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May 18, 2022

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> 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 the Response Of Glenn Riddle Station, L.P., To The Motion Strike Of Portions of the Reply To Sunoco Pipeline L.P.'s Exceptions to the Initial Decision 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

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota  
Nevada New Jersey New York North Carolina **Pennsylvania** South Carolina Texas Washington

**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 (the “Motion”), Sunoco Pipeline L.P. (“Sunoco”), to Strike Portions of GRS’s Reply Exceptions (the “Reply”). Sunoco asks the Commission to “strike” portions of GRS’s Reply ostensibly because Sunoco disapproves of GRS’s opposition to Sunoco’s Exceptions (the “Exceptions”) and disagrees with GRS’s proffered interpretation of governing law. To file its Motion, Sunoco mischaracterizes GRS’s arguments as including either (A) “Extra-Record Material,” or (B) “Issues Waived.”<sup>1</sup> Sunoco’s Motion is a transparent and dishonest attempt at filing an impermissible surreply, and the Commission should follow governing Commission Rules and ignore it. See 52 Pa. Code §§ 5.533-5.535.

Additionally – and somewhat ironically, although entirely consistent with Sunoco’s litigation of this dispute – Sunoco misrepresents the record throughout its Motion, asserting, among other things, that “*GRS is suing Sunoco* in a civil proceeding seeking more money for

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<sup>1</sup> In its lengthy chart, Sunoco includes an additional category, titled, “New facts, misrepresentations of the record, or making new arguments never previously raised.” In its briefing, however, Sunoco includes that category as part of its argument in section A, “Extra-Record Material.” GRS will, therefore, address this argument as if Sunoco included it within its “Extra-Record Material” argument.

[Sunoco’s] temporary easements at the Property.” [Motion, p. 5, fn. 7 (emphasis added).] To “support” this outright lie – which, frankly, has no bearing on Sunoco’s Motion – Sunoco references JM-9. [Id.] JM-9 is minutes of a Middletown Township Council Meeting held on February 8, 2021, referring to a civil action by and between Sunoco and GRS: “*Sunoco elected to condemn the additional workspace and access roads...*the case to determine the appropriate valuation is proceeding in the Delaware County Court of Common Pleas....” [JM-9 (emphasis added).] Sunoco refers to the only pending civil proceeding between the two parties involving compensation for Sunoco’s easements – the condemnation lawsuit *that Sunoco filed against GRS. Sunoco Pipeline, L.P. v. Glen Riddle Station, L.P.*, No. CV-2020-003193 (Ct. Com. Pl. Del. Co. 2020). In other words, Sunoco sued GRS civilly and lied to the Commission about who filed the suit. Sunoco’s unabashed and outright lie is exemplary of the dishonest nature of its entire Motion/surreply.

**A. Sunoco Mischaracterizes GRS’s Responsive Argument As Including “Extra-Record Material.”**

None of the law cited by Sunoco supports striking GRS’s responsive argument in any respect. See 52 Pa. Code § 5.431(b) (prohibiting reliance on new matter or supplementation of the record.”); 52 Pa. Code § 5.535(a) (limiting replies to responsive arguments and issues); Maguire v. Pa. Electric Co., et. al., No. 1952386, 2017 WL 1952386, at \*1 (Pa. P.U.C May 4, 2017) (striking argument and extra-record materials pertaining to a landlord-tenant relationship beyond the scope of the Commission’s jurisdiction); In re Apollo Gas Co., No. A-120450, 1994 WL 578036, at \*1 (Pa. P.U.C. Feb. 3, 1994) (striking argument and a hearsay exhibit proffered for the first time in exceptions); 66 Pa. C.S.A. § 332 (providing for “the exclusion of irrelevant, immaterial, or unduly repetitious evidence,” and explaining that “no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any

party and as supported by and in accordance with the reliable, probative and substantial evidence”); Hess v. Pa. Pub. Util. Comm’n, 107 A.3d 246, 266 (Pa. Commw. Ct. 2014) (striking new argument involving the performance of a transmission line based on reports not introduced into the record at trial.)<sup>2</sup>

Here, unlike the parties proceeding in good faith in the cases cited by Sunoco, Sunoco simply intends to get the “last word” in before the Commission though the law precludes it from doing so. See 52 Pa. Code §§ 5.533-5.535. This outright defiance of the law is consistent with how Sunoco has acted throughout this case, in its dealings with GRS, and in its many other unfortunate dealings within our Commonwealth over the past few years – i.e., Sunoco is, in its own words, above the law, and Sunoco argues that GRS and the Commission should stay out of Sunoco’s path unless that path leaves tragedy in its wake. [Exceptions, pp. 3, 13-15, 37 (arguing that safety requirements do not apply to Sunoco’s work until it harms someone).]

**1. GRS’s inclusion of so-called “provocative statements” is properly made responsive argument that relies on record evidence.**

Sunoco seeks to strike material on pages 1, 7, and 18 of GRS’s brief as so-called “provocative statements,” “mischaracterizations of record evidence,” or “additional facts wholly unsupported by the record.” [Motion, pp. 8-9.] Sunoco cites no basis to strike “provocative statements” or “mischaracterizations of the record” – nor does one exist. Further, although Sunoco categorizes this request under the heading “Extra-Record Materials” (Motion, Section I(A)), GRS properly submitted each argument with citations to facts in the record.

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<sup>2</sup> Sunoco also cited the following cases ostensibly in support of its request to strike what it characterizes as “extra-record” material, but they do not address motions to strike: Davidson v. Unemployment Compensation Bd. of Review, 151 A.2d 870 (Pa. Super. Ct. 1959); In re Shenandoah Suburban Bus Lines, Inc., 46 A.2d 26 (Pa. Super. Ct. 1946); Nat. Fuel Gas Dist. Corp. v. Pa. P.U.C., 464 A.2d 546 (Pa. Commw. Ct. 1983) (Order entered July 30, 1993). The following cases cited by Sunoco pertain to waiver, which has not occurred here for the reasons set forth in Section B, below: Springfield Twp. v. Pa. Pub. Util. Comm’n, 676 A.2d 304, 309 (Pa. Commw. Ct. 1996); Capital City Cab Serv. v. Pa. Pub. Util. Comm’n, 138 A.3d 119, 132 (Pa. Commw. Ct. 2016) (*en banc*).

The first three statements that Sunoco seeks to strike in Section I(A)(ii) are not “facts” of any kind; they are GRS’s legal argument in response to Sunoco’s Exceptions. In its Exceptions, Sunoco argued that the Commission has no authority over Sunoco here because no standards in the Public Utility Code or Commission Regulations apply to Sunoco’s conduct that ALJ Cheskis<sup>3</sup> found unsafe. [Exceptions, pp. 5-12.] In response, GRS identified the logical consequence of Sunoco’s argument – i.e., that the Commission would be powerless to curtail the conduct of Sunoco that ALJ Cheskis found unreasonably unsafe absent a tragedy. [Reply, pp. 2-9.]

Although Sunoco describes GRS’s argument as including “additional facts,” the argument on its face includes no such facts. It references Sunoco’s argument itself and the absurd and dangerous consequences that would result if the Commission adopted such a reckless argument as law. Frankly, Sunoco itself confirms that GRS’s argument asserts no “new facts” when Sunoco responds to GRS’s argument by referencing its own Exceptions. [Id. (“[r]ather, as discussed in detail in [Sunoco’s] Exception No. 11...”; “[a]s discussed in detail in Sunoco Exception No. 5....”)] Again, Sunoco’s response is surreply.

Sunoco also attempts to strike GRS’s response to its Exception that Stephen Iacobucci (“Mr. Iacobucci”) lacked authority to execute the Verification of the Complaint under the heading “Extra-Record Material.” [Motion, p. 9.] GRS asserted that Mr. Iacobucci had authority to execute the Verification as GRS’s Property Manager. [Reply, p. 24.] GRS cited to the Verification, which on its face evidences that GRS authorized Mr. Iacobucci to execute the Verification. [Id., citing Verification to Complaint.] Sunoco alleges that this portion of the Reply must be stricken because it is “inaccurate,” “inappropriate,” and unsupported by the record. [Id.]

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<sup>3</sup> All defined terms not otherwise designated herein have the meaning ascribed to them in the Reply.

In addition to the Verification, which states Mr. Iacobucci's authorization on its face, additional portions of the record support GRS's argument. GRS Statement No. 1, the Direct Testimony of Mr. Iacobucci, contains the following statement, "I am principal of ALJ Properties Management LLC, *which has a management contract with [GRS]*, and have been since 2018." [GRS-1, p.1, ln. 9-10 (emphasis added).] During Sunoco's live cross-examination of Mr. Iacobucci, Sunoco's lead counsel, Thomas Sniscak, Esquire, himself asked Mr. Iacobucci if he was the property manager for GRS: "...am I correct that you're rather *engaged as the property manager [of GRS]?*" – to which Mr. Iacobucci responded, "*that would be correct.*" [Tr. 268:12-14 (emphasis added).] Here, again, GRS appropriately responded to Sunoco's Exceptions with argument based on the record. Yet, Sunoco wants the "last word" and misrepresents the record that its own lawyer created in its effort to get it.

Finally, Sunoco attempts to strike GRS's statement that "Sunoco's work on the Property continued for almost one year..." because it is "not supported by the record." [Motion, p. 9.] Yet, again, no basis to strike this statement exists. Although Sunoco alleges that the record demonstrates preliminary work beginning in December 2020 and actual construction beginning in January 2021, its own record shows a lengthier timeline. [See Sunoco Stmt. No. 4-R (Jayme Fye), p. 8, ln. 4-8 (explaining that the utility location and potholing would begin as soon as the end of the week of November 18, 2020); Sunoco Stmt. No. 6-R (John Packer), p. 2, ln. 1-7, 18-23) (explaining that Sunoco has had on the clock security at the Property since November 2020 to protect Sunoco's workers "*because Sunoco's construction began at the property in November 2020.*") (emphasis added).] Again, this is not "extra-record" material Sunoco seeks to strike – but rather GRS's argument based on the record.

In summary, the statements Sunoco seeks to strike in the chart spanning pages 8-10 as “extra-record,” “not supported by the record,” “new,” or “mischaracterizations,” are responsive arguments supported by record evidence.

**2. GRS’s inclusion of precedential case law and the arguments asserted in that precedential case law is not “extra-record material,” but rather, properly made responsive legal argument.**

In an effort to avoid the consequences to it for making irreconcilable arguments to separate tribunals, Sunoco asks the Commission to strike its own publicly filed prior arguments to the United States District Court for the Eastern District Pennsylvania (the “Eastern District Court”) that resulted in a precedential opinion. There, Sunoco argued, successfully, the exact opposite of what it now argues to the Commission. [See Glen Riddle Station, L.P. v. Middletown Twp., No. 21-286, 2021 WL 1141964, at \*8 (E.D. Pa., Mar. 25, 2021).]<sup>4</sup>

Here, GRS simply makes a legal argument based on related, highly relevant, and probative precedent that demonstrates why, as a matter of law, Sunoco cannot assert that the Commission lacks jurisdiction in this matter. This does not violate Section 5.431(b). 52 Pa. Code § 431(b) (“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....”). It is hard to imagine more relevant legal precedent for the Commission’s consideration than the referenced precedential federal court opinion.

In its Exceptions, Sunoco objected to ALJ Cheskis’s finding that “[w]here issues of community safety are concerned, this Commission possess irrefutable authority to exercise its

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<sup>4</sup> A fact finder may take judicial notice of publicly available documents related to a legal proceeding at any time. See Bowen v. Smith, 239 A.3d 1151, 1151 n.2 (Pa. Commw. Ct. 2020) (taking judicial notice of a document published on the Department of Correction’s website that was relevant to its decision); 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.”).

jurisdiction.” [Id., p. 14.] In its Reply, GRS argued that the Commission possesses jurisdiction as found in the Decision, and that principles of judicial estoppel preclude Sunoco from making the legal argument it seeks to make here. [Reply, pp. 5-6, 9, citing Marazas v. W.C.A.B. (Vitas Healthcare Corp.), 97 A.3d 854, 859 (Pa. Commw. Ct. 2014) (explaining that “a party to an action is estopped from assuming a position inconsistent with his or her assertion in a previous action, if his or her contention was successfully maintained.”)] GRS pointed out that it is settled law that a litigant, like Sunoco, cannot successfully argue one position to a tribunal and later argue the opposite to another. [Id.]

Here, as GRS explained in its Reply, Sunoco previously argued that the Commission had exclusive jurisdiction over GRS’s safety claims, and that argument resulted in a precedential opinion agreeing with Sunoco’s argument. [Id.] In fact, in Glen Riddle Station, L.P. v. Middletown Twp., 2021 WL 1141964, at \*8, after considering the jurisdictional arguments made by Sunoco and discussed by GRS in its Reply [pp. 5-6], the federal court found that “the Commission certainly has jurisdiction to determine whether Sunoco’s work is *unsafe*.” Glen Riddle Station, L.P. v. Middletown Twp., 2021 WL 1141964, at \*8 (emphasis in original). In so finding, the Court cited to one of the specific regulations upon which ALJ Cheskis relied in the Decision – 66. Pa.C.S. § 1505. Id. That legal precedent is unquestionably binding on Sunoco here. Marazas, 97 A.3d at 859.

Sunoco’s attempt to liken its arguments before the Eastern District Court to previously stricken matters involving the Office of Open Records is also fatally flawed. [Motion, p. 5, fn. 5 (citing Order Granting in Part and Denying in Part Motion to Strike Portions of [GRS]’s Reply Brief at 7 (Order entered Dec. 3, 2021) (the “Prior Order”)).] Although ALJ Cheskis found certain documents related to the Office of Open Record matter unrelated to the proceedings before the



Commission and struck it on that basis, that is not the case here. Here – the relevance and important nature of the precedent is apparent on its face – Sunoco made in its Exceptions the exact opposite of the argument that it made in the Eastern District Court. Sunoco’s argument to the Eastern District Court resulted in a precedential opinion and that gives rise to certain legal consequences. See Marazas, 97 A.3d at 859. The Eastern District Court concluded, unequivocally, that the Commission has jurisdiction to render the findings made by ALJ Cheskis here. The Commission should follow this precedent.

Further, in the Prior Order, ALJ Cheskis refused to strike material “easy for all parties to access.” Here, nothing could be more accessible to Sunoco than its own arguments and the opinion of the federal court resolving those arguments.

GRS did not supplement the record with “new facts”; rather, it responded appropriately to Sunoco’s Exceptions with highly probative and relevant legal authority disposing of those Exceptions.

**B. Sunoco Mischaracterizes GRS’s Argument As Including “Issues Waived.”**

Sunoco conflates two separate points made by GRS - one of which was a footnote – in its attempt to “strike” GRS’s response. Sunoco also asserts that these arguments somehow conflict with the Decision, ignoring that both were made in support of the Decision and in opposition to Sunoco’s Exceptions. Once again, Sunoco misrepresents the record in its zeal to have the “last word.”

In addition to *agreeing with the reasoning set forth by ALJ Cheskis*, GRS argued that the law does and should treat the “existing” Mariner East 1 and “new” Mariner East 2 identically. [Reply, pp. 10-12.] Separately, GRS included a footnote to point out the practical absurdity of Sunoco’s argument that the same rules should not apply to its work on the Mariner East 2 even

though Mariner East 1 and 2 are adjacent to each other on GRS's Property. [Reply, p. 10, fn. 2.] Neither of GRS's arguments challenge the Decision, and neither should be stricken.

Both GRS and ALJ Cheskis assert that Sunoco's argument that "new construction" is somehow above the law here, fails. In the Decision, ALJ Cheskis found, "Sunoco's argument that the Public Awareness Plan, and other applicable law, do not apply to *new* construction **will be rejected.**" [Decision, p. 63 (italics in original, bold added.)]. In its Exceptions, Sunoco challenged this finding, asserting "the [Decision's] conclusion that [Sunoco's] Public Awareness Plan applies to *new* pipeline construction (the only construction at issue here), is wrong as a matter of law." [Exceptions, p. 22 (emphasis in original).] Sunoco argued that (a) the regulatory framework referenced in the Decision does not apply to newly constructed pipelines and (b) ALJ Cheskis erred when he cited to the Commission's general powers to regulate safety "without employing any rationale or legal reasoning as to its enforceability in this matter, and rather on a basis of preference rather than reason which the Commission must overturn." [Exceptions, pp. 22-23.]

In its Reply, GRS *agreed* with ALJ Cheskis' rejection of Sunoco's "new construction argument." [Reply, p. 19.] GRS also asserted, "*in addition to ALJ Cheskis' well-reasoned discussion of Sunoco's obligations*, Sunoco's argument also fails because it conflicts with the Commission's and the Pennsylvania Commonwealth Court's treatment of the Mariner East 2 pipeline." [Reply, p. 10 (emphasis added).] For Sunoco to argue that GRS's responsive argument "disputes the legal basis of the [Decision]" and is "not responsive to an argument [Sunoco] made in Exceptions," is simply dishonest.

Further, the proximity of the two pipelines is, contrary to Sunoco's assertion, part of the record here. [See GRS-3, Permanent Easement Agreement, Accompanying the testimony of Stephen Iacobucci, Raymond Iacobucci, and Jason Culp, P.E., p. 12 (map showing existing

pipelines inside permanent easement).] They are side-by-side and Sunoco's argument is practically absurd in this circumstance. [Id.] [Exceptions, pp. 11-14.]

In summary, the Commission should deny Sunoco's request to "strike" portions of GRS's Reply. As set forth above, Sunoco's request is a baseless attempt at filing an impermissible surreply to the responsive, record-based arguments proffered by GRS in response to Sunoco's Exceptions.

Respectfully submitted,

**FOX ROTHSCHILD LLP**

May 18, 2022

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 May 18, 2022, I served a true and correct copy of the foregoing Response to the Motion to Strike Portions of Complainant’s Reply Exceptions 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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