

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Sunoco Pipeline L.P. for a	:	
Finding That the Situation of Structures to	:	Docket Nos. P-2014-2411941,
Shelter Pump Stations and Valve Control	:	2411942, 2411943, 2411944,
Stations is Reasonably Necessary for the	:	2411945, 2411946, 2411948,
Convenience and Welfare of the Public	:	2411950, 2411951, 2411952,
		2411953, 2411954, 2411956,
		2411957, 2411958, 2411960,
		2411961, 2411963, 2411964,
		2411965, 2411966, 2411967,
		2411968, 2411971, 2411972,
		2411974, 2411975, 2411976,
		2411977, 2411979, 2411980.

Comment of the Clean Air Council and the Environmental Integrity Project

The Clean Air Council (“Council”) and the Environmental Integrity Project (“EIP”) (together, “Commenters”), submit the following comment with regard to Sunoco Pipeline L.P.’s (“Sunoco”) Petitions for a Finding That the Situation of Structures to Shelter Pump Stations and Valve Control Stations is Reasonably Necessary for the Convenience and Welfare of the Public (“Petitions”). Commenters request that the Pennsylvania Public Utility Commission (“Commission”) deny Sunoco’s Petitions.

Sunoco has proposed a pipeline project referred to as the Mariner East Pipeline (“Project”). If constructed, the Project would transport Natural Gas Liquids from Houston, Pennsylvania to Marcus Hook, Pennsylvania and Clayton, Delaware. In order to transport these liquids from Marcellus Shale region, Sunoco seeks to build 18 pump stations and 17 valve control stations, as well as structures to shelter them. In order to complete the proposed construction, Sunoco is seeking exemptions from the Commission in 31 municipalities across Pennsylvania under section 619 of the Municipal Planning Code.

I. Sunoco is not a Public Utility Corporation

The Commission has jurisdiction to review Sunoco's Petitions under Pennsylvania Municipal Planning Code ("MPC"). Section 619 of the MPC allows the Commission to grant an exemption for "any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public." 53 P.S. § 10619.

The term "public utility corporation" is not defined in the MPC. However, the term is defined in Pennsylvania's Business Corporation Law ("BCL"), as:

"Any domestic or foreign corporation for profit that (1) is subject to regulation as a public utility by the Public Utility Commission or an officer or agency of the United States; or (2) was subject to such regulation on December 31, 1980, or would have been so subject had it been then existing."

15 Pa. C.S. § 1103. General rules of statutory construction require that the term "public utility corporation" in the MPC be interpreted consistently with its definition in the BCL. *See* 1 Pa. C.S. § 1932.

Sunoco contends that it is a public utility corporation because it is regulated by a federal agency, the Federal Energy Regulatory Commission ("FERC"). Sunoco Petition, at 5-8. However, Sunoco itself has acknowledged that it is regulated by FERC pursuant to the Interstate Commerce Act ("ICA") as a common carrier and not as a public utility. *Id.* The ICA explicitly regulates common carriers, and not public utilities. 49 U.S.C. § 1(b). Thus, Sunoco does not meet the definition of public utility corporation articulated in § 1103 of the BCL. Sunoco's arguments regarding legislative intent for the ICA to regulate public utilities are unavailing.

Where, as here, the law is clear and explicit, the legislative language controls and subjective consideration of legislative intent is inappropriate. 1 Pa. C.S. § 1921.

The Court of Common Pleas in York County, Pennsylvania, has recently directly considered – and twice rejected – the argument Sunoco advances in favor of its being a public utility corporation. *Sunoco v. Loper et al.*, York County Court of Common Pleas (Docket No. 2013-SU-4518-05) (Feb. 25, 2014), *Reaffirmed on Reconsideration* (March 25, 2014). In *Loper*, the court rejected Sunoco’s argument that it met the definition of public utility corporation in the BCL because it was regulated as a public utility by FERC. The court found that Sunoco was regulated as a *common carrier* by FERC, and that it therefore was not regulated as a public utility, and was not entitled to eminent domain powers. *Id.* at 4.

Neither the record before the Commission nor the current state of the law in Pennsylvania warrants a finding that Sunoco is a public utility corporation.

II. Sunoco’s Proposed Situation of Structures is Not Reasonably Necessary for the Convenience and Welfare of the Public

Even if the Commission were to find that Sunoco is a public utility corporation potentially eligible for an exemption under § 619 of the MPC, the Commission should deny Sunoco’s petition because the situation of the proposed structures for the Project is not reasonably necessary for the convenience and welfare of the public, as required by § 619 in order for such an exemption to be appropriate.

Sunoco argues that the following factors make the construction of the pump and valve control stations reasonably necessary for the convenience and welfare of the public:

- (1) the locations of both pump and valve control stations are reasonably necessary to ensure the efficient and safe operation of the new pipeline facilities;
- (2) the pump stations ensure that ethane and propane are

flowing properly, which contributes to the overall safety and efficiency of the project. The valve control stations ensure that the pipeline facilities operate safely and prevent harm to the public and environment. Both types of stations are enclosed with metal housing to protect the equipment from the elements and to facilitate maintenance; (3) as a whole, the Mariner East project results in increased infrastructure to enable the continued development of Marcellus Shale resources, by providing for an efficient outlet for natural gas liquids that are extracted during the process of extracting natural gas from Marcellus Shale wells.

Sunoco Petition at 14.

All three of these arguments contain an implicit assumption that the Mariner East project as a whole, and the further development of the Marcellus Shale region by the oil and gas industry, are necessary for the convenience and welfare of the public. However, the interest in the development of the oil and gas industry may in fact be at odds with the public interests that traditionally underlie the exercise of the zoning powers. It is these zoning powers, intended to ensure the orderly development and use of land, that are fundamentally at issue here.

Viewed through the lens of the interests underlying the exercise of zoning powers, the construction of the proposed facilities is not reasonably necessary for the convenience and welfare of the public, for a variety of reasons. First, Sunoco has not provided any adequate proof that the additional capacity the proposed construction would allow is in fact necessary to the public of Pennsylvania at all. Indeed, to the extent that the liquids will eventually be delivered to the Marcus Hook facility and then exported to foreign countries, the proposed facilities for which Sunoco seeks these exemptions will not benefit the Pennsylvania public at all.

Moreover, the Commission must take into account the *negative* effects that granting Sunoco's requested exemptions will have on the public welfare. The construction and operation of the proposed facilities will undeniably have detrimental environmental and health effects in the areas where it takes place, particularly since it would take place outside the bounds of local

zoning regulations. The Commission must balance these harms to the public against the benefits in determining whether the proposed facilities do in fact contribute to the public convenience and welfare.

III. Article I, Section 27 of the Pennsylvania Constitution Prohibits Granting Sunoco's Petition

Granting Sunoco's petition would contradict the Pennsylvania Supreme Court's recent decision in *Robinson Township, et al. v. Commonwealth of Pennsylvania, et al.*, and would violate Article I Section 27 of the Pennsylvania Constitution. *Robinson*, 83 A.3d 901 (Pa. Dec. 19, 2013). The Supreme Court in *Robinson* explicitly recognized that the public has a concrete interest in the development and application of local zoning ordinances. *Id.* at 920-921. The plurality based its decision in part on the Environmental Rights Amendment of Art. I, § 27, which states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public and natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall preserve and maintain them for the benefit of all the people.

Id. at 949-950 (citing Pa. Const. Art. I, § 27).

The local zoning ordinances from which Sunoco seeks to be exempted necessarily are intended to protect human health, and the environmental integrity and esthetic value of the communities to which they apply. To the extent that granting Sunoco's petition would require local municipalities to disregard their constitutional mandate pursuant to Article I, Section 27, such an action on the part of the Commission would be unconstitutional.

IV. Expedited Review is Not Appropriate

Finally, Sunoco has requested that its petition be given expedited review. Commenters urge that expedited review is not appropriate with respect to this petition. Sunoco's petition involves multiple different types of facilities in 31 different townships in the Commonwealth. The issues involved are numerous, technical, and complex. They deserve careful and deliberate consideration by the Commission, and expedited review is not appropriate.

V. Conclusion

For the reasons set out above, the Clean Air Council and the Environmental Integrity Project respectfully request that the Commission deny each of the Petitions submitted by Sunoco for a Finding That the Situation of Structures to Shelter Pump Stations and Valve Control Stations is Reasonably Necessary for the Convenience and Welfare of the Public. Finally, Commenters endorse and incorporate by reference the arguments raised by the Delaware Riverkeeper and the Delaware Riverkeeper Network in their Petition to Intervene (filed April 18, 2014) and Letter of Protest (filed April 21, 2014).

Respectfully submitted by:

/s/ Augusta Wilson

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VERIFICATION

I, Augusta Wilson, hereby state that the facts set forth above in the Comments of Clean Air Council and the Environmental Integrity Project are true and correct (or are true and correct to the best of my knowledge, information, and belief), and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are subject to the penalties of 18 Pa.C.S. § 4909 (relating to unsworn falsification to authorities).

Dated April 21, 2014

/s/ Augusta Wilson

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CERTIFICATE OF SERVICE

I, Augusta Wilson, do hereby certify that a true and accurate copy of the foregoing Comment of the Clean Air Council and the Environmental Integrity Project was served upon the following on April 21, 2014, pursuant to the requirements of 52 Pa. Code § 1.54(b)(3) (relating to service by a participant).

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