

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Petitioner,

No. 126 M.D. 2017

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

Intervenor,

v.

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

Respondents.

**SENECA RESOURCES COMPANY, LLC'S
REPLY IN SUPPORT OF ITS PETITION TO INTERVENE**

Pursuant to Pennsylvania Rule of Appellate Procedure 1531(b) and Pennsylvania Rule of Civil Procedure 2327, Proposed Intervenor Seneca Resources Company, LLC ("Seneca") respectfully files this Reply in Support of its Petition to Intervene (the "Reply") in the above-captioned matter. In support of its Petition, Seneca further states as follows:

SENECA MEETS THE GROUNDS FOR INTERVENTION

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. This intervention is governed by the Pennsylvania Rules of Civil Procedure. Here, Seneca has a legally enforceable interest in this action, possesses a unique interest that is not presently represented by any of the parties, and Seneca's intervention will not unduly delay the adjudication of the action.

I. Seneca has a Legally Enforceable Interest in this Action

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) (emphasis supplied). The expansive language of the rule squarely includes Seneca, which has a unique, substantial, direct and legally enforceable interest in using its wells, particularly its multiple injection wells, that is likely to be adversely affected by a ruling in favor of Grant Township.

In Rule 2327(4), the word “may” is permissive, meaning there need only be a chance – not a certainty – that a legally enforceable interest could be affected.

See Koken v. Reliance Ins. Co., 586 Pa. 269, 287, 893 A.2d 70 (Pa. 2006)

(explaining that where the words of a statute are clear and free from ambiguity, the legislative intent is to be gleaned from those very words) (internal quotations and citations omitted). Moreover, the last phrase of Rule 2327(4) makes clear that the

right to intervene specifically includes those who would **not** be bound by a judgment in the action.

Grant Township claims that Seneca does not meet the requirements of Rule 2327(4) because its interest in protecting existing, permitted injection wells for the disposal of produced fluids “does not qualify” and is “too speculative.” However, Grant Township provides no authority in support of these bald assertions, and the express terms of Rule 2327(4) plainly direct otherwise.

Here, Seneca’s interests stand to be impacted by a ruling in favor of Grant Township, including but not limited to a ruling in favor of Grant Township on Count IV of Grant Township’s Counterclaim alleging a violation of Article I § 27 of the Pennsylvania Constitution or rulings impacting the constitutionality or applicability of the Solid Waste Management Act or the Pennsylvania Oil and Gas Act (Act 13). Indeed, Grant Township’s prayer for relief in Count IV of its Counterclaim broadly calls for this Court to “declare that DEP is violating Article I, § 27 of the Pennsylvania Constitution” and “enjoin DEP from violating Article I, § 27 of the Pennsylvania Constitution and the Charter....” Seneca currently operates injection wells used for the disposal of produced fluids, and such wells are operated under the permits and approvals of the United States Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (DEP). An adverse ruling would impact Seneca’s existing injection

well permits issued by the DEP, resulting in Seneca's loss of its right to operate wells permitted under state and federal law.

Moreover, Seneca's right to intervene is bolstered by the expansive claims of Grant Township that it refuses to limit. Specifically, Grant Township filed a Response opposing Pennsylvania General Energy Company, L.L.C.'s ("PGE") Motion to Confirm Issues for Trial. Therein, Grant Township confirms:

Grant Township's Counterclaim as to DEP's violation of the Environmental Rights Amendment is **broadly pled**, such that it **includes DEP's failure to fulfill its public trustee duties in how it has addressed the environmental and health impacts of fracking, including but not limited to, the disposal of fracking waste.** (Emphasis supplied).

Grant Township cannot insist on preserving such broad issues for trial yet simultaneously object to the intervention of entities having legitimate interests at stake. Any finding that the DEP failed to fulfill its public trustee duties in approving or issuing permits for the disposal of produced fluids would therefore directly impact Seneca's DEP-permitted injection wells and collaterally impact its EPA permits.

Finally, Grant Township's citation to *Realen Valley Forge Greens Assoc. v. Upper Merion Twp. Zoning Hearing Bd.*, 941 A.2d 739, 744 (Pa. Cmwlth. 2008) is readily distinguishable. The non-party in *Realen Valley Forge* was denied intervention because **the property interest no longer existed** when the intervention was sought. *Id.* at 741. In fact, the non-party had conveyed legal title

to the real property interest at issue, “thereby extinguishing any real property interest it had...” *Id.* In contrast, Seneca currently operates two injection wells in Highland Township, Elk County, which are permitted by EPA Region III with a Class IID UIC (permit numbers: PAS2D025BELK and PAS2D026BELK) and DEP (permit numbers: 37-047-23835-00-01 and 37-047-23885-00-00). Thus, Seneca’s permitted property interests currently exist and stand to be impacted by Grant Township’s self-proclaimed “broadly pled” counterclaims. Furthermore, *Realen Valley Forge* makes clear that a “legally enforceable interest” is “a flexible, although uncertain rule whose application in a given case calls for a careful exercise of discretion and consideration of all the circumstances involved.” *Id.* at 744 (internal quotations and citations omitted). Thus, a case-specific inquiry is required and the outcome of *Realen Valley Forge* does not control.

Seneca has a current, unique, substantial, direct and legally enforceable interest in using its wells, particularly its multiple injection wells, which would be adversely affected by a ruling in favor of Grant Township. Seneca should therefore be granted leave to intervene.

II. No Other Party Adequately Represents Seneca’s Interests in this Action

Unlike the DEP and PGE, Seneca operates disposal wells that are actively permitted and in use. PGE does not have any active DEP permits for disposal wells. Thus, Seneca would be the *only* entity with active, fully permitted disposal

facilities in this proceeding. Seneca will suffer immediate financial harm and disruption in operations in the event of a ruling in favor of Grant Township or a ruling impacting the constitutionality or applicability of the Solid Waste Management Act. Neither the DEP nor PGE stand to incur this significant harm.

Grant Township suggests that Seneca's unique evidence "would only confuse and needlessly complicate the issues in this case." However, Grant Township has already sought to maintain the expansive nature of the issues in the case, per its Counterclaims and its recent Response to Intervenor's Motion to Confirm Issues for Trial. It further suggests that "specifics of any one corporation's disposal well practice are not at issue in this case" and rather, "this case centers on the dangers of the practice as a whole..." Seneca submits that its present-day, specific examples of currently-permitted disposal well practices are highly instructive to a general challenge to the "dangers of the practice as a whole." Seneca is uniquely situated to provide this evidence.

III. Seneca's Intervention Will Not Unduly Delay the Adjudication of the Action

Seneca has already stated that it does not anticipate acting unilaterally to disturb the deadlines set forth in the February 26, 2021 Case Management Order. Seneca stands by that statement, and it does not anticipate serving discovery requests.

Additionally, Grant Township's objection to Seneca's Petition to Intervene "after more than four years" of the pending action is unavailing. PGE filed its Application for Intervention on February 17, 2021, and Seneca filed its Petition to Intervene in this action roughly one month later on March 24, 2021. Grant Township did not raise any objection – and in fact, consented to – PGE's intervention at virtually the same phase of the case. Accordingly, Grant Township's claims of undue delay or prejudice ring hollow in light of these procedural realities.

WHEREFORE, for the foregoing reasons, Seneca Resources Company, LLC respectfully requests that this Honorable Court grant its Petition to Intervene, approving its intervention and full party status.

Respectfully submitted,

BUCHANAN INGERSOLL &
ROONEY PC

Dated: April 22, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2021, a copy of the foregoing Petition to Intervene of Seneca Resources Company, LLC 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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