

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

Docket No. C-2014-2403746

Complainant,

v.

Snyder Brothers, Inc.,

Respondent.

**MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND
RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to 52 Pa. Code §§ 5.342 and 5.349, Respondent Snyder Brothers, Inc., hereby files and serves the following Motion to Compel Answers to Interrogatories and Responses to Requests for Production of Documents.

I. Background

1. On March 27, 2014, Respondent, Snyder Bros., Inc. (“Respondent”) served Interrogatories and Requests for Production of Documents on Complainant, Pennsylvania Public Utility Commission (the “PUC”) in accordance with 52 Pa. Code §§ 5.342 and 5.349.

2. Respondent is seeking information and documents relevant and pertinent to the claims asserted in the Complaint filed against by PUC in this matter, as well as Respondent’s defenses thereto. PUC’s Complaint asserts claims against Respondent for Impact Fees and Administrative Charges allegedly owed by Respondent to the PUC pursuant to the Act of February 14, 2012, P.L. 87, No. 13, 58 Pa. C.S. § 2301, et seq. (“Act 13”).

3. On April 14, 2014, Respondent received a copy of Objections to certain of Respondent’s Interrogatories and Requests for Production of Documents dated April 7, 2014,

asserting that, *inter alia*, (1) certain information and documents requested by Respondent are not in the possession, custody, or control of the PUC's Bureau of Investigation and Enforcement ("I&E") and thus cannot be produced to Respondent and (2) information and documents reviewed by I&E and other bureaus and divisions within the PUC in determining that the Impact Fees and Administrative Charges are allegedly owed are "not relevant" in this matter.

4. For the reasons discussed herein, PUC's Objections must be dismissed and PUC must serve full and complete Answers and Objections to Respondent's Interrogatories and Requests for Production of Documents.

II. General Argument

5. 52 Pa. Code. § 5.321 provides that, in any proceeding before the PUC in which a complaint has been filed,

a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

6. Similarly, 52 Pa. Code § 5.323 provides that

a party may obtain discovery of any matter discoverable under § 5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another party or by or for that other party's representative, including his attorney, consultant, surety, indemnitor, insurer or agent," subject to the caveats that a party may not obtain discovery disclosing the mental impressions of a party's attorney or a party's mental impress, conclusions, or opinions respecting the value or merit of a claim or defense or the strategy or tactics which respect to a claim or defense.

7. Here, in response to Interrogatories and Requests for Production of Documents duly served upon the PUC, the PUC, through I&E, has lodged a series of Objections through which it refuses to provide Answers to two (2) of Respondent's Interrogatories or to produce documents in response to eight (8) of Respondent's Requests for Production of Documents.

8. With limited exception, the PUC's Objections are grounded in the assertion that "[a]s the prosecutory bureau of the Commission, I&E has no knowledge nor should it be expected to have knowledge of any potential communications" between other PUC staff members, of other PUC staff members with members of the Pennsylvania General Assembly, or of other PUC staff members with members of the Pennsylvania Governor's Office regarding information that is clearly relevant to PUC's claims and Respondent's defenses thereto.

9. In support of these Objections, PUC cites to the "*Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-207182 (August 11, 2011)." It appears to be PUC's position that because I&E is a separate "bureau" or "division" within the PUC, I&E is under no duty or obligation to provide Answers to Interrogatories or Responses to Requests for Production of Documents when the information which would form the basis of those Answers and Responses is apparently only in the possession, custody, or control of another bureau or division within the PUC.

10. This position defies logic. I&E is the prosecuting arm of the PUC, i.e., I&E serves as counsel for the PUC in enforcement (and other) matters. This much is admitted in and evident from PUC's Complaint in this matter.

11. For example, the Complaint was verified not by a member of I&E, but rather by a member of the Bureau of Administration's Fiscal Office (the "Fiscal Office"). In fact, the Verification to the Complaint clearly states that "I expect the **Fiscal Office** will be able to prove

the same at any hearing held in this matter.” Similarly, Exhibit C to the Complaint makes clear that this matter did not originate with I&E, but rather that it had been “referred” to I&E from the Fiscal Office. Exhibit C contains a “Notice of Amount Due” which was prepared by the Fiscal Office, and signed and verified by a member of the Fiscal Office. Similarly, in its Answers to Interrogatories, PUC identifies Yvonne Hess (the same employee who verified the Complaint) and Amy Zuvich, both employees of the Fiscal Office, as “witnesses who have knowledge regarding the PUC’s evaluation and review of [Respondent’s] Act 13 submissions, and the determination of the amounts claimed to be owed.” *See* Answer to Interrogatory Number 19.

12. Yet, the PUC continues to refuse to provide Answers to Interrogatories or Responses to Requests for Production of Documents when those Answers or Responses would be based upon information and documents in the possession, custody, and control of other bureaus and divisions within the PUC other than I&E.

13. In sum, I&E has not set forth any reasonable basis to support its Objections to Respondent’s Interrogatories and Requests for Production of Documents. Rather, I&E appears to be simply attempting to evade Respondent’s duly served Interrogatories and Requests for Production of Documents through unfounded Objections. Each of I&E’s Objections are discussed in greater detail *infra*.

III. Discovery Requests and Objections

A. Interrogatories Numbers 23 and 24 and Requests for Production of Documents Numbers 16 and 17

Interrogatory Number 23:

Describe all communications between Complainant and the PUC with members or staff of the Pennsylvania General Assembly related to Complainant’s position that unconventional gas wells producing more than 90,000 cubic feet of gas per day in any one

month subjects such well to the Impact Fee for the entire reporting period.

Objection:

Objection. This discovery request seeks information that is not available to or in the possession of I&E. I&E has had no communications with members or staff of the Pennsylvania General Assembly related to Complainant's position. As the prosecutory bureau of the Commission, I&E has no knowledge nor should it be expected to have knowledge of any potential communications between other PUC staff with members or staff of the Pennsylvania General Assembly. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

Interrogatory Number 24:

Describe all communications between Complainant and the PUC with members of the Governor's Office related to Complainant's position that unconventional gas wells producing more than 90,000 cubic feet of gas per day in any one month subjects such well to the Impact Fee for the entire reporting period.

Objection:

Objection. This discovery request seeks information that is not available to or in the possession of I&E. I&E has had no communications with the Governor's Office related to Complainant's position. As the prosecutory bureau of the Commission, I&E has no knowledge nor should it be expected to have knowledge of any potential communications between other PUC staff with the Governor's Office. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

Request for Production of Documents Number 16:

All documents related to your response to Interrogatory 23.

Objection:

Objection. This discovery request seeks information that is not available to or in the possession of I&E. I&E has had no communications with members or staff of the Pennsylvania General Assembly related to Complainant's position. As the

prosecutory bureau of the Commission, I&E has no knowledge nor should it be expected to have knowledge of any potential communications between other PUC staff with members or staff of the Pennsylvania General Assembly. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

Request for Production of Documents Number 17:

All documents related to your response to Interrogatory 24.

Objection:

Objection. This discovery request seeks information that is not available to or in the possession of I&E. I&E has had no communications with the Governor's Office related to Complainant's position. As the prosecutory bureau of the Commission, I&E has no knowledge nor should it be expected to have knowledge of any potential communications between other PUC staff with the Governor's Office. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

14. These Interrogatories and Requests for Production of Documents seek information and documents relating to communications between Complainant and the PUC on one hand and members or staff of the Pennsylvania General Assembly or the Governor's office on the other. Specifically, the information and documents sought through these Interrogatories and Requests for Production of Documents is relevant to the issue of whether the PUC is properly interpreting the provisions of Act 13 discussing the required Impact Fees and Administrative Charges to be paid by oil and gas operators in the Commonwealth of Pennsylvania. Indeed, one of the major issues presented in this matter is whether the PUC is correctly interpreting the provisions of Act 13 discussing Impact Fees and Administrative Charges.

15. Respondent is entitled to know the factual and legal bases upon which I&E, the Fiscal Office, and/or any other bureau or division with the PUC relied in arriving at the conclusion that Respondent owes additional amounts representing Impact Fees and Administrative Charges under Act 13 for its unconventional gas wells spud before January 1, 2012 and for its unconventional gas wells reported for calendar year 2012

16. Tellingly, I&E has not objected to the relevance of the requested information and documents. Rather, I&E has simply objected to these Interrogatories and Requests for Production of Documents on the basis that I&E apparently has no knowledge nor should it be expected to have knowledge of the information and documents requested.

17. These Objections are baseless. Again, I&E is a division within the PUC. Its duties and obligations are defined by the Pennsylvania Public Utility Code and its implementing Regulations, just like all other bureaus and divisions with the PUC.

18. Nothing in *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011), the lone document upon which I&E relies for its Objections, suggests otherwise. In fact, there is no basis within *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) upon which I&E can credibly rely to object to Respondent's Interrogatories and Requests for Production of Documents.

19. I&E was simply created to participate in all proceedings before the PUC and to "initiate enforcement actions and prosecutions in the public interest." In fact, as I&E admits in its Complaint, this matter was "referred to" it for prosecution by another bureau or division within the PUC, presumably by the Fiscal Office.

20. Indeed, as is readily apparent from the Complaint, many, if not all, of the allegations in I&E's Complaint are based upon information provided by the Fiscal Office.

B. Requests for Production of Documents Numbers 1, 2, and 3.

Request for Production of Documents Number 1:

All documents reflecting any communications by and between the staff of the PUC relating to the Annual Report Snyder Brothers, Inc., filed for 2011.

Objection:

Objection. This discovery request seeks information that is not available to or in the possession of I&E. As the prosecutory bureau of the Commission, I&E has no knowledge nor should it be expected to have knowledge of any potential communications between other PUC staff members. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

Request for Production of Documents Number 2:

All documents reflecting any communications by and between the staff of the PUC relating to the Annual Report Snyder Brothers, Inc., filed for 2012.

Objection:

Objection. This discovery request seeks information that is not available to or in the possession of I&E. As the prosecutory bureau of the Commission, I&E has no knowledge nor should it be expected to have knowledge of any potential communications between other PUC staff members. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

Request for Production of Documents Number 3:

All documents referring or relating to any investigation done regarding the 2011 and 2012 Annual Reports filed by Snyder Brothers, Inc.

Objection:

Objection. I&E is not aware of any documents that exist referring or relating to any other investigation other than that conducted by I&E. The documents relied upon by I&E are those supplied by the company, the spreadsheet prepared by the Fiscal Office, and I&E's application of the statute.

21. These Requests for Production of Documents are clearly relevant to PUC's claims and Respondent's defenses in this matter. For example, any documents reviewed, relied upon or created by the individual(s) from the PUC's Fiscal Bureau who interpreted the relevant statutory language relating to "vertical well" and "stripper well" are highly relevant to the issues of whether the current interpretation of these terms by the Complainant and the PUC have been consistent and are otherwise supportable. Again, PUC has tellingly not objected to the relevance of the information and documents sought through these Requests for Production of Documents.

22. Rather, I&E argues that Respondent seeks information and documents not available to or in the possession of I&E, and relies upon *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011).

23. I&E's arguments are without merit. Nothing in *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) even remotely suggests that I&E does not have access to information in the possession of other bureaus and divisions of the PUC. In fact, I&E admits, with respect to Request for Production of Document Number 3, that I&E relied upon a spreadsheet prepared by the Fiscal Office in asserting its Complaint against Respondent.

24. I&E cannot simply rely upon this "spreadsheet" and then refuse to disclose the remainder of the documents in PUC's possession, custody, and control germane to the manner in which this "spreadsheet" was prepared, including those relating to manner in which the PUC

interpreted the relevant statutory language in this matter by simply stating that such documents are in the possession of another bureau or division within the PUC---particularly when a representatives of another Bureau have already been disclosed as potential witnesses for Complainant. In other words, I&E cannot “pick and choose” which documents and information from other bureaus and divisions within the PUC it wants to disclose to Respondent.

25. Again, Respondent is entitled to know the factual and legal bases upon which the Fiscal Office (and/or any other bureau or division with the PUC) relied in arriving at its conclusion that Respondent allegedly owes additional amounts representing Impact Fees and Administrative Charges imposed under Act 13 for its unconventional gas wells spud before January 1, 2012 and for its unconventional gas wells reported for calendar year 2012.

C. Requests for Production of Documents Numbers 10, 13, and 14.

Request for Production of Documents Number 10:

All documents to which the PUC referred or relied upon in concluding that the PUC’s interpretation of 58 Pa. C. S. Section 2301 as to what is or is not a “stripper well” is based upon whether the well in question produced more than 90,000 cubic feet of gas per day in at least one month in a calendar year.

Objection:

Objection. Relevance. The documents that the PUC referred to or relied upon in making its conclusion are not relevant to this matter. I&E based its complaint on its independent interpretation of the statute and the documents produced by Snyder Brothers indicating that the wells at issue are not stripper wells. Moreover, I&E has no more access to this type of information than does the Respondent.

Request for Production of Documents Number 13:

All documents relating or pertaining to PUC policy regarding the calculation of the Act 13 Impact Fee.

Objection:

Objection. Relevance. The documents relating or pertaining to the PUC policy regarding the calculation of the Act 13 Impact Fee are not relevant to this matter. I&E based its complaint on its independent interpretation of the statute and the documents produced by Snyder Brothers indicating that the wells at issue are not stripper wells and thus are subject to the Act 13 Impact Fee. Moreover, I&E has no more access to this type of information than does the Respondent.

Request for Production of Documents Number 14:

All documents relating or pertaining to PUC policy regarding the calculation of the Act 13 Administrative Fee.

Objection:

Objection. Relevance. The documents relating or pertaining to the PUC policy regarding the calculation of the Act 13 Impact Fee are not relevant to this matter. I&E based its complaint on its independent interpretation of the statute and the documents produced by Snyder Brothers indicating that the wells at issue are not stripper wells and thus are subject to the Act 13 Impact Fee. Moreover, I&E has no more access to this type of information than does the Respondent.

26. Finally, I&E objects to Respondent's Requests for Production of Documents Numbers 10, 13, and 14 on the basis of relevance and on the basis that I&E has "no more access" to the information and documents requested than does Respondent.

27. Again, I&E's arguments are without merit. PUC cannot credibly argue that any documents relied upon in making the very determinations at issue in this matter are not relevant to I&E's Complaint or Respondent's defenses.

28. I&E offers no basis for this argument. The Pennsylvania Rules of Evidence provide that "relevant" evidence is evidence that "has as any tendency to make a fact more or less probable than it would be without the evidence; and . . . the fact is of consequence in determining the action." Pa. R. Evid. 401. I&E is attempting to argue that Respondent is not entitled to review the documents that PUC reviewed and relied upon in making the

determinations at issue in this matter, which clearly have a tendency to make facts of consequence more or less probable than it would be without the documents.

29. The PUC has determined that the wells that are in issue in this matter are not “stripper wells” and thus are subject to the Act 13 Impact Fee. I&E attempts to argue that it made this determination based upon its own interpretation of Act 13 and documents provided by Respondent. However, it is clear from PUC’s Complaint that this determination was made by the Fiscal Office. *See* Complaint, ¶¶ 14 – 26.

30. In fact, the Complaint alleges that “[o]n November 25, 2013, the **Fiscal Office** sent [Respondent] a Notice of Amount Due, attached as Attachment C, in which it informed Snyder Brothers that it owed \$391,250.00 in unpaid Impact Fees and Administrative Charges for calendar years 2011 and 2012.” Complaint, ¶ 27. Interestingly, this Notice of Amount Due was sent to Respondent by cover letter from I&E, although the Notice of Amount Due itself was signed and verified by the Fiscal Office.

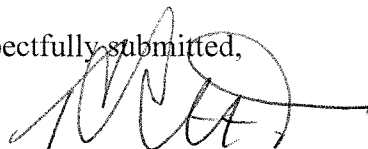
31. It is clear that I&E and the Fiscal Office, both bureaus or divisions within the PUC, conducted investigations and participated in the decision to pursue amounts allegedly unpaid representing Impact Fees and Administrative Charges pursuant to Act 13 from Respondent. For I&E to now argue that the PUC should not be required to produce documents evidencing these investigations or relied upon by the PUC in carrying out these investigations is unsupported and will unfairly prejudice Respondent.

IV. CONCLUSION

32. WHEREFORE, pursuant to 52 Pa. Code §§ 5.342 and 5.349, Respondent Snyder Brothers, Inc. respectfully requests that the Administrative Law Judge dismiss Complainant Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement’s Objections

to Interrogatories Numbers 23 and 24 and Requests for Production of Documents Numbers 1, 2, 3, 10, 13, 14, 16, and 17 and require Complainant Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement to provide full and complete Answers and Responses to said Interrogatories and Requests for Production of Documents within 20 days from the date of the order dismissing the Objections.

Respectfully submitted,



April 17, 2014

Thomas C. Reed, Esquire
Pa. I.D. No. 19913
Dinsmore & Shohl LLP
One Oxford Centre, Suite 2800
301 Grant Street
Pittsburgh, PA 15219
(412) 281-5096
thomas.reed@dinsmore.com
David Singley, Esquire
Pa. I.D. No. 50349
Dinsmore & Shohl LLP
One Oxford Centre, Suite 2800
301 Grant Street
Pittsburgh, PA 15219
(412) 281-5096
david.singley@dinsmore.com
*Counsel for Respondent Snyder Brothers,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the persons listed below this 17th day of April 2014 in the manner indicated:

SERVICE BY FIRST CLASS MAIL ADDRESSED TO:

Heidi L. Wushinske, Esquire
P.O. Box 3265
Harrisburg, PA 17105-3265

Wayne T. Scott, Esquire
P.O. Box 3265
Harrisburg, PA 17105-3265

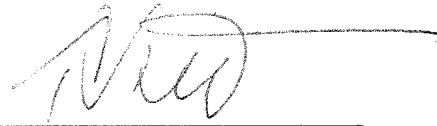
Kevin J. Moody, Esquire
212 Locust Street
Suite 300
Harrisburg, PA 17101-1510

AND VIA E-MAIL TO Ms. Wushinske and Mr. Moody.

hwushniske@pa.gov

kevin@pioga.org

Dated: April 17, 2014



Thomas C. Reed, Esquire