

(collectively, “Plaintiffs”) and Defendants Talen Energy Corporation and Brunner Island LLC (collectively, “Defendants”), jointly move to consolidate the two above-captioned actions.¹ The two actions are currently docketed as No. 1:19-cv-01324-CCC and No 1:19-cv-01329-JEJ.

FACTUAL BACKGROUND

The parties agree that these matters warrant consolidation because both actions are brought against the same defendants, for the same conduct, at the same location. Defendant Brunner owns and operates an electric generation facility, Brunner Island Steam Electric Station in East Manchester Township, York County, Pennsylvania. Plaintiffs both bring actions against Defendants for conduct that they allege violates the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* and Pennsylvania’s Clean Streams Law, *as amended*, 35 P.S. § 691.1 *et seq.*² All parties agree that the actions should be consolidated. Further, the parties have resolved all issues alleged in both Complaints in a proposed Consent Decree, which is the subject of a Motion to Lodge that will be filed simultaneously with this Motion to Consolidate.

¹ Pursuant to Local Rule 7.5, this Motion is not accompanied by a brief in support because all parties are in concurrence.

² The Department also asserts a claim under the Pennsylvania Solid Waste Management Act, as amended, 35 P.S. § 6018.101, *et seq.*

ARGUMENT

The Court should consolidate these two actions because they involve identical issues of law and fact. The parties agree as much and have executed a Consent Decree to resolve the issues. Rule 42(a) of the Federal Rules of Civil Procedure provides:

If actions before a court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary costs or delay.

Fed. R. Civ. P. 42(a). “A district court has broad power to consolidate actions that involve a common question of law or fact.” *Mendoza v. Electrolux Home Prod., Inc.*, No. 4:15-CV-00371, 2018 WL 3973184, at *4 (M.D. Pa. Aug. 20, 2018). Consolidation is appropriate where “both cases involve the same legal claims and surround the same alleged facts.” *Toribio v. Spece*, Civ. Action No. 3:10-2441, 2012 WL 4867254, at *2 (M.D. Pa. Oct. 12, 2012).

On the facts presented here, even if this motion were contested—and it is not—consolidation of these two cases is warranted based on the criteria in Rule 42 because these cases involve common questions of law and facts. Where a ruling in one action would necessarily have an effect on the other or “otherwise run the risk of creating confusion and conflicting outcomes,” consolidation is necessary. *Allstate Ins. Co. v. Hewlett-Packard Co.*, No. 1:13-CV-02559, 2015 WL 179041, at *4 (M.D.

Pa. Jan. 14, 2015). In a similar scenario to the one at bar, the court found that consolidation was appropriate because cases brought by different plaintiffs “involve similar, if not identical, legal claims against identical Defendants. The Plaintiffs’ factual claims are similar, and indeed each Plaintiff would likely introduce evidence from the others as part of their own claims . . . [and] separate trials would require duplicative testimony from many witnesses by all parties.” *Vicky M. v. Ne. Educ. Intermediate Unit*, Civ. Action No. 3:06-CV-1898, 2010 WL 481244, at *1 (M.D. Pa. Feb. 4, 2010). The court further held that due to the similarities between the cases, “judicial economy would be best served by consolidating these cases for trial.” *Id.*

Further, where all of these criteria are met and the parties agree, courts in this district have not hesitated to consolidate the action. *See, e.g., Stepp ex rel. M.S. v. Mid-W. Sch. Dist.*, No. 4:CV-12-2290, 2013 WL 1686699, at *1 (M.D. Pa. Apr. 11, 2013), *rep. and recommendation adopted sub nom. Stepp ex rel. M.S. v. Midd-W. Sch. Dist.*, No. 4:12-CV-2290, 2013 WL 1686708 (M.D. Pa. Apr. 18, 2013) (parties and the court agreed with consolidation).

In sum, this is a classic case for consolidation under Rule 42(a). The issues, facts, and law are identical in both actions and all parties to the two cases agree that the cases should be consolidated.

CONCLUSION

For all of the foregoing reasons, the parties respectfully request the Court to grant its Joint Motion for Consolidation of Cases Under FRCP 42(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served upon all parties the foregoing Joint Motion to Consolidate Under FRCP 42(a) by causing it to be electronically filed via the Court's ECF system.

Dated: July 31, 2019

/s/Bonnie A. Barnett

Bonnie A. Barnett