

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 25, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
Norman J. Kennard
Andrew G. Place, Statement
John F. Coleman, Jr.

Amended Petition of State Senator
Andrew E. Dinniman for Interim
Emergency Relief

P-2018-3001453

Pennsylvania State Senator Andrew E. Dinniman

C-2018-3001451

v.

Sunoco Pipeline, L.P.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a March 29, 2019 letter of Sunoco Pipeline L.P. (Sunoco) requesting the issuance of a Commission Secretarial Letter to authorize the

resumption of construction activity and to discontinue the existing injunction prohibiting construction activity on the Sunoco Mariner East 2 (ME2) pipeline at the Schoen Road work location in West Whiteland Township, Chester County, Pennsylvania. On March 29, 2019, Mark L. Freed, Esquire, on behalf of Senator Andrew E. Dinniman, filed a letter responsive to the Sunoco letter. On April 4, 2019, Sunoco filed a reply to the Mark L. Freed letter. By Order of the Commonwealth Court issued September 27, 2018, in *Sunoco Pipeline L.P. v. Pennsylvania State Senator Andrew E. Dinniman and Public Utility Commission*, No. 1169 C.D. 2018, the Court, *inter alia*, directed the following: “All proceedings in this matter before the PUC are stayed pending resolution of this appeal.”

On consideration of the letters of the parties and based on our review of the text of the Commonwealth Court’s order, we advise the Parties that the Commonwealth Court Order precludes the consideration of Sunoco’s filing seeking a Commission Secretarial Letter discontinuing the injunction until the Commonwealth Court’s stay is lifted.

Discussion

The injunction on construction activity of the ME2 pipeline at the Schoen Road work location was the subject of Ordering Paragraph No. 7 of the Commission’s Opinion and Order entered June 15, 2018, and Ordering Paragraph No. 5 of the Commission’s Opinion and Order entered August 14, 2018, in the above-captioned proceedings.

On March 29, 2019, Sunoco filed a letter, with the attached Affidavit of Matthew E. Gordon, to verify that the Pennsylvania Department of Environmental Protection (PADEP) had issued the appropriate authorizations for Sunoco’s resumption

of construction of the ME2 Pipeline at the Schoen Road work location in West Whiteland Township in Chester County, Pennsylvania.

On March 29, 2019, Mark L. Freed, Esquire, on behalf of Senator Dinniman, filed a letter responsive to the Sunoco letter. Senator Dinniman asserts that the Commission does not have jurisdiction to issue a Secretarial Letter in accordance with the Orders entered June 15, 2018, and August 14, 2018, in this matter in light of the stay issued by the Commonwealth Court by the Order dated September 27, 2018. The March 29, 2019 letter of Senator Dinniman further argues that Sunoco has not, as a factual determination, complied with the Pennsylvania Department of Environmental Protection (PADEP) administered conditions to resume construction at the Schoen Road work location.

On April 4, 2019, Sunoco filed a reply to the Mark L. Freed letter. In reply, Sunoco asserts that the arguments raised by Senator Dinniman are incorrect. Sunoco states, *inter alia*, that the stay of the proceedings is not a “*supersedeas*” of the June 15, 2018 Order and, thus, does not prevent the Commission from enforcing any order entered in the matter pending appeal. Accordingly, Sunoco argues that enforcement of the June 15, 2018 Order continuing the injunction subject to the satisfaction of the enumerated conditions therein would be prohibited only if it had “been superseded as prescribed in this Chapter.” *See* Pa. R.A.P. 1701(b)(2). Sunoco also factually disputes whether Senator Dinniman is correct in his position as to whether PADEP has issued the appropriate authorizations.

Disposition

Generally, once an appeal is taken, an agency loses jurisdiction and may no longer proceed in the matter. *See* Pa. R.A.P. 1701(a).

Under Rule 1701(b)(2), however, an agency retains the jurisdiction to “[e]nforce any order entered in the matter, *unless* the effect of the order has been superseded” Pa. R.A.P. 1701(b)(2) (emphasis added). Sunoco argues that the court’s stay is not a *supersedeas* within the meaning of Rule 1701(b)(2).

In the instances of petitions for interlocutory review, petitions for permission to appeal do not stay the proceedings below, “unless the lower court or governmental unit, or the appellate court or a judge thereof shall so order.” Pa. R.A.P. 1313. Therefore, under the Rules of Appellate Procedure, an appeal of an interlocutory order would not halt the underlying proceedings unless the Commonwealth Court directed the agency to stop. In this instance, the Court has directed us to stop. Specifically, the Court’s order of September 27, 2018, provides, in pertinent part:

All proceedings in this matter before the PUC are stayed pending resolution of this appeal.

The Court’s directive to stay agency proceedings was not in response to a request of Sunoco. Rather, it appears that the Court issued the stay in response to the Commission’s Order granting Sunoco’s motion to certify the case for interlocutory appeal. In that Order, which cited 52 Pa. Code § 5.633(b), and Pa. R.A. P. 1313, the Commission stated:

Importantly, the grant of Sunoco’s *Motion* as it pertains to standing does not stay the proceeding before the Office of Administrative Law Judge. The current consolidated proceedings can and will proceed during the interlocutory appeal to the Commonwealth Court.

Order of July 25, 2018 at 16-17. The Commonwealth Court’s order overrules that

determination.

On review, we find the language unambiguous. Therefore, we determine that this language precludes our consideration of whether Sunoco has satisfied the requisite terms of our Opinion and Orders entered June 15, 2018, and August 14, 2018, until the stay is lifted. Concurrently, Sunoco is not entitled to the issuance of a Commission Secretarial Letter discontinuing the injunction at this time.

Sunoco, a party to the action, seeks affirmative relief from the Commission based upon factual assertions in Sunoco's May 29 Letter that Sunoco has met the requisite terms for resuming construction which were imposed by our Opinion and Orders entered June 15, 2018, and August 14, 2018. Senator Dinniman disputes the factual assertions in Sunoco's letter, based upon his standing as a party to do so. Consequently, any further enforcement action on this issue would first require our determination on the factual dispute between the parties, from which the parties may appeal. We conclude that our authority to render a determination on the factual dispute is precluded by the Commonwealth Court's stay of all proceedings before the Commission.

Further, we do not find, as Sunoco asserts, that our jurisdiction to proceed in this matter turns on the distinction between "stay" and "*supersedeas*." Either term refers to an order by the Commonwealth Court which *supersedes* the authority of the lower tribunal to act unless specifically authorized or directed otherwise. Accordingly, we do not find that the Commission determination required by Sunoco's March 29 letter, as disputed by Senator Dinniman, falls within the exception of Pa. R.A.P. 1701(b) (2) and we, therefore, decline to address the matter in dispute at this time;
THEREFORE,

IT IS ORDERED:

1. That the March 29, 2019 letter and affidavit of Sunoco requesting the issuance of a Secretarial Letter authorizing the resumption of construction activity at the Schoen Road work location, West Whiteland Township, Chester County, Pennsylvania, is, hereby, deferred for any further Commission action until further notice.

2. That this Order shall be served upon all persons appearing on the Service List of the above-captioned Commission docket.

BY THE COMMISSION

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 25, 2019

ORDER ENTERED: April 25, 2019