

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Glen Riddle Station, L.P.	:	
	:	
v.	:	C-2020-3023129
	:	
Sunoco Pipeline, L.P.	:	

**INITIAL DECISION
GRANTING PETITION TO WITHDRAW
PETITION FOR INTERIM EMERGENCY RELIEF**

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a petition to withdraw a petition for interim emergency relief filed by an apartment complex with 124 residential dwelling units against a pipeline operator constructing a pipeline on the apartment complex’s property after having previously filed a formal complaint against the pipeline operator regarding substantially the same matter. The petition to withdraw is granted because it is in the public interest and there is no objection to it. The underlying complaint will continue to a prehearing conference.

HISTORY OF THE PROCEEDING

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 required public awareness plan or standard operating procedures. Sunoco also admitted or denied the various averments made by Glen Riddle with regard to the other alleged failures of Sunoco 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 consistent with its new matter. Glen Riddle filed a response to the preliminary objections on January 4, 2021. Sunoco's preliminary objections were granted in part and denied in part via order dated January 28, 2021.

A hearing notice was issued on January 29, 2021 establishing an initial telephonic hearing for this matter for 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 a motion for a prehearing conference, revised procedural schedule and expedited response. Glen Riddle filed an answer to Sunoco's motion on February 10, 2021. Sunoco's motion was granted via order dated February 11, 2021. A hearing notice was issued on February 11, 2021 setting a call-in prehearing conference for February 18, 2021 at 10:00 a.m.

However, on February 11, 2021, Glen Riddle filed a petition for interim emergency relief pursuant to Section 3.6 of the Commission's regulations, 52 Pa. Code § 3.6. In its petition, Glen Riddle averred that Sunoco, without prior notice, posted signs warning that all areas within 100 yards of its worksite at Glen Riddle's property fall within a "danger" area that must be avoided. Glen Riddle noted that over 200 people live and sleep within the danger area and, therefore, cannot avoid it. Glen Riddle added that it wrote to Sunoco demanding that it stop its work until the residents are notified of the extent of the danger and measures are taken to provide for their safety. Glen Riddle added that Sunoco responded that the danger signs were mistakenly posted and would replace them with signs warning of a lesser danger. Glen Riddle argued that it has met the Commission's requirements to have its petition for an interim emergency order granted.

As a result, on February 12, 2021, an off-the-record conference call was held with the parties and the presiding officer. During the conference call, a procedural schedule and other matters related to the emergency petition were discussed. A scheduling order dated February 12,

2021 was issued memorializing the agreement of the parties regarding litigation of the emergency petition consistent with Section 3.6.

On February 16, 2021, however, Glen Riddle filed a petition to withdraw the petition for interim emergency relief. This petition was jointly executed by counsel by both Glen Riddle and Sunoco. In the petition, Glen Riddle stated that Sunoco has confirmed that the signs in question in the complaint and underlying petition for interim emergency relief were placed by the contractors in error and that there is no danger zone associated with Sunoco's construction activities at Glen Riddle's property. Glen Riddle added that Sunoco has indicated that it has taken all reasonable steps necessary to prevent similar errors from occurring in the future. Attached to the petition was a signed verification from Joseph Becker, Senior Director, Engineering & Construction for Sunoco, verifying these averments. As a result, Glen Riddle indicated that the parties have resolved the issues set forth in the underlying petition for interim emergency relief. Glen Riddle requested that the petition to withdraw be approved.

An additional hearing notice was issued on February 17, 2021 cancelling the evidentiary hearing scheduled for February 18, 2021 and setting a prehearing conference on the underlying complaint for February 26, 2021 at 10:00 a.m. A second prehearing order was issued on February 17, 2021 setting forth various rules that will govern the prehearing conference.

The petition to withdraw the petition for interim emergency relief is ready for disposition. As discussed below, the petition to withdraw will be granted because it is in the public interest and there is no opposition to it. The underlying complaint will proceed to a prehearing conference to be held on February 26, 2021 at 10:00 a.m.

FINDINGS OF FACT

1. The petitioner in this case is Glen Riddle Station, L.P.
2. The respondent in this case is Sunoco Pipeline, L.P.

3. On December 2, 2020, Glen Riddle filed a formal complaint with the Commission against Sunoco.
4. On December 23, 2020, Sunoco filed an answer and new matter in response to Glen Riddle's formal complaint.
5. On January 28, 2021, an order was entered denying in part and granting in part preliminary objections filed by Sunoco in response to Glen Riddle's complaint.
6. On February 11, 2021, Glen Riddle filed a petition for interim emergency relief averring that Sunoco, without prior notice, posted signs warning that all areas within 100 yards of its worksite at Glen Riddle's property fall within a "danger" area that must be avoided.
7. On February 12, 2021, a scheduling order was issued memorializing an agreement of the parties regarding litigation of the petition for interim emergency relief and setting a hearing for February 18, 2021 consistent with Section 3.6 of the Commission's regulations.
8. On February 16, 2021, Glen Riddle filed a petition to withdraw the petition for interim emergency relief.
9. The petition to withdraw the petition for interim emergency relief was signed by counsel for both Glen Riddle and Sunoco.
10. No objections were filed in response to the petition to withdraw.

DISCUSSION

Section 5.94(a) of the Commission's regulations provides that a party desiring to withdraw a pleading in a contested proceeding may file a petition to withdraw the appropriate document with the Commission and serve it upon other parties. 52 Pa.Code § 5.94(a). This section further provides that the petition must set forth the reasons for the withdrawal and that a

party may object to the petition within 10 days. Id. After considering the petition, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted. Id.

In this case, Glen Riddle stated in its petition for interim emergency order that Sunoco, without prior notice, posted signs warning that all areas within 100 yards of its worksite at its property fall within a “danger” area that must be avoided. Glen Riddle noted, among other things, that over 200 people live and sleep within that danger area and, therefore, cannot avoid it. Glen Riddle argued that it has satisfied the Commission’s requirements to have its petition for interim emergency relief granted set forth in Section 3.6, 52 Pa. Code § 3.6.

In its petition to withdraw the petition for interim emergency order, however, Glen Riddle stated that Sunoco has confirmed that the signs were placed by its contractors in error and that there is no danger zone associated with Sunoco’s construction activities at Glen Riddle’s property outside of Sunoco’s worksite. Sunoco further averred that it has taken reasonable steps to prevent the future placement of signs in error at Glen Riddle’s property. In addition, Sunoco has agreed to hold a town meeting on Tuesday, February 23, 2021 with the owners, management, employees, representatives and residents of Glen Riddle to explain the signs used at the site, to discuss the work site and safety and to answer any questions regarding these matters. Sunoco has also agreed to provide notice and communicate with Glen Riddle before placing any similar signage at the site and take all reasonable steps necessary to prevent similar errors. These facts were supported by a verification attached to the petition to withdraw from Joseph Becker, Senior Director, Engineering & Construction for Sunoco stating that these statements are true and correct to the best of his knowledge, information and belief.

No objections were raised in response to the petition to withdraw the petition for interim emergency relief.

The petition to withdraw the petition for interim emergency relief will be granted because it is in the public interest and there is no objection to it. As noted above, the precise matters about which the petition for interim emergency relief was filed has been resolved. Glen

Riddle filed the petition for interim emergency relief because Sunoco had placed signs warning that areas within 100 yards of the worksite all within a danger area. Yet, as verified by a Sunoco employee, those signs were placed by contractors in error and have been subsequently removed. The Sunoco employee also verified that there is no danger zone associated with Sunoco's construction activities at the Glen Riddle property. Furthermore, actions will be taken to prevent the future placement of signs in error and Sunoco has agreed to meet with the owners, management, employees, representatives and residents of Glen Riddle in a town hall meeting to explain the signs used at the site, discuss the work at the site and safety and to answer any questions. These actions have assured Glen Riddle that there is no longer a need for the petition for interim emergency relief and have requested that the petition be withdrawn.

Withdrawing the petition for interim emergency relief at this time is in the public interest because the basis for the petition no longer exists. There are no longer any signs that warn of a danger area within 100 yards and Sunoco has agreed to take all necessary steps to prevent similar errors from occurring in the future. Although the averments raised by Glen Riddle in the petition for emergency relief raise questions of public safety, it is not in the public interest to require parties to litigate a case where the underlying basis for the complaint no longer exists. Granting the petition to withdraw the petition for interim emergency relief will save the Commission and the parties resources that would otherwise be devoted to litigating a petition that is no longer necessary.

It is noted, however, that the underlying complaint filed by Glen Riddle on December 2, 2020 still exists and will continue to be litigated. Any remaining public safety concerns can be addressed in that proceeding. The parties are encouraged, however, to continue settlement discussions in an effort to determine whether the remaining issues in the underlying complaint can be resolved without further litigation, including issues pertaining to signage, access to roads, parking, fencing, etc., consistent with all applicable statutes and regulations. The Commission strongly encourages settlement and, in this instance, additional efforts towards settlement will likely enhance public safety. Therefore, a prehearing conference will be held and a litigation schedule will be established where any related issues, and the other issues raised in Glen Riddle's complaint, can be addressed.

In addition, as noted, there are no objections to the petition to withdraw. Although Section 5.94 of the Commission's regulations allows parties to file objections within ten days of the filing of the petition, both Glen Riddle and Sunoco signed the petition to withdraw and there are no other parties to this proceeding. Therefore, it is not necessary to wait ten days to see if any objections are filed. Similarly, the petition to withdraw allowed 1) Glen Riddle to waive its right to a hearing within 10 days and a decision in 15 days, 2) Sunoco additional time to answer the petition for interim emergency relief and 3) Glen Riddle to provide notice of Sunoco's compliance of its obligations at the town hall meeting on February 23, 2021 within two days of that meeting. Glen Riddle subsequently agreed that the petition for interim emergency relief can be withdrawn immediately with the understanding that a second emergency petition could be refiled if Sunoco does not meet its obligations set forth in the petition to withdraw. Therefore, these additional provisions will not be considered in this decision.

As such, all elements of consideration of the request to withdraw the petition for interim emergency relief have been considered pursuant to Section 5.94 of the Commission's regulations. Such consideration warrants granting the request to withdraw. Therefore, the petition to withdraw the petition for interim emergency relief will be granted. At the same time, however, the underlying complaint filed by Glen Riddle on December 2, 2020 will proceed to a prehearing conference on February 26, 2021 at 10:00 a.m. A prehearing order dated February 17, 2021 was issued setting forth various rules that will govern that prehearing. The parties are directed to follow the instructions on the hearing notice to participate in that prehearing conference at that time.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. A party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon other parties. 52 Pa.Code § 5.94(a).

3. A petition to withdraw a pleading in a contested proceeding must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. 52 Pa.Code § 5.94(a).

4. After considering a petition to withdraw a pleading in a contested proceeding, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted. 52 Pa.Code § 5.94(a).

5. It is in the public interest to allow Glen Riddle to withdraw its petition for interim emergency relief.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request to withdraw the petition for interim emergency relief filed by Glen Riddle Station, L.P. at docket number C-2020-3023129 is hereby granted.

2. That the formal complaint filed by Glen Riddle Station, L.P. against Sunoco Pipeline, L.P. on December 2, 2020 at docket number C-2020-3023129 shall proceed to a prehearing conference on Friday, February 26, 2021 at 10:00 a.m.

Date: February 22, 2021

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge