
Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1985 Direct Fax

July 11, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Glen Riddle Station, L.P. v. Sunoco Pipeline, L.P.
Docket No. C-2020-3023129**

EAP Letter in Support of SPLP's Request for Reconsideration

Secretary Chiavetta:

The Energy Association of Pennsylvania (“EAP”), a trade association whose members include the major natural gas and electric public distribution utilities operating in the Commonwealth of Pennsylvania¹, respectfully submits this letter, in the nature of an amicus filing, regarding the Petition for Reconsideration filed by Sunoco Pipeline, L.P. (“SPLP”) on July 1, 2022, in the above-captioned proceeding before the Pennsylvania Public Utility Commission (“Commission”).

EAP supports SPLP’s request for reconsideration because the Commission’s June 16, 2022 Opinion and Order (“*June 2022 Order*”) can be read as potentially creating a new statewide standard for noise and emergency responder access during utility construction projects. Although

¹ EAP electric utility members include: Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc. – Electric Division; Wellsboro Electric Company; and West Penn Power Company. EAP natural gas utility members include: Columbia Gas of Pennsylvania, Inc.; National Fuel Distribution Corp.; Pike County Light & Power Company; PECO Energy Company; Peoples Natural Gas Company LLC; Philadelphia Gas Works.; UGI Utilities, Inc. – Gas Division; and Valley Energy Inc.

the Commission states in its *June 2022 Order* that its analysis under Section 1501 of the Public Utility Code is conducted on a case-by-case basis,² the Commission affirmed the Initial Decision (“ID”), which contained language suggesting bright line standards that constitute Section 1501 violations.

For example, the ID stated the following regarding the alleged noise violations:

- “The readings of 75 decibels to over 100 decibels are unreasonable, even for a short duration, when viewed in light of Section 1501 of the Public Utility Code, given the residential nature of the property at issue.” ID, p. 48 (emphasis added).
- “Section 1501 of the Public Utility Code requires utilities to provide safe service at all times and it is sufficient for those purposes to determine that the point-in-time readings, as Sunoco refers to them, as demonstrated in the videos submitted by Glen Riddle, demonstrate a violation of Section 1501.” *Id.*, p. 49.
- “The point-in-time loud noises are unreasonable under the Public Utility Code, even if they are not 24-hour readings.” *Id.*
- “It is sufficient to find a violation of Section 1501 to determine that those loud levels were created at a point-in-time and not over a 24-hour period.” *Id.*
- “[I]t is clear that there were 17 incidents of readings higher than 85 decibels and an additional six incidents of readings of between 75 and 85 decibels for a total of 23 incidents of unreasonably high noise levels at the construction site.” *Id.*, p. 50.

The ID then took those 23 individual incidents in excess of 75 decibels, found 23 violations of Section 1501 of the Public Utility Code and 23 violations of Section 59.33 of the Commission’s regulations, and imposed a civil penalty of \$1,000 per each of those alleged noise violations (totaling \$46,000). *Id.*, p. 85. Notably, the Commission accepted the ID’s findings and affirmed the imposition of a civil penalty of \$51,000, which included the \$46,000 for the alleged noise violations. *See June 2022 Order*, p. 47.

In addition, regarding traffic congestion, the ID held that SPLP’s construction activities “undoubtedly slowed” access by “emergency responders” to the property. ID, p. 41. As support, the ID determined that the evidence “show[ed] multiple ways in which emergency responders would, at a minimum, be impeded or slowed.” *Id.* “[W]hen viewed in light of Section 1501 of the Public Utility Code,” the ID found that “the additional delay caused by Sunoco’s construction activities was unsafe and therefore unreasonable.” *Id.*

A fair reading of the ID and the Commission’s *June 2022 Order* is that a public utility’s construction activities in a residential area cannot exceed, at any “point-in-time,”³ 75 decibels, or

² *June 2022 Order*, p. 30.

³ ID, p. 49.

else the utility has violated Section 1501 of the Public Utility Code and can be assessed a civil penalty of \$1,000 for each such violation. Moreover, the ID and the *June 2022 Order* could be interpreted as requiring public utilities to provide, at all times, unimpeded access to properties by emergency responders, with any potential or actual delay constituting a violation of Section 1501 of the Public Utility Code.

EAP respectfully requests that the Commission clarify that it was not creating a new statewide standard for noise and emergency responder access under Section 1501 of the Public Utility Code through this proceeding.

If the Commission did intend to create a new standard, the Commission should reverse its decision for both legal and policy reasons. Any new regulations adopted by the Commission must go through the proper rulemaking process. The Commission cannot and should not adopt a new statewide standard through an individual complaint proceeding.⁴ Doing so would deny due process to all interested parties, including the public utilities subject to that standard.⁵ Also, as a practical matter, electric and natural gas utilities, and their contractors, often work in residential areas and necessarily use equipment that exceeds 75 decibels, such as jackhammers that have noise emissions of approximately 130 decibels. That work is necessary for the utilities to continue providing reasonable, safe, reliable, and adequate electric and natural gas service to their customers, as required by Section 1501 the Public Utility Code. Utilities cannot adequately perform their duties and undertake construction projects on critical infrastructure in residential areas if every single noise in excess of 75 decibels will result in a Section 1501 violation and a \$1,000 civil penalty.

However, even if the Commission did not intend to create a new standard, the Commission's rulings on the alleged noise and emergency responder access issues present serious concerns. Electric and natural gas utilities provide essential services to their customers and must be able to undertake system upgrades, repairs, and maintenance without fear that normal occurrences during construction, such as a brief noise in excess of 75 decibels or a potential traffic congestion, will result in a Section 1501 violation and civil penalty. Therefore, in adjudicating SPLP's Petition for Reconsideration, EAP respectfully asks that the Commission keep in mind the precedential effect, if any, its *June 2022 Order* will have on other public utilities and how the decision may negatively affect their construction and maintenance activities going forward.

⁴ See, e.g., *Borough of Pottstown v. Pa. Mun. Ret. Bd.*, 712 A.2d 741, 743 (Pa. 1998) (citations omitted). (“Where an agency, acting pursuant to delegated legislative authority, seeks to establish a substantive rule creating a controlling standard of conduct, it must comply with the provisions of the Commonwealth Documents Law,” which “sets forth formal procedures for notice, comment and ultimate promulgation in connection with the making of rules that establish new law, rights or duties.”).

⁵ See, e.g., *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (“Among the requirements of due process are notice and an opportunity to be heard on the issues . . .”), *appeal denied*, 2015 Pa. LEXIS 1457 (Pa. 2015).

Rosemary Chiavetta
July 11, 2022
Page 4

For these reasons, EAP respectfully requests that the Commission take this letter into consideration when ruling on SPLP's Petition for Reconsideration and grant the requested clarifications set forth in this letter.

Respectfully submitted,



Devin Ryan

DR/dc
Enclosure

cc: Certificate of Service
Office of Special Assistants

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & REGULAR MAIL

Samuel W. Cortes, Esquire
Ashley L. Beach, Esquire
Fox Rothschild LLP
747 Constitution Drive, Suite 100
Exton, PA 19341
E-mail: scortes@foxrothschild.com
E-mail: abeach@foxrothschild.com
Counsel for Glen Riddle Station, L.P.

Thomas J. Sniscak, Esquire
Kevin J. McKeon, Esquire
Whitney E. Snyder, Esquire
Bryce R. Beard, Esquire
Hawke, McKeon, & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
E-mail: tjsniscak@hmslegal.com
E-mail: kjmckeon@hmslegal.com
E-mail: wesnyder@hmslegal.com
E-mail: brbeard@hmslegal.com

Diana A. Silva, Esquire
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
E-mail: dsilva@mankogold.com
Counsel for Sunoco Pipeline L.P.

Date: July 11, 2022



Devin T. Ryan