

BLANK ROME LLP

Christopher A. Lewis (I.D. No. 29375)

Frank L. Tamulonis (I.D. No. 208001)

Michael Montalbano (I.D. No 320943)

One Logan Square

130 N. 18th Street

Philadelphia, PA 19103

Phone: (215) 569-5500

Facsimile: (215) 832-5793

Email: Lewis@BlankRome.com

FTamulonis@BlankRome.com

MMontalbano@BlankRome.com

*Attorneys for Defendant
Sunoco Pipeline L.P.*

WEST GOSHEN TOWNSHIP AND	:	
CONCERNED CITIZENS OF WEST	:	
GOSHEN TOWNSHIP	:	
Complainant,	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

**RESPONDENT SUNOCO PIPELINE L.P.’S POST HEARING
BRIEF IN OPPOSITION TO WEST GOSHEN TOWNSHIP’S
PETITION FOR INTERIM EMERGENCY ORDER**

Sunoco Pipeline L.P. (“SPLP”) respectfully submits the following Post-Hearing Brief in
Opposition To West Goshen Township’s (the “Township”) Petition for Interim Emergency

Order. Attached to this brief as **Exhibit A** is a proposed initial decision denying the Township's Petition and requested relief.

I. ARGUMENT

In Exhibit A, SPLP identifies in detail the multitude of reasons why the Commission should deny the Township's Petition for an Interim Emergency Order. Succinctly stated, however, the Township has wholly failed to meet its burden of proof. Specifically, the unrebutted evidence admitted at the hearing on July 18, 2017 establishes the following:

1. There is no emergency. Section 3.1 of the regulations of the Pennsylvania Public Utility Commission (the "Commission"), defines an emergency as "a clear and present danger to life or property." The Township Manager, Casey LaLonde, conceded at the hearing that there have been no vehicles blocking the fire department driveway since July 7 and the grubbing and clearing is completed. (Hearing Transcript p. 102, 8-13.) Moreover, SPLP has constructed a construction entrance on Boot Road, so there is no need to use the fire department's driveway at all. (Hearing Transcript, p. 217, ll. 13-17.)
2. The Township has no right to relief. Although SPLP disputes the Township's contentions regarding the *legal* effect of the representations in the Settlement Agreement, SPLP *agrees* with the Township that, in the Settlement Agreement, SPLP represented that it would site the valve on the SPLP Use Area unless engineering constraints required otherwise. In fact, the SPLP Use Area was the *preferred* location for a host of reasons, including maintenance purposes (Hearing Transcript, p. 184, ll. 7-8; p. 197, ll. 14-17), satisfying the Township's concerns (Hearing Transcript, p. 184, ll. 9-10; p. 197, ll. 17-21), lower cost (Hearing Transcript, p. 197, ll. 22-25; p. 198, ll. 1-7), and faster schedule

(Hearing Transcript, p. 198, ll. 11-24). Despite the advantages that would have accrued to SPLP had it been able to site the valve on the SPLP Use Area, the company could *not* site the valve there for three reasons:

- a. First, there was insufficient room along Mary Jane Lane required for a horizontal directional drill (an “HDD”) into the Boot Road pump station. To obtain room, SPLP would have had to condemn and tear down a home on Mary Jane Lane, and even then, there wasn’t enough room because of the adjacent Aqua PA American facility (Hearing Transcript, p. 187, ll. 1-25; p. 188, ll. 1-8).
- b. Second, because the HDD was infeasible, SPLP would have had to open cut Boot Road to get the pipeline into the Boot Road pump station or the SPLP Use Area. (Hearing Transcript, p. 189, ll. 10-25; p. 190, ll. 1-25). Inasmuch as there were already pipelines running down the edges of the road, the cut would have had to go through the center of the road, requiring the road to be closed to all traffic for an extended period of time. (Hearing Transcript, p. 189, ll. 21-25; p. 190, ll. 14-21). It was highly unlikely that PennDOT would have issued a permit for this work (Hearing Transcript, p. 190, l. 1), the closure would have had a negative impact on the community (Hearing Transcript, p. 190, ll. 3-4), and since Boot Road is the most direct route for the fire department, the closure would have adversely affected emergency response (Hearing Transcript, p. 190, ll. 3, 22-25; p. 191, ll. 1-10).
- c. Finally, if the valve were located in the SPLP Use Area, the company would have to use a shored excavation vertical shaft that posed safety risks for welders (Hearing Transcript, p. 193, ll. 11-16), and the drill profile for the HDD under

Route 202 (out of the Boot Road pump station or SPLP use area) would have a maximum depth of approximately 20 feet, passing through highly fractured, unconsolidated sandstone, and posing a very high risk of inadvertent returns that would threaten the safety of vehicles and passengers on Route 202 (Hearing Transcript, p. 193, ll. 17-25.)

Mr. Gordon's testimony that these engineering constraints required the valve to be sited on the Janiec 2 Tract was unrebutted. (*See* Hearing Transcript, p. 90, ll. 8-16, Mr. LaLonde conceding that he is in no position to contradict Mr. Gordon's testimony regarding the determinations of SPLP's project team and engineering group.)

Indeed, the Township introduced *no* evidence that the valve could be safely sited in the SPLP Use Area. To the contrary, the Township's own expert, Richard Kuprewicz, conceded that he never discussed with SPLP whether the SPLP Use Area would be a prudent location (Hearing Transcript, p. 133, l. 2), and his report concluded that the *current* siting of the valve on the Janiec 2 Tract exceeds federal pipeline safety regulations and reflects the "level of respect that transporting HVL should require in a prudent pipeline operation." (Hearing Transcript, p. 130, ll. 3-9, 22-25; p. 131, ll. 1-17.) Further, it is undisputed that the Township had notice of the siting of the valve on the Janiec 2 Tract *before* SPLP commenced work on July 6, 2017.

Mr. Gordon testified that he told the Township about the valve in January of 2016 (specifically remembering the meeting because of a discussion of the architectural vinyl fencing that would surround the valve and Solicitor Camp's request that similar fencing be used at the Boot Road pump station, which fencing was installed). (Hearing

Transcript, p. 207, ll. 1-25; p. 208, ll. 1-18), and Mr. LaLonde testified that the Township had notice as of January 2017 when SPLP's plans were submitted to the Township engineer (Hearing Transcript, p. 69, ll. 19-25; p. 70, ll. 1-12). Regardless of whose testimony the Commission wishes to credit, the simple fact is that the Township had, and has, notice of the siting of the valve, which is all the Settlement Agreement requires.

3. There is no irreparable injury. The Township's contentions regarding irreparable harm are illogical and bizarre. First, the Township's sanctimonious claim that it is seeking to protect precious and irreplaceable natural resources was revealed to be a blatant hoax, since, on January 27, 2016, the Township Board of Supervisors had approved a final land development plan for the same site authorizing the construction of a 114-unit independent living facility that would have occupied 43,671 square feet and would have required the developer to clear and grub double the amount of land cleared by SPLP. (Hearing Transcript, p. 100, ll. 17-25; p. 101, ll. 1-5; p. 216, ll. 1-12; *see also* Respondent Ex. 6 and 7). Second, and perhaps most importantly, as explained above, SPLP *cannot* site the valve on the SPLP Use Area and needs to use the Janiec 2 Tract for the HDD exit and entry points. While Mr. LaLonde professed a concern that an interim emergency order could avoid unnecessary construction (Hearing Transcript, p. 81, ll. 13-22) and alleged blockage of the fire department on the east side of Route 202 (Hearing Transcript, p. 81, ll. 3-12), Mr. Gordon testified that SPLP will not be blocking the fire department's egress because the company has installed an additional temporary construction entrance to the worksite (Hearing Transcript, p. 217, ll. 13-17), and Mr. LaLonde conceded that there have been no vehicles blocking the fire department driveway since July 7 (Hearing Transcript, p. 102, ll. 8-13). Also, Mr. Gordon pointed out that the same driveway would

have been used by the Traditions development for construction access, inasmuch as the safety gates noted by Mr. LaLonde are not put in until after the site is constructed.

(Hearing Transcript, p. 217, ll. 18-25, p. 218, ll. 1-8.) Moreover, neither Mr. LaLonde nor the Township seems to grasp that using the SPLP Use Area leads to a much more horrific scenario—namely, completely shutting down Boot Road on the west side of Route 202, from Ship Road to the existing pump station, for an extended period (Hearing Transcript, p. 190, ll. 6-21), and potentially endangering traffic on Route 202 from inadvertent returns of drilling mud (Hearing Transcript, p. 193, ll. 21-25).

4. The relief requested is injurious to the public interest. The Commission should deny the Township's Petition because the relief it seeks is detrimental and hazardous to the Township's own residents. Mr. Gordon provided un rebutted testimony that the valve cannot feasibly and safely be sited on the SPLP Use Area. (Hearing Transcript, p. 194, ll. 2-11). In addition, SPLP is targeting to put the Mariner East 2 pipeline in service in October of 2017. (Hearing Transcript, p. 218, ll. 14-17). Delaying the installation of the valve would not only impact SPLP's return on investment (Hearing Transcript, p. 218, ll. 21-25), but also adversely affect producers, shippers, and consumers, all of whom are depending on completion of the project. (Hearing Transcript, p. 219, ll. 4-17).

The public interest mandates that the Petition be denied.

Respectfully submitted,

BLANK ROME LLP

Dated: July 24, 2017

Christopher A. Lewis

Christopher A. Lewis (I.D. No. 29375)

Frank L. Tamulonis (I.D. No. 208001)

Michael Montalbano (I.D. No. 320943)

One Logan Square

130 N. 18th Street

Philadelphia, PA 19103

(215) 569-5500

Lewis@BlankRome.com

FTamulonis@blankrome.com

MMontalbano@BlankRome

CERTIFICATE OF SERVICE

I, Michael J. Montalbano, certify that on July 24, 2017, I caused a true and correct copy of Sunoco Pipeline L.P.'s Post-Hearing Brief in Opposition to West Goshen Township's Petition for Interim Emergency Order to be served upon the parties 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):

Honorable Elizabeth H. Barnes
PO Box 3265
Harrisburg, PA 17105-3265
ebarnes@pa.gov

David Brooman, Esquire
Douglas Wayne, Esquire
High Swartz, LLP
40 East Airy Street
Norristown, PA 19404
dbrooman@highswartz.com
dwayne@highswartz.com

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
Ra-sba@pa.gov

Pennsylvania Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101
consumer@paoca.org

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17101

Michael J. Montalbano

Michael J. Montalbano
Attorney for Sunoco Pipeline L.P.

Exhibit A

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

WEST GOSHEN TOWNSHIP AND	:	
CONCERNED CITIZENS OF WEST	:	
GOSHEN TOWNSHIP	:	
Complainant,	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

TABLE OF CONTENTS

I. INTRODUCTION

This Initial Decision denies West Goshen Township's (the Township) Petition for Interim Emergency Order because the Township failed to prove by a preponderance of the evidence that an emergency exists, that the Township's right to relief is clear, that the Township would suffer irreparable harm, and that the Township's requested relief would not be injurious to the public interest.

II. PROCEDURAL HISTORY

On February 17, 2017, the Township filed a Complaint to Enforce Settlement Agreement with the Commission. The settlement agreement (the "Settlement Agreement") at issue was entered into by the Township, Sunoco Pipeline L.P. ("SPLP"), and Concerned Citizens of West Goshen Township ("CCWGT") and certified by the Commission on June 15, 2015. The certification is docketed at U-2015-2486071. The Complaint asserted two breach-of-settlement counts, and requested equitable and monetary relief, and an assessment of attorneys' fees.

On February 21, 2017, SPLP received a formal notice letter from Secretary Rosemary Chiavetta notifying SPLP of the Complaint. SPLP responded to the Complaint on March 10, 2017 by filing an Answer and New Matter, and a Motion to Strike the Township's Request for Attorneys' Fees.

On March 30, 2017, the Township amended the Complaint, withdrawing one of the counts previously asserted in the original Complaint and eliminating its request for attorneys' fees. The Amended Complaint requests that the Commission declare that SPLP is in material breach of Paragraphs II.A, II.A.2, and IV.A of the Settlement Agreement, and to order SPLP to

cease and desist the construction of a valve (“Valve 344” or the “Valve”) on an area of land known as the Janiec 2 Tract, and to install the Valve on a separate parcel called the “SPLP Use Area.”

On March 30, 2017, SPLP received a formal notice letter from Secretary Rosemary Chiavetta notifying SPLP of the Amended Complaint. On April 17, 2017, SPLP filed an Answer to the First Amended Complaint and New Matter. The Township filed its Answer to SPLP’s New Matter on May 4, 2017.

On April 18, 2017, I scheduled an initial prehearing conference for May 23, 2017. Shortly after the initial prehearing conference was scheduled, the Parties began to conduct settlement negotiations. On May 15, 2017, the Parties requested, via electronic mail, that I postpone the May 23, 2017 prehearing conference while the Parties continued with settlement negotiations. On May 17, 2017, I issued an Order canceling the May 23, 2017 prehearing conference, and rescheduling it for July 6, 2017.

On May 22, 2017, SPLP filed a Motion for Judgment on the Pleadings, requesting that the Township’s entire Complaint be dismissed for failure to state a claim upon which relief could be granted. On June 12, 2017, the Township filed its Response in Opposition to the Motion for Judgment on the Pleadings.

On June 30, 2017, SPLP filed its Prehearing Conference Memorandum with the Commission. On July 5, 2017, the Township filed its Prehearing Conference Memorandum with the Commission in which it indicated that it would seek emergency relief from the Commission. On July 6, 2017, I held a prehearing conference with the Parties during which the Township reiterated its intention to seek emergency relief from the Commission.

After close of business on July 7, 2017, the Township filed a Petition for an *Ex Parte* Emergency Order and an Interim Emergency Order (the “Petition”). In its Petition, the Township requested that the Commission enjoin SPLP from beginning any construction on the Janiec 2 Tract until I issued a final order with respect to the Township’s underlying Amended Complaint. The Township contended that it will suffer irreparable harm in the form of loss of trees and green cover, the Valve will prevent the construction of an already approved independent living facility, permitting construction would frustrate the Township’s attempts to carry out its duties under Article I, Section 27 of the Pennsylvania Constitution, and the construction activities would block the egress and ingress of the Township’s fire department.

On July 10, 2017, SPLP filed its Answer in Opposition to West Goshen Township’s Request for *Ex Parte* Relief with the Commission. In its Answer, SPLP disputes many of the facts raised in the Township’s Petition, argues that no emergency exists, and contends that the Township has failed to meet any of the criteria for an *ex parte* emergency order as set out in 52 Pa. Code § 3.2.

On July 11, 2017, Secretary Rosemary Chiavetta issued a letter denying the Township’s Petition for an *Ex Parte* Emergency Order and directed that the Petition proceed under my supervision. On July 12, 2017 the Commission ratified Secretary Chiavetta’s letter denying the Township’s Petition for an *Ex Parte* Order. The Petition for an *Ex Parte* Order, SPLP’s Opposition to the Township’s Petition, the letter denying the Petition, and the Commission’s ratification of the letter denying the Petition are docketed at P-2017-2613461.

On July 17, 2017, SPLP filed its Answer in Opposition to West Goshen Township's Request for Interim Emergency Relief (the "Answer") raising many of the same arguments it posed in its opposition to the Township's Request for *Ex Parte* Emergency Relief.

On July 18, 2017, an evidentiary hearing (the "Hearing") was held concerning the Petition for Interim Emergency Relief. The attorneys present for SPLP were Christopher A. Lewis and Michael J. Montalbano of Blank Rome LLP. The attorneys present for the Township were David Brooman and Richard Sokorai of High Swartz LLC.

At the start of the Hearing, SPLP made an oral motion to exclude any negotiations, promises, and interpretations of the Settlement Agreement that occurred prior to or contemporaneous with the execution of the Settlement Agreement because such evidence was barred by the parol evidence rule. I denied the motion finding that, at this stage, the Settlement Agreement is ambiguous, and not subject to the parol evidence rule. SPLP lodged a continuing objection to any parol evidence admitted during the remainder of this case.

During its case in chief, the Township offered the testimony of the Township Manager, Casey LaLonde; the Township Solicitor, Kirstin Camp; and the Township's outside counsel, David Brooman. The Township also offered the expert testimony of Richard Kuperwicz. Mr. Kuperwicz was admitted as an expert in pipeline safety.

SPLP offered the testimony of Matthew Gordon, SPLP's Project Director of the Mariner East Pipeline. After five hours of testimony, and post-Hearing briefing, this matter is now ripe for review.

III. FINDINGS OF FACT

A. The Mariner East Pipeline.

1. This dispute arises from the Settlement Agreement that was entered into by SPLP, the Township, and CCWGT,¹ and certified by the Commission on June 15, 2015. *See generally* Pet'r's First Am. Compl.
2. The Township is a Township of the Second Class organized and existing under the laws of the Commonwealth of Pennsylvania. *Id.* ¶ 1.
3. SPLP is a certificated public utility that provides intrastate transportation services of petroleum and refined petroleum products including propane and butane. *Id.* ¶ 2.
4. SPLP is set to begin construction of the Mariner East 2 Pipeline (the "Pipeline" or the "Mariner East Pipeline") in West Goshen Township. (Hearing Transcript, p. 213, ll. 17-19.)
5. The Mariner East Pipeline traverses 17 counties and approximately 85 municipalities, and employs approximately 4,500 contractors and inspectors. (Hearing Transcript, p. 181, ll. 13-22).
6. The Mariner East Pipeline is an expansion of service from the Mariner East 1 pipeline, and is designed to connect producers in the Utica and Marcellus shales with the marketplace, increasing the available supply of propane and butane. (Hearing Transcript, p. 180, ll. 2-16).

¹ Although CCWGT was a party to the Settlement Agreement, it has not joined the Complaint filed by the Township. For that reason, I will focus my discussion on SPLP and the Township.

7. The propane will then be used for heating, cooking, and as a raw material for plastics, while the butane will be used for heating and as a gasoline component. (Hearing Transcript, p. 180, l. 25; p. 181, ll. 1-5).

8. Throughout the length of the Pipeline are valves, which are designed to isolate portions of the Pipeline in the event of an emergency, and minimize the amount of product that can escape. (Hearing Transcript, p. 194, ll. 24-25; 195, ll. 1-6).

9. These valves—including Valve 344—are typically installed in an area where the pipe is close to the surface. (Hearing Transcript, p. 127, ll. 13-19; p. 132, ll. 1-6).

10. The staging location for HDD is an area where the pipe will come close to the surface, which means valves are typically installed where the HDD is staged. (*Id.*).

11. The valves are federally mandated. (Hearing Transcript, p. 194, ll. 22-25).

12. Pipes passing through densely populated areas require more valves to further minimize the impact of a potential release. (Hearing Transcript, p. 195, ll. 3-6).

13. Valve 344 is a necessary component of the portion of the Pipeline travelling through West Goshen Township. (Hearing Transcript, p. 196, ll. 1-3).

B. Description of the Settlement Agreement.

14. The Settlement Agreement consists of five sections. *Id.*

15. Section I is titled “Background” and briefly describes the proceedings that took place before the Commission that led to the Settlement Agreement. *Id.*

16. Section II is titled “Pertinent Information Provided by SPLP, which states, *inter alia*, that
- A. SPLP will install a pump station, vapor combustion unit (“VCU”), and all accessory and appurtenant facilities associated with the Mariner East Project on an area of land known as the “SPLP Existing Site.” *Id.* at 2-3.
 - B. SPLP will construct and maintain Valve 344 on a separate parcel of land called the “SPLP Use Area”, which is situated within another area known as the “SPLP Additional Acreage.” *Id.* at 3.
 - C. If due to engineering constraints, SPLP is unable to construct Valve 344 on the SPLP Use Area, SPLP will notify the Township. *Id.*
17. Specifically, Section II.A.2 provides:

The pump station, the VCU and all accessory and appurtenant above-ground facilities associated with all phases of the Mariner East Project will be maintained within the present active site, Parcel No. 52-1-8-U, on which the existing Boot Road Pump Station currently operates (the “SPLP Existing Site”), except that a remote operated valve station will be constructed and maintained on SPLP’s adjacent 4.42 acre property, Parcel No. 52-0-10-10.1, also known as the former Janiec Tract, (the “SPLP Additional Acreage”). The proposed location of such valve station on the SPLP Additional Acreage is depicted on the map attached hereto as Appendix 1 and incorporated by reference (the “SPLP Use Area”). **SPLP intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If due to engineering constraints, SPLP is unable to construct the valve station in the SPLP Use Area, SPLP will notify WGT. Nothing in this Settlement Agreement constitutes an authorization or agreement for SPLP to construct the valve station in any location on the SPLP Additional Acreage other than in the SPLP Use Area.**

Id. ¶ II.A.2 (emphasis added).

18. Section III of the Settlement Agreement is titled “WGT’s Safety Review” and notes that the Township hired Richard Kuprewicz, the President of Accufacts, Inc., and an expert in the field of liquids pipeline safety, to prepare a written report as to the safety of Mariner East 1. (R-4 at 5).

19. Section IV is titled “The Parties’ Promises, Covenants and Agreements” and provides in Section IV.A.1.A that SPLP agrees not to construct utility facilities connected with the Mariner East Pipeline on the “SPLP Additional Acreage.” *Id.* at 5.

20. The one exception to the general prohibition against constructing utility facilities in the SPLP Additional Acreage area was that SPLP could construct Valve 344 on an SPLP Use Area.

21. Under Section IV, SPLP also agreed to the following:

- A. Execute a deed restriction prohibiting the construction of any pump station, VCUs, or above-ground permanent public utility facilities on the SPLP Additional Acreage within 60 days of the Settlement Agreement going into effect. *Id.* at 5.
SPLP is also required to notify the Township that the deed was recorded within 5 business days of the recording. *Id.* at 6
- B. SPLP will provide the Township Manager with immediate notice of any changes to the Mariner East Pipeline that requires remediation under 49 C.F.R. Section 195.452(h)(4)(i), (ii), (iii), or (iv) that could potentially impact the Township. *Id.*
SPLP will then provide a written report within 30 days of the original notice describing the remediation efforts that were undertaken. *Id.*

C. SPLP agrees to consult with Township officials within 30 days of the effective date of the Settlement Agreement regarding land development plans. *Id.*

C. Extrinsic Evidence Regarding the Interpretation of the Settlement Agreement

22. During the negotiation of the Settlement Agreement, the Township was represented by well-regarded and sophisticated outside counsel, the High Swartz law firm. (Hearing Transcript, p. 90, ll. 17-25.) The attorneys representing the Township included Mr. David Brooman and Mr. Ken Myers, both of whom had practiced for multiple decades. (Hearing Transcript, p. 91, ll.4-18.)

23. During the negotiation of the Settlement Agreement, the Township was also represented by Ms. Kristin Camp, the Township Solicitor. (Hearing Transcript, p. 91, ll. 20-23). Ms. Camp's law firm, Buckley Brion, had represented the Township for more than 30 years and had, in Mr. LaLonde's words, provided "very good service" to the Township. (Hearing Transcript, p. 92, ll. 1-8.)

24. Mr. Casey LaLonde, the Township Manager, testified that he considered the representations in Section II.A.2 of the Settlement Agreement regarding the siting of the valve on the SPLP Use Area to be promises that were made by SPLP leading up to the execution of the contract. (Hearing Transcript, p. 61, ll. 17-25, p. 62, ll. 1-12).

25. Mr. LaLonde further testified that his understanding was that if there were any engineering constraints, SPLP would have to notify the Township, and if they had to extend the SPLP Use Area by 50 or 100 feet, SPLP would notify the Township and the parties would discuss further options from there. (Hearing Transcript, p. 62, ll. 19-23.)

26. On cross-examination, Mr. LaLonde conceded that although he considered the representation regarding the valve to be a promise, Section II of the Settlement Agreement describes itself as “Pertinent Information Provided by Sunoco.” (Hearing Transcript, p. 93, ll. 15-18.)
27. Mr. LaLonde agreed that in Section IV of the Agreement, by contrast, the parties designated the provisions as “The Parties’ Promises, Covenants and Agreements.” (Hearing Transcript, p. 93, ll. 24-25, p. 94, ll. 1.
28. Mr. LaLonde further agreed that, in each subsection of Section IV.A.1 of the Settlement Agreement—the section of the Agreement that was denoted “The Parties’ Promises, Covenants and Agreements”, when SPLP made a promise, that promise included: (1) a deadline for the action to be performed; and (2) a requirement that SPLP provide the Township with written documentation that the promise had been performed. (Hearing Transcript, p. 94, ll. 2-25, p. 95, ll. 1-25, p. 96, ll. 1-5.
29. Mr. LaLonde conceded that, by contrast to the promises in Section IV, the representation in Section II.A.2 regarding notifying the Township in the event the valve had to be relocated contained no deadline for action, nor any requirement that the notice be in writing. (Hearing Transcript, p. 95, ll. 18-25, p. 96, ll. 1-8.)
30. Mr. LaLonde further conceded that Section II.A.2 contains no language that creates a deadline for notifying the Township of the Valve relocation; that the relevant sentence contains no language that requires notice to the Township to be in writing; that the sentence does not say that the Township has any right to review SPLP’s engineering determination; and that the

sentence does not state that the Township has a right of consent if SPLP does determine that an engineering constraint exists. (Hearing Transcript, p. 96, ll. 2-16).

31. Mr. LaLonde testified that SPLP complied with other promises in the Settlement Agreement, including 1) the promise to site the vapor combustion unit as a designated location (Hearing Transcript, p. 98, ll.2-5), 2) the promise to automate the valve at Mile Post 228 Hearing Transcript, p. 98, ll. 9-13), 3) the promise to automate the valve at Mile Post 236.6 Hearing Transcript, p. 98, ll. 14-19), and 4) the promise not to build any above-ground facilities on the additional acreage (Hearing Transcript, p. 98, ll. 20-23).

32. Ms. Kristin Camp, the Township Solicitor, conceded that Section II.A.2 contains no language that obligates SPLP to construct Valve 344 on the SPLP Use Area should it encounter engineering constraints, nor does Section II.A.2 contain any language that requires SPLP to provide engineering documents to the Township. (Hearing Transcript, p. 153, ll. 8-25; p. 154, ll. 1-16).

33. However, Mr. Camp testified that the relevant sentence in Section II.A.2 should be read with the entirety of the Settlement Agreement, including representations that SPLP would be putting the valve on the SPLP Use Area of Janiec 1 (i.e., the SPLP Additional Acreage). (Hearing Transcript, p. 153, ll. 16-24), and given the long relationship established between the Township, the Township's experts, and SPLP's engineers, it was her understanding that if engineering constraints were found, that would "strike a conversation and notification to the township so the township themselves could evaluate and say, "Okay, we as the board understand that, we now have to go back to our public, who relied upon us to enter this agreement, and

explain to them why it couldn't be where everybody thought it was going to be on the Janiec 1 tract." (Hearing Transcript, p. 154, ll. 13-25, p. 155, ll. 1-4.)

34. Ms. Camp's reading as regards putting the valve on Janiec 1 if an engineering constraint exists is at odds with the last sentence of Section II.A.2, which states "Nothing in this Settlement Agreement constitutes an authorization or agreement for SPLP to construct the valve station in any location on the SPLP Additional Acreage other than in the SPLP Use Area." Contrary to her understanding, the prohibition does not say "anywhere in the township" but is instead limited to any location on the SPLP Additional Acreage. (Hearing Transcript, p. 156, ll. 3-15).

35. Ms. Camp conceded that there is no language in the Settlement Agreement that required SPLP to have the discussion with the Township in the event that engineering constraints required the relocation of the valve. (Hearing Transcript, p. 154, ll. 13.)

36. Mr. Brooman testified that, during the negotiation of the Settlement Agreement, he had provided SPLP with a list of ten points, and he wanted to have SPLP agree to a covenant not to place any further above-ground facilities in the Township. (Hearing Transcript, p. 162, ll. 7-11.)

37. According to Mr. Brooman, SPLP refused to agree to include this point as a covenant, explaining that if the company did this for West Goshen Township it would have to do the same for every township along the line for the full 318 miles. (Hearing Transcript, p. 162, ll. 12-18.) For this reason, instead of including the representation as a covenant, the parties included it in the Settlement Agreement as a statement of fact. *Id.*

38. On cross-examination, Mr. Brooman admitted to being an experienced attorney who had negotiated many contracts, term sheets, and settlements. (Hearing Transcript, p. 168, ll. 18-25, p. 169, ll. 1-2.)

39. Mr. Brooman testified that the difference between a term sheet and a contract is that the term sheet is a concept, while a contract once signed by the parties is legally binding. (Hearing Transcript, p. 169, ll. 6-8.)

40. As regards the term sheets for the Settlement Agreement, Mr. Brooman acknowledged that the first one (R-14) did not mention the valve at all (Hearing Transcript, p. 169, ll. 24-25), the next one (R-15) mentioned the valve but not the engineering constraints (Hearing Transcript, p. 169, ll. 18-20), and the final one (R-17) mentioned the valve and the engineering constraints (Hearing Transcript, p. 170, ll. 11-16.)

41. Mr. Brooman conceded that the term sheets set forth the basic terms but the parties understood that these would be fleshed out and reduced to writing in a final settlement agreement. (Hearing Transcript, p. 171, ll. 19-25.)

42. Mr. Matthew Gordon, the Project Director for SPLP, testified that his understanding of the Settlement Agreement was: that it did not require the company to consult with the Township prior to making the engineering determination; that it did not require the company to provide documentation of the engineering constraint to the Township; that it did not require the company to submit plans to Richard Kuprewicz in connection with relocation of the valve; and that it did not require the company to obtain the Township's consent if the valve were going to be relocated. (Hearing Transcript, p. 206, ll. 2-19).

D. SPLP Evaluates Potential Routes for the Mariner East Pipeline.

43. In 2014 and early 2015, before the Settlement Agreement had been executed, SPLP's engineers began to evaluate several possible areas where SPLP could stage the installation of the Mariner East Pipeline and construct Valve 344. (Hearing Transcript, p. 225, ll. 23-25; 226, ll. 1-17).

44. SPLP's engineers were "running parallel paths" by which they would analyze different pipe installation options to determine how to best install the Pipeline. (Hearing Transcript, p. 205, ll. 1-5).

45. Two areas SPLP evaluated were the SPLP Use Area and the Janiec 2 Tract. (Hearing Transcript, p. 205, ll. 1-10; p. 222, l. 25; 223, ll. 1-6).

46. SPLP preferred to utilize the SPLP Use Area over alternative routes for several reasons including:

- A. SPLP already owned the SPLP Use Area (Hearing Transcript, p. 184, ll. 5-7);
- B. SPLP could keep its equipment on a single site (Hearing Transcript, p. 197, ll. 14-15);
- C. SPLP believed that the Township and its residents would be more supportive of SPLP staging the HDD on the SPLP Use Area (Hearing Transcript, p. 197, ll. 15-21);
- D. Staging the HDD and constructing Valve 344 on the SPLP Use Area would be less expensive than rerouting the pipeline through an alternative area (Hearing

Transcript, p. 197, ll. 22-25; p. 198, ll. 1-7). Specifically, SPLP was required to pay the Janiec family \$2.2 million to purchase the Janiec 2 Tract—a cost SPLP would not have incurred had it been able to construct the Valve on the SPLP Use Area (Hearing Transcript, p. 202, ll. 15-23).; and

- E. The SPLP Use Area would have allowed SPLP to install the Pipeline at a faster rate than on the Janiec 2 Tract. (Hearing Transcript, p. 198, ll. 8-24).

47. After the Settlement Agreement was executed by the Parties, SPLP’s engineers reviewed utility location data and geotechnical analyses to determine whether the installation of the Pipeline could be staged and Valve 344 constructed at the SPLP Use Area. (Hearing Transcript, p. 205, ll. 1-10).

48. SPLP concluded that it could not install the Mariner East Pipeline via HDD for the west side of the pump station (from Ship Road to the SPLP Use Area) for several reasons, including:

- A. SPLP could not maintain a safe radius of curvature on the SPLP Use Area. Attempting to install the pipe via HDD on the SPLP Use Area would have threatened the integrity of the pipe, or would have required SPLP to tear down a home on Mary Jane Lane to make room for the HDD (Hearing Transcript, p. 186, ll. 24-25; p. 187, ll. 1-5);
- B. Tanks and a pump station from an adjacent Aqua PA American facility prevented SPLP from lining up the pipe with the drill rig (Hearing Transcript, p. 188, ll. 4-9); and

49. Because using HDD was infeasible, SPLP concluded that the only method for installing the Pipeline from Ship Road to the SPLP Use Area would be an open cut in Boot Road. Open cutting Boot Road, however, would create both traffic and safety concerns, including:

- A. The ground underneath Boot Road is congested with existing utility lines, which would require SPLP to install the pipe in the center of the road, causing the closure of both lanes (Hearing Transcript, p. 189, ll. 21-25);
- B. PennDOT was unlikely to issue a permit to open cut Boot Road because of the tremendous impact the installation process would have on the community (Hearing Transcript, p. 190, ll. 1-5);
- C. The closure of Boot Road would cause severe traffic disruptions and would affect the response times of emergency services to the local residents. (*Id.*).
- D. Boot Road is the most direct route for the fire department that is located east of Route 202 to the homes near the SPLP Use Area. Closing the road entirely would have negatively affected emergency access. (Hearing Transcript, p. 191, ll. 3-10);

50. Even if the HDD could have been staged for the west side of the pump station, SPLP still would have encountered problems in installing the pipeline on the east side of the pump station, from the SPLP Use Area across Route 202. (Hearing Transcript, p. 191, ll. 14-25, p. 192, ll. 1-19), including:

- A. PennDOT will not issue a permit to open cut a state highway, so the only possible installation method was HDD. (Hearing Transcript, p. 191, ll. 19-21).

- B. But the HDD option entailed significant safety problems:
- a. If the valve were located in the SPLP Use Area, the company would have to use a shored excavation vertical shaft that posed safety risks for welders (Hearing Transcript, p. 193, ll. 11-16); and
 - b. The drill profile for the HDD under Route 202 would have a maximum depth of approximately 20 feet, passing through highly fractured, unconsolidated sandstone, and posing a risk of inadvertent returns of drilling mud, creating hazardous driving conditions for the nearly 70,000 cars driving on Route 202 each day. (Hearing Transcript, p. 192, ll. 1-19.)

51. Based on these engineering constraints, SPLP determined that it was unable and unsafe to stage the installation of the Pipeline or construct Valve 344 on the SPLP Use Area. (Hearing Transcript, p. 194, ll. 2-11).

52. Mr. Gordon made the decision for SPLP on siting the valve based on data he obtained throughout the fall of 2015, up into the winter of 2015 (described by Mr. Gordon as “approximately the November time frame”). (Hearing Transcript, p. 230, ll. 5-19.) This data included subsurface utility locate data ((Hearing Transcript, p. 230, ll. 11-13) and geotechnical data (Hearing Transcript, p. 230, ll. 13-19; p. 232 ll. 4-15).

53. The geotechnical data was shown on the HDD drilling profile introduced into evidence as R-5 under labels SB-03 and SB-04. (Hearing Transcript, p. 250, ll. 2-22.)

54. At that point, Mr. Gordon knew that the drill in the Janiec 2 property was going to work, while there was no good path forward to use the SPLP Use Area. (Hearing Transcript, p. 232, ll. 4-15.)

55. Mr. Gordon testified that SPLP did not prepare a HDD profile for the SPLP Use Area because the alignment had revealed that it would have to go through the house on Mary Jane Lane, so the company knew at that point that the only installation method that could conceivably be used was an open cut of Boot Road. (Hearing Transcript, p. 223, lines 22-25, p. 224, ll. 1-6.)

56. Notwithstanding Mr. Gordon's determination as Project Manager to site the valve on the Janiec 2 Tract, throughout 2016 and 2017 in the monthly meetings conducted by SPLP's upper management, because the SPLP Use Area was the preferred location, the upper management insisted to the engineering group that it endeavor to construct Valve 344 at the SPLP Use Area. (Hearing Transcript, p. 205, ll. 11-24).

57. The Township introduced no evidence at the hearing rebutting Mr. Gordon's testimony regarding the engineering constraints associated with siting the valve on the SPLP Use Area.

58. Mr. LaLonde testified that he had no knowledge of the determinations made by SPLP's project team and engineering group. (Hearing Transcript, p. 90, ll. 8-11.) Mr. LaLonde further conceded that if Mr. Gordon testified that SPLP had determined that there were engineering constraints, he was not in a position to contradict that testimony. (Hearing Transcript, p. 90, ll. 12-16.)

59. The Township's safety expert, Mr. Richard Kuprewicz, made no evaluation of whether SPLP's actions complied with any purported obligation in the Settlement Agreement to put the valve in the SPLP Use Area. (Hearing Transcript, p. 125, ll. 17-20.)

60. Mr. Kuprewicz did not receive drafts of the Settlement Agreement (Hearing Transcript, p. 121, ll. 7-9) and was not involved in the negotiation to put any particular facilities at any particular spots (Hearing Transcript, p. 121, ll. 16-19). Mr. Kuprewicz testified that the location of the valve was a "township issue" and that his work was a "safety analysis". (Hearing Transcript, p. 121, ll. 20-25).

61. As regards safety, the materials that were relied on by Mr. Kuprewicz in preparing his report showed the valve located on the east side of Route 202 on the Janiec 2 Tract. (Hearing Transcript, p. 130, ll. 3-10).

62. With the valve located on the Janiec 2 Tract, the January 6, 2017 report prepared by Mr. Kuprewicz (R-2) concluded that "...Sunoco has incorporated additional processes in excess of minimum federal pipeline safety regulations that should assure the safety of this proposal across the township" (Hearing Transcript, p. 130, ll. 22-25, p. 131, ll. 1-3) and "[i]t is also Accufacts' opinion that Sunoco on the 20 inch Mariner East 2 expansion pipeline segment that could affect the township is exceeding federal pipeline safety regulations in utilizing additional integrity management approaches, prudent pump station design, main line valve placement and actuation, pipeline monitoring as well as control room procedures, automatic relief detection safety system and emergency notification protocols that reflect the level of respect that transporting HVL should require in a prudent pipeline operation (Hearing Transcript, p. 131, ll. 4-17).

63. The Janiec 2 Tract is located on the east side of Route 202 outside of the SPLP Additional Acreage Area. (R-4.)
64. No evidence was introduced at the hearing to claim that the Janiec 2 Tract has been designated scenic or historically significant.
65. Around the time SPLP selected the Janiec 2 Tract as the site for Valve 344, a developer known as “Traditions” was in the process of seeking approval to construct an independent living facility on the Janiec 2 Tract. (R-6 at 1).
66. The building for the independent living facility was designed for 114 units and would occupy 43,671 square feet. (Hearing Transcript, p. 100, ll. 17-25, R-6 and R-7.)
67. The Board of Supervisors of West Goshen Township considered approval of the Traditions development at its January 13, 2016 meeting (R-6) and later voted formal approval at its January 27, 2016 meeting (R-7). (Hearing Transcript, pp. 107 -109.)
68. In its Petition for Ex Parte Relief and an Interim Emergency Order, the Township represented to the Commission that the clearing and grubbing that SPLP did can be “characterized as destroying the Commonwealth’s precious and irreplaceable natural resources.” (Hearing Transcript, p. 100, ll. 6-10.) The Township further stated that “the Township sought in the Settlement Agreement to prevent the exact permanent harm to its natural resources that is about to occur if the PUC does not step in to maintain the status quo.” (Hearing Transcript, p. 100, ll. 11-16.)

69. On cross-examination, Mr. LaLonde conceded that in order to construct the independent living facility approved by the Township, the developer would have needed to clear and grub the property. (Hearing Transcript, p. 101, ll. 2-5.)

70. SPLP attempted to site Valve 344 next to Boot Road, so that Traditions could still construct the independent living facility. (Hearing Transcript, p. 202, ll. 1-4).

71. The installation of Valve 344 on the Janiec 2 Tract would delay the construction of the independent living facility, and as a result, Traditions withdrew its plans to construct the facility. (Hearing Transcript, p. 202, ll. 5-14).

72. After Traditions withdrew its plans, SPLP entered into an agreement with the Janiec family to purchase the Janiec 2 Tract for \$2.2 million. (Hearing Transcript, p. 202, ll. 5-21).

73. In purchasing the Janice 2 Tract, SPLP was attempting to make the Janiec family whole after it lost the opportunity to sell the property to Traditions. (*Id.*).

74. The Traditions independent living facility would have occupied approximately twice the area of the Janiec 2 Tract that had to be cleared to install the Pipeline and construct Valve 344. (Hearing Transcript, p. 216, ll. 8-12).

D. SPLP Notifies the Township that SPLP Cannot Install Valve 344 on the SPLP Use Area.

75. SPLP first informed the Township of the decision to construct Valve 344 on the Janiec 2 Tract in a January 2016 meeting between Township representatives and SPLP. (Hearing Transcript, p. 206, ll. 24-25; p. 207, ll. 1-3).

76. During the meeting, Matthew Gordon, who at the time was the Project Manager for the Mariner East Pipeline, informed Kristin Camp, the Township's Solicitor, that SPLP would construct Valve 344 on the Janiec 2 Tract next to the area where the Traditions independent living facility would be built. (Hearing Transcript, p. 207, ll. 7-21).

77. At the January 2016 meeting, Mr. Gordon presented to Ms. Camp examples of a faux stone fence that would match the aesthetics of the independent living facility allowing the Valve to blend in with the development. (Hearing Transcript, p. 207, ll. 22-25; p. 208, ll. 1-12).

78. Ms. Camp and Mr. Casey LaLonde dispute the notion that Mr. Gordon ever brought up Valve 344 during the January 2016 meeting, and instead insist that they discussed how the Janiec 2 Tract would be used as a temporary laydown area for HDD. (Hearing Transcript, p. 67, ll. 15-25; p. 68, ll. 1-14; p. 145, ll. 18-25; p. 146, ll. 1-3).

79. Ms. Camp testified that SPLP provided the Township with a map of the area (Township 5) that does not show any valves (Hearing Transcript, p. 145, ll. 9-14), and her handwritten notes from the meeting also do not reflect a discussion of the Valve (Township 18, Hearing Transcript, p. 150, ll. 11-13.)

80. The map, however, does show the HDDs coming up in the Janiec 2 Tract and does not show an HDD going into the SPLP Use Area. (Hearing Transcript, p. 248, ll. 3-21.)

81. In 2016 and early 2017, the Township was notified again when SPLP, pursuant to Act 167, submitted documents showing the location of Valve 344 on the Janiec 2 Tract. (Hearing Transcript, p. 208, ll. 19-25; p. 209, ll. 1-22).

82. The Township was notified of the re-siting a third time in March 2017 when SPLP met with Township representatives including Township Manager Casey LaLonde and Township Solicitor Kristin Camp. (Hearing Transcript, p. 210, ll. 16-25; p. 211, ll. 1-17).

83. During the March 2017 meeting, SPLP described the engineering constraints that exist on the SPLP Use Area, and why it concluded that Valve 344 should be constructed on the Janiec 2 Tract. . (Hearing Transcript, p. 211, ll. 15-17).

84. The Township was notified a fourth time on February 13, 2017, when it was copied on a communication between Commonwealth's Department of Environmental Protection (the "DEP") and SPLP in which DEP approved SPLP's Erosion and Sediment Control Permit ("Chapter 102 Permit"), which identifies the location of Valve 344 on the Janiec 2 Tract. (R-8; Hearing Transcript, p. 211, ll. 18-25; p. 212, ll. 1-10).

E. SPLP Begins Work on the Janiec 2 Tract.

85. In 2016, SPLP purchased the Janiec 2 Tract. SPLP is the current owner of the Janiec 2 Tract. (Hearing Transcript, p. 201, ll. 11-15.).

86. On February 13, 2017, the DEP issued to SPLP an Erosion and Sediment Control Permit (the "Chapter 102 Permit"). (R-8; Hearing Transcript, p. 211, ll. 18-25; p. 212, ll. 1-10).

87. On February 13, 2017, the DEP issued to SPLP the Chapter 105 Permit and Water Obstruction and Encroachment Permit (“Chapter 105 Permit”). (R-9, Hearing Transcript, p. 212, ll. 11-16).
88. On June 6, 2017, the Township also approved SPLP’s Erosion and Sediment Control Report and Plans and granted SPLP the right to commence work on the Janiec 2 Tract when it issued Earth Disturbance Permit 2017-202-1. (R-10, Hearing Transcript, p. 212, ll. 21-25).
89. In June of 2017, PennDOT notified the Township that SPLP planned to begin utility work near the Janiec 2 Tract. . (Hearing Transcript, p. 76, ll. 18-20).
90. In early July of 2017, a SPLP representative notified Casey LaLonde, the Township Manager, that SPLP intended to start work on the Janiec 2 Tract within the next two weeks. (Hearing Transcript, p. 74, ll. 1-11).
91. On July 6, 2017, SPLP began to clear vegetation and grub the portion of the Janiec 2 Tract where the Pipeline installation would be staged. (Hearing Transcript, p. 75, ll. 17-25; p. 76, ll. 1-7).
92. SPLP’s contractors removed the vegetation from a portion of the Janiec 2 Tract, and then installed erosion and sedimentation controls. (Hearing Transcript, p. 214, ll. 6-10; R-13; R-14).
93. While conducting these clearing activities, a SPLP-associated, pickup truck backed into the driveway of the Township’s fire department, partially obstructing the driveway, while a piece of equipment was offloaded. (Hearing Transcript, p. 216, ll. 21-25; p. 217, ll. 1-9).
94. The vehicle was moved once the equipment was offloaded. (*Id.*).

95. SPLP has since constructed a rock construction entrance off of Boot Road, so that equipment could access the Janiec 2 Tract without interfering with the fire department's ingress and egress. (Hearing Transcript, p. 214, ll. 11-15, p. 217, ll. 13-17).

96. Also, Mr. Gordon pointed out that the fire department's driveway would have been used by the Traditions development for construction access, inasmuch as the safety gates noted by Mr. LaLonde are not put in until after the site is constructed. (Hearing Transcript, p. 217, ll. 18-25, p. 218, ll. 1-8.)

97. Once the Valve is constructed the only vehicles that will access the Janiec 2 Tract is a single pickup truck that will use an emergency driveway to inspect the Valve each week. (Hearing Transcript, p. 217, ll. 18-15; p. 218, ll. 1-13).

98. SPLP completed the vegetative-clearing activities in July of 2017. (Hearing Transcript, p. 215, ll. 20-24).

99. SPLP's target completion date for the Mariner East Pipeline is October 2017. (Hearing Transcript, p. 218, ll. 14-17).

100. If construction is delayed, SPLP's return on the approximately \$1 billion it has invested in the Mariner East Pipeline will also be delayed. (Hearing Transcript, p. 218, ll. 18-25).

101. If construction is delayed, producers and shippers will be unable to use the Mariner East Pipeline while the case is pending with the Commission. (Hearing Transcript, p. 219, ll. 3-13).

102. If construction is delayed, propane and butane scheduled to be transported through the Mariner East Pipeline will not reach the marketplace, and in turn will not reach consumers. (Hearing Transcript, p. 219, ll. 14-17).

IV. DISCUSSION

A. Applicable Standard for an Interim Emergency Order.

The standard that governs a petition for interim emergency relief is governed by 52 Pa. Code 3.1 and 3.6. Pursuant to Section 3.6, a petition for emergency relief can be granted only if:

- (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.

The Commission may grant interim emergency relief only if all of the forgoing elements exist. *Petition of Service Electric Telephone Company, LLC*, 2013 WL 1461735 (Pa. P.U.C. April 4, 2013). The petitioner must establish each of the above factors by a preponderance of the evidence. *See Application of Fink Gas Co.*, 2015 WL 5011629, at W*3-4 (Pa. P.U.C. Aug. 20, 2015).

Additionally, emergency relief, including interim emergency relief, must address an "emergency" as defined by the rules governing emergency relief. *See Petition of Norfolk Southern Railway Co. for Rescission or Amendment of the Pennsylvania Public Utility Commission's Order entered on June 12, 1975*, 2011 WL 6122822, *10-12 (Pa. P.U.C. Dec. 1,

2012). Section 3.1 defines an “emergency” as a “situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. “The issuance by the Commission of an emergency order is a form of relief to be sparingly utilized in only the most extraordinary circumstances....”

Petitions of West Penn Power Company for Approval of Electric Energy Purchase Agreements and for Orders Granting Rate Recognition of Purchased Power Costs Re: Milesburg Energy, Inc., 69 Pa. P.U.C. 343 (1989).

B. Whether an Emergency Exists

1. Positions of the Parties

i. The Township

The Township offered no evidence at the hearing that there is a “clear and present danger to life or property.” Instead the Township focused on the four enumerated requirements identified under § 3.6.

ii. SPLP

SPLP argues that there is no “clear and present danger to life or property.” SPLP further contends that siting the Valve on the SPLP Use Area would create a clear and present danger to life or property, since doing so would require the closure of Boot Road, impeding access for emergency responders, and performing the HDD under Route 202 would pose a substantial risk of inadvertent returns that could cause harm to the 70,000 vehicles that use the road daily.

2. ALJ’s Initial Decision

There is no evidence of a clean and present danger to life or property that meets the definition of an emergency under § 3.1.

C. Whether the Township's Right To Relief Is Clear.

1. Positions of the Parties

i. The Township

The Township argues that its Amended Complaint sets forth substantial legal questions regarding the interpretation and effect of the Settlement Agreement, and that those legal questions directly impact the location and construction of Valve 344 within the Township. In short, the Township submits that under the Settlement Agreement SPLP agreed to locate any new above-ground facilities in the Township on an existing facilities site, or in the case of Valve 344, on the identified SPLP Use Area on Janiec 1 Tract, unless engineering constraints made it unable to do so. The Township and its safety expert justifiably relied on this promise, and to date, no justification has been provided at all as to why the valve station cannot be located on the SPLP Use Area. (Petition ¶¶ 29-31).

The Township further argues that the representations contained in Sections I and II of the Settlement Agreement should be construed to be binding promises. (*Id.* ¶ 41). In support of its argument, the Township cites to Pennsylvania case law holding that the goal of contract interpretation is to ascertain and give effect to the intent of the parties, and that courts should not interpret a contract in a manner that would lead to an absurdity. (*Id.* ¶¶ 37-38). The Township

concludes by stating that SPLP's interpretation of the Settlement Agreement is faulty, and that the Township has raised substantial legal questions. (*Id.* ¶¶ 40-42).

ii. SPLP

SPLP argues that the Township's right to relief is not clear because the unambiguous language of the Settlement Agreement makes clear that the statements made in Section II.A.2 were representations and conditions, not promises, and that under the Agreement, the remedy for an unfulfilled condition is to file a safety complaint with the Commission. (Answer ¶ 27).

SPLP contends that even if Section II.A.2 contains binding promises, SPLP still has not breached the Settlement Agreement because 1) the Agreement expressly contemplates the relocation of the Valve if engineering restraints so require (*id.* ¶ 29); 2) there are engineering constraints that preclude locating the Valve on the SPLP Use Area; and 3) the Township has been notified that the Valve will be constructed on the Janiec 2 Tract instead of the SPLP Use Area.

SPLP further argues that there is no language in the Settlement Agreement that requires SPLP to provide the Township notice in writing, to provide the Township with engineering documentation, to consult with the Township regarding the decision, or to obtain the Township's consent to the determination.

2. ALJ's Initial Decision

The Township has the burden of demonstrating that it has raised "substantial legal questions." *See Petition of Service Electric Telephone Co., supra.* The Township argues that its right to relief is clear because SPLP breached the Settlement Agreement by 1) placing the Valve

on the Janiec 2 Tract, 2) failing to notify the Township of the relocation of the Valve, and 3) providing no justification to date as to why the Valve cannot be located on the SPLP Use Area.

Under Pennsylvania law regarding contractual interpretation, I do not agree with the Township that the representations in Section II of the Agreement should be construed to be enforceable promises.

Under Pennsylvania law, evidence of prior or contemporaneous negotiations and agreements that contradict, modify, or vary the terms of an integrated contract is generally inadmissible unless there is evidence of fraud,² accident, or mistake. *See Gianna v. R. Russel & Co., Inc.*, 126 A. 791, 792 (Pa. 1924). Alleged prior or contemporaneous oral or written agreements, representations, or understandings concerning subjects dealt within the written contract are merged in or superseded by the integrated contract. *See McGuire v. Schneider, Inc.*, 534 A.2d 115, 117 (Pa. Super. Ct. 1987) (citing *Bardwell v. Willis Company*, 375 Pa. 503, 507, 100 A.2d 102, 104 (1953)); *see also Gianna*, 126 A. at 792.

A contract is integrated when the parties have their agreement in writing and intend that writing to be the final and complete agreement. *Gianna*, 126 A. at 792. The issue of whether a writing constitutes an integrated contract is a question of law that is to be determined prior to the application of the parol evidence rule. *See Walker v. Saricks*, 63 A.2d 9, 11 (Pa. 1949); *McGuire*, 534 A.2d at 118. Pennsylvania courts have found that contracts are integrated when

² The fraud exception is a narrow one that applies “*only* where it is alleged that the parties agreed that those representations would be included in the written agreement but were omitted by fraud” *1726 Cherry St. P’ship by 1726 Cherry St. Corp. v. Bell Atl. Properties, Inc.*, 653 A.2d 663, 666 (Pa. Super. Ct. 1995) (interpreting *Bardwell v. The Willis Co.*, 100 A.2d 102 (Pa. 1953)) (emphasis in the original). The Township has not claimed that a term or representation was omitted from the Settlement Agreement, therefore, the fraud exception does not apply.

the contract “conveys no suggestion that anything beyond the four corners of the writing is necessary in order to ascertain the intent of the parties.” *McGuire*, 534 A.2d at 118.

The parol evidence rule generally applies where the terms of the written contract are unambiguous. *See Grasso v. Thimons*, 559 A.2d 925, 928 (Pa. Super. Ct. 1989). While Pennsylvania courts do allow parol evidence where a contract is ambiguous, the Court must first determine whether an ambiguity exists. *See Katzeff v. Fazio*, 628 A.2d 425, 428 (Pa. Super. Ct. 1993). “A contract is not ambiguous if the court can determine its meaning without any guide other than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends” *Com., State Highway & Bridge Auth. v. E. J. Albrecht Co.*, 430 A.2d 328, 330 (Pa. Commw. Ct. 1981). Importantly, “a contract is not rendered ambiguous by the mere fact that the parties do not agree upon the proper construction.” *Id.*

At the hearing, I permitted and admitted into evidence parol evidence concerning the Settlement Agreement because the Township claimed it would produce evidence of ambiguity or fraud in the execution of the contract. None of the Township’s witnesses identified a word or phrase in the Settlement Agreement that it deemed ambiguous. Nor did the Township produce any evidence of fraud in the execution. The Pennsylvania Superior Court in *1726*

Cherry described fraud in the execution as follows:

In sum, *Bardwell* permits the admission of parol evidence of representations concerning a subject dealt with in an integrated written agreement and made prior to or contemporaneous with the execution of the agreement to modify or avoid the terms of that agreement *only* where it is alleged that the parties agreed that those representations would be included in the written agreement but were omitted by fraud, accident or mistake. This is commonly referred to as “fraud in the execution” because the party proffering the evidence contends that he or she executed the agreement because he or she was defrauded by being led to believe that the document he or she was signing contained terms that were actually omitted therefrom. Such a

case is to be distinguished from a “fraud in the inducement” case such as the instant one, where the party proffering evidence of additional prior representations does not contend that the parties agreed that the additional representations would be in the written agreement, but rather claims that the representations were fraudulently made and that but for them, he or she never would have entered into the agreement.

1726 Cherry St. P’ship by 1726 Cherry St. Corp. v. Bell Atl. Properties, Inc., 653 A.2d 663, 666 (Pa. Super. Ct. 1995).

In this case, the Township makes no claim that it executed the Settlement Agreement because it believed that the document contained terms that were omitted therefrom. The testimony provided by Mr. Brooman was to the opposite effect: that SPLP told the Township that it would *not* agree to make the representations in Section II to be covenants because doing so would mean that SPLP would have to do likewise for all other townships along the Mariner East 2 route.

Section I and II of the Settlement Agreement are titled “Background” and “Information Provided by SPLP”, respectively. *Id.* at 1-2. Nowhere in either of these sections does SPLP promise or commit to take any particular action. Instead, SPLP provides information to the Township, including SPLP’s intention to site Valve 344 on the SPLP Use Area, and the Township relied on that information in reaching the Settlement Agreement. *Id.* at 2-3. These sections are in contrast with Section IV of the Agreement, which is entitled “The Parties’ Promises, Covenants and Agreements.” In Section IV of the Agreement, SPLP agrees to undertake a number of obligations including recording a deed restriction for the SPLP Additional Acreage, refraining from building utility facilities on the SPLP Additional Acreage area, and providing the Township with notice of certain conditions that require remediation. *Id.* at 5-6. Significantly, for each of the promises made by SPLP in Section IV of the Agreement, the

Township insisted and SPLP agreed 1) that the promise would have a deadline for the action to be performed; and 2) that a written report would be provided to the Township to show that the action had been performed. By contrast, the representation at issue in this proceeding—that SPLP would notify the Township if engineering constraints required the relocation of the Valve—contains no deadline and no provision for written documentation.

The Settlement Agreement was negotiated by sophisticated counsel for the Township. Indeed, the Township used two sets of lawyers, a well-regarded outside law firm, High Swartz, and its solicitor for more than 30 years, Buckley Brion. Moreover, even the Township's evidence showed that the parties exchanged term sheets that changed the language regarding the valve at issue in this proceeding, and the parties understood that the basic terms would have to be fleshed out in a final, written agreement. In these circumstances, there is no reason to not give effect to the unambiguous language that the parties and their counsel chose to express their intent.

When all of the sections of the Settlement Agreement are viewed together, the contract is unambiguous and it is clear that Section II.A.2 contains representation and conditions. The remedy in the event the representation is untrue or the condition is unfulfilled is specified in Section IV.A.2.d of the Agreement—namely, the Township is permitted to file a safety complaint with the Commission if it believes that the altered plans so warrant.

Because Section II.A.2 of the Settlement Agreement cannot be construed as a promise, the Township has no right to seek enforcement of the provision. Indeed, this was precisely the bargain that Mr. Brooman struck with the General Counsel of SPLP when she said that SPLP

would not agree to make the provision a covenant because doing so would lead all the other municipalities to demand similar rights.

While I conclude that the Township has no right to relief as a matter of law given the unambiguous language of the Settlement Agreement, I further note that even if I accepted the Township's contention that the representation in Section II.A.2 of the Settlement Agreement should be enforced as a promise, I would find that SPLP has complied with its representation.

While the parties dispute whether SPLP properly notified the Township of its decision, at this point, it is clear that the Township is aware of the decision regarding the siting of the Valve, and ordering SPLP to provide additional notice to the Township would serve no useful function.

Accordingly, I conclude that the Township has not met its burden of showing that its right to relief is clear, even if I were to accept the Township's contention that Section II.A.2 of the Settlement Agreement contained enforceable promises.

- i. Siting the Valve on the Janiec 2 Tract Does Not Violate the Settlement Agreement.

Section II.A.2 expressly contemplates relocation the Valve elsewhere if engineering constraints so require, provided that it is not sited in the area designated "SPLP Additional Acreage." Specifically, Section II.A.2 provides:

The pump station, the VCU and all accessory and appurtenant above-ground facilities associated with all phases of the Mariner East Project will be maintained within the present active site, Parcel No. 52-1-8-U, on which the existing Boot Road Pump Station currently operates (the "SPLP Existing Site"), except that a remote operated valve station will be constructed and maintained on SPLP's adjacent 4.42 acre property, Parcel No. 52-0-10-10.1, also known as the former Janiec Tract, (the "SPLP Additional Acreage"). The proposed location of such valve station on the SPLP Additional Acreage is depicted on the map attached hereto as Appendix 1 and

incorporated by reference (the “SPLP Use Area”). **SPLP intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If due to engineering constraints, SPLP is unable to construct the valve station in the SPLP Use Area, SPLP will notify WGT. Nothing in this Settlement Agreement constitutes an authorization or agreement for SPLP to construct the valve station in any location on the SPLP Additional Acreage other than in the SPLP Use Area.**

Twp.-4, ¶ II(A)(2) (emphasis added).

SPLP experienced engineering constraints that rendered placement of the Valve on the SPLP Use Area infeasible and required relocation. Those constraints included: 1) The SPLP Use Area was not large enough to allow a successful staging of the HDD without SPLP having to condemn and destroy a nearby home; 2) existing utility facilities belonging to Aqua PA prevents SPLP from staging the HDD at the SPLP Use Area; 3) Staging the installation of the Pipeline on the SPLP Use Area would have required SPLP to drill underneath unconsolidated, fractured sandstone, which would in turn increase the risk of inadvertent returns possibly resulting in the discharge of drilling fluid on Route 202 creating a safety hazard; and 4) SPLP would have had to open cut Boot Road, which, due to existing utility lines, would have required closing both lanes of Boot Road. The closure of Boot Road would have caused severe traffic disruptions and would have delayed emergency services to local residents.

As a result, SPLP relocated the Valve to another SPLP-owned property, the Janiec 2 Tract. Consistent with Section II.A.2 of the Agreement, the Janiec 2 Tract is not located on the SPLP Additional Acreage. Thus, even if Section II.A.2 of the Agreement were an enforceable promise, SPLP has complied with this provision.

ii. The Township’s Claim of Pretext

During the hearing, the Township attempted to refute SPLP's determination of engineering constraints by implying that SPLP had already decided to site the Valve on the Janiec 2 Tract and its recitation of engineering constraints was not supported by engineering drawings showing the Valve on the SPLP Use Area.

I do not find the Township's claim of pretext to be persuasive. First, the Township introduced no evidence that the Valve can feasibly and safely be sited on the SPLP Use Area. I find Mr. Gordon's testimony to the contrary to be detailed, credible, and convincing. As Mr. Gordon explained on cross-examination, the absence of engineering drawings evaluating the feasibility of siting the Valve on the SPLP Use Area is not evidence that this alternative was not considered by the company; rather, it is evidence that the alternative was so problematic that it made no sense to proceed to produce the drawings. I also note that SPLP introduced un rebutted testimony that the SPLP Use Area would have been the preferred location for the Valve given its lower cost, faster schedule, ease of maintainability, and SPLP's desire to avoid further disputes with the Township. Finally, the Township conceded at the hearing that SPLP had complied with various other provisions of the Settlement Agreement that were equally significant, including the siting of a vapor combustion unit, the automation of the valves for Mariner East 1, and the prohibition against siting facilities on the SPLP Additional Acreage. The Township's attempt to tarnish SPLP with accusations of bad faith are belied by SPLP's conduct in honoring the remaining provisions of the Settlement Agreement.

iii. SPLP Notified the Township of the Relocation.

The evidence demonstrates that the Township was notified of the Valve's relocation on at least three separate occasions. SPLP first informed the Township of the decision to construct Valve 344 on the Janiec 2 Tract in a January 2016 meeting between Township representatives

and SPLP. As described in Matthew Gordon's testimony, during the meeting, Mr. Gordon informed Kristin Camp, the Township's Solicitor, and Casey LaLonde, the Township Manager, that SPLP was unable to construct Valve 344 on the SPLP Use Area, and would instead construct the Valve on the Janiec 2 Tract. Ms. Camp and Mr. LaLonde testified that they were never informed during the January 2016 meeting that Valve 344 would be sited on the Janiec 2 Tract. Although I do not doubt the sincerity of their testimony, I believe that the likely explanation for the discrepancies in their testimony were due to a misunderstanding on the part of Ms. Camp and Mr. LaLonde.

The Township was notified a second time in 2016 and early 2017, when the Township received SPLP's proposal to construct Valve 344 on the Janiec 2 Tract. Neither Party disputes that the Township received these proposals, and because the Settlement Agreement does not specify how notice shall be given, SPLP's submission of the proposal constitutes valid notice under the express terms of the Agreement.

The Township was notified a third time in March of 2017, when SPLP met with Township representatives including Township Manager Casey LaLonde and Township Solicitor Kristin Camp. During the March 2017 meeting, SPLP described the engineering constraints that exist on the SPLP Use Area, and why it concluded that Valve 344 should be constructed on the Janiec 2 Tract. Again, the Agreement merely provides that SPLP will "notify" the Township in the event of a relocation. *See* Twp.-4 ¶ II.A.2. The unambiguous language of the Settlement Agreement does not require SPLP to provide any specific form of notice or deadline by which notice must be provided; therefore, SPLP's notifications were sufficient under the terms of the Settlement Agreement.

- iii. SPLP Has No Obligation Under the Terms of the Settlement Agreement To Provide a Written Justification for the Relocation of Valve 344 or Consult with the Township.

The unambiguous language of Section II.A.2 of the Settlement Agreement contains no requirement that SPLP provide written documentation to the Township or that it consult with the Township regarding its engineering determinations. I note that this stands in contrast to the promises contained in Section IV of the Agreement where SPLP did agree to provide written documentation and, as regards landscaping for Mariner East 1, to consult with the Township within a defined timeframe. I reject the Township's contention that the Commission should write additional obligations into the Settlement Agreement.

C. Whether the Need for Relief Is Immediate.

The Parties do not seriously dispute that, assuming the Township satisfies its burden for the remaining factors, the need for relief is immediate. Therefore, for the sake of brevity, I will assume that the Township has met its burden with respect to this requirement.

D. There Is No Irreparable Injury To the Township.

1. Positions of the Parties

i. The Township

The Township argues that it will be irreparably harmed if SPLP is allowed to begin construction on the Janiec 2 Tract before the Commission decides the Township's Amended Complaint because the Janiec 2 Tract will be "irreparably altered", with the loss of the trees and green cover. (Petition ¶¶ 57, 62). The Township also contends that SPLP is out of compliance with its Chapter 102 permit issued by DEP and the Earth Disturbance Permit that was issued by the Township, and that compliance with these permits is critical to protect the health, safety, and welfare of the Township's residents. (*Id.* ¶¶ 58-60).

The Township then lists a number of separate reasons why it will suffer irreparable harm if relief is not granted, including: 1) the Township wants to preserve the status quo and block the clearing of the Janiec 2 Tract to fulfill its obligations under the Environmental Rights Amendment (*id.* ¶¶ 63); 2) SPLP's construction workers have blocked the fire department's driveway creating a potential safety concern (*id.* ¶¶ 65); and 3) the construction of the Valve on the Janiec 2 Tract will prevent the development of the Tradition's independent living facility. (*Id.* ¶¶ 66-70).

ii. SPLP

SPLP argues that the Township has set forth contradictory plans for future use of the Janiec 2 Tract in an attempt to gin up irreparable harm. (Answer ¶¶ 48-49). In short, SPLP states that the Township cannot argue that it is both attempting to preserve its natural resources

and allow the site to be developed into an independent living facility. (*Id.* ¶ 51). SPLP contends that it is merely performing authorized work on property that SPLP owns. (*Id.* ¶ 50).

Furthermore, SPLP maintains that while the Township purports to be concerned with avoiding potentially unnecessary construction and traffic disruption if the Commission were ultimately to rule in the Township's favor, SPLP points out that the alternative sought by the Township—siting the Valve on the SPLP Use Area—would actually involve far more disruption and harm to the residents of the Township since it would require the complete closure of Boot Road.

2. ALJ's Initial Decision

The Township has not provided sufficient evidence to show that it will suffer irreparable harm if relief is not granted. The evidence demonstrates that SPLP owns the Janiec 2 Tract, and its activities on the Janiec 2 Tract have been approved by both the DEP and the Township. SPLP's use of its own property for work that has been authorized by the Township and previously approved by the Commonwealth's DEP is not irreparable injury. *See Beisely. Pa. Power & Light Co.*, 78 Pa. P.U.C. 569, 1993 WL 383053 (Dkt. No. C-00924683, Order Entered Mar. 12, 1993); *see also PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Commw. Ct. 2007). Furthermore, SPLP has already completed its vegetative clearing and grubbing activities; therefore, the issue is now moot.

The Township's concerns regarding the Environmental Rights Amendment also do not constitute irreparable injury because the Township has shown a clear intent to develop the Janiec 2 Tract as evidenced by 1) its issuance to SPLP of an Earth Disturbance Permit 2017-202-1, authorizing work on the Janiec 2 Tract; and 2) the Township's approval of an independent living facility that would have occupied a larger portion of the Janiec 2 Tract than Valve 344.

The Township's desire to have an independent living facility built on the Janiec 2 Tract also does not constitute irreparable harm. The evidence at the hearing made clear that both the Traditions independent living facility and Valve 344 could have been built on the Janiec 2 Tract. The developer of the facility withdrew its plans because the SPLP's construction activities would have delayed the start of construction of the independent living facility. Further, SPLP now owns the Janiec 2 Tract, and is under no obligation to allow the Traditions developer to build the independent living facility on the property. Therefore, the Township will not suffer irreparable harm because the independent living facility will not be built on the Janiec 2 Tract regardless of where Valve 344 is constructed.

The Township has also not provided sufficient evidence to show that SPLP's construction activities have had any meaningful impact on the nearby fire department's ingress and egress. Although there is evidence that a small pickup truck associated with SPLP's construction crews briefly and partially blocked the fire department's driveway on July 6, the testimony also established that SPLP has installed a new driveway, which will allow it to work on the Janiec 2 Tract without interfering with the fire department's activities. The Township furnished no evidence that SPLP has blocked egress after July 6.

Finally, there was uncontested evidence admitted at the hearing that the alternative sought by the Township in this proceeding—constructing the Valve on the SPLP Use Area—would be imprudent and dangerous. I therefore conclude that it is the Township's desired relief that would cause irreparable harm.

D. Whether the Relief Requested Is Injurious To the Public.

1. Positions of the Parties

i. The Township

The Township argues that its requested relief is not injurious to the public because it is not attempting to stop the construction of the Mariner East Pipeline. (Petition ¶ 76). The Township argues that it is simply trying to protect the health, safety, and welfare of its residents, and preserve its natural resources. (*Id.* ¶¶ 81-82). The Township concludes by submitting that a delay in construction is only a slight inconvenience for SPLP and that there is no indication that the Mariner East Pipeline will go into service in 2017. (*Id.* ¶ 84)

ii. SPLP

SPLP argues that the Township's requested relief will delay construction of the Mariner East Pipeline, which will in turn harm producers, shippers, and consumers that are relying on SPLP's utility services. (Answer ¶ 57). SPLP also contends that the Township's requested relief violates longstanding public policy and public utility law, which states that local municipalities have no authority to regulate the siting of public utility facilities. (*Id.* ¶¶ 58-64).

2. ALJ's Initial Decision

The Township's requested relief would injure the public because it would delay the completion of the Mariner East Pipeline, which would harm producers, shippers, and consumers. SPLP's target completion date for the Mariner East Pipeline is October 2017 with the expectation that the Pipeline will provide propane and butane to consumers by the winter season.

The Township seeks to stop all work on the Janiec 2 Tract until the underlying proceeding has been resolved. The Janiec 2 Tract is being used to stage the pullback area for the HDD to install the pipe that will ultimately transport propane and butane. Stopping the work on

the Janiec 2 Tract will delay the completion of Mariner East Pipeline, which will in turn harm the public by denying it access to vital utility services.

Finally, the relief sought by the Township in this proceeding violates longstanding public policy and public utility law. It is well-settled in Pennsylvania that local municipalities have no authority to regulate the siting of public utility facilities. *Duquesne Light Co. v. Upper St. Clair Township*, 105 A.2d 287, 292 (Pa. 1954). Local municipalities have no authority to review and scrutinize engineering determinations of public utilities. *County of Chester v. Philadelphia Electric Co.*, 218 A.2d 331, 333 (Pa. 1966). Granting the relief requested by the Township would encourage local municipalities to encroach on the Commission's exclusive authority to oversee the construction and operation of public utility facilities.

The Township's requested relief would prove injurious to the public, and the Commission will deny the Petition for an Interim Emergency Order.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding under 52 Pa. Code § 5.21.
2. In order for the Township to be entitled to interim emergency relief, the Township must satisfy each of the following requirements: 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. § 3.6.

3. The Commission may grant interim emergency relief only if all of the forgoing elements exist. *Petition of Service Electric Telephone Company, LLC*, 2013 WL 1461735 (Pa. P.U.C. April 4, 2013).
4. The Township must establish each of the above factors by a preponderance of the evidence. *See Application of Fink Gas Co.*, 2015 WL 5011629, at W*3-4 (Pa. P.U.C. Aug. 20, 2015).
5. The Township must also show that an emergency exists. § 3.1.
6. An “emergency” is a “situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” *Id.*
7. “The issuance by the Commission of an emergency order is a form of relief to be sparingly utilized in only the most extraordinary circumstances....” *Petitions of West Penn Power Company for Approval of Electric Energy Purchase Agreements and for Orders Granting Rate Recognition of Purchased Power Costs Re: Milesburg Energy, Inc.*, 69 Pa. P.U.C. 343 (1989).
8. The Township has failed to prove by a preponderance of the evidence that an emergency exists. § 3.1.
9. The Township has failed to prove by a preponderance of the evidence that its right to relief is clear. *Petition of Service Electric Telephone Company, LLC*, 2013 WL 1461735 (Pa. P.U.C. April 4, 2013).
10. The Township has failed to prove by a preponderance of the evidence that the injury it would suffer would be irreparable if relief is not granted. *Beisely. Pa. Power & Light Co.*, 78 Pa. P.U.C. 569, 1993 WL 383053 (Dkt. No. C-00924683, Order Entered Mar. 12, 1993).

11. The Township has failed to prove by a preponderance of the evidence that its requested relief would not be injurious to the public interest. *Duquesne Light Co. v. Upper St. Clair Township*, 105 A.2d 287, 292 (Pa. 1954).

V. **ORDER**

THEREFORE,

IT IS RECOMMENDED:

1. Petitioner West Goshen Township's Petition for an Interim Emergency Order, and the relief requested thereunder are denied.
2. The question as to whether West Goshen Township was properly denied interim emergency relief is certified to the Commission.

Dated: July __, 2017

Elizabeth H. Barnes
Administrative Law Judge