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FEB - 9 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

February 9, 2015

**VIA OVERNIGHT FEDERAL EXPRESS**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Answer of Sunoco Pipeline L.P. to the Motion of Clean Air Council to Compel  
Sunoco Pipeline L.P.'s Response to Discovery Requests  
Docket No. P-2014-2411941, *et seq.*

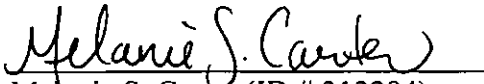
Dear Secretary Chiavetta,

Enclosed for filing is the Answer of Sunoco Pipeline L.P. to the Motion of Clean Air Council to Compel Sunoco Pipeline L.P.'s Response to Discovery Requests, as well as a Certificate of Service evidencing service upon the parties of record.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

BLANK ROME

  
Melanie S. Carter (ID # 312294)  
Blank Rome LLP  
One Logan Square  
Philadelphia, PA 19103  
Phone: (215) 569-5720  
*Counsel for Sunoco Pipeline, L.P.*

cc: Per Certificate of Service (w/encls.)

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RECEIVED**

FEB 9 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

(Not Consolidated)

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**ANSWER OF SUNOCO PIPELINE L.P. TO THE MOTION OF  
CLEAN AIR COUNCIL TO COMPEL SUNOCO PIPELINE L.P.'S  
RESPONSE TO DISCOVERY REQUESTS**

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Pursuant to 52 Pa. Code § 5.61, Petitioner Sunoco Pipeline L.P. ("SPLP"), by its undersigned attorneys, submits the following Answer of Sunoco Pipeline L.P. to the Motion of Clean Air Council ("CAC") to Compel Sunoco Pipeline L.P.'s Response to Discovery Requests ("Motion to Compel").

1. Admitted.
2. Admitted in part, denied in part. It is admitted that SPLP made specific objections to thirty of CAC's discovery requests. SPLP denies that footnote 1 of CAC's Motion to Compel provides a complete list of the requests to which SPLP has refused to respond. In addition to CAC-4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 30, 33, 34, 35, 36, and 38, SPLP also refused to respond to CAC-19, CAC-22 through CAC-29, and CAC-37 absent a mutually

agreeable protective order. Further, footnote 2 of CAC's Motion to Compel incorrectly states that SPLP did not object to CAC-39. In fact, SPLP specifically objected to CAC-39 on the grounds that it is overbroad and unduly burdensome, and further objected to the extent that CAC-39 seeks confidential and proprietary business information about SPLP. SPLP denies CAC's assumption stated in footnote 2 of its Motion to Compel that SPLP will respond in full to all of CAC's discovery requests to which SPLP did not specifically object.<sup>1</sup>

3. Admitted that 52 Pa. Code § 5.321(c) provides the general scope of discovery before the Commission. By way of clarification, discovery is prohibited which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa. Code § 5.361 (Limitation of scope of discovery and deposition).

SPLP has specifically objected to the following CAC discovery requests pursuant to 52 Pa. Code § 5.321(c) on the grounds that they are irrelevant and seek information beyond the scope of this proceeding: Nos. 1, 2, 3, 3(a), 4, 5, 6, 7, 8, 8(a), 9, 9(a), 10, 10(a)-10(d), 11, 11 (a)-(b), 14, 14(a)-(b), 15, 17, 18, 30, 33, 34, 35, 36, and 38.<sup>2</sup>

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<sup>1</sup> SPLP also provided a list of General Objections, one of which states that: "All the foregoing General Objections are incorporated by reference in response to each and every interrogatory, regardless of whether additional objections, general or specific, are made in regard to a specific discovery request." SPLP maintains that its General Objections apply in full to all of CAC's discovery requests, including CAC-12(b) and CAC-13(b), which request information that is not relevant to these proceedings and which is confidential and proprietary to SPLP. SPLP will not respond to CAC-12(b) and CAC-13(b) absent a mutually agreeable protective order.

<sup>2</sup> To clarify, SPLP has objected to the entirety of CAC-15, CAC-33, and CAC-34.

SPLP has specifically objected to the following CAC discovery requests pursuant to 52 Pa. Code §§ 5.321(c) and 5.361(c)(3) to the extent that they seek confidential and proprietary business information from SPLP: Nos. 3, 19, 22, 23, 24, 25, 26, 27, 29, and 37.

SPLP has specifically objected to the following CAC discovery requests pursuant to 52 Pa. Code §§ 5.361(c)(2) and 5.361(c)(4) on the grounds that they are overbroad and unduly burdensome: Nos. 3, 19, 22, 23, 24, 25, 26, 27, 29, and 37.

4. Denied. For the reasons discussed in further detail below, the overwhelming majority of CAC's discovery requests seek information that is not relevant to these proceedings and is not reasonably calculated to lead to the discovery of admissible evidence.

**I. CAC's Collateral Attack on a Prior Commission Ruling in These Proceedings is Improper.**

5. Denied. The Commission and Administrative Law Judges Salapa and Barnes have explained the scope of these proceedings to CAC and the other Intervenors numerous times over the past several months. CAC even admits in Paragraph 7 of its Motion to Compel that:

the Commission's Order limited the issues regarding the public convenience and welfare prong of MPC § 619 to the choice of location for the walls and roof SPLP proposes to build around the pump stations and valve control stations. . . . The Commission has eliminated any consideration of whether the pumping stations and valve control stations are reasonably necessary for the convenience and welfare of the public, whether it is reasonably necessary for the convenience and welfare of the public to site the stations where SPLP proposes to site them, much less whether the Mariner East project as a whole is reasonably necessary for the convenience and welfare of the public.

Yet CAC continues to argue that the "Commission's interpretation of . . . Section 619 of the Municipalities Planning Code, 53 P.S. § 10619 (hereinafter 'MPC § 619'), is incorrect and

unduly narrow.” In that sense, Sections I through III of CAC’s Motion to Compel are akin to a motion for reconsideration.<sup>3</sup>

On October 29, 2014, the Commission issued an Opinion and Order, in which it explained: “There are only two parts to a Section 619 inquiry: (1) whether Sunoco is a public utility corporation, and (2) whether the proposed buildings at issue are reasonably necessary for the convenience or welfare of the public.”<sup>4</sup> On the second prong, the Commission stated:

the inquiry regarding the second prong of the Section 619 analysis concerns only *proposed buildings* as described in each of Sunoco’s Amended Petitions and whether the ‘present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.’ . . . Sunoco is not seeking this Commission’s approval to be certificated as a public utility, approval of the Mariner East project, or approval to construct the valve control and pump stations that the Company seeks to shelter. Rather, Sunoco requests a determination as to whether the structures the company proposes to build *around* and *over* the valve control and pump stations constitute “buildings” within the meaning of the MPC, and, if so, whether such “buildings” are reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning ordinances. *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities in the Borough of West Wyoming, Luzerne County, To the Extent Considered To be Buildings under Local Zoning Rules, Are Reasonably Necessary for The Convenience or Welfare of the Public*, Docket No. P-2013-2347105 (Order entered December 19, 2013). Accordingly, the inquiry on remand should not address whether it is appropriate to place the valve and pump stations in certain areas, but, rather, should address whether the

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<sup>3</sup> As the Commission noted in its October 29, 2014 Opinion and Order, when SPLP applied for a Certificate of Public Convenience (“CPC”) to extend its service territory to include Washington County, which provided SPLP with the ability to initiate the Mariner East project, CAC did not oppose that application. See *October 29, 2014 Opinion and Order* (issued in all above-captioned dockets), at 9-10 (citing *Application of Sunoco Pipeline, L.P. for Approval of the Right to Offer, Render, Furnish or Supply Intrastate Petroleum and Refined Petroleum Products Pipeline Service to the Public in Washington County, Pennsylvania*, Docket No. A-2014-2425633 (Order entered August 21, 2014)). In that application proceeding, SPLP stated its intention to begin the Mariner East project for the transportation of propane and ethane from Houston, Pennsylvania to the Marcus Hook Industrial Complex. The issues that CAC seeks to raise in these dockets (such as purported concerns about safety) are issues that might possibly have been germane to a CPC proceeding and should have been raised then. They are not relevant to a proceeding brought under Section 619 of the MPC.

<sup>4</sup> See *October 29, 2014 Opinion and Order* (issued in all above-captioned dockets), at 40.

buildings proposed to shelter those facilities are reasonably necessary for the convenience or welfare of the public.<sup>5</sup>

In its Opinion and Order, the Commission reiterated that:

In this proceeding, the Commission has been asked to decide a very narrow question: whether enclosures (walls and a roof) that are built around and over a valve control or pump station should be exempt from municipal zoning regulation. To answer this question, we must decide whether it is in the convenience or welfare of the public for Sunoco to enclose the planned facilities with walls and roofs, even if those enclosures may conflict with local zoning ordinances. Sunoco is not seeking (1) a Certificate of Public Convenience; (2) authorization to build the Mariner East pipeline or any facilities attendant thereto (such as valve control or pump stations); (3) approval of the siting or route of the pipeline; or (4) a finding that the proposed pipeline complies with relevant public safety or environmental requirements. Those issues are outside the scope of this proceeding.<sup>6</sup>

Since the Commission issued its October 29, 2014 Opinion and Order, Administrative Law Judges Salapa and Barnes have issued a number of orders that have acknowledged and reiterated the scope of these proceedings.

First, on December 1, 2014, the Judges issued Prehearing Order #1 Granting Interventions, which granting the intervention of CAC and several others.<sup>7</sup> The Judges reiterated the Commission's ruling that "[SPLP]'s compliance with safety and environmental requirements in siting and construction [of] the Mariner East project and the pump and valve control stations were outside the scope of these petitions. Therefore, the interventions . . . in these proceedings will be limited to issues arising from the shelter buildings."<sup>8</sup> The Judges stated that concerns over "the Mariner East project and construction of the pump and valve control stations . . . are

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<sup>5</sup> *Id.* at 43 (emphasis added).

<sup>6</sup> *Id.* at 12.

<sup>7</sup> See *December 1, 2014 Prehearing Order #1 Granting Interventions* (issued in all above-captioned dockets).

<sup>8</sup> *Id.* at 19-20.

beyond the scope of this proceeding.”<sup>9</sup> The Judges further stated that “the Commission directed that we should not address whether it was appropriate to place the valve control and pump stations in certain locations. Rather, we were simply to determine whether Sunoco’s proposed buildings were reasonably necessary for the convenience or welfare of the public.”<sup>10</sup>

Second, on December 17, 2014, the Judges issued an Order in Docket Number 2014-2411966 (West Goshen Township, Chester County), denying a motion of the Concerned Citizens of West Goshen Township (“CCWGT”) to consolidate the formal complaint at Docket Number C-2014-2451943 with SPLP’s Amended Petition at Docket Number 2014-2411966.<sup>11</sup> In that Order, the ALJs stated:

In granting CCWGT’s petition to intervene, we noted that the Commission, in its October 29, 2014 Order, ruled that Sunoco’s compliance with safety and environmental requirements in the siting and construction of the Mariner East project and the pump and valve control stations were outside the scope of the petition at P-2014-2411966. We therefore, limited the intervention of CCWGT in the proceeding at P-2014-2411966 to issues arising from the shelter buildings.

...

As Sunoco points out and the Commission’s October 29, 2014 emphasizes, the scope of its petition is very limited. Sunoco does not have to present any evidence concerning the construction or operation of the pump station for the Commission to grant its petition.<sup>12</sup>

Third, the Administrative Law Judges issued an order on January 9, 2015 striking the answer and new matter of West Goshen Township (“WGT”) as untimely.<sup>13</sup> The January 9, 2015

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<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.*

<sup>11</sup> See *December 17, 2014 Order Denying Consolidation*, Docket No. 2014-2411966.

<sup>12</sup> *Id.* at 4, 8.

<sup>13</sup> See *January 9, 2015 Order Striking Answer and New Matter of West Goshen Township*, Docket No. P-2014-2411966.

order reiterated the Commission's holding in its October 29, 2014 Opinion and Order, and stated that "the Commission directed that we should not address whether it is appropriate to place the valve control and pump stations in certain locations because these issues were outside the scope of the proceedings. Rather we were simply to determine whether Sunoco's proposed buildings were reasonably necessary for the convenience or welfare of the public."<sup>14</sup> The Judges noted that "In granting WGT's petition to intervene, we noted that the Commission, in its October 29, 2014 order, ruled that Sunoco's compliance with safety and environmental requirements in the siting and construction of the *Mariner East* project and the pump and valve control stations were outside the scope of the petition at P-2014-2411966. We therefore, limited the intervention of WGT in the proceeding at P-2014-2411966 to issues arising from the shelter building."<sup>15</sup> Finally, the Judges stated that WGT raised "issues regarding the siting and construction of Sunoco's pipeline and pump station. By raising these issues, WGT's answer with new matter . . . attempts to expand the scope of the Commission's October 29, 2014 remand order."<sup>16</sup>

6. Denied. SPLP denies CAC's sentence fragment of an assertion that the Commission's October 29, 2014 Opinion and Order, or any single particular quote therein, serves as "SPLP's only basis for its assertion that the Council's Requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 8a, 9, 9a, 10, 10a-10-d, 11, 11a-b, 14, 14a-b, 15, 17, 18, 30, 33, 34, 35, 36, and 38." For the reasons discussed in Paragraph 5, above, SPLP denies CAC's assertion that the Commissioners have improperly identified the scope of the issues to be decided in these proceedings.

7. Admitted.

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<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 4-5.

<sup>16</sup> *Id.* at 9.



8. Denied. As support for its interpretation of MPC § 619, the Joint Motion of Vice Chairman John F. Coleman, Jr. and Commissioner Pamela A. Witmer (hereinafter “Joint Motion”) (October 2, 2014), and the Commission’s October 29 Opinion and Order *did not rely exclusively* on the Commission’s order in *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities in the Borough of West Wyoming, Luzerne County, to the Extent Considered to be Buildings under Local Zoning Rules, are Reasonably Necessary for the Convenience or Welfare of the Public*, PUC Docket No. P-2013-2347105 (Opinion and Order entered Dec. 19, 2013) (hereinafter “UGI Order”). The Joint Motion and the October 29 Opinion and Order also relied upon the Commonwealth Court’s decision in *Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593 (Pa. Cmwlth. 1986), as well as *Duquesne Light Co. v. Upper St. Clair Twp., et al.*, 105 A.2d 287 (Pa. 1954). The Commission noted that while “*Duquesne* was decided prior to both the current Public Utility Code and the MPC . . . [s]ubsequent cases, however, have made it clear that the principles enumerated in *Duquesne* are still in force.” *Id.* (citing *Heitzel v. Zoning Hearing Bd. of Millcreek Twp.*, 533 A.2d 832, 833 (Pa. Cmwlth. 1987), and *South Coventry Twp. v. Philadelphia Elec. Co.*, 504 A.2d 368, 371 (Pa. Cmwlth. 1986)).

9. Denied. SPLP denies CAC’s assertion that the Commission’s reliance on the UGI Order as a basis for its interpretation of MPC § 619 is incorrect. SPLP denies that the Commission’s interpretation of MPC § 619 is “unduly narrow.” SPLP denies that the UGI Order does not support the proposition that the scope of the consideration under the second prong of MPC § 619 is limited only to the reasonable necessity for the siting of the structures around the proposed stations for the public welfare and convenience. SPLP denies that the Judge Barnes or the Commission, in the *UGI* proceeding, relied upon the public benefits of the facilities that

would be enclosed by the buildings at issue. As explained in Paragraph 5, above, the Commission has already decided the scope of these proceedings.

10. Denied. SPLP denies CAC's assertion that the Commission, in its UGI Order, relied upon impacts of the proposed project as a whole to determine whether certain buildings that would enclose and protect equipment associated with a metering gate station were reasonably necessary for the convenience or welfare of the public. In *UGI*, the Commission rejected intervenors' attempts to challenge the proposed metering gate station which would be enclosed by the buildings.<sup>17</sup> Further, as discussed in Paragraph 5, above, the Commission has already determined the scope of these proceedings.

11. Denied. SPLP denies CAC's assertion that the Commission in *UGI* did not interpret the language of MPC § 619 as limiting the scope of its consideration to the impact on the public welfare of the structures around the station at issue in that case. SPLP further denies that ALJ Barnes and the Commission, in the *UGI* proceeding, considered evidence relating to the overall impact of the entire project on the public. As discussed in Paragraph 5, above, the Commission has already decided the scope of these proceedings.

12. Denied. SPLP denies CAC's conclusory statement that the UGI Order contains very limited support for its holding.

13. Denied. SPLP denies CAC's characterization that "[t]he only case law the Commission even arguably cites in *UGI* as support for this proposition is *Del-AWARE*." To clarify, the Commission without question *did in fact* cite *Del-AWARE* in support of its interpretation of the scope of MPC § 619.

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<sup>17</sup> UGI Order at 22.

14. Denied. SPLP denies CAC's assertion that the Commonwealth Court in *Del-AWARE* "does not cite to one single authority of any kind supporting" its interpretation of MPC § 619. SPLP also denies CAC's assertion that the Commonwealth Court's interpretation of the scope of MPC § 619 in *Del-AWARE* is "extraordinarily and unreasonably narrow." As discussed above in Paragraph 5, the Commission has already decided the scope of these proceedings.

15. Denied. SPLP denies CAC's implication that the Commission's reasoning in its decision that was on appeal before the Commonwealth Court in *Del-AWARE* should be persuasive authority in these proceedings. The Commonwealth Court considered and rejected the Commission's broader interpretation of MPC § 619.

16. Denied. The Commission, in its October 29, 2014 Opinion and Order, has already rejected CAC's argument that the Commonwealth Court's holding in *Del-AWARE* the Commission to evaluate the environmental impacts of a project under MPC § 619 unless they have already been evaluated by a separate agency.<sup>18</sup> In rejecting CAC's Preliminary Objections, the Commission stated:

CAC maintains that Sunoco has misinterpreted the holding in *Del-AWARE Unlimited, supra*. According to CAC, the Commonwealth Court's decision in that case to limit its review to the siting of the buildings involved hinged on the fact that the predecessor to the Pennsylvania Department of Environmental Protection had already conducted a thorough review of the environmental impacts of the proposed project, and that review was upheld by the Environmental Hearing Board. *Id.* at 15 (citing *Del-AWARE Unlimited*, 513 A.2d at 596). CAC indicates that, in the instant case, no environmental reviews or assessments have been conducted. CAC is concerned that, if the Commission were to approve the requested exemption without considering the environmental impacts of the Mariner East project, then the project would be constructed without any comprehensive environmental review.

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<sup>18</sup> See *October 29, 2014 Opinion and Order* (issued in all above-captioned dockets), at 46, 48.

...

These Preliminary Objections seek to improperly expand the scope of this proceeding to issues concerning the environmental impacts of the Mariner East project and whether the overall project is reasonably necessary for the convenience and welfare of the public, which are issues that are beyond a Section 619 exemption inquiry.<sup>19</sup>

17. Denied. SPLP denies CAC's implication that the Commonwealth Court's holding in *Del-AWARE* requires a comprehensive environmental review under MPC § 619. As explained in Paragraph 16, above, the Commission has already rejected this argument in its October 29, 2014 Opinion and Order.<sup>20</sup>

18. Denied. As discussed in Paragraph 5, above, SPLP denies that the language of MPC § 619 calls on the Commission to consider the impact on the public welfare of the pumping stations and valve control stations and of the Mariner East project as a whole. The Commission has already ordered that those issues are not relevant to these proceedings.

19. Denied. SPLP denies that CAC's "discovery requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 8a, 9, 9a, 10, 10a-10-d, 11, 11a-b, 14, 14a-b, 15, 17, 18, 30, 33, 34, 35, 36, and 38 seek relevant information relating to the environmental, esthetic and other impacts of the proposed stations and the Mariner East project on the public welfare, and the necessity of the project and its siting for the public convenience and welfare."<sup>21</sup> SPLP further denies CAC's assertion that those requests "are reasonably calculated to lead to the discovery of admissible evidence on these issues." For the reasons discussed in Paragraph 5, above, the Commission has already ordered that those issues are not relevant to these proceedings.

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> In addition to the list of discovery requests CAC lists in Paragraph 32 of its Motion to Compel, SPLP also objected to CAC-3(a) and to the entirety of CAC-15, CAC-33, and CAC-34.

**II. The Commission Has Already Determined that the Valve Control and Pump Stations are Not Buildings Within the Meaning of MPC 619 and that the Siting of the Valve Control and Pump Stations is Not Relevant to These Proceedings.**

20. Denied. SPLP denies CAC's assertion that "each one of the pumping stations and valve control stations SPLP proposes to build as part of its Mariner East project is a building." SPLP also denies CAC's assertion that "the reasonable necessity of siting each one of the stations where SPLP proposes to for the convenience and welfare of the public is relevant to the proceedings, and all discovery requests reasonably calculated to lead to the discovery of admissible evidence on that point must be allowed." The Commission has already determined that the pumping stations and valve control stations SPLP proposes to build as part of its Mariner East project are not buildings within the meaning of MPC 619, and that concerns related to the pumping stations and valve control stations are not relevant to these proceedings.<sup>22</sup> Further, the Judges, in their December 1, 2014 Prehearing Order #1 Granting Interventions, their December 17, 2014 Order Denying Consolidation, and their January 9, 2015 Order Striking Answer and New Matter of West Goshen Township, also recognized the distinction between the stations and the metals buildings that will surround those stations:

Sunoco would have to construct pump stations to facilitate the transportation of ethane and propane. In addition, Sunoco would have to construct valve control stations to ensure that the ethane and propane were transported safely. These pump stations and valve control stations would be enclosed in metal buildings. The buildings would protect the electrical, control and communication devices for the pump and valve equipment from the weather. The buildings would lessen the amount of noise from the operation of the pump and valve control equipment that would reach the area surrounding each station.<sup>23</sup>

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<sup>22</sup> *Id.* at 42.

<sup>23</sup> See *December 1, 2014 Prehearing Order #1 Granting Interventions* (issued in all above-captioned dockets), at 10; *December 17, 2014 Order Denying Consolidation*, Docket No. 2014-2411966, at 3; *January 9, 2015 Order Striking Answer and New Matter of West Goshen Township*, Docket No. P-2014-2411966, at 3.

These holdings reiterate that the pump stations and valve controls stations are not buildings within the meaning of MPC § 619, and that they are not relevant to these proceedings.

21. Admitted that the MPC does not define the term “building” and that Section 1903 of the Statutory Construction Act states in part, “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.” 1 Pa.C.S. § 1903.

22. Admitted. However, the Commonwealth Court in *Latimore Twp. v. Singh*, No. 355 C.D. 2012, 2013 WL 3942493, at \*4 (Pa. Commw. Ct. Jan. 14, 2013,) did not define the term “building” in the context of MPC § 619.

23. Denied. For the reasons discussed in Paragraph 20, above, the Commission has already held that the pump stations and valve control stations that SPLP proposes to construct are not buildings within the meaning of MPC § 619. Further, SPLP denies CAC’s conclusory assertion that “there would not be any necessity at all for those buildings without that equipment.”

24. Denied. SPLP denies CAC’s assertion that its discovery requests relating to the stations, their functioning, and their environmental impacts as they are currently proposed to be sited and constructed, are designed to elicit information that is directly relevant to the issues in these proceedings and are reasonably calculated to lead to the discovery of admissible evidence. For the reasons explained in Paragraph 5, above, the Commission has already ruled that those issues are not relevant to these proceedings.

25. Denied. SPLP denies that CAC provided a complete version of SPLP’s objection to CAC-18. SPLP’s objection to CAC-18 reads as follows:

SPLP objects to interrogatory CAC-18 on the grounds that it seeks the production of documents irrelevant to and beyond the scope of this proceeding. In determining whether a site is reasonably necessary, a public utility does not need to show absolute necessity or that the site chosen is the best site; rather, it need only show that the site chosen is “reasonably necessary...” for the convenience or welfare of the public. *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities in the Borough of West Wyoming, Luzerne County, To the Extent Considered To be Buildings under Local Zoning Rules, Are Reasonably Necessary for The Convenience or Welfare of the Public*, 2013 WL 6835113 (Pa. P.U.C. 2013); *see also O’Connor v. Pa. Pub. Util. Comm’n*, 582 A.2d 427, 433 (Pa. Commw. Ct. 1990). This case concerns the siting of the *building*, not the siting of the pump stations and valve control stations.

26. Denied. For the reasons discussed in Paragraph 5, above, SPLP denies that the issues related to the siting of the pump stations and valve control stations are relevant in these proceedings. SPLP denies that CAC-18 is reasonably calculated to lead to the discovery of admissible evidence.

27. Denied. For the reasons discussed in Paragraph 25, above, CAC mischaracterizes SPLP’s objection to CAC-18, by citing only a portion of SPLP’s objection. SPLP also objected to CAC-18 “on the grounds that it seeks the production of documents irrelevant to and beyond the scope of this proceeding” because “[t]his case concerns the siting of the *building*, not the siting of the pump stations and valve control stations.” SPLP’s statement that it does not need to show absolute necessity or that the site chosen is the best site, but rather SPLP need only show that the site chosen is reasonably necessary for the convenience or welfare of the public, is a statement that the Commission has made both in *UGI* and in its October 29, 2014 Opinion and Order in these proceedings.<sup>24</sup> SPLP denies CAC’s assertion that this argument is “unavailing.”

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<sup>24</sup> See UGI Order at 21; *October 29, 2014 Opinion and Order* (issued in all above-captioned dockets), at 16.

Further, for the reasons explained in Paragraph 20, above, the pump stations and valve control stations are not buildings within the meaning of MPC § 619.

**III. The Commission Has Already Determined that CAC's Claims Under Article I, Section 27 of the Pennsylvania Constitution are Not Relevant to These Proceedings.**

28. Denied. The Commission has already ruled that CAC's claims under Article I, Section 27 of the Pennsylvania Constitution are not relevant to these proceedings. The Commission's October 29, 2014 Opinion and Order rejected CAC's assertion that "Article 1, Section 27 of the Pennsylvania Constitution prohibits granting the Amended Petitions . . . based on the Supreme Court's decision . . . in *Robinson Township*."<sup>25</sup> The Commission held that CAC's argument would "improperly expand the scope of this proceeding to issues concerning the environmental impacts of the Mariner East project and whether the overall project is reasonably necessary for the convenience and welfare of the public, which are issues that are beyond a Section 619 exemption inquiry."<sup>26</sup> The Commission agreed with SPLP that "*Robinson Township* involved Act 13 of 2012 and did not involve Section 619 of the MPC. . . . Section 619 of the MPC requires the Commission to make a specific finding that the siting is necessary for the convenience and welfare of the public before exemptions from local zoning are permitted, whereas Act 13 permitted incompatible uses."<sup>27</sup>

CAC cannot, on the one hand, refer to and rely upon the plurality decision in *Robinson Township* as a "recent decision," then on the other hand fail to disclose more recent adverse authority. On January 7, 2015, the Commonwealth Court, in an *en banc* opinion, rejected a challenge from an environmental group to the leasing of state-owned lands for oil and gas development and the Legislature's use of the revenues therefrom for general budget purposes.

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<sup>25</sup> See *October 29, 2014 Opinion and Order* (issued in all above-captioned dockets), at 44.

<sup>26</sup> *Id.* at 48.

<sup>27</sup> *Id.*



*See Pennsylvania Env'tl. Def. Found. v. Com.*, No. 228 M.D. 2012 (Pa. Commw. Ct., Jan 7, 2015). In recognizing that Part III of *Robinson Township* represents a plurality view of the Pennsylvania Supreme Court, the Court held that “[t]he legal reasoning and conclusions contained therein are thus not binding precedent on this Court.” *Id.* at 28 n.31 (citing *Kelly v. State Emps. Ret. Bd.*, 932 A.2d 61, 67-68 (Pa. 2007)). The Court held that *Robinson Township* is “persuasive only to the extent it is consistent with binding precedent from this Court and the Supreme Court on the same subject.” *Id.* at 28 n.31 (citing, e.g., *Cnty. Coll. of Del. Cnty. v. Fox*, 342 A.2d 468 (Pa. Cmwlth. 1975) (en banc), and *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973) (en banc), *aff'd*, 361 A.2d 263 (Pa. 1976)). Ultimately the Court held that *Payne v. Kassab* is still binding precedent on the Commonwealth Court. *Id.* at 34.

The Commonwealth Court, in *Del-AWARE*, also rejected intervenors’ argument to consider environmental impacts under Article 1, Section 27 when reviewing petitions filed under MPC § 619.<sup>28</sup> The Court reaffirmed its prior holding in *Borough of Moosic v. Pennsylvania Public Utility Commission*, 429 A.2d 1237 (Cmwlth Ct. 1981), that “Section 27 cannot legally operate to expand the powers of a statutory agency.”<sup>29</sup> The Court held that Section 27 is “self-executing only as it applies to the commission's regulation of a utility's own conduct which is *within the ambit of the regulatory jurisdiction of the commission as created by statute and directly affects the environment.*”<sup>30</sup>

29. Denied. As discussed in Paragraph 28, above, the Commission already rejected the argument CAC made in its Preliminary Objections that granting SPLP’s Amended Petitions would contradict *Robinson Township*.

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<sup>28</sup> *Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593, 595-96 (Pa. Cmwlth. 1986).

<sup>29</sup> *Id.* at 596.

<sup>30</sup> *Id.*

30. Denied. SPLP denies CAC's assertion that "[t]he Supreme Court in Robinson explicitly recognized that the public has a concrete interest in the development and application of local zoning ordinances." For the reasons discussed in Paragraph 28, above, the controlling case on Art. I, § 27 in these proceedings is *Payne v. Kassab*.

31. Denied. For the reasons discussed in Paragraphs 5 and 28, above, SPLP denies CAC's assertion that "[d]iscovery requests relating to the environmental impacts of the proposed project, potential threats to human health and the environment that its construction or operation may cause, as well as esthetic impacts of the proposed project on local communities may all yield information relevant to this issue."

32. Denied. SPLP denies CAC's assertion that "SPLP must be compelled to respond to the Council's Requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 8a, 9, 9a, 10, 10a-10-d, 11, 11a-b, 14, 14a-b, 15, 17, 18, 30, 33, 34, 35, 36, and 38, and to each and every one of the Council's discovery requests, because they are relevant to the environmental rights issue under Art. I, § 27, or are reasonably calculated to lead to admissible evidence on that issue."<sup>31</sup> For the reasons explained in Paragraph 28, above, CAC's environmental rights claims are not relevant to these proceedings.

#### **IV. SPLP's Objections to Producing Responsive Information Based on Claims of Confidentiality or Proprietary Business Information Should be Sustained.**

33. Admitted in part, denied in part. SPLP admits that with respect to CAC's discovery requests Nos. 3, 19, 22, 23, 24, 25, 26, 27, 29, and 37, SPLP objects on the grounds that the requests seek confidential and proprietary business information about SPLP. SPLP denies CAC's characterization that only "several" of those objections make reference to the

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<sup>31</sup> In addition to the list of discovery requests CAC lists in Paragraph 32 of its Motion to Compel, SPLP also objected to CAC-3(a) and to the entirety of CAC-15, CAC-33, and CAC-34.

absence of a mutually agreeable protective order as a basis for objection. In fact, of the list of discovery requests listed above, SPLP's objections to each of those requests, with the exception of CAC-3, made reference to the absence of a mutually agreeable protective.

34. Admitted.

35. On December 5, 2014, SPLP circulated a draft protective order via email to parties to these proceedings, including counsel for CAC. SPLP indicated that, once the parties agreed to the terms of the protective order, SPLP would request that it be entered as an order and would produce documentation requested by the pending discovery requests. On December 18, 2014, after failing to receive a response from CAC, SPLP again reached out to the parties, including CAC, and indicated that SPLP had not received comments from CAC on the draft protective order. SPLP asked counsel for the parties, including CAC, to provide SPLP with their feedback so that SPLP could finalize the protective order and move for its entry in the proceedings. SPLP did not hear from CAC until reading its Motion to Compel, wherein, more than two months after SPLP initially reached out to CAC to discuss terms of a protective order, CAC states that it will "agree to treat the information as if it were covered by a protective order until such time as a presiding officer or the Commission issues such an order or determines that the issuance of such an order would not be appropriate." On February 4, 2015, after filing its Motion to Compel, and nearly two months after SPLP initially provided CAC with the draft protective order, CAC, along with two other parties, submitted joint comments on the draft protective order. SPLP requests that the Judges not reward CAC for its lack of cooperation with SPLP in negotiating a mutually agreeable protective order without the need for judicial intervention. SPLP respectfully requests that the Judges deny the Motion to Compel and allow

the parties to continue negotiations, and allow CAC to file a motion to compel at a later date if negotiations prove to be unfruitful.

36. Denied. SPLP is without knowledge or belief as to the assertions made by CAC in Paragraph 36 of its Motion to Compel, and as such denies those assertions. Further, CAC's sluggish response to SPLP's attempts to negotiate a protective order suggests that CAC is not overly interested in obtaining SPLP's confidential and proprietary information.

37. Denied. SPLP denies CAC's assertion that "all of SPLP's objections to the Council's discovery requests based on issues relating to confidentiality or proprietary information should be overruled." CAC has not provided any reason to *overrule* CAC's objections on grounds that CAC's discovery requests seek confidential and proprietary information. Further, under the process outlined in 52 Pa. Code § 5.365(c)(4), the parties agree to treat certain information as if it were protected by a protective order. That process does not trigger any waiver of a party's objections.

#### **V. CAC's Discovery Requests are Overbroad and Unduly Burdensome**

38. Denied. SPLP denies CAC's conclusory statement that "SPLP's objection that the Council's discovery requests Nos. 23, 24, 25(a), 26, 27, 29, 30 are overbroad and unduly burdensome are similarly without merit and should be overruled."<sup>32</sup>

39. Denied. SPLP denies CAC's assertion that "SPLP provides no basis whatsoever for its assertion that these requests are overbroad or unduly burdensome." SPLP denies that "these requests each seek information or documents on narrowly tailored and specific questions or issues, which are relevant to the proceeding, which are in the possession and/or unique knowledge of SPLP, and which SPLP is in the best position to most easily obtain or locate."

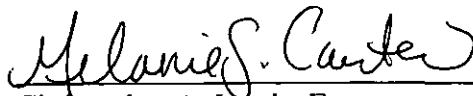
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<sup>32</sup> To clarify, SPLP objected to CAC-24(a), not CAC-24, on grounds that it is overbroad and unduly burdensome. SPLP also objected to CAC-29 in its entirety.

CAC's request for "all" documents is overbroad and unduly burdensome, and is certainly not narrowly tailored to obtain relevant information. For example, CAC-37 asks "What individual(s), entity or entities currently own natural gas liquids (NGLs) that would be transported through the Mariner East pipeline as proposed?" This question presumably would require SPLP to track down each and every entity that currently owns NGLs that may in the future be transported through the Mariner East pipeline. Some of these NGLs are still in the ground within Shale formations throughout the region. To the questions to which SPLP has objected on grounds that they are overbroad and unduly burdensome, SPLP will comply with those requests to the extent that they seek relevant information to these proceedings.

WHEREFORE, Sunoco Pipeline L.P. respectfully requests that the presiding Administrative Law Judges and Commission deny the Motion of Clean Air Council to Compel Sunoco Pipeline L.P.'s Response to Discovery Requests.

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Dated: February 9, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2015, I caused a true copy of Answer of Sunoco Pipeline L.P. to the Motion of Clean Air Council to Compel Sunoco Pipeline L.P.'s Response to Discovery Requests to be served upon the participants listed below by email (where an email address is shown) and first-class U.S. mail, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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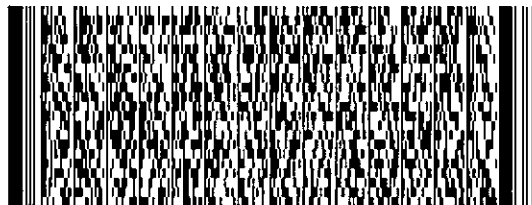
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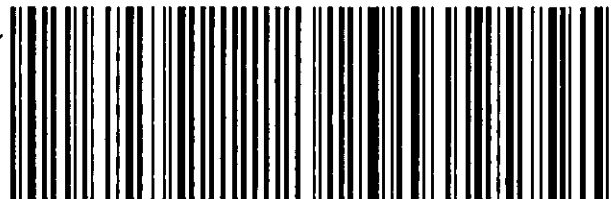
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