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March 31, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Glen Riddle Station, L.P. v. Sunoco Pipeline L.P.; Docket No. C-2020-3023129

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Response of Glen Riddle Station, L.P. (“GRS”) to the Motion *in Limine* of Sunoco Pipeline, L.P., to (1) Enforce the January 28, 2021 Order Granting in Part and Denying in Part Preliminary Objections, (2) to Strike Testimony and (3) Request for Expedited Response Period, in the above-referenced matter. If you have any questions with regard to this filing, please do not hesitate to contact me. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read 'Samuel W. Cortes', written over a light blue horizontal line.

Samuel W. Cortes

SWC:jcc
Enclosure

cc: Per Certificate of Service

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina **Pennsylvania** South Carolina Texas Washington

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMPLAINANT’S RESPONSE TO RESPONDENT’S MOTION TO (1) ENFORCE THE
JANUARY 28, 2021 ORDER GRANTING IN PART AND DENYING PART
PRELIMINARY OBJECTIONS, (2) TO STRIKE TESTIMONY AND
(3) REQUEST FOR EXPEDITED RESPONSE PERIOD**

Complainant, Glen Riddle Station, L.P. (“GRS”), by and through its undersigned counsel, hereby files this Response to the Motion of Respondent, Sunoco Pipeline, L.P. (“Sunoco”), to (1) Enforce the January 28, 2021 Order Granting in Part and Denying in Part Preliminary Objections, (2) to Strike Testimony and (3) Request for Expedited Response Period (the “Motion”).

In the January 28, 2021 Order (the “Order”), Your Honor noted that “the Commission has jurisdiction to hear claims that a utility is providing unsafe service” and that the Commission has jurisdiction to hear “issues regarding the awareness plan and standard operating procedures pertaining to activities within the easement.” GRS’s Direct Testimony relates to the unsafe services that Sunoco is providing and the issues surrounding Sunoco’s non-compliance with the Awareness Plan and the Standard Operating Procedures within the easement. As such, Your Honor should deny Sunoco’s Motion.

GRS is not asking the Commission to make findings regarding Sunoco’s violation of municipal laws or Department of Environmental Protection Laws, rather GRS asks the

Commission to consider its expert's opinion testimony that these provide evidence of a standard of care and a deviation from them is evidence of unsafe operation.

In dismissing GRS's action to enforce the International Fire Code, The Honorable Paul Diamond of the United States District Court for the Eastern District of Pennsylvania explained that the Commission's ruling that it lacks jurisdiction to consider violations of municipal ordinances "hardly ends the matter" because the Commission "certainly has jurisdiction to determine whether Sunoco's work is *unsafe*." Glen Riddle Station, L.P. v. Middletown Twp., Civ. No. 21-286, Memorandum Opinion, Docket No. 27, pp. 14-15 (E.D. Pa. Mar. 25, 2021) (the "GRS Federal Court Case"), attached here as Exhibit A. GRS's Complaint contends that Sunoco's work throughout the property is unsafe for several serious reasons. The municipal and other laws and regulations – outside of the Public Utility Code (and related regulations) are offered solely as evidence of a standard of care to which Sunoco has deviated. That deviation, as opined by GRS's expert, is "unsafe." The Commission, however, is asked only to find that Sunoco's work is "unsafe" and that Sunoco has failed to comply with its communication obligations under its Public Awareness Plan and its Standard Operating Procedures.

Judge Diamond explained that "[i]nitial jurisdiction in matters concerning the relationship between public utilities and the public is the PUC – not in the courts. It has been so held involving, rates, service, rules of service, extension and expansion, [and] *hazard to public safety due to use of utility facilities*." *Id.* (citing Lansdale Borough v. Phila. Electric Co., 170 A.2d 565 (Pa. 1961) (emphasis added); see also Borough of Midland v. Stubenville, E. Liverpool & Beaver Valley Traction Co., 150 A. 300, 303 (Pa. 1930)). Put another way, the Court explained that the PUC has the jurisdiction to hear matters pertaining to the safety of public utility service, even when those matters involve the violation of municipal laws. Sunoco participated in the case before Judge

Diamond and is bound by this finding. See Docket in GRS Federal Court Case, attached as Exhibit B.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

1. Admitted that on December 2, 2020, GRS filed a Complaint with the Commission. The Complaint is a written document, the terms of which speak for themselves. To the extent the allegations are contrary to the terms of the written document, they are specifically denied.

2. Admitted that on December 23, 2020, Sunoco filed Preliminary Objections to the Complaint. The Preliminary Objections are a written document, the terms of which speak for themselves. To the extent the allegations are contrary to the terms of the written document, they are specifically denied. GRS specifically denies that its Complaint requested that the Commission adjudicate the merits and application of the scope of Sunoco's permanent and temporary easements. GRS also denies that its Complaint requested that the Commission adjudicate municipal land use ordinances, environmental laws, or other matters outside of its jurisdiction. GRS included Sunoco's violations of certain municipal and environmental laws because those laws set a standard of care relevant to Sunoco's unsafe operation.

3. Admitted that on January 28, 2021, Your Honor entered the Order. The Order is a written document, the terms of which speak for themselves. To the extent the allegations are contrary to the terms of the written document, they are specifically denied. The Order found that the Complaint raises issues that "warrant being heard at a hearing." [Order, p. 11.]

4. Admitted that on March 15, 2021, GRS submitted the written testimony of Raymond Iacobucci, Stephen Iacobucci, Jason Culp, P.E., and Johanna Rincon. The Direct Testimony consists of written documents, the terms of which speak for themselves. To the extent the allegations are contrary to the terms of the written documents, they are specifically denied.

5. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS's Direct Testimony violates Your Honor's Order. Rather, the Order specifically states:

To the extent 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 required that "every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities."

The Order also states:

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."

Each portion of the Direct Testimony that Sunoco seeks to strike relates to the Public Awareness Plan, the Standard Operating Procedures within the easement, or any inadequate, inefficient, unsafe or unreasonable service. As such, Sunoco's request must fail.

6. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, GRS is not asking Your Honor to find that Sunoco is violating the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations. Rather, GRS is providing testimony related to the Awareness Plan, the Standard Operating Procedures within the easement,

and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission does not need to determine whether such actions are actually a violation of the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations. These laws, however, evidence a standard of safety that Sunoco has failed to follow and are relevant on that basis and in the context in which they were cited in the Direct Testimony.

7. Denied. GRS denies the averments of this paragraph as containing conclusions of law requiring no response. By way of further response, it is specifically denied that any Order precluding testimony is necessary. GRS is providing testimony related to the Public Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission does not need to determine whether such actions are actually a violation of the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations. These laws, however, evidence a standard of safety that Sunoco has failed to follow and are relevant on that basis and in the context in which they were cited in the Direct Testimony.

8. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response. By way of further response, it is specifically denied that Sunoco is denied any due process rights. GRS is not asking Your Honor to make any initial findings that Sunoco is violating the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations. Rather, GRS is providing testimony related to the Public Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service

provided by Sunoco. The Commission does not need to determine whether such actions are actually a violation of the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations. These laws, however, evidence a standard of safety that Sunoco has failed to follow and are relevant on that basis and in the context in which they were cited in the Direct Testimony.

9. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that any of GRS's Direct Testimony is a waste of resources. Rather, the Direct Testimony of GRS creates a record of Sunoco's violations related to the Public Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco.

10. Denied. GRS denies these averments as containing conclusions of law requiring no response. It is specifically denied that Sunoco needs an extension of time to respond to GRS's Direct Testimony. On the contrary, Sunoco is simply trying to delay this proceeding so that it can proceed with its violations related to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service.

II. LEGAL STANDARDS

11. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied. GRS admits that the cited regulations appear to be quoted accurately.

12. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied. GRS admits that the cited law appears to be quoted accurately.

13. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied. GRS admits that the cited law appears to be quoted accurately.

14. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied. GRS admits that the cited law appears to be quoted accurately.

15. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent the allegations are contrary to the terms of the written document, they are specifically denied. GRS admits that the cited law appears to be quoted accurately.

III. ARGUMENT

A. None Of The Direct Testimony Requires Your Honor To Adjudicate Any Issues Beyond The Commission's Jurisdiction.

16. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, Mr. Iacobucci's and Mr. Culp's Direct Testimonies relate to the Public Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. It is possible that the Commission could determine the actions of Sunoco as outlined in GRS's Direct Testimony are unsafe for purposes of a violation of the PUC without determining whether such actions are actually a violation of the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations.

i. GRS Is Not Asking The Commission To Make Initial Findings Regarding OSHA, CDC, or EPA Noise Exposure Rules.

17. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS is raising issues of noise for the first time in its Direct Testimony. On the contrary, in paragraphs 44, 50, 51, and 53, GRS refers to sound barriers. These sound barriers are obviously related to the noise created by Sunoco's work in the Easement. Moreover, in the November 20, 2020, correspondence attached to the Complaint as Exhibit E, counsel for GRS specifically stated that Sunoco's work must comply with "noise requirements while exercising due care for the safety of others." Likewise, as set forth in the emails attached to the Complaint as Exhibit F, counsel for the parties discussed the sound barriers. Likewise, the chart attached to the Complaint as Exhibit P also describes the unresolved issue of the sound barriers. Thus, Sunoco's feigned surprise is disingenuous. In fact, Sunoco submitted an Interrogatory on the noise issue and received a full response. [See Response to Sunoco's Set I Interrogatories, attached as Exhibit C.]

18. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS is raising issues of noise for the first time in its Direct Testimony. On the contrary, in paragraphs 44, 50, 51, and 53, GRS refers to sound barriers. These sound barriers are obviously related to the noise created by Sunoco's work in the Easement. Moreover, in the November 20, 2020, correspondence attached to the Complaint as Exhibit E, counsel for GRS specifically noted that Sunoco's work must comply with "noise requirements while exercising due care for the safety of others." Likewise, as set forth in the emails attached to the Complaint as Exhibit F, counsel for the parties discussed the sound barriers.

Likewise, the chart attached to the Complaint as Exhibit P also describes the unresolved issue of the sound barriers. Thus, Sunoco's feigned surprise is disingenuous. In fact, Sunoco submitted an Interrogatory on the noise issue and received a full response. [See Exhibit C.]

19. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications related to OSHA, CDC, or EPA Rules. Rather, GRS's Direct Testimony related to noise relates to the Awareness Plan, the Standard Operating Procedures within the easement, and the inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission does not need to determine whether such actions are actually a violation of the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations. These laws, however, evidence a standard of safety that Sunoco has failed to follow and are relevant on that basis and in the context of the Direct Testimony in which they were cited.

20. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied.

21. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied.

ii. GRS Is Not Asking The Commission To Make Initial Findings Regarding PennDOT, FHWA, Or International Fire Code Violations.

22. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications related to PennDOT and FHWA Guidelines or violations of the International Fire

Code. Rather, GRS's Direct Testimony related to Sunoco's lack of boundary marking, delineation, and barriers relates to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission does not need to determine that the actions of Sunoco as outlined in GRS's Direct Testimony violate PennDOT and FHWA Guidelines, or the International Fire Code to determine that they are unsafe. These laws/guidelines, however, evidence a standard of safety in the opinion of GRS's expert and are relevant on that basis and in the context of the Direct Testimony in which they were cited.

23. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications related to PennDOT and FHWA Guidelines or violations of the International Fire Code. Rather, GRS's Direct Testimony related to Sunoco's lack of boundary marking, delineation, and barriers relates to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission does not need to determine that the actions of Sunoco as outlined in GRS's Direct Testimony violate PennDOT and FHWA Guidelines, or the International Fire Code to determine that they are unsafe. These laws/guidelines, however, evidence a standard of safety in the opinion of GRS's expert and are relevant on that basis and in the context of the Direct Testimony in which they were cited.

24. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied. GRS admits that the cited law appears to be quoted accurately.

25. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied.

26. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied.

27. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications related to DEP violations. Rather, GRS's Direct Testimony related to Sunoco's hazardous leaks, storm water management, and air quality impacts relates to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. It is possible that the Commission could determine the actions of Sunoco as outlined in GRS's Direct Testimony are unsafe for purposes of a violation of the PUC without determining whether such actions are actually a violation of DEP Regulations.

28. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications related to DEP violations. Rather, GRS's Direct Testimony related to Sunoco's hazardous leaks, storm water management, and air quality impacts relates to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission could determine the actions of Sunoco as outlined in GRS's Direct Testimony are unsafe for purposes of a violation of the PUC without determining whether such actions are actually a violation of DEP Regulations. These

Regulations, however, evidence a standard of safety and are relevant on that basis and in the context of the Direct Testimony in which they were cited.

29. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied.

30. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied.

B. Your Honor Should Not Strike Any Of GRS's Direct Testimony.

31. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications not within your jurisdiction. Rather, GRS's Direct Testimony relates to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission can determine the actions of Sunoco as outlined in GRS's Direct Testimony are unsafe for purposes of a violation of the PUC without determining whether such actions violate laws that the Commission cannot adjudicate. These laws, however, evidence a standard of safety and are relevant on that basis and in the context of the Direct Testimony in which they were cited.

32. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications not within your jurisdiction. Rather, GRS's Direct Testimony relates to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission can determine

the actions of Sunoco as outlined in GRS's Direct Testimony are unsafe for purposes of a violation of the PUC without determining whether such actions violate laws that the Commission cannot adjudicate. These laws, however, evidence a standard of safety and are relevant on that basis and in the context of the Direct Testimony in which they were cited.

33. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications not within your jurisdiction. Rather, GRS's Direct Testimony relates to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. The Commission can determine the actions of Sunoco as outlined in GRS's Direct Testimony are unsafe for purposes of a violation of the PUC without determining whether such actions violate laws that the Commission cannot adjudicate. These laws, however, evidence a standard of safety and are relevant on that basis and in the context of the Direct Testimony in which they were cited.

34. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, it is specifically denied that GRS asks Your Honor to make adjudications not within your jurisdiction. Rather, GRS's Direct Testimony relates to the Awareness Plan, the Standard Operating Procedures within the Easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. It is possible that the Commission could determine the actions of Sunoco as outlined in GRS's Direct Testimony are unsafe for purposes of a violation of the Public Utility Code without determining whether such actions are actually a violation of laws that the Commission cannot adjudicate. None of the issues raised by

GRS in its Direct Testimony are new. Thus, there is no need to grant Sunoco an extension of time. Sunoco seeks to delay this proceeding so that it can proceed with its violations related to the Public Awareness Plan, the Standard Operating Procedures within the Easement, and any inadequate, inefficient, unsafe or unreasonable service.

35. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied.

36. Denied. GRS denies the averments in this paragraph as containing conclusions of law requiring no response and seeking to characterize written documents that speak for themselves. By way of further response, none of GRS's Direct Testimony requires Your Honor to determine whether Sunoco has violated the permanent and temporary easement agreements, municipal law, building standards, fire codes, traffic guidelines, noise exposure rules, and environmental regulations. Rather, GRS is simply providing testimony related to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service provided by Sunoco. For the reasons set forth in Your Honor's Order, such a determination is within the jurisdiction of the PUC.

37. Denied. GRS denies the allegations of this paragraph as conclusions of law requiring no response. To the extent a response is required, the allegations are specifically denied. GRS admits that the cited law appears to be quoted accurately.

38. Denied. It is specifically denied that Sunoco needs an extension of time to respond to GRS's Direct Testimony. To the contrary, Sunoco seeks to delay this proceeding so that it can proceed with its violations related to the Awareness Plan, the Standard Operating Procedures within the easement, and any inadequate, inefficient, unsafe or unreasonable service. The

remaining allegations are conclusions of law to which no response is required. To the extent a response is required, the allegations are specifically denied.

IV. REQUEST FOR EXPEDITED SEVEN DAY ANSWER PERIOD.

39. GRS shall file its response by March 31, 2021.

IV. CONCLUSION


Your Honor noted in your Order that “the Commission has jurisdiction to hear claims that a utility is providing unsafe service” and that the Commission has jurisdiction to hear “issues regarding the awareness plan and standard operating procedures pertaining to activities within the easement.” GRS’s Direct Testimony relates to the unsafe services that Sunoco is providing and the issues surrounding Sunoco’s non-compliance with the Awareness Plan and Standard Operating Procedures within the easement. As such, Your Honor should deny Sunoco’s Motion.

Respectfully submitted,

FOX ROTHSCHILD LLP

March 31, 2021

By:



Samuel W. Cortes, Esquire
Attorney ID No. 91494
Attorneys for Complainant

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that, on March 31, 2021, I served a true and correct copy of the foregoing Response to Respondent’s Motion to Enforce the January 28, 2021 Order Granting in Part and Denying in Part Preliminary Objections, (2) to Strike Testimony and (3) Request for Expedited Response Period, upon the persons listed below and by the methods set forth below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Email

Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire
Kevin J. McKeon, Esquire
Bryce R. Beard, Esquire
Hawke, McKeon & Sniscak LLP
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Samuel W. Cortes, Esquire

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GLEN RIDDLE STATION, L.P.,	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 21-286
	:	
MIDDLETOWN TOWNSHIP,	:	
Defendant.	:	

Diamond, J.

March 25, 2021

MEMORANDUM

Apartment complex owner Glen Riddle Station asks me to remedy a purported due process violation by issuing a state law “mandamus” order prescribing Middletown Township’s interpretation and enforcement of its local fire code. I will dismiss because the Court lacks both jurisdiction and the authority to issue a state law mandamus. As a further alternate ground, I will dismiss because GRS has no standing. Finally, even if this action were otherwise viable, I would abstain from hearing it.

I. FACTUAL BACKGROUND

In May 2020, Sunoco filed a Declaration of Taking in the Delaware County Common Pleas Court, condemning portions of GRS’s property to provide temporary workspace and access road easements for non-party Sunoco LLP’s work on the Mariner East 2 pipeline. (Compl., Doc. No. 1, ¶¶ 6-10.) GRS is comprised of five buildings; Sunoco’s workspace easement extends through the middle of the property, with three buildings on one side and two on the other. (See Ex. E to Compl., Doc. No. 1-3, at 25.) To reduce noise, Sunoco installed temporary “Sound Walls” along the sides of the easement; the Walls are configured differently during the day and at night. (Compl., Doc. No. 1, ¶¶ 11-12.) This dispute arises from Sunoco’s “Sound Walls Plan.”

As alleged, before the Walls were completed, GRS asked the Township to be heard regarding any upcoming construction that might affect its property. (Id. ¶¶ 15-18.) As alleged, the Township approved the Plan without hearing from GRS. (Id. ¶¶ 19.) During a January 11, 2021 public meeting, the Township declared the Plan safe, and issued a corresponding “safety declaration” in its January Engineering Report. (Id. ¶ 20.) The Walls were built later that month.

The gravamen of GRS’s Complaint is that the Plan is unsafe because it violates several provisions of the “International Fire Code” (which the Township has adopted). (Id. ¶¶ 23-42.) GRS first alleges that the Walls bisect existing roads, violating the fire code requirement that each dwelling be equipped with two separate fire apparatus access roads. (Id. ¶¶ 32-33.) GRS also urges that the Walls: lack required movable gates that can be operated by one person; and obstruct the property’s roads, thus violating the code requirement to allow sufficient space for emergency vehicles to turn around on dead-end fire apparatus roads. (Id. ¶¶ 34-40.) GRS urges that in combination, these purported defects might prevent emergency services from easy access to the property during a fire or other emergency. (Id. ¶¶ 54-56.)

II. PROCEDURAL BACKGROUND

The record abundantly shows that GRS’s objection to the Plan is but one of countless complaints it has made in connection with Mariner East 2’s construction. (PUC Compl., Doc. No. 12, Ex. 8; Id. Ex. D, E, F, H, K.) On December 2, 2020, after its complaints were not resolved to its satisfaction, GRS filed a Public Utility Commission complaint against Sunoco alleging, *inter alia*, that the Plan was unsafe, thus violating the Township’s fire code. (See generally PUC Compl., Doc. No. 12, Ex. 8; see also id. ¶¶ 51-52, 70.) Although that matter remains pending, the Administrative Law Judge recently ruled that the Commission does not have jurisdiction to hear

allegations of municipal ordinance violations. (See January 28, 2021 Order, PUC Dkt. No. C-2020-3023129.)

On January 21, 2021, GRS filed the instant two count Complaint: (1) alleging under § 1983 that the Township violated GRS's procedural due process rights; and (2) asking me to exercise "supplemental jurisdiction" and "cure" that violation by issuing a state law mandamus order directing the Township to interpret and apply specific provisions of its fire code in a manner GRS favors. (Compl., Doc. No. 1); 28 U.S.C. §§ 1331, 1367. GRS thus asks me to rule that the Township must comply with local fire code sections D106, D103.4, and D103.5. (Compl., Doc. No. 1, at 13-14.) GRS further asks me to direct the Township to bar work on the GRS property until the Township enforces those three provisions against Sunoco, thus "curing" the Walls' "defects" I discussed earlier. (Id.) GRS also seeks monetary damages.

On January 25, 2021, GRS filed an "Emergency Motion for Writ of Mandamus and Peremptory Judgment." (Doc. No. 3.) Remarkably, GRS never requested a hearing on its "Emergency Motion." I ordered GRS to serve a copy of the Motion on Sunoco, and asked any interested party to submit a memorandum addressing whether: (1) the Court has jurisdiction to hear this matter; (2) a federal court has the authority to issue a "mandamus" under Pennsylvania procedural law directing a municipality as to how it must interpret and enforce its own ordinances; (3) Sunoco is an indispensable party; (4) GRS has standing; and (5) I am required to abstain from hearing this matter. (Doc. No. 7.) GRS, the Township, and Sunoco (as *amicus curiae*) have submitted memoranda. (Doc. Nos. 10, 12-13, 17-20.)

The Township now moves to dismiss for lack of subject matter jurisdiction, lack of standing, and failure to state a claim. (Doc. No. 23); Fed. R. Civ. P. 12(b)(1), (12)(b)(6). Sunoco

filed a short statement supporting dismissal. (Doc. No. 25.) GRS asks me to deny the Township's Motion. (Doc. No. 26.)

III. LEGAL STANDARDS

Motion to Dismiss Under 12(b)(1)

The Third Circuit instructs that a “facial attack” on subject matter jurisdiction:

is an argument that considers a claim on its face and asserts that it is insufficient to invoke the subject matter jurisdiction of the court because, for example, it does not present a question of federal law, or because there is no indication of a diversity of citizenship among the parties, or because some other jurisdictional defect is present.

Constitution Party of Pennsylvania v. Aichele, 757 F.3d 347, 358 (3d Cir. 2014). In ruling on a facial attack, I must accept as true all facts alleged and construe any inferences in favor of the nonmoving party. Id.

Because standing is a jurisdictional issue, motions to dismiss for want of standing are commonly addressed under Rule 12(b)(1). In re Schering Plough Corp. Intron/Temodar Consumer Class Action, 678 F.3d 235, 243 (3d Cir. 2012).

Courts disagree as to whether abstention is analyzed under Rule 12(b)(1), Rule 12(b)(6), or distinct standards. See Bird v. Borough of Moosic, 2020 WL 7699452, at *2 (M.D. Pa. Dec. 28, 2020) (compiling cases). Compare Jaffery v. Atl. Cty. Prosecutor's Office, 695 F. App'x 38, 42 (3d Cir. 2017) (affirming district court's decision granting 12(b)(1) motion on abstention grounds); Dutton v. Court of Common Pleas of Phila. Domestic Relations Div., 215 F. App'x 161, 162 (3d Cir. 2007) (analyzing abstention motion distinctly from 12(b)(6) or 12(b)(1) motions); Heritage Farms, Inc. v. Solebury Twp., 671 F.2d 743, 745 (3d Cir. 1982) (describing dismissal on abstention grounds as “in the nature of a dismissal under Fed. R. Civ. P. 12(b)(6)”). The distinctions are semantic, however, as all the standards require me to accept as true GRS's factual allegations.

IV. DISCUSSION

I will dismiss because the Court does not have subject matter jurisdiction. In the alternative, I conclude that GRS lacks standing. In the further alternative, I will dismiss because this Court is without authority to grant the relief GRS seeks. Finally, even in the absence of these defects, I would abstain.

A. Subject Matter Jurisdiction

I must dismiss if the federal claim supporting supplemental jurisdiction “is ‘made solely for the purpose of obtaining jurisdiction’ or if the claim is ‘wholly insubstantial and frivolous.’” Kulick v. Pocono Downs Racing Ass'n, Inc., 816 F.2d 895, 898 (3d Cir. 1987) (quoting Bell v. Hood, 327 U.S. 678, 682-83 (1946)). This is not a factual determination; dismissal is appropriate only where the claims are “insubstantial on their face.” Id. (quoting Hagans v. Lavine, 415 U.S. 528, 542 n.10 (1974)). Further, “dismissal for lack of jurisdiction is not appropriate merely because the legal theory alleged is probably false, but only because the right claimed is ‘so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.’” Id. at 899 (quoting Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 666 (1974)).

GRS contends that because the Court has federal question jurisdiction over its due process claim, it also has supplemental jurisdiction over GRS’s state law mandamus request. See 28 U.S.C. § 1331 (providing for “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”); 28 U.S.C. § 1367 (establishing “supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy”).

To make out a § 1983 due process violation, the plaintiff must show “that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of ‘life, liberty, or property,’ and (2) the procedures available to him did not provide ‘due process of law.’” Hill v. Borough of Kutztown, 455 F.3d 225, 234 (3d Cir. 2006) (quoting Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000)).

GRS alleges that its due process rights were violated by the Township’s “clandestine” approval of the Sound Walls Plan, including its failure to provide GRS adequate notice or an opportunity to be heard. (Compl., Doc. No. 1, ¶¶ 47-56; Motion for Mandamus, Doc. No. 3, at 2-4.) Unfortunately for GRS, it seeks to protect an insubstantial interest. The mere *risk* of harm—here, that in very limited circumstances emergency vehicles might not have easy access to every part of the property—is not a cognizable deprivation of life, liberty, or property. See Rivera v. Rhode Island, 402 F.3d 27, 37-38 (1st Cir. 2005) (“[A]n increased risk is not itself a deprivation of life, liberty, or property; it must still cause such a deprivation.”). Moreover, there is no general, constitutionally protected interest in the enforcement of local ordinances. See Hameetman v. City of Chicago, 776 F.2d 636, 641 (7th Cir. 1985) (“The Constitution does not require states to enforce their laws (or cities their ordinances) with Prussian thoroughness as the price of being allowed to enforce them at all.”); Leland v. Moran, 235 F. Supp. 2d 153, 159 (N.D.N.Y. 2002), aff’d, 80 F. App’x 133 (2d Cir. 2003) (finding no constitutionally protected interest in enforcement of zoning code). This would be true even if the Township had violated its fire code or other state law. See Whittaker v. Cty. of Lawrence, 674 F. Supp. 2d 668, 695 (W.D. Pa. 2009), aff’d, 437 F. App’x 105 (3d Cir. 2011) (“[A] mere violation of a state statute [by defendant county] does not necessarily constitute a violation of the Due Process Clause.”).

Even if its tenuous interest were protected, GRS has not cited, and I have been unable to find, authority that it had a federal constitutional right to be heard regarding the specifics of the Plan. Indeed, although a landowner has a right to be heard regarding compensation for a taking, there is no due process right to a hearing regarding the necessity of a taking by eminent domain. Bragg v. Weaver, 251 U.S. 57, 58 (1919) (“Where the intended use is public, the necessity and expediency of the taking may be determined by such agency and in such mode as the state may designate. They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment.”); cf. Local 736, Williamsport Firefighters v. City of Williamsport, 470 F. Supp. 344, 349 (M.D. Pa. 1979), aff’d, 601 F.2d 575 (3d Cir. 1979) (citizens not entitled to hearing before town reduced number of firefighters, even if reduction rendered fire protection inadequate). Finally, although GRS alleges it had no notice regarding the Plan, emails between counsel for GRS and Sunoco show that at least as early as November 2020, GRS had already learned of the Sound Walls Plan and objected to the Walls’ construction—well before that construction even began. (Doc. No. 12-1, at 289.)

In sum, because GRS’s § 1983 procedural due process claim is “wholly insubstantial,” the Court does not have subject matter jurisdiction.

B. Supplemental Jurisdiction

Even if GRS’s federal claim were viable, I would not exercise jurisdiction over its state law “mandamus” Count, and so would dismiss the “mandamus” Count.

I may decline to exercise supplemental jurisdiction over a claim that “substantially predominates over the claim or claims over which the district court has original jurisdiction.” 28 U.S.C. § 1367(c). “[I]f it appears that the state issues substantially predominate, whether in terms

of proof, of the scope of the issues raised, or of the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals.” United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726–27 (1966). The Third Circuit has explained that state issues predominate when “permitting litigation of all claims in the district court can accurately be described as allowing a federal tail to wag what is in substance a state dog.” Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 789 (3d Cir. 1995). That is certainly true here, where GRS asks me to administer the Township’s fire code.

Once again, to promote safety, GRS asks me to: (1) rule that the Township must interpret and apply three sections of its fire code in a particular way; (2) prevent work on the GRS property before there is compliance with the code; and (3) award damages “resulting from the Township’s failure to enforce the [code].” (Compl., Doc. No. 1, at 13-14.) These issues are distinct from whether the Township impermissibly failed to hear from GRS before approving the Plan. Plainly, there is “a substantial quantity of evidence supporting their state claims that would not be relevant to the federal claims.” Borough of W. Mifflin, 45 F.3d at 789.

In sum, because non-federal issues predominate, GRS’s state law “mandamus” claim is not appropriate for the exercise of supplemental jurisdiction. Gibbs, 383 U.S. at 727. (“[R]ecognition of a federal court's wide latitude to decide ancillary questions of state law does not imply that it must tolerate a litigant's effort to impose upon it what is in effect only a state law case.”).

C. Standing

Federal courts have jurisdiction to hear only actual “cases or controversies.” U.S. Const. Art. III, § 2. A plaintiff without standing to sue cannot meet this jurisdictional requirement. Raines v. Byrd, 521 U.S. 811, 818 (1997). GRS must thus show that: (1) it has suffered an injury that is “concrete and particularized” and “actual or imminent”—not “conjectural” or “hypothetical”; (2)

that the injury is fairly traceable to the Township; and (3) it is likely that the injury can be redressed by a favorable judicial decision. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted). As my discussion of jurisdiction suggests, GRS cannot meet these standing requirements.

Reilly v. Ceridian Corporation is particularly instructive. 664 F.3d 38, 43 (3d Cir. 2011). There, the Court ruled that the plaintiffs had no standing when the injury alleged was an increased risk of identity theft, after a third-party hacker might have stolen their data from the defendant, a payroll processing firm. 664 F.3d at 38. The Court admonished that because “[a]llegations of ‘possible future injury’ are not sufficient to satisfy Article III,” “[a] plaintiff . . . lacks standing if his ‘injury’ stems from an indefinite risk of future harms inflicted by unknown third parties.” Id. at 42. Harm to the Reilly plaintiffs would occur only after the hacker had actually saved the stolen information and misused it. Id. at 43. The plaintiffs thus lacked standing because they “ha[d] yet to suffer any harm, and their alleged increased risk of future injury is nothing more than speculation.” Id.

Similarly, GRS has not demonstrated any “quantifiable risk of damage in the future.” Reilly, 664 F.3d at 45. GRS alleges that the configuration of the Walls *may* prevent emergency vehicles from gaining easy access to all parts of the complex. (See, e.g., Compl., Doc. No. 1, ¶¶ 44-46, 56, 62-63.) Yet, GRS has not identified any part of the complex that is purportedly inaccessible. Rather, GRS alleges only that Sunoco’s violations of the Township’s fire code could create that risk. (See generally, Compl., Doc. No. 1.) This “alleged increased risk of future injury” is too conjectural to confer standing. See Reilly, 664 F.3d at 43; see also Clapper v. Amnesty Int’l USA, 568 U.S. 398, 416 (2013) (no standing for respondents who merely had “fears of hypothetical future harm that is not certainly impending”). Indeed, Sunoco and the Township

allege (without contradiction) that the Fire Department conducted three “trial” emergency visits to the property without issue, and emergency services have responded to two separate, actual emergencies without problems. (Township Response, Doc. No. 10, at 8; Sunoco Response, Doc. No. 12-1, at 17.)

Because GRS’s claims of injury are speculative and hypothetical, I conclude in the further alternative that GRS does not have Article III standing to bring this suit.

D. Authority to Grant Requested Relief

Under Pennsylvania common law, “[m]andamus is an extraordinary writ which will issue ‘to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other adequate and appropriate remedy.’” Shaler Area Sch. Dist. v. Salakas, 432 A.2d 165, 168 (Pa. 1981) (quoting Philadelphia Newspapers, Inc. v. Jerome, 387 A.2d 425, 430 n.11 (Pa. 1978)). Peremptory judgment in a Pennsylvania mandamus action is appropriate if, when construing all disputed facts in favor of the defendant “there exists no genuine issue of fact,” “the case is clear and free from doubt,” and “the right of the plaintiff thereto is clear.” Id.; 231 Pa.C. § 1098. A Pennsylvania law mandamus is thus distinct from federal mandamus, which GRS is not seeking and which, in any event, could not issue here. 28 U.S.C. § 1361 (“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel *an officer or employee of the United States or any agency thereof* to perform a duty owed to the plaintiff.”) (emphasis added); Andrade v. Calif. Dep’t of Corr., 2021 WL 412267, at *1 (C.D. Cal. 2021) (noting federal mandamus statute does not allow federal courts to “direct non-federal entities or officials in the performance of their duties”); see also Fed. R. Civ. P. 81(b) (“The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under

these rules.”); but see Banks v. Hornak, 698 F. App'x 731, 737 n.10 (4th Cir. 2017) (noting that federal jurisdiction over actions in the nature of mandamus under 28 U.S.C. § 1361 exists, Rule 81(b) notwithstanding); La Buy v. Howes Leather Co., 352 U.S. 249, 255 (1957) (describing writs of mandamus available to federal appellate courts).

It is (to say the least) by no means clear that a federal court has the authority to employ state procedures created by state courts for their own use. Federal courts have long understood that they may apply state procedural law only in the most limited circumstances; none is present here. See Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) (establishing general rule that federal courts sitting in diversity apply state substantive law but federal procedural law); United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966) (Erie doctrine also applies to pendent jurisdiction cases); but see Arnold v. BLaST Intermediate Unit, 843 F.2d 122, 124-25 (3d Cir. 1988) (“A district court is required to apply the procedural law of the forum state ‘in proceedings supplementary to and in aid of judgment, and in proceedings on and in aid of execution’ unless a federal statute governs.”).

Remarkably, GRS argues that the “mandamus relief” it seeks here “is a matter of state substantive law . . . 42 Pa.C.S. § 8303.” (GRS Opposition, Doc. No. 26, at 11.) This is simply incorrect. Section 8303 provides only that a person who defies a state court mandamus order is subject to a suit for damages. See 42 Pa.C.S. § 8303. As I have discussed, the state court issues the actual mandamus order as a procedural remedy pursuant to common law.

Although the decisions GRS offers all include the word “mandamus,” they offer no support for the suggestion that a federal court may exercise supplemental jurisdiction to issue a state law mandamus. For example, in Eichenlaub v. Township of Indiana (on which GRS places particular emphasis), the challenged district court judgment included no equitable element—no mandamus

writ had issued or been denied. Indeed, before the district court's judgment, the parties had, before the district court's judgment, settled the sole claim for equitable relief: a challenge to municipal approval of two development projects. That left only a damages (*i.e.* legal) claim for review by the district and circuit courts. This is why the district court "dismissed the Eichenlaubs' *petitions* for mandamus as moot," and the Circuit reversed only as to "the Eichenlaubs' claims for *damages incidental to mandamus.*" 214 Fed. App'x 218, 221 (3d Cir. 2007) (emphasis added). Eichenlaub thus provides no basis for the instant mandamus request.

In Cheyenne Sales, Limited v. Western Union Financial Services International, the Court treated the plaintiff's mandamus request as one for the issuance of a preliminary injunction. 8 F. Supp. 2d 469, 473 (E.D. Pa. 1998). GRS has not asked me thus to transform its requested mandamus relief, however, nor has it shown that it would be entitled to the issuance of a mandatory injunction directing the Township as to how it should enforce its fire code. See Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (plaintiff seeking preliminary injunction must show that it is: (1) "likely to succeed on the merits"; (2) "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "that the balance of equities tips in [its] favor"; and (4) "that an injunction is in the public interest."); see also Bennington Foods LLC v. St. Croix Renaissance, Grp., LLP, 528 F.3d 176, 179 (3d Cir. 2008) ("[W]here the relief ordered by the preliminary injunction is mandatory and will alter the status quo, the party seeking the injunction must meet a higher standard of showing irreparable harm in the absence of an injunction."). For instance, as I have discussed, GRS offers no authority suggesting that it was entitled to be heard before the Township approved the Plan, nor has it shown that the Township misapplied its fire code. GRS thus has not shown that it "is likely to succeed on the merits" of this dispute. Further, although GRS argues that it will suffer "irreparable harm" in the absence of an injunction, it offers no

supporting evidence. To the contrary, as I have discussed, GRS does not dispute that the Township has conducted three “trial” emergency visits to the property and that emergency vehicles have twice entered the complex—all without difficulty. (Township Reply, Doc. No. 17, at 2-3.) Similarly, even though GRS says it “has no other adequate remedy,” it seeks damages in its “mandamus” Count. In these circumstances, GRS is not entitled to a mandatory injunction.

Although the other decisions GRS cites also include references to a “mandamus,” in none did a federal court, exercising supplemental jurisdiction, issue a state law mandamus prescribing how a state or local agency must interpret and enforce its own regulations. Hayes v. Pittsburgh Bd. of Public Educ., 279 Fed. App’x 108, 110 (3d Cir. 2008); Mosley v. City of Pittsburgh Public School Dist., 702 F. Supp. 2d 561, 563 (W.D. Pa. 2010); Koslick v. Berryman, 2006 WL 8448496, at *2 (M.D. Pa. 2006); Hidden Creek Stock Farms, Inc. v. Upper Frederick Township Bd. of Supervisors, 1993 WL 40056, at *2 (E.D. Pa. 1993).

In sum, the Court does not have the authority to grant the relief GRS seeks. Accordingly, for this alternate reason as well, I will dismiss GRS’s Complaint. See, e.g., In re Machne Israel, Inc., 48 F. App’x 859, 862 (3d Cir. 2002) (petitioner must show that court has authority to grant requested relief); Rogers v. Grewal, 2018 WL 2298359, at *3 (D.N.J. 2018), aff’d sub nom, 2018 WL 10808705 (3d Cir. 2018) (dismissing case where court lacked authority to grant requested relief); Nguyen v. Williams, 2016 WL 3405461, at *5 (E.D. Pa. June 21, 2016) (same).

E. Abstention

Even if the Court had subject matter jurisdiction, GRS had standing, and I had the authority to grant the relief requested, I would abstain from hearing this matter.

In urging me to “mandamus” the Township, GRS underscores that it is asking a federal court to administer state regulations against a public utility. Under the Burford abstention doctrine,

however, “a federal court should refuse to exercise its jurisdiction in a manner that would interfere with a state's efforts to regulate an area of law in which state interests predominate and in which adequate and timely state review of the regulatory scheme is available.” Chiropractic Am. v. Lavecchia, 180 F.3d 99, 104 (3d Cir. 1999); Burford v. Sun Oil Co., 319 U.S. 315 (1943). I thus should abstain if either: (1) there are “difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar”; or (2) the “exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.” Chiropractic Am., 180 F.3d at 104 (quoting New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans, 491 U.S. 350, 361 (1989)). Under the second prong, I must consider:

(1) whether the particular regulatory scheme involves a matter of substantial public concern, (2) whether it is the sort of complex, technical regulatory scheme to which the Burford abstention doctrine usually is applied, and (3) whether federal review of a party's claims would interfere with the state's efforts to establish and maintain a coherent regulatory policy.

Id. at 105 (internal citations and quotation marks omitted).

Burford typically applies when there is adequate state review in the form of an administrative or otherwise specialized process. See United Servs. Auto. Ass'n v. Muir, 792 F.2d 356, 364 (3d Cir. 1986) (“Generally, Burford abstention is justified where a complex regulatory scheme is administered by a specialized state tribunal having exclusive jurisdiction.”). That review exists here. GRS has already begun a proceeding against the appropriate entity—Sunoco—in the appropriate forum—the Public Utility Commission. Although an ALJ has ruled that the Commission is without jurisdiction to consider violations of municipal ordinances, that hardly ends the matter, especially as GRS may seek interlocutory review or appeal the ALJ’s eventual final decision. See 66 Pa.C.S. § 322(h); 52 Pa. Code § 5.301 et seq. Regardless of how the

administrative proceeding is resolved, however, the Commission certainly has jurisdiction to determine whether Sunoco's work site is *unsafe*:

Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient . . . the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.

66 Pa.C.S. § 1505.

Pennsylvania courts have thus emphasized the Commission's jurisdiction over utility safety: "Initial jurisdiction in matters concerning the relationship between public utilities and the public is in the PUC — not in the courts. It has been so held involving rates, service, rules of service, extension and expansion, [and] *hazard to public safety due to use of utility facilities*["]."
Lansdale Borough v. Philadelphia Electric Company, 170 A.2d 565 (Pa. 1961) (emphasis added); see also Borough of Midland v. Steubenville, E. Liverpool & Beaver Valley Traction Co., 150 A.300, 303 (Pa. 1930) ("In the instant case, the complaint is based on the use of facilities actually within the state, alleged to jeopardize the safety of the citizens, constituting a public nuisance. It is clearly within the power of the commission to make such order . . . as may be required to correct danger which exists[.]").

Once again, the gravamen of GRS's action is that the Township has created safety risks. For instance, in its Pre-Hearing Motion before the Commission, GRS alleges "[d]angerous conditions cause[d] by the installation of the sound walls at the property." Prehearing Memorandum at 4, Glen Riddle Station, L.P. v. Sunoco Pipeline L.P., C-2020-3023129.

In these circumstances, adequate, specialized state review is available. See also Popowsky v. Pennsylvania Pub. Util. Comm'n, 910 A.2d 38, 42 (Pa. 2006) (Commission proceeding addresses, *inter alia*, increased risk of fire due to water access problems for firefighters). That

review is bolstered by the robust procedures in place for appeals from Commission decisions. In New Orleans Public Service, Inc. v. Council of City of New Orleans, the Supreme Court emphasized that abstention had been proper in an earlier case where the “right of statutory appeal [was] ‘concentrated in one circuit court,’” thus demonstrating that the state regulatory process had a “unified nature” and that “adequate state court review of [the] administrative order [was] available.” 491 U.S. 350, 360-61 (1989) (some alterations in original) (citing Alabama Pub. Serv. Comm’n v. Southern R. Co., 341 U.S. 341 (1951)). The appellate rights Pennsylvania affords those aggrieved by the Commission further confirm that abstention is appropriate. See 66 Pa.C.S. § 332(h) (outlining procedure for appeal of ALJ decision to Commission); 52 Pa. Code § 5.301 et seq (describing procedure for interlocutory review); 42 Pa.C.S. § 763(a) (vesting Commonwealth Court with exclusive jurisdiction over appeals from the PUC); United Transp. Union v. Pennsylvania Pub. Util. Comm’n, 68 A.3d 1026, 1032 (Pa. Commw. Ct. 2013) (describing standard of review).

Moreover, the regulation of fire safety is a matter of substantial public concern. See Parow v. Kinnon, 300 F. Supp. 2d 256, 265 (D. Mass. 2004) (“[O]ne would be hard pressed to imagine a topic of greater public concern than fire safety”); United States v. Faulkner, 450 F.3d 466, 472 (9th Cir. 2006) (noting public interest in fire safety). GRS also impugns an overlapping, similarly important area of public concern: the regulation of natural gas pipelines. See Burford, 319 U.S. at 318 (creating doctrine in context of oil and gas regulations). This “complex, technical regulatory regime” is similarly appropriate for Burford abstention. Chiropractic Am., 180 F.3d at 105; see Grode v. Mut. Fire, Marine & Inland Ins. Co., 8 F.3d 953, 956 (3d Cir. 1993) (“[F]ederal courts should exercise equitable discretion and refrain from exercising authority over questions involving basic problems of state policy pertaining to the regulation of *important state natural*

resources”) (emphasis added); cf. Khal Charidim Kiryas Joel v. Vill. of Kiryas Joel, 935 F. Supp. 450, 456 (S.D.N.Y. 1996) (federal court order that plaintiff had complied with state building and fire codes would be inappropriate under Burford); Hill v. City of Suffolk, 2010 WL 11530490, at *2 (E.D. Va. Dec. 1, 2010) (applying Burford to purported violations of building codes).

Finally, the Commonwealth’s efforts to establish a consistent policy respecting fire and gas regulation would be frustrated if, at GRS’s request, I prescribed how the Township must interpret and apply its own fire code. See PPL Elec. Utilities Corp. v. City of Lancaster, 125 A.3d 837, 844 (Pa. Commw. Ct. 2015), aff’d in part, rev’d in part on other grounds, 214 A.3d 639 (Pa. 2019) (“The courts of this Commonwealth have long recognized the intent of our General Assembly that public utilities be regulated on a uniform basis by a statewide regulator and not be subject to the varied regulation of the many cities, townships, and boroughs throughout the Commonwealth.”); Chester Cty. v. Philadelphia Elec. Co., 218 A.2d 331, 333 (Pa. 1966) (“If each county were to pronounce its own regulation and control over electric wires, pipe lines and oil lines, the conveyors of power and fuel could become so twisted and knotted as to affect adversely the welfare of the entire state.”); see also Hachamovitch v. DeBuono, 159 F.3d 687, 697 (2d Cir. 1998) (emphasizing that this factor involves the “extent to which the federal claim requires the federal court to meddle in a complex state scheme”).

In these circumstances, even if the defects I have discussed were not present, I would abstain from hearing this matter.

F. Failure to State a Claim Under 12(b)(6)

I will not address the Township’s and Sunoco’s remaining contentions, persuasive though they may be. Nor will I address whether Sunoco, which conceived the Plan, erected the Walls,

and would be prejudiced by the relief GRS seeks, is an indispensable party. See Fed. R. Civ. P. 19(b).

V. CONCLUSION

GRS seeks to transform a local fire code dispute into a constitutional tort. As the Seventh Circuit remarked in upholding the dismissal of a due process claim based on a zoning code dispute, “if the plaintiffs can get us to review the merits of [a local zoning board] decision under state law, we cannot imagine what zoning dispute could not be shoehorned into federal court” Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 467 (7th Cir. 1988). I will not allow GRS to “shoehorn” a fire code dispute into this Court. I will thus grant the Township’s Motion to Dismiss and deny GRS’s “Emergency Motion for Writ of Mandamus and Peremptory Judgment.”

An appropriate Order follows.

/s/ Paul S. Diamond

March 25, 2021

Paul S. Diamond, J.

EXHIBIT B

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:21-cv-00286-PD**

GLEN RIDDLE STATION, L.P. v. MIDDLETOWN TOWNSHIP
Assigned to: HONORABLE PAUL S. DIAMOND
Cause: 42:1983 Civil Rights Act

Date Filed: 01/21/2021
Date Terminated: 03/25/2021
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
01/21/2021	1	COMPLAINT against MIDDLETOWN TOWNSHIP (Filing fee \$ 402 receipt number 0313-14858507.), filed by GLEN RIDDLE STATION, L.P.. (Attachments: # 1 Civil Cover Sheet, # 2 Designation Form, # 3 Exhibits A-F)(CORTES, SAMUEL) (Entered: 01/21/2021)
01/21/2021	2	Disclosure Statement Form pursuant to FRCP 7.1 by GLEN RIDDLE STATION, L.P.. (CORTES, SAMUEL) (Entered: 01/21/2021)
01/21/2021		DEMAND for Trial by Jury by GLEN RIDDLE STATION, L.P.. (fb) (Entered: 01/21/2021)
01/21/2021		Summons Issued as to MIDDLETOWN TOWNSHIP. E-MAILED To: COUNSEL on 1/21/21 (bw,) (Entered: 01/21/2021)
01/25/2021	3	Emergency MOTION for Writ of Mandamus <i>and Peremptory Judgment</i> filed by GLEN RIDDLE STATION, L.P..Brief. (Attachments: # 1 Proposed Order, # 2 Brief, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6)(CORTES, SAMUEL) (Entered: 01/25/2021)
01/25/2021	4	CERTIFICATE OF SERVICE by GLEN RIDDLE STATION, L.P. re 3 Emergency MOTION for Writ of Mandamus <i>and Peremptory Judgment</i> (CORTES, SAMUEL) (Entered: 01/25/2021)
01/25/2021	5	STANDING ORDER OUTLINED HEREIN.SIGNED BY HONORABLE PAUL S. DIAMOND ON 1/25/2021. 1/25/2021 ENTERED AND COPIES E-MAILED.(rt) (Entered: 01/25/2021)
01/25/2021	6	SUMMONS Returned Executed by GLEN RIDDLE STATION, L.P. re: David Cox served Summons and Complaint upon MIDDLETOWN TOWNSHIP by Personal. MIDDLETOWN TOWNSHIP served on 1/25/2021, answer due 2/16/2021. (CORTES, SAMUEL) (Entered: 01/25/2021)

01/26/2021	7	ORDER THAT PLAINTIFF SHALL ENSURE THAT SUNOCO, LP IN ADDITION TO MIDDLETOWN TOWNSHIP IS FORTHWITH SERVED WITH A COPY OF PLAINTIFF'S EMERGENCY MOTION FOR WRIT OF MANDAMUS. ON OR BEFORE 2/2/21, DEFENDANT AND ANY INTERESTED PARTY SHALL FILE A RESPONSE TO PLAINTIFF'S MOTION ADDRESSING, INTER ALIA, WHETHER THIS COURT HAS JURISDICTION TO HEAR THIS MATTER; WHETHER THE COURT HAS THE AUTHORITY TO ISSUE A WRIT OF MANDAMUS TO A LOCAL MUNICIPALITY; WHETHER SUNOCO IS AN INDISPENSIBLE PARTY TO THIS LITIGATION; WHETHER THIS COURT IS OBLIGED TO ABSTAIN FROM HEARING THIS MATTER; AND WHETHER PLAINTIFF HAS STANDING. SIGNED BY HONORABLE PAUL S. DIAMOND ON 1/25/21. 1/26/21 ENTERED AND COPIES NOT MAILED TO UNREP AND E-MAILED.(mbh,) (Entered: 01/26/2021)
01/26/2021		MAILED OUT ORDER ENTRY #7 TO UNREP ON 1/26/21. (jaa,) (Entered: 01/26/2021)
01/27/2021	8	CERTIFICATE OF SERVICE by GLEN RIDDLE STATION, L.P. re 7 Order,,, Set Motion and R&R Deadlines/Hearings,,, 3 Emergency MOTION for Writ of Mandamus <i>and Peremptory Judgment</i> (BEACH, ASHLEY) (Entered: 01/27/2021)
01/28/2021	9	NOTICE of Appearance by ASHLEY L. BEACH on behalf of GLEN RIDDLE STATION, L.P. (BEACH, ASHLEY) (Entered: 01/28/2021)
02/02/2021	10	RESPONSE in Opposition re 3 Emergency MOTION for Writ of Mandamus <i>and Peremptory Judgment</i> filed by MIDDLETOWN TOWNSHIP. (NAUGHTON-BECK, M.) (Entered: 02/02/2021)
02/02/2021	11	Disclosure Statement Form pursuant to FRCP 7.1 with Certificate of Service by SUNOCO PIPELINE L.P..(BYER, ROBERT) (Entered: 02/02/2021)
02/02/2021	12	MOTION to File Amicus Brief filed by SUNOCO PIPELINE L.P..Memorandum, Certificate of Service. (Attachments: # 1 Exhibit A, # 2 Memorandum, # 3 Proposed Order, # 4 Certificate of Service)(BYER, ROBERT) (Entered: 02/02/2021)
02/02/2021	13	Supplemental Plaintiff's Memorandum of Law in Support of its Motion for Peremptory Judgment and Emergency Issuance of Writ of Mandamus filed by GLEN RIDDLE STATION, L.P..Certificate of Service. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(CORTES, SAMUEL) Modified on 2/3/2021 (fb). (Entered: 02/02/2021)
02/03/2021	14	NOTICE of Appearance by SHANNON HAMPTON SUTHERLAND on behalf of SUNOCO PIPELINE L.P. (Attachments: # 1 Certificate of Service)(SUTHERLAND, SHANNON) (Entered: 02/03/2021)
02/03/2021	15	NOTICE of Appearance by GEORGE J. KROCULICK on behalf of SUNOCO PIPELINE L.P. (Attachments: # 1 Certificate of Service)(KROCULICK, GEORGE) (Entered: 02/03/2021)
02/03/2021	16	ORDER THAT PLAINTIFF, DEFENDANT AND SUNOCO PIPELINE L.P. MAY FILE ANY REPLY BRIEFS ON OR BEFORE 2/8/21 AT 12:00 PM. SIGNED BY HONORABLE PAUL S. DIAMOND ON 2/3/21. 2/3/21 ENTERED AND COPIES E-MAILED.(mbh,) (Entered: 02/03/2021)
02/08/2021	17	REPLY Brief re , 3 Emergency MOTION for Writ of Mandamus <i>and Peremptory Judgment</i> filed by MIDDLETOWN TOWNSHIP. (NAUGHTON-BECK, M.) Modified on 2/9/2021 (fb). (Entered: 02/08/2021)
02/08/2021	18	REPLY in Further Support of , 3 Emergency MOTION for Writ of Mandamus <i>and Peremptory Judgment</i> filed by GLEN RIDDLE STATION, L.P.. (CORTES, SAMUEL)

		Modified on 2/9/2021 (fb). (Entered: 02/08/2021)
02/08/2021	19	MOTION to File Amicus Brief filed by SUNOCO PIPELINE L.P..Memorandum and Certificate of Service. (Attachments: # 1 Memorandum, # 2 Text of Proposed Order, # 3 Certificate of Service, # 4 Exhibit A)(BYER, ROBERT) (Entered: 02/08/2021)
02/08/2021	20	ORDER THAT SUNOCO PIPELINE'S MOTIONS FOR LEAVE TO FILE AMICUS BRIEFS ARE GRANTED. THE CLERK OF COURT IS DIRECTED TO DOCKET SUNOCO PIPELINE'S AMICUS BRIEF AND AMICUS CURIAE REPLY BRIEF. SIGNED BY HONORABLE PAUL S. DIAMOND ON 2/8/21.2/8/21 ENTERED AND COPIES E-MAILED.(mbh,) (Entered: 02/08/2021)
02/08/2021	21	Memorandum of Law in Support of SUNOCO PIPELINE L.P.S Motion for Leave to File Amicus Brief (mbh,). (Main Document 21 replaced on 2/8/2021) (mbh,). (Entered: 02/08/2021)
02/08/2021	22	SUNOCO PIPELINE L.P.S Reply Brief as Amicus Curiae(mbh,) (Entered: 02/08/2021)
02/15/2021	23	MOTION to Dismiss for Lack of Jurisdiction , MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by MIDDLETOWN TOWNSHIP.Memorandum, Certificate of Service.(NAUGHTON-BECK, M.) (Entered: 02/15/2021)
02/22/2021	24	ORDER THAT ALL INTERESTED PARTIES RESPOND TO DEFENDANT'S MOTION TO DISMISS NO LATER THAN 3/1/21 AT 12:00 PM. SIGNED BY HONORABLE PAUL S. DIAMOND ON 2/22/21. 2/22/21 ENTERED AND COPIES E-MAILED.(mbh,) (Entered: 02/22/2021)
02/26/2021	25	RESPONSE in Support re 23 MOTION to Dismiss for Lack of Jurisdiction MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by SUNOCO PIPELINE L.P.. (Attachments: # 1 Certificate of Service)(BYER, ROBERT) (Entered: 02/26/2021)
03/01/2021	26	RESPONSE in Opposition re 23 MOTION to Dismiss for Lack of Jurisdiction MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by GLEN RIDDLE STATION, L.P.. (CORTES, SAMUEL) (Entered: 03/01/2021)
03/25/2021	27	MEMORANDUM, APARTMENT COMPLEX OWNER GLEN RIDDLE STATION ASKS ME TO REMEDY A PURPORTED DUE PROCESS VIOLATION BY ISSUING A STATE LAW "MANDAMUS" ORDRE PRESCRIBING MIDDLETOWN TOWNSHIP'S INTERPRETATION AND ENFORCEMENT OF ITS LOCAL FIRE CODE. I WILL DISMISS BECAUSE THE COURT LACKS BOTH JURISDICTION AND THE AUTHORITY TO ISSUE A STATE LAW MANDAMUS. AS A FURTHER ALTERNATE GROUND, I WILL DISMISS BECAUSE GRS HAS NO STANDING. FINALLY, EVEN IF THIS ACTION WERE OTHERWISE VIABLE, I WOULD ABSTAIN FROM HEARING IT.....CONCLUSION, GRS SEEKS TO TRANSFORM A LOCAL FIRE CODE DISPUTE INTO A CONSTITUTIONAL TORT. AS THE SEVENTH CIRCUIT REMARKED IN UPHOLDING THE DISMISSAL OF A DUE PROCESS CLAIM BASED ON A ZONING CODE DISPUTE, "IF THE PLAINTIFFS CAN GET US TO REVIEW THE MERITS OF (A LOCAL ZONING BOARD) DECISION UNDER STATE LAW, WE CANNOT IMAGINE WHAT ZONING DISUPTE COULD NOT BE SHOEHORNED INTO FEDERAL COURT...." CONISTON CORP. V. VILLAGE OF HOFFMAN ESTATES, 844 F. 2D 461, 467 (7TH CIR. 1988). I WILL NOT ALLOW GRS TO "SHOEHORN" A FIRE CODE DISPUTE INTO THIS COURT. I WILL THUS GRANT THE TOWNSHIOP'S MOTION TO DISMISS AND DENY GRS'S "EMERGENCY MOTION FOR WRIT OF MANDAMUS AND PEREMPTORY JUDGMENT." AN APPROPRIATE ORDER FOLLOWS.. SIGNED BY HONORABLE PAUL S. DIAMOND ON 3/25/2021. 3/25/2021 ENTERED AND COPIES E-MAILED.(rt) (Entered: 03/25/2021)

03/25/2021

[28](#)

ORDER, IT IS HEREBY ORDERED AS FOLLOWS: 1. MIDDLETOWN TOWNSHIP'S MOTION TO DISMISS (DOC. NO. [23](#)) IS GRANTED. GLEN RIDDLE STATION'S COMPLAINT (DOC. NO. [1](#)) IS DISMISSED WITH PREJUDICE. 2. GLEN RIDDLE STATION'S EMERGENCY MOTION FOR WRIT OF MANDAMUS AND PEREMPTORY JUDGMENT (DOC. NO. [3](#)) IS DENIED. 3. THE CLERK OF COURT IS DIRECTED TO CLOSE THIS CASE.SIGNED BY HONORABLE PAUL S. DIAMOND ON 3/25/2021. 3/25/2021 ENTERED AND COPIES E-MAILED.(rt)
(Entered: 03/25/2021)

PACER Service Center			
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EXHIBIT C

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

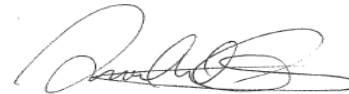
GLEN RIDDLE STATION, L.P.,	:	DOCKET NO. C-2020-3023129
Complainant,	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have, on March 9, 2021, served a true copy of Glen Riddle Station, L.P.’s Responses to Certain Sunoco Pipeline L.P.’s Interrogatories and Request for Production of Documents upon Glen Riddle Station, L.P. – Set I upon the participants and by the methods set forth below, in accordance with the requirements of 52 Pa. Code § 1.54, as indicated below:

Email

Thomas J. Sniscak, Esquire
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Samuel W. Cortes, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RESPONSES OF GLEN RIDDLE STATION, L.P., TO CERTAIN SUNOCO PIPELINE
L.P.’S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO GLEN RIDDLE STATION L.P. – SET 1**

Glen Riddle Station, L.P. (“GRS”) provides the responses set forth below subject to the general and specific objections set forth in its Objections as modified in its Response to the Motion to Compel filed by Sunoco Pipeline L.P. (“Sunoco”). GRS reserves the right to supplement the responses below.

INTERROGATORIES – SET I

1. Identify all communications between Glen Riddle and Glenn Riddle Residents regarding the Pipeline Project, Sunoco’s work on the Property, or Sunoco.

Answer: GRS has provided its communications with residents concerning the safety issues set forth in the Complaint to counsel for production. In addition to what has been provided, GRS posts communications to its residents through its website located at <https://www.glenriddleapartments.com/pipelineupdate>

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

2. Identify all communications between Glen Riddle Residents and Glen Riddle regarding the Pipeline Project, Sunoco's work on the Property, or Sunoco.

Answer: GRS has provided its communications with residents concerning Pipeline Project, Sunoco's work on the Property, or Sunoco to counsel for production. In addition to what has been provided, GRS posts communications to its residents through its website located at <https://www.glenriddleapartments.com/pipelineupdate>

Dated: March 9, 2021

Answer provided by: Stephen Jacobucci

3. Identify all communications between Glen Riddle and the Township related to the Property.

Answer: GRS has provided its communications with the Township concerning Sunoco to counsel for production.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

4. Reference the “Letter to the Editor: Why is Middletown siding with the pipeline?” published in the DELCO Times on February 4, 20201.

a. When was this Letter to the Editor submitted to the DELCO Times?

Answer: January 12, 2021.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

b. Identify all documents supporting or relating to the Letter to the Editor, including but not limited to copies or logs of all communications in support of the noise allegations in the Letter.

Answer: GRS has provided the responsive documentation within GRS’s possession to its counsel.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

6. Identify how many parking spots were present on the Property prior to SPLP commencing work at the Property.

Answer: To the best of my knowledge, there were between 95-105 parking spaces on the western side of the Property. The western side services three buildings. There were between 120-131 parking spaces on the eastern side of the Property. The eastern side services two buildings.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

7. Identify the average size of each parking space on the Property.

Answer: The parking spaces measured inside line edge to inside line edge are approximately 9-10 ft.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

8. Identify how many cars are listed on current leases with the Property or otherwise registered with Glen Riddle.

Answer: GRS does not track this information.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

13. Identify the total number of apartments at the Glen Riddle Apartments.

Answer: There are 124 apartments.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

15. Has any tenant relocated from one Glen Riddle Apartment building to another Glen Riddle Apartment building due to the Pipeline Project?

Answer: No.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

17. Identify how many tenants have children 18 years of age or younger.

Answer: GRS cannot track this information. School buses stop at the Property.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

REQUEST FOR PRODUCTION OF DOCUMENTS – SET I

1. All documents and/or communications identified in, used to respond to, referenced by, or related to Glen Riddle's answers to the Interrogatories.

RESPONSE: Responsive documents in GRS's possession are being produced as agreed in GRS's Response to Sunoco's Motion to Compel.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

2. All documents and/or communications identified in, referenced by, or related to Glen Riddle's Complaint.

RESPONSE: Responsive documents in GRS's possession are being produced.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

3. All documents, communications, and information relating to the safety of Sunoco's construction at the Property.

RESPONSE: Responsive documents in GRS's possession are being produced.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

4. All documents, communications, and information submitted by Glen Riddle to the Township related to Sunoco's work at the Property.

RESPONSE: Responsive documents in GRS's possession are being produced as agreed in GRS's Response to Sunoco's Motion to Compel.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

5. All documents, communications, and information submitted by Glen Riddle to the Pennsylvania Department of Health related to Sunoco's work at the Property.

RESPONSE: GRS does not have any responsive documents in its possession.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

6. All documents, communications, and information submitted by Glen Riddle to the Pennsylvania State Police related to Sunoco's work at the Property.

RESPONSE: GRS does not have any responsive documents in its possession.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

7. All documents, communications, and information submitted by Glen Riddle to the Pennsylvania Attorney General related to Sunoco's work at the Property.

RESPONSE: GRS does not have any responsive documents in its possession.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

8. All documents, communications and information by and between Glen Riddle and Rosetree Media School District related to the Pipeline Project.

RESPONSE: Responsive documents in GRS's possession are being produced.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

9. All documents, communications, and information submitted by Glen Riddle to any other state or federal agency related to Sunoco's work at the Property.

RESPONSE: Responsive documents in GRS's possession are being produced.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

10. All communications by and between Glenn Riddle and the Township or any representatives of the Township relating to the Property or payments made to the Township.

RESPONSE: Responsive documents are being produced as agreed in GRS's Response to Sunoco's Motion to Compel.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

11. All submissions made through the portal at the following link on Glen Riddle Station's website: <https://www.glenriddleapartments.com/pipeline-report>.

RESPONSE: Responsive documents are being produced as agreed in GRS's Response to Sunoco's Motion to Compel.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

13. All communications by and between Glen Riddle and Delaware County, including the District Attorney's Office.

RESPONSE: Responsive documents in GRS's possession are being produced.

Dated: March 9, 2021

Answer provided by: Stephen Iacobucci

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


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

VERIFICATION

I, Stephen Iacobucci, on behalf of Glen Riddle Station, L.P., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

SIGNED VERIFICATION TO BE PROVIDED ON MARCH 9, 2021

Dated: March 9, 2021



(NAME)