



Eagleview Corporate Center
747 Constitution Drive
Suite 100
Exton, PA 19341-0673
Tel (610) 458-7500 Fax (610) 458-7337
www.foxrothschild.com

SAMUEL W. CORTES
Direct No: 610.458.4966
Email: SCortes@FoxRothschild.com

April 2, 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 Motion of Glen Riddle Station, L.P. (“GRS”), for Protective Order and for Sanctions Against Sunoco Pipeline L.P., 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
Nevada New Jersey New York North Carolina **Pennsylvania** South Carolina Texas Washington

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

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

NOTICE TO PLEAD

TO: Sunoco Pipeline L.P.

Pursuant to 52 Pa. Code §§ 5.362 and 5.371, you are hereby notified that Glen Riddle Stations, L.P., has filed a Motion for Protective Order and for Sanctions Against Sunoco Pipeline L.P. at the above-referenced docket to which you may file an answer within five (5) days. Your failure to answer will allow the ALJ to rule on the Motion without a response from you, thereby requiring no other proof. All pleadings such as an Answer to this Motion must be filed with the Secretary of the Pennsylvania Public Utility Commission, Rosemary Chiavetta.

FOX ROTHSCHILD LLP

April 2, 2021

By:



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

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

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

**MOTION OF GLEN RIDDLE STATION, L.P., FOR A PROTECTIVE ORDER AND
FOR SANCTIONS AGAINST SUNOCO PIPELINE L.P.**

Glen Riddle Station, L.P. (“GRS”), by and through its counsel, Fox Rothschild LLP, pursuant to 52 Pa. Code §§ 5.362 and 5.371, files this Motion for Protective Order and for Sanctions (“Motion”) Against Sunoco Pipeline L.P. (“Sunoco”). Specifically, GRS seeks a Protective Order to prevent Sunoco from further trespassing on its property to conduct an inspection without complying with 52 Pa. Code § 5.349(c). GRS also seeks sanctions against Sunoco for its refusal to comply with 52 Pa. Code § 5.349(c) upon request of GRS, its violation of the Pennsylvania Code, and its violation of the Commission’s Scheduling Order.

GRS respectfully requests that the ALJ enter an Order (1) preventing Sunoco from conducting the inspection until Sunoco complies with 52 Pa. Code § 5.349(c); (2) requiring Sunoco to be accompanied by GRS’s representative during the Inspection; (3) precluding Sunoco from using any evidence collected in violation of 52 Pa. Code § 5.349; and (4) requiring Sunoco to pay GRS’s legal fees and costs to file this Motion as a sanction for failing to comply with the Pennsylvania Code and the Commission’s Scheduling Order.

In support of the Motion, GRS states as follows:

I. BACKGROUND

1. On February 26, 2021, the Commission entered a Scheduling Order. A true and correct copy of the Scheduling Order is attached hereto and incorporated herein as Exhibit A.

2. The Scheduling Order requires that the parties comply with 52 Pa. Code § 5.321 – 5.373, except as modified by the Scheduling Order. See Exhibit A, ¶ 5.

3. The Scheduling Order does not modify 52 Pa. Code § 5.349.

A. Sunoco Attempts To Unilaterally Schedule An Inspection Of GRS's Property In Violation Of 52 Pa. Code § 5.349.

4. On March 31, 2021, at 7:37 p.m., Sunoco's counsel from the law firm of Duane Morris LLP (who is not counsel of record in this proceeding) emailed GRS's counsel to advise that Sunoco intended to have an acoustical engineer (the "Engineer") traverse GRS's property to take sound readings (the "Inspection") on the morning of April 1, 2021 – i.e., the day following the after-hours email. A true and correct copy of the Email Exchange is attached hereto and incorporated herein as Exhibit B.

5. Sunoco's counsel admitted that Sunoco intended the Inspection to require Sunoco representatives to perform work outside the boundaries of the permanent and temporary easements (the "Boundaries"). See Exhibit B.

6. Despite receiving Sunoco's counsel emails outside of normal business hours, GRS's counsel promptly responded at 7:51 p.m. advising Sunoco's counsel that the Engineer should not trespass beyond the Boundaries without the written consent of GRS, which would likely be given once Sunoco confirmed for GRS the purpose of the test and when the results of the test would be shared with GRS. See Exhibit B.

7. GRS's counsel also offered to share with the Engineer the sound readings GRS had already taken and reiterated that "we are happy to work with you on this over the next several days." See Exhibit B.

8. GRS's counsel reminded Sunoco's counsel that GRS would not permit anyone to trespass on GRS's property. See Exhibit B.

9. Sunoco's counsel did not respond.

10. At 8:40 p.m. GRS's counsel emailed Sunoco's counsel again urging him to provide GRS's counsel with a response to the limited request to avoid a trespasser on GRS's property. See Exhibit B.

11. At 10:31 p.m. Sunoco's counsel finally responded, indicating for the first time that the Engineer was actually an expert for this proceeding and that "the express purpose of his visit tomorrow is to prepare responsive testimony." See Exhibit B.

12. In addition, Sunoco's counsel stated for the first time that Sunoco was conducting the Inspection pursuant to 52 Pa. Code § 5.349. See Exhibit B.

13. In his 10:31 p.m. email Sunoco's counsel also copied Sunoco's counsel in this proceeding who had not been copied on the previous emails unilaterally informing GRS's counsel of the Inspection. Id.

14. Then, despite having failed to even attempt to comply with 52 Pa. Code § 5.349, Sunoco's counsel threatened to "immediately take this matter before Judge Cheskis, and to seek sanctions as appropriate." Id.

15. Sunoco's counsel's 7:37 p.m. email was a flagrant attempt to circumvent the requirements of 52 Pa. Code § 5.349.

16. Sunoco's counsel's attempt to circumvent 52 Pa. Code § 5.349 is made even more obvious and objectionable by its use of counsel outside this proceeding to send the email.

B. Sunoco Did Not Comply With 52 Pa. Code § 5.349, Which Requires Sunoco To Serve A Written Request For An Inspection.

17. 52 Pa. Code § 5.349(a)(2) requires that “a party may serve on another party a request...to permit entry upon designated land...upon whom the request is served for the purpose of inspecting...testing..the property.”

18. 52 Pa. Code § 5.349(c) further requires that the request “must set forth the items to be inspected...describe items...with reasonable particularity, and specify a reasonable time, place and manner of making the inspection and performing the related acts.”

19. A party who receives a proper request must respond to it within twenty (20) days of service of the request.

20. Sunoco's counsel's 7:37 p.m. email on March 31, 2021 (the “Email”), does not comply with 52 Pa. Code § 5.349.

21. The Email is not a request but rather an email informing GRS what Sunoco intended to do.

22. The Email does not set forth what is to be inspected with reasonable particularity.

23. The Email does not specify a reasonable, time, place, or manner of making the Inspection.

24. The Email does not notify GRS that it has the opportunity to respond.

25. As such, the Email does not comply with 52 Pa. Code § 5.349.

26. GRS's counsel informed Sunoco's counsel that unless and until Sunoco complied with 52 Pa. Code § 5.349, any entry beyond the Boundaries would be treated as an intentional trespass and the persons would be removed. See Exhibit B.

C. Notwithstanding Its Noncompliance With 52 Pa. Code § 5.349, Sunoco Proceeded With The Inspection On GRS's Property On April 1, 2021.

27. In further disregard of the requirements of 52 Pa. Code § 5.349, and over the objection of GRS's counsel, Sunoco conducted the Inspection. See Exhibit B.

28. GRS's counsel informed Sunoco's counsel of its intention to file this Motion to preclude the use of any evidence obtained during the Inspection, among other relief. See Exhibit B.

II. LEGAL ARGUMENT

29. Pursuant to 52 Pa. Code § 5.362:

(a) Upon motion by a party or by the person from whom discovery or deposition is sought, and for good cause shown, the presiding officer may make an order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:

(1) The discovery or deposition shall be prohibited.

(2) The discovery or deposition shall be only on specified terms and conditions, including a designation of the method, time or place.

30. Pursuant to 52 Pa. Code § 5.371:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(2) A party deponent or an officer or managing agent of a party refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.

31. Pursuant to 52 Pa. Code § 5.371

(a) The presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:

(1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to

be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

(4) An order with regard to the failure to make discovery as is just.

32. GRS files this Motion for a Protective Order and for Sanctions because Sunoco not only failed to comply with 52 Pa. Code § 5.349 and the Commission's Scheduling Order, but Sunoco also trespassed on GRS's property.

33. Sunoco did not serve GRS with a written request in accordance with 52 Pa. Code § 5.349.

34. Had Sunoco provided GRS with a written request, GRS would have had the opportunity to respond.

35. Instead, at 7:37 p.m. on the eve of the Inspection, counsel for Sunoco, but not in this proceeding, sent an email unilaterally notifying GRS of the Inspection.

36. Sunoco's counsel's failure to include Sunoco's counsel in this proceeding on and cryptic description of the Investigation in the email are evidence of Sunoco's bad faith.

37. By excluding Sunoco's counsel in this proceeding, Sunoco's counsel hoped not to tip off GRS of its real intention of the Inspection – to obtain discovery for use in this proceeding.

38. Sunoco's counsel's failure to inform GRS that it intended to conduct discovery for use in this proceeding is evidence of Sunoco's bad faith.

39. Only when pressed by GRS's counsel did Sunoco's counsel admit – three (3) hours after its initial email – the purpose of the Inspection was for discovery in this proceeding.

40. Sunoco's counsel tried to rectify its bad faith by stating that such an Inspection is permissible under the Pennsylvania Code.

41. Although inspections are permissible under the Pennsylvania Code, Sunoco failed to comply with the Pennsylvania Code to proceed with the Inspection.

42. Notwithstanding its noncompliance, and over the objection of GRS, Sunoco conducted the Inspection on April 1, 2021.

43. Under such circumstances, sanctions are appropriate.

44. Specifically, GRS requests that the Commission order Sunoco to comply with 52 Pa. Code § 5.349 and grant a Protective Order prohibiting Sunoco from performing the Inspection without a representative of GRS present at all times.

45. In addition, GRS requests that the Commission preclude Sunoco from using any evidence collected in violation of 52 Pa. Code § 5.349.

46. Lastly, GRS requests that because of Sunoco's bad faith the Commission require Sunoco to pay GRS's legal fees and costs to file this Motion.

III. CERTIFICATION

47. The undersigned counsel certifies that on March 31, 2021, and April 1, 2021, he wrote to Sunoco's counsel in an attempt to meet and confer and resolve GRS's objections. See Exhibit B.

IV. CONCLUSION

48. For the reasons set forth herein, GRS respectfully requests that the ALJ enter an Order (1) preventing Sunoco from conducting the inspection until Sunoco complies with 52 Pa.

Code § 5.349(c); (2) requiring Sunoco to be accompanied by GRS's representative during the Inspection; (3) precluding Sunoco from using any evidence collected in violation of 52 Pa. Code § 5.349; and (4) requiring Sunoco to pay GRS's legal fees and costs to file this Motion as a sanction for failing to comply with the Pennsylvania Code and the Commission's Scheduling Order.

Respectfully submitted,

FOX ROTHSCHILD LLP

April 2, 2021

By:



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

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

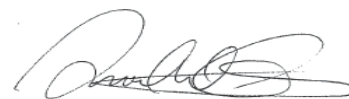
GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
GRS,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that, on April 2, 2021, I served a true and correct copy of the foregoing Motion for Protective Order and for Sanctions Against Sunoco Pipeline L.P., 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
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
TJSniscak@hmslegal.com
WESnyder@hmslegal.com



Samuel W. Cortes, Esquire

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P.	:	
	:	
v.	:	C-2020-3023129
	:	
Sunoco Pipeline, L.P.	:	

SCHEDULING ORDER

On December 2, 2020, Glen Riddle Station, L.P. (Glen Riddle) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Sunoco Pipeline, L.P. (Sunoco), docket number C-2020-3023129. In its complaint, Glen Riddle averred that on or about May 13, 2020, Sunoco filed a Declaration of Taking in the Court of Common Pleas of Delaware County that concerned various portions of the Glen Riddle property that contains 124 residential dwelling units. Glen Riddle further averred that, in the taking action, Sunoco condemned temporary workspace easements and a temporary access road easement over their property for purposes of completing a pipeline project. Glen Riddle further averred that Sunoco is not complying with previous requirements of the Commission regarding a public awareness plan and standard operating procedures. Glen Riddle also identified several other alleged failures of Sunoco with regard to the property, including, parking and traffic safety concerns, unsafe work site, failure to follow government-mandated pandemic safety protocols, failure to communicate regarding a potentially hazardous leak, and structural and storm drainage concerns, among other things. Glen Riddle averred that Sunoco’s actions violated several provisions of the Public Utility Code and requested that the Commission enter an order enjoining or restraining Sunoco from engaging in further work at the property until the safety concerns are addressed. Glen Riddle attached multiple documents to its complaint in support of its position.

On December 23, 2020, Sunoco filed an answer and new matter in response to the complaint. In its answer, Sunoco admitted or denied the various averments Glen Riddle made in its

complaint. In particular, Sunoco denied that it has not complied with the public awareness plan or standard operating procedures it is required to comply with. Sunoco also admitted or denied the various averments made by Glen Riddle with regard to the other alleged failures of Sunoco with regard to the property that were averred in the complaint. Sunoco provided significant detail in response to the averments made in the complaint and concluded by requesting that the complaint be dismissed with prejudice. Sunoco also attached multiple documents to its answer in support of its position.

In its new matter, which was accompanied by a notice to plead, Sunoco argued that the Commission lacks jurisdiction over Glen Riddle's allegations regarding environmental law issues and permitting obligations, the validity and scope of easements and compliance with municipal ordinances and the Governor's orders and regulations regarding Covid-19. Sunoco also argued that Glen Riddle has failed to state a claim upon which the Commission can grant relief. In part, Sunoco argued that Glen Riddle's allegations regarding construction means and methods and relief seeking a work plan and schedule reflecting Glen Riddle's preferences fail as a matter of law to state a claim upon which relief can be granted and should be dismissed.

Also on December 23, 2020, Sunoco filed preliminary objections in response to Glen Riddle's complaint reiterating the arguments raised in new matter. Sunoco's preliminary objections were granted in part and denied in part via an order dated January 28, 2021.

A hearing notice was issued on January 29, 2021 establishing an initial telephonic hearing for this matter for Wednesday, March 3, 2021 at 10:00 a.m. A prehearing order was issued on the same day setting forth various rules that would govern the hearing. On February 4, 2021, however, Sunoco filed a motion for a prehearing conference, revised procedural schedule and expedited response. Glen Riddle filed its answer to Sunoco's motion on February 10, 2021. Sunoco's motion was granted via order dated February 11, 2021. A hearing notice was issued on February 11, 2021 setting a call-in prehearing conference for Thursday, February 18, 2021 at 10:00 a.m.

However, on February 11, 2021, Glen Riddle filed a petition for interim emergency relief pursuant to section 3.6 of the Commission’s regulations averring, among other things, that Sunoco, without prior notice, posted signs warning that all areas within 100 yards of its worksite at Glen Riddle’s property fall within a “danger” area that must be avoided. A scheduling order dated February 12, 2021 was issued memorializing the agreement of the parties regarding litigation of the petition for emergency relief.

On February 16, 2021, however, Glen Riddle filed a petition to withdraw the petition for interim emergency relief. The petition to withdraw was jointly executed by counsel for both Glen Riddle and Sunoco. The petition for leave to withdraw the petition for interim emergency relief was granted via Initial Decision dated February 18, 2021 leaving the underlying complaint ready for adjudication.

As a result, a hearing notice was issued on February 17, 2021 cancelling the hearing on the petition for interim emergency relief scheduled for February 18, 2021 and rescheduling the prehearing conference for the underlying complaint for Friday, February 26, 2021 at 10:00 a.m. A prehearing order was issued on February 17, 2021 regarding that prehearing conference.

The further prehearing conference was held on February 26, 2021, as scheduled. Samuel Cortes, Esquire and Ashley Beach, Esquire appeared on behalf of Glen Riddle and Thomas Sniscak, Esquire appeared on behalf of Sunoco.

Following a lengthy discussion, the parties agreed to the following schedule:

Glen Riddle Direct Testimony	March 15, 2021
Sunoco Rebuttal Testimony	April 9, 2021
Glen Riddle Surrebuttal	April 16, 2021
Hearings	April 26 and 27, 2021
Main Brief	May 14, 2021

In an effort to accommodate the briefing schedule, an expedited transcript turnaround will be ordered of either 3-days or 5-days.

In addition, a discussion was also held regarding modifying the Commission's regulations regarding discovery. In particular, the following modifications will be adopted for this proceeding:

1. Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service, rather than the fifteen (15) provided for in 52 Pa. Code § 5.342(d).
2. Objections to interrogatories shall be communicated orally within three (3) calendar days of service of the interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) days of service of the interrogatories.
3. Motions to compel the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.
4. Answers to motions to compel shall be filed within three (3) calendar days of service of such motions.
5. Ruling over such motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion.

The parties are encouraged to resolve discovery disputes amongst themselves and are directed to confer with each other regarding the possible informal resolution of any disputes prior to filing a motion to compel.

A discussion was also held regarding the need for a protective order to govern the treatment of information alleged to be proprietary in this proceeding. The parties indicated they will submit a proposed protective order, and any objections to it, as soon as possible.

In addition, due to the Covid-19 pandemic, the parties are required to enroll in the Commission's eservice program to facilitate document exchanges. Information on how to enroll in the Commission's eservice program can be found on the Commission's website (www.puc.pa.gov).

Finally, the parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. The parties are encouraged to avail themselves of the Commission's mediation unit or the settlement judge process pursuant to the Commission's regulations. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the following schedule will be adopted for this proceeding:

Glen Riddle Direct Testimony	March 15, 2021
Sunoco Rebuttal Testimony	April 9, 2021
Glen Riddle Surrebuttal	April 16, 2021
Hearings	April 26 and 27, 2021
Main Brief	May 14, 2021

2. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on the presiding officer. The parties shall serve the documents listed above so that the documents are received via email by the parties and presiding officer no later than 4:30 p.m. on the dates listed, with hard copy of testimony to be provided at the time of the hearing, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. **Parties shall not file testimony with the Commission but shall file a certificate of service.**

3. That written testimony shall comply with the requirements of 52 Pa.Code §5.412 and shall be marked with numerical, sequential statement numbers.

4. That all 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.

5. That the parties shall conduct discovery pursuant to 52 Pa.Code §§5.321-5.373, accept as modified above. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§5.361, 5.371-5.372.

6. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§5.232 and 5.234.

7. That any evidentiary hearing in this matter constitutes a formal legal proceeding and will be conducted in accordance with the Commission's Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

8. That 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).

9. That the parties are encouraged to commence settlement discussions as soon as possible.

Date: February 26, 2021

_____/s/_____
Joel H. Cheskis
Deputy Chief Administrative Law Judge

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

*SAMUEL W CORTES ESQUIRE
ASHLEY BEACH ESQUIRE
FOX ROTHSCHILD LLP
747 CONSTITUTION DRIVE
SUITE 100
EXTON PA 19341
610.458.4966
610.458.7500

scortes@foxrothschild.com
abeach@foxrothschild.com

*Accepts eService

Via e-mail only due to Emergency Order at M-2020-3019262

WHITNEY E SNYDER ESQUIRE
THOMAS J SNISCAK ESQUIRE
HAWKE MCKEON AND SNISCAK LLP
100 N 10TH STREET
HARRISBURG PA 17101
717.236.1300

wesnyder@hmslegal.com
tjsniscak@hmslegal.com

Accepts eService

EXHIBIT B

Chernesky, Jean C.

From: Cortes, Samuel W. <SCortes@foxrothschild.com>
Sent: Thursday, April 01, 2021 11:12 AM
To: Amerikaner, David B.
Cc: Kroculick, George J.; Chernesky, Jean C.; Beach, Ashley L.; Kuebler, Tara L.; 'Diana Silva'; Thomas Sniscak; Bryce Beard
Subject: RE: Glen Riddle: Acoustical Engineer

David,

It appears people are on site today to pursue the discovery in the PUC matter that you identified at 10:33 pm last night under the Rule that you identified. I reiterate that no trespasses will be tolerated.

As to the discovery you are seeking under the Rule you identified, we will be seeking relief for your client having Duane Morris sneak discovery in without providing any notice or an opportunity to be heard to us concerning the discovery – or even notifying the PUC of the discovery. We intend to file a motion to preclude the use of any evidence obtained through these efforts, among other relief. It's not lost on us how this was sent, by who (counsel who is not even entered in the PUC matter trying to obtain discovery in the PUC matter on the sly), when, and what Sunoco is trying to do here without notifying us or the PUC. This is a first for me in my career.

Thanks.

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: Cortes, Samuel W.
Sent: Wednesday, March 31, 2021 11:09 PM
To: Amerikaner, David B. <DBAmerikaner@duanemorris.com>
Cc: Kroculick, George J. <GJKroculick@duanemorris.com>; Chernesky, Jean C. <JChernesky@foxrothschild.com>; Beach, Ashley L. <abeach@foxrothschild.com>; Kuebler, Tara L. <TKuebler@foxrothschild.com>; 'Diana Silva' <DSilva@mankogold.com>; Thomas Sniscak <TJSniscak@hmslegal.com>; Bryce Beard <brbeard@hmslegal.com>
Subject: RE: Glen Riddle: Acoustical Engineer

David – You are mistaken. No such discovery request has been served. Nor am I aware of any Certificate of Service having been filed with the Commission to evidence the service of such a request. I see that you copied PUC counsel and

they should be able to disabuse you of your statements below. Or they can send me the request and confirm service of same if I missed service of this request, which I'm reasonably sure that I did not.

If an appropriate discovery request is served with the appropriate time for objections, if necessary, and allowing for a response in accordance with the scheduling order, we will respond in accordance with the order. You don't get to make up the rules as you go though.

If your emails from late this evening (first around 8 pm and later at 10:33 pm) are intended to be service of an inspection to occur on my client's property **tomorrow**, this is not a discovery request under the Rule you cite. Further, first notifying us at 8 pm on the evening before the intended inspection by a cryptic email that did not even mention that the inspection was for PUC purposes is outrageous. We have a right to know under the governing Rules that a discovery request has been served. Yet, you now acknowledge that your client intended to take discovery by entering on my client's property without my client's consent or authorization and without giving us notice or an opportunity to respond to the request, whatever it is. Your client intended, and apparently still intends, to deny us due process here.

In fact, your email at 10:33 pm acknowledges that your cryptic email from earlier this evening hid from us that your client intended to pursue discovery under the PUC Rules by entering upon our property without our consent and without giving us actual notice of the discovery or an opportunity to respond to it. This is bad faith and we intend to seek all appropriate relief for it.

Furthermore, we are disappointed, but not surprised, that this purported inspection, if any, has nothing to do with making the property more safe. Instead, this is like the other theatrical performances your client concocted this week – the starting and stopping of which is captured on film as choreographed to match the cameras that your client is running to put on a show ostensibly designed to fool the PUC as to what has occurred on the property for months. No one would believe this if it wasn't on film. It's that absurd, and anyone with some common sense would understand what it actually evidences.

In any event, please review the Rule you cited and the scheduling order and comply with them. Until a proper request is served and we have an opportunity to review it and respond so that we can evaluate what the request is and determine if it is appropriate, no one may enter our property on behalf of your client. Such entry will be treated as an intentional trespass and the person or persons will be removed. I trust it will not come to this.

Thanks.

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: Amerikaner, David B. <DBAmerikaner@duanemorris.com>

Sent: Wednesday, March 31, 2021 10:31 PM

To: Cortes, Samuel W. <SCortes@foxrothschild.com>

Cc: Kroculick, George J. <GJKroculick@duanemorris.com>; Chernesky, Jean C. <JChernesky@foxrothschild.com>; Beach, Ashley L. <abeach@foxrothschild.com>; Kuebler, Tara L. <TKuebler@foxrothschild.com>; 'Diana Silva' <DSilva@mankogold.com>; Thomas Sniscak <TJSniscak@hmslegal.com>; Bryce Beard <brbeard@hmslegal.com>
Subject: [EXT] RE: Glen Riddle: Acoustical Engineer

Sam,

To be clear, Sunoco's acoustical engineer is an expert retained for the PUC litigation to directly respond to your client's allegations and testimony regarding sound/noise issues at the Glen Riddle Station Apartments. The express purpose of his visit tomorrow is to prepare responsive testimony – which Sunoco has the right to do under the Commission's regulations and in keeping with general due process considerations. Sunoco will provide the results of its expert's analysis when it serves responsive testimony (if and when necessary given pending motions on this topic), and in accordance with the case management order entered in the PUC litigation. Further, it should be noted that the Commission's regulations expressly grant a party the right of entry upon property for the purposes of inspection, measurements, and testing. See 52 Pa. Code § 5.349. Your emails below appear to indicate that your client intends to prohibit Sunoco from performing this inspection and work tomorrow. If that is your position, then Sunoco intends to immediately take this matter before Judge Cheskis, and to seek sanctions as appropriate.

Thank you,

David

From: Cortes, Samuel W. <SCortes@foxrothschild.com>
Sent: Wednesday, March 31, 2021 8:40 PM
To: Amerikaner, David B. <DBAmerikaner@duanemorris.com>
Cc: Kroculick, George J. <GJKroculick@duanemorris.com>; Chernesky, Jean C. <JChernesky@foxrothschild.com>; Beach, Ashley L. <abeach@foxrothschild.com>; Kuebler, Tara L. <TKuebler@foxrothschild.com>
Subject: RE: Glen Riddle: Acoustical Engineer

David – I haven't heard back from you. Without any clarification from you, I'm left to understand your email to indicate that some third party engineer who is unknown to us intends to intentionally trespass on my client's property. Our security has been notified of this and they will not permit any intentional trespasses by unknown individuals without more information. Please inform this person that the person will be treated as a trespasser and removed from the premises if an intentional trespass occurs.

You can call me if you'd like to give us the limited information so that we may clear what you have requested. In the future, please don't wait until almost 8 pm on the evening before to make a request like this. Thanks.

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: Cortes, Samuel W.
Sent: Wednesday, March 31, 2021 7:51 PM
To: Amerikaner, David B. <DBAmerikaner@duanemorris.com>
Cc: Kroclic, George J. <GJKroclic@duanemorris.com>; Chernesky, Jean C. <JChernesky@foxrothschild.com>; Beach, Ashley L. <abeach@foxrothschild.com>; Kuebler, Tara L. <TKuebler@foxrothschild.com>
Subject: RE: Glen Riddle: Acoustical Engineer

David,

As a follow up to my email expressing appreciation for Sunoco finally doing something about the serious noise issues, your engineer should not trespass beyond the boundaries without our written consent. I suspect we will give this written consent once we confirm the purpose of this test and when the results will be shared. We have readings from every day since construction has begun that we are happy to share with your engineer to aid in making the site safer. Obviously, getting one day of readings will not present a reliable sample given the fluctuations that we've observed, but we are happy to work with you on this over the next several days.

Please let us know what the purpose of the inspection is and when we will see the results. Please also let us know what other days the engineer will be at the site as I'm assuming this is not some one-day theatrical "inspection" solely for PUC-purposes akin to what Sunoco was doing over the past few days with the flaggers. Until we have an understanding on these points, though, please confirm your understanding that no trespassing will be permitted. We will have security on site and we will not tolerate any trespassing beyond the boundaries without our written consent as set forth in this email. I am available this evening to give this consent once we have some answers.

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: Amerikaner, David B. <DBAmerikaner@duanemorris.com>
Sent: Wednesday, March 31, 2021 7:37 PM
To: Cortes, Samuel W. <SCortes@foxrothschild.com>
Cc: Kroclic, George J. <GJKroclic@duanemorris.com>
Subject: [EXT] Glen Riddle: Acoustical Engineer

Sam,
We write to let you know that our client will be bringing an acoustical engineer to the Glen Riddle Station Apartments property tomorrow to take sound readings. He will be taking sound readings both inside the sound walls and outside

the sound walls, and both during construction activities and after construction activities have ceased. He will need to take readings from outdoor areas on the property that are within the boundaries of the permanent and temporary easements and from some areas that are outside of those boundaries.

Please let us know if you have any questions.

David Amerikaner

Special Counsel

Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
P: +1 215 979 1939
F: +1 215 754 4891
C: +1 213 220 7365

DBAmerikaner@duanemorris.com
www.duanemorris.com

For more information about Duane Morris, please visit <http://www.DuaneMorris.com>

Confidentiality Notice: This electronic mail transmission is privileged and confidential and is intended only for the review of the party to whom it is addressed. If you have received this transmission in error, please immediately return it to the sender. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege.

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.