

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIROMENTAL PROTECTION,

Petitioner,

v.

GRANT TOWNSHIP OF INDIANA
COUNTY AND THE GRANT TOWNSHIP
BOARD OF SUPERVISORS,

Respondents,

and,

PENNSYLVANIA GENERAL ENERGY
COMPANY, L.L.C.,

Proposed Intervenor.

No. 126 M.D. 2017

**UNOPPOSED PETITION TO INTERVENE OF
PENNSYLVANIA GENERAL ENERGY COMPANY, L.L.C.**

Pursuant to Pennsylvania Rule of Appellate Procedure 1531(b) and Pennsylvania Rule of Civil Procedure 2327, Proposed Intervenor Pennsylvania General Energy Company, L.L.C. ("PGE") respectfully applies for leave to intervene in the above-captioned matter, which the named parties do not oppose. In support of its Petition, PGE states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. PGE is a Pennsylvania limited liability company with a business address of 120 Market Street, Warren, PA 16365. PGE is in the business of exploration and development of natural gas. Its activities include drilling and operating natural gas wells and managing brine and produced fluids generated from operating wells.

2. On September 21, 2012, PGE entered into an injection lease with Michael H. Yanity, Marian E. Yanity, John G. Yanity, and Karen D. Yanity covering 150 acres of land, more or less, and being known as Tax Map Nos. 19-11-102, 19-11-102.2, and 19-11-102.3 in Grant Township, Indiana County for the purpose of, inter alia, injecting and disposing of tophole water, production brine, and stimulation flowback fluids associated with oil and natural gas exploration and production into the Huntersville and Oriskany formations (the “Injection Lease”) in a deep gas well (the “Injection Well”) in Grant Township on property known as the Yanity Farm pursuant to Well Permit No. 37-063-31807-00-00 issued by the Pennsylvania Department of Environmental Protection (the “Well Permit”).

3. As more fully set out in the Court’s prior opinions in this case – *Dep’t of Env’t Prot. v. Grant Twp. of Indiana Cnty. and The Grant Twp. Bd. of Supervisors*, (Pa. Cmwlth., No. 126 M.D. 2017) filed May 2, 2018 (overruling in part and sustaining in part petitioner’s preliminary objections – “*Grant Township I*”); filed March 2, 2020 (denying petitioner’s application for summary relief – “*Grant Township II*”); and January 26, 2021 (denying the parties applications to stay or dismiss – “*Grant Township III*”) – this litigation arose from Grant Township of Indiana County’s 2015 adoption of a Home Rule Charter form of government that purports to prohibit “depositing of waste from oil and gas extraction” into injection wells and to prohibit the Pennsylvania Department of Environmental Protection from issuing a permit under state environmental laws to allow such activities.

4. As a result of the opinions in *Grant Township I*, *Grant Township II*, and *Grant Township III*, the claims currently pending before the Court are those in Counts I through IV of DEP’s Petition for Review and the Township’s Counterclaims 3 and 4.

5. PGE requests intervention on the claims currently before the Court and does not seek to enlarge the scope of any claim.

6. A status conference has been scheduled for February 24, 2021 to discuss the scheduling of a trial, following the Court's order in *Grant Township III*.

PGE'S GROUNDS FOR INTERVENTION

7. Pennsylvania Rule of Appellate Procedure 1531(b) allows a party not named as a respondent in an original jurisdiction Petition for Review to seek leave to intervene by filing an application with the Court.

8. Pursuant to Pennsylvania Rules of Appellate Procedure 106 and 1517, original jurisdiction Petitions for Review are governed by the Pennsylvania Rules of Civil Procedure, unless the Rules of Appellate Procedure expressly provide otherwise.

9. Pennsylvania Rule of Civil Procedure 2327 authorizes intervention where "determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action." Pa.R.C.P. 2327(4).

10. PGE seeks to intervene pursuant to Pa.R.C.P. 2327(4) because it has a substantial and direct legally enforceable interest in using the Injection Well that would be adversely affected by a ruling in favor of the Township.

11. The Injection Lease remains in effect.

12. PGE has the federal Underground Injection Control Permit No. PAS2D013BIND that the U.S. EPA issued under the federal Safe Drinking Water Act on September 11, 2014 which is needed to operate the injection well. This permit is in full force and effect; it does not expire until September 11, 2024.

13. Although DEP subsequently rescinded the Well Permit it issued to PGE, PGE appealed that action to the Pennsylvania Environmental Hearing Board which is currently pending at EHB Dkt No. 2020-046-R.

14. The relief the Township requests in its Counterclaims, i.e., that the Home Rule Charter is valid under the Pennsylvania Environmental Rights Amendment and that DEP violated the ERA by failing to protect and advance rights protected by the ERA, if granted, would nullify PGE's ability to utilize its federal permit, the Injection Lease, and the Well Permit if the Environmental Hearing Board orders reinstatement of the Well Permit.

15. Thus, PGE satisfies Pennsylvania Rule of Civil Procedure 2327's requirement for intervention because the determination in this action will affect its "legally enforceable interest." Pa.R.C.P. 2327(4).

16. In addition, in *Grant Township I*, this Court stated that "[s]cientific and historical evidence concerning environmental issues . . . may be necessary to fully adjudicate these Counterclaims as well as DEP's Complaint." Opinion at 16 (emphasis added).

17. As the owner and operator of the Yanity Well, PGE possesses and would introduce the scientific and technical evidence to demonstrate that operating the Yanity Well will fully protect groundwater and other environmental values the Township alleges would be at risk if the Home Rule Charter is invalidated.

18. PGE's scientific and historical evidence will assist this Court in its adjudication; DEP cannot adequately represent PGE's interests on these issues.

19. Finally, the Township in its New Matter alleges "numerous past and current violations of environmental regulations" by PGE. (Township's New Matter, ¶ 68); *see also Grant Township III*, at 3.

20. If permitted to intervene, PGE will introduce evidence of its exemplary environmental compliance record to rebut the Township's allegations.

21. No provision of Pennsylvania Rule of Civil Procedure 2329 applies to justify a denial of PGE's Petition to Intervene. Pa.R.C.P. 2329.

22. PGE has not delayed seeking intervention in this matter, nor would its intervention cause any undue delay in its resolution or prejudice the rights of the Township or DEP. The Court only recently issued its January 26, 2021, Opinion in *Grant Township III*, ordering a status conference to schedule a trial and has not yet adopted a case management schedule.

23. Counsel for both Grant Township and DEP have represented that their respective clients do not oppose intervention.

WHEREFORE, for the foregoing reasons, Pennsylvania General Energy Company, L.L.C. respectfully requests that this Honorable Court grant its Petition to Intervene, approving its intervention and full party status.

Respectfully submitted,

DATE: February 17, 2021

/s/ Kevin J. Garber

Kevin J. Garber

PA I.D. No. 56671

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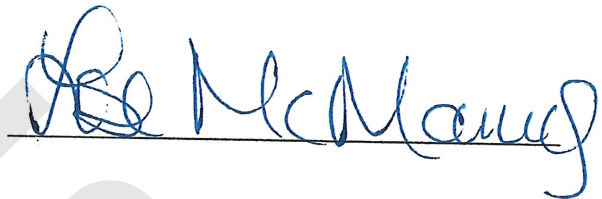
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LLC*

VERIFICATION

I, Lisa C. McManus, hereby state that I am the Vice President, Legal and General Counsel of Pennsylvania General Energy Company, LLC, and that the facts set forth in the foregoing Unopposed Petition to Intervene of Pennsylvania General Energy +are true and correct to the best of my knowledge, information, and belief. I understand that any false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: February 17, 2021



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[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2021, upon consideration of
the Petition to Intervene filed by Pennsylvania General Energy Company, L.L.C. in the above-
captioned matter, it is hereby ORDERED that the Petition to Intervene is GRANTED.

BY THE COURT:

B. BRIGANCE LEADBETTER,
Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2021, a copy of the foregoing Petition to Intervene of Pennsylvania General Energy Company, L.L.C. was served electronically via the PACFile filing system, in accordance with PA.R.A.P. 121 upon the following counsel of record:

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/s/ Kevin J. Garber

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