

Phone: (215) 569-5618  
Fax: (215) 832-5618  
Email: MMontalbano@BlankRome.com

July 31, 2017

**VIA COURIER**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

RECEIVED  
2017 JUL 31 AM 11:17  
PA PUC  
SECRETARY'S BUREAU  
FRONT DESK

Re: ***West Goshen Township v. Sunoco Pipeline L.P.***  
**Docket No. C-2017-2589346**

Dear Secretary Chiavetta,

Enclosed please find Sunoco Pipeline L.P.'s Brief Addressing the Material Question Certified by Administrative Law Judge Elizabeth Barnes and the Appendix to the Brief, each of which are being filed in connection with the above-referenced case and ALJ Barnes's July 24, 2017 Interim Emergency Order and Certification of Material Question. I have also included a CD with electronic versions of the enclosed documents. Copies have been served on all parties of record in accordance with the Certificate of Service.

Thank you for your attention to this matter, and please do not hesitate to contact me with any questions or concerns.

Very truly yours,



Michael J. Montalbano

Enclosures

cc: As per Certificate of Service

**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. 18<sup>th</sup> 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 BRIEF IN OPPOSITION  
TO THE ORDER GRANTING INTERIM EMERGENCY RELIEF**

---

In accordance with 52 Pa. Code §§ 3.10(b) and 5.305(c), Sunoco Pipeline L.P. ("SPLP") hereby files its Brief addressing the Material Question certified by Administrative Law Judge Elizabeth Barnes (the "Presiding Officer") in the above-captioned matter.

## I. INTRODUCTION

On July 24, 2017, following a hearing, the Presiding Officer granted West Goshen Township's (the "Township's") Petition for Interim Emergency Order and blocked SPLP from completing construction of the Mariner East 2 Pipeline (the "Pipeline" or "Mariner East 2") until at least the latter half of 2018.<sup>1</sup> Before the Interim Emergency Order was issued, SPLP aimed to complete construction of the Pipeline by October 2017, in advance of the winter heating season. (SPLP-185, ll. 14-17). The Interim Emergency Order may cause the *complete denial* of public utility service to the public for a period of 9 months or more, including during the winter season when the service is needed most.

There was no evidence presented at the hearing of any clear or present danger to life or property that could possibly qualify as an "emergency" under Section 3.1 of the Commission's rules, 52 Pa. Code § 3.1. None is identified in the Interim Emergency Order. Instead, the central issue underlying the Order is whether a valve should be located on land situated on the west side of Route 202 at Boot Road (the "SPLP Use Area") or on the east side of Route 202 at Boot Road (the "Janiec 2 Tract"). SPLP had represented to the Township in the Settlement Agreement that it intended to construct the valve on the SPLP Use Area *subject to engineering constraints* and to notify the Township if engineering constraints required SPLP to relocate the valve. It is undisputed that both parcels of land are owned in fee by SPLP.

At the hearing, SPLP presented *unrebutted evidence* from the Project Director of Mariner East 2, Matthew Gordon,<sup>2</sup> that the valve could not safely and feasibly be located on the SPLP

---

<sup>1</sup> The Interim Emergency Order enjoins SPLP from construction activity in West Goshen Township until the entry of a final Commission Order ending the Township's formal amended complaint proceeding. In an Order Denying Motion For Judgment On The Pleadings also issued on July 24, 2017, the Presiding Officer set a procedural schedule that calls for hearings on April 25 and 26, 2018, and final Reply Briefs due on June 18, 2018. (See SPLP-241). Under this schedule, a final order from the Commission would likely be issued in July or August of 2018.

<sup>2</sup> Page 5 of the Interim Emergency Order incorrectly identifies Matthew Gordon as "Richard Gordon".

Use Area while it could be prudently sited on the Janiec 2 site. (SPLP-156-160). The Township's safety expert, Richard Kuprewicz, testified that he had not examined the feasibility of siting the valve on the SPLP Use Area, but had reviewed SPLP's plans for the Janiec 2 site and concluded that those plans *exceeded* the applicable federal safety standards. (SPLP-97-100).

The Interim Emergency Order thus halts an important and critical expansion of public utility service to force exploration of an engineering option that SPLP's project team and engineering group has *already rejected* as being unsafe and infeasible. The Presiding Officer did so without *any* evidence that the Township's desired site would be safe and feasible and despite testimony from both SPLP and the Township's own expert that the site chosen by SPLP *is* safe and feasible. SPLP respectfully requests the Commission to find that the Presiding Officer erred by finding that the Township had demonstrated a clear right to relief in these circumstances.

While the Township has complained about not receiving "proper" notice of SPLP's determination, it is undisputed at this point that the Township has had actual notice of SPLP's plans at least since January of 2017, at least five (5) months before construction began on July 6, 2017. The Commission can review the applicable language of the Settlement Agreement and see that there is no basis *in the contract* for the Presiding Officer's theory that the *representation* that SPLP would "notify" the Township might be construed as a *covenant* by SPLP to provide the Township with written engineering documentation for the relocation, to permit the Township to review the documentation, to consult with the Township over the matter, or to obtain the Township's consent to the ultimate selection. Contrary to the Presiding Officer's erroneous legal conclusion, there is no ambiguity in the Settlement Agreement that would permit the Commission to conclude that the parties intended to confer on the Township this suite of rights with regard to the relocation of the valve.

For the reasons set forth below, the Commission should promptly vacate the Order. Alternatively, Section 3.8 of the Commission's rules provides that an order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary. In the event the Commission upholds the propriety of the Presiding Officer's order, SPLP respectfully requests that the Commission's Order stipulate that: (1) the Interim Emergency Order will be effective only if the Township posts a bond in an amount that the Commission considers proper to pay the costs and damages sustained by SPLP if SPLP ultimately prevails on the merits; and (2) the Office of Administrative Law Judge be directed to hold a hearing immediately to determine the amount of such security.

## **II. ARGUMENT**

### **A. Applicable Legal Standard**

Under Section 3.6(b) of the Commission's rules, a petition for emergency relief can be granted only if it is supported by facts which establish the need for interim emergency relief, including facts to support the following:

- (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 (*emphasis added*).

The Commission may grant interim emergency relief only if all of the forgoing elements exist. *Pet. of Serv. Elec. Tel. Co., LLC*, 2013 WL 1461735 (Pa. P.U.C. April 4, 2013).

Additionally, emergency relief, including interim emergency relief, must address an "emergency" as defined by the rules governing emergency relief. *See Pet. of Norfolk Southern*

*Ry. Co. for Rescission or Amendment of the Pa. Pub. Util. Comm'n's Order entered on June 12, 1975*, 2011 WL 6122882, \*10-12 (Pa. P.U.C. Dec. 1, 2012) (finding that petitioner failed to show emergency existed and upholding denial of interim emergency order). Section 3.1 defines an “emergency” as a “situation which presents a *clear and present danger* to life or property.” 52 Pa. Code § 3.1 (*emphasis added*). “The issuance by the Commission of an emergency order is a form of relief to be sparingly utilized in only the most extraordinary circumstances....” *Pets. of W. Penn Power Co.*, 69 Pa. P.U.C. 343 (Pa. Pub. Util. Comm’n 1989).

**B. No Evidence Was Offered of a Clear and Present Danger to Life or Property, and The Presiding Officer Did Not Find The Existence of an Emergency**

The Presiding Officer’s ruling contains no mention of any clear or present danger to life or property, and the Township offered no evidence that such an emergency exists.<sup>3</sup> The absence of an emergency is fatal to the issuance of the Interim Emergency Order. *See Pet. of Norfolk*, 2011 WL 6122882, \*10-12.

**C. The Presiding Officer Misconstrued A Clear and Unambiguous Contract**

The underlying dispute between the Township and SPLP arises out of a Settlement Agreement (Township Exhibit 4 at SPLP-251) among SPLP, the Township, and the Concerned Citizens of West Goshen Township (the “Concerned Citizens”) that was negotiated by two sets

---

<sup>3</sup> In its Petition for Ex Parte Relief and an Interim Emergency Order, the Township represented to the Commission that it was seeking to fulfill its Article I, Section 27 constitutional obligation to protect natural resources because the Janiec 2 Tract was vacant land and fully forested” *Petition*, ¶63, and to protect public safety by ensuring access to and egress from the Fire Department next to the Janiec 2 Tract, *Petition*, ¶66. During the hearing, the Township Manager conceded that there have been no vehicles blocking the Fire Department driveway since July 7 and the grubbing and clearing is completed. (SPLP-69, ll. 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. (SPLP-184, ll. 13-17.) Finally, while the Township had professed a concern about protecting natural resources, it was undisputed that on January 27, 2016, the Township’s Board of Supervisors had approved a final land development plan for the Janiec 2 Tract 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. (SPLP-67, ll. 17-25; SPLP-68, ll. 1-5; SPLP-183, ll. 1-12; *see also* Respondent Ex. 6 and 7 at SPLP-436-442).

of sophisticated lawyers for the Township (SPLP-57-59) in negotiations spanning several months and multiple terms sheets (Township Exhibits 14, 15, and 16 at SPLP-345-364).

This dispute centers mainly around the interpretation of Sections II and IV of the Settlement Agreement and two parcels of land that are incorrectly described in footnote 1 on page 3 of the Interim Emergency Order. As set forth in Paragraph II.A.2 of the Settlement Agreement, there is a 4.42 acre property, which the parties have called the Janiec 1 Tract, that is adjacent to SPLP's existing Boot Road Pump Station on the west side of Route 202. The Settlement Agreement designates this land as "the SPLP Additional Acreage." Paragraph II.A.2 further describes the site where SPLP said it intended to locate the valve station. This site was designated the "SPLP Use Area." Contrary to the Presiding Officer's misunderstanding, the SPLP Additional Acreage is *not* within the SPLP Use Area. The reverse is true: the SPLP Use Area is a small area located within the much larger SPLP Additional Acreage. This can be clearly seen on the various exhibits admitted into evidence, including Appendix 1 to the Settlement Agreement (Township Exhibit 4), Township Exhibit 2 and Respondent Exhibit 4.

The bargain struck by the parties in the Settlement Agreement with respect to these parcels is straightforward, plain, and unambiguous. The Township wanted to confine SPLP's activities in the Township to the existing Boot Road Pump Station. The Concerned Citizens wanted to stop SPLP from siting any facilities on the SPLP Additional Acreage, which was adjacent to their homes. SPLP knew that a valve would be required for Mariner East 2 in the Township, but the final location of the valve would depend on the engineering. The Settlement Agreement addressed these concerns as follows:

In Paragraph II.A.2 of the Settlement Agreement, SPLP represented that it intended to confine all above-ground Mariner East Project facilities within the Township to the existing Boot

Road Pump Station, *except* for the valve. SPLP represented that, *subject to engineering constraints*, it intended to construct the valve in the SPLP Use Area. SPLP further represented that it would notify the Township if engineering constraints required the valve to be relocated. The *expressed language* of the final Agreement acknowledges engineering constraints may prevent the placement in the SPLP Use Area.

SPLP represented to the Township in Paragraph II.A.3 of the Settlement Agreement that at the time of execution of the Settlement Agreement, *other than* the valves and vapor combustion unit described in Sections II.A.1 and 2, SPLP had no plans to construct any *additional* above-ground facilities in the Township.

In Paragraph IV.A.1.a of the Agreement, SPLP covenanted and agreed that, except with respect to the SPLP Use Area, SPLP would not construct or install any above-ground facilities *on the SPLP Additional Acreage* for any phase of the Mariner East Project.

Specifically, Section II.A, titled “*Pertinent Information Provided by SPLP*”, provides:

II. Pertinent Information Provided by SPLP

- A. SPLP has provided WGT and WGT’s consulting expert with the following information (“SPLP Information”). WGT and CCWGT expressly rely upon the accuracy of the SPLP Information in reaching this Agreement.

\* \* \*

2. 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.**

SPLP-255-56 ¶ II.A.2 and 3 (emphasis added).

Paragraph IV.A.1.a of the Agreement, titled “The Parties’ Promises, Covenants and Agreements” provides:

IV. The Parties’ Promises, Covenants and Agreements

A. Based on the SPLP Information recited in Section II of this Agreement, the Parties agree to make the following promises, covenants and agreements:

1. SPLP covenants and agrees as follows:

- a. **Because of its existing Pump Station Facility at Boot Road, except with respect to the SPLP Use Area, SPLP covenants and agrees that it shall not construct or install any pump stations, VCUs, or above-ground pertinent public utility facilities on the SPLP Additional Acreage for any phase of the Mariner East Project. SPLP also agrees that, except for the SPLP Use Area, any use of the SPLP Additional Acreage for staging construction, laydown or other operational activity will be temporary, and SPLP will restore the surface to its former condition following the completion of such activity. SPLP will execute and record a deed restriction reflecting this limitation within sixty (60) days of the Effective Date of this Agreement, in a form substantially similar to the Form of Deed Restriction attached hereto as Appendix 4. SPLP will provide copies of the recorded deed restriction to counsel for WGT and CCWGT within five business days of the date of recording.**

SPLP-258-59 ¶ IV.A.1.a (emphasis added).

At the hearing, Mr. Gordon testified that SPLP considered multiple paths for the siting of the valve. (SPLP-172, ll. 1-10; SPLP-189, l. 25; SPLP-190, ll. 1-6). SPLP ultimately determined that it must site the valve on the east side of Route 202, on the Janiec 2 Tract, because SPLP’s engineering group concluded that constructing the valve on the SPLP Use Area was not safe or feasible, while constructing it on the Janiec 2 Tract was both safe and feasible. (SPLP-156-161).

With these facts as background and having clarified the Presiding Officer's misunderstanding, the Presiding Officer's erroneous construction of the Settlement Agreement becomes clear. In the Interim Emergency Order, the Presiding Officer said the legal questions underlying the Township's clear right to relief included "1) whether the Settlement Agreement requires Sunoco to construct any above-ground valve station facilities in the Township within the "SPLP Use Area" unless Sunoco is unable to do so due to engineering constraints; . . . and 7) whether the Settlement Agreement grants Sunoco the right to locate valve facilities anywhere it wishes in the township other than on the SPLP Additional Acreage." (SPLP-224-225).

Applying the plain and unambiguous language of the Settlement Agreement, the answers to these questions are patent: as set forth in Paragraph IV.A.1.a, SPLP is *forbidden* from siting the valve on the SPLP Additional Acreage *unless* the valve is sited in the SPLP Use Area. This limitation was further reinforced via a Deed Restriction that was attached as Appendix 4 to the Settlement Agreement. Because of the promise in Paragraph IV.A.1.a and the Deed Restriction, if SPLP *cannot* site the valve in the SPLP Use Area, then the *only possible alternative* is to site the valve somewhere *other than on the SPLP Additional Acreage*. This point is further emphasized by the sentence in Paragraph II.A.2 that states, after noting that the valve could be relocated for engineering constraints, "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." (SPLP-256 Emphasis supplied.)<sup>4</sup>

---

<sup>4</sup> During the hearing, SPLP objected to parol evidence because the contractual language was clear and unambiguous. Nevertheless, overruling SPLP's objection, the Presiding Officer permitted the Township Manager and the Township Solicitor to testify as to their understanding of the parties' intent. While they testified as to their understandings, neither tied their understanding to any specific ambiguity in the language of the Settlement Agreement. For example, the Township Manager 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. (SPLP-29, ll. 19-23.) This understanding is the opposite of what the Settlement Agreement provides. Under the Settlement Agreement, SPLP was forbidden from constructing on the SPLP Additional Acreage, and by their express terms, the

The Settlement Agreement is *silent* and contains no provisions as to SPLP's right to site the valve elsewhere in the Township on land that is not the SPLP Additional Acreage. The issue is not, as the Presiding Officer seeks to frame it, whether the Settlement Agreement confers a right on SPLP to site the valve elsewhere. Rather, the issue is whether the Settlement Agreement *prohibits* SPLP from siting the valve elsewhere. It plainly does not; the prohibition applies *only* to the SPLP Additional Acreage—the parcel of land on the west side of Route 202. If the prohibition applied to *all of the Township*, as the Township contends,<sup>5</sup> then the valve could not be sited *at all* if engineering constraints required the valve to be relocated outside of the SPLP Use Area. The parties could not have intended this absurd and unreasonable result. Indeed, such a reading would render meaningless the very concept of the “SPLP Additional Acreage”, and the repeated references in the Agreement to the “SPLP Additional Acreage” would be surplusage.

Similarly, the Presiding Officer misread the plain and unambiguous language of Section II of the Settlement Agreement. In the Order Denying Motion for Judgment on the Pleadings, the Presiding Officer quotes Paragraph V.A.4 of the Settlement Agreement, which states:

“The Parties acknowledge and agree that any action to enforce any provision of this Agreement (other than the deed restriction on the use of the SPLP Additional Acreage) shall be brought before the Pennsylvania Public Utility Commission or any such successor agency or commission.”

The Presiding Officer then quotes the representations in Paragraphs II.A.2 and A.3 of the Settlement Agreement as if they contain enforceable promises, but *omits the language that begins Paragraph II stating that those statements are information provided by SPLP*:

“II. Pertinent Information Provided by SPLP

---

Settlement Agreement and the Deed Restriction do not permit SPLP and the Township to agree to enlarge the SPLP Use Area. The Deed Restriction would be enforceable by parties other than the Township itself, so the Township could not unilaterally decide to alter the deal.

<sup>5</sup> Although the Township Solicitor testified that it was her understanding that the prohibition applied to the entire Township, she conceded that the language of the Settlement Agreement does not so provide. (SPLP-123, ll. 3-15).

- A. SPLP has provided WGT and WGT's consulting expert with the following information ("SPLP Information"). WGT and CCWGT expressly rely upon the accuracy of the SPLP Information in reaching this Agreement."

This is a critical difference. By overlooking the prefatory language identifying the statements as SPLP Information, the Presiding Officer erroneously converts a *representation* in the Settlement Agreement into a *covenant*, opening the door to fictional promises that are simply not in the contract.

Although the purpose of Paragraph II—on its face—is merely to recite the *information provided by SPLP*, the Presiding Officer found that the Township's right to relief was clear because issues could theoretically exist as to whether the Settlement Agreement requires SPLP: (1) to present the engineering data supporting its position to the Township; (2) to permit such engineering data to be reviewed and analyzed by the Township's safety expert, Richard Kuprewicz; and (3) to then consult with the Township and secure the Township's consent to some other arrangement.<sup>6</sup> (SPLP-224-225). The flaw in the Presiding Officer's reasoning should be obvious: there cannot be any such issues because Paragraph II was only a recitation of information provided by SPLP, not a suite of promises to take action in the event the parties disagreed on the sufficiency of SPLP's engineering determinations.<sup>7</sup>

---

<sup>6</sup> The Presiding Officer's erroneous interpretation of the Settlement Agreement is clear from the July 24, 2017 Order Denying Motion for Judgment on the Pleadings. On page 7, the Presiding Officer states:

"Although Sunoco believes West Goshen was properly notified within the meaning of the settlement when it announced plans to relocate Valve 344, the township disagrees that this notice was proper in that in the event Sunoco ran into engineering constraints that it believed rendered it unable to construct a necessary valve on the SPLP Use Area, Sunoco should have notified the township and presented the engineering data supporting its position to the township. Sunoco's engineering data could then have been analyzed by Mr. Kuprewicz and other township experts and the township's response to a proposed relocation would have been guided by independent expertise." (SPLP-239).

<sup>7</sup> Even the Township Manager conceded that the representation in Paragraph II.A.2 that SPLP would notify the Township in the event engineering constraints required relocation of the valve contained no language creating a deadline for the notification, no language requiring the notice to be in writing, no language stating that the Township has any right to review SPLP's engineering determination, and no right of consent if SPLP does determine that an engineering constraint exists. (SPLP-63, ll. 2-16). The Township Manager further conceded that this stood in contrast to the promises, covenants and agreements made by SPLP in Section IV.A.1 of the Settlement Agreement where, in each case, when SPLP made a promise, that promise included: (1) a deadline for the action to be

Finally, the Presiding Officer's conclusion that the Settlement Agreement is ambiguous ignores the parties' *explicit* coverage in the Settlement Agreement of what would happen if SPLP changed its construction plans and varied from the SPLP Information provided in Paragraph II. In Paragraph IV.A.2 of the Settlement Agreement, the Township *conditioned* its obligations on SPLP constructing and operating the facilities as described in Paragraph II:

**As long as SPLP (i) constructs and operates facilities in WGT as described in Paragraph II above; (ii) abides by the covenants and agreements in Paragraph III.A.1 above; and (iii) operates in a manner consistent with the safety, design and engineering facts and information heretofore provided to WGT's consultant, WGT agrees that it will not file or join in any complaint against the safety of SPLP's service or facilities with the Commission or any other federal, state or local government agency or endorse or promote any protest or action filed by the CCWGT or any other individual or group against SPLP with respect to the safety of the Mariner East 1 or the valve station described in paragraph II.A.2 of this Agreement.**

SPLP-260 ¶ IV.A.2.d. The Settlement Agreement itself answers the Presiding Officer's "substantial legal questions" as to "whether at the time of execution of the Settlement Agreement, Sunoco had plans and withheld material information about its plans for the ME2 phase pipeline" and "whether Sunoco always intended to site Valve 344 on the Janiec 2 Tract and misrepresented this intention at the time of the Settlement Agreement." The Settlement Agreement provided in Paragraph IV.A.2.e that SPLP would share its plans for ME 2 with Richard Kuprewicz upon the execution of a mutually agreeable confidentiality agreement, so that Mr. Kuprewicz could perform a safety review.<sup>8</sup> If SPLP failed to construct the valve station as

---

performed; and (2) a requirement that SPLP provide the Township with written documentation that the promise had been performed. (SPLP-61, ll. 2-25; SPLP-62, ll. 1-25; SPLP-63, ll. 1-5).

<sup>8</sup> Contrary to the Presiding Officer's implication, there was no legal obligation on the part of SPLP to disclose these plans to the Township *before* it entered into the Settlement Agreement (i.e., at the time it was negotiating the site for the valve). *After* the Settlement Agreement became effective, SPLP did comply with its obligation under Paragraph IV.A.2.e by furnishing the plans to Mr. Kuprewicz, and Mr. Kuprewicz's report concluded that siting the

described in Paragraph II, then, *as the parties expressly stipulated* in Paragraph IV.A.2.d of the Settlement Agreement, the Township could bring a safety complaint against SPLP if Mr. Kuprewicz's review of the Mariner East 2 plans uncovered a safety issue. In short, the Settlement Agreement expressly anticipates this precise situation and creates a remedy for the Township. The Presiding Officer was required to give effect to the plain and unambiguous language of the Settlement Agreement. *See Ruzzi v. Butler Petroleum Co.*, 588 A.2d 1, 12 (Pa. 1991) (Pennsylvania's present law of contract . . . clearly requires that courts give legal effect to the plain meaning of what is written in contracts."). That was not done here.

**D. The Presiding Officer Ignored Unrebutted Evidence of Engineering Constraints**

The Presiding Officer ignored *unrebutted* evidence of engineering constraints that led SPLP to relocate the valve. SPLP presented evidence at the hearing that it would have *preferred* to locate the valve on the SPLP Use Area for a host of reasons, including maintenance purposes (SPLP-151, ll. 7-8; SPLP-164, ll. 14-17), satisfying the Township's concerns (SPLP-151, ll. 9-10; SPLP-164, ll. 17-21), lower cost (SPLP-164, ll. 22-25; SPLP-165, ll. 1-7), and faster schedule (SPLP-165, 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, SPLP 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 (SPLP-154; SPLP-155, ll. 1-8).

---

valve at the Janiec 2 Tract exceeds the applicable federal safety standards. (Respondent Exhibit 2 at SPLP-416; SPLP-97-98).

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. (SPLP-156-57). 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. (SPLP-156, ll. 21-25; SPLP-157, ll. 14-21). It was highly unlikely that PennDOT would have issued a permit for this work (SPLP-157, l. 1), the closure would have had a negative impact on the community (SPLP-157, ll. 3-4), and since Boot Road is the most direct route for the fire department, the closure would have adversely affected emergency response (SPLP-157, ll. 3, 22-25; SPLP-158, 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 (SPLP-160, 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 motorists on Route 202 (SPLP-160, ll. 17-25.)

To be sure, as the Township contended and the Presiding Officer found, these “engineering constraints” did not establish that it is *impossible* to site the valve on the SPLP Use Area. But the Settlement Agreement does not require impossibility; it merely requires *engineering constraints*. The safety and feasibility concerns identified *at length and in detail* by Mr. Gordon constitute “engineering constraints” under any conceivable definition of the phrase, and the Presiding Officer’s *legal conclusion* that this is ambiguous is clearly erroneous.

E. **The Township Presented No Evidence That the Valve Could Safely Be Located in the SPLP Use Area**

The Township presented no evidence that the valve could be safely located 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 (SPLP-100, 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." (SPLP-97, ll. 3-25; SPLP-98, ll. 1-17.)

**F. The Presiding Officer Erroneously Concluded That the Interim Emergency Order Would Not Be Injurious to the Public**

In ruling that the Interim Emergency Order would not be injurious to the public, the Presiding Officer ignored unrebutted testimony that the delay would impact the rights of third parties, including shippers, producers, and consumers. (SPLP-186, ll. 3-17). The Presiding Officer erroneously believes that there can be no delay because the HDD is currently shut down in other parts of Chester County due to water contamination from inadvertent returns. (SPLP-229). But this assessment disregards the fact that, at some point, the HDD will resume. The Interim Emergency Order causes delay until beyond June 2018 *regardless* of any shut down of construction for other reasons.

**G. The Presiding Officer Disregarded Longstanding Public Utility Law That Municipalities Should Not Be Involved In the Siting of Utility Facilities**

Finally, in misconstruing the unambiguous terms of the Settlement Agreement and endeavoring to force SPLP to negotiate with the Township over the placement of the valve,<sup>9</sup> the

---

<sup>9</sup> On page 7 of the July 24, 2017 Order Denying Motion for Judgment on the Pleadings, the Presiding Officer states:

"Thus far, there has been no discovery allowing the parties opportunity to seek clarification and potentially resolve this complaint. It appears on the surface of the complaint that if there are legitimate engineering constraints involving cost, time, safety, feasibility, and/or geological reasons to constructing the Valve 344 and its appurtenant facilities on the SPLP Additional Acreage and there are sound engineering reasons for relocating the Valve 344 to the Janiec Property that take into consideration the health, safety and property rights of the residents of West Goshen Township, the parties may be able to work out an agreement and settle this matter prior to a hearing." (SPLP-239).



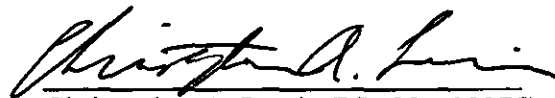
Presiding Officer disregarded longstanding public policy and public utility law. It is well-settled in Pennsylvania that local municipalities have no authority to regulate the siting of public utility facilities. *Duquesne Light Co. v. Upper St. Clair Township*, 105 A.2d 287, 292 (Pa. 1954).

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).

While SPLP settled its dispute with the Township by agreeing to the specific promises set forth in Paragraph IV.A of the Settlement Agreement, none of those promises constitutes an agreement to allow the Township to be involved in the siting of SPLP's public utility facilities outside of the SPLP Additional Acreage or in the engineering of public utility facilities. SPLP did not cede this authority to the Township in the Settlement Agreement, and neither should the Commission.<sup>10</sup>

Dated: July 31, 2017

**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. 18<sup>th</sup> Street  
Philadelphia, PA 19103  
(215) 569-5500  
[Lewis@BlankRome.com](mailto:Lewis@BlankRome.com)  
[FTamulonis@blankrome.com](mailto:FTamulonis@blankrome.com)  
[MMontalbano@BlankRome](mailto:MMontalbano@BlankRome)

---

The Presiding Officer's optimism overlooks the fact that SPLP already settled this issue with the Township in the Settlement Agreement and that the Settlement Agreement itself requires no such consultation or consent.

<sup>10</sup> The Commission should note that the Township's interpretation of the Settlement Agreement—the one that the Presiding Officer has allowed—is that the Settlement Agreement confines not just Mariner East 2, but all future SPLP above-ground pipeline facilities, to the SPLP Use Area. Longstanding public policy and case law precludes the Township from achieving this result via its zoning power, as it would lead to a patchwork quilt of local regulation, inefficient routing of pipeline public utilities, and a combat among local municipalities to shift pipeline development to neighboring communities. Where, as here, the prohibition in Paragraph IV.A.1.a of the Agreement on its face applies only to development in the SPLP Additional Acreage, the unambiguous language in the Agreement should not be distorted to achieve a result that public policy abhors.

**CERTIFICATE OF SERVICE**

I, Michael J. Montalbano, certify that on July 31, 2017, I caused a true and correct copies of Sunoco Pipeline L.P.'s Post-Hearing Brief in Opposition to West Goshen Township's Petition for Interim Emergency Order and Appendix To the Brief to be served upon the parties listed below by U.S. Mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

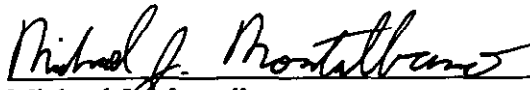
Honorable Elizabeth H. Barnes  
PO Box 3265  
Harrisburg, PA 17105-3265  
[ebarnes@pa.gov](mailto:ebarnes@pa.gov)

David Brooman, Esquire  
Douglas Wayne, Esquire  
High Swartz, LLP  
40 East Airy Street  
Norristown, PA 19404  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)  
[dwayne@highswartz.com](mailto:dwayne@highswartz.com)

Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
[Ra-sba@pa.gov](mailto:Ra-sba@pa.gov)

Pennsylvania Office of Consumer Advocate  
555 Walnut Street  
5th Floor Forum Place  
Harrisburg, PA 17101  
[consumer@paoca.org](mailto:consumer@paoca.org)

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

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

Michael J. Montalbano, Esq.  
BLANK ROME LLP  
COUNSELORS AT LAW

One Logan Square 18th & Cherry Streets  
Philadelphia, PA 19103-6998  
www.BlankRome.com

---

**To:**

**Attn: Rosemary Chiavetta, Secretary and  
Jodi Taylor**  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**HAND  
DELIVER**