

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION,	:	
	:	
Petitioner,	:	No. 126 M.D. 2017
	:	
and	:	
	:	
PENNSYLVANIA GENERAL ENERGY	:	
COMPANY, L.L.C.,	:	
	:	
Intervenor,	:	
	:	
v.	:	
	:	
GRANT TOWNSHIP OF INDIANA	:	
COUNTY AND THE GRANT TOWNSHIP:	:	
SUPERVISORS,	:	
	:	
Respondents.	:	

RESPONDENTS’ RESPONSE TO PETITION TO INTERVENE OF SENECA RESOURCES COMPANY, LLC

INTRODUCTION

Grant Township and Grant Township Supervisors (“Respondents”) respectfully request that this Court deny the attempt to intervene in this action by Seneca Resources Company, LLC (“Seneca”). Seneca does not have a legally enforceable interest in this case. Any purported interest it does have would not be adversely affected by the outcome, and it is adequately represented by the existing

parties in the case. Finally, Seneca's intervention would unduly delay the adjudication of the rights of the parties.

ARGUMENT

Seneca's Petition to Intervene should be denied. Pennsylvania Rule of Civil Procedure 2327 provides the following grounds for intervention:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

(1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or

(2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or

(3) such person could have been named as an original party in the action or could have been joined therein; or

(4) the 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. No. 2327. The corollary rule on intervention is found at Rule No. 2329, which sets forth the reasons for denying intervention:

(1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or

(2) the interest of the petitioner is already adequately represented; or

(3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.

PA. R.C.P. No. 2329.

If the petitioner cannot show they belong to one of the four classes described in Rule 2327, intervention must be denied. Intervention may also be

refused if one of the grounds under Rule 2329 is present. *Larock v. Sugarloaf Township Zoning Hearing Board*, 740 A.2d 308, 313 (Pa.Cmwlth. 1999).

I. Seneca does not have a legally enforceable interest in this action.

Here, Seneca alleges a “legally enforceable interest” in the determination of this action under Rule 2327(4). Its argument for such an interest is stated as follows:

The relief Grant 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 extend beyond Grant Township and impact Seneca’s ability to operate under its existing UIC well permits and its injection wells.

Pet. ¶ 14.

Thus, Seneca’s only purported interest is its concern that a ruling against DEP regarding DEP’s oversight of fracking and fracking waste disposal could result in DEP reconsidering well permits in locations outside of Grant Township. This does not qualify as a “legally enforceable interest.” If it did, then virtually any case could become complex litigation with multiple parties concerned about future implications and policy changes as a result of court rulings.

As to Grant Township’s counterclaim regarding the validity of the Home Rule Charter, there are currently no Home Rule Charters regarding fracking in the locations where Seneca operates. Seneca cannot manufacture a legally enforceable interest based on a hypothetical -- *if* there was a Home Rule Charter that prevented

its oil and gas operations, *would* that Home Rule Charter be valid? This would, again, open intervention to virtually anyone concerned about the impact of a potential future law or what, in their view, would be considered undesirable precedent. Any harm to Seneca as a result of Grant Township's success on its counterclaims is too speculative to warrant intervention.

Moreover, a determination in favor of Grant Township would have no direct effect on Seneca's existing permits for waste disposal facilities, neither of which are in Grant Township. *Id.* ¶ 20. Grant Township's Charter did not harm a legally enforceable interest of Seneca's when it was enacted, just as it would not now harm Seneca's interests by being upheld.

No explanation is offered for Seneca's assertion that a ruling impacting the constitutionality or applicability of the Solid Waste Management Act would cause it "immediate financial harm and disruption in operations." Pet. ¶ 21. Seneca does not have a legally enforceable interest in influencing the statutory construction of state-wide legislation, just as Seneca cannot sue legislators for drafting a law that might influence the economy or the profitability of their industry.

This Court has held that a legal dispute over a municipal law that affected a non-party's future ability to obtain profits does not vest the non-party with a legally enforceable interest in the dispute. *Realen Valley Forge Greens Assoc. v. Upper Merion Twp. Zoning Hearing Bd.*, 941 A.2d 739, 744 (Pa. Cmwlth. 2008).

A legally enforceable interest includes “a real property interest in the land, not some tangential interest(s) that could arise out of business dealings that did not involve the property.” *Id.* The non-party in *Realen Valley Forge* was found not to qualify for intervenor status in the case, despite the fact that the challenged zoning law might have influenced his future profits.

Seneca is a corporation concerned about a challenged law in a municipality where it does not yet own any property and has not yet applied for permits. The right to be exempt from a law in the future in order to maximize a desired profit does not justify intervention, when currently the prospective intervenor has no rights implicated by the validity of that law. Seneca’s interest in the possibility of someday depositing injection waste in Grant Township is purely hypothetical and Seneca has no current interest that depends in any way on violating the Grant Township Charter.

II. Seneca’s interest is already adequately represented by the Parties.

To the extent Seneca has an interest in this litigation, it is already adequately represented by DEP and PGE. Pa. R.C.P. 2329(2). Seneca claims that it should be granted intervention because it possesses “industry-based, scientific and technical evidence to demonstrate that operating [conventional, unconventional and injection] wells will protect groundwater and other environmental values Grant Township alleges would be at risk if the Home Rule Charter is invalidated” and

that it “is uniquely situated in a way that DEP and [PGE] are not. As such, DEP and PGE cannot adequately represent Seneca’s interests on these issues ... [because] Seneca operates disposal wells that are actively permitted and in use,” while PGE does not. Pet. ¶¶ 17-19.

However, the interests of Seneca and PGE are aligned. Indeed, PGE’s stated reason for intervening in the case was as follows: “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.” PGE Pet. to Intervene, ¶ 17.¹

Seneca states that its “evidence will assist this Court in its adjudication.” Pet. ¶ 18. It will not. To the contrary, its participation would only confuse and needlessly complicate the issues in this case. The specifics of any one corporation’s disposal well practices are not at issue in this case. Rather, this case centers on the dangers of the practice as a whole, specifically as related to DEP’s violation of its duties under the Environmental Rights Amendment, and the circumstances under which lawmakers may pass or defend local laws in furtherance of the rights secured, and duties imposed, under the ERA. Allowing

¹ Grant Township reserves the right to challenge the scope of evidence that PGE seeks to introduce as irrelevant or on other grounds.

Seneca to intervene would open the floodgates for any oil and gas company in Pennsylvania to claim a “legally enforceable interest” simply because the case may have implications for fracking activities. Having information that may “assist the Court” does not meet the standard for intervention, and would perhaps be more appropriate as an *amicus curiae* brief.

III. Seneca’s intervention will unduly delay the adjudication of the Parties’ rights.

Seneca’s petition should be denied because its intervention would unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties. Pa. R.C.P. 2329(3). Here, this action is being heard by this Court with expedited pre-trial deadlines, more than four years after the filing of Petitioner’s complaint.

This Court has required a showing that delay will not prejudice the parties. *See In re PP&L, Inc.*, 838 A.2d 1, 8 (Pa. Cmwlth. 2003) (trial court did not abuse its discretion in permitting intervention a year into the litigation when there was no prejudice assigned to the delay); *In re Rowan*, 763 A.2d 958, 961 (Pa. Cmwlth. 2000) (affirming trial court’s denial of intervention on the basis of undue delay when proposed intervenor “waited until the last minute to file its petition”).

Here, Seneca has unduly delayed seeking intervention in this matter, and that delay prejudices Grant Township. DEP filed its complaint on March 23, 2017. Even if delay is calculated from the Court’s May 2, 2018 Memorandum Opinion,

quoted by Seneca, which stated that “[s]cientific and historical evidence concerning environmental issues ... may be necessary to fully adjudicate these Counterclaims as well as DEP’s complaint,” that was still nearly *three years ago*. Grant Township should not be forced to face a significant change in the dynamics of the litigation and mount a defense against an entirely new party that has never previously expressed an interest in this case, less than six months before trial. If Seneca truly believed it had a legitimate interest to intervene, it could have attempted to do so at any time during the past four years. It is unfair to burden Grant Township as a result of Seneca’s inexcusable delay. Unlike its opponents who have significant corporate and state government resources, Grant Township is a small township with limited resources. Efforts to exhaust an opponent’s resources by engaging in unnecessary and protracted litigation is a common litigation tactic of corporate parties and should be rejected here.

Seneca has failed to offer any acceptable basis for delaying its petition to intervene until after the Court had already set a Case Management Order setting pre-trial deadlines. Even with the extension agreed to by the Parties, written discovery is due April 30, 2021. Seneca’s promise to “abide by the ordered deadlines” and assurance that it “does not intend to unilaterally request an extension of such deadlines” (Pet. ¶ 9) lack a grounding in reality, when the first deadline is two weeks away. Factoring in Seneca’s option to reply to the instant

Response, and the time for the Court to issue a decision, Seneca has no basis for its promise to meet the written discovery request deadline of April 30, when the Court may not have even had an opportunity to rule on this motion by then. If Seneca is granted intervention, new deadlines will need to be set, further delaying adjudication of the parties' interests after more than four years.

CONCLUSION

For the foregoing reasons, Seneca's Petition to Intervene should be denied.

Dated: April 15, 2021

Respectfully submitted,

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