**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P. :

:

v. : C-2020-3023129

:

Sunoco Pipeline, L.P. :

**ORDER**

**GRANTING FURTHER CONTINUANCE**

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, the filing of a motion for a protective order that was contested, a motion in limine and a motion to enforce the order granting in part and denying in part the preliminary objections and striking Glen Riddle testimony. Each of these procedural matters was responded to with the necessary order or hearing notice as appropriate.

On May 14, 2021, Glen Riddle filed a motion for continuance. In its motion, Glen Riddle requested a four-week continuance of the hearing scheduled for May 24, 2021 and May 27, 2021 and all remaining deadlines. Glen Riddle noted that it seeks the extension because it has one week to provide surrebuttal testimony in response to eight pieces of rebuttal testimony filed by Sunoco. Glen Riddle argued that “the current scheduling order deadlines, which provides Glen Riddle with one week to submit its surrebuttal testimony, is insufficient given the sheer volume of testimony requiring rebuttal.” Glen Riddle also noted that the litigation schedule agreed to in this case was suspended after Glen Riddle submitted its testimony so that the parties could pursue mediation and that this suspension allowed Sunoco more time to prepare its rebuttal testimony.

On May 17, 2021, Sunoco filed an answer opposing Glen Riddle’s motion for a continuance. In its answer, Sunoco argued that Glen Riddle’s portrayal of the parties’ agreement to the current schedule is misleading. Sunoco argued that the expedited schedule is “purely self-inflicted by Glen Riddle.” Sunoco also argued that there is no “fairness” concern with the current agreed upon schedule and that Glen Riddle cannot expand its direct case in its surrebuttal testimony, noting the Commission regulation prohibiting the introduction of evidence in the rebuttal phase which should have been included in the party’s case-in-chief. Sunoco added that it did not use the stay in the schedule created by the mediation efforts to increase its rebuttal testimony. Sunoco concluded that Glen Riddle’s motion should be denied.

Finally, on May 18, 2021, Glen Riddle filed a reply in further support of its motion for a continuance. As this pleading is generally a reply to Sunoco’s answer, and the Commission’s regulations do not allow for replies to answers, this pleading will not be considered.

Given that Glen Riddle’s surrebuttal testimony was originally scheduled to be served on May 19, 2021, an initial one-day extension until May 20, 2021 was *sua sponte* given for Glen Riddle to submit its surrebuttal testimony while Glen Riddle’s motion was pending. A conference call was convened on May 19, 2021 amongst counsel for Glen Riddle, counsel for Sunoco and the presiding officer for a discussion and informal resolution of Glen Riddle’s motion. During that call, it was determined that Glen Riddle’s motion would be granted, although the parties were left to determine the details of the remaining procedural schedule within certain parameters that were provided during the call.

On May 21, 2021, the parties indicated that a revised procedural schedule has been agreed upon, along with modifications to the Commission’s discovery regulations. The parties agreed that Glen Riddle’s surrebuttal testimony would be due on Monday, June 14, 2021 and that hearings would be held on July 12, 2021 and July 13, 2021, with a special hearing on July 7, 2021 for one Sunoco witness who is not available on July 12th or July 13th. The parties also agreed to the following modifications to the Commission’s discovery regulations:

* After service of the surrebuttal testimony, answers to written interrogatories shall be served in-hand within five (5) calendar days of service;
* Objections to interrogatories shall be communicated orally within two (2) calendar days of service of the interrogatories, unresolved objections shall be served to the ALJ in writing within three (3) days of service of the interrogatories;
* Motions to compel the answering of interrogatories shall be filed within two (2) calendar days of service of the written objections;
* Answers to motions to compel shall be filed within two (2) calendar days of service of such motions; and
* Ruling over such motions shall be issued, if possible, within three (3) calendar days of the filing of the motion.

The purpose of this order is to formally grant the motion for continuance filed by Glen Riddle and to memorialize the agreed upon remaining schedule for this proceeding.

Section 5.483 of the Commission’s regulations provides presiding officers with the authority to regulate the course of proceedings. 52 Pa.Code § 5.483(a). Presiding officers are required to conduct fair and impartial hearings and maintain order. 52 Pa.Code § 5.485(a). Furthermore, the Commission’s regulations are to be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding and the presiding officer may, at any stage, disregard an error or defect of procedure which does not affect the substantive rights of parties. 52 Pa.Code § 1.2(a). Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests. 52 Pa.Code § 1.15(b). Only for good cause shown will requests for continuance be considered. Id.

In this case, good cause exists to grant a continuance. Glen Riddle noted that, under the prior procedural schedule, it only had one week to respond to eight pieces of rebuttal testimony provided by Sunoco. Glen Riddle also noted its attempts to resolve this matter via mediation during the time it served its direct testimony and Sunoco’s rebuttal testimony was served. Certainly, Glen Riddle’s efforts to resolve this matter without further litigation are commendable and constitute good cause for it to have additional time to respond to the rebuttal testimony submitted by Sunoco. The Commission strongly encourages settlement and it can be difficult at times to litigate a case and engage in settlement efforts at the same time. Furthermore, although there are allegations of safety concerns present in this case, this is Glen Riddle’s complaint to prosecute and it should be given every opportunity it can to pursue its complaint, while still maintaining Sunoco’s due process rights. The agreed upon schedule submitted by the parties balances Glen Riddle’s opportunity to pursue its complaint while protecting Sunoco’s due process rights.

Regardless of Glen Riddle’s opportunity to pursue its complaint, however, the Commission’s resources to adjudicate this matter are not boundless. Therefore, no further continuance of this matter will be granted absent exigent circumstances. Furthermore, Glen Riddle is reminded, as it was during the conference call held on May 19, 2021, that its surrebuttal must be responsive to Sunoco’s rebuttal testimony. The additional time provided for Glen Riddle to provide surrebuttal testimony does not also give Glen Riddle an opportunity to expand the scope of its arguments beyond its direct testimony. Glen Riddle is not being given “a second bite of the apple” through this further continuance. Furthermore, the additional time provided for the parties to litigate does not encourage the parties to file additional prehearing motions. Although the parties have the right to file such motions, as was also pointed out during the May 19, 2021 conference call and elsewhere throughout this proceeding, the parties have submitted an inordinate amount of prehearing motions in this case. The parties are encouraged again to work cooperatively to minimize the further need for such motions.

In conclusion, Glen Riddle’s motion for a continuance will be granted. The parties are commended for agreeing to a reasonable remaining litigation schedule for this matter, and modifications to the Commission’s discovery regulations, that protects both parties’ due process rights while recognizing that the Commission’s resources to adjudicate this complaint are not boundless. The proposed modifications to the litigation schedule, and accompanying modifications to the Commission’s discovery regulations, will be approved.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion for a continuance filed by Glen Riddle Station L.P. on May 14, 2021 at docket number C-2020-3023129 is hereby granted.
2. That the remaining schedule for litigating this matter will be modified to:

|  |  |
| --- | --- |
| Glen Riddle Surrebuttal Testimony | June 9, 2021 |
| Hearings | July 7, 12 and 13, 2021 |

1. That the Commission’s discovery regulations are modified consistent with the discussion above.
2. That the parties are encouraged to continue their efforts toward settlement.

Dated: May 24, 2021 \_\_\_\_\_\_\_\_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joel H. Cheskis

Deputy Chief Administrative Law Judge

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

*Revised 4/20/21*

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