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December 27, 2021

Via Electronic Filing

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

RE: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129;
**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING GLEN RIDDLE
STATION L.P.’S MOTION TO STRIKE FROM THE RECORD CERTAIN
OF SUNOCO PIPELINE L.P.’S BRIEFING.**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.’S Answer to The Motion of Glen Riddle Station L.P. to Strike From The Record Certain of Sunoco Pipeline’s Briefing in the above-referenced proceeding. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact the undersigned counsel.

Respectfully submitted,

/s/ Thomas J. Sniscak

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BRB/das

Enclosures

cc: Honorable Joel Cheskis (via email jcheskis@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | | |
|---------------------------|---|------------|----------------|
| GLEN RIDDLE STATION, L.P. | : | | |
| | : | Docket No. | C-2020-3023129 |
| v. | : | | |
| | : | | |
| SUNOCO PIPELINE L.P. | : | | |

**SUNOCO PIPELINE L.P.’S ANSWER
OPPOSING GLEN RIDDLE STATION L.P.’S MOTION TO STRIKE BRIEFING**

Sunoco Pipeline L.P. (“SPLP”), by and through undersigned counsel, hereby submits this Answer Opposing Glen Riddle Station L.P.’s (“GRS”) Motion to Strike from the Record Certain of Sunoco Pipeline L.P.’s Briefing (“Motion”) and hereby requests that the Motion be denied. The Motion sought three areas of relief, each of which are addressed below.¹

A. GRS’s Request To Strike SPLP’s Main Brief Note 10 Must Be Denied As Note 10 Is Fully Supported By GRS’s Own Record Evidence and Your Honor’s Prior Orders.

1. GRS argues that SPLP’s Main Brief at Note 10 should be stricken because GRS believes this footnote “references information that is outside the record” and that Note 10 “concerns matters outside the record in this proceeding.” Motion at ¶¶ 11-16. GRS further argues that because its “attempt[s] to respond to Sunoco’s averments concerning these ‘other proceedings’ ... were stricken...” so should SPLP’s mere reference to the existence of these other proceedings. Motion at ¶ 15. This argument has no merit, and SPLP’s Main Brief at Note 10 should not be stricken as it is in fact supported by record evidence.

¹ SPLP is not required to and will not provide a paragraph-by-paragraph response to the Motion as the allegations and arguments are largely procedural and repetitive. *Compare* 52 Pa. Code § 5.61(b)-(c) (allegations in complaint may be deemed admitted if not specifically denied) *with* 52 Pa. Code § 5.103 (regarding response to motions and containing no similar provision).

2. SPLP's Main Brief at Note 10 states:

GRS has filed lawsuits against Middletown Township related to the construction at the property, including a complaint in the U.S. District Court for the Eastern District of Pennsylvania and appeals of two of the Township's denials of Right-To-Know requests seeking, inter alia, documents exchanged between SPLP and the Township.

As shown, Note 10 merely states that GRS has filed a lawsuit against Middletown Township related to SPLP's construction in Federal Court and has appealed two Right-To-Know law matters involving Middletown Township. Note 10 alleges no facts from or outcomes of these proceedings, let alone including any documents, arguments, orders or dispositions based thereon.

3. Contrary to GRS's baseless assertions, Note 10 is in fact supported by GRS's own evidence of record. Exhibit GRS-134, which consists of a letter dated March 21, 2021 sent from GRS's Mr. Stephen Iacobucci to SPLP's Mr. Joseph McGinn, provides:

In its pursuit of safety, GRS has filed two actions: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129 (the "PUC Complaint") and **Glen Riddle Station, L.P. v. Middletown Township; Civil Action No. 21-286 (the "Federal Action")**. To resolve these lawsuits, insofar as they pertain to Sunoco's work on the Property, GRS and Sunoco must resolve, finally, the following issues (the "Safety Issues")...

Exhibit GRS-134 at page 1 (emphasis added). Had GRS simply reviewed its own evidence, which was admitted into the record in this proceeding, it would have known that the record supports SPLP Main Brief Note 10 that GRS in-fact filed "the Federal Action." The time and resources of the parties and Your Honor's waste of time in addressing this meritless argument could have been avoided had GRS not neglected to look at its own evidence.

4. Additionally, Note 10 discusses that GRS has appealed two Right-To-Know matters involving Middletown Township. GRS again neglected to review the written history of this proceeding before filing its motion. Your Honor has already recognized the existence of these

proceedings in the March 5, 2021 Order Denying Motion To Compel Filed by Glen Riddle Station L.P. – Set I. *See Glen Riddle Station L.P. v. Sunoco Pipeline L.P.*, Docket No. C-2020-3023129, Order Denying Motion to Compel Filed by Glen Riddle Station L.P. – Set I at n. 2 (Order entered March 5, 2021). GRS’s argument to strike Note 10’s statement that GRS has appealed two Right-to-Know law matters against Middletown Township has no merit.

5. GRS goes on to argue that because of Note 10, GRS felt obligated to wholesale attach impermissible extra-record materials as Exhibit A to its Reply Brief, which was subsequently stricken by Your Honor on December 3, 2021, and therefore SPLP’s mere reference to the fact other proceedings exist must also be stricken. Motion ¶¶ at 15-16. This argument is illogical, and simply because Your Honor correctly struck GRS Reply Brief Exhibit A, which contained an 11-page letter to the Office of Open Records from GRS Counsel dated Sept. 29, 2021, never before seen in this proceeding and that is wholly irrelevant to the Complaint, does not warrant striking SPLP’s Main Brief Note 10 which in fact is supported by the record by GRS’s own Exhibit GRS-134 and Your Honor’s March 5, 2021 Order. References to the fact that other proceedings exist, facts which are supported by record evidence, does not prejudice GRS in any way. There is no basis to strike this statement. Therefore, the Motion to Strike SPLP’s Main Brief Note 10 should be denied.

B. GRS’s Request To Strike SPLP’s Appendices To Its Main Brief Including Proposed Findings Of Facts, Proposed Conclusions Of Law, And Proposed Ordering Paragraphs Must Be Denied.

6. GRS requests that SPLP’s Main Brief² Appendix A (Proposed Finding of Fact), Appendix B (Proposed Conclusions of Law), and Appendix C (Proposed Ordering Paragraphs) (“Proposed Materials”) be stricken. GRS argues these appendices should have been included

² SPLP notes that its Main Brief was filed on September 24, 2021. GRS provides no rationale for its 74-day delay in filing the instant motion.

within the 60-page limitation on briefs under 52 Pa. Code § 5.501 and therefore the Proposed Materials should be stricken. Motion at ¶¶ 2-8. GRS cites no caselaw supporting its contention and relies solely on its own incorrect interpretation of 52 Pa. Code § 5.501.

7. As is common practice before the Commission, SPLP included the Proposed Materials as Appendices to its Main Brief and not within the text of the Main Brief itself. There are countless examples of this standard practice across all types of Commission proceedings.³ Additionally, there are numerous examples of the proposed materials appendices exceeding the technical brief page limitation⁴ as Appendices are not legal argument and part of the brief – they are simply Proposed Materials requested by ALJ’s to assist in the preparation of an Initial Decision that are not subject to the briefing page limitations of 52 Pa. Code § 5.501.

8. GRS is not prejudiced. It had more than adequate time and opportunity to respond to SPLP’s Proposed Materials in its reply brief yet chose not to address them at all in its reply brief even though it had 42 extra pages to do so,⁵ and now months after submission of the briefs, seeks to strike these materials without legal basis. In contrast, SPLP would be prejudiced at this late time if the Proposed Materials, prepared in reliance on the Commission’s briefing practices, would be stricken without prior notice. As described above, Commission practice is for Proposed Materials to be included as appendices to briefs, and not within briefs themselves - changing that standard practice without prior notice would create undue prejudice for SPLP in this proceeding.

³ See e.g. Briefs at C-2019-3013805, C-2020-3019621, A-2017-2640195. See also *infra* fn. 4.

⁴ See e.g. Briefs at A-2019-3015173 including Main Briefs of Aqua PA, Bureau of Investigation and Enforcement, the Office of Consumer Advocate, The County of Delaware, and Sunoco Partners Marketing & Terminals; Briefs at A-2016-2575829 including Main Briefs of Laurel Pipeline Company; Briefs at C-2020-3019621 including Main Brief of National Fuel Gas Distribution Corporation. Additionally see Briefs in matters involving SPLP including C-2018-3006116 Main Briefs of the Flynn et al Complainants and SPLP.

⁵ GRS’s Reply Brief consisted of only 18 pages. Pursuant to 52 Pa. Code § 5.501, which allows 60-pages for briefs, GRS had 42 pages remaining to address any arguments it felt necessary in reply to SPLP’s Main Brief and any disagreement with the appendices. That GRS failed to address these matters in its Reply Brief, and now seeks to strike the materials months after is meritless.

9. Further, as the Proposed Materials are not argument or briefing material and indeed are tools prepared at the request of Your Honor to assist in the preparation of an Initial Decision, striking the Proposed Materials serves no purpose. To the extent that SPLP's Proposed Materials attached as Appendices to its Main Brief are subject to the 60-page brief limitation despite standard Commission practice, which SPLP avers Appendices are not, SPLP asks that Your Honor, pursuant to 52 Pa. Code § 1.2, exercise discretion and disregard the alleged technical defect of procedure under 52 Pa. Code § 5.501 as the Proposed Materials do not affect the substantive rights of the parties. GRS has pointed to no caselaw and provided no legal argument as to how its substantive rights were or even could have been affected by SPLP's Appendices containing Proposed Materials which GRS believes exceed a technical page limit. Where, as here, there is no prejudicial impact to another party, the Commonwealth Court has affirmed that Administrative Law Judges (ALJs) have broad discretion to disregard procedural irregularities regarding briefs. *See Springfield Tp. v. Pennsylvania Pub. Util. Comm'n.*, 676 A.2d 304 (Pa. Cmwlth. 1996) (holding ALJ did not abuse her discretion to accept and consider briefs with procedural defects pursuant to 52 Pa. Code § 1.2 as the ultimate decision was "amply supported by the evidence of record" and that accepting and considering the briefs "did not affect the Township's substantive rights asserted in the complaint")(emphasis added).

10. Therefore, GRS's Motion to Strike SPLP's Main Brief Appendix A-C should be denied.

C. GRS's Request To Strike SPLP's Appendix 1 To Its Reply Brief Including The Page-By-Page Analysis Of GRS's Ubiquitous Inaccurate Citations To And Quotations Of The Evidence Of Record In Its Main Brief Must Be Denied As GRS's Misrepresentations Of The Record Merit Additional Explanation.

11. GRS requests that Appendix 1 to SPLP's reply brief be stricken as it "contain[s] further argument" and exceeded the page limitation for briefs in 52 Pa. Code § 5.501(b). Motion

at ¶¶ 9-10. GRS makes the same argument as above that the 60-page limitation on briefs includes any appendices to briefs. But GRS cites no precedent to support its contention, and provides no explanation as to how GRS is prejudiced by SPLP's Reply Brief Appendix 1. Moreover, at the time it filed its reply brief, GRS obviously interpreted 52 Pa. Code § 5.501(b) consistent with SPLP's interpretation and the Commission's practice, because GRS's Reply Brief as filed, with attachments, totaled well over 100 pages.

12. Initially, as stated above, Appendices to Briefs are not subject to the brief page limitations as they are not "briefs" but rather are additional matter attached to the brief to support the legal arguments therein. Further GRS cannot claim any prejudice by the inclusion of Appendices to SPLP's Reply Brief as GRS's own reply brief was not constrained by the page limits in 52 Pa. Code § 5.501.⁶

13. Appendix 1 to SPLP's Reply Brief contains a table with a page-by-page correction of the incorrect and inaccurate citations to and quotations of the record that plagued nearly every page of GRS's Main Brief. As discussed in SPLP's reply brief, which also included the most egregious examples of GRS's misrepresentations of the record in the text itself,⁷ GRS's tactic of repeatedly misstating or mischaracterizing the record is not and cannot be a substitute for substantial evidence. Therefore, SPLP had no choice but to conduct an exhaustive page-by-page correction to the inaccuracies in GRS's Main Brief so that the ultimate disposition of this matter will be based on actual record evidence and not GRS's intentional misstatements of the record designed to confuse, complicate, and obfuscate GRS's failure to meet its burden of proof on *any* relief sought in the Complaint. It is understandable that GRS wants to exclude Appendix 1 from

⁶ GRS's Reply Brief contained 18 pages of argument and 91 pages of attachments. Your Honor struck some of the attachments, but did so not because they caused the brief to exceed 52 Pa. Code § 5.501's page limit (they did not) but because the attachments were substantively improper.

⁷ See e.g., SPLP Reply Brief at 1-4, 7-39.

consideration, because it calls out GRS's repeated misrepresentations on a page-by-page basis, but it is telling that GRS offers no rationale for doing so. Placing the lengthy recitation of factual misrepresentations in an appendix is appropriate because it is intended to serve as a reference for Your Honor and the Commission that substantiates SPLP's assertion that GRS has repeatedly misrepresented the record, but does so without cluttering the argument portion of the reply brief with repetitive corrections of GRS's repeated misstatements.

14. The Commission has denied similar motions to strike based on technical arguments that submissions exceeded the page limitations within the Commission's regulations pursuant to the authority granted under 52 Pa. Code § 1.2(c). See *Samall Associates, Inc. v. Delaware Valley Utilities, Inc.*, Docket No. C-00004517, Opinion and Order (Order entered Feb. 28, 2002)(“*Samall*”). In *Samall*, the Respondent submitted reply exceptions that exceeded the 25-page limitation at 52 Pa. Code § 5.535, and the Complainant moved to strike. In reply to the motion to strike, the Respondent argued the technical violation of the page limit is not a basis for the reply to be stricken. The Respondent further argued, and the Commission agreed, that the Respondent's rationale for exceeding the page limit had merit as “an attempt to bring order to the proceeding, which has a complicated factual background, and due to the numerous arguments raised in the Complainant's Exceptions.” *Samall* at n. 1. The Commission ultimately denied the Complainant's Motion to Strike pursuant to 52 Pa. Code § 1.2, stating:

This proceeding has a lengthy and convoluted procedural and factual history, which we believe merits the additional explanation and, therefore, pages used by the Respondent in its Reply Exceptions. Pursuant to the authority granted to us in Section 1.2(c) of our Regulations, 52 Pa. Code § 1.2(c), we waive the Section 5.535, 25-page, limit on reply exceptions in the instant proceeding.

Samall at n. 1.

15. Similar circumstances to *Samall* exist here. The extent to which GRS inaccurately and improperly cited or quoted the evidence of record merits that SPLP's page-by-page corrections

not be stricken in order to “bring order to the proceeding” by exposing the inappropriate distortion of the factual record evidence in GRS’s Main Brief. As noted above, while a significant portion of the citations contained in Appendix 1 were discussed by SPLP in the text of its Reply Brief, the ubiquity of GRS’s repeated inaccuracies required a catalogued response designed to assist Your Honor and the Commission in ruling on the Complaint based on correct, accurate and proper citations to the evidence of record rather than GRS’s mischaracterizations and misrepresentations. Therefore, GRS’s Motion to Strike SPLP’s Reply Brief Appendix 1 should be denied.

WHEREFORE, SPLP respectfully requests the Motion be DENIED.

Respectfully submitted,

/s/ Thomas J. Sniscak

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Date: December 27, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

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Dated: December 27, 2021