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October 19, 2017

VIA ELECTRONIC FILING

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

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 ("SPLP's") Petition for Amendment of the Interim Emergency Order Entered On July 24, 2017 in the above referenced case. Copies of the Petition 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,

Christopher A. Lewis

Christopher A. Lewis

Enclosures

cc: As per Certificate of Service

BLANK ROME LLP

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*Attorneys for Defendant
Sunoco Pipeline L.P.*

WEST GOSHEN TOWNSHIP AND :
CONCERNED CITIZENS OF WEST :
GOSHEN TOWNSHIP :
Complainant, :
v. :
SUNOCO PIPELINE L.P., :
Respondent. :

Docket No. C-2017-2589346

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.483, you are hereby notified that, if you do not file a written response to the enclosed Petition of Sunoco Pipeline L.P. for Amendment of the Interim Emergency Order Entered on July 24, 2017 within 10 days from service of this notice, a decision may be rendered against you. Any Response to the Petition must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline L.P., and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:

Christopher A. Lewis, Esquire
Frank L. Tamulonis, Esquire
Michael Montalbano, Esquire
Blank Rome LLP
One Logan Square
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Dated: October 19, 2017

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Sunoco Pipeline L.P.*

WEST GOSHEN TOWNSHIP AND :
 CONCERNED CITIZENS OF WEST :
 GOSHEN TOWNSHIP :
 Complainant, :
 v. :
 SUNOCO PIPELINE L.P., :
 Respondent. :

Docket No. C-2017-2589346

**PETITION OF SUNOCO PIPELINE L.P.
 FOR AMENDMENT OF THE INTERIM EMERGENCY ORDER
 ENTERED ON JULY 24, 2017**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572(a) and (d), Sunoco Pipeline L.P. (“SPLP”) hereby petitions the Pennsylvania Public Utility Commission (“Commission” or “PUC”), to amend its Order entered on July 24, 2017 (the “Interim Emergency Order”), in Docket No. C-2017-2589346. SPLP seeks an amendment to the Interim Emergency Order insofar as the order enjoins activity in the Township that is unrelated to the construction of Valve 344 or the underlying Settlement Agreement, and is therefore beyond the scope of this proceeding.

Further, at the time of the hearing and issuance of the Interim Emergency Order, other regulatory and legal proceedings threatened to delay SPLP's Horizontal Directional Drilling ("HDD") activities. Those proceedings have since been resolved and SPLP's HDD activities have been resumed in all areas except West Goshen Township. The delay in West Goshen Township threatens to delay the completion of the Mariner East 2 pipeline in West Goshen Township during the pendency of this proceeding. Accordingly, pursuant to 52 Pa. Code § 3.8(b), SPLP further requests that the Commission order the Township to post a bond, and, if necessary, schedule a hearing to determine the proper amount for the bond.

Finally, SPLP requests an expedited briefing schedule, requiring the Township to file its response to this Petition within 10 days of service.

In support of this Petition, SPLP avers as follows:

I. INTRODUCTION

1. The Township filed this action challenging the appropriate location of a valve appurtenant to the Mariner East project ("Valve 344" or "Valve") in West Goshen Township under the terms of a prior Settlement Agreement entered into among the Township, SPLP, and the Concerned Citizens of West Goshen Township. *See* Settlement Agreement, attached hereto as **Exhibit A**.

2. On July 7, 2017, the Township requested an interim emergency order enjoining SPLP from beginning construction of (1) a valve at any location not specifically agreed to in the Settlement Agreement, and (2) any facility appurtenant to the valve in West Goshen Township or any other location not specifically agreed to in the Settlement Agreement. *See Petition of West Goshen Township for an Ex Parte Emergency Order and an Interim Emergency Order*, ¶ 1 ("WGT Petition") (July 7, 2017), attached hereto as **Exhibit B**; *see also Interim Emergency Order and*

Certification of Material Question (“Interim Emergency Order”), p. 1, attached hereto as **Exhibit C**.

3. On July 24, 2017, the Commission granted the Township’s Petition and enjoined “all current construction including: (1) constructing Valve 344; (2) constructing appurtenant facilities to Valve 344; and (3) horizontal directional drilling activities on the Janiec 2 Tract in West Goshen Township until the entry of final Commission order....” *Interim Emergency Order*, p. 10.

4. As currently written, the Interim Emergency Order enjoins more than is necessary to maintain the status quo relative to the Settlement Agreement, including activities that are beyond the scope of the Settlement Agreement and unrelated to Valve 344 such as HDD S3-0421 and HDD S3-0460, which involve underground construction activities that are neither governed by the Settlement Agreement nor appurtenant to Valve 344.

5. Accordingly, SPLP respectfully requests that the scope of the Interim Emergency Order be revised to only enjoin the following activities: (1) construction of Valve 344; and (2) construction of facilities related to or necessary for the placement of the Valve 344.

6. Furthermore, due to this temporary injunction and the current litigation schedule, the portion of the Mariner East 2 Pipeline in West Goshen Township will be delayed because a ruling from the Office of Administrative Law Judge is not expected until July 2018, and the Parties must then wait another two months for the Commission to issue a final order with respect to any Exceptions that are filed. Following entry of that final order, SPLP will need 6 months to complete the horizontal directional drills (“HDDs”) for Mariner East 2 service through West Goshen Township.

7. Accordingly, SPLP respectfully requests a bond be issued to protect SPLP from the significant losses it expects to incur as a result of the interim emergency relief.

II. LEGAL STANDARD

8. Section 703(g) of the Public Utility Code provides in relevant part:

(g) Rescission and amendment of orders.--The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa.C.S. § 703(g).

9. Under Sections 5.572(a) and (d) of the Commission's regulations, 52 Pa. Code § 5.572(a) and (d), a party may, at any time, petition the Commission to rescind or amend a prior order.

III. HDD S3-0421 and S3-0460

10. To complete the Mariner East 2 Pipeline in West Goshen Township, SPLP will undertake multiple HDDs that will approach the Janiec 2 Tract from different directions.

11. One HDD will approach the Janiec 2 Tract from the west (the "West-to-East drill" or "HDD S3-0421").

12. A separate HDD will approach the Janiec 2 tract from the east ("East-to-West drill" or "HDD S3-0460").

13. As noted at the July 18 hearing, SPLP has already concluded that it cannot "open cut" Boot Road in order to install the pipe coming from West to East. If the Commission were to require SPLP to install Valve 344 on the SPLP Use Area, SPLP would still need to perform the West-to-East drill.

14. Similarly, HDD S3-0460, the East-to-West drill, must be drilled in order to complete construction of Mariner East 2 in East and West Goshen Townships. The design of HDD S3-0460 is unrelated to the location and placement of Valve 344, and HDD S3-0460 is not otherwise governed by the Settlement Agreement.

15. Said another way, regardless of the location of the Valve and pipe tying in the main pipe to the Valve, the main pipe will still need to be installed following the paths of HDD S3-0421 and S3-0460.

IV. ARGUMENT

16. SPLP respectfully requests that the Interim Emergency Order be amended because the Order, when implemented, has the practical effect of enjoining activities that are beyond the scope of the underlying dispute.

17. In its Petition for Interim Relief, the Township set forth the scope of its request for relief, stating that it seeks an Interim Emergency Order enjoining SPLP from:

[B]eginning construction of a valve and any other facilities appurtenant thereto (collectively “Valve 344”) for SPLP’s Mariner East 2 pipeline (“ME2”) in the Township, or at any location not specifically agreed to in SPLP’s Settlement Agreement with Township, until after the Pennsylvania Public Utility Commission (“Commission”) issues a final order on the Township’s First Amended Formal Complaint (“Amended Complaint”) in this matter.¹

¹ SPLP acknowledges the apparent inconsistency between the Township’s first paragraph in its Petition (quoted above) and its “Wherefore” clause wherein it seeks an Interim Emergency Order enjoining SPLP from beginning “any” construction on the Janiec 2 Tract or anywhere else in the Township “other than as specifically represented in the Settlement Agreement.” However, because the Settlement Agreement pertains only to Valve 344 and other above-ground facilities appurtenant to ME2 in the Township, this request for relief can fairly be interpreted as only requesting an injunction pertaining to Valve 344 or facilities appurtenant thereto and not requesting an injunction of any and all construction on the Janiec 2 Tract. In this way, the “wherefore” clause and the scope of relief stated in Paragraph 1 of the WGT Petition are consistent.

See WGT Petition, p.2.²

18. Accordingly, the Township is not seeking to enjoin any and all construction on the Janiec 2 Tract or related to the Mariner East Project generally.

19. Rather, the Township is only seeking to enjoin the construction of (1) Valve 344 and (2) any facilities appurtenant to Valve 344, to the extent such construction is inconsistent with the Township's interpretation of the Settlement Agreement.

20. Nevertheless, the Interim Emergency Order states enjoins:

“all current construction including: (1) constructing Valve 344; (2) constructing appurtenant facilities to Valve 344; and (3) horizontal directional drilling activities on the Janiec 2 Tract in West Goshen Township until the entry of final Commission order....”

Interim Emergency Order, p. 10 (emphasis added).

21. Read literally, this language could be interpreted as an injunction prohibiting **all** construction related to the Mariner East Project including construction of facilities that are neither governed by the Settlement Agreement nor appurtenant to Valve 344.

22. Part three (3) further enjoins **all** HDD activities on the Janiec 2 Tract including HDD activities unrelated to Valve 344 or other facilities governed by the Settlement Agreement.

² The Commission acknowledged the scope of relief requested by the Township, stating:

Complainant seeks an Interim Emergency Order pursuant to 52 Pa. Code § 3.6 enjoining Respondent from beginning or continuing construction of a valve and any other facility appurtenant thereto for Sunoco's Mariner East 2 (ME2) pipeline in West Goshen Township, or any other location not specifically agreed to in Sunoco's Settlement Agreement with the Township, until after the Commission issues a final order ending the formal amended complaint proceeding at Docket No. C-2017-258946.

See *Interim Emergency Order*, p. 1.

23. The broad scope of this language enjoins construction of HDD S3-0421 and S3-0460, even though construction activity associated with either HDDs is not governed by the Settlement Agreement, and neither HDDs are related to or necessary for the placement of Valve 344.

24. Specifically, the Settlement Agreement pertains *only* to the placement of Valve 344 and certain permanent, above-ground, facilities appurtenant to the pipeline and in no way relates to or otherwise impacts other subsurface activities or temporary, operational activities unrelated to the Valve, such as HDD S3-0421 and HDD S3-0460. *See* Ex. A at IV.A.1.a (allowing SPLP to conduct temporary activities such as “staging construction”, “laydown”, and “other operational activities”, as long as SPLP “restore[s] the surface to its former condition following the completion of such activities.”).

25. Further, the Settlement Agreement does not prohibit the use of the Janiec 2 Tract as a temporary site for staging the HDDs. The Settlement Agreement only applies to the siting of above-ground facilities.

26. Accordingly, by extending the scope of the interim emergency relief to actions that are not governed by the Settlement Agreement such as HDD S3-0421 and HDD S3-0460, the Commission’s order extends beyond that which is necessary to maintain the status quo relative to the Settlement Agreement.

27. While SPLP acknowledges that the PUC may enforce settlement agreements that are duly approved by the Commission, the Commission does not have the authority to enjoin SPLP from engaging in other activities on its own property that are unrelated to a duly approved Settlement Agreement, absent some independent safety concern.

28. The Township has not raised any concerns – safety related or otherwise – concerning HDD S3-0421 or HDD S3-0460.

29. Finally, the scope of the injunction will have a significant impact on SPLP's construction schedule. SPLP has resumed its HDD program at its remaining drilling locations in the Commonwealth, and the entire Pipeline—except for the West Goshen portion—will be completed and ready to deliver product by the fourth quarter of 2017 or early 2018. The HDD site in West Goshen Township will not be resumed until after this matter is resolved which, if Exceptions are filed, is not expected until September 2018. Thus, West Goshen Township is the only location where drilling will not resume for the foreseeable future.

30. Modifying the scope of the Interim Emergency Order to permit SPLP to undertake activities unrelated to Valve 344 or the underlying litigation will partially mitigate the significant adverse impacts to SPLP resulting from this injunction and is otherwise consistent with the relief sought by the Township here.

V. REQUEST FOR BOND

31. In addition to the modification to the Interim Emergency Order, SPLP also requests that the Commission require the Township to post a bond to protect SPLP from the considerable losses it will sustain from this injunction in the event that the injunction is found to have been improperly granted.

32. Section 3.8 of the Public Utility Code empowers the Commission to require the posting of a bond after an interim emergency order is issued:

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 and will specify the amount of the bond.

52 Pa. Code. § 3.8(b).

33. The Commission has also recognized the necessity of requiring a party seeking interim emergency relief to post a bond sufficient to protect the party subject to the emergency order. *See Buffalo-Lake Erie Wireless Sys. Co., LLC Petition for Emergency Order*, P-2009-2150008, 2010 WL 237779, at *4 (Pa. Pub. Util. Comm’n Jan. 14, 2010) (directing party to place \$122,405.93 in escrow or to obtain surety bond “to maintain the status quo” as condition for granting interim emergency relief); *Palmerton Tel. Co. v. Global NAPs S., Inc.*, C-2009-2093336, 2009 WL 1351738, at *5 (Pa. Pub. Util. Comm’n May 5, 2009) (directing presiding ALJ to make factual findings to determine the appropriate amount for a surety bond).

34. Further, Pennsylvania courts have long held that bonds are appropriate to compensate a party for the damages it sustains in the event that an injunction is improperly granted. *See Coll. Watercolor Grp., Inc. v. William H. Newbauer, Inc.*, 360 A.2d 200, 207-8 (Pa. 1976) (“The purpose of that bond was to protect appellants in the event that the preliminary injunction was improperly granted and damages were sustained thereby.”).

35. Here, the Township should be required to post a bond sufficient to protect SPLP from the damage it will sustain from the delayed completion of the Mariner East Pipeline in the event the Commission concludes that Valve 344 cannot be safely and prudently sited on the SPLP Use Area.

36. At the July 18 hearing, SPLP introduced un rebutted evidence that Valve 344 cannot be safely and prudently sited on the SPLP Use Area. Specifically, Matthew Gordon, Project Director for Mariner East 2 pipeline project for SPLP, testified that the Valve could not be placed on the SPLP Use Area because:

- (1) 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 residential building on Mary Jane Lane.

(2) Tanks and a pump station from the adjacent Aqua PA American facility prevented SPLP from lining up the pipe with the drill rig.

Because HDD was infeasible, SPLP decided the only method for installing the Pipeline from Ship Road would be to open cut Boot Road. But this presents both safety and traffic concerns, including:

(1) 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 closure of both lanes.

(2) PennDOT was unlikely to issue a permit to open cut Boot Road because of the tremendous impact and inconvenience to the community.

(3) The closure of Boot Road would cause severe traffic disruptions and would adversely affect response times of emergency services to local residences.

(4) 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.

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 202). These included:

(1) If the valve were located in the SPLP Use Area, the company would have to use a shored deep excavation vertical shaft that posed safety risks for welders.

(2) 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.

37. To date, the Township has offered no evidence that the considerations cited by Mr. Gordon are false or incorrect.

38. When it issued the Interim Emergency Order, the Commission found that there was “insufficient evidence to show a substantial financial loss [would] be sustained by SPLP’s customers” because HDD was “shut down in other parts of Chester County.” *See* Ex. C at 8-9.

39. However, all legal and regulatory impediments have been removed and SPLP’s HDD activities in Chester County—and throughout the rest of the Commonwealth—have since resumed.

40. Thus, the Interim Emergency Order is the only impediment preventing SPLP from completing the portion of the Mariner East 2 Pipeline in West Goshen Township in a timely manner.

41. SPLP and its customers will suffer significant harm should the project be delayed by more than a year while this case is resolved.

42. SPLP submits that the Township should post a bond to protect SPLP from the damage it will sustain in the event that the interim emergency relief is found to have been improperly granted.

43. SPLP also requests that the Commission schedule a hearing to determine the appropriate amount for the bond. In the event that the Commission grants such hearing, SPLP respectfully requests that, pursuant to Paragraph 10 of the Protective Order entered by ALJ Barnes

on September 1, 2017, the hearing proceed under seal so that SPLP may introduce Proprietary Information to substantiate its claims of damages.

VI. REQUEST FOR EXPEDITED BRIEFING SCHEDULE

44. Given the time sensitive nature of this request, SPLP respectfully requests that the Commission waive the standard 20-day response period under 52 Pa. Code § 5.61(a), and require the Township to file a response within 10 days of the filing and service of this Motion. *See Cavalier Tele. Mid-Atlantic, LLC v. Verizon Pa. Inc.*, A-20055343, 2007 WL 2325360 (Pa. Pub. Util. Comm'n Aug. 9, 2007) (ordering expedited briefing schedule).

VII. CONCLUSION

For the reasons set forth above, SPLP respectfully requests the following relief:

1. An Order modifying Part 2 of the current Interim Emergency Order to read as follows:

That Sunoco Pipeline L.P. is enjoined from: 1) constructing Valve 344 and 2) constructing facilities related to or necessary for the placement of Valve 344 until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

2. An Order requiring the Township to post a bond, and setting a date for a hearing to determine the proper amount of the bond.

Respectfully submitted,

BLANK ROME LLP

Dated: October 19, 2017

Christopher A. Lewis

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

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

Michael Montalbano (I.D. No. 320943)

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CERTIFICATE OF SERVICE

I, Frank L. Tamulonis, certify that on October 19, 2017, I caused a true and correct copy of the foregoing Petition of Sunoco Pipeline L.P. for Amendment of the Interim Emergency Order Entered on July 24, 2017 to be served upon the party listed below by electronic mail and U.S. Mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Honorable Elizabeth H. Barnes
PO Box 3265
Harrisburg, PA 17105-3265
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Frank L. Tamulonis

Frank L. Tamulonis
Attorney for Sunoco Pipeline L.P.

VERIFICATION

Matthew Gordon deposes and says he is employed by Sunoco Pipeline L.P. ("SPLP") as the Project Director for the Mariner East 2 pipeline project; that he is duly authorized to and does make this Verification on behalf of SPLP; that the facts set forth in the foregoing Petition of Sunoco Pipeline L.P. for Amendment of the Interim Emergency Order Entered on July 24, 2017 are true and correct to the best of his knowledge information and belief; and that this verification is made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



MATTHEW GORDON

DATED: October 9, 2017

Exhibit A

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

SETTLEMENT AGREEMENT

This Agreement is made by, between, and among Sunoco Pipeline, L.P., a limited partnership organized under the laws of the State of Texas ("SPLP"); West Goshen Township, a Township of the Second Class located in Chester County, Pennsylvania ("WGT"); and, Concerned Citizens of West Goshen Township, an ad hoc association of individual persons each of whom owns and resides on property adjacent to or within approximately 1,000 feet of the properties owned by SPLP near Boot Road in WGT ("CCWGT"), hereinafter collectively referred to as the "Parties."

I. Background

A. On March 21, 2014, Sunoco filed a Petition with the Pennsylvania Public Utility Commission ("Commission") requesting, inter alia, approval for the situation and construction of a building on property owned by SPLP near Boot Road in WGT to house facilities related to a pump station ("SPLP Petition"). The Boot Road Pump Station, and an associated Vapor Combustion Unit ("VCU"), would serve a natural gas liquids pipeline owned by SPLP that is part of a project commonly known as Mariner East, which would transport propane, ethane, and other natural gas liquids from points west and north of WGT to points in Delaware County, Pennsylvania, and the State of Delaware. The Commission docketed the proceeding at P-2014-2411966.

B. On April 18, 2014, CCWGT filed a Protest and Preliminary Objections to the SPLP Petition. On April 21, 2014, WGT intervened as of right in the Commission docket.

C. In response to the Preliminary Objections of CCWGT and other parties, SPLP filed an Amended Petition against which further preliminary objections were filed by CCWGT, WGT, and other parties.

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

D. After the exchange of various other pleadings, the Commission issued an Opinion and Order dated October 29, 2014, that denied all preliminary objections and returned the matter to the Office of Administrative Law Judge for further proceedings.

E. On November 7, 2014, CCWGT filed a Formal Complaint with the Commission against SPLP concerning alleged safety concerns with proposed SPLP facilities in WGT, docketed at C-2014-2451943 ("CCWGT Complaint"). After the exchange of various pleadings, the Administrative Law Judges assigned to the CCWGT Complaint denied SPLP's preliminary objections to the Complaint and denied CCWGT's request to consolidate its Complaint with the SPLP Petition.

F. Subsequent to, and as a result of, these procedural matters, the Parties exchanged information (both formally and informally) and conducted settlement negotiations in an attempt to resolve this litigation and related matters.

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.

1. As used herein, the phrase "Mariner East Project" refers to the existing Mariner East 1 pipeline and appurtenant facilities, and all additional pipelines and appurtenant facilities to be owned and/or operated by SPLP in WGT for the transportation of propane, ethane, butane, and/or other natural gas liquids.

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

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

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"). Subject to any engineering constraints, 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.

3. As of the date of execution of this Agreement, SPLP has no plan or intention to construct any additional above-ground permanent utility facilities in WGT except as otherwise expressly set forth in this Agreement.

4. Consistent with its engineering plans for all Mariner East 1 pump stations, there will be an enclosed VCU at the Boot Road Pump Station. The location of the VCU on the SPLP Existing Site will be as noted on the map provided to WGT and CCWGT attached hereto as Appendix 2 and incorporated by reference. The VCU is designed and will be constructed and operated to contain any pilot light or flame completely within its structure such that no flame is visible outside the pump station site except in rare instances. In the event of a rare instance in which a flame is visible, in addition to first responders and emergency responders to which SPLP currently provides notification, SPLP shall notify the WGT Township Manager of the circumstances causing the flame to be visible.

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

5. The VCU is designed so that the anticipated noise level at a distance of 145 feet is 51.3 decibels, as shown on the noise diagram provided by SPLP to WGT and CCWGT attached hereto as Appendix 3 and incorporated by reference.

6. As is the case for all of its products pipelines, the Mariner East Project present and proposed pipelines are included within SPLP's current rupture monitoring system which has several alarms designed for different pipeline conditions and events. Included in SPLP's rupture monitoring system is the Inter Site Automatic Close Logic system (ISACL), a first line of defense automated alarm system designed to automatically shut-down the pipeline and close remotely operated valves on the mainline in the event of a rupture or low pressure on the pipeline. Each individual Mariner East Project pipeline station shall be equipped with an automated shutdown and upset condition response logic that is triggered for all or any segment of the Mariner East Project. If triggered, the pipeline or a segment of the pipeline shall be automatically shut-down and the remotely operated valves impacting the mainline pipeline closed, with no operator discretion. The ISACL system can be triggered by other locations on the pipeline or can be initiated locally and it will trigger events at other pipeline locations.

7. SPLP currently maintains remotely operated inlet and outlet valves at its Boot Road Pump Station in WGT that are controlled by a centralized control room, and these valves will be used in connection with the Mariner East Project. In addition, SPLP maintains a number of remotely operated valves and manual valves, including manual valves at pipeline markers 228 and 236.6 (the pipeline valve locations immediately upstream and downstream from Boot Road) in connection with its Mariner East Project. As part of its final design, SPLP is installing remotely operated valves that are controlled by its centralized control room at pipeline markers 228 and 236.6. SPLP will use commercially reasonable efforts to apply for any permits,

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

rights of way, approvals and extensions of utility service within sixty (60) days after the Effective Date of this Agreement. These remotely operated valves will be installed within ninety (90) days after receipt of all necessary permits, rights of way, approvals, and extensions of utility service.

III. WGT's Safety Review.

1. WGT has engaged Accufacts, Inc., and its President, Richard Kuprewicz, a nationally recognized expert in the field of liquids pipeline safety, to prepare a written report as to the safety of Mariner East 1 (the "Kuprewicz Report") based on the design and engineering facts and information heretofore provided by SPLP. The Kuprewicz Report is attached as Appendix 5 hereto and is made a part of this Agreement.

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 permanent 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

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PARTIES

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.

b. SPLP will provide the WGT Township Manager with immediate notice of any Mariner East pipeline condition changes requiring remediation under 49 CFR Section 195.452(h)(4)(i), (ii), (iii) or (iv) that potentially could impact WGT, and thereafter will provide a written report within thirty (30) days describing the remediation efforts undertaken by SPLP, the location of the remediation efforts, and the expected timeframe within which these remediation efforts will be completed.

c. Within thirty (30) days after the Effective Date of this Agreement, SPLP agrees to consult with WGT officials concerning land development plans, including landscaping and fencing plans, with respect to the SPLP Existing Site and the SPLP Additional Acreage and to provide WGT officials with any existing landscaping or screening plans for such areas.

2. WGT covenants and agrees as follows:

a. WGT shall not oppose the thirty-four feet (34') height proposed for the VCU.

b. WGT consents to the withdrawal by SPLP of the SPLP Petition now pending before the Commission, and will not initiate any action or proceeding claiming that the existing or reconfigured pump station at Boot Road violates WGT's zoning or land development ordinances.

c. For so long as SPLP offers to provide intrastate petroleum and refined petroleum products pipeline service to the public, including transportation of propane or ethane, WGT will not contest, dispute or protest SPLP's service for lack of public utility status in

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PARTIES

any federal, state, local or regulatory proceeding or file any lawsuit, litigation or action or join any lawsuit, litigation or action with respect thereto.

d. As long as SPLP (i) constructs and operates facilities in WGT as described in Section II above; (ii) abides by the covenants and agreements in Section 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 Mariner East 1 or the valve station described in paragraph II.A.2. of this Agreement.

e. With respect to Mariner East 2, SPLP agrees, upon the execution of a mutually agreeable confidentiality agreement, that it will provide to Accufacts, Inc. or a person or entity acting for WGT that is similarly a nationally recognized expert in the field of liquids pipeline safety ("Liquids Pipeline Safety Expert") information relating to Mariner East 2 of a similar nature that was provided regarding Mariner East 1 for review by the Liquids Pipeline Safety Expert. WGT and its expert will meet and confer with SPLP with respect to any concerns the Liquids Pipeline Safety Expert may have related to safety and SPLP will be provided an opportunity to respond thereto, before WGT would file any formal protest or other action raising any safety issue related to Mariner East 2.

f. WGT will treat as public information any notifications provided to the Township Manager by SPLP concerning (1) the circumstances causing the visibility of a flame from the VCU, or (2) Mariner East Project pipeline condition changes requiring remediation under 49 CFR Section 195.452(h)(4)(i), (ii), (iii) or (iv), and will make such

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

information available to members of the public in accordance with standard WGT procedures for access to public information.

3. CCWGT covenants and agrees as follows:

a. The members of CCWGT are identified in Appendix 6 attached hereto.

b. CCWGT consents to the withdrawal by SPLP of the SPLP Petition now pending before the Commission and will not initiate any action or proceeding claiming that the existing or reconfigured pump station at Boot Road violates WGT's zoning or land development ordinances.

c. For so long as SPLP offers to provide intrastate petroleum and refined petroleum products pipeline service to the public, including transportation of propane or ethane, CCWGT will not contest, dispute or protest SPLP's service for lack of public utility status in any federal, state, local or regulatory proceeding or file any lawsuit, litigation or action or join any lawsuit, litigation or action with respect thereto.

d. Within five (5) business days after the Effective Date, CCWGT agrees to mark as satisfied and withdraw the CCWGT Complaint.

e. As long as SPLP (i) constructs and operates facilities in WGT as described in Section II above; (ii) abides by the covenants and agreements in Section 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, CCWGT 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

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

by any other individual or group against SPLP with respect to the safety of Mariner East 1 or the valve station described in paragraph II.A.2. of this Agreement.

V. General Provisions

A. In addition to the individual promises, covenants and agreements set forth above, the Parties individually and jointly acknowledge and agree as follows:

1. This Agreement is an agreement between a public utility and a municipal corporation that must be filed with the Commission at least 30 days prior to its effective date in order to be legally valid and binding, as set forth in 66 Pa. C.S. § 507. The Parties agree, therefore, that this Agreement shall be filed by SPLP with the Commission within five calendar days after it is duly executed by all parties. The Parties further agree to fully support this Agreement in any proceeding instituted by the Commission concerning this Agreement, and to refrain from taking any position before the Commission that is contrary to, or inconsistent with, the terms and conditions of the Agreement.

2. The Parties acknowledge and agree that the Effective Date of this Agreement shall be the date which is 35 calendar days after the last date on which the Agreement is executed by all Parties, as shown below.

3. The Parties acknowledge and agree that any action to enforce the deed restriction on the use of the SPLP Additional Acreage shall be brought before the Chester County Court of Common Pleas.

4. 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.

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL PARTIES

5. This Agreement shall be binding on the Parties, their successors and assigns.

6. This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the dates shown below.

SUNOCO PIPELINE, L.P.

By: 

Date: 4-14-15

Attest: Kathleen Eden Bellay

Counsel:

WEST GOSHEN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA

By: Name: _____
Title: Chairman, Board of Supervisors

Date: _____

Attest: _____

Special Counsel:

CONCERNED CITIZENS OF WEST GOSHEN TOWNSHIP

By: Name: _____
Duly authorized representative of CCWGT

Date: _____

Attest: _____
Scott J. Rubin, Esq.
Counsel for CCWGT

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL PARTIES

5. This Agreement shall be binding on the Parties, their successors and assigns.

6. This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the dates shown below.

SUNOCO PIPELINE, L.P.

By: _____ Date: _____
Attest: _____
Counsel: _____

WEST GOSHEN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA

(Signature)
By: Name: _____ Date: May 13, 2015
Title: Chairman, Board of Supervisors

Attest: _____
(Signature)
Special Counsel:

CONCERNED CITIZENS OF WEST GOSHEN TOWNSHIP

By: Name: _____ Date: _____
Duly authorized representative of CCWGT

Attest: _____
Scott J. Rubin, Esq.
Counsel for CCWGT

**CONFIDENTIAL SETTLEMENT DOCUMENT
NOT FOR PUBLIC DISTRIBUTION UNTIL SIGNED BY ALL PARTIES**

6. This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the dates shown below.

SUNOCO PIPELINE, L.P.

_____ Date: _____
By: _____

Attest: _____

Counsel:


WEST GOSHEN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA

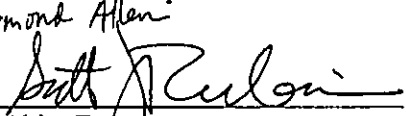
_____ Date: _____
By: Chairman, Board of Supervisors

Attest: _____

Special Counsel:

CONCERNED CITIZENS OF WEST GOSHEN TOWNSHIP


By: Duly authorized representative of CCWGT Date: 04/11/2025
Raymond Allen

Attest: 
Scott J. Rubin, Esq.
Counsel for CCWGT

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
PARTIES

Appendices:

Appendix 1: Map showing SPLP Use Area

Appendix 2: Map showing location of VCU

Appendix 3: VCU noise diagram

Appendix 4: Form of Deed Restriction

Appendix 5: Kuprewicz Report

Appendix 6: List of members of CCWGT and signatures/initials of members (at least 51%)
approving the Settlement Agreement

APPENDIX 1

Map Showing SPLP Use Area



NOTES:
 1 CONTRACTOR SHALL VERIFY ALL DIMENSIONS.

Booney Engineering, Inc.
 12201 E. Arapahoe Rd. C10
 Centennial, CO 80112
 (303) 792-5911

E 04/17/19		FOR TOWN ONLY NOT FOR CONSTRUCTION	LLC														
REV.	DATE	APP.	APPROVAL														
<table border="1"> <thead> <tr> <th colspan="2">ENGINEERING RECORD</th> </tr> </thead> <tbody> <tr> <td>DRAWN BY</td> <td>LCDE</td> </tr> <tr> <td>CHECKED BY</td> <td>TSJ</td> </tr> <tr> <td>APPROVED BY</td> <td>LSMGR</td> </tr> <tr> <td>DATE</td> <td>2019-03-17</td> </tr> <tr> <td>SCALE</td> <td>N.T.S.</td> </tr> <tr> <td>NO. PROJ.</td> <td>0000</td> </tr> </tbody> </table>				ENGINEERING RECORD		DRAWN BY	LCDE	CHECKED BY	TSJ	APPROVED BY	LSMGR	DATE	2019-03-17	SCALE	N.T.S.	NO. PROJ.	0000
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CHECKED BY	TSJ																
APPROVED BY	LSMGR																
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SCALE	N.T.S.																
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		BOOT STATION GENERAL ARRANGEMENT SPLP USE AREA EXHIBIT															
OLD DRAWING NO		SHEET NO. 2896-BOO2-EXHIBIT 2	REV. NO. E														

APPENDIX 2

Map Showing Location of VCU



NOTES:
1. CONTRACTOR SHALL VERIFY ALL DIMENSIONS.

Reaney Engineering, Inc.
12201 E. Arapahoe Rd. C10
Centennial, CO 80112
(303) 782-0811

E1		02/16/13	FOR OWNER ONLY NOT FOR CONSTRUCTION	LLC	DATE
REV	DATE	APP	DESCRIPTION	APPROVAL	
ENGINEERING RECORD			 <p>BOOT STATION GENERAL ARRANGEMENT</p>		
DRAWN BY: L. LORR					
CHECKED BY: J. BARR					
APPROVED BY: J. BARR					
DATE: 2013-02-13					
SCALE: 1" = 30'			OLD DRAWING NO.		
NO. PROJ. / SHEET			2896-BOO2-EXHIBIT 1		
			REV. NO. E1		

APPENDIX 3

VCU Noise Diagram

61.3 dBA @ 46 ft

SEE DWG 2896-B002-M040500

85 dBA @ 3 ft

SEE DWG 2896-B002-M040400

FLARE
55'-0" FIELD VERIFY

EXISTING 12"
RECEIVER

71'-3"
FIELD VERIFY

25'-0"
F.V.

UNDERGROUND
DRIP HEADER

PROPERTY LIMITS

44'-9"

46'-13"

5

15'-11"
F.V.

28'-10"

APPENDIX 4

Form of Deed Restriction

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made as of this ___ day of _____, 2015, by SUNOCO PIPELINE, L.P., a Texas limited partnership ("Declarant")

BACKGROUND

A. Declarant is the owner of certain real property more particularly described on Exhibit A attached hereto (the "Subject Property").

B. Declarant desires to restrict the use of a portion of the Subject Property as more fully described on Exhibit B attached hereto ("Restricted Parcel 1").

C. Declarant desires to restrict the use of the balance of the Subject Property (*i.e.*, excluding Restricted Parcel 1) as more fully described on Exhibit C attached hereto ("Restricted Parcel 2").

NOW THEREFORE for good and valuable consideration and intending to be legally bound, Declarant hereby declares as follows:

1. Declarant covenants and agrees that it shall not construct or install any pump stations, vapor combustion units or above-ground permanent public utility facilities on Restricted Parcel 1.

2. Notwithstanding the foregoing, Declarant shall be permitted to use all or portions of Restricted Parcel 1 for staging construction, laydown or other operational activity on a temporary basis, and Declarant will restore the surface to its former condition following the completion of such activity.

3. Declarant covenants and agrees that the only public utility purposes that shall be permitted on Restricted Parcel 2 are the following purposes: (1) construction, maintenance, repair and/or replacement of a valve station for the Mariner East Project; and (2) staging construction, laydown or other operational activity on a temporary basis provided that Declarant restores the undeveloped surface of Restricted Parcel 2 to its former condition following the completion of such activity.

4. The restrictions set forth herein shall be binding on the Declarant, its successors and assigns, and shall run with the land.

5. This Declaration shall be governed by the laws of the Commonwealth of Pennsylvania

IN WITNESS WHEREOF, Declarant has signed this Declaration the day and year written above.

SUNOCO PIPELINE, L.P,
a Texas limited partnership

BY: _____,
Its General Partner

By: _____
Name:
Title:

STATE OF _____ :
:SS
COUNTY OF _____ :

On this, the ___ day of _____, 2015, before me, a Notary Public authorized to take acknowledgements and proofs in the County and State aforesaid personally appeared _____ who acknowledge (himself) (herself) to be the _____ of _____, the sole general partner of Sunoco Pipeline, L.P., and that (s)he, being authorized to so, executed the foregoing instrument on behalf of and as the act and deed of said limited partnership.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal.

My Commission Expires: _____
Notary Public
[Notarial Seal]

EXHIBIT A

Legal Description of the Subject Property

EXHIBIT B

Legal Description of Restricted Parcel 1

EXHIBIT C

Legal Description of Restricted Parcel 2

APPENDIX 5
Kuprewicz Report

Accufacts Inc.

"Clear Knowledge in the Over Information Age"

4643 192nd Dr. NE
Redmond, WA 98074
Ph (425) 836-4041
Fax (425) 836-1982
kuprewicz@comcast.net

Date: March 6, 2015

**To: Mr. Casey LaLonde
Township Manager
West Goshen Township
1025 Paoli Pike
West Chester, PA 19380-4699**

Re: Accufacts Report on Mariner East Project Affecting West Goshen Township

1. Introduction

Accufacts Inc. ("Accufacts") was asked to assist West Goshen Township ("Township") in evaluating a Sunoco Pipeline L.P. ("Sunoco") pipeline project identified as Mariner East, a project to repurpose an existing 8-inch pipeline and to modify an existing pump station within the Township to reverse flow and carry highly volatile liquids, or HVLs, eastward. Accufacts provides specialized technical and safety expertise in pipeline and pump station siting, design, operation/maintenance, and regulatory requirements, especially as it relates to HVLs, a category of liquids given special definition and regulation in the federal pipeline safety regulations.¹ Accufacts assisted the Township's legal team in collecting relevant technical information from Sunoco regarding the design and operation of the proposed Mariner East phase 1 ("Mariner East") pipeline project, and provided advice as to the safety and adequacy of Sunoco's approach, recommending several enhancements. Attachment 1 sets forth the list of confidential documents provided by Sunoco and reviewed by Accufacts.

The discussion and conclusions in this report are based on a careful review and analysis of the information provided by Sunoco to the representatives of the Township and to Accufacts. Accufacts understands that the Township is considering entering an agreement with Sunoco that codifies in writing the important safety systems and operating methods that factor into the conclusions reached in this report. Accufacts and the Township legal team were required to sign Nondisclosure Agreements ("NDA") with Sunoco that prevent Accufacts from disclosing certain sensitive information unless it is already in the public domain. While this

¹ 49CFR§195.2 Definitions.
Accufacts Inc.

limitation does not restrict Accufacts' ability to present its independent critical observations, the reader should be aware of the obligation to honor the NDA as Accufacts will not disclose certain sensitive details supporting our observations.

Accufacts' analysis and this report are limited to the segments of the Mariner East project that could affect the Township. Certain additional equipment physically outside of the Township was also reviewed, such as the overall control program, mainline valves, metering, and pump stations that could impact the Township in case of a release of HVL.

The Mariner East Pipeline crosses slightly over a mile of the Township as an 8-inch pipeline, primarily consisting of pipe manufactured in 1968, and newer pipe replacement segments, with the Boot Road Pump Station located within the Township that will be modified to allow the flow of HVLs consisting of ethane, propane or a mixture. These fluids are pressurized to remain liquid at operating conditions within the pipeline, but upon release would generate heavier than air hydrocarbon vapor clouds that can impact large areas. It is important that such a pipeline operation pay special attention to its design, operation, and maintenance practices to assure the pipeline's integrity to keep the fluid within the pipeline.

Federal pipeline safety regulations provide limited levels of safety assurance. Prudent pipeline operators moving HVLs should exceed these basic requirements to assure proper control of their system. These liquid pipeline safety regulations are codified in the Code of Federal Regulation ("CFR") at 49CFR§191, 49CFR§194, and 49CFR§195. The Federal pipeline safety regulations place the responsibility of safe pipeline operation squarely upon the pipeline operator. Many process safety management approaches have been codified into pipeline safety regulations under the label "integrity management," following a series of tragic pipeline ruptures. These high profile rupture failures have called into question the dedication of certain operators to comply with the intent of the safety regulations, especially in the area of integrity management.

I have observed over more than 40 years of incident investigations that some pipeline operators embrace the process safety management intent (or safety culture) to assure that they have their pipelines under control, while others do not. Accufacts has developed a series of process safety management questions concerning pipeline siting, design, operation, maintenance and performance standards that allow Accufacts to evaluate whether a pipeline operator is incorporating prudent management approaches to stay ahead of pipeline failures, especially ruptures. Ruptures are large volume releases associated with big openings typically from pipe fracture. It is not that difficult for an experienced pipeline person to readily ascertain if a pipeline operator embraces the process safety management approach to pipeline safety. The following general observations follow a process safety management

approach that I have successfully utilized over 40 years evaluating many complex operations, including pipelines.

2. Verification of Integrity of the Pipeline for High Pressure HVL Service

Pipe steel, even pipe steel manufactured over 80 years ago, does not age or wear out. Pipe steel has essentially an infinite life if properly assessed, maintained, and operated within its design parameters. Certain manufacturing processes and/or transportation, and construction techniques associated with older vintage pipe steel, as well as new pipe, can introduce some types of anomalies or imperfections that can grow to failure with time, such as cracks in pipelines. These imperfections are often associated with vintage electric resistance welded pipe, either low frequency (LF-ERW) or early high frequency (HF-ERW) pipe, that can exhibit axial crack rupture failure with time for various reasons. Also, after a pipeline is installed, certain imperfections can be introduced such as corrosion or third party damage that may merit that a particular segment of the pipeline be remediated or replaced. Additional pipe segments may also require replacement and relocation because of roadwork or other activities that have nothing to do with the condition of the pipeline. There are such pipe segments crossing the Township that replace the originally installed 8-inch pipe.

Federal pipeline safety regulatory advancements promulgated in the early 2000s, adopted as a result of some tragic transmission pipeline ruptures, improved on pipeline integrity assessments.² In addition, to the published regulations, the federal office responsible for pipeline safety, the Pipeline and Hazardous Materials and Safety Administration, or PHMSA, has issued Advisory Bulletins that can be implemented more quickly than the long process associated with regulation development.

One Advisory Bulletin especially significant in this matter is PHMSA's recently released bulletin addressing "repurposing," a change in service or reversal of flow in older pipelines.³ This Bulletin provides guidance on the use of important hydrotesting assessment procedures utilizing a strength and spike test.

Federal regulations do not currently specify the hydrostatic strength test as a percent of specified minimum yield strength, "%SMYS," or require the use of an additional hydrotesting protocol known as a "spike" test which is very important in evaluating many pipe steels. The above referenced Bulletin indicates: "Operators should consider performing ILI and {emphasis added} hydrostatic pressure with a spike test prior to implementing any

² 49CFR§195.452 Pipeline integrity management in high consequence areas.

³ PHMSA Advisory Bulletin, ADB-2014-04, "Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service – Docket No. PHMSA-2014-0040," September 18, 2014.

of these changes, especially if historical records have indications of previous in-service or hydrostatic pressure test failures, selective seam corrosion, stress corrosion cracking, other cracking threats or other system concerns. A spike test 30 minutes in duration at 100 percent to 110 percent specified minimum yield strength or {emphasis added} between 1.39 to 1.5 times ...the maximum operating pressure for hazardous liquids is suggested as it is the best method for evaluating cracking threats at this time."

ILI stands for inline inspection, which involves the insertion, typically in an operating pipeline, of a "pig," a self-contained multi-ton device containing: a) measurement instruments, b) computers, c) storage devices to retain the information gathered, and d) batteries to support the remote device's gathering and retaining certain information about the pipeline's condition. Such ILI tools, also known as "smart pigs," are designed to measure various types of imperfections in the pipe, such as possible damage, corrosion, and with more recent developing technology, some types of crack threats. After a pig run is completed, the volume of ILI tool information must be further analyzed and evaluated off site by special analysts from the vendor supplying the ILI tool who utilize special proprietary software to determine which measured imperfections might be problematic (go to failure) before the next ILI tool run. This last step can take some time, involving months depending on the type of smart pig utilized and the amount/complexity of information gathered. Not all ILI tool runs are successful, especially if an ILI tool has not been proven field reliable for the type of threat, so a measure of precaution is warranted in ILI selection and subsequent analysis.

The best assessment method for ascertaining the suitability or integrity of the pipeline for its new service, especially if cracking threats may be present, are proper hydrotests performed in excess of the current minimum federal pipeline safety hydrotesting regulations that are meant for new pipe testing. Hydrotesting is superior due to its ability to assess/proof various forms of pipe crack threats particularly those cracks associated with certain types of vintage pipe that can grow over time to rupture failure, as ILI and associated engineering analyses has not yet proven sufficiently reliable to adequately assess. A prudent hydrotest (in excess of current federal pipeline safety regulations), is the proof test for cracking anomaly risks, given that ILI tools and related engineering assessments for discovering cracking potential are still in development.

Accufacts has reviewed the various types of ILI smart pig tools used to re-qualify the pipeline on the Mariner East project, and has carefully reviewed in detail the November 2014 hydrotest results provided by Sunoco on the segments that could affect the Township. Sunoco performed both strength and spike hydrotests. Accufacts can report that Sunoco tracked the percent minimum and maximum specified minimum yield strength, or %SMYS, during both the strength and the spike test phases of the hydrotesting. Hydrotesting pressures substantially exceeded the minimum 125 percent (1.25 times the maximum operating

pressure, or MOP) required in current federal regulations. These tests meet the test ranges identified in the above referenced Advisory Bulletin (at least 1.39 times MOP).⁴ It should be noted that the maximum operating pressure on the 8-inch pipeline will be quite high, so hydrotesting pressures as a ratio of MOP were also quite high, indicating very good integrity of older sections of pipe in the Township, despite its age, as well as replacement sections.

In addition to the hydrotesting performance factors, Accufacts also reviewed information related to pipe replacements in the Township as well as Sunoco's ILI approach in re-qualifying the pipeline in the Township for the new operation. A review of Google Earth and alignment maps across the Township did not reveal any threat factors such as land movement that could result in abnormal loading pipeline failure. Accufacts has found no significant anomalies that could affect the pipeline in the Township segment to cause growth to rupture failure in the reasonable future, and concludes that Sunoco's ILI assessment management approaches are prudent.

The primary objective of an integrity management program is for the pipeline operator to undertake efforts to avoid pipeline failure in high consequence areas, such as the Township, from various types of threats that may be present on such sensitively located pipeline segments. It is Accufacts' opinion for the section of 8-inch pipeline that crosses the Township, that Sunoco far exceeds a number of requirements of the federal pipeline safety regulations, that it embraces the intent of integrity management, or IM, regulations that are meant to prevent pipe mainline rupture failure, and that their IM approach is currently prudent.

3. Operation of the Mariner East Pipeline affecting the Township

Components of the pipeline other than the mainline pipe in the Township play an important role in the operation of the HVL pipeline as it could affect the Township. These include: 1) the Boot Road Pump Station located within the Township, 2) upstream and downstream pump stations and mainline pipe beyond the Township, 3) certain mainline valves and their actuation, and 4) to a lesser extent, the elevation profile of the pipeline.

3a) The Boot Road Pump Station

There are certain minimum pump station requirements in federal regulation that set important obligations that the pipeline operator: a) have the station under their control (i.e., fenced boundaries), b) require the installation of certain emergency and fire protection equipment, and c) install separate power supplies that will allow the emergency shutdown of the station

⁴ 49CFR§195.304 Test pressures.
Accufacts Inc.

by the pipeline operator.⁵ With these additional requirements in place, while a failure/release in a pump station can be fairly spectacular, the release tonnage from a station failure is much more limited than that from a mainline pipeline rupture failure. At Accufacts' request, Sunoco provided Boot Road Pump Station piping and instrument diagrams ("P&ID") that identify the general existing and new additions to the station, indicating piping size and flow arrangements within the station, as well as key instrumentation and various safety approaches for the station. The Mariner East pump stations, including the Boot Road Pump Station, are designed to be shut down in an emergency, or ESD, either locally, remotely from the control room, or automatically via the computer system, isolating line segments if needed.

Based on a detailed review of the P&ID, Accufacts observes prudent pump station design that properly incorporates safety protection reflective of an HVL product operation, and also includes additional well thought out protections for the mainline in the event the pipeline is shut down. Some of this safety design requires the installation of a flare at the Boot Road Pump Station. This flare will have three types of operation:

- 1) a continuous pilot light within the flare to assure reliable ignition of combustibles that may be directed to the flare at any time;
- 2) an intermittent burn of smaller thermal or maintenance venting of pipeline/pump station equipment periodically released to the flare; and,
- 3) an intermittent burning of larger volumes of combustibles to quickly de-inventory segments of the pump station and sections of connecting mainline during an emergency.

Accufacts concurs with Sunoco's safety approach regarding integrating a flare into the pump station. Accufacts is well aware of public concerns regarding the installation of a flare at the Boot Road Pump Station, but Accufacts concurs that the flare is needed for various prudent safety reasons that cannot be publicly disclosed in detail.

The pump station flare should not often be operated at a high volume. Some of the public may be acquainted with flare operations associated with larger refinery flares that can generate considerably more heat and noise than the proposed flare at Boot Road. Although future pump station modifications from other pipeline projects (Mariner East 2) might increase flaring potential, the Boot Road Pump Station flare should not be operated as frequently as a refinery flare. Should such an integration occur from another project, it should still be a fairly infrequent safety operation. Basically, the Boot Road Pump Station

⁵ 49CFR§195.262 Pumping equipment.
Accufacts Inc.

flare is needed to reduce volumes of combustibles that could be released into the environment in close proximity to the public in the Township. Accufacts thus concludes Sunoco's flare approach is fair and appropriate.

3b) Pipeline Mainline Valve Remote Actuation

Accufacts has reviewed the pipeline elevation profile provided by Sunoco that also identified various additional pump stations and mainline valve locations along the pipeline outside of the Township. The installation/placement of remotely operated valves along a pipeline, especially in an HVL pipeline, is not an exact science. In case of pipeline rupture, material in HVL pipelines (unlike most liquid pipelines) can flow uphill. This has made the development of regulations concerning the placement of such important valves subject to some interpretation, with a wide field of opinions. There is no absolute "one size fits all" solution to the placement of mainline valves on liquid pipelines, especially because valving with remote actuation can introduce additional operational complexities for a pipeline if an appropriate safety review has not been performed (such as surge analysis and thermal expansion potential) and incorporated into the installation.

Accufacts has recommended that two mainline valves that were installed as manually operated isolation valves beyond the Township be actuated to permit remote and automatic mainline valve closure, isolating segments of the pipeline in an emergency. Sunoco's acceptance to remotely actuate two suggested existing manual mainline valves that span the Township, but are not within the Township boundaries, is a reasonable and necessary precaution and provides an additional level of protection to Township residents in the case of an emergency.

3c) Automatic and Remote Pipeline System Shutdown

Given its criticality to the overall operation of a high pressure HVL pipeline system in a highly populated area, Accufacts spent considerable time and effort reviewing and discussing with Sunoco's technical experts the system to automatically shut down the pipeline in the event of a possible rupture release. Sunoco information indicates that upon certain trigger events, usually indicative of a possible pipeline rupture, the Mariner East pipeline and pump stations will be automatically shut down, and the stations and segments of the mainline automatically isolated by strategically placed mainline valves closing. Sunoco further informs me that this important system-wide safety approach also covers major transients such as those that can occur during startup and shutdown, and major product changes. The control room operator can also manually initiate the automatic shutdown of the pipeline system.

3d) "Leak Detection" Systems

There are basically two types of pipeline releases, leaks and ruptures. Leaks are smaller rate releases from such conditions as minor cracks, pitting corrosion holes, punctures etc., where the minor size of the opening limits the rate of release. Leaks can nevertheless be dangerous depending on where they occur. The other type of releases are ruptures, high rate releases associated with large openings in the pipe caused by pipe fracture from certain anomalies or imperfections in the pipe. Ruptures by their nature are always dangerous,

Because of the complexity of hydrocarbons and pipeline operation, it is very difficult to design and install a leak detection system that can remotely identify all forms of pipeline releases. Accufacts advises that pipeline operators first focus on remotely identifying pipeline ruptures, and then attempt to improve on technology to possibly identify the much harder to recognize leaks. It is a significant challenge to reliably identify rupture releases, and technology has not yet been developed to dependably identify pipeline leaks. Too often Accufacts has observed pipeline operators trying to operate leak detection systems to capture all forms of releases only to be faced with excessive nuisance false release alarms. Leak detection approaches that generate such excessive false alarms, leak or rupture, set up control room operators to miss or ignore real release events when they occur. Accufacts has repeatedly observed in its investigations excessive false leak alarms causing control room operators to miss even pipeline rupture events.⁶ One of the objectives of the control room management regulation promulgated in 2009/2010 was to assist the operators in removing such excessive false alarms.⁷

Regarding "leak detection", the Mariner East project will first incorporate an advanced computer/automatic system that scans and monitors the pipeline and pump stations for certain parameters that are indicative of a possible pipeline rupture, and automatically initiates a full pipeline system shutdown and isolation, including pump station isolation and remote mainline valve closure, following a special required sequence. Sunoco information provided indicates a rational and progressive approach in trying to achieve pipeline rupture release detection with automated shutdown response without excessive false alarms. It is Accufacts' experience that Sunoco's particular approach may cause more false shutdowns than simple leak detection, but Sunoco has applied the use of this design that includes transient detection on their Mariner West operation, and false shutdowns have been very infrequent on that system since its startup slightly more than a year ago.

⁶ National Transportation Safety Board, NTSB, "Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release Marshall, MI July 25, 2010," NTSB/PAR-12/01, adopted July 10, 2012.

⁷ 49CFR§195.446 Control room management.
Accufacts Inc.

To complement the automatic shutdown system focused on possible larger pipeline releases, the pipeline will also incorporate a different separate non-automatic "leak detection" software package that is intended to assist the control room operator in possible pipeline leak as well as rupture identification. To enhance the effectiveness of this software leak detection system the pipeline is to be normally operated liquid full, or non-slack line. This separate approach requires the control room operator to interpret presented information of a possible release in a special format, decide if a possible release indication is real, and manually initiate a system wide shutdown if warranted. This second leak detection monitoring system relies on control room operator intervention, but is intended to supplement the automatic shutdown intended for larger releases.

Accufacts supports Sunoco's approach for both automatic shutdown and isolation for large releases, and the second "leak detection" approach that requires the control room operator to evaluate certain presented information and determine if a possible pipeline release is occurring, and manually initiate a pipeline shutdown.

3e) The Critical Role of the Control Room Operator.

While pipeline automation plays an important role in controlling and monitoring certain aspects of a pipeline operation, and can play a timely safety role in automatically shutting down and isolating a pipeline system, the control room operator nonetheless still serves an important function in pipeline operation. The control room operator is responsible for *managing various operating parameters*, as well as *monitoring and responding to various computer signals*, including responding to alarms, in their hierarchy of importance. A well designed computer system that initiates certain actions such as automatic shutdown and mainline valve closure can react faster than a human monitoring various aspects of a pipeline system. Such complexity should not override the ability of the control room operator to initiate a shutdown if he feels it is warranted. Accufacts considers Sunoco's computer monitoring and shutdown approach to be "progressive" in its efforts to assure a safe and prompt response in the event of a HVL rupture release, should it ever be needed.

Even in a system designed for automatic shutdown, the control room operator has an important role to assure that the safety equipment has performed as intended, especially in the case of a system-wide automatic shutdown. Accufacts did not see in Sunoco's original emergency procedure that, upon such an automatic shutdown, the control room operator is instructed to check the overall pipeline system to assure that the pump stations have shut down and that automatically operated valves along the mainline have properly closed to assure segment isolation. In too many pipeline rupture investigations, Accufacts has found deficient operating procedures that do not require the control room operator to assure remotely operated/actuated mainline valves have been quickly and properly closed. Sunoco has agreed to add a modification to their control room emergency procedures to assure that

the operator checks that the emergency shutdown system has performed as intended, and that mainline valves have properly closed.

3f) The Importance of Emergency Response Plans

Pipeline operators are required under federal pipeline regulation to have emergency response plans to deal with the emergencies associated with pipeline releases. Such procedures focus on protecting people first and then on property, establish who is in control and how control is handed off during various stages of a release, what type of command structure is utilized for such emergencies such as the Incident Command Structure (or ICS) that has proven to be highly effective in pipeline releases, and how communication is maintained with first responders who are usually the first to arrive at a release site. It is important that all key pipeline personnel be trained in their various roles and responsibilities in the event of a pipeline release emergency, especially pipelines moving HVL that can have serious consequences.

During an emergency involving a release, the control room plays a critical role as the emergency contact actually controlling and monitoring the pipeline to assure that appropriate equipment has been properly shutdown. The control room also serves to maintain liaison with local emergency responders until hand-off to company onsite field incident command personnel can occur. The control room thus is a critically important initial contact with local emergency responders to assure everyone is properly communicating/coordinating during the *important initial stages of a possible pipeline release where there can be much confusion.*

Under federal pipeline safety regulations, the pipeline operator is required to notify and coordinate with emergency first responders during pipeline emergencies.⁸ The control room should have a list of local emergency contacts, including "other public officials." Local first responders and these officials should also have company emergency contacts and, for obvious reasons as identified above, the important pipeline control room emergency contact number(s). Because of various changes that may occur in organizations, local official contact numbers can be frustratingly difficult to keep current, but the control room contact number should usually never change. Federal pipeline safety regulations place the responsibility to keep emergency contacts with Township officials squarely on the pipeline operator for very good reasons.⁹ It is Accufacts' understanding that these important contacts for the Township have been recently updated and that Sunoco has a process for periodically updating the list.

⁸ 49CFR§195.402 Procedural manual for operations, maintenance, and emergencies.

⁹ 49CFR§195.402(e)(7).

4. Keeping Township Informed of Future Major Changes in the Pipeline's Integrity within the Township

As discussed above, a prudent safety management approach should initially assess the integrity of the pipe, periodically reassess the pipe for possible new threats, and install appropriate equipment to allow the monitoring and shutdown of the pipeline during a suspected possible emergency. At Accufacts' recommendation, Sunoco has agreed to keep the Township informed of a future possible integrity threat on the pipe within the Township identified under 49CFR§452(h)(4) (i), (ii), (iii), & (iv), *Special requirement for scheduling remediation*, once it has been discovered by the operator.¹⁰ Based on Accufacts' extensive experience this reporting requirement should assist the Township to know that the pipeline operator continues to utilize a prudent integrity management approach to avoid threats of possible pipeline rupture failure on the segments in the Township. It again should be stressed that no pipeline is anomaly free, even new pipelines, so anomalies should be expected. The key is to catch those anomalies that can quickly lead to failure, especially rupture. The federal regulatory requirements as to identified threats for which the Township will receive notice should be sufficient, and reporting any changes should not be difficult or burdensome on either the pipeline operator or the Township.

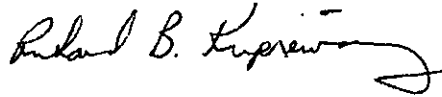
5. Accufacts' Conclusions

As discussed above, the important hydrotesting protocols utilized in November 2014 by Sunoco on the Mariner East pipeline exceed federal regulatory protocols in the application of strength hydrotesting at adequate pressures and in % SMYS. In addition, Sunoco performed an important spike hydrotest which is not currently required by pipeline safety regulations. Accufacts finds that Sunoco exceeds federal hydrotest regulatory requirements and complies with the latest PHMSA Advisory Bulletin concerning pipeline reversals as discussed earlier (ADB-2014-04). These special hydrotest approaches play an important role in assuring the integrity of the pipeline at the time of the hydrotest, even for very old pipe.

It is also Accufacts' opinion that Sunoco, on the Mariner East pipeline segment that could affect the Township, is exceeding federal pipeline safety regulations in utilizing additional integrity management approaches, prudent pump station design, mainline valve placement and actuation, pipeline monitoring, as well as control room procedures, automatic release detection safety systems, and emergency notification protocols that reflect the level of respect that transporting HVL should require in a prudent pipeline operation. While these efforts cannot guarantee against a release, they reflect a safety attitude that applies up to date

¹⁰ 49CFR§452(h)(2) *Discovery of condition* places an upper time limit of 180 days from an integrity assessment (e.g., ILI) for the threats that might be introduced in the future operation of Mariner East that can affect the Township.

steps to avoid a release and respect for the consequences a material release could produce, especially rupture. Accufacts concludes that the Mariner East phase 1 project, with the enhancements discussed above, meets or exceeds the prudent technical approaches commensurate with the safe transportation of HVL.

A handwritten signature in black ink, appearing to read "Richard B. Kuprewicz". The signature is fluid and cursive, with a long, sweeping tail that loops back under the name.

Richard B. Kuprewicz
President,
Accufacts Inc.

APPENDIX 6

List of Members of Concerned Citizens of West Goshen Township

Members of Concerned Citizens of West Goshen Township
 (All addresses are in West Chester, PA 19380)

Raymond and Holly Allen
 1244 Killern Lane *Yes Proxy*

Amanda and John Buffington
 1008 E. Boot Road

Mike and Carol Burkardt
 1246 Victoria Lane *CB*

RV Rosana I. Chiple
 1130 Laurel Drive

Derick Deangelo
 1256 Victoria Lane

MD Marcella and Mark Denisewicz
 1312 Mary Jane Lane

Keith Dickerson *(11/22)*
 1212 Culbertson Circle

LR Linda Erfle
 1237 Killern Lane

[REDACTED]

Christine & Ted Frain
 1252 Victoria Lane

Georgine Guzzi
 1303 Anderson Ave *GR*

Leonard J Iacono *LI*
 1324 Mary Jane Lane

Leonard Kelly *LK*
 1313 Mary Jane Lane

Kevin and Krista Link *KL # KL*
 1315 Mary Jane Lane

Mark and Mary Jane Lorenz
 1317 Mary Jane Lane

ELM Eric and Lizann Marchetti
 1308 Mary Jane Lane

*DJC
KAC*

Drew & Kimberly McCorkell
 1303 Mary Jane Lane

James & Mary Meyers *JM*
 1309 Mary Jane Lane

Steve and Lynn Moose *OK*
 1235 Hamlet Hill Dr. *SR*

EMM Erin Morelli
 1322 Mary Jane Lane

Anthony Natale III
 1254 Victoria Lane

M SM John & Mary Nescio
 1307 Mary Jane Lane

Cindy & Tim Nichols *CR*
 1223 Hamlet Hill Drive *(SR)*

J. M. Sharon Owen *PROX for Sharon Owen*
 1304 Mary Jane Lane *Proxy*

Tom Pavletich
 1132 Laurel Drive

Jeff Perham *JF (SR)*
 1221 Trafalgar Lane

Joseph & Deborah Radzewicz *JR DR*
 1248 Victoria Lane *(SR)*

Phyllis Ruggiero
 1311 Mary Jane Lane

Masooda B. Siddiqui *MS*
 1325 Mary Jane Lane

Diane Watson Treon
 1320 Mary Jane Lane

Edna Mae Veit *EV*
 1314 Mary Jane Lane

From: (215) 569-5500
 Christopher Lewis
 Blank Rome LLP
 1 Logan Square
 18th & Cherry Street
 Philadelphia, PA 19103

Origin ID: REDA

FedEx
 Express



J151215022303uv

Ship Date: 15MAY15
 Act/Wgt: 0.5 LB
 CAD: 103873866/WSXI2500

Delivery Address Bar Code



Ref # 142919.00601
 Invoice #
 PO #
 Dept #

SHIP TO: (717) 787-8009

BILL SENDER

Rosemary Chiavetta
Pennsylvania Public Utility Comm.
400 NORTH ST

HARRISBURG, PA 17120

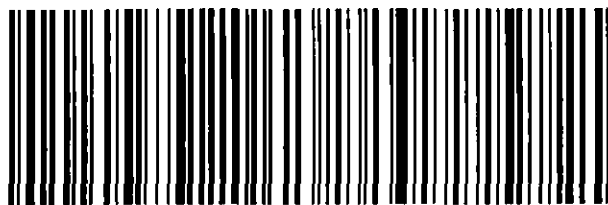
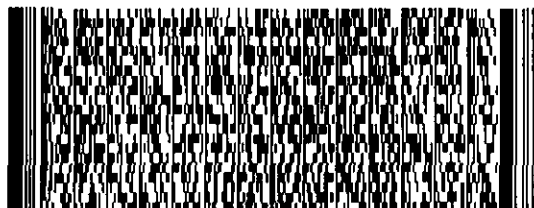
MON - 18 MAY 10:30A
 PRIORITY OVERNIGHT

TRK# 7806 6383 1010

0201

DSR
 17120
 PA-US
 MDT

SH MDTA



FOLD on this line and place in shipping pouch with **bar code and delivery address visible**

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.

Exhibit B

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

HIGH SWARTZ LLP
David J. Brooman, Esquire (I.D. No. 36571)
Richard C. Sokorai, Esquire (I.D. No. 80708)
Mark R. Fischer, Jr., Esquire (I.D. No. 94043)
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mfischer@highswartz.com

Attorneys for West Goshen Township

WEST GOSHEN TOWNSHIP,	:	
Petitioner	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
Respondent	:	

**PETITION OF WEST GOSHEN TOWNSHIP FOR
AN EX PARTE EMERGENCY ORDER AND AN INTERIM EMERGENCY
ORDER**

Petitioner, West Goshen Township (“Township”), is seeking an Ex Parte Emergency Order and an Interim Emergency Order pending a final decision and injunction per its complaint to enforce its settlement agreement with Sunoco Pipeline, L.P. (“SPLP”). Specifically, Township seeks to prevent SPLP from violating its agreement with Township that it would locate a valve station at a particular location unless engineering constraints rendered it unable to do so. SPLP, on the apparent basis that its 1930s certificate of public necessity overrides the health, safety and welfare of the residents of Township, has been surreptitiously planning on steamrolling its way through Township, by locating and constructing pipeline facilities in locations contrary to its promises and representations in its Settlement Agreement with the

Township. Further, SPLP has not demonstrated even the slightest regard for coordination with Township regarding construction scheduling, road closures, and other construction activities.

Township is not seeking to halt all pipeline and related pipeline construction in the Township and has no issue with construction proceeding consistent with the promises and representations of SPLP. Rather, Township only seeks a halt to construction or related activities inconsistent with SPLP's promises in its Settlement Agreement regarding the location of certain facilities.

Understanding that regulation of public utilities is in the purview of the Commission, not municipalities, the Township disagrees that SPLP can do whatever it wants, however it wants, wherever it wants and whenever it wants. SPLP and the Township were before the PUC when the Settlement Agreement was reached. There are actions before the PUC that the Township could have taken, but did not, based upon SPLP's assurances in its Settlement Agreement with Township. Therefore, Township, by and through its attorneys, High Swartz LLP, respectfully files this Petition for an Interim Emergency Order pursuant to 52 Pa. Code §3.6, and in support thereof avers as follows:

I. Introduction and Procedural History

1. Petitioner, West Goshen Township ("Township"), seeks an Ex Parte Emergency Order pursuant to 52 Pa.Code §3.2 and an Interim Emergency Order pursuant to 52 Pa. Code § 3.6, enjoining Respondent, Sunoco Pipeline, L.P. ("SPLP"), from beginning construction of a valve and any other facilities appurtenant thereto (collectively "Valve 344") for SPLP's Mariner East 2 pipeline ("ME2") in the Township, or at any location not specifically agreed to in SPLP's Settlement Agreement with Township, until after the Pennsylvania Public Utility Commission ("Commission") issues a final order on the Township's First Amended Formal Complaint ("Amended Complaint") in this matter.

2. Township does not seek to enjoin pipeline and appurtenant facilities construction in the Township consistent with SPLP's promises and representations in its Settlement Agreement with the Township.

3. The Township's Amended Complaint seeks interpretation and enforcement of a Settlement Agreement executed by the parties ending certain PUC litigation between them. The Settlement Agreement was certified by the Secretary of the Commission as effective on June 15, 2015 ("Settlement Agreement").¹ A true and correct copy of the Township's Amended Complaint is attached hereto as Exhibit "1" and the allegations set forth therein are incorporated herein by reference as if set forth at length. The Settlement Agreement is attached to the Township's Amended Complaint at Exhibit "A."

4. On or about May 22, 2017 SPLP filed a Motion for Judgment on the Pleadings, to which the Township filed a Response in Opposition on or about June 12, 2017.

5. The Initial Pre-Hearing Conference in this matter occurred on July 6, 2017 before Administrative Law Judge Elizabeth H. Barnes.

II. Pertinent Factual Background

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

¹ The Settlement Agreement provides that any action to enforce any provision of the Agreement, other than the deed restriction created pursuant to the Agreement, shall be brought before the Pennsylvania Public Utility Commission. *See* Settlement Agreement at ¶ V.A.4.

the SPLP initiated proceeding. The facts set forth in the Settlement Agreement are incorporated herein by reference.

7. The Settlement Agreement had several provisions that are relevant to this Petition:

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

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

c. Any above ground facilities related to the Mariner East Project would be located on an existing site where other above ground facilities were located already, except one valve station, which was to be constructed on a specific location (the “SPLP Use Area”) on land adjacent to the existing SPLP facilities that was formerly owned by the Janiec family (referred to in the Settlement Agreement as the “former Janiec Tract” and referred to in this petition as the “Janiec 1 Tract”) (Settlement Agreement Section II.A.2.);

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

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

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

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

8. Consistent with the above contractual provisions, throughout the negotiations resulting in the Settlement Agreement, SPLP repeatedly represented to Township and Kuprewicz, that after engineering design, if any above-ground pipeline facilities needed to be placed in the Township, such facilities would be constructed on the "SPLP Use Area." *See* Settlement Agreement (Ex. 1 at Ex. A), at Paragraph II.A.2; *see also* the Affidavits of Richard Kuprewicz, Ray Halvorsen (West Goshen Township Supervisor), Casey LaLonde (Township Manager), and Kristin Camp (Township Solicitor), copies of which are attached to the Township's Response in Opposition to SPLP's Motion for Judgment on the Pleadings, a true and correct copy of which is attached hereto as Exhibit "2."

9. The SPLP Use Area is located adjacent to an existing ME1 pump station, on the north side of Boot Road, near the US Route 202 southbound off-ramp (west of US Route 202).

10. On or about January 12, 2017, the Township received plans and other materials from SPLP relating to SPLP's application for an Erosion and Sediment Permit, which included references to SPLP's proposal to construct an above ground valve station, known as Valve 344, on an entirely separate 6.646 acre tract of property in the Township, located further south on Boot Road, near the US Route 202 northbound on-ramp (east of US Route 202) (hereinafter the "Janiec 2 Tract").

11. SPLP's intention to build Valve 344 on the Janiec 2 Tract contradicts its representations and promises to the Township throughout the negotiation of, and within the body of, the Settlement Agreement, to build any required above-ground facilities within the SPLP Use Area.

12. Disturbingly, SPLP's submissions to the Township in January 2017 indicate that SPLP had plans to place Valve 344 on the Janiec 2 Tract as early as March 26, 2015, which preceded its execution of the Settlement Agreement on April 14, 2015.

13. Contrary to the terms of the Settlement Agreement, SPLP did not provide the Township with any notice that it intended to site a valve station anywhere in the Township other than the SPLP Use Area, nor any engineering documentation concluding that SPLP cannot construct Valve 344 on the SPLP Use Area due to engineering constraints.

14. SPLP's lack of notice of the change in location of the Valve Station for almost two years from the date displayed on its secret plan, deprived Township and Kuprewicz the ability to perform a meaningful safety review and resulted in the Township filing its initial Complaint to Enforce the Settlement Agreement on or about February 17, 2017, then the Amended Complaint on or about March 30, 2017.

15. SPLP's unilateral attempt to relocate Valve 344 to the Janiec 2 Tract, without notice and engineering justification to the Township, is a material violation of the Settlement Agreement.

16. On or about June 15, 2017, while the Township's Amended Complaint remained pending, the Township received a notice from the Pennsylvania Department of Transportation ("PADOT") advising that SPLP planned lane closures on Boot Road between U.S. Route 202

and Ship Road in the Township, among other places, beginning on June 19, 2017, due to utility work that is expected to finish in early August.

17. Based upon the foregoing, and other facts set forth more fully below, the Township believes that SPLP's construction of Valve 344 on the Janiec 2 Tract is imminent.

18. Since receiving the aforementioned PADOT notice, the Township, through counsel, has made requests to SPLP for its construction schedule in the Township, but SPLP refused to provide said information until, on July 5, 2017, Township Assistant Manager Derek Davis received a phone call from Ivana Wolfe, purportedly of Sunoco Logistics Community Relations, on behalf of SPLP advising that SPLP intended to start "mobilizing" the Janiec Tract (Janiec 2 Tract) in the next one to two weeks, which would include site clearing and setting up a drill site, but not providing any further details about construction or timing.

19. However, on that same day, the Township noticed workers on the Janiec 2 Tract, apparently preparing for construction or site clearing activities.

20. The Janiec 2 Tract is entirely green and/or tree covered and site clearing, particularly for facilities that are not permitted on that site, would be needlessly detrimental to the Township.

21. In addition, other construction, including on one of the major roadways in the Township will be very disruptive to the residents of the Township, and if the facilities are not ultimately permitted on the Janiec 2 Tract, new construction would require significant additional disturbance to the residents to correct the problem.

22. Further, SPLP will no doubt argue in future proceedings that what will then be (if not now prevented) existing disturbance or construction, will weigh in favor of allowing them to

continue to put the facilities in the prohibited location for fear of causing more disruption to fix the problem.

23. Prior to filing this Petition, the Township, through counsel, also requested that SPLP enter into a standstill agreement to maintain the status quo until after the Commission issues a final order on the Township's Amended Complaint, but SPLP again refused.

24. SPLP takes the position that the public need for pipeline facilities outweighs the Township's need to assure that the public is properly prepared for and protected from the impending construction of facilities carrying highly volatile fuels through the Township.

25. Given SPLP's refusal to cooperate with the Township within which it intends to construct these volatile utility facilities, Township hereby seeks an Interim Emergency Order enjoining SPLP from beginning construction on the Janiec Tract, or anywhere else in the Township other than the SPLP Use Area, relating to Valve 344 or otherwise, until after the Commission issues a final order on the Township's Amended Complaint.

III. Petition for Interim Emergency Order

26. "A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief, including facts to support the following: (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. (4) The relief requested is not injurious to the public interest." 52 Pa. Code § 3.6(b).

27. The petitioner must establish these factors by a preponderance of evidence.

Application of Fink Gas Co. for Approval of the Abandonment of Serv. by Fink Gas Co. to 22 Customers Located in Armstrong Cty., Pennsylvania, & the Abandonment by Fink Gas Co. of All Nat. Gas Servs. & Nat. Gas Distribution Servs., 2015 WL 5011629, at *3-4 (Pa. P.U.C. Aug. 20,

2015) (citing *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990)).

28. The facts set forth in this Petition, establishing the criteria for an Interim Emergency Order, are supported by an affidavit executed by the Township Manager, Casey LaLonde, attached hereto as Exhibit 3 (hereinafter “LaLonde Affidavit”).

A. The Township’s right to interim emergency relief is clear.

29. In order to determine if the petitioner’s right to relief is clear, it is not necessary to determine the merits of a controversy; rather, the question is whether the petitioner has raised “substantial legal questions.” *Application of Fink Gas Co.*, 2015 WL 5011629, at *3–4 (Pa.P.U.C. Aug. 20, 2015).

30. As summarized above, the Township’s Amended Complaint sets forth substantial legal questions regarding the interpretation and effect of the Settlement Agreement, which directly impact the location and construction of Valve 344 within the Township.

31. On the face of the 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.

32. If SPLP was unable to locate the valve station on the use area due to engineering constraints, it had an express obligation to notify the Township, which it did not do.

33. To date, no justification has been provided at all as to why the valve station can not be located as agreed.

34. Rather, contrary to its material representations, SPLP had existing plans to locate the valve station on the Janiec 2 site, but the Township did not discover this until almost 2 years

later upon submission of an E&S plan by SPLP, substantially depriving the Township and its expert of any meaningful safety review.

35. SPLP generally relies on three arguments to support its position that it can construct its facilities, however, wherever and whenever it wants:

a. that all of the promises, representations and warranties set forth by SPLP in the negotiations and the Settlement Agreement, and upon which Township relied, are mere surplus with no effect on its obligations, regardless as to the express provision in the Settlement Agreement that the Township and its expert were relying on same;

b. that the Township is somehow trying to usurp the authority of the PUC even though the Township has brought this action before the PUC, that SPLP voluntarily made this agreement and representations, and even though the Parties agreed that any action to enforce the Agreement shall be brought before the PUC; and

c. that all other provisions of the Settlement Agreement should be ignored and/or given no effect, except the direct promise set forth in Section IV.A.1.a. that SPLP would not put the valve station on any part of the Janiec 1 Tract except the SPLP use area, but which specific section does not specifically reference the Janiec 2 Tract or other properties in the Township.

36. These positions have no merit as the intent of the Settlement Agreement is clear; to control the location of the valve station to the SPLP Use Area unless engineering constraints made SPLP unable to do so.

37. The paramount goal of contract interpretation is to “ascertain and give effect to the parties’ intent.” *Lyons v. Lyons*, 585 A.2d 42, 45 (Pa.Super. 1991). As explained in *Wrenfield Homeowners Ass’n, Inc. v. DeYoung*, 600 A.2d 960 (Pa.Super. 1991): Each and every

part of [the contract] must be taken into consideration and given effect, if possible, and the intention of the parties must be ascertained from the entire instrument.” In order to ascertain the intention of the parties, “the court may take into consideration the surrounding circumstances, the situation of the parties, the objects they apparently have in view, and the nature of the subject-matter of the agreement.” The court will adopt an interpretation that is most reasonable and probable bearing in mind the objects which the parties intended to accomplish through the agreement. *Wrenfield Homeowners, supra* at p. 963.

38. “Before a court will not interpret a provision in ... a contract in such a way as to lead to an absurdity or make the ...contract ineffective to accomplish its purpose, it will endeavor to find an interpretation which will effectuate the reasonable result intended. *See Laudig v. Laudig*, 624 A.2d 651, 654 (Pa.Super. 1993) *citing Pocono Manor Ass’n v. Allen*, 12 A.2d 32, 35 (1940). Further, Pennsylvania contract law prescribes that, “an interpretation will not be given to one part of the contract which will annul another part of it.” *Capek v. Devito*, 767 A.2d 1047, 1050 (Pa. 2001).

39. It would be contrary to Pennsylvania law and the clear intent of the parties to ignore the entirety of the contract and interpret one provision in a vacuum.

40. SPLP’s position that the relevant information under sections II and III of the Settlement Agreement are not binding is faulty, as in addition to the same legal principals cited above, there is clause in the Settlement Agreement that Township and its safety expert were expressly relying on the information in entering into the Agreement.

41. Further, there is nothing in the Settlement Agreement that specifies that Section II and III were mere surplus, as opposed to material and enforceable.

42. Based on the foregoing, the Township’s right to relief is clear.

B. The Township's need for relief is immediate.

43. SPLP's lack of notice of the change in location of the valve station for almost two years from the date displayed on its secret plan, deprived Township and its pipeline safety expert, Richard Kuprewicz, the ability to perform a meaningful review of the ME2 pipeline and above ground facilities before entering into the Settlement Agreement and provide input through PUC processes.

44. The Township received notice on April 10, 2017 from PADOT that SPLP planned to begin utility work in the Township roads, near the area of the SPLP Use Area, in June, 2017;

45. Township staff and through its special counsel, thereafter made numerous requests to SPLP for its construction schedule in the Township, but SPLP refused to provide said information until, on July 5, 2017, the Township received a phone call from Ivana Wolfe, purportedly of Sunoco Logistics Community Relations, on behalf of SPLP advising that SPLP intended to start "mobilizing" the Janiec 2 Tract in the next one to two weeks, which would include site clearing and setting up a drill site, but not providing any further details about construction or timing.

46. However, on that same day, Township noticed workers on the Janiec 2 Tract, apparently preparing for construction or site clearing activities.

47. Full construction activities have commenced on Boot Road in the adjacent Township, East Goshen.

48. On July 6, 2017, the same date of the first pre-trial conference before Administrative Law Judge Elizabeth H. Barnes, at 12:30 PM, without notice to the Township, the Township Engineer, and Township special counsel observed vegetation/tree clearing and other earth disturbance activities at the Janiec 2 site. Attached as Exhibit B to the LaLonde Affidavit are photographs of the disturbance.

49. In addition, as further evidence that the need for relief is immediate, with respect to the timing of the work:

- a. SPLP filed the E&S permit application in January 2017;
- b. The Township recently received notice from SPLP that it planned to begin utility work in the Township, near the area of the SPLP Use Area, sometime in July 2017;
- c. full construction activities have commenced on Boot Road in the adjacent Township, East Goshen
- d. Despite multiple requests, SPLP has refused to provide information about the work or work schedule; and
- e. SPLP has refused to voluntarily stay the work.

50. Therefore all information indicates that commencement of work is imminent.

51. In addition, the Township anticipates that the planned utility work by SPLP is the construction of Valve 344, the location of which is the very subject of the Township's Amended Complaint.

52. Because the construction of Valve 344 appears imminent, and there is not yet a hearing scheduled on the Township's Amended Complaint, the Township's need for interim emergency relief is immediate.

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

53. In determining the third requirement for interim emergency relief, whether an injury is irreparable, the Commission determines "whether the harm can be reversed if the request for emergency relief is not granted." Application of Fink Gas Co., 2015 WL 5011629, at *9.

54. As set forth in the Township's Amended Complaint, the Township entered into the Settlement Agreement in reliance upon SPLP's representations that any above-ground utility

facilities relating to the ME1 or other projects in the Township would be constructed within the SPLP Use Area, adjacent to the existing SPLP facilities.

55. SPLP unilaterally and surreptitiously decided to try to locate Valve 344 on the Janiec 2 Tract, without notice to the Township or any engineering justification as required by the Settlement Agreement.

56. As evidenced by SPLP's application for an Erosion and Sediment Permit, SPLP's construction of Valve 344 will require tree clearing and soil movement at the property upon which the construction occurs.

57. Allowing SPLP to begin construction on the Janiec 2 Tract before the Commission decides the Township's Amended Complaint will result in the Janiec 2 Tract being irreparably altered, with the loss of the trees and green cover.

58. The disturbance seen in the attached photos (Exhibit B to the LaLonde affidavit) is out of compliance with the recently issued erosion and sedimentation (E&S) control permit and Township regulations in that the required E&S controls (silt socks and silt fencing) were not in place prior to the disturbance.

59. This disturbance is also out of compliance with the Township Code, as clearly set forth on the permit application, since the Township Engineer must be notified 48 hours in advance of any earth disturbance. A copy of the relevant application and permit are attached to the Lalonde Affidavit as Exhibit C; relevant sections of the Township Code are attached to the LaLonde Affidavit as Exhibit D..

60. Compliance with the permit procedures and Township Codes is critical to protect the health, safety and welfare of the residents of the Township.

61. On July 7, 2017, the Township issued a Notice of Violation to SPLP for its failure to comply with the Township's Earth Disturbance Permit and Chapter 69 of the Township Code. A copy of the Notice of Violation is attached to the LaLonde Affidavit as Exhibit E.

62. The Janiec 2 Tract is entirely green and/or tree covered. Site clearing, particularly for facilities that are not permitted on that site, would be needlessly detrimental to the Township. As discussed in the LaLonde Affidavit, the clearing and grubbing that SPLP has done in building ME2 in other parts of Chester County can only be characterized as complete destruction the Commonwealth's precious and irreplaceable natural resources.

63. The Township, in fulfilling its Article I, Section 27 constitutional obligation to protect the natural resources of this Commonwealth for its citizens, insisted in the settlement negotiations and in the Settlement Agreement that already industrial land, and the adjacent SPLP Use Area, be the only land permanently disturbed by ME2 above ground facilities. The existing site has a pump station, equipment appurtenant to the pump station, the VCU, and above ground utilities of all kinds. The Janiec 2 tract is vacant land, fully forested, and zoned residential. 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.

64. The proposed construction, including on one of the major roadways in the Township, will be very disruptive to the residents of the Township, and if the facilities are not ultimately permitted on the Janiec 2 Tract, new construction on the Janiec 2 property would require significant additional disturbance to the residents to correct the problem.

65. The construction workers working on behalf of Sunoco have unilaterally occupied the volunteer fire department premises, without notice or permission of the Fire Department or

Township, and their activities have blocked access to the Fire Department, causing further threat of immediate and catastrophic harm to the residents of the Township.

66. In addition, prior to the Janiec 2 property being condemned on May 12, 2017, without notice to the Township, the Township had granted all entitlements necessary to develop the property with a needed housing development for the elderly, which would have provided numerous benefits to the Township including mitigation of an existing stormwater management problem from the Route 202 construction, needed road improvements to Township roads, and a reliable source of new tax revenue.

67. Allowing the valve station to be constructed on the Janiec 2 tract will be detrimental to the Township as it will stop the approved development.

68. Prior to filing this Petition, the Township, through counsel, also requested that SPLP enter into a standstill agreement to maintain the status quo until after the Commission issues a final order on the Township's Amended Complaint, but SPLP has refused.

69. This refusal resulted in the Township filing its initial Complaint to Enforce the Settlement Agreement on or about February 17, 2017, then the Amended Complaint on or about March 30, 2017.

70. Such injury can be prevented by enjoining SPLP from beginning construction within the Township until after the Commission decides the Township's Amended Complaint.

71. Further, SPLP would no doubt argue, if allowed to begin construction, that the injunctive aspects of Township's complaint are moot, arguing that any irrevocable harm has already been suffered and that to hold otherwise would cause further harm and disruption to put the valve station in the correct location.

72. In addition, as demonstrated by the Kuperwicz report incorporated into the Settlement Agreement, there are many important safety concerns associated with such above ground facilities, which could lead to disastrous results if not managed and monitored properly.

73. By preventing any meaningful expert review of the newly proposed location, significant harm is being brought upon the residents of the Township as they are being deprived of the benefit of the review by the Township for which it bargained.

74. For these reasons, the injury to the Township would be irreparable if this petition is not granted.

D. The relief requested is not injurious to the public interest.

75. The Public Utility Commission has found that there are significant public benefits to be gained from enhancing delivery options for Marcellus Shale producers. *See e.g. Petition of Sunoco Pipeline, L.P. for Amendment of the Order Entered on August 29, 2013*, Docket No. P-2014-2422583 (Order entered July 24, 2014) at 7 and Petitioner does not dispute that there is significant public benefit.

76. The Township is not attempting to halt construction of the ME2 pipeline in the Township which is consistent with the Settlement Agreement. There are is significant planned construction in the Township, including on the areas currently used by SPLP, where construction can proceed even with the entry of the requested orders.

77. The Township entered into a Settlement Agreement, which was filed with the PUC ending the litigation, because the Settlement Agreement was also in the public interest.

78. Presumably SPLP also felt the same way, for as a public utility, it also felt it appropriate to enter into the Settlement Agreement.

79. Further, the Township ensured that the Settlement Agreement cited all of the SPLP representations that it, and its safety expert, relied upon to ensure the public safety with

respect to the SPLP s plans for above-ground facilities in the Township, and agreed to withdraw any further protest to said facilities only if constructed on the SPLP Use Area in accordance with that Settlement Agreement.

80. The Township undertook the initial PUC Intervention and subsequent Settlement Agreement to fulfill its obligation to minimize any damage or disruption to the health, safety and welfare of its residents and ensure their rights to clean air and water under Article I Section 27 of the Pennsylvania Constitution

81. Nowhere does the PUC hold, or the Settlement Agreement provide, that the public benefit of enhancing delivery options for Marcellus Shale producers is so great that a public utility can mislead a Township to lower its vigilance in protecting the health safety and welfare of its residents.

82. Now the Township is faced with impending traffic disruptions (as indicated in the aforementioned PADOT release) and natural resource destruction, all for construction at a property within the Township other than that which was anticipated and agreed upon.

83. Requiring SPLP to await construction in the Township until the Commission decides the Township's Amended Complaint is not injurious to the public interest; rather, it is necessary to protect the public interests that led to the Settlement Agreement.

84. Any small inconvenience to SPLP in delaying the construction of only a small portion of the SPLP pipeline until it is determined if SPLP should be required to honor its representations and promises in the Settlement Agreement is outweighed by the public interest of the Township, as stewards of the environment and safety of its residents, exercising its responsibility to ensure that their rights to a pristine environment under the Article I, Section 27 of the Pennsylvania Constitution are preserved and ensuring that the fire department's important

services to the community are not hindered by the total disregard for public safety demonstrated by SPLP and its contractors, particularly given that:

a. the Township is not trying to stop the ME2 pipeline from going through its Township, or trying to stop its construction consistent with SPLP's promises, but rather is merely seeking to force SPLP to construct the facilities where it promised;

b. Despite the significant amount of nonobjectionable construction that SPLP can do in the Township, the only construction activities it has commenced are those at the Janiec 2 site, indicating that SPLP is rushing to complete the objectionable work before the PUC can stop the improper conduct;

c. there is no indication that the ME2 line is going into service in 2017;

d. SPLP has presented no information that engineering constraints render SPLP unable to construct the valve station on the SPLP Use Area, which it can do now without opposition; and

e. SPLP agreed to have the Commission resolve any dispute regarding the terms of the Settlement Agreement, and therefore should be required to await the Commission's decision on this material dispute under the Settlement Agreement.

85. For these reasons, the Township's request for interim emergency relief is not injurious to the public interest.

E. Need for Ex Parte Emergency Order

86. Interim Emergency Orders must be ruled on by the presiding officer within 15 days of the filing of the Petition, 52 Pa.Code §3.7, and then only after a five day response period and a hearing within 10 days of filing the petition. 52 Pa.Code §§3.6 and 3.6(a).

87. In fact, at the July 6, 2017, prehearing conference, the filing of this Petition was discussed and a tentative date for the hearing is set for July 18, 2017.

88. However, as explained above, SPLP is now going out of its way, even to the extent of violating the Township's E&S ordinance, to perform the construction at the disputed location before the PUC can act.

89. The Interim Emergency Order provisions of the Pennsylvania Code alone are not sufficient to prevent the immediate substantial harm to life and property as set forth above.

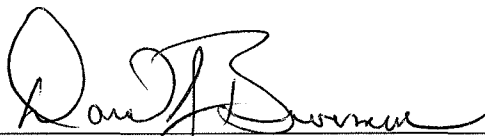
90. Under the Code, an emergency includes a situation which presents a clear and present danger to life or property that requires action prior to the next scheduled public meeting.
52 Pa.Code. §3.1

91. An emergency order is an ex parte order issued by a single Commissioner, the Commission, the Commission's Director of Operations or the Commission's Secretary in response to an emergency.

92. The immediate harm to property and Chester County natural resources set forth in this Petition and the supporting affidavit of Casey LaLonde requires an Ex-Parte Emergency Order, pursuant to 52 Pa.Code. §§ 3.1 and 3.2, to stop the immediate substantial and irreversible damage to property and natural resources, pending the hearing and order on the request for an Interim Emergency Order.

WHEREFORE, West Goshen Township respectfully requests that the Commission enter an Ex Parte Emergency Order, followed by an Interim Emergency Order enjoining SPLP from beginning any construction on the Janiec 2 Tract, related to the Janiec 2 Tract, or anywhere else in the Township other than as specifically represented in the Settlement Agreement, such as the SPLP Use Area until after the Commission issues a final order on the Township's currently pending Amended Complaint.

HIGH SWARTZ LLP

By: 

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Richard C. Sokorai, Esquire
Mark R. Fischer, Jr., Esquire
Attorneys for Petitioner
West Goshen Township

Date: July 7, 2017

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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WEST GOSHEN TOWNSHIP,	:	
<i>Complainant</i>	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
<i>Respondent</i>	:	

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2017, a true and correct copy of West Goshen Township’s Petition for an Ex Parte Emergency Order and an Interim Emergency Order was served upon the party listed below by electronic filing, email, 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).

Christopher A. Lewis, Esquire
Michael Montalbano, Esquire
Frank Tamulonis, Esquire
Blank Rome, LLP
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Attorney for Sunoco Logistics, L.P.

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Office of Small Business Advocate
300 North Second St., Suite 202
Harrisburg, PA 17101

High Swartz, LLP

A handwritten signature in black ink, appearing to read "David J. Broomar", written over a horizontal line.

David J. Broomar, Esquire
Richard C. Sokorai, Esquire
Mark R. Fischer, Jr., Esquire
Attorneys for Petitioner
West Goshen Township

Exhibit C

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township	:	
	:	
v.	:	C-2017-2589346
	:	
Sunoco Pipeline, L.P.	:	

INTERIM EMERGENCY ORDER AND CERTIFICATION OF MATERIAL QUESTION

On July 18, 2017, I conducted a hearing on the Petition for Interim Emergency Relief filed on July 10, 2017 by Complainant West Goshen Township (West Goshen or Township), against Respondent Sunoco Pipeline, L.P. (Sunoco) at Docket No. C-2017-2589346. Specifically, Complainant seeks an Interim Emergency Order pursuant to 52 Pa. Code § 3.6 enjoining Respondent from beginning or continuing construction of a valve and any other facilities appurtenant thereto for Sunoco’s Mariner East 2 pipeline (ME2) in West Goshen Township, or any other location not specifically agreed to in Sunoco’s Settlement Agreement with the Township, until after the Commission issues a final order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

DISCUSSION

Legal Standards:

The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. The purpose of granting injunctive relief is to maintain things as they are until the rights of the parties can be considered and determined after a full hearing. Further, the status quo that is to be preserved by preliminary injunction is the last actual, peaceable, lawful, and noncontested status which preceded the pending controversy. *Pa. PUC v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947).

The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for 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.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6 (b).

The Commission may grant interim emergency relief only when *all* the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993). Further, as to the first element, it is not necessary to determine the merits of the controversy in order to find that a petitioner's right to relief is clear; rather, the only required determination is that the petition raises substantial legal questions. *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985).

The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements in the Commission's Regulation. 66 Pa.C.S. § 332; 52 Pa. Code § 3.6(b). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact

sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Section 3.10(a) provides that an order granting or denying interim emergency relief is immediately effective upon issuance by the Administrative Law Judge (ALJ) and that no stay of the order will be permitted pending Commission review of the order. 52 Pa. Code §3.10(b) requires the ALJ to certify the question of the grant or denial of relief to the Commission as a material question in accordance with 52 Pa. Code § 5.305.

Disposition:

1. Whether the Petitioner’s Right to Relief is Clear

For West Goshen to meet the first criteria, it need not establish entitlement as an absolute right to relief on the underlying claim. Rather, in addition to satisfying the other three elements for interim emergency relief, it must establish that the underlying claim raises substantial legal questions. *T. W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985).

The underlying claim in the instant case raises substantial legal questions including but not limited to: 1) whether the Settlement Agreement requires Sunoco to construct any above-ground valve station facilities in the Township within the “SPLP Use Area”¹ unless Sunoco is unable to do so due to engineering constraints; (2) whether Sunoco gave the Township proper notice of an intent to relocate valve 344 from the SPLP Use Area to the Janiec Tract 2²; (3) 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; (4) whether Sunoco

¹ SPLP Use Area is that area of land on Boot Road, to the west of Route 202, which already has Sunoco facilities existing upon it. SPLP Additional Acreage is an undeveloped parcel located within the SPLP Use Area.

² Janiec 1 Tract is also referred to as SPLP Additional Acreage and is in the SPLP Use Area to the west of Route 202. Janiec 2 Tract is the property Sunoco condemned in May, 2016 and cleared for construction on July 6, 2017. Township Exhibits 9 and 20. Janiec 2 Tract is located on Boot Road, to the East side of Route 202.

always intended to site Valve 344 on the Janiec 2 Tract and misrepresented this intention at the time of the Settlement Agreement; (5) whether there are engineering constraints that prevent Sunoco from constructing Valve 344 on the SPLP Use Area; (6) whether the township has the right to review the alleged engineering constraints that might be identified as preventing the installation of valve facilities outside the SPLP Use Area; 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.

In 2014 Sunoco presented to the Township proposed improvements to its existing pump station in the Township, about its ME1 project. N.T. 47. Sunoco's existing pump station is located on the SPLP Use Area near the intersection of Boot Road and Route 202, to the north of East Boot Road and to the west of the Route 202 Southbound off-ramp. N.T. 47-48, Township Exhibits 1 and 2. To the north of the existing pump station is a separate four-acre parcel that was owned by the Janiec family and known as the "Janiec 1 Tract". N.T. 49-50. To the east of Route 202 and north of Boot Road was another wooded property also owned by the Janiec family and known as the "Janiec 2 Tract". N.T. 57-58, 17-22. Township Exhibit 2.

The Township's expert witness in pipeline safety, Richard Kuprewicz, reviewed documents including a piping instrument diagram for the Boot Road pump station regarding the Mariner East Phase 1 project (8-inch pipe) (ME1) in 2014 and later reviewed more documents from Sunoco regarding a Mariner East Phase 2 project (20-inch pipe) (ME2) on April 8, 2016. N.T. 118-120. He was not involved with any settlement negotiations to put any facilities at any locations. N.T. 121. Mr. Kuprewicz looked at the elevation profile, the siting and design of pump stations and valves and the integrity of the existing pipeline being refurbished. He made recommendations to the Township regarding the placement of flares, valve replacement and valve automation. N.T. 117-118. He agrees a valve should be placed where the pipe arcs close to the surface even if this occurs on the Janiec 2 property; however, no reason was ever given to him as to why Sunoco could not do horizontal directional drilling (HDD) at the SPLP use area. N.T. 126-127.

Mr. Kuprewicz testified that duplicative drilling, and needless removing and relocating of a built valve station and its appurtenances is costly as there is a duplication of

expenses and issues with permits associated with having to come up with a new HDD bore. Additionally, a duplicative construction effort is risky as there is an increase risk of HDD breakouts or frac-outs³, which could damage drinking water. A frac-out is when during boring, a drilling mixture of bentonite and water a crack-out or break-out occurs under pressure and the mixture escapes from the cylinder for boring and migrates into water, possibly drinking water wells. N.T. 128-129.

After consultation with counsel and Kuprewicz, the Township's Board of Supervisors together with witnesses LaLonde, Camp, and Brooman participated in the settlement negotiations on behalf of the Township. N.T. 56, 139. Richard Gordon, Don Zoladkiewicz, Kathleen Shea, and Christopher Lewis, Esquire ("Lewis") of Blank Rome participated in the settlement negotiations for Sunoco. N.T. 56. Kuprewicz was not involved in the settlement negotiations with Sunoco and did not receive copies of any drafts of the Settlement Agreement; his role was limited to safety review. N.T. 57, 120-121. After a year of negotiations, the Township and Sunoco reached the Settlement Agreement, which Sunoco signed in April 2015 and the Township Board of Supervisors approved in May 2015. N.T. 54-55, 222, Township Exhibit 4. This Agreement was certified and filed at the Commission at U-2015-2486071 on June 15, 2015. The Parties dispute the meaning of the Settlement. The Township avers the location of the valve on the SPLP Use Area was central to the agreement and that while entering into the Settlement Agreement, Sunoco was secretly planning to locate the valve on Janiec 2 Tract.

At the hearing on July 18, 2017, when asked whether a plan existed for the SPLP Use Area like the one developed for Janiec 2 Tract, Sunoco's witness Richard Gordon admitted, "there's not a plan like this one," referring to Township Exhibit "13," and not even a draft plan. N.T. 225-226, 230-231. There is evidence to show Mr. Gordon was aware of plans and recommendations from his engineering consultants to go forward with Janiec 2 Tract, while leading the Township to believe Sunoco would be placing the valve station on the Janiec 1 Tract. N.T. 225-229. Thus, there is a substantial legal issue with regard to whether Sunoco ever

³ The frac-out, or inadvertent return of drilling lubricant is a potential concern when the HDD is used under sensitive habitats, waterways and areas of concern for cultural resources.

notified the Township in a timely manner that it was unable to locate the valve on the SPLP Use Area. The map provided to the Township at the meeting is dated September 28, 2015 and identified as Township Exhibit 5. N.T. 69, 145. The map provided by Sunoco to the Township at the January 2016 meeting does not depict a valve station on the Janiec 2 Tract. N.T. 67-68, Township Exhibit 5. I am also persuaded by the testimony of Kristin Camp, who took notes at the meeting to make sure she understood everything that would be happening at the Janiec 2 Tract, because the Township wanted to know how Sunoco would impact the Traditions Project, which the board wanted to see go forward. N.T. 145-147. Township Exhibit 18. Ms. Camp kept her notes contemporaneously with the meeting to recall what exactly happened and there is nothing in her notes about a valve, which she would have written down if discussed. N.T. 147-150. Township Exhibit 18.

Additionally, in February 2017 Sunoco's engineer submitted to the Township subsequent erosion and sediment control plans, which included plans dated March 26, 2015 showing a valve station on the Janiec 2 Tract. N.T. 72, Township Exhibit 13.

Additionally, there is an issue whether Sunoco can feasibly and safely locate the valve on the SPLP Use Area, or whether this locale is restrained by sound reasonable engineering concerns. Mr. Gordon did not testify that the valve station is unable to be constructed on the SPLP Use Area, only that: (1) from an engineering standpoint it would not be "prudent" to site the valve on the SPLP Use Area, because it's extremely difficult and "potentially unsafe" (N.T. 194); (2) he noted challenges in constructability (N.T. 223); and (3) he does not know whether "it's practical" (N.T. 249). For these reasons, I find the Petitioner's right to relief is clear in that the underlying claim raises substantial legal questions.

2. Whether the Need for Relief is Immediate

I am persuaded by the credible testimony of Casey LaLonde, Township Manager for West Goshen Township, to find that on or about July 3, 2017 the Township received notice from Sunoco stating that it was starting construction on the Janiec 2 Tract within several weeks. N.T. 74. However, on July 6, 2017, the same date as the pre-conference hearing on the Township's Amended Complaint, Sunoco would not promise a stay of construction, and it began

clearing work on the Janiec 2 Tract. N.T. 30, 74-75, Township Exhibit 9. The clearing and grading of the Janiec 2 Tract, and the preparation of the construction entrance thereon, indicate that Sunoco intends to immediately begin construction of the valve station on the Janiec 2 Tract. N.T. 76. The Township also received notice from the Pennsylvania Department of Transportation that Sunoco was beginning work in the Janiec 2 Tract. N.T. 76. The Township requested that Sunoco cease operations on the Janiec 2 Tract until this case is decided by the PUC, but it refused. N.T. 30, 76. Sunoco's witness, Matthew Gordon, Project Manager of Mariner East Project, testified that work has commenced on the Janiec 2 tract. N.T. 213-214. Given these facts, I find the need for injunctive relief to be immediate.

3. Whether the Injury Would be Irreparable if Relief is not Granted

Monetary losses can satisfy the irreparable injury requirement of 52 Pa. Code § 3.7(a). *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 615 A.2d 951 (Pa. Cmwlth. 1992). If there is a great deal of uncertainty as whether West Goshen Township could recover possible losses, they have satisfied the irreparable injury requirement of 52 Pa. Code § 3.7(a)(3). *Id.* at 959.

Prior to Sunoco's use of the Janiec 2 Tract, in December, 2015, the Township approved a \$35 million land development project known as the Traditions Project. N.T. 82, Township Exhibit 11. The Traditions Project would have been the first facility of its kind in the Township, would have generated significant real estate tax and earned income tax revenue for the Township, and would have provided approximately \$200,000 of road improvements in the Township. N.T. 82-83. However, the developer abandoned the Traditions Project when Sunoco condemned the Janiec 2 Tract for its use on May 12, 2016. N.T. 83 – 84, 114. If Sunoco moved from the Janiec 2 Tract, the Traditions Project could happen. N.T. 84.

Construction has a negative impact on the Township including safety, transportation delays, dust, and noise. N.T. 63-64. Excessive HDD drilling needlessly increases the risk of frac-outs of bentonite drilling mixtures. N.T. 128-129. Approximately 25,000 to 36,000 vehicles use Boot Road in the Township each day and approximately 70,000 vehicles use

Route 202 through the Township each day (N.T. 63), so construction has as a significant impact on the Township.

The Township code at Chapter 69 requires a pre-construction meeting be held with the Township engineering at least 48 hours prior to construction commencing, including grubbing and clearing of a site. N.T. 74. Sunoco did not provide the Township with notice 48 hours before beginning grubbing and clearing of the Janiec 2 Tract. N.T. 75. There is evidence that the Settlement Agreement confined Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area, to minimize the impact to the Township residents and to minimize impeding access for firefighters entering and departing from the Goshen Fire Company, which is located adjacent to the Janiec 2 Tract. N.T. 63-64.

Additionally, there is evidence that if Sunoco installs a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area, because the pipe might be too deep at the location of the SPLP Use Area. N.T. 127. If Sunoco installs the valve station on the Janiec 2 Tract, then is required to move the valve station to the SPLP Use Area, Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, creating a second round of risks to the public, including breakouts and frackouts within the Township. N.T. 127-128. If Sunoco continues construction as planned on the Janiec 2 Tract, but later must relocate the valve station to the SPLP Use Area, the Township will endure the noise, vibration, obstructions, and other negative consequences of the construction activities twice. N.T. 81. For these reasons, I find the injury would be irreparable if the injunctive relief is not granted.

4. Whether the Interim Emergency Relief will be injurious to the public

Mr. Gordon testified an interim emergency order would delay the targeted completion deadline for the Mariner East project and would cause producers of propane, ethane and butane natural gas liquids (NGLs) a delay in being able to transport and ship their products through Pennsylvania; however, it is noted that horizontal directional drilling is currently shut down in other parts of Chester County due to water contamination from frac-outs. N.T. 246.

Thus, there is insufficient evidence to show a substantial financial loss will be sustained by Sunoco's customers pending a temporary interim injunction in this case.

West Goshen is not seeking to permanently stop construction of the Mariner East Pipeline; or even from running a pipeline through the Township altogether; however, it seeks enforcement of a Settlement Agreement in the interest of its residents. N.T. 81-82. At least at one point, in May, 2015 Sunoco appears to have agreed to constrictions on its imprint in the township. I fail to see how an injunction on construction on the Janiec 2 Tract until a final Commission decision regarding the amended complaint would be injurious to the public. Further, the status quo whereby there is no construction on Janiec 2 Tract would be maintained throughout the litigation of the complaint. Thus, the public would not be injured by the requested emergency interim relief.

Conclusion:

In conclusion, West Goshen Township has demonstrated by a preponderance of the evidence, and meeting all four requirements, that it is entitled to emergency interim relief pursuant to 52 Pa. Code § 3.6. Accordingly, the relief requested will be granted in the Ordering paragraphs below. Pursuant to the Commission's Rules of Practice and Procedure, this Order shall be immediately certified to this Commission for consideration and disposition in accordance with 52 Pa. Code § 5.305, pertaining to interlocutory review of a material question submitted by a presiding officer.

THEREFORE,

IT IS ORDERED:

1. That the petition for interim emergency relief, filed on July 10, 2017, by West Goshen Township is granted.

2. That Sunoco Pipeline L.P. is enjoined from beginning and shall cease and desist all current construction including: 1) constructing Valve 344; 2) constructing appurtenant facilities to Valve 344; and 3) horizontal directional drilling activities on the Janiec 2 Tract in West Goshen Township until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

3. That the granting of relief by interim emergency order in the proceedings at Docket No. C-2017-2589346 is certified to the Commission as a material question requiring interlocutory review.

Date: July 24, 2017

Elizabeth Barnes
Administrative Law Judge

C-2017-2589346 - WEST GOSHEN TOWNSHIP v. SUNOCO PIPELINE L.P.

(Revised 7/10/2017)

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