

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

West Rockhill Township,	:	
Petitioner	:	
	:	
v.	:	No. 1595 C.D. 2019
	:	Argued: September 16, 2020
Department of Environmental	:	
Protection,	:	
Respondent	:	

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge¹
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE J. ANDREW CROMPTON, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: June 15, 2021

Petitioner West Rockhill Township (Township) petitions for review of the September 25, 2019 Order of the Pennsylvania Environmental Hearing Board (EHB). In that order, the EHB, on a motion by Intervenor Adelphia Gateway, LLC (Adelphia), dismissed for lack of subject matter jurisdiction the Township's appeal of an April 19, 2019 plan approval by the Pennsylvania Department of Environmental Protection (DEP) of what the parties refer to as the Quakertown

¹ This case was assigned to the opinion writer before Judge Brobson succeeded Judge Leavitt as President Judge.

Compressor Station. At issue in this appeal is whether Section 19(d)(1) of the federal Natural Gas Act, as amended in 2005, 15 U.S.C. § 717r(d)(1),² divests the EHB of its subject matter jurisdiction to hear the Township’s appeal from DEP’s plan approval.

The EHB, relying on a series of United States Court of Appeals for the Third Circuit decisions applying Section 717r(d)(1), concluded that original and exclusive jurisdiction over the Township’s administrative appeal to the EHB from the DEP plan approval lies in the Third Circuit. For the reasons set forth in our opinion in a companion case, *Cole v. Pennsylvania Department of Environmental Protection*, ___ A.3d ___ (Pa. Cmwlth., No. 1577 C.D. 2019, filed June 15, 2021), the EHB erred in dismissing the Township’s administrative appeal for lack of subject matter jurisdiction. We, therefore, will reverse the EHB’s order and remand the matter to the EHB to hear the Township’s administrative appeal.³

P. KEVIN BROBSON, Judge

² For ease of reference, we will refer to this provision simply as Section 717r(d)(1).

³ After oral argument in this matter before the Court *en banc*, Adelphia filed an Application for Relief to File a Post-Submission Letter pursuant to Rule 2501(a) of the Pennsylvania Rules of Appellate Procedure. In that application, and the accompanying letter, Adelphia essentially provides a post-argument sur-reply brief on certain issues and questions that arose during oral argument. The Court did not request supplemental briefing on the issues and questions that Adelphia raises in its sur-reply brief. Moreover, Adelphia “does not allege any modification or reversal of authority relied on by either party that would necessitate the filing of such a communication.” *Commonwealth v. Abdul-Salaam*, 812 A.2d 497, 504 n.3 (Pa. 2002). Accordingly, we will deny Adelphia’s application to file a post-submission communication.

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ORDER

AND NOW, this 15th day of June, 2021, the September 25, 2019 Order of the Pennsylvania Environmental Hearing Board (EHB) (EHB Docket No. 2019-039-L) is REVERSED. This matter is REMANDED to the EHB for further proceedings consistent with the accompanying opinion.

Intervenor Adelphia Gateway, LLC's Application for Relief to File a Post-Submission Letter is DENIED.

Jurisdiction relinquished.

P. KEVIN BROBSON, Judge

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HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE J. ANDREW CROMPTON, Judge

OPINION NOT REPORTED

CONCURRING OPINION
BY JUDGE CROMPTON

FILED: June 15, 2021

While I do not fundamentally disagree with the majority in reversing the decision of the Environmental Hearing Board (EHB) and remanding this matter to the EHB, I am of the opinion that the issue now before this Court, namely the grant or denial of an environmental permit related to a natural gas pipeline, rests on appeal with the United States Court of Appeals for the Third Circuit, per the Natural Gas Act,¹ pending further clarification by the Third Circuit.

¹ 15 U.S.C. §717r(d)(1).

For the reasons set out in my concurring opinion in a companion case, *Cole v. Pennsylvania Department of Environmental Protection*, ___ A.3d ___ (Pa. Cmwlth., No. 1577 C.D. 2019, filed June 15, 2021), I concur.

J. ANDREW CROMPTON, Judge