

agreed to in Sunoco's settlement agreement with Township, until after the Pennsylvania Public Utility Commission issues a final order on the Township's First Amended Formal Complaint ("Amended Complaint") in this matter. *See* Township's Petition.

2. The Township's Amended Complaint seeks interpretation and enforcement of a Settlement Agreement executed by the parties ending certain PUC litigation between them. The Settlement Agreement was certified by the Secretary of the Commission as effective on June 15, 2015 ("Settlement Agreement"). *See* Township Petition at Exhibit "1."

3. The Settlement Agreement resolved two prior actions, one initiated by Sunoco in or around March 21, 2014, under docket number C-2014-2451943, in which Sunoco sought a determination of public necessity to allow it to bypass zoning regulations and provide it with the right of eminent domain related to the Mariner East 1 ("ME1") pipeline project, and the second initiated by the Concerned Citizens of West Goshen Township ("CCWGT") on or about November 7, 2014, under docket number C-2014-2451943, in which CCWGT alleged safety concerns with the proposed facilities in the Township. *See* Township Exhibit "4."

4. The Settlement Agreement provisions relevant to the Township's Petition provide the following:

a. The Township and its safety consultant, Richard Kuprewicz, were expressly relying on the accuracy of information provided by Sunoco in reaching the Agreement (Settlement Agreement Section II.A.);

b. The Settlement Agreement applied to the entire Mariner East Project, including the existing ME1 pipeline and all other pipelines and related facilities to be owned or operated by SPLP in the Township (Settlement Agreement Section II.A.1);

c. Any above ground facilities related to the Mariner East Project would be located on an existing site where other above ground facilities were located already, except one valve station, which was to be constructed on a specific location (the “SPLP Use Area”) on land adjacent to the existing SPLP facilities (Settlement Agreement Section II.A.2.);

d. If SPLP was unable to construct the valve station at the designated location due to engineering constraints, it must notify the Township (Settlement Agreement Section II.A.2);

e. SPLP had no plans to put any other above ground facilities anywhere else in the Township as of the date of the Settlement Agreement (SPLP signed April 14, 2015) (Settlement Agreement II.A.3.);

f. Kuprewicz’s safety review, based on the above facts, was incorporated into the Agreement (Settlement Agreement III.A.1);

g. The Township’s actions, including allowing SPLP to withdraw its petition and refraining from filing an action or injunction regarding the location of the valve station, were effective as long as SPLP constructed and operated the facilities in the Township in accordance with Sections II and III of the Settlement Agreement (Section IV.A.2.d).

See Township Exhibit “4” at the referenced sections.

B. The July 18, 2017 Hearing and Witnesses

5. On July 18, 2017 a hearing was held on the Township’s Petition.

6. At the hearing, Casey LaLonde, Richard Kuprewicz, Kristin Camp, Esquire and David Brooman, Esquire, testified on behalf of the Township and Matthew Gordon testified on behalf of Sunoco. *See* Notes of Testimony from 7/18/17 hearing (“NT”) *generally*.

7. Casey LaLonde (“LaLonde”) is the appointed Township Manager for West Goshen Township, responsible for management of all aspects of township business from personnel to projects, as well as assisting with litigation involving the Township. NT 46:12-13, 18-21.

8. Richard Kuprewicz (“Kuprewicz”) of Accufacts, Inc. is an expert in pipeline safety, with 40 over years’ experience in the energy industry, evaluating pipeline safety and reviewing horizontal directional drilling (“HDD”) plans for reasonableness. NT 115:9-15, 116:23-25, 117:1-3. NT. *See also* Township Exhibit “12.”

9. Kristin Camp (“Camp”) is the Solicitor, essentially general counsel, for the Township. NT 135:8-16.

10. David Brooman, Esquire (“Brooman”) of High Swartz LLP is special counsel to the Township in this matter and participated in the prior settlement negotiations with Sunoco. NT 56:2-3, 136:13-15.

11. Matthew Gordon (“Gordon”) is employed by Sunoco as a project director, since 2012 for the ME1 pipeline, and currently for the ME2 pipeline projects; his duties include overseeing design, permitting, land acquisition and construction. NT 172:17–176:13-23.

12. Gordon’s education and experience is set forth in his resume marked as Exhibit R-3. While he has been in the pipeline industry with Sunoco since 2006, he had less than 6 years pipeline experience before assuming the role of Principal Engineer, Project Manager in October 2012 for the ME projects. NT 176:24-179:3.

13. Sunoco’s ME2 project is expanding services from ME1, to convey gas producers from Utica and Marcellus shale to shippers and users, with the ME2 20 line transporting propane and butane and ME1 transporting primarily ethane and propane. NT 179:25-181:11.

14. Prior to the ME2 project, other than small relocations, Gordon's only pipeline construction project prior to ME2 was approximately 50 miles of new 12 inch pipe associated with the ME1 project. NT 179:14-24.

15. Gordon is not a certified professional engineer (P.E.). Exhibit R-3.

16. Gordon relies on professional engineers to interpret materials such as computer models. NT 224:19-225:12.

17. Gordon was not offered as an expert or qualified as an expert at the hearing, and thus presented no expert testimony.

C. The Township's right to relief is clear – substantial legal issues exist.

i. The settlement negotiations for the valve at the SPLP Use Area.

18. In 2014 Sunoco presented to the Township proposed improvements to its existing pump station in the Township, in connection with its ME1 project. NT 47:5-8.

19. Sunoco's existing pump station is located near the intersection of Boot Road and Route 202, to the north of East Boot Road and to the west of the Route 202 Southbound off-ramp. NT 47:25-48:6. *See also* Township Exhibits "1" and "2."

20. To the north of the existing pump station is a separate four-acre parcel that was owned by the Janiec family and known as the "Janiec 1 Tract". NT 49:20-50:2.

21. To the east of Route 202 and north of Boot Road was another wooded property also owned by the Janiec family and known as the "Janiec 2 Tract". NT 57:21-58:11, 17-22. *See also* Township Exhibit "2."

22. At the time of the initial meeting with the Township in 2014, Sunoco intended to purchase or take through an easement the Janiec 1 Tract and use it as an expansion area for the ME1 project. NT 50:8-12.

23. Upon learning of Sunoco's intended use of the Janiec 1 Tract in 2014, the Township became concerned of the potential impacts that the constructions activities would have on the surrounding neighborhoods. NT 51:23-52:9.

24. Sunoco filed an application with the Township's Zoning Hearing Board relating to its intended use of the Janiec 1 Tract. NT 52:13-15.

25. The Township opposed Sunoco's Zoning Hearing Board application. NT 52:20-24.

26. Sunoco withdrew its application to the Township's Zoning Hearing Board before it was decided and submitted the case to the Pennsylvania Public Utility Commission ("PUC"). NT 53:6-8.

27. The Township opposed Sunoco's application to the PUC. NT 53:10-13.

28. The Township hired Kuprewicz in mid-2014 to review all aspects of safety regarding Sunoco's proposed operation of the ME1 project and its effects on the Township, in regard to Sunoco's application to the PUC. NT 53:16-20, 117:8-14.

29. Sunoco allowed Kuprewicz to review certain documents, drawings and specifications after he signed a confidentiality agreement with Sunoco, but Kuprewicz was not permitted to share the documents with the Township or the Township's counsel. NT 56:21-25, 119:4-8.

30. For the ME1 project Kuprewicz reviewed the elevation profile, the location and design of pump stations, the location of valves and other related issues, and made

recommendations to Sunoco regarding flare and valve placement and valve automation. NT 117:17-118:4, 118:8-16, 119:12-17.

31. After consultation with counsel and Kuprewicz, the Township decided to explore a settlement with Sunoco in order to address its largest concerns with the Sunoco project. NT 137:1-7.

32. The Township's primary goals were to assure safety and that any expansion or any additional facilities that Sunoco would need to build related to ME1 or ME2 would be contained within the existing parcels owned by Sunoco to the west of Rt. 202 near the existing pump station. NT 137:8-138:14.

33. The Township residents were very concerned about keeping the facilities contained to one area. NT 139:1-14.

34. LaLonde, Camp, Brooman and the Township's Board of Supervisors participated in the settlement negotiations on behalf of the Township. NT 56:1-3, 8-9, 139:19-23.

35. Gordon, Don Zoladkiewicz, Kathleen Shea, and Christopher Lewis, Esquire ("Lewis") of Blank Rome participated in the settlement negotiations for Sunoco. NT 56:5-7.

36. Kuprewicz was not involved in the settlement negotiations with Sunoco and did not receive copies of any drafts of the Settlement Agreement; his role was limited to safety review. NT 57:4-13, 120:24-121:9.

37. During the settlement negotiations, the Township conveyed its concerns regarding the safety of the Township and its desire to maintain all of Sunoco's facilities in the Township on a single site, rather than spread out throughout the Township. NT 55:2-13, 59:4-10. *See also* Township Exhibit "3."

38. During the settlement negotiations, Sunoco declined the Township's request for copies of engineering plans or drawings, other than what was included in a PowerPoint presentation to the Board of Supervisors, stating that they could not be disclosed to the Township for proprietary and security reasons. NT 56:10-20. *See also* Township Exhibit "3."

39. Initially during settlement negotiations, Sunoco represented to the Township that all above-ground facilities, except for a valve station for the Mariner East 2 ("ME2") project, would be located within the footprint of Sunoco's existing pump station (NT 59:11-24), with a lay down area adjacent to the existing pump station on the Janiec 1 Tract, known as the SPLP Additional Acreage. NT 59:25-60:9-14.

40. By January 30, 2015 the settlement negotiations progressed to a draft term sheet exchanged by email between Brooman and Lewis. NT 160:4-161:7. *See also* Township Exhibit "14."

41. There were ten terms in the draft term sheet, about which there were discussions back and forth between counsel for the Township and Sunoco. NT 161:8-10, 162:7-8. *See also* Township Exhibit "14."

42. During those discussions, Sunoco counsel explained several times that Sunoco did not want to put covenants in the Settlement Agreement regarding the location of their facilities for fear that other townships would request the same, so Sunoco needed to state its covenants as facts. NT 162:7-163:4.

43. On February 4, 2015 Sunoco's counsel responded to the January 30, 2015 email explaining, consistent with the prior discussions, that a specific objective of Sunoco was that they not put in a covenant something that would come back to hurt them with other townships, so

the covenants would be couched as representations of fact. NT161:11-163:13. *See also* Township Exhibit “15.”

44. The term sheet attached to Township Exhibit “15” took the Sunoco promises and stated them as facts. NT 163:15 -164:14. *See also* Township Exhibit “15.”

45. At or around February 4, 2015, Sunoco first raised the issue of adding a valve station. NT 164:20-165:12.

46. The Township wanted the valve station as close to the existing facilities as possible, but it was Sunoco that selected the SPLP Use Area. NT 165:13-24, 166:2-8.

47. Sunoco made a PowerPoint presentation for the Township Board of Supervisors explaining the location of the valve at the SPLP Use Area. NT 55:2-13, 59:4-10. *See also* Township Exhibit “3.”

48. Gordon was the person at Sunoco that actually selected the SPLP Use Area for use in the Settlement Agreement. NT 222:19-21.

49. On February 10, 2015 Sunoco counsel sent an email to Township counsel showing what the valve would look like. NT 165:25-166:19. *See also* Township Exhibit “16.”

50. On February 11, 2015 Sunoco counsel sent an email to Township counsel including a term sheet indicating that the valve station would be in the SPLP Additional Acreage and specifically in the SPLP Use Area thereon. NT 166:20-167-7. *See also* Township Exhibit “17.”

51. Sunoco subsequently reduced the SPLP Use Area to a legal description. NT 167:8-10.

52. Sunoco represented that the location of the valve station might change, but within the confines of the SPLP Use Area as set forth in the term sheet identified as Township Exhibit “17.” NT 172:7-173:5.

53. During the settlement negotiations, there was never discussion about the Janiec 2 Tract, as the number one tenet of the Township was that there would be no more above ground facilities, but if there needed to be, it would be located right on Sunoco’s existing pump station. NT 58:12-16, 173:6-11.

54. After a year of negotiations, the Township and Sunoco reached the Settlement Agreement, which Sunoco signed in April 2015 and the Township Board of Supervisors approved in May 2015. NT 54:12-16, 55:14-21, 222:22-23. *See also* Township Exhibit “4.”

ii. The location of the valve on the SPLP Use Area was central to the Agreement.

55. The Township understood the Settlement Agreement as Sunoco’s promise to locate the new pumps station, vapor combustion unit and all accessory and appurtenant facilities for the ME1 and ME2 projects on Sunoco’s existing pump station site, except for a remote operated valve station to be constructed and maintained on the SPLP Use Area, as depicted on Township Exhibit 2. NT 60:20-62:12, 139:24-141:3.

56. The Township further understood Section II of the Settlement Agreement to be Sunoco’s promise that Sunoco were unable to construct the remote operated valve station in the SPLP Use Area due to engineering constraints, Sunoco would notify the Township, and the two parties would discuss the issue and determine a resolution. NT 62:13-23.

57. The Township further understood Section II of the Settlement Agreement to mean that they were providing no permission for any other facilities anywhere else in the Township, including the Janiec 2 Tract. NT 62:24-63:4.

58. Sunoco's promises in Section II of the Settlement Agreement were central to the Township's acceptance of the Settlement Agreement. NT 63:5-7.

59. The Township would not have entered into the Settlement Agreement but for the promises of Sunoco set forth in Section II of the Agreement. NT 63:12-14.

iii. Sunoco secretly was planning to locate the valve on Janiec 2.

60. Gordon provided advice on the technical, design and construction aspects of the project and was provided drafts and the final version of the Settlement Agreement and associated diagrams. NT 221:20-222:18.

61. Gordon was responsible for implementing parts of the settlement in relation to ME1. NT 192-19 -21.

62. Gordon testified that Sunoco attempted to site the valve station on the SPLP Use Area per the Settlement Agreement (NT 183-20-184:10) and that Sunoco was "running parallel paths" (NT 205:1-10), but this assertion is belied by his subsequent testimony and the documentary evidence.

63. By March of 2015, Sunoco had done Google Earth view of the site and based on that decided not to do any further drawings, mapping or development of the SPLP Use Area. NT 231:3-10.

64. Gordon did not even run a computer model for the SPLP Use Area as an option for the valve station, because it was not considered due to a residential house at Boot Road and Mary Jane Lane. NT 224:14-224:18.

65. When asked whether a plan existed for the SPLP Use Area like the one developed for Janiec 2 Tract, Gordon admitted, “there’s not a plan like this one,” referring to Township Exhibit “13,” and not even a draft plan. NT 225:23-226:3, 230:20-231-2.

66. By March of 2015 Gordon made a determination to go forward only with the Janiec 2 Tract, yet continued to promise the Township that Sunoco would put the valve station on the SPLP Use Area in the negotiations, and in the Settlement Agreement, because he felt under a clause in the contract, if he could not locate the valve as agreed, he could locate it elsewhere on notice to the Township. NT 225:23-229:5.

67. Despite the promise in the Settlement Agreement that the valve would be located on the SPLP Use area and the representation in the Settlement Agreement that Sunoco had no plans to put above ground facilities anywhere else in the Township, Gordon did not notify the Township of the Janiec 2 Tract determination and does not believe anyone else from Sunoco did either. NT 229:6–20.

68. Gordon maintains that throughout 2015 he was still having meetings with his consultants with the possibility that the valve could still go on the promised SPLP Use Area site, but he doubts there are minutes of those meetings (NT 231:14-19) and he produced no emails or supporting documents about the meetings. (NT 231:20 – 232-3).

69. Gordon noted that these meetings were still occurring because he still did not have the locations of the underground utilities or soil study information until the fall of 2015 (NT

229:21-230-10, 232:4-15), but these items are both depicted on Sunoco's March 26, 2015 plans. NT 232:16-23, 233:4-11, 249:22-250:18. *See also* Township Exhibit "13."

iv. Sunoco never notified the Township that it was unable to locate the valve on the SPLP Use Area.

70. At the Township's first Board of Supervisors meeting in January 2016, the Board of Supervisors was considering final approval of a long-pending land development project for an independent living facility on the Janiec 2 Tract ("Traditions Project"), when it learned from the Goshen Fire Company that Sunoco was interested in using the Janiec 2 Tract. NT 66:3-25, 108:19-23, 141:13-142-16.

71. The Township obtained an extension regarding the approval of the Traditions Project so the Township could meet with Sunoco to find out what they were doing. NT 142:17-143:14.

72. On January 20, 2016, Township officials, including LaLonde and Camp, met with Sunoco officials, including Gordon and Sunoco counsel Kathleen Shea, to discuss what Sunoco was planning on the Janiec 2 Tract and how it would impact the land development plan. NT 67:3-10, 143:15-144:19.

73. At the meeting, Sunoco provided the Township with a map of the general layout of the ME2 pipeline and advised that it was going to use the Janiec 2 Tract for a lay-down yard and to perform horizontal drilling to reach East Goshen Township to the east and West Whiteland Township to the west. NT 67:16-22, 68:9-14, 144:20-145:17.

74. The map provided to the Township at the meeting is dated September 28, 2015 and identified as Township Exhibit "5." NT 69:9-10, 145:17. *See also* Township Exhibit "5."

75. The map provided by Sunoco to the Township at the January 2016 meeting does not depict a valve station on the Janiec 2 Tract. NT 67:23-68:5, 147:6-15. *See also* Township Exhibit “5.”

76. Sunoco never mentioned anything at the January 2016 meeting about a valve station anywhere on the Janiec 2 Tract. NT 68:6-9, NT 145:18-146:3.

77. Camp took notes at the meeting to make sure she understood everything that would be happening at the Janiec 2 Tract, because the Township wanted to know how Sunoco would impact the Traditions Project, which the board wanted to see go forward; hence, she would have known if permanent above ground facilities were discussed at the meeting. NT 145:18-21, 146:4-147:5. *See also* Township Exhibit “18.”

78. Camp kept her notes contemporaneously with the meeting in order to recall what exactly happened and there is nothing in her notes about a valve, which she would have written down if discussed. NT 147:16-150:13. *See also* Township Exhibit “18.”

79. Prior to the January 2016 meeting, Sunoco never advised the Township of any interest in the Janiec 2 Tract. NT 67:11-14.

80. In March 2016, the Township expanded Kuprewicz’s assignment to include review of the ME2 project. NT 119:13-15.

81. Camp did not discuss the January 20, 2016 meeting with Kuprewicz. NT 151:24-152:3.

82. In April 2016, Sunoco provided Kuprewicz with additional documents in connection with his review of ME2, again under a confidentiality agreement which prevented him from sharing the documents with the Township or the Township’s counsel. NT 119:16-23, 122:4-6.

83. In or around April 2016 Kuprewicz spoke with Sunoco representative, Mike Slough (“Slough”), regarding the ME2 documents; they discussed Sunoco’s HDD plan for ME2 and the location of a valve on the Janiec 2 Tract, but Kuprewicz did not discuss the location of the valve with the Township at that time. NT 122:8-12, 123:7-20, 124:23-125:5.

84. Kuprewicz and Slough did not discuss notification to the Township under the Settlement Agreement, Sunoco’s obligation to put a valve station on the SPLP Use Area, placing a valve on the SPLP Use Area or the reason that a valve could not be placed thereon, or the reason that Sunoco could not perform the HDD at the SPLP Use Area. NT 122:22-123:4, 125:9-23, 127:20-22.

85. Kuprewicz was not aware that the Settlement Agreement calls for a valve on the SPLP Use Area and did not discuss the location of the valve on the Janiec 2 Tract with the Township until after the initiation of this lawsuit. NT 121:10-15, 125:6-8.

86. In January 2017 the Township received from Sunoco’s engineering firm a box of plans and specifications for an erosion and sediment (“E&S”) control plan on the Janiec 2 Tract, which detailed a valve on the Janiec 2 Tract. NT 69:22-67:2. *See also* Township Exhibit “6.”

87. Upon seeing the erosion and sediment control application submitted by Sunoco, the Township’s staff engineer, Rick Craig, informed LaLonde, who in turn informed Camp, that Sunoco was placing a valve station on the Janiec 2 Tract. NT 70:5-8.

88. The plans submitted by Sunoco in January 2017, containing the valve station on the Janiec 2 Tract, were dated June 12, 2015, approximately one month after the Township approved the Settlement Agreement. NT 70:16-25. *See also* Township Exhibit “6.”

89. The Township's review of the June 12, 2015 plans submitted in January 2017 was the first time the Township learned that Sunoco intended to put a valve station on the Janiec 2 Tract. NT 69:16-18, 71:7-9.

90. Brooman never saw plans for the Janiec 2 property until the Township called him after receiving the E&S plans. NT 173-20-24.

91. From the January 2016 meeting until January 2017 Sunoco never advised the Township that it decided to put a valve station on the SPLP Use Area. NT 69:11-15.

92. Despite the Township's request, Sunoco did not provide any explanation for the valve station on the Janiec 2 Tract. NT 71:10-15.

93. In February 2017 Sunoco's engineer submitted to the Township subsequent erosion and sediment control plans, which included plans dated March 26, 2015 showing a valve station on the Janiec 2 Tract. NT 72:3-22. *See also* Township Exhibit "13."

94. The March 26, 2015 plans showing the valve station on the Janiec 2 Tract were in place before the Township and Sunoco entered into the Settlement Agreement. NT 73:1-3, 8-9. *See also* Township Exhibit "13."

95. Sunoco has never advised the Township that engineering constraints make it unable to put the valve station on the SPLP Use Area. NT 65:18-21.

96. Gordon maintains that Sunoco notified the Township "of its decision" to locate the valve on the Janiec 2 Tract at a meeting in January 2016 (NT 206:21-208-18), but admits that he did not send a confirming letter and did not send an agenda for the meeting (NT 233:21-24).

97. Gordon testified that Sunoco did provide a drawing to the Township at the January 2016 meeting, but admitted that the drawing does not depict a valve station or even note

that the valve would not be on the SPLP Use Area, as that information was intentionally withheld from the Township. NT 234:2-236:13.

98. Gordon maintains that the erosion and sediment control permit application was submitted by Sunoco sometime in 2016, which he claims provided notice of the valve station on the Janiec 2 Tract (NT 208:19-210:12); however, he did not remember the date of submission and he did not show evidence of submission (NT 236:19-237-2).

99. While the Township received the January 2017 and February 2017 erosion and sediment control applications that show the valve station at the Janiec 2 tract, there was no notice to the Township that Sunoco was unable to use the SPLP Use Area and this suit was initiated soon thereafter.

100. Gordon also testified about the March 2017 “sit-down” meeting with the Township “about this valve site,” and why Sunoco was using the Janiec 2 site, but he did not testify that he explained that engineering constraints made Sunoco unable to place the valve station as agreed. NT 210:10-211:17.

v. Sunoco has not established that it is unable to locate the valve on the SPLP Use Area.

101. An engineer has never told Gordon that the drilling cannot be done in the SPLP Use Area and he has no report in that regard. NT 244:17-245-23.

102. Sunoco has not provided to the Township any computer data, written analysis or other engineering report, to demonstrate that it is unable to construct the valve station on the SPLP Use Area, only that it is preferable to use the Janiec 2 Tract.

103. Sunoco has not produced any plans or drawings or diagrams to depict the construction “challenges” in putting the valve station on the SPLP Use Area as it alleges. NT 223:8–224:6.

104. Sunoco can only established that given a choice of routes for the valve station, the Janiec 2 Tract is better for Sunoco; however, this ignores the bargained for promise to put the valve station on the SPLP Use Area unless unable to do so.

105. Sunoco has not produced any evidence regarding the difference in cost between the two locations.

106. Gordon did not testify that the valve station is unable to be constructed on the SPLP Use Area, only that:

- a. from an engineering standpoint it would not be “prudent” to site the valve on the SPLP Use Area, because it’s extremely difficult and “potentially unsafe” (NT 194:2-11).
- b. he noted challenges in constructability (NT 223:8–12).
- c. he does not know whether “it’s practical” (NT 249:6-10).

107. In explaining why Sunoco “decided” not to use the SPLP Use Area (not why it was unable to) (NT 184:25-185:2), Gordon explained:

- a. Sunoco *tries* to adhere to a 2,000 foot minimum drill curvature (he did not set forth the limits) (NT 184:25-186:15), but he did not provide any of the stress calculations for pipeline drilling and did not even run such calculations for using the SPLP Use Area (NT 223:13-21).
- b. Using the path of the pipeline paralleling Boot Road in the drill plan (*see* Exhibit R5) to run the ME2 line to the SPLP Use Area, Sunoco would have to condemn or acquire a home on the corner of Mary Jane Lane and Boot Road (NT 186:21-187:17); however,

no one ever contacted the homeowner to see if they would be willing to sell, nor ask the Township to contact them (NT 250:19-252-3).

c. “We” did not “think” we’d be able to make the turn to get that pipe to line up with the drill because of the Aqua PA facilities (NT 187:18-188:9).

108. Gordon testified that Sunoco also looked at open cutting the road in the existing easement in making the decision to use the Janiec 2 Tract, noting:

a. Boot Road is congested with utilities (NT 188:10-189:13) (even though Sunoco knew this before entering into the Settlement Agreement, *see* Township Exhibit “13”);

b. When Sunoco shut down a lane of Boot Road for ME1 it caused a lot of traffic issues (NT 189:14-20) (but Sunoco made no attempt to coordinate with the Township or PennDOT to determine if traffic could be more effectively controlled).

c. Existing pipelines running down the edges of the road make down the middle of the road the only place Sunoco can put two more pipelines, which would require a complete shutdown of Boot Road, which Gordon did not think would be “accepted very well from a permitting standpoint” (NT 189:20-190:5) (although no engineering diagram or analysis was provided to demonstrate this and there is no demonstrated attempt to coordinate with PennDOT).

109. Gordon testified that to install the valve on the SPLP Use Area Sunoco would need a shored excavation to weld fittings, which he characterized as “not the safest working conditions” (NT 193:3-16) (though he provided no explanation or analysis as to why this could not be done safely with proper precautions).

D. The need for relief is immediate.

110. On or about July 3, 2017 the Township received notice from Sunoco stating that it was starting construction on the Janiec 2 Tract within several weeks. NT 74:1-5.

111. However, on July 6, 2017, the same date as the pre-conference hearing on the Township's Amended Complaint, Sunoco began clearing work on the Janiec 2 Tract. NT 74:7-11, 75:17-24. *See also* Township Exhibit "9."

112. The clearing and grading of the Janiec 2 Tract, and the preparation of the construction entrance thereon, indicate that Sunoco intends to immediately begin construction of the valve station on the Janiec 2 Tract. NT 76:8-17.

113. The Township also received notice from the Pennsylvania Department of Transportation that Sunoco was beginning work in the area of the Janiec 2 Tract. NT 76:18-19.

114. The Township requested that Sunoco cease operations on the Janiec 2 Tract until this case is decided by the PUC, but it refused. NT 76:21-25.

115. Gordon testified that work has commenced on the Janiec 2 tract. NT 213:17-214:15.

E. The injury would be irreparable if relief is not granted.

116. A valve station for a pipeline such as the ME2 pipeline is placed at a location where the horizontal direction drilling comes close to the surface. NT 126:6-7, 127:7-9.

117. Sunoco's recent placement of HDD equipment on the Janiec 2 Tract indicates that Sunoco intends to place a valve on the Janiec 2 Tract. NT 126:1-7, 126:24-127:2.

118. Approximately 25,000 to 36,000 vehicles use Boot Road in the Township each day and approximately 70,000 vehicles use Route 202 through the Township each day (NT 63:18-19), so construction has as a significant impact on the Township.

119. The Township code at Chapter 69 requires that a pre-construction meeting be held with the Township engineering at least 48 hours prior to construction commencing, including grubbing and clearing of a site. NT 74:14-19.

120. Sunoco did not provide the Township with notice 48 hours before beginning grubbing and clearing of the Janiec 2 Tract. NT 75:12-13.

121. The Settlement Agreement confined Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area, to minimize the impact to the Township residents. NT 63:19-64:20

122. Construction has an impact on the Township including safety, dust, and noise. NT 63:19-64:20.

123. The Settlement Agreement confined Sunoco's construction activities in the Township to the west side of Route 202, away from the access to the Goshen Fire Company, which is located adjacent to the Janiec 2 Tract. NT 64:21-65:7.

124. HDD involves boring in a cylinder using a drilling mixture of bentonite and water; a breakout or frackout occurs when the pressure involved causes a break out of the drilling cylinder and allows the drilling mixture to migrate into underground water supplies. NT 128:14-129:3.

125. If Sunoco installs a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area, because of the pipe would be too deep at the location of the SPLP Use Area. NT 127:10-19.

126. If Sunoco installs the valve station on the Janiec 2 Tract, then is required to move the valve station to the SPLP Use Area, Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, creating a second round of risks to the public, including breakouts and frackouts within the Township. NT 127:23-128:8.

127. If Sunoco continues construction as planned on the Janiec 2 Tract, but later must relocate the valve station to the SPLP Use Area, the Township will have to endure the noise, vibration, obstructions, and other consequences of the construction activities twice. NT 81:13-22.

128. Prior to Sunoco's use of the Janiec 2 Tract, the Township approved the \$35 million land development project known as the Traditions Project. NT 82:8-16. *See also* Township Exhibit "11."

129. The Traditions Project would have been the first facility of its kind in the Township, would have generated significant real estate tax and earned income tax revenue for the Township, and would have provided approximately \$200,000 of road improvements in the Township. NT 82:18-83:15.

130. However, the developer abandoned the Traditions Project when Sunoco condemned the Janiec 2 Tract for its use. NT 83:18-23.

131. If Sunoco moved off of the Janiec 2 Tract, the Traditions Project could happen. NT 84:2-4.

F. The relief requested is not injurious to the public.

132. There is no evidence that stopping construction on the Janiec 2 Tract would be injurious to the public.

133. If there is any injury from delay, it is caused by Sunoco not revealing its secret plans to use the Janiec 2 Tract in violation of the agreement.

134. Gordon testified that the company is “hoping” to put the ME2 pipeline in service in October 2017, and that stopping this work will be costly to Sunoco. NT 218:14-219:2.

135. Gordon testified that there has not been a shortage on propane since ME1 was completed and he did not testify as to any potential fuel shortages if this project is delayed. NT 219:3-13.

136. Gordon testified that stopping drilling at the Janiec 2 Tract would be harmful to the project schedule, but there are other parts of Chester County where Sunoco intends to run the pipeline where drilling has already stopped because of problems it is causing to water. NT 246:24-247-15.

137. The Township is not trying to stop Sunoco from running a pipeline through the Township, but rather seeking to have Sunoco abide by the Settlement Agreement. NT 81:25-82:5.

138. The Township is seeking to keep the valve station inside the legal description as prepared by Sunoco. NT 167:11-14.

139. The Township and Sunoco, as a public municipal corporation and a public utility, entered into the Settlement Agreement because it is good for the public.

II. CONCLUSIONS OF LAW

1. The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa.Code §3.1; *Application of Fink Gas Co. for Approval of the Abandonment of Serv. by Fink Gas Co. to 22 Customers Located in Armstrong Cty., Pennsylvania, & the Abandonment by Fink Gas Co. of All Nat. Gas Servs. & Nat. Gas Distribution Servs.*, 2015 WL 5011629, at *3 (Pa. P.U.C. Aug. 20, 2015).

2. The “purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding.” *Petition of Norfolk Southern Railway Company for rescission or amendment of the Pennsylvania Public Utility Commission’s Order entered on June 12, 1975*, 2011 WL 6122882 at *9 (Pa.P.U.C. December 1, 2011).

3. The factors a petitioner must prove for an interim emergency order are plainly set forth in the PUC regulations: (1) the petitioner’s right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest.” 52 Pa. Code § 3.6(b)

4. The petitioner must establish these four factors by a preponderance of evidence. *Application of Fink, supra* at *3–4 (citing *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

5. The preponderance of the evidence standard has been interpreted by the Pennsylvania Supreme Court as: “. . . the petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party.” *Application of Fink Glass* at *4, citing *Se-Ling Hosiery. Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. The Commission is empowered to hear two types of requests for injunctive relief pursuant to the PUC regulations at 52 Pa. Code §§3.1-3.11

7. A complainant can seek an emergency order pursuant to 52 Pa. Code §3.2, or an interim emergency order pursuant to 52 Pa. Code §3.6.

8. § 3.2(b) sets forth the standard for an emergency order, stating,

“A petition for emergency order must be supported by a verified statement of facts which establishes the existence of an emergency, including facts to support the following...(the same four part test found at § 3.6).”

9. § 3.6 (b) sets forth the standard for an interim emergency order, stating:

“To the extent practicable, a petition for an interim emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief, including facts to support the following . . .(the four part test).”

10. Unlike § 3.2 (b), § 3.6(b) does not require the petitioner to establish “the existence of an emergency.”

11. The Township is seeking an interim emergency order pursuant to 52 Pa. Code §3.6.

12. The Township is not required to establish an “emergency,” as that term is defined in the PUC’s regulations at 52 Pa. Code § 3.1, to obtain interim emergency relief pursuant to §3.6(b).

13. The Township is not required to establish “a clear and present danger to life or property” to obtain an “interim emergency order” (also defined at 52 Pa. Code §3.1) pursuant to §3.6(b).

14. An emergency order is properly sought where there is no ongoing proceeding related to the controversy for which emergency relief is sought.

15. An emergency order is issued ex parte, without the benefit of a hearing before an Administrative Law Judge in which the public utility is provided the right to introduce evidence and cross examine the complainant's witnesses.

16. Interim emergency relief is granted only after the public utility has been given the opportunity to present evidence and cross examine a complainant's witnesses.

17. An ex parte emergency order is not immediately certified for review by the full Commission.

18. An interim emergency order by the Administrative Law Judge must be certified to the Commission for interlocutory review pursuant to 52 Pa. Code §3.6

19. The ex parte nature of an emergency order requires a heightened standard of emergency, distinguishing it from an interim emergency order that tracks the Pennsylvania standard for a preliminary injunction and simply preserves the status quo until a final ruling by the Commission.

20. In addition to the same four factors a complainant must establish for an interim emergency order pursuant to §3.6, obtaining an emergency order pursuant to §3.2 requires the petitioner also prove the existence of an "emergency" as defined in §3.1.

21. § 3.6(b), the controlling regulation for an interim emergency order, does not list the additional requirement of an "emergency," as defined in §3.1.

22. *Application of Fink* does not hold that a complainant must independently prove a "fifth factor" of the existence of an "emergency," § 3.1.

23. *Norfolk Southern* does not hold that a complainant must establish the existence of an "emergency" to obtain an interim emergency order.

24. *Application of Fink Gas Company and Norfolk Southern* both hold that “[t]he party seeking relief bears the burden of proving that the facts and circumstances meet **all four** of the requirements in the Commission’s regulations.” *Norfolk Southern* at *6, citing 66 Pa.C.S. §332 and 52 Pa.Code §3.6(b) (emphasis added).

25. The four requirements set forth in §3.6(b) have been established by the Township by a preponderance of the evidence.

A. The Township’s Right to Interim Relief is Clear.

26. The four corners of the Settlement Agreement establishes that the Township’s right to relief is clear.

27. The documentary evidence and oral testimony admitted into evidence at the interim emergency hearing establishes that the Township’s right to relief is clear.

28. The Township Manager, Casey LaLonde, established that the Township’s right to relief resulting from SPLP’s breach of the Settlement Agreement is clear. § 3.6(b)

29. The Township has raised “substantial legal questions.” *Application of Fink Gas Co.*, 2015 WL 5011629, at *3–4 (Pa.P.U.C. Aug. 20, 2015).

30. The Township presented substantial evidence that SPLP breached material promises and representations of the Settlement Agreement with respect to the location of the ME2 valve station in West Goshen Township.

31. SPLP promised the Township and its citizens that any new ME1, ME2 or ME2x (a/k/a ME 3) valve would be located in the “SPLP Use Area,” as that areas is precisely defined and identified in Appendix 1 of the Settlement Agreement and Township Exhibit “2.”

32. SPLP represented to the Township and its citizens that any new ME1, ME2 or ME2x (a/k/a ME 3) valve would be located in the “SPLP Use Area,” as that area is precisely defined and identified in Appendix 1 of the Settlement Agreement and Township Exhibit “2.”

33. SPLP represented to the Township and its citizens in the Settlement Agreement that it had no plans to place any new ME1, ME2 or ME2x (a/k/a ME 3) valve anywhere in the Township other than the SPLP Use Area.

34. The Township presented substantial evidence from its Township Manager, Casey LaLonde, and its Township Solicitor, Kristin Camp, that it justifiably relied on SPLP’s promises and representations.

35. The Township presented substantial evidence from its Township Manager, Casey LaLonde, and its Township Solicitor, Kristin Camp, that SPLP did not notify the Township, as required by the Settlement Agreement, that it did not intend to use the SPLP Use Area for an ME2 valve.

36. SPLP did not notify the Township, as required by the Settlement Agreement, that it condemned the Janiec 2 Tract for the purpose of citing a valve station on the Janiec 2 Tract.

37. SPLP did not establish at the interim relief hearing that engineering constraints caused SPLP to locate the valve station on the Janiec 2 Tract.

B. The Need for Relief is Immediate.

38. The Township established by a preponderance of the evidence at the interim relief hearing that the need for relief is immediate.

39. LaLonde and Gordon both testified that construction has started on the Janiec 2 Tract.

40. Gordon testified that intends to use the site for HDD drilling without delay, which means that this is the location where the pipeline will be close to the surface and where the pump station will be installed, contrary to Sunoco's promises.

41. Some of the issues that supported the petition have either been corrected upon filing of the Petition or have already occurred, but actual construction has not yet started.

42. If interim emergency relief is not granted, the pipeline will be installed in the immediate future and hopes the pipeline would be operational Without interim relief, the Township will suffer not once, but twice, the impacts and damage caused by HDD.

43. Sunoco has refused to voluntarily stay construction pending the outcome of this matter.

44. While Sunoco has not established that it is not unable to located the valve on the SPLP Use Area, if it intends to establish this in the future, the Township needs time to conduct discovery and evaluate the accuracy and veracity of this position, and interim emergency relief is required in the meantime to preserve the status quo.

C. The Township Will Suffer Irreparable Injury if Interim Relief is not Granted.

45. The Township has set forth evidence that construction, and pipeline construction, has a significant impact on the community, including, traffic, air, dust, noise, vibrations, potential water contamination and other impacts.

46. Sunoco has admitted that its drilling has impacted water supplies in adjacent Township which has caused them to shut down drilling.

47. Drilling is not without significant cost and risk and re-drilling to correct the contractual breach would expose the Township and the public to needless risk and costs.

48. By allowing the HDD and valve station at the Janiec 2 tract while this case is pending, without interim emergency relief, the established at the interim relief hearing that the injury to its land, and the impacts to its groundwater, caused by SPLP's HDD is irreparable.

49. The Township, its residents and the public irreparable injury if, it has to suffer through the drilling and valve installation at the wrong location, only to suffer it again when the valve station must be moved per the contractual obligations.

50. The construction activities without notice to the Township and failure to use E&S controls in Sunoco's haste to beat the injunction, the blockage of the fire departments ingress and egress until stopped by the Township and the contamination of the water supply in the adjacent Township all highlight the significant impact and potential impacts and risks to the community that the Township would have to be exposed to twice if drilling and valve placement is not stopped on the Janiec 2 Tract on an interim basis.

D. Interim Emergency Relief Will Not Be Injurious to the Public.

51. HDD by SPLP is currently shut down in other parts Chester County due to water contamination.

52. The Township is not seeking to permanently stop construction of the Mariner East pipeline; rather, the Township seeks through its petition to protect the health and safety of its residents by stopping construction in the wrong location. .

53. Stopping the incorrect construction will prevent unnecessary suffering and risk to the public.

54. Any costs associated with the delay is not caused by the entry of the interim order but by Sunoco's own actions in hiding its true plans and not revealing them over two years ago.

55. The purported evidence presented through Gordon at the interim emergency hearing to establish injury to the public was not sufficient nor credible to support a finding of harm to the public.

56. Granting the requested interim emergency relief will not be injurious to the public interest.

E. Conclusion

57. Sunoco promised to put the valve station on the SPLP Use Area at a specific location and move it within that area, upon notice to the Township, if it was unable to locate it where planned. It also represented that it had no other plans to put the valve station anywhere else in the Township. It did not try to put the valve station where promised, hid its existing intentions to locate valve elsewhere from the Township for over two years when the Township uncovered the plan in an E&S application. Clearing has occurred and construction is imminent. Re drilling and moving the valve will have to occur if relief is not granted, to the great risk and detriment of the public.

58. The Township has met the requirements set forth at 52 Pa. Code §3.6(b), and is entitled to interim emergency relief.

WHEREFORE, based on the above findings of fact and conclusions of law the Township of West Goshen, its elected and appointed officials, and its residents, respectfully request an interim emergency order enjoining SPLP from beginning any construction on the Janiec 2 property until after the Commission issues a final order on the Township's currently pending First Amended Formal Complaint to Enforce the Settlement Agreement.

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