



Thomas J. Sniscak  
(717) 236-1300 x224  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

Whitney E. Snyder  
(717) 236-1300 x260  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

---

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

December 23, 2020

**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 PRELIMINARY OBJECTIONS TO THE  
FORMAL COMPLAINT**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Preliminary Objections to the Formal Complaint in the above-referenced proceeding. Copies have been served in accordance with the attached Certificate of Service.

The Preliminary Objections are served electronically pursuant to the COVID-19 Suspension Emergency Order dated March 20, 2020 and ratified March 26, 2020.

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

Respectfully submitted,

*/s/ Whitney E. Snyder*

Thomas J. Sniscak  
Whitney E. Snyder

*Counsel for Sunoco Pipeline L.P.*

TJS/BRB/das  
Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**NOTICE TO PLEAD**

---

You are hereby advised that, pursuant to 52 Pa. Code § 5.61, you may file a response within ten (10) days of the attached preliminary objections. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline, L.P., and where applicable, the Administrative Law Judge presiding over the issue.

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**SUNOCO PIPELINE L.P.’S PRELIMINARY OBJECTIONS TO  
FORMAL COMPLAINT OF GLEN RIDDLE STATION, L.P.**

---

Pursuant to 52 Pa. Code § 5.101, Respondent Sunoco Pipeline L.P (SPLP) submits these Preliminary Objections to Glen Riddle Station, L.P.’s Formal Complaint (Complaint) in the above captioned proceeding and requests the Complaint be dismissed.

**I. INTRODUCTION**

1. Pursuant to 52 Pa. Code § 5.101(a)(1), (4), the Complaint should be dismissed in its entirety because it raises issues over which the Commission lacks jurisdiction and is legally insufficient in that it fails to state a claim on which relief can be granted. The Complaint admittedly confirms these fundamental legal defects.

2. *First*, the Complaint’s myriad allegations of violation of public awareness regulations and SPLP’s public awareness plan fail as a matter of law and are legally insufficient because public awareness only applies to operational pipelines, not new construction of pipelines, and construction of new pipelines is the entire basis of the allegations of the Complaint.

3. **Second**, while attempting to frame allegations as “safety concerns,” the true issue Complainant raises is with SPLP’s occupancy of the easements SPLP holds over Complainant’s property: (i) the permanent easement Complainant voluntarily granted to SPLP in 2016 in exchange for substantial compensation, and (ii) the temporary easements that SPLP condemned over Complainant’s property in 2020 for which SPLP has deposited just compensation with the Delaware County Court of Common Pleas. Without a Commission jurisdictional basis, Complainant nonetheless aims in its impertinent Complaint to have the Commission enforce SPLP’s compliance with municipal ordinances.

4. The short answer to points one and two above is the Complaint is deficient and should be dismissed, as the Commission lacks jurisdiction to adjudicate the merits and application of municipal land use ordinances or public awareness claims relative to a pipeline which is not operational and at the construction stage.

5. **Third**, the Complaint raises allegations of violations of the Governor’s and Department of Health’s face-covering mandates. Again, the Commission lacks jurisdiction over these issues and is not in a position to substantively determine what face-covering practices are compliant with laws administered by the Department of Health or the Governor.

6. **Fourth**, the Complaint makes allegations of non-compliance with environmental laws and Pennsylvania Department of Environmental Protection (DEP) plans and permitting. Again, compliance or non-compliance with environmental laws, regulations or orders is a matter within the ambit of the DEP and not this Commission.

7. **Finally**, the Complaint is a prime example of a Complainant—one who operates or runs rental units, who is not a public utility granted a certificate of public convenience—trying to substitute its preferences or discretion to micro-manage SPLP’s construction practices. This is

legally insufficient because the Complaint does not cite to a single pipeline construction regulation SPLP is alleged to have violated. Instead, the Complaint is asking the Commission to make new standards that must be set through a rulemaking, not an adjudication. In addition, the Complainant would invade SPLP's right to managerial discretion, which the appellate courts have recognized permits the utility the right to decide how to manage and undertake its business or projects despite a third party, such as Complainant, believing it should be done a different way. For all these reasons, as detailed below, the Complaint should be dismissed.

## **II. ARGUMENT**

### **A. Legal Standards**

8. The Commission's regulations allow a respondent to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R. Civ. P. 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

9. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders' conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the

plaintiff, the law says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

10. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code § 5.22(a)(4); *see, e.g., James Drake v. Pennsylvania Electric Co.*, Docket No. C-2014-2413771, Initial Decision Sustaining Preliminary Objection and Dismissing Complaint, 2014 WL 2003281, \*4 (May 7, 2014).

11. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, et seq. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

**B. Preliminary Objection 1: The Complaint Is Legally Insufficient Because Public Awareness Regulations and SPLP's Public Awareness Plan Do Not Apply to New Pipeline Construction.**

12. Despite evidencing the plethora of communications that have been taking place between SPLP and Complainant, the Complaint alleges a lack of communication and provision of information in violation of 49 C.F.R. § 195.440 and SPLP's Public Awareness Plan.

13. The Complaint expressly states that SPLP's activities on Complainant's Property are all related to new pipeline construction. Complaint at ¶ 16 (defining Pipeline Project as the installation of the ME2 pipeline); *see* Complaint generally, tying allegations throughout to the Pipeline Project.

14. The Complaint makes numerous factual assertions concerning lack of communications and provision of information related to pipeline construction allegedly in violation of law because they purportedly do not conform to SPLP's Public Awareness Plan and 49 C.F.R. § 195.440. *See, e.g.*, Complaint at ¶¶ 44-56, 118-124.

15. 49 C.F.R. § 195.440 is the regulation governing public awareness for hazardous liquid pipelines which are the regulations applicable to SPLP's pipelines in general.

16. Part 195 is split up into various Subparts, each dealing with different topics. Section 195.440 is located in Subpart F – Operation and Maintenance, not Subpart D – Construction. Moreover, Part 195 adopts through reference American Petroleum Institute Recommended Practice 1162 governing public awareness standards. 49 C.F.R. 195.440(a). API RP 1162 expressly states it does *not* apply to new pipeline construction. “This guidance is not intended to focus on public awareness activities appropriate for new pipeline construction or for communications that occur immediately after a pipeline-related emergency.” *Id.* at 1.2 (Scope). *See also id.* at Preface (“Communications related to new pipeline construction, [] and during emergencies are not covered by this RP.”).

17. Thus, all allegations that SPLP has not followed its public awareness plan or public awareness regulations in 49 C.F.R. 195.440 fail to state a claim as a matter of law because these provisions are inapplicable to new pipeline construction, which is the basis for all of the allegations concerning communications.

**C. Preliminary Objection 2: The Commission Lacks Jurisdiction Over the Scope and Validity and Compliance With Easements and Municipal Ordinances.**

18. The Complaint makes various allegations about SPLP's use of its easements on Complainant's property and resulting alleged effects on parking and traffic and emergency response vehicle access to the property, including alleging SPLP's use of its easements cause Complainant to be in violation of local municipal ordinances. Complaint at ¶¶ 57-74, 75-78. The Complaint also alleges failure to review certain inspections of the Complainant's property prior to construction. Complaint at ¶¶ 109-111.

19. The Commission lacks jurisdiction to adjudicate the validity and scope of easements. In *Fairview Water Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 162 (Pa. 1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement. *See also Lasko v. Windstream Pa., LLC*, Docket No. C-2010-2217869 (Final Order dated April 1, 2011); *Perrige v. Metro. Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered September 15, 1999); *Baker and Blume v. SPLP*, Docket No. C-2020-3022169, Initial Decision at 10-11 (Barnes, J) (ID entered Dec. 8, 2020).

20. Despite Complainant's invitation, the Commission also lacks jurisdiction to adjudicate compliance with municipal ordinances or Complainant's preferences. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977) (As a creation of the legislature, the Commission possesses only the authority that the Commonwealth's legislature has specifically granted to it in the Public



Utility Code. 66 Pa.C.S. §§ 101, et seq. The Commission’s jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom.).

21. While trying to paint these allegations as “safety” concerns, in fact they are concocted and exaggerated allegations regarding SPLP’s use and compliance with its easements over Complainant’s property, in order to extract concessions Complainant failed to negotiate and obtain in its easements. This second bite at the apple and collateral attack on (i) an agreement (the permanent easement) that Complainant signed and received compensation/consideration, and (ii) temporary easements whose terms Complainant could have negotiated with SPLP, should be rejected, and the Commission should not spend its valuable time and resources being invited into what is a basic contract or easement dispute under the pretext of safety.

22. In paragraphs 57-74, Complainant alleges SPLP’s occupation of its easements will take away parking spots from residents and block ingress and egress to the structures on Complainant’s property. This is an issue governed under the terms of the permanent easement, which provides SPLP as Grantee the right to use the permanent easement for the purposes of establishing, laying constructing, installing and surveying pipelines. *See* Complaint Exhibit A, Easement at ¶ 1. The permanent easement also provides SPLP with the right to select the exact location of the Pipelines. *Id.* at ¶ 3. The permanent easement also provides SPLP with the right of entry, access, ingress and egress in, to, through, on, over, under and across the permanent easement for any and all purposes reasonably necessary for and/or incident to SPLP’s exercise of the rights granted in the easement (construction of its pipelines). *Id.* at ¶ 6.

23. In paragraphs 75-78, Complainant alleges issues with lack of fencing and SPLP's pre-construction equipment and preparation. Again, Complainant is taking issue with SPLP exercising its rights to utilize its easements consistent with the terms cited *supra* paragraph 22.

24. In paragraphs 109-111, Complainant makes allegations regarding pre-construction inspections of the structures and water piping on Complainant's Property. These are specifically governed under paragraphs 4 and 5 of the easement, which provides for these inspections. Complainant's concerns are outside the jurisdiction of the Commission because it is truly taking issue with SPLP's occupation and use of its easement, not safety issues.

25. Complainant also alleges that SPLP's use of its easements will result in Complainant being in violation of municipal ordinances. Complaint at ¶¶ 57, 70.

26. The Commission does not have jurisdiction to address these issues and the Complaint should be dismissed. *See, e.g., Fairview supra.*

**D. Preliminary Objection 3: The Commission Lacks Jurisdiction Over Face Covering Mandates by Health Officials of the Commonwealth.**

27. In Paragraphs 79-86, Complainant alleges violation of the Governor's and Department of Health's face covering mandates.

28. The Commission has no jurisdiction to enforce the terms of these mandates and the Complaint should be dismissed. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977) (As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, et seq. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom.).

29. In any event, even if the Commission did have jurisdiction over this issue (which it does not), the photos show workers outside, apparently within the confines of SPLP's

easements, not interacting with or within six feet of Complainant or its Residents, and Complainant's own contractors have not complied with the conditions of which it complains.

**E. Preliminary Objection 4: The Commission Lacks Jurisdiction Over Environmental Issues Regulated by DEP.**

30. In paragraphs 87-108 and 112-117, the Complaint makes allegations concerning environmental laws and permitting issues.

31. The Commission lacks jurisdiction over Complainant's allegations regarding environmental laws, issues, and permitting obligations. *Pickford v. Pa. Pub. Util. Comm'n*, 4 A.3d 707, 712-14 (Pa. Cmwlth. 2010) (holding while framed as a complaint about reasonableness under 66 Pa. C.S. § 1501, claims regarding DEP and EPA determinations were outside scope of Commission's jurisdiction and disallow collateral attack on DEP's decision); *see also Baker and Blume v. SPLP*, Docket No. C-2020-3022169, Initial Decision at 11-12 (Barnes, J) (ID entered Dec. 8, 2020) ("The Commission does not permit or regulate the environmental permitting process for SPLP's construction. Those permits are sought, obtained, modified, and enforced by the Department of Environmental Protection (DEP). Therefore, the Commission lacks jurisdiction over such matters.").

32. Paragraphs 87-108 deal with and exaggerate a minor leak from a truck of less than one gallon of hydraulic fluid and allege there was a violation of various environmental laws, Complaint at ¶¶ 92-93 and SPLP's DEP Water Supply Assessment, Preparedness, Prevention and Contingency Plan, Complaint at ¶¶ 94-97. These are clearly issues within DEP's jurisdiction, not the Commission's. Such hyperbole and grasping at straws should not be condoned and lack credibility.

33. Likewise, in Paragraphs 112-117, Complainant makes allegations regarding SPLP's storm water management on the Property, which is governed by SPLP's DEP Erosion and Sedimentation Plan. Again, disagreement with or compliance with this Plan is purely within the

realm of the DEP, not the Commission. The Complaint's allegations on these issues should be dismissed.

**F. Preliminary Objection 5: The Complaint is Legally Insufficient Regarding Construction Allegations.**

34. The Complaint as a whole boils down to Complainant wanting to micro-manage SPLP's construction via a Commission Order. This is legally insufficient because it violates the doctrine of managerial discretion. *See, e.g., Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981). The Complaint fails to cite a single existing construction regulation or law SPLP is alleged to have violated.

35. Instead, the Complaint asks the Commission to set, through an adjudication, binding industry-like standards. This request is inappropriate, and Complainant fails to join all necessary pipelines or parties that would be affected by this individual apartment owner's preferred rules for pipelines. In fact, this individual apartment owner's attempt to establish its individual preference as binding norms that a pipeline should meet is undercut by the fact that pipeline construction utility regulations are being contemplated in a Commission rulemaking. Complainant cannot show a violation of any existing law or regulation or Commission Order over which the Commission has jurisdiction regarding SPLP's construction and the Complaint is thus legally insufficient.

36. Instead, all it offers is relief it prefers or wants in addition to the agreement it agreed to where it received compensation in exchange for providing an easement. That is, clearly, an issue for the courts, not the Commission.

37. It could not be clearer that Complainant improperly seeks to set rules of utility behavior which currently are not in existence and do so outside the rulemaking process. Indeed, and without any reference in the Complaint, the Commission initiated a rulemaking by issuing an

Advanced Notice of Proposed Rulemaking and seeking comments. *Advance Notice of Proposed Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59*, Advanced Notice of Proposed Rulemaking Order, Docket No. L-2019-3010267 (Order entered Jun. 13, 2019) (ANOPR Order).

38. In the ANOPR Order, the Commission expressly laid out various minimum regulatory standards for pipeline construction and sought comments on them, but expressly did not limit comments to these specific construction topics, instead seeking comments on any additional regulations related to pipeline construction. ANOPR Order at 6 (“Below, the Commission provides an overview of the present minimum construction and design standards and seeks comment specifically on the areas of pipeline material and specification, cover over buried pipelines, underground clearances, and valves. We again note that comments are not limited to these areas. Interested parties may comment on other provisions of Part 195 relating to the construction and design of hazardous liquid public utilities that they believe the Commission should consider building upon through this rulemaking.”).

39. The Commission has already held that relief regarding new standards potentially proposed in the ANOPR Order is legally unavailable via a complaint proceeding. *Baker v. SPLP*, Docket No. C-2018-3004294, Opinion and Order at 11 (Order entered Sept. 23, 2020), Ordering Paragraph 2 (upholding ALJ Barnes’ rejection of request for early warning alarm system for residents because “such matters should be vetted through a rulemaking proceeding at docket number L-2019-3010267 in order to not deprive the pipeline operator and other interest groups their due process rights”).

40. Moreover, because there are no specific construction regulations SPLP is claimed to have violated regarding the allegations in the Complaint, SPLP’s actions are protected under

the doctrine of managerial discretion. Managerial discretion is the Commission and court-recognized legal principle that provides the Public Utility Code is performance-based, and it is up to a utility's management to determine how and when to manage, maintain, and construct its facilities within the bounds of the Public Utility Code and the Commission's regulations. *See, e.g., Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981).

41. Accordingly, Complainant's allegations concerning construction means and methods and relief seeking a work plan and schedule reflecting Complainant's preferences fail as a matter of law to state a claim upon which relief can be granted and should be dismissed.

### **III. CONCLUSION**

**WHEREFORE**, SPLP respectfully requests the Formal Complaint be dismissed with prejudice for the reasons stated herein and that the Commission grant such other and further relief as it deems just and proper.

Respectfully submitted,

/s/ Whitney E. Snyder

Thomas J. Sniscak, Esq. (PA ID No. 33891)  
Whitney E. Snyder, Esq. (PA ID No. 316625)  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Tel: (717) 236-1300  
tjsniscak@hmslegal.com  
wesnyder@hmslegal.com

*Attorneys for Respondent Sunoco Pipeline L.P.*

Dated: December 23, 2020

**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**

Samuel W. Cortes, Esquire  
Fox Rothschild LLP  
747 Constitution Drive, Suite 100  
Exton, PA 19341  
(610) 458-7500  
[scortes@foxrothschild.com](mailto:scortes@foxrothschild.com)

*/s/ Whitney E. Snyder* \_\_\_\_\_  
Thomas J. Sniscak, Esq.  
Whitney E. Snyder, Esq.

Dated: December 23, 2020