**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P. :

 :

 v. : C-2020-3023129

 :

Sunoco Pipeline, L.P. :

**ORDER**

**DENYING MOTION IN LIMINE**

**FILED BY SUNOCO PIPELINE L.P.**

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.

Subsequently, multiple pleadings were filed and procedural matters occurred. This includes the filing of preliminary objections, establishment of an initial telephonic hearing, a motion for a prehearing conference and procedural schedule, the filing of a petition for interim emergency relief, the withdraw of the petition for interim emergency relief, a prehearing conference, the rescheduling of the prehearing conference, the filing of a motion to compel by each party and the filing of a motion for a protective order that was contested. Each of these procedural matters was responded to with the necessary order or hearing notice as appropriate.

On March 22, 2021, Sunoco filed the instant motion in limine to (1) preclude Glen Riddle Station from violating the Scheduling Order and the Commission’s regulations by supplementing its direct testimony in surrebuttal or (2) in the alternative, motion for modified procedural schedule and (3) request for expedited 7-day response. In its motion, Sunoco argued Glen Riddle signaled its intent in its direct testimony to supplement its testimony in order to address information provided recently in response to discovery. Sunoco argued that Glen Riddle had the discovery responses a week before its testimony was due and that Glen Riddle could have commenced discovery earlier. Sunoco added that Glen Riddle did not ask Sunoco to provide files in an alternative format and failed to ask for more time to file direct testimony. Sunoco argued that supplementing direct testimony is barred by the Commission’s regulations and would be prejudicial in this case where Sunoco does not have an opportunity to respond to the supplemental direct testimony thereby denying Sunoco due process. Sunoco requested that the procedural schedule be amended and extended if Glen Riddle is not precluded from supplementing its direct testimony.[[1]](#footnote-1)

On March 31, 2021, Glen Riddle filed an answer to Sunoco’s motion in limine. In its answer, Glen Riddle argued that it has not utilized Sunoco’s discovery responses in its surrebuttal testimony because it has not yet filed surrebuttal testimony. Glen Riddle further noted the voluminous discovery responses it received from Sunoco – 36,254 pages and 893 files – which made the review of the materials more difficult. Glen Riddle added that Sunoco’s responses were late and that Sunoco is engaging in gamesmanship given the electronic format the files were provided in. Glen Riddle argued that given Sunoco’s actions it had to reserve its right regarding its testimony. Glen Riddle added that Sunoco will not be prejudiced because the documents used in the testimony are Sunoco’s own documents. Glen Riddle argued that it, not Sunoco, is being ambushed. Glen Riddle opposed any modification to the schedule.

On April 1, 2021, Sunoco filed a motion for leave to reply to Glen Riddle’s March 31, 2021 answer to Sunoco’s motion in limine. Since the Commission’s regulations do not allow for replies to answers, this filing will not be considered.

Given the expedited schedule for this proceeding, and that Sunoco’s rebuttal testimony is due on April 9, 2021, an informal off-the-record conference call was held with the parties and the presiding officer on April 2, 2021 to informally inform the parties that Sunoco’s motion in limine will be denied. This order formally confirms that denial.

Sunoco’s motion in limine is ready for disposition. For the reasons discussed below, the motion will be denied in its entirety.

Sunoco is correct that section 5.243 of the Commission’s regulations prohibits parties from introducing evidence during a rebuttal phase that is repetitive, should have been included in the party’s case-in-chief or substantially varies from the party’s case-in-chief. 52 Pa. Code § 5.243(e). Sunoco is also correct that this prohibition was articulated in the scheduling order issued in this case on February 26, 2021. Such prohibits are in place to avoid “trial by ambush” where parties would present additional argument at a time when it is difficult or impossible for the opposing party to respond. Such actions cannot be countenanced by this Commission.

In this case, Sunoco filed its motion in limine because one of Glen Riddle’s witnesses stated at the conclusion of his testimony that he “reserves 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 [in response to discovery] but, due to the time of its receipt cannot include today.” *See*, Glen Riddle St. 2 at 14. The testimony then referenced in a footnote the difficulties associated with discovery.

Sunoco’s motion will be denied because it is not ripe – meaning, it is not ready for adjudication because it rests upon contingent future events that may not occur as anticipated or may not occur at all. Regardless of what format Sunoco provided its discovery responses to Glen Riddle, and the volume of those responses, Glen Riddle is prohibited from introducing evidence during a rebuttal phase that should have been included in the party’s case-in-chief. To the extent that Glen Riddle had difficulties with the form and/or volume of Sunoco’s discovery responses, it could have raised those issues separately, either formally or informally. Nonetheless, it is not uncommon in proceedings before the Commission for parties to reserve their right to supplement their testimony if the need arises. Doing so aids in the parties accurately and completely setting forth their litigation positions and developing a clear record which ultimately allows for these proceedings to be run more smoothly and effectively and a better end result to be achieved. Of course, all parties’ due process rights must be protected throughout the course of this proceeding and to the extent that a party supplements previously served written testimony, the opposing party must be given a reasonable opportunity to respond to such testimony. All parties’ due process rights will be protected in this proceeding.

In this case, however, Sunoco’s motion is premature. It is necessary to see what Glen Riddle provides in its surrebuttal testimony to determine whether Section 5.243 is violated. If Sunoco believes that Glen Riddle’s surrebuttal testimony violates Section 5.243, it is free to raise its motion again and it will be addressed at that time. It is possible that any violations could be remedied by a modification of the procedural schedule but that will not be known until such violations occur, if they occur. There is no need to modify the existing procedural schedule now.

As such, Sunoco’s motion in limine will be denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline, L.P.’s motion in limine to (1) preclude Glen Riddle Station from violating the Scheduling Order and the Commission’s regulations by supplementing its direct testimony in surrebuttal or (2) in the alternative, motion for modified procedural schedule and (3) request for expedited 7-day response filed on March 22, 2021, at docket number C-2020-3023129 is hereby denied.

Dated: April 8, 2021 \_\_\_\_\_\_\_\_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joel H. Cheskis

Deputy Chief Administrative Law Judge

**C-2020-3023129 - GLEN RIDDLE STATION, L.P. v. SUNOCO PIPELINE L.P.***updated 3/3/21*

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1. Sunoco also requested that Glen Riddle be directed to answer this motion within 7 days because its testimony is due on April 9, 2021. Glen Riddle provided its answer on March 31, 2021 and therefore this portion of Sunoco’s motion is now moot. [↑](#footnote-ref-1)