**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P. :

 :

 v. : C-2020-3023129

 :

Sunoco Pipeline, L.P. :

**SECOND ORDER**

**GRANTING IN PART AND DENYING IN PART**

**MOTION TO STRIKE PORTIONS OF BRIEFS**

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, 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, a motion to enforce the order granting in part and denying in part the preliminary objections and striking Glen Riddle testimony, a motion for a final continuance, another motion to compel and a motion to strike a portion of a reply brief. Each of these procedural matters was responded to with the necessary order or hearing notice as appropriate.

 In addition, the parties submitted pre-served written testimony pursuant to the litigation schedule.

The hearing was held on July 7, 12 and 13, 2021, as scheduled. Samuel Cortes, Esquire and Ashley Beach, Esquire appeared on behalf of Glen Riddle. Diana Silva, Esquire, Tom Sniscak, Esquire, Kevin McKeon, Esquire, Whitney Snyder, Esquire and Bryce Beard, Esquire appeared on behalf of Sunoco. Witnesses were subject to cross examination and pre-served testimony and accompanying attachments were admitted into the record. At the conclusion of the hearing, a discussion was held regarding the opportunity to submit briefs on the disputed issues. The parties agreed that main briefs would be filed on September 3, 2021 and reply briefs would be filed on September 24, 2021. A briefing order was issued on July 14, 2021 memorializing the briefing schedule and addressing additional procedural issues regarding briefs. On August 20, 2021, at the request of the parties, a revised briefing order was issued to modify the briefing due dates to accommodate delays in the receipt of the hearing transcript so that the main briefs would instead be due on September 17, 2021 and the reply briefs would be due on October 8, 2021.

Both Glen Riddle and Sunoco filed main and reply briefs pursuant to the revised briefing order.

On November 9, 2021, Sunoco filed a motion to strike portions of Glen Riddle’s reply brief. On November 29, 2021, Glen Riddle filed an answer to Sunoco’s motion to strike. By Order dated December 3, 2021, Sunoco’s motion was granted in part and denied in part.

On December 7, 2021, Glen Riddle filed a motion to strike portions Sunoco’s main and reply briefs. On December 27, 2021, Sunoco filed an answer to Glen Riddle’s motion to strike. As discussed further below, Glen Riddle’s motion to strike will be granted in part and denied in part.

As an initial matter, and as noted in the December 3, 2021 order addressing Sunoco’s motion to strike, Section 5.403 of the Commission’s regulations provides that presiding officers have all necessary authority to control the receipt of evidence, including ruling on the admissibility of evidence. 52 Pa. Code § 5.403(a)(1). The presiding officer will actively employ these powers to direct and focus the proceedings consistent with due process. 52 Pa.Code § 5.403(b). In addition, presiding officers have the authority to “exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.” 52 Pa. Code § 5.483(a). Furthermore, Section 5.431 governs the close of the record. Specifically, the record of a case will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission. 52 Pa. Code § 5.431(a). After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. 52 Pa. Code § 5.431(b).

In its motion, Glen Riddle argued that Sunoco’s briefs fail to comply with Commission regulations and the briefing order entered in this case because they exceed the page limitations. Glen Riddle noted that Sunoco’s main brief is 87 pages, including its appendices where it included its proposed conclusions of law, findings of fact and ordering paragraphs, and that Sunoco’s reply brief is 109 pages long including a 54-page chart that contains further argument. Glen Riddle added that portions of Sunoco’s main brief should be stricken because it references matters that are outside of the record. Glen Riddle argued that it attempted to respond to the extra-record evidence in its reply brief but that portion of the reply brief was stricken upon Sunoco’s motion. Glen Riddle argued that Appendices A, B and C to Sunoco’s main brief, Appendix A of Sunoco’s reply brief and page 38, footnote 10 of Sunoco’s main brief should be stricken.

In its answer to Glen Riddle’s motion, Sunoco argued that Glen Riddle’s request to strike footnote 10 of its main brief should be rejected because the footnote is supported by record evidence, namely Glen Riddle exhibit GRS-134, and that the footnote merely states that the lawsuit was filed, not any facts or outcomes of those lawsuits. Sunoco compares this reference to the 11-page letter Glen Riddle filed with the Office of Open Records as part of that proceeding that was never admitted into the record. With regard to Sunoco exceeding the page limits on the briefs, Sunoco argued that it is common practice before the Commission that proposed findings of fact, conclusions of law and ordering paragraphs are attached as appendices to the main brief, not included in the main brief, noting that they are not legal argument but are helpful to the presiding officer. Sunoco also argued that Glen Riddle was not prejudiced by the proposed materials because Glen Riddle could have responded to them in its reply brief, which was only 18-pages long. Finally, Sunoco argued that Glen Riddle’s argument that Appendix A to Sunoco’s main brief should be stricken should also be rejected because the Appendix contains a table with a page-by-page correction of the incorrect and inaccurate citations to and quotations of the record in Glen Riddle’s main brief and that Sunoco had no choice but to submit an exhaustive page-by-page correction to the inaccuracies in Glen Riddle’s main brief. Sunoco argued that the Commission has denied similar motions to strike based on technical grounds where additional explanation was needed. Sunoco requested that Glen Riddle’s motion be denied.

Glen Riddle’s motion to strike footnote 10 of Sunoco’s main brief will be denied. As Sunoco noted in its answer to Glen Riddle’s motion, footnote 10 only references the other proceedings and does not state any facts from or outcomes to these proceedings. In addition, there is other evidence of record in this proceeding that similarly references the proceedings. Whereas the specific averments and allegations of those proceedings are irrelevant to and not a part of this proceeding, only referencing the other proceedings is not unreasonable and does not cause any prejudice to Glen Riddle. This contrasts with Glen Riddle’s attachment to its reply brief of an 11-page letter that contained significant argument in the other proceeding, and to which Sunoco could not respond to, which would prejudice Sunoco. As a result, Glen Riddle’s motion to strike footnote 10 from Sunoco’s main brief will be denied.

Similarly, Glen Riddle’s motion to strike Appendices A, B and C of Sunoco’s main brief will also be denied. Sunoco is correct that it is common practice before the Commission that proposed findings of fact, conclusions of law and ordering paragraphs can be attached to briefs as appendices and not be included within the page limit for the briefs. Sunoco is also correct that the proposed findings of fact, conclusions of law and order paragraphs are not argument but are used to aid the presiding officer when drafting the decision and that Glen Riddle was not prejudiced by Sunoco’s including these as appendices to the main brief since Glen Riddle could have responded to them in its reply brief. Glen Riddle’s motion to strike Appendices A, B and C from Sunoco’s main brief will also be denied.

Finally, Glen Riddle’s motion to strike Appendix A of Sunoco’s reply brief will be granted. In this situation, the extra pages beyond the 60-page limit allowed in the Commission’s regulations and in the briefing order contains significant argument and is not merely an aid to the presiding officer such as the proposed findings of fact, conclusions of law and ordering paragraphs which is commonly included as an appendix outside the page limit. The appendix includes 54 pages of “GRS Assertion/Statement,” “Citation to GRS Brief” and “Contrary Statement/Evidence/Legal Principles.” This is precisely the type of legal argument that must be included within the body of the brief. It is unreasonable to include this additional argument and “contrary statement/evidence/legal principles” beyond the 60-page limit when all parties are limited to 60 pages in making such arguments. The “contrary statement/evidence/legal principles” must have been addressed within the body of the reply brief. Furthermore, by adding this 54-page chart as an appendix to its reply brief, Glen Riddle is prejudiced by its inability to file a meaningful response. Therefore, the Appendix A attached to Sunoco’s reply brief is distinguishable from the Appendices A, B and C attached to Sunoco’s main brief and will be stricken and will not be considered as part of the decision in this case.

 As such, Glen Riddle’s motion to strike certain of Sunoco’s briefing will be granted in part and denied in part. Glen Riddle’s motion with regard to Appendix A of Sunoco’s reply brief will be granted and that appendix will be stricken. Glen Riddle’s motion with regard to Appendices A, B and C of Sunoco’s main brief, and footnote 10 on page 38 of Sunoco’s main brief, however, will be denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to strike certain portions of Sunoco Pipeline, L.P.’s briefs filed by Glen Riddle Station, L.P. on December 7, 2021 is hereby granted in part and denied in part.
2. That Appendix A to Sunoco Pipeline, L.P.’s reply brief filed on October 22, 2021 is stricken.

Dated: December 29, 2021 \_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Joel H. Cheskis

 Deputy Chief Administrative Law Judge

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

*Revised July 6, 2021*

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