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December 2, 2015

Via E-mail and U.S. Mail

Thomas Alan Linzey, Esq.
Community Environmental Legal Defense Fund
P.O. Box 369
Mercersburg, PA 17236

**Re: *Pennsylvania General Energy Company L.L.C. v. Grant Township*
Civil Action No. 1:14-cv-209
Rule 11 Violations**

Dear Thomas:

I am writing on behalf of Pennsylvania General Energy L.L.C. ("PGE") to address violations of Rule 11 of the Federal Rules of Civil Procedure. As you are aware, Rule 11 requires that every pleading, motion or other paper be signed by an attorney of record. By signing and filing a pleading, motion or other paper, the attorney of record certifies that the paper "is not being presented for any improper purpose" and "the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(1) and (2). The pleadings and motions that you and the Community Environmental Legal Defense Fund (collectively "CELDF") have signed and filed on behalf of Grant Township violate Rule 11(b).

In response to PGE's Amended Complaint in the above-captioned matter, CELDF filed an Answer and Affirmative Defenses that denied PGE's averments regarding its constitutional claims and state law preemption claims and raised legal defenses that are not warranted by existing law. (See Docket No. 10, pp. 5-18.) For example, CELDF asserted that PGE lacks the capacity to sue as a "person" and that PGE's requested relief violates the right to local, community self-government. CELDF also filed a Counterclaim on behalf of Grant Township seeking declaratory and injunctive relief under 42 U.S.C. Section 1983. In the Counterclaim, Grant Township contends that the subject Community Bill of Rights Ordinance (the "Ordinance") is a valid exercise of the right of the people of Grant Township to "local, community self-government." Grant Township seeks declaratory relief that the Ordinance is valid and that PGE is not a "person" under the law, as well as injunctive relief enjoining PGE from violating the Ordinance. (See Docket No. 10, pp. 24-29.) In response to the October 14, 2015 Memorandum Opinion and Order denying judgment on the pleadings on the Counterclaim, CELDF filed a Motion for Reconsideration. Grant Township's Answer, Affirmative Defenses, Counterclaim and Motion for Reconsideration violate Rule 11.



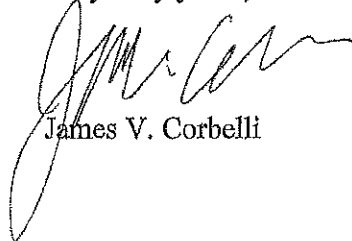
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CELDF has conceded in numerous forums, including pleadings, articles and CELDF's own website, that Grant Township's arguments are not warranted under existing law and that CELDF is seeking to alter this country's structure of government.

Accordingly, this letter is intended as notice of the ongoing Rule 11 violations and PGE's intention to file a motion for sanctions if these violations are not corrected. Because Grant Township's legal claims and arguments are frivolous and are not warranted by existing law—a fact that is understood and conceded by CELDF and Grant Township—PGE demands that CELDF withdraw Grant Township's Answer, Affirmative Defenses and Counterclaim (Docket No. 10) and Motion for Reconsideration (Docket No. 119). Grant Township's claims and the accompanying legal arguments have no support and are in violation of the U.S. Constitution and century-old federal precedent. Moreover, CELDF's arguments, which seek to reverse this well-settled law, are frivolous because CELDF is admittedly trying to alter our country's structure of government. The judiciary is not a proper forum for such a plea. Clearly, CELDF's continued pursuit of these claims is improper and designed to gain publicity for CELDF's mission. It is also clear that CELDF plans on continuing to pursue this strategy.

Within twenty-one (21) days of the date of this letter, CELDF should withdraw Grant Township's Answer, Affirmative Defenses and Counterclaim and re-file an Answer and Affirmative defenses, if any, without violating Rule 11. In addition, Grant Township should withdraw the Motion for Reconsideration. If CELDF fails to do so, PGE is prepared to move for sanctions under Rule 11. The proposed Motion for Sanctions is attached to this letter.

Very truly yours,



James V. Corbelli

JVC/vlc
Enclosure

cc: Kevin J. Garber, Esq.

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA GENERAL ENERGY
COMPANY, L.L.C.

Plaintiff,

vs.

GRANT TOWNSHIP,

Defendant.

Case No. 1:14-cv-209

Magistrate Judge Susan Paradise Baxter

**PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT
TO FED. R. CIV. P. 11(b) AND BRIEF IN SUPPORT**

Plaintiff Pennsylvania General Energy L.L.C. ("PGE"), by its undersigned counsel, moves this Court for an order entering sanctions against Defendant Grant Township and its counsel, Community Environmental Legal Defense Fund ("CELDF"), for their frivolous legal claims and defenses pursued in the above-captioned action. In support of this Motion, PGE states as follows:

1. PGE filed this action to challenge the constitutionality, validity and enforceability of an ordinance adopted by Grant Township that established a so-called Community Bill of Rights for the people of Grant Township (the "Ordinance").

2. Grant Township filed an Answer and Affirmative Defenses, which denied PGE's averments regarding its constitutional and state law preemption claims and raised legal defenses not warranted by existing law. (*See* Docket No. 10, pp. 5-18.)

3. Grant Township also filed a Counterclaim, which alleged that the people of Grant Township have a purported right to "local, community self-government" and requested, among

other relief, a declaration that the Ordinance is a valid assertion of that right, a declaration that PGE is not a “person” under the law, and an injunction preventing PGE from violating the Ordinance. (Docket No. 10, at pp. 24-29.)

4. On October 14, 2015, this Court entered a Memorandum Opinion and Order which denied Grant Township’s Motion for Judgment on the Pleadings on its Counterclaim and found that Grant Township failed to present any legal precedent in support of judgment as a matter of law. (Docket No. 113, at pp. 5-9.)

5. In the same Memorandum Opinion and Order, this Court also invalidated portions of the Ordinance as preempted or invalid under state law and expressly recognized that Grant Township’s position is “contrary to over one hundred years of Supreme Court precedent that establishes that corporations are considered ‘persons’ under the United States Constitution.” (Docket No. 113, at pp. 5-9, 13-20.)

6. Despite the patent lack of legal support for its claims, Grant Township filed a Motion for Reconsideration of the Court’s decision denying judgment on the pleadings. (Docket No. 119.)

7. Rule 11 of the Federal Rules of Civil Procedure requires that every pleading, motion and other paper be signed by counsel of record. Fed. R. Civ. P. 11(a).

8. By signing and presenting the pleading, motion and other paper to the court, the attorney is certifying that the paper “is not being presented for any improper purpose” and that “the claims defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.” Fed. R. Civ. P. 11(b).

9. “Rule 11 sanctions may be awarded in exceptional circumstances in order to ‘discourage plaintiffs from bringing baseless actions or making frivolous motions.’” *Bensalem Twp. v. Int’l Surplus Lines Co.*, 38 F.3d 1303, 1314 (3d Cir. 1994) (citing *Doering v. Union Cty. Bd. of Chosen Freeholders*, 857 F.2d 191, 194 (3d Cir. 1988)).

10. Rule 11 imposes a “nondelegable duty” upon the person signing a pleading, written motion, or other paper filed with the court “to conduct his own independent analysis of the facts and law which forms the basis of a pleading or motion.” *Garr v. U.S. Healthcare, Inc.*, 22 F.3d 1274, 1277 (3d Cir. 1994) (citations omitted). The Rule provides that this person “may be sanctioned if [she/he], among other things, fails to make a reasonable inquiry into the legal legitimacy of a pleading.” *Ario v. Underwriting Members of Syndicate 3 at Lloyds*, 618 F.3d 277, 297 (3d Cir. 2010).

11. An inquiry is considered “reasonable” under the circumstances if it provides the person with “an objective knowledge or belief at the time of the filing of a challenged paper that the claim was well-grounded in law and fact.” *Bensalem Twp.*, 38 F.3d at 1314 (citations omitted).

12. Although federal courts have stated the standard in different ways, the standard for Rule 11 sanctions focuses on the objective reasonableness of the party or attorney making the legal claims. *See, e.g., Fishoff v. Coty, Inc.*, 634 F.3d 647, 654 (2d Cir. 2011) (The legal position has “no chance of success.”); *Burns v. George Basilikas Trust*, 599 F.3d 673, 677 (D.C. Cir. 2010) (A reasonable attorney in similar circumstances could not have believed his or her actions were legally justified.); *ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 579 F.3d 143, 150 (2d Cir. 2009) (The actions show objective unreasonableness.).

13. “Claims that ignore contrary case law, offer no colorable argument or support, present incomprehensible arguments, or contain nothing of substance or merit, are frivolous.” *Lewis v. Smith*, 2010 U.S. App. LEXIS 27606, *7-*8 (3d Cir. 2010) (citations omitted).

14. In *Rouse v. II-VI Inc.*, 2013 U.S. Dist. LEXIS 138598, *8 (W.D.Pa. 2013), the defendants moved for sanctions in an employment dispute based upon previous lawsuits filed by a *pro se* plaintiff and alleged knowingly incorrect assertions in the complaint. Although the Court did not impose sanctions against the *pro se* plaintiff at that time, the Court cautioned that “[l]itigation is not a platform to advance unsupported conclusions.” *Id.* at *9. The Court further admonished that if further litigation on the same subject is filed by the *pro se* plaintiff, the Court “would entertain an appropriate motion for Rule 11 sanctions because the lengthy litigation by Plaintiff has cost Defendants a significant amount of time, stress, funds, and resources.” *Id.* at *10.

15. In sum, Rule 11 is designed to correct litigation abuse. *Ario*, 618 F.3d at 297.

16. In the instant case, sanctions are warranted given the lack of any precedent supporting Grant Township’s claims and the frivolous nature of Grant Township’s arguments for modification of well-settled law.

17. Unlike the plaintiff in the *Rouse* case, Grant Township is represented by legal counsel, who prepared and signed the Answer, Affirmative Defenses and Counterclaim and the Motion for Reconsideration filed on behalf of Grant Township.

18. Here, CELDF and its attorneys knew or should have known that Grant Township’s legal claims and defenses would not succeed and were well beyond reasonable arguments to modify existing law.

19. CELDF and its attorneys have a duty to analyze the legal legitimacy of the claims, yet CELDF has conceded in numerous forums that Grant Township's claims and arguments are *not* warranted under existing law.

20. For example, in the pleadings filed in this matter, CELDF and Grant Township have admitted the following:

- a. In Grant Township's Brief in Support of its Motion for Judgment on the Pleadings ("Brief in Support"), Grant Township asserted that it "understands that arguments in later sections of the brief raise issues related to what may be considered 'well-settled' law." (Docket No. 53, p. 8, n. 2.) Grant Township alerted this Court that it sought relief that is contrary to the law and asked this Court to render a decision against well-settled legal precedent.
- b. With respect to the long-standing limits on local governments, Grant Township made the following startling admission: "Community lawmaking as the legitimate exercise of self government by people where they live has generated mostly critical, occasionally derisive treatment from legislators, jurists, and commentators since the time of the founding. Consistent with this attitude, American jurisprudence has developed legal doctrines to infringe the right of local, community self-government, both by denying it outright, and by severely restricting local governmental power allowed for communities by state law. Such doctrines include corporate constitutional 'rights,' Dillon's Rule, and preemption." (Docket No. 53, p. 30.)

- c. Grant Township has further admitted that for “the past 150 years, the judiciary has ‘found’ corporations within the U.S. Constitution and bestowed constitutional rights upon them.” (Docket No. 53, p. 33.)
- d. With respect to Dillon’s Rule, Grant Township admitted that “Pennsylvania jurisprudence has long applied Dillon’s Rule to subordinate municipal corporations to the state, and continues to do so today.” (Docket No. 53, p. 39.)
- e. Lastly, Grant Township admitted that it is trying to change the landscape of federal constitutional law and Pennsylvania state law: “By enacting the Community Bill of Rights Ordinance, the people of Grant Township decided that the existing municipal system of law – constrained by precisely the same legal doctrines asserted against the Township by PGE in this action – was failing to provide the most basic constitutional guarantees of American governments.” (Docket No. 53, pp. 44-45.)

21. Grant Township and CELDF recognize and admit that their arguments are contrary to current law, and that to succeed, they must modify the form of government in the United States and reverse decades-long precedent.

22. Moreover, CELDF has conceded publicly on multiple occasions that Grant Township’s claims are against existing precedent and that Grant Township is essentially seeking to alter our country’s structure of government.

- a. Most recently, CELDF was quoted in a November 15, 2015 article from The Athens News titled “Anti-fracking figure makes case in Athens.” A true and correct copy of the November 15, 2015 article is attached to this

Motion as Exhibit “A.” In the article, counsel for Grant Township discussed the substantive legal issues underlying Grant Township’s claims and made the following concessions:

The U.S. Constitution, [Tom Linzey] argued, is based heavily in Colonial-era English common law—and that law helped turn the U.S. into an industrial powerhouse. Linzey said the Constitution gives corporations the same legal rights it gave European colonizers: the power to impose on local populations and make use of local resources, without local residents’ consent.

That means it’s legally within corporations’ rights to sue any group that prevents them from exercising their constitutionally guaranteed privileges.

“Corporations are persons under the law,” Linzey said. “If you tell them they can’t use the permit, then you’re depriving the corporation of their property, because corporations are persons under the law. They have the same protections we do.” (emphasis added).

- b. In a press release by the CELDF regarding the attempt by Grant Township to avoid this Court’s ruling in its October 14, 2015 Memorandum Opinion, CELDF admits that “They are mobilizing against a system of law that empowers corporations over communities, and empowers government to preempt communities from protecting their air and water. Communities are saying this is not acceptable, it’s not sustainable, it’s not democratic, and it’s going to change.” *See* November 3, 2015 CELDF Press Release, attached as Exhibit “B.”
- c. In a description of the concept of a community bill of rights, CELDF openly concedes that a community bill of rights is designed to pursue “the supremacy of inalienable rights over other laws” and that “there are well-

established legal barriers to the exercise of the right to local self-government.” *See* August 31, 2015 CELDF statement entitled “What’s in a Community Bill of Rights?” attached as Exhibit “C.”

- d. In perhaps the most honest explanation by CELDF of its goals and willingness to ignore the law, in connection with this matter and the Pennsylvania Department of Environmental Protection’s decision to wait for this Court to rule on the validity of the Ordinance before rendering decisions on permit applications, Attorney Linzey is quoted as saying: “The reason why these ordinances are surfacing is because people have given up hope that the state is going to do anything for them. People have given up, they’re done. And it’s a new kind of activism that’s emerging that says **screw you, we’re going to make laws ourselves.**” *See* Article entitled “DEP Delays Deep Injection Well Decisions,” State Impact PA, September 8, 2015, attached as Exhibit “D” (emphasis added).
- e. In addition, CELDF recognizes that by taking positions that are contrary to law, it places its clients at risk of significant adverse money judgments. In that vein, Attorney Linzey is quoted as saying that: “And if a town goes bankrupt trying to defend one of our ordinances, well, perhaps that’s exactly what is needed to trigger a national movement.” *See* Article entitled “CELDf Threat of Bankrupting Communities with Fracking Bans Comes to Colorado,” October 9, 2015. <http://energyindepth.org/mtn-states/celdf-threat-of-bankrupting-communities-with-fracking-bans-comes-to-colorado/>, attached as Exhibit “E.”

23. Indeed, even CELDF's home page for its website contains concessions showing that Grant Township's claims lack merit under existing law: "A problem: corporations have been granted rights allowing them to wreak havoc in communities for over 200 years."¹

24. CELDF's position on its legal claims and defenses is clear. CELDF wants to make laws itself, knowing that what it seeks to do has no legal support and has been regularly rejected. It is equally clear based on their admissions that CELDF and its attorneys do not intend to stop their repeated effort to ignore existing and well-founded law. This is the very kind of behavior that Rule 11 was designed to address.

25. Grant Township's Answer, Affirmative Defenses, Counterclaim and Motion for Reconsideration violate Rule 11 because they are not warranted by existing law or a nonfrivolous modification of the law. Grant Township and CELDF are trying to amend the United States Constitution and completely overhaul the structure of government in this country. As Judge Schwab admonished in the *Rouse* case, litigation is not a platform to advance unsupported conclusions.

26. Given the lack of legal merit and the nonexistent likelihood of success on its claims, Grant Township's continued pursuit of its legal claims and defenses is based on the improper purpose of harassing PGE and running up PGE's legal fees in order to make a statement and gain publicity in support of CELDF's mission.

27. This Court has the opportunity to use Rule 11 the way it was intended: to deter future, inappropriate conduct. Sanctions for a violation of Rule 11 are primarily imposed to deter similar violations by the offender or others similarly situated. *See DiPaolo v. Moran*, 407 F.3d 140 (3d Cir. 2005). Because CELDF does not intend to cease its presentation of legal

¹ As this Court is likely aware, Tom Linzey, counsel of record for Grant Township is a co-founder of CELDF and serves as its Executive Director and Chief Legal Counsel. CELDF's home page can be viewed at <http://celdf.org/>.

theories that have no legal support, even in light of this Court's rulings, sanctions are appropriate here to deter similar, repeated violations.

28. On December 2, 2015, PGE provided written notice to Grant Township and its counsel of the alleged Rule 11 violations, and PGE also served a copy of this Motion with the notice letter. A true and correct copy of the notice letter is attached hereto as Exhibit "F."

29. Despite notice of the Rule 11 violations and a formal request that Grant Township withdraw its Answer, Affirmative Defenses and Counterclaim (Docket No. 10) and Motion for Reconsideration (Docket No. 119), Grant Township has refused to do so.

30. Twenty-one days have passed since PGE served Grant Township and its counsel with the notice letter and this Motion.

31. Accordingly, PGE respectfully requests that this Court grant PGE's Motion and enter sanctions against Grant Township and its counsel in the form of an order striking Grant Township's Answer and Affirmative Defenses, dismissing with prejudice the Counterclaim, denying the Motion for Reconsideration, and payment of PGE's reasonable attorneys' fees and expenses resulting from the violations.

32. A proposed Order is attached hereto.

WHEREFORE, PGE respectfully requests that this Court grant its Motion for Sanctions and Brief in Support and enter sanctions against Grant Township and its counsel in the form attached hereto.

Respectfully submitted,

Dated: December __, 2015

By: /s/ James V. Corbelli
Kevin J. Garber, Esquire
Pa. I.D. #51189
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Pa. I.D. #56671
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UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA GENERAL ENERGY
COMPANY, L.L.C.

Plaintiff,

vs.

GRANT TOWNSHIP,

Defendant.

Case No. 1:14-cv-209

Magistrate Judge Susan Paradise Baxter

ORDER OF COURT

AND NOW, on this ____ day of _____, 2015, upon consideration of Plaintiff's Motion for Sanctions Pursuant to Fed. R. Civ. P. 11(b), and any response thereto, it is hereby ORDERED that said Motion is **GRANTED**. This Court finds that Defendant Grant Township's claims are not warranted by existing law or a nonfrivolous argument for modifying existing law and that Grant Township's claims are being presented for an improper purpose. It is hereby further ORDERED that Grant Township's Counterclaim (Docket No. 10) is hereby DISMISSED, Grant Township's Answer and Affirmative Defenses (Docket No. 10) are hereby STRICKEN and Grant Township shall file an Answer and Affirmative Defenses, if any, that do not violate Rule 11, and Grant Township's Motion for Reconsideration (Docket No. 119) is hereby DENIED, and Thomas A. Linzey and Community Environmental Legal defense Fund are jointly ordered to pay Plaintiff's attorneys' fees and costs resulting from the Rule 11 violations after a determination by this Court of a reasonable amount following a hearing on the same.

BY THE COURT:

Magistrate Judge Susan Paradise Baxter

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed a true and correct copy of the foregoing Plaintiff's Motion for Sanctions Pursuant to Fed. R. Civ. P. 11(b) and Brief in Support this ___ day of December, 2015, using the Court's CM/ECF system, which will automatically serve a copy upon all counsel of record.

By: /s/ James V. Corbelli