

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

David J. Brooman, Esquire
 Attorney I.D. No. 36571
 Richard C. Sokorai, Esquire
 Attorney I.D. No. 80708
 Douglas Wayne, Esquire
 Attorney I.D. No. 69410
 HIGH SWARTZ LLP
 40 East Airy Street
 Norristown, PA 19404
 610-275-0700 [phone]
 610-275-5290 [facsimile]
dbrooman@highswartz.com
rsokorai@highswartz.com
dwayne@highswartz.com

Attorneys for West Goshen Township

WEST GOSHEN TOWNSHIP,

Complainant

v.

SUNOCO PIPELINE, L.P.,

Respondent

:
:
:
:
:
:
:
:
:
:

Docket No. C-2017-2589346

**COMPLAINANT, WEST GOSHEN TOWNSHIP’S, INITIAL
 PREHEARING CONFERENCE MEMORANDUM**

Complainant, West Goshen Township (“Township”), by and through its counsel, High Swartz LLP, pursuant to the April 18, 2017 Prehearing Conference Order and in anticipation of the Prehearing Conference scheduled to take place on July 6, 2017, provides the following Prehearing Conference Memorandum.

A. Service List

The Township designates the following primary person for entry on the service list:

David Brooman, Esquire
High Swartz LLP
40 East Airy Street
Norristown, PA 19404
(610) 275-0700 (voice)
(610) 275-5290 (facsimile)
dbrooman@highswartz.com

The Township also requests that the parties serve electronic (but not paper) copies of all documents and communications in this proceeding on the following counsel, also of High Swartz LLC:

Richard Sokorai, Esquire
rsokorai@highswartz.com

Douglas Wayne, Esquire
dwayne@highswartz.com

B. Statement on settlement possibilities

The parties have had discussions regarding possible settlement. While the Township is open to an amicable resolution, the Township is not optimistic that the issues dividing the parties can be resolved absent a full Commission decision on the substantive issues dividing the parties. At minimum, a decision on the pending Motion for Judgment on the Pleadings will be required before there is a realistic chance of settlement.

C. Proposed Discovery Plan/Schedule

The Township proposes the following discovery schedule:

Prehearing conference:	July 6, 2017
Negotiate protective order/ confidentiality agreement:	August 20, 2017 (45 days)
Document and lay witness discovery	February 16, 2018 (180 days)
Expert discovery	June 16, 2018 (120 days)

The Township's discovery schedule presumes that there will be minimal to no

discovery disputes.

D. Proposed discovery orders

The parties will need to reach a confidentiality agreement/protective order regarding discovery disclosures and other sensitive information. Attached to this Prehearing Conference Memorandum as Exhibit A is the Confidentiality Agreement executed by the parties in the prior PUC litigation, PUC Docket P-2014-24111966 . The Township suggests that the attached Confidentiality Agreement is sufficient to protect SPLP's interests. The Township contends that the draft Protective Order proposed by SPLP for this litigation is needlessly complex and likely will lead to unnecessary discovery disputes that would delay timely resolution of the pending Petition.

E. Need for public input hearings

The Township does not presently believe that public input hearings will be necessary. However, the Township will certainly participate if public input hearings are deemed necessary.

F. Testimony/Hearing/Briefing schedule

The Township's proposes the following schedule:

Direct testimony of Township	August 15, 2018 (60 days)
Rebuttal testimony of SPLP	September 29, 2018(45 days)
Sur-rebuttal testimony of Township	November 13, 2018(45 days)
Oral rejoinder outlines	November 27, 2018 (14 days)
Hearings	December 11, 2018 (14 days)
Close of Record	January 10, 2019 (30 days)
Main Briefs	March 11, 2019 (60 days)

G. Witnesses

At this time, the Township anticipates calling the following witnesses:

Township Manager Casey LaLonde
West Goshen Township Offices
1025 Paoli Pike
West Goshen, PA 19380
(610) 696- 5266

Mr. LaLonde's testimony is expected to include his understanding of the Settlement Agreement and the Township's expectations that the valve station in question would be constructed on the SPLP Use Area unless Respondent SPLP was unable to do so due to engineering constraints. Mr. LaLonde also is expected to testify as to the lack of notice of SPLP's change to the valve location, and the reasons why SPLP's unilateral decision to site Valve 344 on the Janiec tract is problematic for the Township.

Township Supervisor Raymond Halvorsen
c/o West Goshen Township Offices
1025 Paoli Pike
West Goshen, PA 19380
(610) 696- 5266

Mr. Halvorsen's testimony is expected to include his understanding of the Settlement Agreement and the Township's expectations that the valve station in question would be constructed on the SPLP Use Area unless Respondent SPLP was unable to do so due to engineering constraints. Mr. Halvorsen also is expected to address the lack of notice to the Township of SPLP's unilateral decision to place a Valve 344 on the Janiec tract, and the resulting damages to the Township if the valve is not relocated to the SPLP Use Area.

Kristin Camp, Esquire
Buckley Brion McGuire & Morris, LLP
118 West Market Street, Suite 300
West Chester, PA 19382

(610) 436-8305

Testimony from Ms. Camp is expected to include her understanding of the Settlement Agreement and the Township's expectations that the valve station in question would be constructed on the SPLP Use Area unless Respondent SPLP was unable to do so due to engineering constraints. Her testimony also is expected to address the lack of notice of SPLP's unilateral decision to change the location of Valve 344 to the Janiec tract, and the reasons why that location is problematic for the Township

Richard Kuprewicz
President, Accufacts, Inc.
President Richard Kuprewicz
8040 161st Ave NE, #435
Redmond, WA 98085
(425) 802-1200

Mr. Kuprewicz is an expert witness in pipeline safety, pipeline design and pipeline construction. His testimony is expected to include the analysis performed by Accufacts in the context of the prior PUC case (P-2014-24111966), the analysis performed by Accufacts on the Mariner East 2 pipeline since entering into the Settlement Agreement, the representations made to Mr. Kuprewicz by SPLP project engineers and senior executives during those reviews, and the confidential documents and other information provided by SPLP to enable those reviews.

In addition, the Township may consult with and reserves the right to call as expert witnesses the following:

- a. A civil professional engineer
- b. A mechanical professional engineer
- c. A pipeline design expert

The testimony of these experts, in addition to Mr. Kuprewicz's testimony, would be related to issues in their respective fields of expertise, based upon information disclosed

during discovery, concerning the timing and decision process used by SPLP in determining that SPLP was unable to locate the valve station in question in the SPLP Use Area, alternative plans to site Valve 344, and the feasibility of siting Valve 344 on the SPLP Use Area.

H. Issues and sub issues the Township intends to raise

Issues and sub issues which the Township intends to raise include:

1. Whether the Township is entitled to an Interim Emergency Order to halt construction inconsistent with the Settlement Agreement while this case is pending.
2. Whether the Settlement Agreement between the parties obligates SPLP to place the valve station at issue within the SPLP Use Area to the exclusion of any other site in the Township unless SPLP is unable to do so due to engineering constraints.
3. Whether SPLP is unable to construct the valve station at issue in the SPLP Use Area due to engineering constraints.
4. Whether SPLP acted fraudulently and in bad faith in that it had already made the decision to locate the valve station in question outside the SPLP Use Area prior to entering into the Settlement Agreement which was submitted for approval to the PUC.
5. Whether or not representations made by SPLP in the Settlement Agreement, and upon which the Township expressly relied, are mere surplusage as claimed by SPLP, or material representations integral to the Settlement Agreement.

6. Whether a permanent injunction should be included as part of the final relief afforded to the Township.

I. Evidence the Township proposes to present on each issue

The Township plans to present lay witness testimony, expert testimony and documentary evidence that:

1. With respect to its petition for an Interim Emergency Order, the Township intends to present evidence that SPLP has refused to keep the Township reasonably informed of its construction schedule and activities, that construction at the non-permitted location, and adjacent areas, is imminent, and that if interim emergency relief is not granted, the Township and its citizens will suffer irreparable harm, including but not limited to road and traffic disruption, soil disruption, tree removal and extensive construction activities all at areas that are to remain untouched under the Settlement Agreement.
2. On the issue of the contractual requirements, the Township plans to present evidence that all parties to the agreement knew and understood that the SPLP location was the agreed upon location of the valve station absent engineering constraints making SPLP unable to put it there, that SPLP had alternate plans to put the valve station at an entirely separate property, and that SPLP fraudulently and in bad faith failed to disclose existing plans to construct the valve station on a separate property despite material representations and reliance by the Township to the contrary in the Settlement Agreement.
3. The Township intends to present evidence that SPLP is able to construct the

valve station on the SPLP Use Area as it agreed to in the Settlement Agreement submitted to and approved by the PUC, and that rather, SPLP is seeking to simply ignore its contractual obligations to implement a plan it already had in place at the time of the Settlement Agreement, which was surreptitiously not disclosed, merely because it is cheaper and more convenient to SPLP.

4. On the issue of whether SPLP fraudulently and in bad faith failed to disclose its existing plan to use an alternate site, evidence of the date of the existing plans and communications about existing plans and the negotiation of the Settlement Agreement will be introduced.
5. On the issues as to whether SPLP's representations in the Settlement Agreement were material or mere surplusage, and whether a permanent injunction is appropriate, the Township intends to present evidence as to the negotiations, state of mind of the relevant parties, the significance of the designated and alternate locations of the valve station and the permanent harm to the Township if the Settlement Agreement is not complied with.

Petitioner reserves the right to supplement this list as evidence is obtained in discovery.

HIGHTSWARTZ, LLP



By: David J. Brooman, Esquire
Richard C. Sokorai, Esquire
Douglas Wayne, Esquire
Attorneys for Complainant,
Township of West Goshen

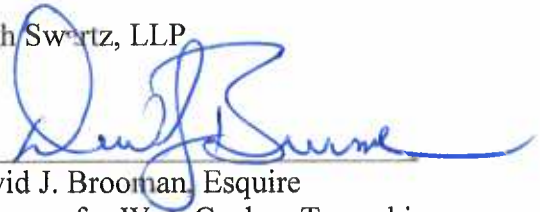
Dated: July 5, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2017, I caused a true and correct copy of West Goshen Township's Initial Prehearing Conference Memorandum to be served upon the party listed below by electronic mail and U.S. Mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Michael Montalbano, Esquire
Christopher A. Lewis, Esquire
Blank Rome, LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
lewis@blankrome.com
Attorney for Sunoco Logistics, L.P.

High Swartz, LLP



David J. Brooman, Esquire
Attorney for West Goshen Township

EXHIBIT A

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is made effective as of October 20, 2014 by and between High Swartz, LLP, a Pennsylvania limited liability partnership, and Sunoco Pipeline, L.P. ("SPLP").

WHEREAS, on or about May 8, 2014, SPLP filed an Amended Petition before the Pennsylvania Public Utility Commission (the "Commission") in Docket No. P-2014-2411966 (the "PUC Proceeding"), requesting a finding that structures in West Goshen Township to shelter a pump station and a valve control station are reasonably necessary for the convenience and welfare of the public and, therefore, exempt from any local zoning pursuant to 53 P.S. § 10619 ("Section 619") of the Municipal Planning Code ("MPC"); and

WHEREAS, West Goshen Township filed Preliminary Objections to the Amended Petition, which Preliminary Objections were subsequently denied by order of the Commission; and

WHEREAS, through its counsel, West Goshen Township has sought information relating to SPLP's Mariner East Project and SPLP's pipeline operations that is confidential and proprietary in nature; and

WHEREAS, SPLP is willing to disclose such confidential and proprietary information to certain representatives of West Goshen Township (collectively, the "WGT Representatives"), for the sole and exclusive purpose of discussing and negotiating a settlement of the PUC Proceeding, subject to the terms and conditions of this Agreement;

NOW THEREFORE, in reliance upon and in consideration of the following undertakings, and intending to be legally bound hereby, the parties agree as follows:

1. Subject to the limitations set forth in Paragraph 2, all information disclosed by SPLP to the WGT Representatives shall be deemed to be "Proprietary Information." In particular, Proprietary Information shall be deemed to include any trade secret, information, process, technique, training manual, workbook, algorithm, computer program (source and object code), design, drawing, formula or test data relating to any project, work in process, future development, engineering, manufacturing, marketing, servicing, financing or personnel matter relating to SPLP, its present or future operations, sales, suppliers, customers, employees, investors or business, whether in oral, written, graphic or electronic form. Without limiting the foregoing, the term "Proprietary Information" includes all information relating to SPLP's pipeline integrity management, operations and maintenance, facilities design and construction, emergency preparedness, risk assessment and management.

2. The term "Proprietary Information" shall not be deemed to include information which: (a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available; (b) is known by the receiving party at the time of receiving such information; (c) is hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; or (d) is independently developed by the receiving party without any breach of this Agreement.

3. The WGT Representatives shall maintain all Proprietary Information in trust and confidence and shall not disclose to any third party or use any Proprietary Information for any purpose whatsoever, including but not limited to disclosing or using Proprietary Information in connection with a civil action or the PUC Proceeding, except that the WGT Representatives may use Proprietary Information for purposes of discussing and negotiating a settlement of the above-captioned proceeding. Proprietary Information shall not be reproduced in any form except as may be required to accomplish the intent of this Agreement. Nothing in this Agreement shall preclude West Goshen Township from exercising its rights under the applicable rules and regulations of the Pennsylvania Public Utility Commission (the "Commission") to seek discovery in the PUC Proceeding and to seek admission into evidence of information obtained in discovery. SPLP reserves its rights under the Commission's rules and regulations to object to any and all such discovery and to object to the relevance and admissibility of any and all evidence offered by West Goshen Township in such proceeding.

4. Proprietary Information shall be provided only to High Swartz, LLP, which has executed and delivered this Agreement as attorneys for West Goshen Township, and Accufacts Inc. ("Accufacts"), a safety consultant retained by the West Goshen Township attorneys, provided Accufacts shall first have executed and delivered a written acknowledgement that it has received a copy of this Agreement and agrees to be bound by its terms and that Accufacts agrees to be subject to injunctive relief in any court of competent jurisdiction agree to venue for such relief in any court of competent jurisdiction, including, but not limited to, the United States District Court for the Eastern District of Pennsylvania, as provided in section 11 below, in the event that Accufacts shall breach this Agreement.

5. SPLP hereby acknowledges and agrees that Accufacts may prepare a report containing conclusions regarding the safety of the pipeline and that such report may be released to the public, subject to the following provisos:

- a. The report may contain findings and conclusions, but not data obtained from the Proprietary Information.
- b. Mr. Kuprewicz shall conduct an exit conference with SPLP to communicate Accufacts' proposed findings and conclusions and to obtain SPLP's comments thereon. A discussion draft of the report shall be shared with SPLP prior to the exit conference.
- c. Accufacts shall not be obligated to make any corrections or modifications proposed by SPLP; however, SPLP shall have the right to issue its own report or comments responding to any of the Accufacts findings or conclusions.
- d. A draft of the Accufacts final report shall be shared with SPLP at least 48 hours before the report is released to the public.

6. Notwithstanding any other provision of this Agreement, disclosure of Proprietary Information shall not be precluded if such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; *provided*,

however, that the responding party shall first have given notice to the other party hereto and shall have made a reasonable effort to obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which the order was issued.

7. All Proprietary Information (including all copies thereof) shall remain the property of SPLP and shall be returned to SPLP upon request.

8. This Agreement shall continue in full force and effect for so long as SPLP continues to disclose Proprietary Information. This Agreement may be terminated by either party at any time upon five (5) days written notice to the other party. The termination of this Agreement shall not relieve either party of the obligations imposed by Paragraphs 3, 4, 5 and 9 of this Agreement with respect to Proprietary Information disclosed prior to the effective date of such termination and the provisions of those Paragraphs shall survive the termination of this Agreement.

9. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

10. This Agreement contains the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter. This Agreement may not be changed, modified, amended or supplemented except by a written instrument signed by both parties.

11. The parties hereby acknowledge and agree that in the event of any breach of this Agreement, including, without limitation, the actual or threatened disclosure or unauthorized use of SPLP's Proprietary Information without the prior express written consent of SPLP, SPLP will suffer an irreparable injury, such that no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, the parties agree that SPLP shall be entitled to specific performance, a temporary restraining order, and preliminary and permanent injunctive relief, as well as such further relief as may be granted by a court of competent jurisdiction. The parties further agree that in any suit or proceeding brought to enforce this Agreement, the prevailing party in that dispute shall be entitled to an award of reasonable attorneys' fees and costs.

12. No party to this Agreement shall have the right to assign or otherwise transfer this Agreement. This Agreement shall inure to the benefit of, and be binding on, the parties and their permitted successors and assigns.

13. The signatories to this Agreement represent and warrant that they are authorized to execute and deliver this Agreement on behalf of their clients and that the Agreement is legally binding and enforceable with respect to the parties hereto. If any provision of this Agreement is found by a proper authority to be unenforceable, that provision shall be severed and the remainder of this Agreement will continue in full force and effect.

14. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing.

Such notice shall be deemed given upon the personal delivery, or sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing.

15. The parties understand that SPLP is not making any representation or warranty of any kind as to the accuracy or completeness of the Proprietary Information disclosed hereunder. SPLP shall not incur any liability on the basis of use of the Proprietary Information by the receiving party or the permitted recipients hereunder.

16. No failure or delay by a party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other as further exercise thereof.

AGREED TO:

High Swartz LLP

By: 

Kenneth R. Myers, Esq.
David J. Brooman, Esq.
Special Counsel for West Goshen
Township

AGREED TO:

Blank Rome LLP

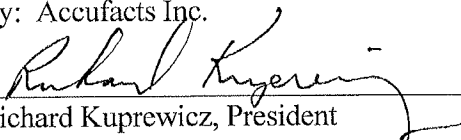
By: 

Christopher A. Lewis, Esq.
Attorneys for Sunoco Pipeline, L.P.

ACKNOWLEDGEMENT

I hereby acknowledge that I have received, read, and understand the Confidentiality Agreement by and between West Goshen Township and Sunoco Pipeline, L.P. ("SPLP"), made in connection with the dispute pending before the Pennsylvania Public Utility Commission at Docket No. P-2014-2411966, and that in consideration of the promises made therein and intending to be legally bound hereby, I agree to be bound and obligated and to abide by all of its terms.

By: Accufacts Inc.


Richard Kuprewicz, President

Date: November 14, 2014