

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Glenn Riddle Station, L.P.

Public Meeting held August 25, 2022

3023129-OSA

v.

Docket No. C-2020-3023129

Sunoco Pipeline, L.P.

MOTION OF COMMISSIONER RALPH V. YANORA

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition is the Petition for Reconsideration (Reconsideration Petition) and the Motion for Extension of Time for Payment of Civil Penalty and Request for Expedited Response and Relief (Extension Petition) filed by Sunoco Pipeline, L.P. (Sunoco) on July 1, 2022, in the above-captioned proceeding. The Reconsideration Petition seeks reconsideration of the Commission’s Opinion and Order entered June 16, 2022 (*June 2022 Order*), which found Sunoco in violation of Section 1501 of the Public Utility Code (Code) and Section 59.33 of the Commission’s Regulations for certain construction-related activities. On July 11, 2022, the Energy Association of Pennsylvania (EAP) filed a Letter in Support of Sunoco’s Reconsideration Petition. On that same date, Glenn Riddle Station, L.P. (Glenn Riddle) filed its Answer to Sunoco’s Reconsideration Petition.

When reviewing petitions for reconsideration, the Commission has held, *inter alia*, that petitions seeking reconsideration and/or clarification under Subsection 703(g) of the Code, 66 Pa. C.S. § 703(g), may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part.¹ Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by us.² *See Duick*, at 559; *also AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

In our *June 2022 Order*, the Commission adopted Administrative Law Judge (ALJ) Cheskis’ Initial Decision (ID) issued on March 8, 2022, which found, *inter alia*, that certain Sunoco construction activities within its construction easement at the Glen Riddle property violated Section 1501 of the Code³ and Section 59.33 of the Commission’s Regulations.⁴ In the ID, the ALJ specifically found that Sunoco violated the Code and PUC Regulations by: (1) creating 23 instances of unreasonably high noise levels within its construction easement at the Glenn Riddle property, (2) exacerbating emergency and fire hazards at the Glen Riddle property as a result its construction activities, and (3) failing to adequately communicate with residents of the Glenn Riddle property regarding its construction activities.

¹ *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983); 51 PUR4th 284, 288-289 (1983) (*Duick*)

² *See Duick*, at 559; *also AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

³ 66 Pa. C.S. § 1501 (regarding character of service and facilities).

⁴ 52 Pa. Code § 59.33 (regarding safety).

With regard to Sunoco’s construction noise activity, the ALJ stated that “[t]he 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.”⁵ The ALJ also stated that “[t]he point-in-time loud noises are unreasonable under the Public Utility Code, even if they are not 24-hour readings.”⁶ Based on a finding of 23 individual noise occurrences in excess of 75 decibels, the ALJ imposed a \$46,000 civil penalty against Sunoco – finding 23 violations of Section 1501 of the Code and 23 violations of Section 59.33 of the Commission’s Regulations – imposing a civil penalty of \$1,000 per each of those alleged noise violations.⁷

In its Letter, the EAP questioned the Commission’s adoption of the ALJ’s noise violation findings. The EAP stated “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.”⁸

I believe EAP is correct that ordinary construction equipment used by electric and natural gas utilities regularly exceeds 75 decibels and may reach approximately 130 decibels. Given this new information, it appears that the Commission overlooked that utility construction noise emissions above 75 decibels occur frequently. Given that the Commission overlooked that noise emissions typically occur at such decibel levels in utility construction, the *Duick* standard for reconsideration has been satisfied. I also note that construction activities, which frequently include noise emissions reaching approximately 130 decibels for equipment such as jackhammers, are imperative to maintaining our critical utility infrastructure and are necessary to ensure that utilities are adequately performing their duties to provide reasonable, safe, reliable, and adequate service.

Regarding potential emergency and fire hazards at the Glenn Riddle property, the ALJ stated that “it is clear, for example, that if an emergency responder would have had to access the property while a large construction vehicle was maneuvering on the property, that emergency responder would have been delayed as a result.”⁹ Additionally, the ALJ found that “[h]igh levels of truck traffic, delay and stacking on an incline on the [Glenn Riddle] property occurred.”¹⁰ Based on the finding that Sunoco’s construction activities exacerbated the potential delay of fire and/or other emergency personnel access at the Glenn Riddle property, the ALJ imposed a

⁵ Id. at 48.

⁶ Id. at 49.

⁷ Id. at 85.

⁸ EAP Letter at 3.

⁹ Id. at 40.

¹⁰ Id.

\$2,000 civil penalty against Sunoco – \$1,000 for violating Section 1501 of the Code and \$1,000 for violating Section 59.33 of the Commission’s Regulations.

In its Letter, the EAP questioned the Commission’s adoption of the ALJ’s finding of emergency and fire responder access violations by Sunoco. The EAP states that “[e]lectric 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 potential [for] traffic congestion [emergency responder access], will result in a Section 1501 violation and civil penalty.”¹¹ Based on this information, it appears that the Commission overlooked the fact that large construction vehicle maneuvering and high levels of truck traffic are regular and expected occurrences when electric and natural gas utilities are engaged in construction activity. Given that the Commission overlooked these occurrences regarding traffic activity, the *Duick* standard for reconsideration has been satisfied. I also note that large construction vehicle usage and truck traffic are endemic to utility construction activity in service of the safety mandates of Section 1501 of the Code and Section 59.33 of our Regulations.

Regarding Sunoco’s communications with the residents of the Glenn Riddle property, I believe that the Commission appropriately found that Sunoco failed to adequately communicate with residents of the Glenn Riddle property regarding its construction activities resulting in a civil penalty of \$3,000, for the reasons set forth in our *June 2022 Order*.

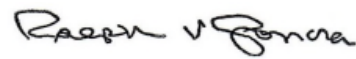
THEREFORE, I MOVE THAT:

1. The Petition for Reconsideration filed by Sunoco Pipeline, L.P. on July 1, 2022, is granted, in part, and denied, in part, consistent with this Motion.
2. That the Motion for Extension of Time for Payment of Civil Penalty and request for Expedited Response and Relief filed by Sunoco Pipeline, L.P. on July 1, 2022, is denied.
3. That the Letter Request for Temporary Extension of Time for Payment of Civil Penalty filed by Sunoco Pipeline, L.P. on July 18, 2022, is denied.
4. That Sunoco Pipeline, L.P., shall pay a civil penalty of \$3,000 due to the violation of Section 1501 of the Public Utility Code, Section 59.33 of the Commission’s Regulations and past Commission Orders.
5. That Sunoco Pipeline, L.P., shall pay a total of \$3,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of this Final Commission Order to:

¹¹ EAP Letter at 3.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

6. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.



DATE: August 25, 2022

Ralph V. Yanora, Commissioner