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March 22, 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 IN LIMINE TO (1) PRECLUDE GRS FROM VIOLATING YOUR HONOR’S SCHEDULING ORDER AND THE COMMISSION’S REGULATIONS BY SUPPLEMENTING GRS’ DIRECT TESTIMONY IN SURREBUTTAL OR (2) IN THE ALTERNATIVE, MOTION FOR MODIFIED PROCEDURAL SCHEDULE, AND (3) REQUEST FOR EXPEDITED 7-DAY RESPONSE PERIOD**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.’S Motion In Limine To (1) Preclude GRS From Violating Your Honor’s Scheduling Order And The Commission’s Regulations By Supplementing GRS’ Direct Testimony In Surrebuttal Or (2) In The Alternative, Motion For Modified Procedural Schedule, And (3) Request For Expedited 7-Day Response Period 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
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Counsel for Sunoco Pipeline L.P.

BRB/das

Enclosures

cc: Honorable Joel Cheskis (via email jcheskis@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103(c), you are hereby notified that, if you do not file a written response to the enclosed Motion in Limine within seven (7) days from service of this notice,¹ a decision may be rendered against you. Any Response to the Motion in Limine must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline, L.P., and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

¹ This motion requests that the ALJ order an expedited response time of 7-days due to the expedited procedural schedule in this matter. Should the ALJ grant this request, the 20-day response time under 52 Pa. Code § 5.103(c) will be modified as ordered.

**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.’S MOTION IN LIMINE TO
(1) PRECLUDE GRS FROM VIOLATING YOUR HONOR’S SCHEDULING ORDER
AND THE COMMISSION’S REGULATIONS² BY SUPPLEMENTING GRS’ DIRECT
TESTIMONY IN SURREBUTTAL OR (2) IN THE ALTERNATIVE, MOTION FOR
MODIFIED PROCEDURAL SCHEDULE, AND
(3) REQUEST FOR EXPEDITED 7-DAY RESPONSE PERIOD**

In accordance with 52 Pa. Code §§ 5.103 (c), 5.202(c), 5.223(a), and 5.243(e), Sunoco Pipeline L.P. (“SPLP”), by its undersigned counsel, requests Your Honor grant one of the alternative forms of the relief requested herein to enforce Your Honor’s Scheduling Order³ and 52 Pa. Code §5.243(e)’s requirement that all direct evidence be presented in Glen Riddle Station, L.P.’s (“GRS”) direct case served March 15, 2021, so as to protect SPLP’s due process rights by avoiding trial by ambush and preventing surprise.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

GRS has signaled its intent to “supplement” through its rebuttal⁴ testimony all of its direct testimony in order to address information that was in GRS’s possession before it served

² 52 Pa. Code § 5.243(e) (a party will not be able to introduce during a rebuttal phase evidence which should have been included in the party’s case-in-chief).

³ *Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P.*, Docket No. C-2020-3023129, Scheduling Order (Feb. 26, 2021) (“Scheduling Order”).

⁴ The Scheduling Order’s procedural schedule provides GRS with the opportunity to open with direct testimony and close with a second round of testimony denominated as “surrebuttal.” The schedule provides SPLP with one round of testimony, denominated as “rebuttal.” Presumably, GRS means that it intends to supplement its direct testimony through its closing (i.e., second) round of testimony, denominated in the procedural schedule as surrebuttal testimony.

its March 15, 2021 direct testimony, but that GRS did not include in its direct testimony.⁵ Even if GRS had a legitimate basis for claiming this alleged right to supplement – and it does not⁶ – GRS should not be permitted to supplement its direct testimony in its closing testimony.

The gist of GRS’s basis for claiming the right to supplement its direct testimony through surrebuttal is that although GRS had the production from SPLP almost a week before direct testimony was due, GRS “just did not get to it.” This is no excuse. GRS could have commenced discovery months before it did, could have requested the files in the format it preferred when it finally asked the discovery, could have reviewed the production in time to include materials from it in its direct testimony, and had the resources to do so. Instead, GRS did not even access the production until the last minute, failed to ask SPLP post-production to provide the files in an alternative format, failed to ask Your Honor for more time to complete and serve its direct testimony, and then buried its “notice” that it plans to file supplemental direct testimony as part

⁵ GRS signaled this intent in an unusual way, through the direct testimony of Stephen Iacobucci, one of GRS’s four witnesses. *See* GRS Statement No. 2 at 14: 17-20 and n. 3:

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes. However, I reserve the right to supplement my testimony as additional issues arise during the course of this proceeding. That supplementation will likely include evidence we just received from Sunoco but, due to the timing of its receipt, cannot include today.³

³ Sunoco made a production of 15G to counsel for GRS end of day on Tuesday. Sunoco made its production as a PDF-only production requiring GRS counsel’s team to have to convert all PDFs to load files to review them efficiently. This took several days to complete. As such, **GRS has not been able to review and digest the production from Sunoco by the time of this filing and reserves the right to supplement all testimony as part of its Rebuttal.** (Emphasis added).

⁶ GRS’s basis is that it lacked the time to review discovery responses it received from SPLP on March 9, six days in advance of its direct testimony due date of March 16, 2021. As set forth below, however, GRS waited until March 12 to even access the discovery responses SPLP provided via electronic file transfer. Moreover, it is GRS that advocated for the compressed procedural schedule that it now finds inconvenient and seeks to circumvent.

of its surrebuttal in a footnote in the testimony of a lay witness.

Supplementing direct as GRS demands is expressly barred by 52 Pa. Code § 5.243(e)(2) and Your Honor's February 26, 2021 Scheduling Order,⁷ and would be particularly prejudicial here, where an opportunity for SPLP to respond to the supplemental direct is not provided, and where, even if the opportunity existed, the compressed procedural schedule and the supplemental direct's unknown subject matter would make the timely preparation of responsive testimony within the existing schedule impracticable. Allowing GRS to supplement its direct testimony thus would have the effect of denying SPLP due process, because SPLP would never have an opportunity to respond through testimony to the new aspects of GRS's direct case.

If Your Honor does not grant SPLP's primary request to simply preclude GRS from supplementing its direct testimony, SPLP requests in the alternative that the procedural schedule be amended and extended. Specifically, SPLP proposes a date for GRS to serve supplemental direct testimony limited to issues arising out of SPLP's March 9 discovery production, a revised date for SPLP to serve rebuttal testimony that addresses both GRS's direct and its supplemental direct, a revised date for GRS rebuttal, and revised hearing and briefing dates.

Finally, SPLP respectfully requests, for the efficiency and fairness of this proceeding, that Your Honor shorten the time within which GRS may answer this motion, so that this issue can be resolved before April 9, 2021, when SPLP's testimony is due under the existing procedural schedule.

⁷ Scheduling Order at Ordering Paragraph 4 (“[A]ll parties shall comply with the provisions of 52 Pa. Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party's case-in-chief or which substantially varies from the party's case-in-chief, unless the party is introducing evidence in support of a proposed settlement.”).

II. LEGAL STANDARDS

SPLP seeks (a) to preclude GRS from supplementing its direct testimony; or (b) in the alternative to modify the procedural schedule in a way that accommodates GRS's supplementation without unduly prejudicing SPLP; and (c) to shorten the time within which GRS may answer this motion. The Commission's regulations allow for each of these reliefs.

First, the Commission's regulations and paragraph 4 of your Honor's Scheduling Order bar the introduction of evidence in rebuttal that should have been included in the party's direct case:

(e) A party **will not be permitted to introduce evidence during a rebuttal phase** which:

- (1) Is repetitive.
- (2) **Should have been included in the party's case-in-chief.**
- (3) Substantially varies from the party's case-in-chief.

52 Pa. Code § 5.243(e) (emphasis added).

The purpose of the rule is to protect due process rights to avoid trial by ambush and prevent surprise. "The clear purpose of it [52 Pa. Code § 5.243(e)] is to avoid trial by ambush and the prevention of surprise can only be achieved if the parties are confined to the scope of their direct case." *Pennsylvania Public Utility Commission v. UGI Utilities, Inc.*, 1994 Pa. PUC LEXIS 138, *85; *Pennsylvania Pub. Util. Comm'n v Total Environmental Solutions, Inc.*, 103 Pa. P.U.C. 110 (July 30, 2008) (parties here were "ambushed" by the new information contained in rebuttal testimony that "corrected" information provided in direct testimony and discovery responses.); *Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. -- Treasure Lake Water Division, et al.*, Docket No. R-00072493, 2008 Pa. PUC LEXIS 42 at *114-116 (Pa PUC May 23, 2008) ("...it is not equitable to permit TESI to take a second bite at direct testimony, or to allow it to shore-up inadequate direct at the rebuttal phase of this case."), *aff'd*, Opinion and

Order at 89 (July 30, 2008); *City of Lancaster (Sewer Fund) v. Pennsylvania Pub. Util. Comm'n*, 793 A.2d 978 (Pa. Cmwlth. 2002) (Commonwealth Court affirmed the PUC's ruling that the City improperly proffered direct evidence during a rebuttal phase of the proceeding, citing 52 Pa. Code § 5.243(e)).

Second, SPLP asks in the alternative that if Your Honor is inclined to allow GRS to supplement its direct testimony to include facts gleaned from SPLP's March 9 discovery production to GRS, the procedural schedule be modified to: set a new date for the supplemental direct; extend the time for SPLP to serve its rebuttal; extend the time for GRS to serve its surrebuttal; set new hearing dates; and set new briefing deadlines. The Commission's regulations and the Scheduling Order in this case provide for the granting of such relief. 52 Pa. Code § 5.202(c) ("The Commission or the presiding officer in the exercise of discretion, for cause, may advance or postpone proceedings on the hearing calendar with notice to the parties"); 52 Pa. Code § 5.223(a), as referenced in the Scheduling Order at Paragraph 8 ("any provision of this order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code §5.223(a).").

Finally, SPLP asks that the time for responding to this motion be shortened from 20 days to 7, so that this issue can be resolved sufficiently in advance of April 9, 2021, when SPLP's testimony is due under the existing procedural schedule. This relief is permitted under 52 Pa. Code § 5.103(c) ("A party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.").

III. ARGUMENT

a. GRS Should Be Precluded From Supplementing Its Direct Testimony

The law is clear that a party will not be permitted to present testimony that “[s]hould have been included in the party’s case-in-chief” in later phases of testimony. 52 Pa. Code § 5.243(e). This, without more, is sufficient reason to preclude GRS from supplementing its direct testimony.

GRS incorrectly attempts to defect blame for its incomplete direct testimony by stating it is somehow SPLP’s fault. Its stated reason for claiming the right to “supplement all testimony as part of its Rebuttal,” GRS Statement No. 2 at 14: 17-20 and n. 3, is that GRS lacked the time to “review and digest the production” Sunoco made on March 9, 2021 in time to include testimony based on that production by March 16 when its direct testimony was due. GRS explains that SPLP provided a large volume of material as “a PDF-only production requiring GRS counsel’s team to have to convert all PDFs to load files to review them efficiently. This took several days to complete.”

In a nutshell, GRS’s excuse for not including testimony on the discovery production is that it “just did not get to it.” For multiple reasons, this preemptive justification fails, because any hardship is of GRS’s own making. GRS could have commenced discovery when it filed its complaint on December 2, 2020,⁸ but waited until February 4, 2021. GRS received the discovery production on March 9 at 5:29 pm, but did not access it until March 12 at 9:40 am. *See Exhibit 1* (SPLP email/file transfer transmission of production and Sharefile activity log). GRS is not without resources, represented as it is by a large law firm. GRS did not specify in its discovery

⁸ 52 Pa. Code § 5.331(b) (“A party shall initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.”).

requests the format in which it wanted SPLP to provide the production; had GRS done so, SPLP would have provided the production to GRS on March 9 in load files rather than searchable PDFs organized in folders responsive to each discovery request. Moreover, SPLP would have provided the production in load files even after the production was tendered on March 9 if GRS had so requested. And if it is true that the sheer volume of the documents GRS requested and SPLP produced would nonetheless have prevented GRS's review in time for inclusion in GRS's testimony on March 15, GRS could and should have requested an extension of the procedural schedule to provide GRS more time to serve its direct testimony (and a commensurate extension for SPLP to serve responsive testimony). Instead, GRS seeks to remedy its self-inflicted problem by attempting to shift the burden to SPLP, arrogating to itself by footnote buried in a lay witness' testimony the "right" to supplement its direct case days before hearing, under a schedule that neither affords SPLP sufficient time to investigate new allegations nor respond to them through supplemental rebuttal testimony. The outcome GRS seeks thus denies basic due process to SPLP. The Commission's regulations have recognized the ploy GRS seeks to use and do not permit it. "The clear purpose of it [52 Pa. Code § 5.243(e)] is to avoid trial by ambush and the prevention of surprise can only be achieved if the parties are confined to the scope of their direct case." *Pennsylvania Public Utility Commission v. UGI Utilities, Inc.*, 1994 Pa. PUC LEXIS 138, *85; *Pennsylvania Pub. Util. Comm'n v Total Environmental Solutions, Inc.*, 103 Pa. P.U.C. 110 (July 30, 2008) (parties here were "ambushed" by the new information contained in rebuttal testimony that "corrected" information provided in direct testimony and discovery responses.). Your Honor's Scheduling Order underscores the point, warning the parties they may not engage in such tactics.

SPLP respectfully requests that Your Honor rule *in limine* that GRS is precluded from supplementing its direct case in its surrebuttal round of testimony.

b. In the Alternative, the Procedural Schedule Should Be Modified

In the event Your Honor concludes that, notwithstanding its own lack of diligence and adherence to the regulations, GRS will be permitted to supplement its direct testimony to address materials produced in SPLP’s March 9 discovery production, GRS should not be permitted to do so in its surrebuttal testimony, as that would foreclose SPLP’s opportunity to respond, in violation of due process. Instead, SPLP requests in the alternative that the procedural schedule be modified to set a new date for GRS’s supplemental direct, a new date for SPLP to serve its rebuttal to both GRS’s March 15 direct testimony and GRS’s supplemental direct testimony, a new date for GRS surrebuttal, a new hearing date, and new briefing deadlines. Given the time required for resolution of this motion, SPLP suggests that GRS’s additional direct testimony be served on April 9, 2021.

The proposed revised procedural below assumes adoption of the April 9 deadline for GRS’s supplemental direct testimony (limited to matters arising out of SPLP’S March 9, 2021 production) and then extends all of the other dates in the existing procedural schedule using the same time intervals used in the existing schedule:

EVENT	ORIGINAL	PROPOSED REVISED
Glen Riddle Direct Testimony	March 15, 2021	
Glen Riddle Supplemental Direct Testimony (if any)		April 9, 2021
Sunoco Rebuttal Testimony	April 9, 2021	May 5, 2021
Glen Riddle Surrebuttal	April 16, 2021	May 12, 2021

Hearings	April 26 and 27, 2021	May 24 and 25, 2021
Main Brief	May 14, 2021	June 11, 2021
Reply Brief	May 21, 2021	June 18, 2021

IV. REQUEST FOR EXPEDITED SEVEN DAY ANSWER PERIOD

Pursuant to 52 Pa. Code § 5.103(c), SPLP respectfully requests that Your Honor shorten the response period for this motion from 20 days to 7, so that the issue of supplemental direct testimony raised by GRS can be resolved sufficiently in advance of April 9, 2021, when SPLP’s testimony is due under the existing procedural schedule. As it stands, SPLP is in the process of identifying the witnesses it will call to respond to GRS’s direct testimony served March 16, 2021. Unless the answering period is shortened, GRS’s answer would not be due until April 12, 2021.

V. CONCLUSION

For the foregoing reasons, SPLP respectfully requests that Your Honor:

- (1) Preclude GRS from serving supplemental direct testimony as part of its surrebuttal testimony; or, alternatively,
- (2) Modify and extend the procedural schedule in this proceeding as proposed herein to accommodate SPLP's due process right to respond to GRS's supplemental direct testimony; and
- (3) Shorten the response period for this motion from 20 days to 7.

Respectfully submitted,

/s/ Thomas J. Sniscak

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Date: March 22, 2021

Exhibit 1

SPLP Service Email

SPLP Sharefile Activity Log

From: Bryce Beard
To: "[Cortes, Samuel W.](#)"; [Beach, Ashley L.](#)
Cc: [Diana Silva](#); [Thomas Sniscak](#); [Whitney Snyder](#); [Kevin McKeon](#)
Subject: Glen Riddle v. Sunoco Pipeline, Docket No. C-2020-3023129; Sunoco Pipeline Responses to Glen Riddle Set I
Date: Tuesday, March 9, 2021 5:29:00 PM
Attachments: [SPLP Response to GRS Interrogatories Set I 3.9.21 .pdf](#)

Mr. Cortes and Ms. Beach,

Please find attached Sunoco Pipeline L.P.'s Responses to Glen Riddle Station L.P.'s set I interrogatories and requests for production of documents.

The documents and productions can be found at: [REDACTED]
[REDACTED]

Should you have any issues with the sharefile or other questions, please contact me directly.

Sincerely,

Bryce R. Beard

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Date	ItemName	Activity	User
3/12/21 10:32 AM	/Glen Riddle v. SPLP, C-2020-3023129, Discovery Productions/Glen Riddle Set 1/3-9-21 Production	Download	Samuel Cortes
3/12/21 9:40 AM	/Glen Riddle v. SPLP, C-2020-3023129, Discovery Productions/Glen Riddle Set 1/3-9-21 Production	Download	Samuel Cortes

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

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Dated: March 22, 2021