

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held August 25, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Dissenting Statement  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Glen Riddle Station, L.P.

C-2020-3023129

v.

Sunoco Pipeline, L.P.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Reconsideration Petition) filed by Sunoco Pipeline, L.P. (Sunoco) on July 1, 2022, seeking reconsideration of our Opinion and Order entered June 16, 2022 (*June 2022 Order*), adopting the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (ALJ) Joel H. Cheskis issued on March 8, 2022, in the above-captioned proceeding. The Initial Decision, *inter alia*, granted, in part, and denied, in part, the Formal Complaint (Complaint) filed by Glen Riddle Station, L.P. (Glen Riddle/Complainant), found Sunoco

in violation of Section 1501 of the Public Utility Code (Code) and awarded civil penalties in the amount of \$51,000.

Also before the Commission is the Motion for Extension of Time for Payment of Civil Penalty and Request for Expedited Response and Relief filed by Sunoco on July 1, 2022, seeking an extension of time in which to pay the civil penalty ordered by the *June 2022 Order* pending resolution of the Reconsideration Petition (Extension Petition<sup>1,2</sup>). Glen Riddle filed an Answer in opposition to both the Reconsideration Petition and Extension Petition on July 11, 2022, and July 20, 2022, respectively. The Energy Association of Pennsylvania (EAP) filed a Letter in Support of the Reconsideration Petition on July 1, 2022.

For the reasons stated more fully, *infra*, we conclude that Sunoco asserts sufficient basis for reconsideration of our *June 2022 Order* regarding the violations related to Sunoco's construction noise activity and emergency and fire responder access, however, fails to assert a basis for a finding of "good cause" to grant an extension of time in which to pay the civil penalty directed by our *June 2022 Order*. Therefore, based upon the record in this proceeding, and upon consideration of Sunoco's Reconsideration Petition and filing in support thereof, and Glen Riddle's Answer in opposition thereto, we shall grant, in part, and deny, in part, the Reconsideration Petition. Further, based upon

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<sup>1</sup> We note that Sunoco captions its filing as a "Motion for Extension of Time" filed pursuant to Section 1.15 of Commission Regulations (pertaining to extension of time and continuances), however, as discussed more fully, *infra*, we shall treat the filing as a petition for relief associated with the request for reconsideration, under Section 5.572 of Commission Regulations, and therefore shall reference the filing as Sunoco's Extension Petition.

<sup>2</sup> We also note that Sunoco subsequently filed a Letter Request for Temporary Extension of Time, dated July 18, 2022, seeking a temporary extension of time in which to pay the civil penalty. On July 20, 2022, Glen Riddle filed an Answer in opposition to Sunoco's Letter.

Sunoco's Extension Petitions and filings in support thereof, and Glen Riddle's Answers in opposition thereto, we shall deny the Extension Petitions.

## **I. History of Proceeding**

In its Complaint, filed December 2, 2020, Glen Riddle averred that Sunoco's conduct of the pipeline construction project running through the Glen Riddle community property which contains 124 residential dwelling units, violated several provisions of the Code and requested that the Commission enter an order restraining Sunoco from engaging in further work at the property until the safety concerns are resolved. Glen Riddle also identified several other alleged failures to comply by Sunoco, including, *inter alia*, parking and traffic safety concerns, creating an 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.

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. Specifically, Sunoco expressly denied that it has not complied with the *required* public awareness plan or standard operating procedures and denied all allegation of failures by Sunoco regarding any statutory or regulatory duty 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. In support, Sunoco attached multiple documents to its Answer. In its New Matter, accompanied by a Notice to Plead, Sunoco argued that the Commission lacks jurisdiction over Glen Riddle's allegations regarding environmental law issues, permitting obligations, the validity and scope of easements, and Sunoco's 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, as well as 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.

Sunoco filed Preliminary Objections on December 23, 2020. Glen Riddle filed its Answer to the Preliminary Objections on January 4, 2021.

On January 28, 2021, an Order was entered granting, in part, and denying, in part, the Preliminary Objections filed by Sunoco. In that Order, the scope of the proceedings was framed by the determination that Glen Riddle has raised issues over which the Commission has jurisdiction, including allegations regarding the Public Awareness Plan and standard operating procedures ordered by the Commission in a prior proceeding. The Order also noted that the Commission has jurisdiction to hear claims that a utility is providing unsafe service, and, therefore, permitted those issues to proceed to hearing. The remaining issues, related to the scope and validity of an easement, claims regarding Municipal Law, the Governor's face covering mandates and environmental regulations were stricken from the Complaint on the basis that they are beyond the scope

of the Code, Commission order or Regulation. The Order further ruled that Glen Riddle's Complaint was legally sufficient.<sup>3</sup>

Both Glen Riddle and Sunoco filed Main Briefs on September 24, 2021 and Reply Briefs on October 22, 2021.

Also, on September 24, 2021, Sunoco filed a request for a transcript correction seeking to change all 74 instances of "calcimate" in the transcript to "Calciment." The request was not opposed and therefore deemed granted pursuant to Section 5.253(f)(2) of the Commission's Regulations. 52 Pa. Code § 5.253(f)(2).

On November 9, 2021, Sunoco filed a Motion to Strike Portions of Glen Riddle's Reply Brief. On November 29, 2021, Glen Riddle filed an Answer to that Motion. That Motion was granted, in part, and denied, in part, by order dated December 2, 2021.

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<sup>3</sup> The ALJ noted multiple pleadings and procedural matters occurred, consistent with Commission practice and procedure:

...including establishment of an initial telephonic hearing, a motion for a prehearing conference and procedural schedule, the filing of a petition for interim emergency relief, the withdraw of the petition for interim emergency relief, a prehearing conference, the rescheduling of the prehearing conference, the filing of a motion to compel by each party, the filing of a contested motion for a protective order, a motion *in limine*, a motion to enforce the order granting in part and denying in part the preliminary objections and striking Glen Riddle testimony, a motion for a final continuance, another motion to compel, a motion for a protective order and sanctions, and two motions to strike various portions of the parties' briefs. Each of these procedural matters was responded to with the necessary answer, order or hearing notice as appropriate.

I.D. at 2-3.

On December 7, 2021, Glen Riddle filed a Motion to Strike Portions of Sunoco's Main and Reply Briefs. On December 27, 2021, Sunoco filed its Answer to the Motion. Glen Riddle's Motion was granted, in part, and denied, in part, by Order dated December 29, 2021. The record in this case closed on December 29, 2021.

By Initial Decision issued March 8, 2022, Glen Riddle's Complaint was granted, in part, and denied, in part.

Exceptions were filed by Sunoco on March 28, 2022. Replies to the Exceptions were filed by Glen Riddle on April 7, 2022. On April 29, 2022, Sunoco filed a Motion to Strike Portions of Glen Riddle's Reply Exceptions, and Glen Riddle filed its Response thereto on May 18, 2022.

As previously noted, by the *June 2022 Order*, the Commission adopted the ALJ's Initial Decision which, *inter alia*, granted, in part, and denied, in part, the Glen Riddle Complaint; found Sunoco in violation of Section 1501 of the Code; and imposed a civil penalty in the amount of \$51,000, payable within thirty (30) days of the entry of the order, or by July 18, 2022.

On July 1, 2022, Sunoco filed its Petition for Reconsideration of the *June 2022 Order* and filed its Extension Petition, seeking an extension of time in which to pay the civil penalty pending resolution of the Reconsideration Petition.

On July 11, 2022, Glen Riddle filed its Answer to Sunoco's Reconsideration Petition, opposing reconsideration. Also on that date, the EAP filed a Letter in Support of [Sunoco's] Request for Reconsideration, in the nature of an amicus filing.

On July 18, 2022, Sunoco filed a second Letter request for Temporary Extension of Time, again requesting an extension of time in which to pay the civil penalty. On June 20, 2022, Glen Riddle filed its Answer in opposition to Sunoco's request.

## **II. Background**

This case arises from the disruption to the Glen Riddle community caused by the pipeline construction project conducted by Sunoco pursuant to its certificated authority and the easements associated with the Mariner East Pipeline Project, a major pipeline construction project within the Commonwealth.

Glen Riddle is the owner of a residential apartment community known as the Glen Riddle Station Apartments in Middletown Township, Delaware County. The property includes five buildings closely located together with 124 units that house over 200 Pennsylvanians. Sunoco's pipeline project runs through the center of the Glen Riddle community.

Sunoco is a Texas limited partnership and certificated Pennsylvania public utility constructing a pipeline across Pennsylvania, including through the Glen Riddle apartment complex.

As a result of Sunoco's pipeline construction project in its right of way, which dissects the Glen Riddle Community, Glen Riddle filed its Complaint against Sunoco alleging unsafe and unreasonable conditions to the inhabitants of the Glen Riddle community caused by Sunoco's construction project including: (1) creating fire hazards; (2) unreasonably high noise levels; (3) inadequate communications with the public; (4) traffic hazards; (5) the use of a dangerous product (Calciment) at the property; and (6) causing a water line break.

After the hearing and based upon a fully developed record, the ALJ's Initial Decision sustained the Complaint as to the averments of fire hazards, noise levels and inadequate communications with the public, directed that Sunoco pay a civil penalty in the amount of \$51,000, and denied the Complaint as to the averments of traffic hazards, the use of Calciment at the property and a water line break.

Sunoco filed Exceptions challenging the ALJ's Initial Decision as entirely without merit. Specifically, Sunoco challenged those portions of the Initial Decision which sustained the Complaint as to the averments of fire hazards, noise levels and inadequate communications with the public, and awarding civil penalties in the amount of \$51,000.

The Commission's *June 2022 Order* denied Sunoco's Exceptions and adopted the finding of violations and award of civil penalties in the amount of \$51,000.

### **III. Discussion – Reconsideration Petition**

#### **A. Legal Standards**

Before addressing the Reconsideration Petition, we note that any issue not specifically addressed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993).

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and (g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572,

relating to petitions for relief following the issuance of a final decision. Petitions for reconsideration are due fifteen (15) days following entry of the order for which reconsideration is sought. *See*, 52 Pa. Code §5.572 (c).

As explained by the Pennsylvania Supreme Court, petitions to reconsider, clarify, amend or rescind a final agency action may only be “granted judiciously” and “under appropriate circumstances” because such action results in the disturbance of final agency orders. *See City of Pittsburgh v. Pa. Dept. of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980) (*City of Pittsburgh*); *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, No. 576 W.D., Allocatur Docket (April 9, 1996) (*West Penn*).

The standard that is consistently applied by the Commission for reviewing a petition for reconsideration, rehearing, and clarification following a final order<sup>4</sup> is set forth in the Commission’s Order entered in the case of *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983); 51 PUR4th 284, 288-289 (1983) (*Duick*). In *Duick*, 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. However, 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. *See Duick*, at 559; *also AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

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<sup>4</sup> The *June 2022 Order* is an adjudication and, as such, final and appealable. *Pa. Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995), n. 9, *affirmed*, 543 Pa. 307, 670 A.2d 1152 (1996), citing *Professional Paramedical Services, Inc. v. Pa. PUC*, 525 A.2d 1274 (Pa. Cmwlth. 1987), *petition for allowance of appeal denied*, 517 Pa. 627, 538 A.2d 879 (1988).

Application of the considerations of *Duick* essentially require a two-step analysis. *See, e.g., SBG Management Services, Inc./ Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered May 19, 2019) (*SBG Order*)<sup>5</sup> (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Order entered September 11, 2014)).

The first step of the *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. The second step is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify our previous decision. We will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. *See SBG Order*.

Finally, in the present case, the overarching statutory and regulatory provisions applicable to the conduct of the utility include Section 1501 of the Code and Section 59.33 of the Commission's Regulations. Section 1501 provides in pertinent part:

**§ 1501. Character of service and facilities.**

Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the

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<sup>5</sup> *Affirmed, Phila. Gas Works v. Pa. PUC*, \_\_\_Pa. \_\_\_, 249 A.3d 963 (2021); No. 14 EAP 2020 (April 29, 2021); 2021 WL 1681311; *remand granted, in part* (June 15, 2021); 2021 WL 2697432 (Table).

accommodation, convenience and safety of its patrons, employees and the public.

66 Pa. C.S. § 1501. In addition, Commission Regulations at Section 59.33 provides in pertinent part:

**§ 59.33. Safety.**

- (a) *Responsibility.* Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.

52 Pa. Code § 59.33.

**B. The Commission's *June 2022 Order***

By our *June 2022 Order*, we denied the Exceptions filed by Sunoco and adopted the ALJ's Initial Decision which reviewed each of the outstanding issues of the Complaint *seriatim*, including averments related to traffic hazards, fire hazards, noise levels, Calciment, water main break, and communication with the public. The ALJ concluded substantial record evidence supported a finding that Glen Riddle had satisfied its burden of proof that Sunoco's conduct regarding fire hazards, noise levels and communications to the public violated the Code and Commission Regulations or Commission Order regarding the standard and duty of reasonable care in utility operations.

As a result of the violations regarding fire hazards, noise levels and communications, the ALJ found that a civil penalty of \$51,000 was warranted in the circumstances. However, the ALJ also concluded that Glen Riddle's claims regarding

Sunoco’s responsibility for creating traffic hazards, the alleged dangerous use of Calciment during construction, and causing a water line break, failed to satisfy the burden of proof and were, therefore, denied. Accordingly, our *June 2022 Order* adopted the ALJ’s Initial Decision granted, in part, and denied, in part, the Complaint filed by Glen Riddle.

## **C. Position of the Parties**

### **1. Sunoco and EAP**

In its Reconsideration Petition Sunoco avers that reconsideration is warranted because the *June 2022 Order* “overlooked and failed to consider key issues, evidence law, and argument” offered by Sunoco and therefore erroneously concluded that the Sunoco’s construction activities were unsafe or unreasonable. Sunoco’s averments fall under four general basis for reconsideration which include: (1) creating *ex post facto* standards for violation of the Code in violation of Sunoco’s due process rights; (2) flawed evidentiary basis for finding violation of the Code which overlooked Sunoco’s competent evidence in favor of incompetent or no evidence; (3) overlooked fatal deficiency of the Complaint; (4) overlooked fatal deficiency to finding PUC jurisdiction; and (5) overlooked the due process violation resulting from late-raised request for civil penalties. Reconsideration Petition at 1-7.

Sunoco avers that the *June 2022 Order* failed to either acknowledge or apprehend Sunoco’s basis for arguing that, in the absence of applicable specific regulation, standard or PUC order prohibiting specific conduct, the findings of violations were based upon “purely subjective criteria” and therefore violate Sunoco’s due process rights. Reconsideration Petition 8-10. Further, Sunoco avers that the *June 2022 Order* failed to consider Sunoco’s argument that the findings that construction noise and emergency responder access are unsafe or unreasonable constitute arbitrary and

discriminatory enforcement which if applied going forward will render all utility construction to be in violation of safe and reasonable standard. Reconsideration Petition 10-12.

Sunoco also avers that the finding that Glen Riddle had standing to bring the Complaint is wrong as a matter of law and not based upon substantial evidence and that the *June 2022 Order* overlooked key competent evidence. In addition, Sunoco maintains that the order lacked substantial evidence to conclude that sound levels were unsafe, and that Sunoco's construction created unsafe conditions regarding emergency responder access. Reconsideration Petition 12-20.

With respect to the issue of communication with the public, Sunoco avers the *June 2022 Order* failed to consider that as a matter of law no law, order or regulation establishes public awareness requirements for new pipeline construction and overlooked key evidence by failing to consider the adequate communication by Sunoco with the public. Reconsideration Petition 20-25.

Sunoco avers the *June 2022 Order* overlooked key legal arguments which defeat the conclusion that the award of civil penalties did not violate Sunoco's due process. Further, Sunoco avers that the order failed to consider that dismissing the case as moot would not impact the Commission's enforcement authority. Reconsideration Petition 25-30.

Finally, Sunoco avers that the *June 2022 Order* failed to consider the correct application of the holding in *Povacz v. Pa. PUC*, 241 A.3d 481, 493 (Pa. Cmwlth. 2020), *appeal granted*, 253 A. 3d 220 (Pa. 2021), failed to consider that the Commission lacks jurisdiction over fire safety, and failed to consider caselaw and argument that the Complaint should be dismissed for lack of valid verification. Reconsideration Petition 27-34.

Based on the asserted failures, omissions and errors, Sunoco asserts that the Commission should grant reconsideration of the *June 2022 Order* and reverse its findings that Sunoco was in violation of the Code and regulations, reverse the award of civil penalties in the amount of \$51,000, and dismiss the Complaint.

EAP's Letter in Support, in the nature of an amicus filing, offered support for Sunoco's request for reconsideration. As a trade association whose members include the major natural gas and electric public distribution utilities in the Commonwealth, EAP supports reconsideration on the primary basis of EAP's expressed concern that the *June 2022 Order* may be read to "[create] a new statewide standard for noise and emergency responder access during utility construction project." Letter in Support at 1. EAP requests that the Commission grant reconsideration to clarify that the *June 2022 Order* was *not* intended to create a statewide standard that a public utility's construction activities in a residential area cannot exceed, at any "point -in-time," 75 decibels, or the utility may be found in violation of Section 1501 of the Code, subject to a \$1000 fine for each violation, or be required to provide, at all times, unimpeded emergency responder access or be subject to being found in violation of Section 1501. *Id.* at 2-3.

EAP suggests that, if the Commission did intend to impose new state-wide standards for noise levels and access for emergency responders, the Commission should grant reconsideration and reverse the *June 2022 Order*.

## **2. Glen Riddle**

In its Answer, Glen Riddle asserts that Sunoco's request for reconsideration fails to satisfy the first step of the *Duick* analysis, which requires that a party seeking reconsideration offer new and novel arguments or identify considerations that appear to have been overlooked or not addressed by the Commission in its previous order. Glen

Riddle argues that, to the contrary, Sunoco does precisely what the Commission has expressly stated *should not* be done by requesting reconsideration: “[raising] the same questions which were specifically decided against them. ...” Answer at 2, citing 56 Pa. P.U.C. at 559 (quoting *Pa. Railroad Co. v. Pa. Public Service Comm’n*, 179 A. 850, 854 (Pa. Super. 1935)).

Glen Riddle avers that the arguments set forth in Sunoco’s Reconsideration Petition are the identical arguments raised in the exact same order by Sunoco’s Exceptions, which were addressed and rejected by the *June 2022 Order*. Glen Riddle provides the following chart, which it maintains, illustrates that Sunoco is raising arguments which have been previously considered and rejected by the Commission:

<b>Issue Sunoco Alleges The Commission Failed to Consider</b>	<b>Sunoco’s same argument in its Exceptions</b>	<b><u>GRS’s Response</u></b>	<b><u>Order</u></b>
Petition III(A) ¶¶ 13-16 <i>Alleged violation of due process</i>	Exception Nos. 1, 2	Section II, pp. 2-11	pp. 24-29 and adopting the Initial Decision
Petition III(B) ¶¶ 17-20 <i>Alleged creation of new standards</i>	Exception No. 3	Section II, pp. 2-11	pp. 29-31 and adopting the Initial Decision
Petition III(C) ¶¶ 21-24 <i>Alleged lack of standing</i>	Exception No. 4	Section II, pp. 11-13	pp. 31-32 and adopting the Initial Decision
Petition III(D) ¶¶ 25-31 <i>Alleged failure to weigh evidence regarding sound levels</i>	Exception No. 5	Section II, pp. 13-17	pp. 33-34 and adopting the Initial Decision
Petition III(E) ¶¶ 32-34 <i>Alleged failure to weigh evidence regarding fire hazards</i>	Exception No. 6	Section II, pp. 17-19	pp. 35-36 and adopting Initial Decision

<b>Issue Sunoco Alleges The Commission Failed to Consider</b>	<b>Sunoco's same argument in its Exceptions</b>	<b><u>GRS's Response</u></b>	<b><u>Order</u></b>
Petition III(F) ¶¶ 35-40 <i>Alleged failure to recognize that Public Awareness requirements do not apply to new pipelines</i>	Exception No. 7	Section II, pp. 2-11	pp. 36-37 and adopting Initial Decision
Petition III(G) ¶¶ 41-45 <i>Alleged failure to consider evidence of</i>	Exception No. 8	Section II, pp. 19-21	pp. 37-38 and adopting Initial Decision
<i>Sunoco communications with GRS</i>			
Petition III(H) ¶¶ 46-49 <i>Allegedly inappropriate application of civil penalty</i>	Exception No. 9	Section II, p. 21	pp. 39-40 and adopting Initial Decision
Petition III(I) ¶¶ 50-57 <i>Alleged failure to dismiss complaint as moot</i>	Exception No. 10	Section II, pp. 21-22	pp. 40-41 and adopting Initial Decision
Petition III(J) ¶¶ 58-60 <i>Alleged failure to recognize requirement of actual harm</i>	Exception No. 11	Section II, pp. 22-23	pp. 42-43 and adopting Initial Decision
Petition III(K) ¶¶ 61-63 <i>Alleged lack of jurisdiction</i>	Exception No. 12	Section II, pp. 2-11	p. 44 and adopting Initial Decision
Petition III(L) ¶¶ 64-66 <i>Alleged failure to dismiss for lack of proper verification</i>	Exception No. 13	Section II, pp. 23-25	pp. 45-46 and adopting Initial Decision

Glen Riddle avers that the chart setting forth the identical arguments raised by Sunoco in its Exceptions, demonstrates that Sunoco's Reconsideration Petition does exactly that which is prohibited in seeking reconsideration, *e.g.*, rehashing the same questions which have already been specifically decided against Sunoco.

Glen Riddle asserts that Sunoco's attempt to relitigate arguments already decided against it should be rejected, and Sunoco's Reconsideration Petition should be denied

#### **D. Disposition**

As a preliminary procedural matter, we shall address the timeliness of Sunoco's Reconsideration Petition. Although Sunoco's Petition for Reconsideration was filed on July 1<sup>st</sup>, the Secretary of the Commission notified Sunoco *via* letter of that same date, that the Petition for Reconsideration of the June 16, 2022 Order from Sunoco Pipeline, L.P., dated July 1, 2022, and received by the Secretary's Bureau on July 1, 2022, contained no verification or affidavit as required by the Commission's Rules of Administrative Practice and Procedure, set forth at 52 PA Code § 1.36(a), and could not be accepted for filing. Subsequently, the perfected filing was submitted on July 5, and docketed as timely received on July 1, 2022.

In its Answer to the Reconsideration Petition, Glen Riddle argues that as the procedural defect in Sunoco's filing was not cured until July 5<sup>th</sup>, nineteen (19) days after the entry of the *June 2022 Order*, Sunoco's Petition was filed past the fifteen (15) day period for filing for reconsideration, as set forth in Section 5.572 (c) of Commission Regulations. Therefore, Glen Riddle argues the Commission should bar the Reconsideration Petition as untimely. *See*, Answer at 1-2.

Based upon our review of Sunoco’s Reconsideration Petition and Glen Riddle’s Answer thereto, we conclude that, as it is within Commission discretion to liberally construe the procedural rules to disregard procedural defects which do not prejudice the rights of the parties, it was proper to docket Sunoco’s Reconsideration Petition as timely filed on July 1, 2022. *See* 52 Pa. Code §1.2.

Turning now to the merits of Sunoco’s Reconsideration Petition, based upon our review of the record in this proceeding, the positions of the Parties and the Commission’s *June 2022 Order*, as discussed more fully *infra.*, we shall grant, in part, and deny in part, Sunoco’s Reconsideration Petition, consistent with this Opinion and Order.

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.<sup>6</sup> 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. *See Duick*, at 559; *also AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990).

We agree with Sunoco that it has raised new or overlooked arguments regarding the findings of violations related to Sunoco’s construction noise activity and emergency and fire responder access, which persuade us that reconsideration of our *June 2022 Order* is warranted. Accordingly, we find that Sunoco raises a basis upon which to grant reconsideration, in part, and we shall therefore, grant, in part, and deny, in part, Sunoco’s Reconsideration Petition.

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<sup>6</sup> *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983); 51 PUR4th 284, 288-289 (1983).

In our *June 2022 Order*, the Commission adopted ALJ Cheskis’ Initial Decision 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 Code<sup>7</sup> and Section 59.33 of the Commission’s Regulations.<sup>8</sup> In the Initial Decision, 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.

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.”<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup>

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<sup>7</sup> 66 Pa. C.S. § 1501 (regarding character of service and facilities).

<sup>8</sup> 52 Pa. Code § 59.33 (regarding safety).

<sup>9</sup> *Id.* at 48.

<sup>10</sup> *Id.* at 49.

<sup>11</sup> *Id.* at 85.

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.”<sup>12</sup>

We 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. We 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

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<sup>12</sup> EAP Letter at 3.

on the property, that emergency responder would have been delayed as a result.”<sup>13</sup> Additionally, the ALJ found that “[h]igh levels of truck traffic, delay and stacking on an incline on the [Glenn Riddle] property occurred.”<sup>14</sup> 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 \$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.”<sup>15</sup> 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, we conclude that the Commission appropriately found that Sunoco failed to adequately communicate with residents of the Glenn Riddle property regarding

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<sup>13</sup> *Id.* at 40.

<sup>14</sup> *Id.*

<sup>15</sup> EAP Letter at 3.

its construction activities resulting in a civil penalty of \$3,000, for the reasons set forth in our *June 2022 Order*.

#### **IV. Extension Petition, Answer and Disposition<sup>16</sup>**

##### **A. Legal Standards**

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. As to its request for an extension of time and/or stay/supersedeas of the duty to pay a civil penalty, therefore, the burden of proof is on Sunoco. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

With respect to motions seeking an extension of time in which to perform an act directed by date certain, Section 1.15 of the Commission’s Regulations provides that the Commission may, in its discretion, grant an extension of time upon motion made and good cause shown:

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<sup>16</sup> Although Sunoco’s Extension Petition requested expedited Commission action on the Petition at the Public Meeting held July 14, 2022, and further sought waiver of or a shortened reply period for Glen Riddle’s Reply to the Extension Petition, no expedited treatment was granted. Subsequently, Sunoco renewed its request for extension of time in which to pay the civil penalty, by its letter dated July 18, 2022 (July 18 Letter). Therefore, in order to address Sunoco’s request for extension of time to pay the civil penalty, we shall review Sunoco’s Extension Petition on the merits.

§ 1.15 Extensions of time and continuances.

(a) Extension of time shall be governed by the following:

- (1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, *for good cause* be extended upon motion made before expiration of the period originally prescribed or as previously extended.

*Id.* (emphasis added).

With respect to petitions for a stay/supersedeas of a duty arising under a Commission's final order, including a duty to pay a civil penalty, as noted *supra.*, the Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and (g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

As a general matter of practice and procedure before this Commission, the filing of a petition for reconsideration under Section 5.572 of Commission Regulations does not operate as an "automatic" stay of the order for which reconsideration is sought. Consequently, Section 5.572, pursuant to which reconsideration is sought, also provides a means for seeking relief from the obligation to perform duties imposed by such order. Under Section 5.572, a party seeking relief in the form of reconsideration may also seek supersedeas or stay of the duties imposed by the order, including payment of a civil penalty. *See* 52 Pa. Code § 5.572 (a) and (c). Therefore, a party seeking to delay

payment of a civil penalty imposed by Commission order must petition for permission for stay/supersedeas under §5.572(c) within 15 days of entry of the Commission order.

Similarly, appeals to Commonwealth Court from orders involving solely the payment of money do not operate to automatically stay the obligation to pay. Rather, an automatic stay from an order to pay money is only warranted if the party seeking the stay posts a bond in the amount of 120 percent of the total civil penalty consistent with the Commonwealth Court's practice, pursuant Pa. R.A.P. 1731.<sup>17</sup>

In reviewing petitions seeking a stay/supersedeas of a Commission order, the Commission has adopted the standards set forth in *Pa. PUC v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983) (*Process Gas*). The standards set forth in *Process Gas* require a petitioner to fulfill the following:

1. Make a strong showing that it is likely to prevail on the merits;
2. Show that without the requested relief, it will suffer irreparable injury;

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<sup>17</sup> Pa. R.A.P. 1731(a) provides:

Except as provided by subdivision (b), an appeal from an order involving solely the payment of money shall, unless otherwise ordered pursuant to this chapter, *operate as a supersedeas upon the filing with the clerk of the lower court of appropriate security in the amount of 120% of the amount found due by the lower court and remaining unpaid*. Where the amount is payable over a period of time, the amount found due for the purposes of this rule shall be the aggregate amount payable within 18 months after entry of the order.

*Id.* (emphasis added).

3. Show that the issuance of a stay will not substantially harm other interested parties in the proceedings; and
4. Show that the issuance of a stay will not adversely affect the public interest.

*Process Gas*, 502 Pa. at 552-53, 467 A.2d at 808-09, citing *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958) (*Virginia Jobbers*). These criteria require the balancing of all interests, including the public, where applicable.

In *Process Gas*, the court also acknowledged that demonstration of the first factor, success on the merits, usually involves review of the merits of a dispute that have already been fully considered in an adversarial proceeding before the same body now considering the request for a stay. In this instance, the court concluded that it is essential that the petitioner make a strong case under the criteria, and when facing a case in which the other three factors strongly favor interim relief, discretion may be exercised to grant a stay where the petitioner has made a substantial case on the merits even though the reviewing tribunal may disagree with the result advocated. *Process Gas*, 502 Pa. at 553-54, 467 A.2d at 80 (quoting *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)).

## **B. Position of the Parties**

### **1. Sunoco**

Sunoco's Extension Petition was captioned as a "motion for extension of time" filed pursuant to Section 1.15 of the Commission Regulations, governing extensions of time and continuances. Sunoco asserts that the request for extension is governed by Section 1.15, based upon a prior decision of the Commission in which an

extension of time to pay a civil penalty was granted pending resolution of a petition for reconsideration. Extension Petition at 2, citing *Pa PUC BI&E v. Uber Technologies, Inc., Gegen LLC, Rasier LLC, and Rasier PA LLC*, Docket No. C-2014-2422723 (Order entered June 9, 2016) (*Pa PUC v. Uber*).

Sunoco asserts that good cause exists to grant the extension of time because Sunoco has sought reconsideration within the allowable time frame, administrative efficiency would be served should reconsideration be granted and the civil penalty reversed, and, here, the extension of time for payment of a penalty to the general fund rather than to a specific party, will not cause harm to anyone. *Id.* at 2-3.

In addition to an extension of time in which to pay the \$51,000 penalty, Sunoco requested an expedited response from the Commission on the “motion,” and waiver of the opposing party’s right to file an answer to the motion, under Section 5.103 (c). Sunoco argues that answers to the motion are not warranted because payment of the penalty to the Commonwealth’s General Fund does not directly impact the Complainants in this proceeding. However, if the Commission allows for answers to the motion, Sunoco requests that the time frame in which to answer be shortened from 20 days to 10 days. Extension Petition at 3-4.

## **2. Glen Riddle**

In its Answer, Glen Riddle asserts that Sunoco’s request for extension of time in which to pay the civil penalty order by the Commission’s *June 2022 Order* should be denied. Glen Riddle notes that the date on which Sunoco was obligated to pay the civil penalty was July 18, 2022, and Sunoco has not paid fine of \$51,000. Glen Riddle asserts that Sunoco should be found in clear violation of the Commissions’ *June 2022 Order*. Glen Riddle avers that because Sunoco’s Reconsideration Petition was

filed late, Sunoco is not entitled to any relief associated with reconsideration, including any extension of the time in which to pay the penalty. Answer at 1-2.

Glen Riddle argues that Sunoco has asserted no good cause for its failure to pay the fine by July 18<sup>th</sup>. Glen Riddle asserts the Commission should dismiss any cursory and unsubstantiated claim that Sunoco was unable to pay the fine “due to [unspecified] delays” with its bank. Answer to July 18 Letter at 2.

Glen Riddle further asserts that the standard of “good cause” under Section 1.15, is applicable for an extension of time requested *prior* to the expiration of the time in which to pay the fine. Glen Riddle asserts that where, as here, the time in which to pay the fine has expired and the party failed to pay the fine as ordered, the standard becomes whether the failure to pay was based upon “reasonable grounds.” Answer at 3.

Glen Riddle avers that “administrative efficiency” is not a basis to find good cause, especially where the agency’s consideration and likely denial of reconsideration is itself expending agency resources. Glen Riddle further asserts that, as Sunoco’s Reconsideration Petition is meritless, the request for extension of time to pay the civil penalty is likewise without merit. Finally, Glen Riddle asks that the Commission deny Sunoco’s request for an extension of time. Answer at 4-5.

### **C. Disposition**

At the outset, we note that the proper form of Sunoco’s request should be a petition for stay/supersedeas filed following a final order of the Commission, pursuant to Section 5.572 of Commission Regulations (pertaining to petitions for relief). In the present case, Sunoco filed its request as a “motion for extension of time to pay civil penalty” pursuant to Section 1.15 of Commission Regulations (pertaining to extensions of

time and continuances) and in reliance upon the Commission’s prior decision in *Pa. PUC v Uber*. However, Sunoco’s reliance upon Section 1.15 and our prior decision in *Pa. PUC v. Uber*, is misplaced.

As a result of filing its request for relief as a “motion for extension of time” pursuant to Section 1.15, whether intentionally or not, Sunoco seeks to have its request for relief measured by the standard of “good cause shown” rather than attempt to satisfy the standard set forth in *Process Gas*, that a party seeking a stay/supersedeas must:

1. Make a strong showing that it is likely to prevail on the merits;
2. Show that without the requested relief, it will suffer irreparable injury;
3. Show that the issuance of a stay will not substantially harm other interested parties in the proceedings; and
4. Show that the issuance of a stay will not adversely affect the public interest.

*Process Gas*, 502 Pa. at 552-53, 467 A.2d at 808-09, *citing*, *Virginia Jobbers*, 259 F.2d 921 (D.C. Cir. 1958).

As Sunoco correctly acknowledged, in *Pa PUC v. Uber*, the Commission addressed similar circumstances in which Uber was ordered to pay a civil penalty and requested relief from the duty to pay the penalty while its petition for reconsideration was pending before the Commission. There, the Commission treated Uber’s petition for stay/supersedeas filed pursuant to Section 5.572 of Commission Regulations as a motion to extend deadline for payment of civil penalty, pursuant to 52 Pa. Code § 1.15, and granted a stay of the duty to pay the penalty to allow for thorough consideration and disposition of the reconsideration petition. *See* Extension Petition at 2. However,

Sunoco failed to apprehend the material distinctions between the present case and *Pa. PUC v. Uber*.

The Commission expressly noted in *Pa PUC v. Uber* that it was exercising its discretion to treat Uber’s petition for stay as a motion for extension of time to pay the civil penalty under the unique circumstances of that case. *See, Pa PUC v. Uber at 3.* (based upon the unique circumstances of this case, deferring analysis and disposition of the merits of the petition for stay/supersedeas under *Process Gas* standard). There, Uber had properly filed its petition for stay/supersedeas, pursuant to Section 5.572, arguing it had satisfied the *Process Gas* standard. However, the Commission, in an exercise of its discretion, *sua sponte* deferred disposition on the merits of the petition for stay/supersedeas until the disposition on the merits of the petition for reconsideration, given the time constraints and that the amount of the civil penalty at issue was *more than 11 million dollars*. It was only given the unique circumstances of that case, the extraordinarily high penalty amount in dispute, that the Commission found “good cause” for an extension of time to pay the penalty, pending resolution of the merits of the petition for reconsideration. Ultimately, the Commission did review Uber’s petition for stay/supersedeas on the merits and declined to grant a stay/supersedeas.

In contrast, here Sunoco appears to believe it need only meet the initial standard of “good cause shown” under Section 1.15, since Sunoco’s Extension Petition does not proffer any discussion of the application of the *Process Gas* standard to the present case. Also in stark contrast, the present case involves a civil penalty of \$3,000. The penalty amount in the present case, relative to the penalty imposed in *Pa PUC v. Uber* is inconsequential, and does not, in itself, warrant the Commission exercising its discretion to allow Sunoco to circumvent filing the proper petition for stay/supersedeas, and meeting the corresponding *Process Gas* standard for imposing a stay/supersedeas of the obligation to pay the civil penalty.

We conclude that in order to establish grounds for a stay/supersedeas, Sunoco would be obliged to meet the higher standard established under *Process Gas*. However, it is not necessary for us to engage in the *Process Gas* analysis, where we further conclude that Sunoco fails to establish any “good cause” for stay/supersedeas of the duty to pay the civil penalty in the amount of \$3,000.

We agree with Glen Riddle, that the amount of penalty in question, and lack of any valid basis asserted by Sunoco, do not warrant granting an extension of time in which to pay the civil penalty. We find Sunoco’s arguments related to agency efficiency and “no harm” caused by delaying payment to the General Fund to be unpersuasive.

However, we disagree with Glen Riddle that Sunoco’s conduct warrants a further finding of violation of the Code and imposition of penalties. In the circumstances, we shall direct that Sunoco pay the civil penalties within thirty (30) days of the entry of this order.

Therefore, we shall deny Sunoco’s Extension Petitions, and shall direct that Sunoco pay the civil penalty in the amount of \$3,000, within thirty (30) days of the entry of this Opinion and Order.

## V. Conclusion

Based upon our review of the record and the applicable law, we shall grant, in part, and deny, in part, Sunoco’s Reconsideration Petition and deny Sunoco’s Extension Petitions, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration of June 16, 2022 Order filed by Sunoco Pipeline, L.P. on July 1, 2022, at Docket Number C-2020-3023129, is granted, in part, and denied, in part, consistent with this Opinion and Order.

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, at Docket Number C-2020-3023129, 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, at Docket Number C-2020-3023129, 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:

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

6. That Sunoco Pipeline, L.P. shall cease and desist from further violations of the Public Utility Code or any regulations of the Public Utility Commission.

7. That this matter be marked closed upon payment by Sunoco Pipeline, L.P., of the \$3,000 civil penalty in accordance with Ordering Paragraphs 4 and 5 above.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2022

ORDER ENTERED: September 13, 2022