**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township :

:

v. : C-2017-2589346

:

Sunoco Pipeline, L.P. :

**ORDER DENYING MOTION TO MODIFY PROCEDURAL SCHEDULE**

Procedural History

On July 6, 2017, at a prehearing conference, oral argument was heard regarding Respondent Sunoco Pipeline, L.P.’s (Sunoco) Motion for Judgment on the Pleadings and Motion to Stay Discovery. Additionally, the parties’ respective proposed procedural schedules, which were over ten months apart, were discussed. West Goshen Township (West Goshen or Township) requested that its direct testimony be due on August 15, 2018 and that a hearing be held on December 11, 2018. West Goshen indicated that it would be filing a petition for interim emergency order to preclude construction in West Goshen Township because clearing for construction had begun. N.T. 5-6, 30. Sunoco indicated it would not stay construction pending a decision regarding an Interim Emergency order and it proposed the Township’s direct testimony be due November 6, 2017 and that hearings be held on January 29 – 30, 2018. N.T. 30. Sunoco requested no testimony due dates occur between December 15, 2017 and January 15, 2018 due to holiday schedules. N.T. 26-28.

On July 18, 2017, a hearing was held regarding West Goshen’s Petition for Interim Emergency Order. N.T. 34 – 254. The Petition for Interim Emergency Order was granted and a Material Question was certified to the Commission on July 24, 2017. Also on July 24, 2017, the Motion for Judgment on the Pleadings and Motion to Stay Discovery were denied and the following procedural schedule was ordered.

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| Direct Testimony of West Goshen Twp. | February 1, 2018 |
| Rebuttal Testimony of Sunoco Pipeline L.P. | March 1, 2018 |
| Surrebuttal Testimony of West Goshen Twp. | April 2, 2018 |
| Oral rejoinder outlines | April 19, 2018 |
| Hearings | April 25 & 26, 2018 |
| Main Briefs | May 28, 2018 |
| Reply Briefs | June 18, 2018 |

On October 19, 2017, Sunoco filed a Motion to Modify the Procedural Schedule (Motion to Modify) at Docket No. C-2017-2589346. The Motion to Modify requested an expedited briefing schedule requiring West Goshen to file its response within ten days of service.

On October 26, 2017, the Commission entered an Opinion and Order granting West Goshen’s Petition for Interim Emergency Relief and enjoining Sunoco from horizontal directional drilling (HDD) and other construction activities involving Valve 344 and appurtenant facilities on the Janiec 2 Tract in West Goshen Township until the entry of a final Commission Order ending the instant formal complaint proceeding. The Commission further denied Sunoco’s request that West Goshen Township be directed to post a bond under 52 Pa. Code §3.8. The Commission referred this matter back to the Office of Administrative Law Judge for further proceedings.

By Order entered October 31, 2017, the normal twenty-day period for a response to motions was shortened by five days to November 3, 2017. On November 3, 2017, West Goshen filed an Answer. The Motion to Modify is ripe for a decision.

Discussion

Sunoco’s Position

Sunoco argues the above-procedural schedule could significantly delay the completion of the Mariner East 2 Pipeline in West Goshen Township. Sunoco contends it has resumed horizontal directional drilling (HDD) at its remaining drilling locations in the Commonwealth and the entire pipeline, except for West Goshen Township’s portion, will be complete and ready to deliver product by the fourth quarter of 2017 or early 2018. The HDD site in West Goshen Township is the only location where drilling will not resume for the foreseeable future, and will soon be the only segment of the pipeline that remains unfinished.

Regarding outstanding discovery requests, Sunoco “anticipates that it will complete the document production relating to the engineering constraints by November 8, 2017. At that point, the Township should have an expert review the material and opine whether the engineering constraints cited by Sunoco are real or imaginary.” Motion at 10. Sunoco requests the Commission require Township to make an initial showing that the engineering concerns cited by Sunoco for not locating the Valve on the SPLP Use Area are illusory and misplaced. Motion at 10. Sunoco requests the procedural schedule be shortened by three months such that hearings are held on January 22 and 23, 2018 instead of April 25 & 26, 2018. In support of its position that it is resuming HDD in this Commonwealth, Sunoco attached a Corrected Stipulated Order from the Environmental Hearing Board dated August 10, 2017, at Docket No. 2017-009-L to its Motion. Motion at Exhibit B.

West Goshen’s Position

West Goshen responds that its witnesses’ direct testimony is due on February 1, 2018, and the Township has been relying upon the current schedule, which has been in place for three months, since July 24, 2017. The Township opposes a dramatic change to the schedule, which would require it to produce an expert report analyzing complex engineering issues by November 28, 2017, in less than a month, when Sunoco has not yet provided all engineering documents required for the evaluation. Township contends it will be prejudiced if the procedural schedule were to be changed at this late date. Specifically, to require Township to produce expert testimony within 20 days of November 8th, the date Sunoco claims it will produce responses to discovery requests, is unfair to the Township.

Township also argues Sunoco should not be permitted to create a new threshold legal burden for the Township to meet. Township contends that Sunoco is asserting false facts to support its position that it is engaged in HDD drilling everywhere else in the Commonwealth except for West Goshen Township, and that only the current procedural schedule would delay total completion of the Mariner 2 project. West Goshen objects to any bifurcation of the proceedings and contends that delays in construction are within Sunoco’s control and self-imposed as it refuses to abide by the terms of the parties’ Settlement Agreement.

Disposition

The Commission’s regulations grant the presiding officer “all necessary authority to control the receipt of evidence.” 52 Pa.Code § 5.403(a). Written testimony is encouraged. 52 Pa.Code § 5.412(a). The Commission’s regulations also allow Presiding Officers the authority to “regulate the course of the proceeding.” 52 Pa.Code § 5.483(a). Liberal construction is allowed to “secure the just, speedy and inexpensive determination of every action or proceeding” and the “presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” 52 Pa.Code § 1.2(a); *see also*, 52 Pa.Code § 1.2(c) (“presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.”).

I am unpersuaded to expedite the hearing date of April 25, 2017, which is approximately 85 days longer than the hearing date originally proposed by Sunoco in its prehearing conference memorandum and 229 days shorter than the date proposed by the Township. The current litigation schedule is a reasonable compromise given the complexity and subject matter of the proceeding. As of November 3, 2018, Sunoco had not yet provided complete responses to Interrogatories 6, 10, 13, 14, 19, 20 and 21. Sunoco is compelled to provide these responses on or about November 22, 2018. *Order Granting in Part and Denying in Part Motion to Compel Responses to West Goshen Township’s Discovery Requests,* November 1, 2017. Even if Sunoco were to provide full and complete responses by November 22, 2017, it would be unfair to require Township to serve its expert(s)’ report(s) by November 28, 2017 or December 8, 2017, over a Thanksgiving-holiday time-period. Expediting the due date for a report and direct testimony by three months when West Goshen has relied on the current schedule may negatively affect West Goshen’s substantive rights. It is not clear if Sunoco is requesting a bifurcation of proceeding; however, Sunoco requests the Township be required to first “produce” a report regarding the feasibility of siting the valve on the SPLP Use Area by November 28, 2017, then be required to serve direct written testimony by December 8, 2017. It is unclear whether Sunoco means “file” or just “serve” by the word “produce.” This production of an “expert report regarding the feasibility of siting valve on SPLP Use Area” is a newly proposed preliminary deadline in the procedural schedule introduced three months after the initial litigation schedule was entered. Sunoco could have made the request sooner, but did not. An earlier request would have been more reasonable.

I am not persuaded to bifurcate the proceeding requiring one issue be determined before all other issues are considered or to shorten the time-frame because of Sunoco’s assertion that it has resumed HDD at its remaining drilling locations in the Commonwealth and the entire pipeline, except for the West Goshen portion, will be complete and ready to deliver product by the fourth quarter of 2017 or early 2018. Sunoco has not yet completed the installation of the Mariner East 2 pipeline in all other areas of the Commonwealth and its assertion that West Goshen Township’s segment will soon be the only segment of the pipeline that remains unfinished assumes facts not currently in evidence. The Corrected Stipulated Order contains many terms and conditions including re-evaluations and reports required prior to resuming HDD. Motion at Exhibit B. The Corrected Stipulated Order does not direct unconditional HDD activities resume at all 55 sites, and I am not persuaded by it to find that but for the procedural schedule in the instant case, the entire Mariner East 2 project would be completed by the first quarter of 2018.

**THEREFORE,**

**IT IS ORDERED,**

1. That the Sunoco Pipeline L.P.’s Motion to Modify Procedural Schedule at Docket No. C-2017-2589346 is denied.

Date: November 14, 2017

Elizabeth Barnes

Administrative Law Judge

**C-2017-2589346 - WEST GOSHEN TOWNSHIP v. SUNOCO PIPELINE L.P.**

***(Revised 11/01/2017)***

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