**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P. :

 :

 v. : C-2020-3023129

 :

Sunoco Pipeline, L.P. :

**ORDER**

**DENYING MOTION TO COMPEL**

**FILED BY SUNOCO PIPELINE L.P. - SET I**

**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 reiterating the arguments raised in new matter. Sunoco’s preliminary objections were granted in part and denied in part via an order dated January 28, 2021.

A hearing notice was issued on January 29, 2021 establishing an initial telephonic hearing for this matter for Wednesday, March 3, 2021 at 10:00 a.m. A prehearing order was issued on the same day setting forth various rules that would govern the hearing. On February 4, 2021, however, Sunoco filed a motion for a prehearing conference, revised procedural schedule and expedited response. Glen Riddle filed its answer to Sunoco’s motion on February 10, 2021. Sunoco’s motion was granted via order dated February 11, 2021. A hearing notice was issued on February 11, 2021 setting a call-in prehearing conference for Thursday, February 18, 2021 at 10:00 a.m.

However, on February 11, 2021, Glen Riddle filed a petition for interim emergency relief pursuant to Section 3.6 of the Commission’s regulations averring, among other things, that Sunoco, without prior notice, posted signs warning that all areas within 100 yards of its worksite at Glen Riddle’s property fall within a “danger” area that must be avoided. A scheduling order dated February 12, 2021 was issued memorializing the agreement of the parties regarding litigation of the petition for emergency relief. On February 16, 2021, however, Glen Riddle filed a petition to withdraw the petition for interim emergency relief. The petition to withdraw was jointly executed by counsel for both Glen Riddle and Sunoco. The petition for leave to withdraw the petition for interim emergency relief was granted via Initial Decision dated February 18, 2021 leaving the underlying complaint ready for adjudication.

As a result, a further hearing notice was issued on February 17, 2021 cancelling the hearing on the petition for interim emergency relief scheduled for February 18, 2021 and rescheduling the prehearing conference for the underlying complaint for Friday, February 26, 2021 at 10:00 a.m. A second prehearing order was issued on February 17, 2021 regarding that further prehearing conference.

The further prehearing conference was held on February 26, 2021, as scheduled. A scheduling order was issued on February 26, 2021 memorializing the agreements reached at the further prehearing conference.

On February 26, 2021, Glen Riddle filed a motion to dismiss the objections of Sunoco and compel responses to Glen Riddle’s first set of interrogatories which were served on February 5, 2021. On March 3, 2021, Sunoco filed an answer to Glen Riddle’s motion to compel. Glen Riddle’s motion was denied via order dated March 5, 2021.

On March 1, 2021, Sunoco filed a motion to compel responses to interrogatories and request for production of documents set I directed at Glen Riddle. In its motion, Sunoco stated that, in set I, it “sought discoverable and relevant information regarding Glen Riddle’s actions involving its residents, measures Glen Riddle has taken, information regarding the alleged impact of Sunoco’s construction on Glen Riddle and its tenants and various events related to Sunoco’s construction at the property as well as relevant documents to this proceeding.” Sunoco requested that Glen Riddle’s objections be dismissed.

On March 5, 2021, an order granting a motion for a protective order filed by Sunoco was issued.

On March 8, 2021, Glen Riddle filed an answer to Sunoco’s motion to compel. In its answer, Glen Riddle denied that the requests to which it continues to object to seek discoverable and relevant information regarding the matters before the Commission, noting the Commission’s discovery regulations. Glen Riddle added that the matter before the Commission is exclusively focused on the safety concerns posed by Sunoco’s work on Glen Riddle’s property. Glen Riddle requested that Sunoco’s motion to compel be dismissed. Glen Riddle also identified several discovery requests raised in Sunoco’s motion that are no longer in dispute. The parties’ efforts to informally resolve some disputes is appreciated.

Sunoco’s motion to compel is ready for disposition. For the reasons discussed below, the motion will be denied in its entirety.

**Legal standard**

The Commission’s regulations allow parties the opportunity to conduct 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. 52 Pa.Code § 5.321(c). It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. Id. Discovery is not permitted, however, if it is sought in bad faith; would cause unreasonable annoyance, embarrassment, oppression, burden or expense; relates to a matter which is privileged; or would require the making of an unreasonable investigation by the deponent, a party or witness. 52 Pa.Code § 5.361(a); *see also*, City of Pittsburgh v. Pa.P.U.C., 526 A.2d 1243 (Pa.Cmwlth 1987), *alloc. denied*, 538 A.2d 880 (Pa. 1988).

Furthermore, information is relevant if it tends to establish a material fact, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact. *See*, Petition of the Borough of Cornwall for a Declaratory Order that the Provision of Water Service to Isolated Customers Adjoining its Boundaries Does Not Constitute Provision of Public Utility Service Under § 102, Docket Number P-2015-2476211 (Order dated September 11, 2015) at 9-10, *citing*, Smith v. Morrison, 47 A.3d 1311 (Pa.Super 2012), *alloc. denied*, 57 A.3d 71 (Pa. 2012). Relevancy in discovery is broader than the standard used for admission of evidence at a hearing. Id. at 10, *citing*, Com. v. TAP Pharmaceutical Products, Inc., 904 A.2d 986 (Pa.Cmwlth 2006). The party objecting to discovery has the burden to establish that the requested information is not relevant or discoverable with any doubts regarding relevancy being resolved in favor of discovery. Id.

**Interrogatory Set I, No. 9 and Request for Production of Documents Set 1, No. 12**

In interrogatory set I, number 9, Sunoco requested that Glen Riddle identify all communications between it and eight named people. In request for production of documents number 12, Sunoco requested “all documents related to the Mama Bear Brigade protest event started at the property on January 30, 2021.” In its objection, Glen Riddle stated that this interrogatory is objectionable because it would cause unreasonable annoyance, oppression, burden and expense and would require an unreasonable investigation to respond. Glen Riddle also stated that the interrogatory is not reasonably calculated to lead to discovery of admissible evidence relevant to the issues raised in the instant proceeding.

In its motion to compel, Sunoco argued that it is requesting any communications and coordination efforts that Glen Riddle had with various anti-pipeline activists, some of whom have been physically present at the property in an attempt to interrupt or halt construction activities. Sunoco noted that multiple members of the protest were charged with the summary offense of defiant trespass which Sunoco claims Glen Riddle openly supported. Sunoco claims that these discovery requests are narrowly tailored and not burdensome and are relevant to whether Glen Riddle and its representative actively coordinated with individuals of the public to interrupt Sunoco’s approved construction at the property.

In its objection, Glen Riddle denied that the referenced protest obstructed Sunoco’s work on the property or was intended to obstruct the work on the property. Glen Riddle added that there were no arrests on the property and that the protest was peaceful. Glen Riddle added that communications between Glen Riddle and anti-pipeline activist are not relevant to whether Sunoco’s work on the property is safe and these requests are a fishing expedition attempted to distract from Sunoco’s own safety failures. Glen Riddle further denied Sunoco’s representations in its motion regarding Glen Riddle or its representatives’ involvement in the protest.

Sunoco’s motion to compel with regard to interrogatory set I, number 9 and request for production of documents set I, number 12 will be denied. As an initial matter, the request for “all communications” between Glen Riddle and other parties is unduly burdensome and overly broad. Such requests are a fishing expedition which the Commission discourages. *See, e.g.*, City of York v. Pa. P.U.C., 281 A.2d 261, 265 (Pa. Cmwlth 1971). It is reasonable to request information regarding certain communications that are reasonably calculated to lead to the discovery of admissible evidence but requesting “all communications” is too broad and would result in responses that are not relevant. A more narrowly tailored request for communications between Glen Riddle and certain third parties is more appropriate. Furthermore, the specific request for documents related to a protest at the property by third parties on January 30, 2021 is also unduly burdensome and unreasonably annoying.

It is also unclear how the purported protest at the property, and any involvement in that protest by Glen Riddle representatives, is adequately relevant to the issues raised in the complaint filed by Glen Riddle to warrant granting the motion to compel. It is unclear how whether Glen Riddle and its representative actively coordinated with individuals of the public to interrupt Sunoco’s approved construction at the property is relevant to this proceeding or calculated to lead to the discovery of admissible evidence. Sunoco raised no argument in its motion that warrants finding that the information sought in these requests is relevant to the complaint filed by Glen Riddle.

As such, Sunoco’s motion to compel with regard to interrogatory set I, number 9 and request for production of document 12 will be denied.

**Interrogatory Set I, Nos. 10 and 11**

In interrogatory set I, number 10, Sunoco requested “any document related to a rent abatement program for Glen Riddle residents.” In interrogatory set I, number 11, Sunoco requested “the apartment or other manager for the property and any leasing agents.” In objecting to both requests, Glen Riddle stated that these interrogatories would cause unreasonable annoyance, oppression, burden and expense and would require an unreasonable investigation to respond. Glen Riddle also objected that these interrogatories are not reasonably calculated to lead to discovery of admissible evidence relevant to the issues raised in the instant proceeding. Glen Riddle concluded that these interrogatories appear to be discovery related to the eminent domain proceeding which is improper.

In its motion to compel, Sunoco argued that these requests seek relevant information which will lead to the discovery of admissible evidence in this proceeding and “seek to explore the underlying accusations regarding the impact Glen Riddle claims on its residents at the core of this proceeding and what programs, offerings and accommodations Glen Riddle and its property managers have made for residents which goes directly to the veracity of their complaint.”

In its objection, Glen Riddle stated that it has not “referenced its contractual obligations to its residents, but rather has focused exclusively on the only matter which this Commission has jurisdiction – the safety of the residents relating to Sunoco’s work on the property.” Glen Riddle argued that these requests also constitute a fishing expedition that the Commission does not allow. Glen Riddle noted that the Commission’s jurisdiction is limited to the safety of Sunoco’s operations and that “the Commission does not have jurisdiction over a dispute regarding the contractual relationships between Glen Riddle and its tenants or what rent abatements, if any, Glen Riddle has made because of Sunoco’s work.” Glen Riddle argued that whether it has provided rent abatements, or any other contractual concessions is not a matter relating to the safety of Sunoco’s services.

Sunoco’s motion to compel with regard to interrogatories set I, numbers 10 and 11 will be denied. Sunoco’s requests for information regarding rent abatement programs and the identity of Glen Riddle’s property manager and leasing agents will not establish a material fact, make a fact at issue more or less probable or support a reasonable inference or presumption regarding a material fact and, therefore, are not relevant. As Glen Riddle noted in its answer to the motion to compel, the information sought in these interrogatories does not relate to the safety of Sunoco’s services. Sunoco’s argument that it “seeks to explore the underlying accusations regarding the impact Glen Riddle claims on its residents and what programs, offerings and accommodations Glen Riddle and its property managers have made for residents” does not go “directly to the veracity of the complaint.” The complaint pertains to Sunoco’s safe actions or inactions – not what Glen Riddle may have done in response. The interrogatories are therefore irrelevant, unreasonably annoying and not permitted under the Commission’s regulations.

As such, Sunoco’s motion to compel with regard to interrogatories set I, numbers 10 and 11 will be denied.

**Interrogatory Set I, Nos. 12 and 14**

In interrogatory set I, number 12, Sunoco requested that Glen Riddle identify all tenants who have vacated their apartment at Glen Riddle in the last six months. In interrogatory set I, number 14, Sunoco requested the vacancy rate or number of vacant units and their building as of the first of each month for September, 2020 through February, 2021. In its objection, Glen Riddle raised the same objections as it did in response to the prior interrogatories regarding unreasonable annoyance, oppression, burden, expense and investigation, as well as the interrogatories being not reasonably calculated to lead to discovery of admissible evidence relevant to the issues raised in this proceeding. Glen Riddle also again objected that these interrogatories appear to be discovery related to the eminent domain proceeding which is improper. With regarding to interrogatory set I, number 14, Glen Riddle added that the interrogatory is not likely to lead to evidence relevant to the safety issues as defined in the complaint.

In its motion to compel, Sunoco argued that these discovery requests seek to explore the extent of Glen Riddle’s alleged impact to residents and the veracity therefore as a result of the construction at the property. Sunoco argued that, in the complaint, Glen Riddle made multiple allegations regarding the impacts of Sunoco’s construction at the property and on its residents. Sunoco served these discovery requests to explore whether those impacts are able to be substantiated through data regarding Glen Riddle’s tenancy and any change thereof at the property.

In its objection, Glen Riddle stated that these requests pertain to the eminent domain proceeding and that the number of residential dwelling units vacated at Glen Riddle as a result of Sunoco’s work on the property does not impact Sunoco’s obligation to operate safely under the Commission’s regulations. Glen Riddle argued these requests do not explore the veracity of the impact of Sunoco’s work on the residents. Glen Riddle added that these requests are targeted at the financial impact of Sunoco’s work on the property and not its safety and are therefore not relevant.

Sunoco’s motion to compel with regard to interrogatories set I, numbers 12 and 14 will be denied. Sunoco’s request for Glen Riddle to identify all tenants who have vacated their apartment at Glen Riddle in the last six months and the vacancy rate or number of vacant units and their building as of the first of each month for September, 2020 through February, 2021 will not establish a material fact, make a fact at issue more or less probable or support a reasonable inference or presumption regarding a material fact and, therefore, are not relevant. It is unclear how these requests are relevant to the complaint filed by Glen Riddle and warrant directing Glen Riddle to provide the information requested.

Sunoco argued that it needs this information to explore the extent of Glen Riddle’s alleged impact to residents and the veracity thereof as a result of construction at the property but the “identity of all tenants who have vacated their apartment” in the last six months will not make more or less probable whether Sunoco has acted safely. At a minimum, the specific identity of any such tenants is overly broad and unreasonably annoying. Sunoco may be able to make its argument with a narrower request. The specific identity of any such tenants is not relevant. Even so, however, it is unclear how the vacancy rates make whether Sunoco acted safely and consistent with all applicable regulations more or less probably because residents could vacate their units for a variety of reasons. The specific vacancy rates and the number of vacant units over a period of six months is not relevant to whether Sunoco has acted safely.

As such, Sunoco’s motion to compel with regard to interrogatories set I, numbers 12 and 14 will be denied.

**Request for Production of Documents Set I, Nos. 14 through 17**

In request for production of documents set I, number 14 through 17, Sunoco requested a sample lease for the Glen Riddle Apartments; a sample application for tenancy at the Glen Riddle Apartments; any documents evidencing rules, regulations or requirements of tenants at the Glen Riddle Apartments and all marketing materials, brochures and websites for Glen Riddle Apartments from the last two years. In its objection, Glen Riddle raised the same objections as in response to the prior discovery requests regarding unreasonable annoyance, oppression, burden, expense and investigation, as well as the requests not reasonably calculated to lead to discovery of admissible evidence relevant to the issues raised in this proceeding. Glen Riddle also again objected that requests 14, 15 and 17 appear to be discovery related to the eminent domain proceeding which is improper.

In its motion to compel, Sunoco argued that the requests are not unduly burdensome because these are items that Glen Riddle must have in its possession to carry out its leasing and daily apartment operations at the property. Sunoco also argued that the information requested is relevant or likely to result in relevant evidence regarding the matters, rights and obligations alleged to be interfered with through Sunoco’s actions at the property. Sunoco added that the project has been widely publicized for years and therefore, whether and how Glen Riddle has advised prospective tenants of that fact is highly relevant to the issues of credibility of the present complaint about Sunoco’s activities at the property.

In its answer to the motion to compel, Glen Riddle denied that its lease, applications for tenancy, rules that apply to tenants and Glen Riddle’s marketing relate to the subject matter before the Commission.

Sunoco’s motion to compel with regard to request for production of documents 14 through 17 will be denied. As with the above requests, a sample lease, sample application for tenancy, rules and regulations that apply to tenants and Glen Riddle’s marketing materials will not establish a material fact, make a fact at issue more or less probable or support a reasonable inference or presumption regarding a material fact and, therefore, are not relevant. It is unclear how these requests sufficiently relate to the complaint filed by Glen Riddle to warrant directing Glen Riddle to provide that information. There are no averments in the complaint pertaining to these issues that warrant directing Glen Riddle to provide the documents requested. Sunoco is correct that providing these documents would not be unduly burdensome. Nonetheless, these requests do not satisfy the threshold requirement of relevancy to warrant granting a motion to compel Glen Riddle to provide the information requested.

As such, Sunoco’s motion to compel with regard to requests for production of documents 14 through 17 will be denied.

**Conclusion**

 The scope of discovery is broad. As noted above, the Commission’s regulations allow parties the opportunity to conduct 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. However, discovery must pertain to information that is relevant. Information about rent abatement, apartment manager, leasing agents, vacancy rates, lease applications, and others, does not tend to establish a material fact, make a fact at issue more or less probable or support a reasonable inference or presumption regarding a material fact. Therefore, these requests are not relevant. In addition, some of these requests are overly broad or unreasonably annoying. As a result, Sunoco’s motion to compel will be denied in its entirety.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Sunoco Pipeline, L.P.’s motion to compel responses to interrogatories and requests for production of documents set I filed on March 1, 2021, at docket number C-2020-3023129 is hereby denied.

Dated: March 12, 2021 /s/

Deputy Chief Administrative Law Judge

Joel H. Cheskis

**C-2020-3023129 - GLEN RIDDLE STATION, L.P. v. SUNOCO PIPELINE L.P.***updated 3/3/21*

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