**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P. :

 :

 v. : C-2020-3023129

 :

Sunoco Pipeline, L.P. :

**ORDER**

**GRANTING IN PART AND DENYING IN PART PRELIMINARY OBJECTIONS**

**Introduction**

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 and 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.

Also on December 23, 2020, Sunoco filed preliminary objections in response to Glen Riddle’s complaint. In its preliminary objections, which were also accompanied by a notice to plead, Sunoco argued that the complaint should be dismissed because it raises issues over which the Commission lacks jurisdiction and the complaint is legally insufficient in that it fails to state a claim upon which relief can be granted. Sunoco added that the public awareness regulations and plan only apply to operational pipelines and not new construction. Sunoco argued that the Commission lacks jurisdiction to adjudicate the merits and application of municipal land use ordinances, the Governor’s face-covering mandates and environmental laws. Sunoco specifically articulated two preliminary objections regarding legal insufficiency and three preliminary objections regarding matters over which it argues the Commission lacks jurisdiction to hear. Sunoco again concluded that the complaint should be dismissed with prejudice.

On January 4, 2021, Glen Riddle filed an answer to Sunoco’s preliminary objections. In its answer, Glen Riddle argued that the Commission has the authority to remedy and abate Sunoco’s ongoing endangerment of the public and the employees and residents of Glen Riddle. Glen Riddle then specifically affirmed or denied the various averments made by Sunoco in its preliminary objections. In particular, Glen Riddle denied that the Commission lacks jurisdiction to hear the safety concerns raised in the complaint. Glen Riddle also denied that the Commission lacks jurisdiction regarding, among other things, the alleged violation of the public awareness regulations and Sunoco’s public awareness plan. Glen Riddle cited to past Commission decisions that addressed similar issues. Glen Riddle provided significant detail regarding each of the various arguments raised by Sunoco in its preliminary objections and concluded that Sunoco’s preliminary objections should be denied.

A motion judge assignment notice was issued on January 12, 2021 informing the parties that I had been assigned as the presiding officer and am responsible to resolve any issues which may arise during the preliminary phase of this proceeding.

Sunoco’s preliminary objections are now ready for disposition. For the reasons discussed below, Sunoco’s preliminary objections will be granted in part and denied in part and the complaint will be scheduled for a hearing.

**Legal standard**

Section 5.101 of the Commission’s rules of administrative practice and procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company*,* 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). Section 5.101(a) provides:

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.
7. Standing of a party to participate in a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Glen Riddle and should dismiss the complaint only if it appears that Glen Riddle would not be entitled to relief under any circumstances as a matter of law. Equitable, *supra*; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

In this case, Sunoco’s five preliminary objections can be grouped into two groups for disposition: the three preliminary objections regarding jurisdiction and the two preliminary objections regarding legal insufficiency.

**Preliminary Objections 2, 3 and 4 – Jurisdiction**

 With regard to jurisdiction, Sunoco argued that the Commission lacks jurisdiction over the scope and validity of easements and municipal ordinances, face covering mandates by health officials in the Commonwealth and environmental issues regulated by the Pennsylvania Department of Environmental Protection (DEP). More specifically, in its second preliminary objection, Sunoco argued, among other things, that, while trying to “paint” the allegations regarding easements and municipal ordinances as “safety concerns,” those allegations are in fact allegations regarding easements over Glen Riddle’s property and constitute a collateral attack on those agreements. These allegations pertain to parking spots, blocking ingress and egress to structures, lack of fencing and pre-construction inspections, all of which, Sunoco argued, are governed by the easements. Sunoco also argued that the Commission lacks jurisdiction to hear the allegations of violations of municipal ordinances. In its third preliminary objection, Sunoco argued that the Commission only possesses the authority provided it by the General Assembly and that such authority does not include the jurisdiction to enforce the terms and mandates of the Governor’s and Health Department’s face covering mandates. In its fourth preliminary objection, Sunoco cites case law that indicates that the Commission lacks jurisdiction over allegations regarding environmental laws, issues, and permitting obligations, noting, for example, the allegations regarding a minor leak from a truck of less than one gallon of hydraulic fluid and storm water management over which the Commission lacks jurisdiction to hear.

 In response, Glen Riddle, among other things, denied that it is asking the Commission to adjudicate the validity or scope of the easements but argued that it is asking the Commission to exercise its jurisdiction to adjudicate the unsafe manner in which Sunoco is conducting work both within and often times outside of the easements. Glen Riddle also denied that it is asking the Commission to adjudicate compliance with municipal ordinances but to exercise its authority to remedy and abate Sunoco’s ongoing endangerment of the public and Glen Riddle residents and employees. Glen Riddle further argued that its complaint is not a collateral attack on the easement and that it does not want to alter the scope of the easement, only to remedy and abate Sunoco’s dangerous conduct. Glen Riddle also argued that Sunoco’s preliminary objections otherwise inappropriately characterize the complaint. Glen Riddle then argued that Sunoco’s failure to ensure its employees were adhering to the government safety requirements related to face coverings and social distancing is evidence of Sunoco’s failure to operate in a reasonable and safe manner as is required by the Public Utility Code. With regard to Sunoco’s preliminary objection regarding environmental laws and regulations, Glen Riddle argued that the averments regarding Sunoco’s improper handling of a leak and stormwater management evidence violations of the Public Utility Code as well over which the Commission has jurisdiction.

 When viewing the complaint in the light most favorable to Glen Riddle, and accepting as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts, it appears that Glen Riddle would not be entitled to relief under any circumstances as a matter of law with regard to some but not all of the averments contained in the complaint. The scope of the complaint will be limited to those matters which the Commission has jurisdiction to hear, as discussed below. Therefore, Sunoco’s preliminary objections 2, 3 and 4, will be granted in part and denied in part.

As a preliminary matter, 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).

In this case, Glen Riddle has raised issues over which the Commission has jurisdiction. For example, in its complaint, Glen Riddle raised allegations regarding the public awareness plan and standard operating procedures ordered by the Commission in a prior proceeding. To the extent that the complaint avers issues regarding the awareness plan and standard operating procedures pertaining to activities within the easement, the Commission has jurisdiction to hear those averments since they were part of a Commission order. The complaint articulates several issues regarding safety that may have occurred within the easement. Certainly, the Commission has jurisdiction to hear claims that a utility is providing unsafe service. As noted in the complaint, Section 1501 of the Public Utility Code specifically requires that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.” 66 Pa.C.S. § 1501. Section 1505 of the Public Utility Code also requires the services and facilities to be safe. 66 Pa.C.S. § 1505.

When accepting as true all well pleaded averments, and every reasonable inference from those averments, and viewing the complaint in the light most favorable to Glen Riddle, it is clear that the Commission has jurisdiction to hear these arguments, even if those averments pertain to activities that occurred within an easement. Sunoco’s preliminary objections 2, 3 and 4 must be denied in part.

However, Sunoco is correct that the Commission’s jurisdiction is limited. As noted above, 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*. For example, the Commission has no jurisdiction to hear arguments regarding the scope and validity of an easement. Similarly, the Commission generally lacks jurisdiction to adjudicate claims regarding violations of Municipal law, including parking spaces and fencing, the Governor’s or Health Department’s face covering mandates or environmental regulations that are beyond the scope of the Public Utility Code or a Commission order or regulation. To the extent that Sunoco may be found to have violated municipal law, face covering mandates or environmental regulations by a court that has jurisdiction to hear such claims, or the easement pertains to a utility issue such as inspection of structures and water piping, then such a finding may be used to demonstrate that Sunoco is also violating the Public Utility Code by providing unsafe service. The Commission, however, lacks jurisdiction to make such an initial finding. To the extent that Glen Riddle has raised those issues, Sunoco’s preliminary objection will be granted in part.

 As such, Sunoco’s preliminary objection 2, 3 and 4 must be granted in part and denied in part. Glen Riddle’s averments regarding matters beyond which the Commission has jurisdiction to hear will be stricken from the complaint. All other matters, however, will be set for a hearing.

**Preliminary Objections 1 and 5 – Legal Insufficiency**

 With regard to legal insufficiency, Sunoco argued in its first preliminary objection that Glen Riddle’s allegations that Sunoco has not followed its public awareness plan or the public awareness regulations in 49 C.F.R. 195.440 fails 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. Similarly, in its fifth preliminary objection, Sunoco argued that the complaint is legally insufficient regarding construction allegations because “the complaint as a whole boils down to the complainant wanting to micro-manage Sunoco’s construction via a Commission order” and “fails to cite a single construction regulation or law Sunoco is alleged to have violated.” Sunoco further argued that Glen Riddle is asking the Commission to set, through an adjudication, binding industry-like standards. Sunoco concludes that Glen Riddle cannot interfere with its managerial discretion or create such standards.

 In response to Sunoco’s first preliminary objection, Glen Riddle denied that the communication failures alleged in the complaint do not constitute violations of 49 C.F.R. 195.40 and/or Sunoco’s public awareness plan. Glen Riddle added that Sunoco’s communication failures have persisted since the complaint was filed and that Sunoco has admitted that its work on the pipeline project is subject to the safety awareness plan and the standard operating procedures as set forth in the complaint. Glenn Riddle also added, among other things, that 49 C.F.R. 195.440 applies to Sunoco’s work on the pipeline project. In response to Sunoco’s fifth preliminary objection, Glen Riddle denied that the complaint constitutes an effort to micro-manage Sunoco via a Commission order and that the complaint is legally insufficient under the doctrine of managerial discretion. Glen Riddle argued, rather, that the complaint alleges violations of Section 1501 and 1505 of the Public Utility Code based on safety issues relating to Sunoco’s failure to construct the pipeline in a reasonable and safe manner. Glen Riddle added that Sunoco’s actions are an abuse of its managerial discretion and are adverse to the public interest requiring the Commission’s intervention.

 When viewing the complaint in the light most favorable to Glen Riddle, and accepting as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts, as is required when disposing of Sunoco’s preliminary objections, it does not appear that Glen Riddle’s complaint is legally insufficient or that Glen Riddle is not entitled to relief under any circumstances as a matter of law. Sunoco’s preliminary objections 1 and 5, will, therefore, be denied.

In civil practice, a preliminary objection based on legal insufficiency is referred to as a demurrer. Preliminary objections in the form of a demurrer will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. Community Life Support Systems, Inc., *et al*. v. Commonwealth of Pennsylvania, 689 A.2d 1014, 1017 (Pa. Cmwlth. 1997). Any doubt must be resolved in favor of overruling a demurrer. Id. The question presented by the demurrer is whether, on the facts averred, the law states with certainty that no recovery is possible. Hoffman v. Misericordia Hospital of Philadelphia, 439 Pa. 501, 267 A.2d 867 (1970).

 In this case, it is not free and clear from doubt that dismissing the complaint at this preliminary stage is clearly warranted by the record. With regard to Sunoco’s argument that the complaint is legally insufficient because “these provisions are inapplicable to new pipeline construction, which is the basis for all of the allegations concerning communications,” Glen Riddle has averred in the complaint, for example, that Sunoco’s “failure to take appropriate steps to address and/or rectify the Safety Issues constitutes violations of Section 1501 and 1505 of the Public Utility Code.” Glen Riddle added that Commission regulations include the requirement that the public utility exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reasons of its equipment and facilities. These provisions are not inapplicable to new construction. In particular, as Glen Riddle noted in its complaint, Section 1501 provides that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.” Regardless of Sunoco’s arguments in its preliminary objection regarding 49 C.F.R. 195.440, Sunoco’s obligations under the Public Utility Code are broad and do not exclude new pipeline construction but include the type of activity which Glen Riddle averred in the complaint occurred. For example, Section 1501 creates a safety obligation ***to the public***. The fact that new construction is the subject of the complaint and not an operational pipeline does not mean that Sunoco does not have an obligation to the public and that the complaint should be dismissed on a preliminary basis. This is particularly true when accepting as true all well pleaded material facts in the complaint, and every reasonable inference from those facts, and viewing the complaint in the light most favorable to Glen Riddle.

 Similarly, with regard to Sunoco’s fifth preliminary objection that the complaint is legally insufficient because the complaint constitutes micro-managing Sunoco’s construction, nothing in Glen Riddle’s complaint constitutes micro-managing. Rather, Glen Riddle has averred serious safety and other concerns that warrant a hearing and should not be dismissed on a preliminary basis as micro-managing. Nor is Glen Riddle’s complaint setting binding industry-like standards through an adjudication, as Sunoco has argued. There is no need to “join all necessary pipelines or parties that would be affected by the individual apartment owner’s preferred rules for pipelines,” as Sunoco argued in its preliminary objection, just like there is no need to join other entities in any other complaint brought before this Commission. This complaint will be adjudicated based on the record developed in this case and will affect the parties to the case. No “binding industry-like standards” will be established in this proceeding. Precedent may be established as it is done in the normal course of any adjudication which could be applied in any future proceeding with similar facts and circumstances, to the extent that any such future parties may be so inclined to make such arguments. Those arguments will be left for any such future case and to the extent that the Commission seeks to establish “binding industry-like standards,” they are certainly free to do so in an appropriate proceeding as well. In fact, Sunoco extensively references such a rulemaking proceeding in its preliminary objection. Such arguments, however, are not sufficient to dismiss Glen Riddle’s complaint on a preliminary basis, especially when accepting as true all well pleaded facts in the complaint, and every reasonable inferenced from those facts, and viewing the complaint in the light most favorable to Glen Riddle. It is not clear and free from doubt that dismissal is clearly warranted by the record.

 As such, Sunoco’s preliminary objection 1 and 5 must be denied. Glen Riddle’s averments are not legally insufficient but, rather, raise issues which should not be dismissed on a preliminary basis but should be heard at a hearing.

**Conclusion**

In conclusion, the preliminary objections filed by Sunoco must be granted in part and denied in part. When accepting as true all well pleaded averments of material fact in Glen Riddle’s complaint, as well as every reasonable inference from those averments, and viewing the complaint in the light most favorable to Glen Riddle, as is required when disposing of Sunoco’s preliminary objections, it is clear and free from doubt that the Commission has jurisdiction to hear matters alleging violations of the Public Utility Code or a Commission order or regulation. This includes among other things, violations of Section 1501 and 1505 of the Public Utility Code but does not include municipal laws, the scope and validity of easements, the Governor’s or Health Department’s mask mandates or DEP laws. Sunoco preliminary objections 2, 3 and 4 will therefore be granted in part and denied in part. In addition, Glen Riddle’s complaint is not legally insufficient because the averments pertain to new construction, or because Glen Riddle seeks to micromanage Sunoco or create binding norms. Rather, Glen Riddle’s complaint raises issues that, when accepting as true all well pleaded facts, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Glen Riddle, warrant being heard at a hearing. Glen Riddle’s complaint is not legally insufficient but, rather, raises issues which may constitute a violation of the Public Utility Code and for which Glen Riddle may be entitled to relief as a matter of law.

Glen Riddle is advised, however, that, at a hearing, it must prove by a preponderance of the evidence that Sunoco has violated a provision of the Public Utility Code or a Commission order or regulation in order to have its complaint sustained. This standard is higher than that which Sunoco’s preliminary objections were addressed. In addition, all decisions of the Commission must be supported by substantial evidence. In the interim, however, Sunoco’s preliminary objections must be granted in part and denied in part consistent with the above discussion.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Sunoco Pipeline L.P. on December 23, 2020 at Docket Number C-2020-3023129 are hereby granted in part and denied in part consistent with the above discussion.
2. That those matters over which the Commission lacks jurisdiction to hear will be stricken from the formal complaint filed by Glen Riddle Station, L.P.
3. That the formal complaint filed by Glen Riddle Station, L.P. at Docket Number C-2020-3023129 shall proceed to a hearing.

Date: January 28, 2021 /s/

 Joel H. Cheskis

 Deputy Chief Administrative Law Judge

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

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