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November 29, 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 with the Pennsylvania Public Utility Commission is Complainant's Response to Respondent's Motion to Strike Portions of Complainant's Reply Brief 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

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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 TO STRIKE PORTIONS OF COMPLAINANT’S REPLY BRIEF**

Complainant, Glen Riddle Station, L.P. (“GRS”), by and through its undersigned counsel, hereby files this Response to the Motion of Respondent, Sunoco Pipeline L.P. (“Sunoco”), to Strike Portions of GRS’s Reply Brief (the “Motion”).

First, GRS’s statements regarding the docketing of Sunoco’s Answer with New Matter were proper because Sunoco never publicly filed its Answer with New Matter. In any event, each allegation purportedly asserted as “New Matter” constitutes a conclusion of law that is deemed denied.

Second, in its continued ignorance of GRS’s legitimate concerns, Sunoco falsely characterized GRS as a litigious and demanding property owner by referencing related Right-to-Know Law proceedings involving Sunoco, GRS, and Middletown Township (“Middletown”). GRS properly responded to these false accusations by discussing the Right-to-Know Law proceedings that Sunoco itself raised and the criminal indictment recently filed by the Pennsylvania Attorney General to refute Sunoco’s suggestion that GRS is the only property owner negatively impacted by or seeking relief for Sunoco’s hazardous conduct.

1. GRS's Statements Regarding Sunoco's Answer And New Matter Are True

Sunoco's request to strike statements regarding the filing of its Answer with New Matter must fail because Sunoco's arguments regarding a "secret policy" to keep a secret docket are nonsensical and it is undisputed that Sunoco never publicly filed an Answer with New Matter.

Sunoco claims that "as a policy" the Commission "typically does not post the initial pleadings" on the public docket where those pleadings involve *pro se* complainants or the disclosure of personal information. [Motion, at p. 3]. As an initial matter, Sunoco's contention makes little sense given that its initial pleading, i.e., its Preliminary Objections, was posted on the public docket. Additionally, the so-called "policy" to withhold certain pleadings from the public docket and only note those pleadings on a separate, secret docket is, evidently, an *unwritten* policy nowhere to be found in the law or rules governing this proceeding. Aside from conclusory argument, Sunoco offers no evidence (such as citations to the Commission's rules) that this "policy" even exists. Nor does Sunoco explain how such a "policy" comports with principles of open government. Moreover, even assuming this "policy" exists, which GRS disputes, this proceeding involves neither *pro se* parties nor the public disclosure of personal information; therefore, Sunoco's attempt to apply the so-called "policy" to this situation simply does not fit.

In any event, Sunoco does not dispute, because it cannot dispute, that the public docket in this action does not include Sunoco's Answer with New Matter. Therefore, GRS's statements and references to the public docket in relation to Sunoco's Answer with New Matter are accurate and should not be stricken.

Furthermore, as GRS explained in its Reply Brief, Sunoco's focus on its non-filed New Matter is a non-starter because the New Matter consists entirely of legal conclusions, which are

deemed denied as a matter of law. See Ritmanich v. Jonnel Enterprises, Inc., 280 A.2d 570, 576 (Pa. Super. Ct. 1971).

2. The Commission May Consider Publicly Available Evidence From Related Legal Actions And Sunoco Opened The Door For Such Consideration

Sunoco requests that the Commission ignore information from related legal proceedings adverse to Sunoco, including Sunoco's recent loss in a bid to keep secret its communications with Middletown and a 48-count criminal charging document for Sunoco's illegal and harmful conduct at GRS's Property, among others in the Commonwealth.

As an initial matter, the Commission should deny this request because the Commission, in its discretion, may consider publicly available documents from related legal proceedings. See Bowen v. Smith, 239 A.3d 1151, n. 2 (Pa. Commw. Ct. 2020); see also Schaefer v. Decision One Mortg. Corp., No. 08-5653, 2009 WL 1532048, at *3 (E.D. Pa. May 29, 2009) ("A court may take judicial notice of the record from a state court proceeding and consider it on a motion to dismiss.").

Additionally, Sunoco "opened the door" to these related proceedings. See Commw. v. Nypaver, 69 A.3d 708, 716 (Pa. Super. Ct. 2013) (holding, "[a] litigant opens the door to inadmissible evidence by presenting proof that creates a false impression refuted by the otherwise prohibited evidence"); see also Duchess v. Langston Corp., 709 A.2d 410, 412 (Pa. Super. Ct. 1998) (holding that the trial court erred in failing to allow the introduction of a manual referenced during testimony at trial).

Specifically, in its Main Brief, Sunoco attacked GRS's motive and genuineness in bringing this action and characterized Sunoco as a demanding and litigious property owner by referencing Right-to-Know Law proceedings relating to Middletown's and Sunoco's communications and agreements about the Pipeline. [Sunoco's Main Brief, p. 38 fn. 10 (referencing, "appeals of two

of the Township’s denials of Right-To-Know requests seeking, among other things, documents exchanged between SPLP and the Township.”)]. GRS naturally responded to defend itself and explained why Sunoco’s characterization of GRS was absurd because, among other reasons, ***Middletown and Sunoco lost the Right-to-Know dispute in the Court of Common Pleas of Delaware County.*** Specifically, the Court ordered the production of communications by and between Middletown and Sunoco that those parties sought to keep secret without any good faith basis.¹ By attacking GRS’s intentions regarding this action against Sunoco and referencing the Right-to-Know Law proceedings, Sunoco opened the door for GRS to respond with an accurate description of that proceeding. See Nypaver, 69 A.3d at 716; Duchess, 709 A.2d at 412.

Similarly, in response to Sunoco’s attempt to falsely characterize GRS as a one-off, burdensome property owner, GRS referenced the 48-count criminal indictment filed by the Pennsylvania Attorney General that clearly shows GRS is just one of many property owners across the Commonwealth who have suffered at the hands of Sunoco’s unsafe, profits-above-all-else, practices. GRS is not suggesting or requesting that the ALJ decide the numerous, serious, criminal charges pending against Sunoco, but is responding to Sunoco’s attempt to, once again, shrug off GRS’s legitimate concerns, which concerns the criminal indictment shows are shared by many others.

With this Motion to Strike, in addition to its Main Brief and Reply Brief, Sunoco has submitted an excessive 196 pages of briefing, which is 76 pages over the page limits set by the Commission’s Rules and the ALJ’s Orders. It is apparent that Sunoco purposefully exceeded the

¹ To date, Middletown has not produced the communications that the Court ordered it to produce. Instead, both Sunoco and Middletown appealed the Court’s decision to the Commonwealth Court of Pennsylvania. Accordingly, Sunoco’s attempt to characterize GRS as a problematic and litigious property owner is ironic given that Sunoco is the one pursuing the litigation and going to great lengths to withhold documents it has been ordered to produce, which are undoubtedly relevant to this proceeding.

page limit in an effort to overwhelm the ALJ and confuse the record. For example, in the 54 page single space chart that Sunoco improperly attached as an “Appendix” to its Reply Brief, Sunoco falsely accuses GRS of misciting and mischaracterizing the record. A review of the allegations and citations contained in GRS’s Brief confirms that it is, in fact, Sunoco – not GRS – that is misleading the ALJ, as Sunoco’s “chart” is wholly inaccurate. [See, e.g., Sunoco’s “Chart” at page 12, representing that Jeffrey A. Davis, M.D., testified at 3:18-19 that “my testimony will focus on impact that certain decibels of sound can have on human hearing,” when in fact he testified at these page and line numbers that “[a]t 80-85 decibels, CDC indicates that hearing loss can occur after 2 hours of exposure.”); Sunoco’s “Chart” at p. 24, representing that GRS-131 is a communication from Middletown Township showing that Sunoco “was in communication with the Township,” when the exhibit is a statement made by Middletown Township’s Council Chair that “Sunoco/Energy Transfer did such a horrible job last time communicating their pipe hydro test...’”].²

² These are just a few examples of the inaccuracies in the Chart, and are not intended to be exhaustive. If the ALJ does not strike the excess pages but, instead, considers them, GRS respectfully requests that it be given leave to address the misrepresentations made in Sunoco’s excess pages.

Sunoco's Motion to Strike is yet another transparent attempt by Sunoco to get the "final word" in violation of the rules applicable to this proceeding. If anything should be stricken, it is Sunoco's Motion and the pages of Sunoco's Briefs that exceed the page limits. Accordingly, for these reasons and those set forth above, GRS respectfully requests that Sunoco's Motion to Strike be denied.

Respectfully submitted,

FOX ROTHSCHILD LLP

November 29, 2021

By:



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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.	:	

CERTIFICATE OF SERVICE

I hereby certify that, on November 29, 2021, I served a true and correct copy of the foregoing Response to the Motion to Strike Portions of Complainant’s Reply Brief 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):

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