**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Sunoco Pipeline, L.P. :

for a finding that a building to shelter the :

Boot pump station in West Goshen Township, : P-2014-2411966

Chester County, Pennsylvania is reasonably :

necessary for the convenience or welfare :

of the public :

**ORDER STRIKING ANSWER AND NEW MATTER**

**OF WEST GOSHEN TOWNSHIP**

HISTORY OF THE PROCEEDING

On March 21, 2014, Sunoco Pipeline, L.P. (Sunoco), filed a petition with the Pennsylvania Public Utility Commission (Commission), pursuant to 52 Pa.Code § 5.41 and 53 P.S. § 10619. The petition contained 31 separate locations in its caption. The Commission’s Secretary treated the petition as 31 separate petitions and assigned 31 docket numbers to the same petition.

These 31 petitions requested that the Commission find that the buildings to shelter 18 pump stations and 17 valve control stations along Sunoco’s proposed Mariner East pipeline were reasonably necessary for the convenience or welfare of the public and therefore exempt from any local zoning ordinance. The petitions indicated that the Mariner East pipeline involved the construction of new pipeline facilities and use of existing pipeline facilities to transport ethane and propane. The Mariner East pipeline would originate in Houston, Pennsylvania and terminate in Claymont, Delaware.

The petitions alleged that the purpose of the Mariner East pipeline was to provide additional transportation infrastructure to transport Marcellus Shale resources. According to the petitions, there is a need for additional infrastructure to transport natural gas and associated natural gas liquids.

As part of the construction of the Mariner East pipeline, Sunoco will have to construct pump stations to facilitate the transportation of ethane and propane. In addition, Sunoco would have to construct valve control stations to ensure that the ethane and propane are transported safely. These pump stations and valve control stations will be enclosed in metal buildings. The buildings will protect the electrical, control and communication devices for the pump and valve equipment from the weather. The buildings will lessen the amount of noise from the operation of the pump and valve control equipment that reaches the area surrounding each station.

Notice of Sunoco’s 31 petitions was published in the April 5, 2014 Pennsylvania Bulletin at 44 Pa.B. 2145, specifying a deadline of April 21, 2014, for filing formal protests, comments or petitions to intervene in the proceeding.

On April 21, 2014, the West Goshen Township (WGT), filed a petition to intervene in the proceeding at P-2014-2411966.

On May 8, 2014, Sunoco filed 31 separate amended petitions requesting that the Commission find that the buildings to shelter 18 pump stations and 17 valve control stations along Sunoco’s proposed Mariner East pipeline were reasonably necessary for the convenience or welfare of the public and therefore exempt from any local zoning ordinance. The amended petitions alleged that the Mariner East pipeline would originate in Houston, Pennsylvania and deliver propane to the Marcus Hook Industrial Complex and Sunoco’s Twin Oaks facilities, both located in Delaware County.

The amended petitions alleged that Sunoco currently holds a certificate of public convenience to provide petroleum products transportation services for the segment of the Mariner East pipeline located west of Mechanicsburg, Cumberland County. A portion of the service on this segment had been discontinued and abandoned pursuant to Commission orders entered August 29, 2013 and October 17, 2013 at A-2013-2371789. According to the amended petitions, Sunoco would be seeking to resume intrastate transportation service along this segment so that it could ship propane by pipeline to the Twin Oaks facilities to allow further distribution to third party storage facilities or distribution terminals.

In addition, the certificate of public convenience to provide petroleum products transportation services for the segment of the Mariner East pipeline located east of Mechanicsburg, Cumberland County had been suspended, pursuant to Commission orders entered August 29, 2013 and October 17, 2013 at P-2013-2371775. The amended petitions asserted that Sunoco would resume service to meet demand for the 2014-2015 winter season and would file a tariff supplement to implement service between Mechanicsburg and its Twin Oaks facilities. This would allow Sunoco to transport approximately 5,000 barrels per day of propane by pipeline from Mechanicsburg to Twin Oaks.

Sunoco would have to construct pump stations to facilitate the transportation of ethane and propane. In addition, Sunoco would have to construct valve control stations to ensure that the ethane and propane were transported safely. These pump stations and valve control stations would be enclosed in metal buildings. The buildings would protect the electrical, control and communication devices for the pump and valve equipment from the weather. The buildings would lessen the amount of noise from the operation of the pump and valve control equipment that would reach the area surrounding each station.

Notice of Sunoco’s 31 amended petitions was published in the May 24, 2014 Pennsylvania Bulletin at 44 Pa.B. 3204-3215, specifying a deadline of June 9, 2014 for filing formal protests, comments or petitions to intervene in the proceeding.

On July 30, 2014, we issued an initial decision sustaining the preliminary objections of various parties and dismissing Sunoco’s petitions because we concluded that Sunoco was not a public utility within the meaning of 53 P.S. § 10619 and therefore that the Commission lacked jurisdiction over Sunoco’s petitions. Sunoco filed exceptions to our initial decision.

By order dated October 29, 2014, the Commission granted Sunoco’s exceptions, reversed our initial decision, which ruled that the Commission lacked jurisdiction over Sunoco’s amended petitions, denied other outstanding preliminary objections and remanded the matter to us for further proceedings.

On November 17, 2014, WGT filed an answer with new matter to Sunoco’s amended petition. The answer denies that Sunoco is a public utility and asserts that Sunoco does not hold a certificate of public convenience to transport petroleum products from Mechanicsburg to Twin Oaks. The answer further denies that the proposed pumping station to be located in WGT is a necessary part of Sunoco’s proposed Mariner East project or is necessary for the convenience and welfare of the public.

The new matter asserts that Sunoco never applied for or received a certificate of public convenience to transport petroleum products in facilities located east of Mechanicsburg, including its facilities located in WGT. In addition, the new matter contends that Sunoco never applied for or received a certificate of public convenience to transport petroleum products to the refineries at Marcus Hook or Twin Oaks. The new matter contends that the service proposed by Sunoco and it facilities to provide that service are not public utility service or facilities and that the Commission therefore lacks the authority to authorize Sunoco to undertake construction in WGT that does not conform to WGT’s zoning and land use ordinances.

The new matter further asserts that Sunoco’s pipeline located in WGT is over 80 years old and that portions of the pipeline have been replaced due to corrosion and other factors jeopardizing the integrity of the pipeline. Due to the need to increase pressure in the pipeline to transport ethane and propane, the age of the pipeline and the proximity of high density residential areas to the pipeline, the new matter alleges that any release of ethane or propane could have a major impact on WGT. The answer with new matter requests that the Commission deny Sunoco’s amended petition.

By order dated December 1, 2014, we granted WGT’s petition in the proceeding at P-2014-2411966 to intervene subject to the limitations set forth in 52 Pa.Code § 5.75. In granting WGT’s petition to intervene, we noted that the Commission, in its October 29, 2014 order, ruled that Sunoco’s compliance with safety and environmental requirements in the siting and construction of the Mariner East project and the pump and valve control stations were outside the scope of the petition at P-2014-2411966. We therefore, limited the intervention of WGT in the proceeding at P-2014-2411966 to issues arising from the shelter building.

On December 8, 2014, Sunoco filed a reply to WGT’s new matter and preliminary objections to WGT’s answer with new matter. The reply to new matter states that the answer with new matter is untimely filed and should be stricken. The reply also contends that the new matter raises impertinent matter that is outside the scope of the proceeding.

Sunoco’s reply asserts that Sunoco is a public utility and holds certificates of public convenience to transport petroleum products to refineries at Marcus Hook or Twin Oaks. The reply points out that the Commission in its October 29, 2014 order rejected the contention that Sunoco’s proposed service was not public utility service. The reply alleges that Sunoco maintains, inspects, evaluates and assesses that condition of its pipeline to ensure that it is safe. The reply requests that the Commission grant Sunoco’s amended petition.

Sunoco’s preliminary objections contend that WGT’s answer with new matter is untimely filed and should be stricken. The preliminary objections state that because WGT’s answer with new matter is untimely, WGT should be deemed to be in default and the facts stated in Sunoco’s amended petition should be deemed admitted.

The preliminary objections also argue that WGT’s answer with new matter contains irrelevant and therefore impertinent material which should be stricken. In addition, the preliminary objections contend that the allegations in the answer with new matter alleging unsafe conditions are vague, insufficiently specific and should be stricken. The preliminary objections request inter alia that the Commission strike WGT’s answer with new matter.

On December 15, 2014, WGT, pursuant to 52 Pa.Code § 1.15, requested by letter that we extend the time for it to file an answer to Sunoco’s preliminary objections. WGT’s letter requested that we extend the deadline for it to file an answer to Sunoco’s preliminary objections to December 29, 2014. According to its letter, counsel for WGT contacted counsel for Sunoco and counsel for Sunoco consented to WGT’s request to extend the deadline for WGT to file an answer to Sunoco’s preliminary objections until December 29, 2014. By order dated December 17, 2014, we granted WGT’s request.

On December 29, 2014, WGT filed an answer to Sunoco’s preliminary objections. The answer argued that its answer with new matter to Sunoco’s amended petition was timely filed. WGT reasoned that its answer with new matter was an amendment to its petition to intervene in this proceeding, filed pursuant to 52 Pa. Code § 5.91.

In addition, WGT’s answer contends that its answer with new matter contains relevant material and that is specific and legally sufficient. WGT’s answer requests that the Commission deny Sunoco’s preliminary objections.

The preliminary objections are ready for decision. For the reasons set forth below, we will grant the preliminary objections.

DISCUSSION

The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a) as follows:

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

Here, the preliminary objections assert inclusion of scandalous or impertinent matter, pursuant to 52 Pa.Code § 5.101(a)(2), and lack of sufficient specificity, pursuant to 52 Pa.Code § 5.101(a)(3). The preliminary objections also allege that WGT’s answer with new matter was untimely filed and should be stricken. We will first address the timeliness of WGT’s answer with new matter.

Initially, 52 Pa. Code § 5.101(a) does not list untimely filing as grounds for preliminary objections. Since the grounds for preliminary objections are limited to those set forth in 52 Pa.Code § 5.101(a), Sunoco’s motion should have been designated as a motion to strike, filed pursuant to 52 Pa.Code § 103, which governs motions for relief.

The regulation at 52 Pa.Code § 1.2(a) provides that the presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Since Sunoco served its preliminary objections on WGT, WGT had notice of the motion to strike.

We will ignore the procedural defects of Sunoco’s motion and treat Sunoco’s preliminary objection alleging that WGT’s answer with new matter was untimely as a motion to strike, filed pursuant to 52 Pa.Code § 103, in order to secure a just, speedy and inexpensive determination of this proceeding, pursuant to 52 Pa.Code § 1.2(a). This will not adversely affect WGT’s substantive rights, pursuant to 52 Pa.Code § 1.2(c), since it had notice of Sunoco’s motion and an opportunity to respond.

Having decided to treat Sunoco’s preliminary objection alleging that WGT’s answer with new matter as a motion to strike, pursuant to 52 Pa.Code § 103, we will now address the merits of that motion. It is clear that WGT’s answer with new matter filed on November 17, 2014 in response to Sunoco’s amended petition, filed on May 8, 2014 was filed well beyond the 20 day period for filing an answer to an amended pleading set forth at 52 Pa. Code § 5.65. Even assuming that publication of Sunoco’s amended petition in the May 24, 2014 Pennsylvania Bulletin at 44 Pa.B. 3204-3215, established a different time for filing an answer to Sunoco’s amended petition, an answer to the amended petition was still due no later than June 9, 2014. WGT’s filed its answer with new matter almost five months after the June 9, 2014 deadline.

WGT does not offer any excuse or explanation for the late filing of its answer with new matter. While the Commission may exercise its discretion and accept late filed pleadings, the party requesting that the Commission accept a late filed pleading has the burden to establish good cause for the late filed pleading. Application of Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish or Supply Water Service to the Public in a portion of Franklin Township, Chester County, Docket No. A-210111F0003, (Order entered June 24, 2004); Joint Application of Pennsylvania-American Water Company and Thames Water Aqua Holdings GmbH, Docket Nos. A‑212285F0096, A-230073F0004, (Order entered May 9, 2002); Re: S.T.S. Motor Freight, Inc., 54 Pa. P.U.C. 343 (1980); Re: Milton Transportation, Inc., 56 Pa. P.U.C. 623 (1982); Application of Douglasville Water Co., Docket No. A-210760, (Order entered August 24, 1990). Since WGT has not established good cause for its late filing, the Commission should not exercise its discretion to accept its late filed answer with new matter.

Rather than allege good cause for its late filing, WGT argues that its answer with new matter is an amendment to its petition to intervene in this proceeding, filed pursuant to 52 Pa. Code § 5.91. This is factually inaccurate since WGT’s pleading does not state that it is an amendment to its petition to intervene. Rather, the pleading specifically states that it is an answer filed pursuant to 52 Pa.Code § 5.61.

As noted above, the regulation at 52 Pa.Code § 1.2(a) provides that the presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. Pursuant to the provision at 52 Pa. Code § 1.2(a), we could treat WGT’s answer with new matter as an amendment to its petition to intervene, if it did not affect Sunoco’s substantive rights.

As noted above, WGT’s answer with new matter denies that Sunoco is a public utility and asserts that Sunoco does not hold a certificate of public convenience for its proposed service. The answer with new matter further raises issues regarding the siting and construction of Sunoco’s pipeline and pump station. By raising these issues, WGT’s answer with new matter affects Sunoco’s substantive rights and attempts to expand the scope of the Commission’s October 29, 2014 remand order. We decline to do this because doing so would affect Sunoco’s substantive rights and would be contrary to the Commission’s October 29, 2014 order

In its October 29, 2014 order, the Commission held that we were to determine on remand whether Sunoco had met its burden of proof to show that it was a public utility corporation and that its proposed buildings were necessary for the convenience or welfare of the public and exempt from local zoning ordinances, pursuant to 53 P.S. § 10619. In determining whether Sunoco met its burden of proof to show that it was a public utility corporation, the Commission directed that we decide whether the intervenors had presented evidence to rebut the presumption that Sunoco was a public utility and hence a public utility corporation and whether Sunoco’s proposed service was included within its existing public utility authority.

In determining whether Sunoco met its burden of proof to show that its proposed buildings were necessary for the convenience or welfare of the public and exempt from local zoning ordinances, the Commission directed that we should not address whether it was appropriate to place the valve control and pump stations in certain locations because these issues were outside the scope of the proceedings. Rather, we were simply to determine whether Sunoco’s proposed buildings were reasonably necessary for the convenience or welfare of the public.

WGT’s answer with new matter is contrary to the Commission’s October 29, 2014 order and impermissibly attempts to expand the scope of the Commission’s remand order and the scope of this proceeding. Treating WGT’s answer with new matter as an amended petition to intervene would adversely affect Sunoco’s substantive rights and contravene the Commission’s October 29, 2014 order.

Since Sunoco’s substantive rights would be adversely affected and the Commission’s October 29, 2014 order contravened, we cannot disregard WGT’s error or defect of procedure and treat its answer with new matter as an amendment to its petition to intervene. We will strike WGT’s answer with new matter as untimely. Since we are striking WGT’s answer with new matter as untimely, it is unnecessary for us to discuss Sunoco’s remaining preliminary objections.

While we will strike WGT’s answer with new matter as untimely, we will not deem WGT to be in default and deem the facts stated in Sunoco’s amended petition as admitted as Sunoco advocates. A party cannot be deemed to be in default for failing to file an answer to a petition. A party can only be deemed to be in default for failing to file an answer to a complaint, pursuant to 52 Pa.Code § 5.61(c). Sunoco’s request that WGT be deemed in default is therefore denied.

WGT remains an intervenor in this proceeding. As noted above, we granted WGT’s petition to intervene, subject to the limitations set forth in 52 Pa.Code § 5.75 and subject to the limitations set forth in the Commission’s October 29, 2014 order. Since we granted WGT’s petition to intervene, its attempt to answer Sunoco’s amended petition was unnecessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Sunoco Pipeline, L.P. to strike the answer with new matter of West Goshen Township is granted.

2. That the answer with new matter of West Goshen Township is stricken as late-filed.

3. That West Goshen Township remains an Intervenor in Docket No. P‑2014-2411966.

Dated: January 9, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

David A. Salapa

Administrative Law Judge

Elizabeth H. Barnes

Administrative Law Judge

**P-2014-2411966 Petition of Sunoco Pipeline LP**

**C-2014-2451943 Concerned Citizens of West Goshen Township v Sunoco Pipeline LP**

(Per ALJ 12/18/14)

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