**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 :

Concerned Citizens of West Goshen Township :

 :

 v. : C-2014-2451943

 :

Sunoco Pipeline, L.P. :

**ORDER DENYING MOTION TO CONSOLIDATE PROCEEDINGS**

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 Concerned Citizens of West Goshen Township (CCWGT), 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, 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.

 By Order dated December 1, 2014, we granted CCWGT’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 CCWGT’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 CCWGT in the proceeding at P-2014-2411966 to issues arising from the shelter buildings.

 On November 7, 2014, CCWGT filed a complaint with the Commission against Sunoco. The complaint alleges that Sunoco’s proposed construction and operation of a pump station near a residential neighborhood where members of CCWGT reside in West Goshen Township (WGT) is unsafe and unreasonable and in violation of the Public Utility Code.

The complaint argues that it is unreasonable and unsafe for Sunoco to install the pump station without consulting with local land use officials, residents and emergency responders. According to the complaint, Sunoco has failed to consult with local officials concerning the location of the pump station.

CCWGT requests that the Commission issue an Order prohibiting Sunoco from constructing the proposed pump station in the residential neighborhood where CCWGT members reside. In addition, the CCWGT requests that the Commission inspect Sunoco’s facilities to ensure that they are safe. Finally, CCWGT requests that the Commission inspect Sunoco’s plans for the proposed pump station.

On November 10, 2014 CCWGT filed a motion to consolidate its complaint at C‑2014-2451943 with Sunoco’s petition at P-2014-2411966, pursuant to 52 Pa.Code § 5.81(a). The motion alleges that the two proceedings involve the same facilities proposed to be located on the same property in WGT. The motion contends that it would avoid unnecessary costs and delay to hear the two proceedings together. The motion argues that the Commission should not authorize the construction of a building to house facilities unless it first determines that the facilities are safe. The motion requests that the Commission enter an Order consolidating the two proceedings.

On December 1, 2014, Sunoco filed an answer opposing CCWGT’s motion to consolidate. The answer points out that the Commission’s October 29, 2014 Order determined that issues similar to those raised by CCWGT’s complaint are outside the scope of Sunoco’s petition at P-2014-2411966. The answer asserts that CCWGT’s complaint and Sunoco’s petition do not have common issues of law and fact. According to the answer, Sunoco’s petition only requires the Commission to determine whether the site of its proposed building is reasonable, not whether the construction and operation of the pump station satisfies any safety requirements. The answer requests that the Commission deny CCWGT’s request to consolidate the proceedings.

On December 10, 2014, Sunoco filed preliminary objections to CCWGT’s complaint. Sunoco’s preliminary objections allege that CCWGT’s complaint is insufficiently specific, pursuant to 52 Pa. Code § 5.101(a)(3) and legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4). Since Sunoco has filed a preliminary objection alleging insufficient specificity, pursuant to 52 Pa. Code § 5.101(a)(3), it is not required to file an answer to CCWGT’s complaint until further direction of the presiding officer or Commission, pursuant to 52 Pa. Code § 5.101(e)(1).

CCWGT’s motion to consolidate is ready for decision. For the reasons set forth below, we will deny the motion.

The Commission’s regulations pertaining to consolidation appear at 52 Pa. Code § 5.81, and state in relevant part:

**§ 5.81. Consolidation**.

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

Whether to consolidate particular cases is left to the sound discretion of the Commission or the presiding officer.

The Commission or presiding officer have consolidated cases for adjudication; Re: Middletown Taxi Company, 50 Pa. PUC 263 (1976), for hearing; City of York v. York Telephone and Telegraph Co., 43 Pa. PUC 240 (1967), and for briefing; Clepper Farms, Inc. v. Grantham Water Co., 41 Pa. PUC 749 (1965). The Commission or presiding officer have refused to consolidate cases for any purpose. Dopp v. Williamsburg Borough Dept. of Water and Sewer, 59 Pa. PUC 25 (1984).

In deciding whether to consolidate certain cases, the Commission or presiding officer must first determine that the proceedings involve a common question of law or fact. In such cases as Application of Philadelphia Electric Co., 43 Pa. PUC 781 (1968), Pa. Pub. Util. Comm’n v. Bell Telephone Co. of Pennsylvania, 46 Pa. PUC 568 (1973) and Pa. Pub. Util. Comm’n v. Butler Twp. Water Co., 52 Pa. PUC 442 (1978), as well as those cited above, the Commission has established that the Commission or presiding officer should evaluate considerations in addition to the presence of common questions of law or fact in ruling on a motion to consolidate. These other considerations include:

1. Will the presence of additional issues cloud a determination of the common issues?

2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?

3. Do issues in one proceeding go to the heart of an issue in the other proceeding?

4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?

5. Will different statutory and legal issues be involved?

6. Does the party with the burden of proof differ in the proceedings?

7. Will consolidation unduly delay the resolution of one the proceedings?

8. Will supporting data in both proceedings be repetitive?

No single consideration or group of considerations or the presence of a common question of law or fact is dispositive in determining whether to consolidate proceedings. Rather, the Commission or presiding officer must evaluate all of these considerations and balance those favoring versus those disfavoring consolidating the proceedings.

After reviewing these considerations, we conclude that consolidating the two proceedings here is not appropriate. Initially, there are not common questions of law and fact. While CCWGT is correct that its complaint and Sunoco’s petition involve the same location, the questions of law and fact are completely dissimilar.

Sunoco’s petition requires that it demonstrate that it is a public utility corporation and that its proposed building is necessary for the convenience or welfare of the public and exempt from local zoning ordinances, pursuant to 53 P.S. § 10619. Sunoco must also address the impact of its proposed building upon local comprehensive plans and zoning ordinances, pursuant to the Commission policy statement at 52 Pa.Code § 69.1101. CCWGT’s complaint requires that it demonstrate the proposed pump station is an unsafe or unreasonable public utility facility in violation of 66 Pa.C.S. § 1501 and that the Commission should issue an Order pursuant to 66 Pa.C.S. § 1505 directing Sunoco to alter or relocate the proposed pump station.

As Sunoco points out and the Commission’s October 29, 2014 emphasizes, the scope of its petition is very limited. Sunoco does not have to present any evidence concerning the construction or operation of the pump station for the Commission to grant its petition.

Conversely, one would expect that CCWGT would present evidence, presumably including expert testimony, that Sunoco’s construction and operation of the proposed pump station is unsafe and unreasonable and fails to comply with applicable regulations or industry standards. In response, one would expect that Sunoco would present evidence, presumably including expert testimony, that its construction and operation of the proposed pump station is safe and reasonable and complies with applicable regulations or industry standards. In short, Sunoco’s petition and CCWGT’s complaint do not involve common questions of law and fact.

As noted above, different statutory and legal issues would be involved if the two proceedings are consolidated. In addition, the party with the burden of proof differs in the two proceedings. The supporting data in the two proceedings will not be repetitive but rather, separate and distinct. Consolidating the two proceedings would produce a disorderly and unwieldy record and may not result in reduced costs of litigation and decision-making for the parties and the Commission. Since CCWGT’s complaint is still only at the preliminary objection stage, consolidation may unduly delay the resolution of Sunoco’s petition. For all of these reasons, consolidating these proceedings for hearing and decision is unwarranted. We will issue the following Order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of the Concerned Citizens of West Goshen Township to consolidate its complaint at C-2014-2451943 with Sunoco Pipeline, L.P.’s petition at P-2014-2411966, pursuant to 52 Pa.Code § 5.81(a), is denied.

Date: December 17, 2014

 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**

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