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March 31, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Response of Glen Riddle Station, L.P. (“GRS”) to the Motion *in Limine* of Sunoco Pipeline, L.P., to (1) Preclude GRS from Violating Your Honor’s Scheduling Order and the Commission’s Regulations by Supplementing GRS’s Direct Testimony in Surrebuttal or (2) in the Alternative, Motion for Modified Procedural Schedule, and (3) Request for Expedited Response Period (the “Motion”), in the above-referenced matter. If you have any questions with regard to this filing, please do not hesitate to contact me. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read 'Samuel W. Cortes', written over a light blue horizontal line.

Samuel W. Cortes

SWC:jcc
Enclosure

cc: Per Certificate of Service

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
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**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
Complainant,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

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

Complainant, Glen Riddle Station, L.P. (“GRS”), by and through its undersigned counsel, hereby files this Response to the Motion *in Limine* (the “Motion”) of Respondent, Sunoco Pipeline, L.P. (“Sunoco”), to (1) Preclude GRS from Violating Your Honor’s Scheduling Order and the Commission’s Regulations by Supplementing GRS’s Direct Testimony in Surrebuttal or (2) in the Alternative, Motion for Modified Procedural Schedule, and (3) Request for Expedited Response Period (the “Motion”).

I. INTRODUCTION

Sunoco’s Motion is based on a false premise and, at best, is premature. GRS has not utilized Sunoco’s production in its Surrebuttal Testimony. Given the issues in this proceeding, it is unlikely that Sunoco’s production actually contains new evidence. Rather, it is more likely that GRS would utilize Sunoco’s to rebut Sunoco’s testimony. Until Sunoco submits its Rebuttal Testimony on April 9th, GRS cannot ascertain whether it will use Sunoco’s production. As such, until such issues raised in the Motion actually arise, Your Honor should defer ruling on the Motion.

Should Your Honor seek to resolve the Motion at this time, then Your Honor should be aware of an important fact left out of Sunoco's Motion – Sunoco produced 36,254 pages, contained in 893 .pdf files, twelve (12) days late (the “Late Production”) and only six (6) days prior to GRS's deadline for Direct Testimony. Not only did Sunoco not give GRS any indication how voluminous its production would be (to enable GRS to seek an extension of time from Your Honor to submit its Direct Testimony), but Sunoco also did not produce TIFF files. This made the review of the 893 files in the Late Production on such limited notice more difficult. Having engaged in such gamesmanship, Sunoco now seeks to bar GRS from utilizing any of its Late Production. Although Sunoco claims that it will be prejudiced if Your Honor permits GRS to utilize its Late Production in GRS's Surrebuttal Testimony, such an argument is without merit and Your Honor should deny it.

A. Sunoco's Late Production Of Documents

On February 5, 2021, GRS served Sunoco with its discovery requests. A true and correct copy of the correspondence transmitting the discovery requests is attached hereto and incorporated herein as Exhibit A. 52 Pa. Code 5.349(d) required Sunoco to respond to the Request for Production of Documents by February 25, 2021, eighteen (18) days prior to GRS's deadline for submitting its Direct Testimony. Although in its Motion Sunoco asserts that GRS should have propounded discovery earlier if it wanted an opportunity to review the discovery in advance of its deadline for Direct Testimony, Sunoco did not produce the requested documents on the February 25, 2021 deadline. Instead, on February 25, 2021, at 4:57 p.m., Sunoco's counsel emailed GRS's counsel “We will need an extension on our discovery responses. We are working **to start** getting things to you as soon as possible.” See Exhibit A (emphasis added). By Sunoco's counsel's own

admission, it had only started to gather the responsive documents on the deadline, twenty (20) days after it had received the requests. Id.

Mindful of the Commission's encouragement to resolve discovery disputes amongst themselves, GRS's counsel inquired, "How much time are you asking for?" See Exhibit A. Sunoco's counsel never responded. Instead, after the prehearing conference in this case, Sunoco finally agreed to produce its discovery on March 9, 2021. That production contained 36,254 pages, contained in 893 .pdf files. Not only was the production late, but it was also in a .pdf format that did not enable GRS to review the documents in a manageable form. Although Sunoco casts blame on GRS for not specifying a production format, Sunoco provides no reason for not producing the documents in a standard, native production format. Sunoco's conduct borders on bad faith.

The format of production is particularly troubling given that Sunoco caused the delay. Given the voluminous cases to which Sunoco is a party, and its experience with electronic discovery, Sunoco surely is familiar with the standard document production format. Sunoco's attempt to lay blame on GRS for not being able to review the Late Production when Sunoco itself caused the delayed production is, at best, gamesmanship.

After Sunoco knew the size of its production, it made no attempt to notify GRS to determine if an adjustment to the Scheduling Order would be necessary. Given the looming deadline for Direct Testimony, and not wanting to delay matters due to the exigency of the safety issues here, GRS reserved its right to supplement its Direct Testimony, but only if necessary. [See fn. 1 of Direct Testimony of Stephen Iacobucci.] GRS specified that it would supplement as part of its Surrebuttal Testimony. Although GRS certainly does not intend to delay this proceeding or desire to introduce new evidence, the failure of Sunoco to timely respond to discovery has put GRS in the untenable position of needing to reserve its rights.

Sunoco's argument that it will be prejudiced by any additional testimony included in GRS's Surrebuttal Testimony is nonsensical. Any supplemental testimony will be based upon Sunoco's own documents which, presumably, Sunoco reviewed prior to production. There will be no surprise to Sunoco.

On the other hand, GRS will be prejudiced by Sunoco's Late Production if Your Honor does not permit GRS to utilize the documents in this proceeding. Such a result would simply encourage parties to fail to comply with discovery deadlines and produce documents late. Your Honor should deny the Motion.

II. LEGAL ARGUMENT

A. The PA Code Does Not Bar Any Surrebuttal Testimony Utilizing Sunoco's Late Production.

52 Pa. Code 5.243(e) does not preclude any Surrebuttal Testimony utilizing the Late Production. GRS does not intend to introduce evidence that is repetitive, nor does GRS intend to introduce evidence that substantially varies from its case-in-chief. Thus, the question becomes whether GRS should have submitted the Late Production in its Direct Testimony. Because Sunoco produced the documents late and in a difficult format, the answer is no.

The case law cited by Sunoco supports GRS here. In Pa. Public Utility Comm. v. Total Environmental Solutions, Inc., 103 Pa. P.U.C. 110, 22008 WL 4145507, *45 (Pa. P.U.C. 2008), the Commission noted: "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." (internal citations omitted.) In that case, the ALJ stated that, in her opinion, the Parties were 'ambushed' by new information. [Id.] Here, GRS, not Sunoco, is being ambushed. Sunoco cannot be ambushed by its own documents that it failed to produce as required by law.

Moreover, enforcement of 52 Pa. Code 5.243(e) is predicated on the parties complying with all other rules, including discovery deadlines. Had Sunoco produced the Late Production when due, eighteen (18) days prior to its Direct Testimony, GRS would have had the opportunity to review it, consider it, and determine whether to include it. Sunoco did not meet its discovery obligations. Such failure placed GRS in an untenable position of seeking an extension of time to respond or simply reserving its right to supplement its Direct Testimony during Surrebuttal Testimony, if necessary. Under such circumstances, and 52 Pa. Code 5.371, Your Honor should permit GRS to utilize the Late Production in its Surrebuttal Testimony, if necessary.

B. There Is No Need To Modify The Scheduling Order.

Modifying the Scheduling Order will just delay the proceeding, which is what Sunoco wants obviously and what GRS attempted to avoid when it timely filed its Direct Testimony and reserved its right to supplement the record through Surrebuttal Testimony, if necessary. Under such circumstances, Your Honor should not modify the Scheduling Order. Permitting GRS to utilize the Late Production in its Surrebuttal Testimony, if necessary, is the proper remedy for Sunoco's failure to comply with discovery deadlines. Sunoco will have the opportunity before the hearing to cross-examine witnesses on such testimony.

C. The Request For Expedited Seven Day Answer Period Is Moot.

The request for expedited seven day answer period is moot because GRS was allowed until Wednesday, March 31, 2021, to respond to the Motion.

III. CONCLUSION

Given that Sunoco has yet to submit its Rebuttal Testimony, it is, at best, premature to rule on the Motion. Rather Your Honor should rule if, and when, such circumstances arise. Alternatively, Your Honor should deny the Motion because Sunoco failed to timely respond to

discovery, produced 36,254 pages, contained in 893 .pdf files in a difficult form, and is now seeking to prejudice GRS by barring it from utilizing the Late Production without basis. Sunoco should not be rewarded for such obvious gamesmanship.

Sunoco is well aware of the information contained in the Late Production. It will not be ambushed by any Surrebuttal Testimony GRS submits based upon the Late Production. As such, GRS respectfully requests that the Commission deny Sunoco's Motion.

Respectfully submitted,

FOX ROTHSCHILD LLP

March 31, 2021

By:



Samuel W. Cortes, Esquire
Attorney ID No. 91494
Attorneys for Complainant

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
Complainant,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that, on March 31, 2021, I served a true and correct copy of the foregoing Response to Respondent’s Motion *in Limine* to (1) Preclude GRS from Violating Your Honor’s Scheduling Order and the Commission’s Regulations by Supplementing GRS’s Direct Testimony in Surrebuttal or (2) in the Alternative, Motion for Modified Procedural Schedule, and (3) Request for Expedited Response Period, upon the persons listed below and by the methods set forth below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Email

Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire
Kevin J. McKeon, Esquire
Bryce R. Beard, Esquire
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
TJSniscak@hmslegal.com
WESnyder@hmslegal.com
kjmckeon@hmslegal.com
brbeard@hmslegal.com



Samuel W. Cortes, Esquire

EXHIBIT A

Chernesky, Jean C.

From: Cortes, Samuel W. <SCortes@foxrothschild.com>
Sent: Thursday, February 25, 2021 4:59 PM
To: Whitney Snyder; Beach, Ashley L.; Thomas Sniscak
Cc: Chernesky, Jean C.; Bryce Beard; Kuebler, Tara L.
Subject: RE: GRS v. Sunoco PUC No. C-2-2020-3023129; GRS Discovery Requests.PDF

How much time are you asking for?

Samuel Cortes

Partner

Fox Rothschild LLP

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From: Whitney Snyder <WESnyder@hmslegal.com>
Sent: Thursday, February 25, 2021 4:57 PM
To: Beach, Ashley L. <abeach@foxrothschild.com>; Thomas Sniscak <TJSniscak@hmslegal.com>
Cc: Chernesky, Jean C. <JChernesky@foxrothschild.com>; Cortes, Samuel W. <SCortes@foxrothschild.com>; Bryce Beard <brbeard@hmslegal.com>
Subject: [EXT] RE: GRS v. Sunoco PUC No. C-2-2020-3023129; GRS Discovery Requests.PDF

We will need an extension on our discovery responses. We are working to start getting things to you as soon as possible.

My apologies,

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/> |

From: Beach, Ashley L. <abeach@foxrothschild.com>
Sent: Friday, February 5, 2021 3:28 PM
To: Whitney Snyder <WESnyder@hmslegal.com>; Thomas Sniscak <TJSniscak@hmslegal.com>
Cc: Chernesky, Jean C. <JChernesky@foxrothschild.com>; Cortes, Samuel W. <SCortes@foxrothschild.com>
Subject: GRS v. Sunoco PUC No. C-2-2020-3023129; GRS Discovery Requests.PDF

Counsel,

Attached please find the discovery requests of Glen Riddle Station, L.P., directed to Sunoco Pipeline, L.P. in the referenced matter. Thank you.

Best regards,

Ashley Beach

Ashley Beach

Partner

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