



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 22, 2014

Rosemary Chiavetta
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Snyder Brothers, Inc.; Docket No. C-2014-2402746

Dear Secretary Chiavetta:

Pursuant to the provisions of 52 Pa. Code § 5.342, please accept for filing the Bureau of Investigation and Enforcement's Answer to Snyder Brothers' Motion to Compel in the above referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

Heidi L. Wushinske
Prosecuting Attorney
Attorney ID No. 93792

Enclosures

cc: As per Certificate of Service

RECEIVED
2014 APR 22 PM 2:49
PA PUC
SECRETARY'S BUREAU

II. Argument

A. I&E's Objections to Snyder Brothers' Interrogatories 23 and 24 and Requests for Production of Documents 16 and 17 Should Be Granted

6. I&E answered Snyder Brothers Interrogatories 23 and 24 and Requests for Production of Documents 16 and 17 to the extent it could, as no I&E staff or staff of the Commission's Fiscal Office assisting I&E with this prosecution had any communications with members or staff of the Pennsylvania General Assembly or Governor's Office.

7. To the extent these Interrogatories and Requests for Production of Documents seek information regarding any potential communications between other PUC staff and members or staff of the Pennsylvania General Assembly or Governor's Office, I&E has no knowledge of any such communications nor should it be expected to seek such information.

8. Pennsylvania Rules of Civil Procedure limit requests for production of documents and things to those that are "in the possession, custody or control of the party or person upon whom the request or subpoena is served." Rule 4009.1(a). If any such communications exist, I&E has no knowledge of them and any such communications are not in I&E's possession, custody, or control. These communications are no more in I&E's custody and control than they are in Snyder Brothers' custody and control. If it is Snyder Brothers position that they need this information, let them seek discovery directly from the Commission.

9. The *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) ("*Implementation Order*"), clearly defined the Bureau of Investigation and Enforcement as the prosecutory bureau of the Public Utility Commission.

10. The *Implementation Order* also clearly states that "the Bureau of Investigation and Enforcement shall have standing and authority, through its attorneys, to participate in all Commission proceedings and to initiate enforcement actions and prosecutions in all Commission proceedings and to initiate enforcement actions and prosecutions *in the public interest.*" *Implementation Order* at 5 (*emphasis added*).

11. Respondent's statement that "I&E serves as counsel for the PUC in enforcement (and other) matters" is not only incorrect but shows clear misunderstanding of the Commission. As the *Implementation Order* makes clear, I&E was created to serve the public interest, not to serve as counsel for the PUC. Only the Law Bureau serves as counsel for the PUC.

12. Furthermore, I&E employees engaged in prosecutory functions are prohibited from commingling of functions as set forth in 66 Pa. C.S. § 308.2(b). *See also Implementation Order* at 5.

13. This prohibition against commingling of functions also applies to employees of other bureaus of the Commission who are assisting I&E in a prosecution.

14. Regarding Snyder Brothers Interrogatories 23 and 24 and Requests for Production of Documents 16 and 17, Yvonne Hess of the Commission's Fiscal Office, verified the Complaint and Responses to Snyder Brothers' Discovery Requests. I&E's response to Snyder Brothers Interrogatories 23 and 24 and Requests for Production of Documents 16 and 17 included any potential communications between Ms. Hess and the members or staff of the General Assembly or Governor's Office.

15. To the extent Snyder Brothers' Interrogatories 23 and 24 and Requests for Production of Documents 16 and 17 seek information pertaining to Commissioners or their staffs serving in an advisory or adjudicatory capacity, such information is beyond the scope of discovery. 52 Pa. Code § 5.321(d).

16. In its General Objections, I&E objected to any interrogatory, request for document production, or request for admission seeking information protected by "any other privilege, protection, or immunity applicable under the governing law or regulation."

17. For these reasons, Snyder Brothers' Motion to Compel I&E to provide further responses to its Interrogatories 23 and 24 and Requests for Production of Documents 16 and 17 should be denied because to find otherwise would effectively nullify the *Implementation Order*.

B. Snyder Brothers' Requests for Production of Documents Numbers 1 and 2 Should Be Denied

18. I&E objected to Snyder Brothers' Requests for Production of Documents Numbers 1 and 2 because the information sought was not in the possession of or available to I&E. To the extent this document production request seeks information that is in the possession or control of I&E's witness, I&E is compiling this information for Respondent and will serve it as quickly as possible.

19. Snyder Brothers' Requests for Production of Documents Numbers 1 and 2 seek information regarding communications "by and between the staff of the PUC."

20. I&E did not base its Complaint or its investigation on any such communications and does not even know if such communications occurred or such documents exist.

21. For the reasons stated above regarding the creation of I&E and its prosecutory functions, I&E should not be expected to have knowledge of what PUC staff communicated regarding the Annual Reports Snyder Brothers filed for 2011 or 2012.

22. Pennsylvania Rules of Civil Procedure limit requests for production of documents and things to those that are “in the possession, custody or control of the party or person upon whom the request or subpoena is served.” Rule 4009.1(a).

23. The documents sought by Respondent in its Requests for Production of Documents Numbers 1 and 2 are not in the possession, custody, or control of I&E, if such documents exist. These documents and things are no more in I&E’s custody and control than they are in Snyder Brothers. If it is Snyder Brothers’ position that they need this information, let them seek discovery directly from the Commission.

24. Furthermore, to the extent Snyder Brothers’ Interrogatories 23 and 24 and Requests for Production of Documents 16 and 17 seek information pertaining to Commissioners or their staffs serving in an advisory or adjudicatory capacity, such information is beyond the scope of discovery. 52 Pa. Code § 5.321(d).

25. In its General Objections, I&E objected to any interrogatory, request for document production, or request for admission seeking information protected by “any other privilege, protection, or immunity applicable under the governing law or regulation.”

26. For these reasons, Snyder Brothers’ Motion to Compel I&E to provide further responses to its Requests for Production of Documents 1 and 2 should be denied.

C. Snyder Brothers’ Request for Production of Documents Number 3 Should Be Denied

27. In its Request for Production of Documents Number 3, Snyder Brothers requested “[a]ll documents referring or relating to any investigation done regarding the 2011 and 2012 Annual Reports filed by Snyder Brothers, Inc.”

28. I&E answered Snyder Brothers’ Request for Production of Documents Number 3 to the extent it could and identified the documents upon which it relied in conducting its investigation. To the extent this document production request seeks

information that is in the possession or control of I&E's witness, I&E is compiling this information for Respondent and will serve it as quickly as possible.

29. I&E cannot be expected to know of any potential investigations done by any staff member of the entire Commission, especially since I&E did not rely upon or review information other than what it identified in its response to Snyder Brothers' Request for Production of Documents Number 3. I&E has no more ability than Respondent to procure these documents.

30. As Respondent accurately notes, I&E did identify and subsequently produce the spreadsheet prepared by the Commission's Fiscal Office, which it did review *in the course of its investigation*. I&E is not aware of the existence of other documents relating to any investigations done regarding the 2011 and 2012 Annual Reports filed by Snyder Brothers.

31. For the reasons previously stated regarding the creation of I&E and its prosecutory functions, I&E presently has no interest in or knowledge of any potential investigations done by any staff member of the Commission. I&E has already identified the documents relating to its investigation concerning Snyder Brothers' 2011 and 2012 Annual Reports.

32. Pennsylvania Rules of Civil Procedure limit requests for production of documents and things to those that are "in the possession, custody or control of the party or person upon whom the request or subpoena is served." Rule 4009.1(a).

33. Any documents, other than those I&E is currently seeking from its witness and those previously identified by I&E referring or relating to any investigation done regarding the 2011 and 2012 Annual Reports filed by Snyder Brothers, Inc. are not in the possession, custody, or control of I&E, if such documents exist.

34. For these reasons, Snyder Brothers' Motion to Compel I&E to provide further responses to its Request for Production of Documents Number 3 should be denied.

D. Snyder Brothers' Requests for Production of Documents Numbers 10, 13, and 14 Should Be Denied

35. I&E answered Snyder Brother's Requests for Production of Documents 10, 13, and 14 to the extent it could, identifying the documents on which it based its Complaint.

36. As the prosecutory bureau of the Commission, I&E has no more access than Respondent to documents relating to the formation of Commission policy. As I&E

stated in its Objection to these document requests, I&E did not base its Complaint on the documents sought by Respondent and does not know if such documents exist

37. Pennsylvania Rules of Civil Procedure limit requests for production of documents and things to those that are “in the possession, custody or control of the party or person upon whom the request or subpoena is served.” Rule 4009.1(a).

38. As explained in its Objections and above, I&E does not have possession, custody, or control of the documents sought by Respondent, if such documents exist.

39. Moreover, I&E cannot be expected to complete Respondent’s Discovery for it. Respondent can just as easily obtain documents not in I&E’s possession, custody, or control. I&E has no special access to these documents for the reasons previously stated.

40. For these reasons, Snyder Brothers’ Motion to Compel I&E to provide further responses to its Requests for Production of Documents Number 10, 13 and 14 should be denied.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the Commission deny the Motion to Compel filed by Snyder Brothers, Inc.

Respectfully submitted,



Heidi L. Wushinske
Prosecutor
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265

Date: April 22, 2014

RECEIVED
2014 APR 22 PM 2:50
PA PUC
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Answer to Motion to Compel in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Thomas C. Reed, Esquire
Dinsmore & Shohl, LLP
301 Grant Street, Suite 2800
Pittsburgh, PA 15219

The Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Kevin J. Moody, Esquire
General Counsel
Pennsylvania Independent Oil & Gas Association
212 Locust Street, Suite 300
Harrisburg, PA 17101-1510



Heidi L. Wushinske
Prosecutor
Attorney ID #93972
(Counsel for Pennsylvania Public Utility
Commission)

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: April 22, 2014

RECEIVED
2014 APR 22 PM 2:50
PA PUC
SECRETARY'S BUREAU