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March 3, 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 ANSWER TO GLEN RIDDLE STATION’S
MOTION TO DISMISS OBJECTIONS AND COMPEL RESPONSES TO
SET I**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.’s Answer to Glen Riddle Station’s Motion to Dismiss Objections and Compel Responses to Set I 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)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.	:	Docket No.	C-2020-3023129
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.	:		

**SUNOCO PIPELINE L.P. ANSWER TO GLEN RIDDLE MOTION TO DISMISS
OBJECTIONS AND COMPEL RESPONSES TO SET I**

Pursuant to 52 Pa. Code § 5.342(g)(1) of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) regulations, Sunoco Pipeline L.P. (“SPLP”) submits this Answer to Glen Riddle Station L.P. (“GRS”) Motion To Dismiss Objections and Compel Responses filed February 26, 2021 (“Motion”).¹ In support of this Answer, SPLP respectfully asserts as follows:

INTRODUCTION

1. On February 5, 2021, GRS served on SPLP Interrogatories and Request for Production of Documents Set 1.²
2. On February 16, 2021, SPLP interposed the attached Objections to Set I Nos. 19 and RFP Nos. 1, 29, 36, 37. SPLP contends these burdensome requests seek information that has no bearing on whether or not SPLP is in violation of the Public Utility Code or Commission regulations, and is unlikely to lead to the discovery of admissible evidence related to matters within the Commission’s jurisdiction.
3. On February 26, 2021, GRS filed the above-mentioned motion to compel.

¹ Due to the pending discussion regarding the Motion to Compel on March 1, 2021 to try to resolve the dispute, GRS and SPLP agreed that this answer would be due under the Commissions normal, 5-day deadline under 52 Pa. Code § 5.342(g)(1).

² Set 1 contained 21 interrogatories and 38 requests for production of documents. SPLP objected to some of the definitions and 5 of these requests as irrelevant, overly burdensome, and unlikely to lead to the discovery of admissible evidence before the Commission.

4. On March 1, 2021, SPLP and GRS discussed the possible resolution of GRS's motion to compel. The results of that discussion are described herein. Where SPLP and GRS could not meet at a resolution, SPLP provides these answers to the Motion to Compel and asks Your Honor to dismiss GRS's motion to compel responses to Set I.

I. OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

5. SPLP and GRS resolved the general objection to GRS's Instruction and Definitions to the extent not compliant with the Commission's regulations as discussed in Paragraph 9 of GRS's motion.

6. Regarding Paragraphs 10-15 of GRS's Motion, SPLP objected to Set 1 Instructions regarding the production of any proprietary, confidential, highly confidential or confidential security protection until a protective order has been entered in this proceeding. GRS moved to dismiss SPLP's objections based on the premise that SPLP failed to seek a protective order within 14 days of receipt of the discovery requests. As discussed in SPLP's Motion for Protective order filed March 2, 2021, GRS's arguments are meritless; SPLP timely proposed a protective order to GRS and was awaiting a response. Your Honor should enter the commonly used Commission Standard protective order SPLP proposed, at which time SPLP will produce, pursuant to that order, any proprietary, confidential, highly confidential, or Confidential Security Information responsive to GRS Set I.

7. Regarding Paragraph 16-20 of GRS' Motion, SPLP objected to Set 1 Instructions and the Definition of "document" as overly broad and unduly burdensome which would encompass productions outside the scope of allowable discovery. SPLP's objection stated:

SPLP objects to the definition of document as overly broad and unduly burdensome and outside the scope of allowable discovery. Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c). Section 5.323(a) of the Commission's regulations also exempts preliminary or draft versions of testimony and exhibits from discovery, whether or not the final versions of the testimony or exhibits are offered into evidence. 52 Pa. Code § 5.323(a). In addition, the Commission's regulations prohibit discovery which would cause unreasonable burden to a party. 52 Pa. Code § 5.361(a)(4). Complainant defines "Document" in a manner which is unreasonably burdensome, and seeks information that is privileged, irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence. The definition of document specifically seeks to include all prior drafts of any document, and handwritten notes, notations, records or recordings of any conversation. Any prior drafts of a document are irrelevant and immaterial to the issues in this proceeding and are not likely to lead to the discovery of admissible evidence. To the extent that a document is relevant to the issues in this proceeding, the content of that document speaks for itself and does not require inquiry into any prior draft(s). Moreover, such drafts are exempt from discovery under the Commission's regulations. In addition, production of prior drafts, and any handwritten notes, notations, records or recordings of any conversation is unreasonably burdensome. Production of such materials would require an unreasonably extraordinary and burdensome effort by SPLP, and only serve to inefficiently delay this proceeding. Moreover, Complainant seeks to include materials and documents that were created in preparation of litigation in its definition of Document. To the extent that any document or other material was prepared in anticipation or preparation of litigation, such materials are privileged and exempt from discovery. Based on the foregoing, SPLP objects to Complainant Set 1 definition of "document" as unreasonably burdensome, and as seeking information that is privileged, irrelevant, immaterial, and not likely to lead to the discovery of admissible evidence. SPLP reserves the right to further object to any question that similarly seeks discovery of an overly broad classification or category of materials or documents.

8. GRS's motion to compel at paragraphs 16-20 argues for the production of all drafts of responsive documents. Further, GRS' motion argues that all handwritten notes, notations, records, or recordings within their definition of "document" must be produced as well. The extreme scope of this definition would impose an unreasonable burden on SPLP. For example, GRS's request to produce various permits and applications related to the property in RFP 38 states: "All permits and supporting documents from all sources, including, but not limited to, the Township, Pennsylvania Department of Transportation and/or Pennsylvania Department of

Environmental Protection, related in any way to Sunoco's work at the property." Taken literally using GRS' definition of "document" SPLP would need to dredge up drafts, notes, and recordings related to each of its numerous permits, and "would cause unreasonable annoyance, embarrassment, oppression, burden or expense to[SPLP]." 52 Pa. Code § 5.361.

9. Finally, GRS's instructions require a privilege log for every document as to which SPLP claims privilege. The Commission's regulations do not require production of a privilege log; to the extent the issue arises and circumstances require Your Honor could order one, but there is no basis for requiring one as part of general discovery instructions.

II. OBJECTIONS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION

A. GRS Set 1, Interrogatory No 19.

10. GRS Set 1, No 19 states:

19. Identify all monies that Sunoco has paid to the Township in addition to the \$1.8 Million identified in the Letter Agreement between Sunoco and the Township dated September 26, 2016, and the purpose of each such payment.

11. SPLP objected to this interrogatory on the basis that it seeks information irrelevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence under 52 Pa. Code § 5.321(c).

12. GRS argues that it is entitled to discovery as to whether SPLP made any payments to the Township, alleging that it may somehow relate to SPLP's "unsafe practices." GRS further argues that pursuant to a "Letter Agreement to Permanent Easement Agreement" (Letter Agreement) between Sunoco and the Township, SPLP agreed to reimburse the Township for:

"all reasonable and documented expenses incurred in conjunction with the Easements including, but not limited to, legal fees (including, but not limited to, **for the negotiation of the Easements**, the review and drafting of any and all documents **associated with the Easements**, attendance at public and private meetings, and litigation costs and expenses incurred including in

opposing the injunction filed against the Township **in conjunction with the Easements**) engineering fees (including, but not limited to, for the negotiation, review and drafting of documents **associated with the Easements**, and **oversight of the construction and restoration of the Easements** and Township property and roads), consultant costs and expenses (including, but not limited to, the charges of all appraisers), and administrative costs and fees.”

See Motion at 7-8 (emphasis added). The Letter Agreement is wholly unrelated to the issues in this proceeding, which revolves around whether SPLP’s active construction on Complainant’s property and communications with Complainant related to that construction comply with the Public Utility Code and the Commissions regulations.

13. As Your Honor ruled on SPLP’s Preliminary Objections, the Commission’s jurisdiction is limited, it possesses only the authority that the legislature has specifically granted in the Public Utility Code. 66 Pa. C.S. §§ 101, *et seq.* See *Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Granting In Part and Denying In Part Preliminary Objections at 7 (Order entered January 28, 2021):

the Commission has no jurisdiction to hear arguments regarding the scope and validity of an easement. Similarly, the Commission generally lacks jurisdiction to adjudicate claims regarding violations of Municipal law, including parking spaces and fencing, the Governor’s or Health Department’s face covering mandates or environmental regulations that are beyond the scope of the Public Utility Code or a Commission order or regulation. To the extent that Sunoco may be found to have violated municipal law, face covering mandates or environmental regulations by a court that has jurisdiction to hear such claims, or the easement pertains to a utility issue such as inspection of structures and water piping, then such a finding may be used to demonstrate that Sunoco is also violating the Public Utility Code by providing unsafe service. The Commission, however, lacks jurisdiction to make such an initial finding. To the extent that Glen Riddle has raised those issues, Sunoco’s preliminary objection will be granted in part.

Id.

14. GRS fails to justify its request; payments made in conjunction with easements is not relevant discovery within the subject matter involved in the pending action. 52 Pa. Code § 5.321(c).

15. To the extent potential relevance could be imagined, the request is so open ended as to be a fishing expedition, not reasonably tailored to discover admissible evidence. *See, e.g., City of York v. Pa. P.U.C., 281 A.2d 261, 265* (Pa. Commw. Ct. 1971) (“*City of York*”) (“Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.”) (quoting *American Car & Foundry Company v. Alexandria Water Company, 70 A. 867, 869* (Pa. Super. Ct. 1908)).

16. Your Honor should deny GRS’s motion as to GRS Set I, Interrogatory 19.

B. GRS Set 1, RFP No. 1.

17. GRS Set 1, RFP No. 1 States:

1. All documents and/or communications identified in, used to respond to, referenced by, or related to Sunoco’s answers to the Interrogatories and/or the Complaint filed by Glen Riddle.

18. During the discussion call between GRS and SPLP Counsel on March 1, 2021, the Parties agreed that SPLP will limit its production to documents relevant to the scope of each individual interrogatory. With that understanding, SPLP withdraws its objection to RFP 1.

C. GRS Set 1 RFP No. 29.

19. GRS Set 1 RFP No. 29 states:

29. All documents, communications, and information regarding Sunoco’s Chapter 102 Erosion and Sediment Control, including, but not limited to, permits.

20. SPLP is agreeable to the limitation proposed by GRS, i.e., that the request shall be limited to Chapter 102 Erosion and Sediment Control permits relevant to the property rather than a statewide request.

D. GRS Set 1 RFP No. 36 and 37

21. GRS Set 1 RFP 36 and 37 state:

36. All communications by and between James R. Flandreau, Esquire, or any of his partners or associates, and Duane Morris LLP, relating in any way to Sunoco or the Property.

37. All communications by and between Sunoco and any of its representatives, including, but not limited to, Energy Transfer Partners and Duane Morris LLP, on the one hand, and the Township or any representatives of the Township, including, but not limited to, legal counsel, engineers, officials, council members, and the Township Manager, on the other, relating to work in the Township, payments, safety, and/or the Property.

22. SPLP objected to these requests for production on the basis that they seek information irrelevant to this proceeding and are not reasonably calculated to lead to the discovery of admissible evidence under 52 Pa. Code § 5.321(c). The request falls far outside the scope of the Commission's jurisdiction and this proceeding on whether SPLP's construction at GRS property and communications with GRS comply with the Public Utility Code and the Commission's regulations.

23. GRS asserts that the requests are reasonably calculated to lead to the discovery of admissible evidence; they are not.

24. Communications between Sunoco and its representatives and the Township and its representatives are not relevant to the subject matter involved in the pending action and are in no way reasonably calculated to lead to the discovery of admissible evidence.

25. GRS fails to justify its requests, asserting that such communications may be relevant to GRS' safety concerns. This cannot justify GRS's open-ended attempt to rummage through the files of the Township and SPLP's counsel in this Complaint proceeding.

26. These requests are, by definition, a burdensome and irrelevant fishing expedition that are not reasonably tailored to discovery admissible evidence and should not be allowed, especially when considering the expedited nature of this proceeding. *See, e.g., City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Commw. Ct. 1971) (“*City of York*”) (“Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.”) (quoting *American Car & Foundry Company v. Alexandria Water Company*, 70 A. 867, 869 (Pa. Super. Ct. 1908).

27. Further Counsel for GRS filed a Right-to-Know Law request on December 16, 2020 with Middletown Township seeking, *inter alia*, all communications by and between the Township and its representatives and Sunoco Pipeline L.P. and its representatives from January 1, 2019 through present. The Right-to-Know Law request was partially granted by the Township of February 2, 2021, and Counsel for GRS was provided with over 1,820 pages of documents from Middletown Township. A copy of the Township’s February 2, 2021 partial approval letter is attached as Attachment A. The requests in RFP 36 and 37 are duplicative of the Right-to-Know Law request submitted by Counsel to the Township. To the extent Middletown Township denied the Right-to-Know Law request, counsel for GRS has appealed to the Office of Open Records at Docket No. AP 2021-0278, in which Energy Transfer is a Direct-Interest Participant. Therefore, to the extent this request would be considered relevant, which it is not, it would be unduly burdensome for SPLP to have to produce the same documents containing communications between SPLP and Township in in this litigation.

28. Your Honor should deny Glen Riddle’s motion.

CONCLUSION

WHEREFORE, Sunoco Pipeline L.P. respectfully requests that Your Honor deny Complainant Glen Riddle Station L.P.'s Motion to Compel as stated herein.

Respectfully submitted,

/s/ Thomas J. Sniscak

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Date: March 3, 2021

ATTACHMENT A

COUNCIL MEMBERS

AT LARGE
Kathleen O'Connell-Bell
Norman C. Shropshire
Mark Kirchgasser

FIRST DISTRICT
Susan Powell

SECOND DISTRICT
Walter (Bok) Read

THIRD DISTRICT
Biblanna Dussling

FOURTH DISTRICT
Stephen Byrne

27 N. PENNELL ROAD

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TOWNSHIP OF MIDDLETOWN

DELAWARE COUNTY, PENNSYLVANIA

www.middletowndelcopa.gov



610-565-2700

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MANAGER
John McMullan

ENGINEER
Kelly & Close Engineers

SOLICITOR
Joseph A. Damico, Jr., ESQ

February 2, 2021

Mr. Cortes:

On December 16, 2020, you submitted a Right to Know request containing multiple requests for information pursuant to the Pennsylvania Right-to-Know Law. Each individual request is enumerated and responded to below.

1. *All communications by and between the Township (including, but not limited to, all appointed and elected officials (e.g., Township Manager, Township Engineer, and Solicitor or Conflict Solicitor, James Flandreau, Esq.) (collectively, the "Township")) and Sunoco Pipeline, LP (including, but not limited to, Duane Morris LLP, Energy Transfer Partners, Manko, Gold, Katcher, and Fox, LLP, and all other persons and/or entities acting for or on behalf of it (collectively, "Sunoco")), from January 1, 2019, through the present relating to the Mariner East 2 Pipeline or any work relating to the same.*

By correspondence dated December 22, 2020, I advised you that the Township would require additional time to respond because a legal review was necessary to determine whether the record was subject to access under the RTKL and to provide notice to the third party and allow the third party to respond and provide justification for whether the record(s) should remain confidential.

Based on completion of review as well as response by the third party, your request has been granted, to the extent that the communications requested are not otherwise exempt from disclosure for the following reasons:

- (1) Records containing confidential security information and/or public safety and physical security information, per Section 708(b)(2) and Section 708(b)(3) of the RTKL are exempt from disclosure. Similar to Section 708(b)(3), any communications that would fall under the Public Utility Confidential Security Information Protection Act, Act of November 29, 2006, P.L. 1435, No. 156 (CSI Act) cannot be disclosed.
- (2) Records relating to a non-criminal investigation that the Township has conducted are exempt from disclosure, per Section 708(b)(17) of the RTKL.
- (3) Records provided pursuant to a Protective Order issued by a court or administrative agency are exempt from production pursuant to RTKL Section 306.
- (4) Records reflecting pre-decisional deliberations of the Township, its members, employees or officials are exempt from disclosure per RTKL Section 708(b)(10).
- (5) Records reflecting the contents of real estate appraisals, engineering or feasibility estimates, environmental review, audits or evaluations made for or by the Township relative to leasing, acquiring or disposing of real property or an interest in real property, purchase of public supplier or equipment included in the real estate transaction, or construction projects. These materials are exempt pursuant to RTKL Section 708(b)(22)(i).

Additionally, if you would like to review any of the documents pertaining to Flynn at al v. Sunoco, Nos. C-2018-3006, 116, P-2018-3006, 117, they are available on the PUC docket.

2. *All applications for permits, permission, consent, assistance, or any relief submitted to the Township by Sunoco and any decisions by the Township concerning same from January 1, 2019, through the present.*

This request has been granted. The following permits have been compiled. You had previously received 9 Grading Permits in response to your RTK request dated 1/14/2021 which are also applicable under this request and have previously been fulfilled.

Permit #	Date	Description
ROP 2020-22	8/20/2020	
ROP 2020-35	11/13/2020	amends original SOP-17-00006 Riddlewood Drive
ROP-2020-36	11/13/2020	temporary construction entrance War Trophy Lane
ROP-2020-37	11/13/2020	temporary construction entrance Riddlewood Drive
ROP-2020-41	12/4/2020	amend original DOP-17-00008 Riddlewood Drive & Pennell

The following communications pertaining to requests for permission/authorization have been compiled.

Date	Permission Description
8/29/2019	Continuous work authorization - pipe pullback at Sleighton Park
2/20/2020	Continuous work authorization - pipe pullback at Granite Farms Estates
6/30/2020	Geophysical Monitoring Permission at Sleighton Park
9/16/2020	Continuous work request - pipe pullback at Chester Creek Gun Club

3. *All written agreements by and between the Township and Sunoco.*

This request has been granted. The following agreements have been compiled.

- Original easement and access agreements contained within Ordinance 768 dated 9/26/16
- Excess Maintenance Agreement (RUMA) dated 11/2/16
- Stormwater O&M Agreement dated 11/9/17
- Amendment to Permanent Easement – Sleighton – dated 6/22/20
- Letter Agreement for Extended Temporary Workspace Easement (Sleighton) – dated 6/22/20
- Amendment to Road Use & Excess Maintenance Agreement (RUMA) – dated 12/8/20

4. *All documents identifying any factual basis for the following statement in John McMullan’s email dated December 15, 2020, sent to “Mr. Schultz”: “I know Sunoco has provided the Property Managers at the complex with informational materials about the work.”*

This request has been granted and has been compiled, noted as a response to request numbers 4, 5 and 6.

5. *All communications sent or received by the Township related in any way to the December 15, 2020 email referenced in the preceding sentence.*

This request has been granted and has been compiled, noted as a response to request numbers 4, 5 and 6.

6. *All communications by and between the Township and any residents of Glen Riddle Station from September 1, 2020, through the present.*

This request has been granted and has been compiled, noted as a response to request numbers 4, 5 and 6.

7. *All documents identifying any benefits conferred by Sunoco to or upon the Township or to or upon any Township officials, including, without limitation, the payment of money and the provision of work or materials.*

Your request is denied because no records exist related to the nature of your request.

You have a right to appeal the denial of information by submitting your information to the following link:
<https://www.openrecords.pa.gov/Appeals/AppealForm.cfm>

If you choose to file an appeal you must do so within 15 business days of the date of the Township's response. See 65 P.S. Section 67.1101. Please note that a copy of your original Right-to-Know request and this denial letter must be included when filing an appeal. The law also requires that you state the reasons why the record is a public record and address each of the reasons the Township denies your request. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

The cost for the copies of the above-noted productions is \$726.50. Checks can be made payable to Middletown Township. Please make arrangements for pick-up and payment of the copies at your convenience.

Sincerely,



John McMullan
Township Manager

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
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(610) 458-7500
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/s/ Thomas J. Sniscak _____

Thomas J. Sniscak, Esq.
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Kevin J. McKeon, Esq.
Bryce R. Beard, Esq.

Dated: March 3, 2021