

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Glen Riddle Station, L.P.
v.
Sunoco Pipeline, L.P.

Public Meeting – August 25, 2022
3023129-OSA
Docket No. C-2020-3023129

STATEMENT OF CHAIRMAN GLADYS BROWN DUTRIEUILLE

On December 2, 2020, Glen Riddle Station, L.P. (Glen Riddle) filed a formal Complaint alleging that Sunoco’s construction of the Mariner East 2 and Mariner East 2x pipelines through its property, which housed 124 residential apartments, caused severe disruption to its residents sufficient to constitute unreasonable service by the utility. Glen Riddle claimed that Sunoco’s actions adversely affected property parking and traffic safety, created an unsafe construction work site, shirked government-mandated pandemic safety protocols, caused a water line break depriving residents of water service, raised structural and storm drainage concerns, and that the utility failed to communicate regarding a potentially hazardous leak.

The matter was fully litigated before Administrative Law Judge Cheskis who found as follows:

Action	Violations	Amount per violation	Sub-total
Creating traffic hazards	0	\$1,000	\$0
Creating fire hazards	1 violation of Section 1501 1 violation of Section 59.33	\$1,000	\$2,000
Creating unsafe noise levels	23 violations of Section 1501 23 violations of Section 59.33	\$1,000	\$46,000
Exposing residents to calciment construction dust	0	\$1,000	\$0
Damaging residents’ water line	0	\$1,000	\$0
Lack of communication with public	1 violation of Section 1501 1 violation of Section 59.33 1 violation of Public Awareness Plan	\$1,000	\$3,000
		Total	\$51,000

At the June 16, 2022 Public Meeting, the Commission denied Sunoco's Exceptions to the ALJ's Initial Decision and we sustained the ALJ's determination that Sunoco provided unreasonable service as well as the recommended \$51,000 civil penalty. On July 1, 2022, Sunoco filed the instant Petition for Reconsideration. The Energy Association of Pennsylvania (EAP) filed a letter in support of Sunoco's Petition arguing that utility construction noise often exceeds the 75 decibels found to unreasonable here; that because no regulations establishing a standard for utility construction practices exist, there is no basis for the Commission to find violations; and that if the June 16, 2022 Order stands, EAP members may be unfairly subjected to penalties for routine construction work.¹

Sunoco avers that the June 2022 Order failed to either acknowledge or apprehend Sunoco's basis for arguing that, in the absence of a specific regulation, standard or PUC order prohibiting specific conduct, the findings of violations violate Sunoco's due process rights. Further, Sunoco avers that the June 2022 Order failed to consider Sunoco's argument that the findings that construction noise, emergency responder access, and fire safety are unsafe or unreasonable constitute arbitrary and discriminatory enforcement which if applied going forward will render all utility construction to be in violation of that safe and reasonable standard.

The first step of the *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983); 51 PUR4th 284, 288-289 (1983) (*Duick*) analysis is determining whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. As Glen Riddle's Answer clearly and concisely demonstrates, each averment of Sunoco's Reconsideration Petition was previously raised in both content and chronological order in Sunoco's Exceptions and rejected by the Commission's disposition of the Exceptions in the June 2022 Order. (Glen Riddle Answer at 4-5). By failing to allege any "new or novel" argument or matter overlooked by our June 2022 Order, Sunoco fails to assert any basis for a grant of reconsideration.

I wish to clarify that my vote on June 16, 2022 to uphold the \$51,000 civil penalty was based upon the totality of the evidence submitted at this docket, as well as Sunoco's past compliance history with regard to violations.² My vote was in no way intended to impose a broad and overreaching set of construction standards upon our regulated utilities.³ I believe that had

¹ I note that EAP is not a party to this litigation never having filed a petition to intervene and I question whether evidence provided by the EAP at this stage in the proceeding can be relied upon as a basis for a finding. "It should be well established by now that neither the [administrative agency] in its decision[-]making process, nor this Court in a review of that process, may consider any matters not made a part of the record when counsel and the litigants are present. Whether or not such matters would be prejudicial to the [p]etitioner is irrelevant. They simply cannot be considered." *Grubbs v. Pa. Board of Probation and Parole*, 481 A.2d 1390, 1391 (Pa. Cmwlth. 1984).

² Commission's Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). See item 6, compliance history, of the Commission's Policy Statement which sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

³ "Clearly, the plain reading of the language of Section 1501 and the Commission orders applying the standard of reasonable and safe service to Sunoco, including *Fhynn* and *Baker*, demonstrate that the Commission's application is restrained to the case-by-case analysis of what is reasonable in the given circumstances." Opinion and Order entered June 16, 2022, at 4.

Sunoco given proper public notice of construction activity to Glen Riddle as required by our regulations, an accord could have been reached between the Parties regarding construction times and possible ways to minimize disruption. Sunoco's Petition for Reconsideration should be denied for failing to meet the *Duick* standard.



August 25, 2022

Date

Gladys Brown Dutrieuille, Chairman
