**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P. :

:

v. : C-2020-3023129

:

Sunoco Pipeline, L.P. :

**ORDER**

**GRANTING MOTION FOR PREHEARING CONFERENCE,**

**REVISED PROCEDURAL SCHEDULE AND EXPEDITED RESPONSE**

On December 2, 2020, Glen Riddle Station, L.P. (Glen Riddle) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Sunoco Pipeline, L.P. (Sunoco), docket number C-2020-3023129. In its complaint, Glen Riddle averred that on or about May 13, 2020, Sunoco filed a Declaration of Taking in the Court of Common Pleas of Delaware County that concerned various portions of the Glen Riddle property that contains 124 residential dwelling units. Glen Riddle further averred that, in the taking action, Sunoco condemned temporary workspace easements and a temporary access road easement over their property for purposes of completing a pipeline project. Glen Riddle further averred that Sunoco is not complying with previous requirements of the Commission regarding a public awareness plan and standard operating procedures. Glen Riddle also identified several other alleged failures of Sunoco with regard to the property, including, parking and traffic safety concerns, unsafe work site, failure to follow government-mandated pandemic safety protocols, failure to communicate regarding a potentially hazardous leak, and structural and storm drainage concerns, among other things. Glen Riddle averred that Sunoco’s actions violated several provisions of the Public Utility Code and requested that the Commission enter an order enjoining or restraining Sunoco from engaging in further work at the property until the safety concerns are addressed. Glen Riddle attached multiple documents to its complaint in support of its position.

On December 23, 2020, Sunoco filed an answer and new matter in response to the complaint. In its answer, Sunoco admitted or denied the various averments Glen Riddle made in its complaint. In particular, Sunoco denied that it has not complied with the public awareness plan or standard operating procedures it is required to comply with. Sunoco also admitted or denied the various averments made by Glen Riddle with regard to the other alleged failures of Sunoco with regard to the property that were averred in the complaint. Sunoco provided significant detail in response to the averments made in the complaint and concluded by requesting that the complaint be dismissed with prejudice. Sunoco also attached multiple documents to its answer in support of its position.

In its new matter, which was accompanied by a notice to plead, Sunoco argued that the Commission lacks jurisdiction over Glen Riddle’s allegations regarding environmental law issues and permitting obligations, the validity and scope of easements and compliance with municipal ordinances and the Governor’s orders and regulations regarding Covid-19. Sunoco also argued that Glen Riddle has failed to state a claim upon which the Commission can grant relief. In part, Sunoco argued that Glen Riddle’s allegations regarding construction means and methods and relief seeking a work plan and schedule reflecting Glen Riddle’s preferences fail as a matter of law to state a claim upon which relief can be granted and should be dismissed.

Also on December 23, 2020, Sunoco filed preliminary objections in response to Glen Riddle’s complaint. In its preliminary objections, which were also accompanied by a notice to plead, Sunoco argued that the complaint should be dismissed because it raises issues over which the Commission lacks jurisdiction and that the complaint is legally insufficient in that it fails to state a claim upon which relief can be granted. On January 4, 2021, Glen Riddle filed an answer to Sunoco’s preliminary objections. In its answer, Glen Riddle argued, among other things, that the Commission has the authority to remedy and abate Sunoco’s ongoing endangerment of the public and the employees and residents of Glen Riddle. Sunoco’s preliminary objections were granted in part and denied in part by order dated January 28, 2021.

A hearing notice was issued on January 29, 2021 establishing an initial telephonic hearing for this matter for Wednesday, March 3, 2021 at 10:00 a.m. A prehearing order was issued on the same day setting forth various rules that would govern the hearing.

On February 4, 2021, Sunoco filed the instant motion for a prehearing conference, revised procedural schedule and expedited response. In its motion, Sunoco argued that the Commission’s regulations encourage the use of prehearing conferences and that a prehearing conference in this case will be valuable to allow the parties to cooperatively work out a schedule, determine the amount of hearing time needed, arrange for submission of written testimony and potentially simplify the issues. Sunoco added that written testimony should be used in this proceeding given the allegations at issue concerning safety that will require expert testimony, noting that the complaint is 134 paragraphs long and contains 16 exhibits. Sunoco added that the Commission encourages the use of written testimony for expert witnesses. Sunoco requested that Glen Riddle be given a shortened time period in which to answer this motion given that the hearing is currently scheduled for March 3, 2021.

In response, Glen Riddle filed its answer to Sunoco’s motion on February 10, 2021. In its answer, Glen Riddle indicated that it does not oppose a prehearing conference be established but that, given the exigency of the matters set forth in the complaint, it does not agree to any schedule that postpones the hearing by more than two weeks. Glen Riddle noted that postponing a hearing requires a demonstration of good cause which Sunoco has failed to demonstrate. Glen Riddle also argued that Sunoco has not worked cooperatively with it as it is required to do pursuant to the prehearing order issued in this case on January 29, 2021. Glen Riddle also indicated that it does not object to the use of written testimony provided that all witnesses are made available for cross-examination.

Sunoco’s motion is now ready for disposition. For the reasons discussed below, Sunoco’s motion will be granted, the hearing scheduled for March 3, 2021 will be cancelled and a prehearing conference will be held in this case on **Thursday, February 18, 2021 at 10:00 a.m**.

Section 5.103 of the Commission’s regulations allows for request to be made by motion for relief desired in writing at any time. 52 Pa.Code § 5.103(a) & (b). Parties are given 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer. 52 Pa.Code § 5.103(c). The presiding officer is authorized to rule on motions. 52 Pa.Code § 5.103(d). Also relevant to the disposition of Sunoco’s motion are sections 5.221 and 5.222 of the Commission’s regulations which allow for the establishment of prehearing conferences for consideration of, among other things, the means by which the hearing will be conducted to make a more effective use of hearing time in formal proceedings. 52 Pa.Code §§ 5.221 and 5.222. Finally, it is also relevant to the disposition of Sunoco’s motion that the Commission’s regulations encourage the use of written testimony, especially in connection with the testimony of expert witnesses. 52 Pa.Code § 5.412(a).

As noted above, requests for a change of a hearing date are generally only granted where good cause is shown. Here, good cause has been shown to grant Sunoco’s motion because cancelling the March 3, 2021 hearing and holding a prehearing conference will enable the parties to arrange for the submission of written testimony and potentially simplify the issues, especially with regard to the multiple averments regarding public safety. Doing so may also break any logjam that otherwise has been preventing any settlement from occurring. As Sunoco noted, the averments in Glen Riddle’s complaint are extensive and detailed. Discovery will likely be required to help determine the issues. Establishing a procedural schedule and requiring written testimony in advance of the hearing will aid in moving this case forward as efficiently and expeditiously as possible.

Such good cause, however, must be balanced against the serious public safety averments made in the complaint. As such, the parties should expect that the proceeding will proceed on an expedited schedule. Nonetheless, the efficient and expeditious resolution of this complaint would be aided by a prehearing conference being held before the hearing is held. This will enable a procedural schedule to be established and due process to be afforded to all parties while addressing the public safety averments raised in the complaint.

Furthermore, the portion of Sunoco’s motion requesting that Glen Riddle file its response to the motion in an expedited manner, instead of the 20-day period allowed in the regulations, is now moot, because Glen Riddle filed its answer six days after the motion was filed.

Finally, the parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

As such, Sunoco’s motion for motion for a prehearing conference, revised procedural schedule and expedited response will be granted. The hearing scheduled for March 3, 2021 will be cancelled and a prehearing conference will be held on Thursday, February 18, 2021 at 10:00 a.m. The parties are directed to dial 877-931-3508 and enter PIN 32041174 to participate in the conference.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Sunoco Pipeline, L.P. for a prehearing conference, revised procedural schedule and expedited response at Docket Number C-2020-3023129 and dated February 4, 2021 is hereby granted.
2. That the initial evidentiary hearing scheduled in this case for March 3, 2021 is hereby cancelled.
3. That a prehearing conference will be held in this matter on Thursday, February 18, 2021 at 10:00 a.m. and the parties are directed to dial 877-931-3508 and enter PIN 32041174 to participate in the conference.
4. That the parties are encouraged to engage in settlement discussions.

Date: February 11, 2021 /s/

Joel H. Cheskis

Deputy Chief Administrative Law Judge

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