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November 17, 2017

***BY ELECTRONIC FILING***

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

Re: West Goshen Township and Concerned Citizens of West Goshen Township v. Sunoco Pipeline L.P.; Docket No. C-2017-2589346; **SUNOCO PIPELINE L.P. REPLY TO NEW MATTER AND PETITION FOR INTERLOCUTORY REVIEW AND ANSWERS TO MATERIAL QUESTIONS.**

Dear Secretary Chiavetta:

Enclosed for filing<sup>1</sup> with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s ("SPLP"):

- (1) Reply to New Matter in West Goshen Township's ("Township") November 3, 2017 Answer; although not labeled as such by the Township, the new facts alleged in the Township's Answer and its supporting affidavit constituted "new matter" within the meaning of the Commission's rules at 52 Pa. Code § 5.62(b); and
- (2) Petition for Interlocutory Review and Answers to Material Questions.

With respect to the Petition for Interlocutory Review, the parties may file a brief within ten (10) days of the filing of the petition under 52 Pa. Code §5.302, which would be Monday November 27, 2017, shortly after Thanksgiving and its weekend. SPLP proposes, as an offered courtesy to the Township, that briefs be due Monday December 4, 2017.

Finally, please note that SPLP has reevaluated whether it is necessary to site a valve in the Township, the location of which (Janiec 2 tract) is the basis of the Township's First Amended Complaint in this matter. If SPLP decides to eliminate the valve at Janiec 2, or for that matter not locate a valve anywhere in the Township, it will apprise the Commission of its decision

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<sup>1</sup> Copies of this letter and filing have been served in accordance with the attached Certificate of Service.

Rosemary Chiavetta, Secretary  
November 17, 2017  
Page 2

expeditiously. In either event, both the October 26, 2017 injunction order in this matter and the Complaint proceeding will become moot and SPLP will request that the Commission rescind or vacate the injunction order on that basis.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Thomas J. Sniscak". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas J. Sniscak  
Kevin J. McKeon  
Whitney E. Snyder

*Counsel for Sunoco Pipeline L.P.*

TJS/WES/das

cc: Honorable Elizabeth H. Barnes (by email and first class mail)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township and	:	
Concerned Citizens of West	:	
Goshen Township	:	
Complainant,	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
Sunoco Pipeline L.P.,	:	
Respondent.	:	
	:	

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**SUNOCO PIPELINE, L.P.'S  
REPLY TO NEW MATTER  
CONTAINED IN WEST GOSHEN TOWNSHIP'S ANSWER  
TO MOTION TO MODIFY PROCEDURAL SCHEDULE**

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Sunoco Pipeline L.P. (SPLP), pursuant to the Commission's regulation at 52 Pa. Code §5.63, respectfully submits this reply to new matter contained in Paragraphs 16, 17, 18 and 32 of West Goshen Township's (Township) November 3, 2017 answer to SPLP's motion to modify the procedural schedule.<sup>1</sup>

**I. BACKGROUND AND SUMMARY OF REPLY POSITION OF SPLP.**

1. SPLP's motion is premised on the fact that but-for the current extended procedural schedule in this case and the attendant delay in pipeline construction in the Township because of the dispute over the siting of Valve 344, the Mariner East 2 Pipeline (ME2) would be capable of

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<sup>1</sup> 52 Pa. Code §5.62(b) provides that "a party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading." 52 Pa. Code §5.63(a) provides that a reply to such new matter shall be filed within 20 days, and 52 Pa. Code §5.63(b) provides that failure to reply to such newly pleaded facts may be deemed an admission. The Township's claims in Paragraphs 16, 17, 18 and 32 of its answer that dispute SPLP's representations about the timeline for completion of non-West Goshen Township HDD operations, supported by the Affidavit of Alexander Bomstein, Esq., are more than mere denials. Though not labeled as new matter, they are new alleged material facts.

delivering product early in 2018, to the very substantial benefit of Pennsylvania's economy. As Commissioner Sweet correctly pointed out at Public Meeting on October 26, 2017, the current procedural schedule is needlessly protracted given the straightforward issues presented, "will probably take our processes a year to conclude," and should not be the "roadblock" that prevents ME2 from commencing service at an earlier time.<sup>2</sup>

2. Contrary to that concern, the Township seeks to mislead by mischaracterizing and then "refuting" SPLP's statements about the remaining obstacles preventing flow on ME2 – a classic "strawman" delay tactic. Specifically, the Township's new matter response to SPLP's motion is based on an affidavit-made factual representation by a non-party lawyer that SPLP's motion is "simply false" about when ME2 would be operational but-for West Goshen Township. (Answer at 2).

3. This reply to new matter is to set the record straight as to the true "roadblock" to making ME2 operational. It is not, as the Township claims, the Department of Environmental Protection's (DEP) horizontal directional drilling (HDD) permitting issues. Rather, it is the combination of the preliminary injunction preventing siting of Valve 344 in West Goshen Township and the current procedural schedule in this case, under which a final Commission decision is unlikely until late October 2018.

**II. SPLP REPLY TO NEW MATTER: THE CURRENT PROCEDURAL SCHEDULE, NOT DEP'S HDD PERMITTING PROCESS, IS THE ROADBLOCK TO ME2.**

4. The Township mischaracterizes SPLP's statements concerning the timeline for completion of ME2 and the impact of DEP's HDD permitting process, and then condemns those

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<sup>2</sup> See oral statement by Commissioner Sweet <https://www.youtube.com/watch?v=geaeUKDuA3w&feature=youtu.be> beginning at 15:45.

statements (statements SPLP never actually made) as “simply false.” (Answer at 2, and Paragraphs 16-18 and 32). SPLP therefore replies to Paragraphs 16, 17, 18 and 32 of the Township’s answer, and counters the Township’s Affidavit of Alexander Bomstein, Esq. (Bomstein Affidavit) with the attached affidavit of Larry Gremminger, the professional who manages SPLP’s HDD permitting with DEP (Gremminger Affidavit). Regarding these paragraphs of the Township’s Answer and Bomstein Affidavit, SPLP replies as follows:

16. In Paragraph 16 of its motion, SPLP stated that the Environmental Hearing Board’s (EHB) August 10, 2017 Corrected Stipulated Order “permitted SPLP to resume HDD activities,” and attached a copy of the Order that sets forth the permitting reevaluation process that must occur before drilling occurs at specific HDD locations identified in the Order. The Township in its answer “denies” that the Corrected Stipulated Order “permitted SPLP to immediately resume HDD activities.” But SPLP did not state or imply that the Corrected Stipulated Order permitted immediate resumption of drilling. Rather, SPLP referenced the Order, which lifted the EHB’s temporary partial supersedeas that temporarily halted HDD operations at certain locations, and made resumption of HDD operations at specific identified locations subject to a DEP review process, all of which is evident from the plain language of the Corrected Stipulated Order that SPLP attached to its motion.

17. In Paragraph 17 of its motion, SPLP stated that as of October 19, 2017, SPLP “has resumed its HDD program at its remaining drilling sites.” The Township in its answer “denies” that SPLP “has resumed drilling at its remaining drilling locations.” But SPLP did not state or imply that it had resumed drilling at every single location where HDD is being utilized to construct the ME2 pipeline. SPLP stated that it had resumed its HDD program – which included locations where HDD operations were subject to the reevaluation requirements listed in the Corrected

Stipulated Order, and many more locations that were not subject to the Order at all. For those HDD locations that are subject to the Corrected Stipulated Order, SPLP was engaged in the reevaluation and report process as described in and required by the Order, a process that has finite prescribed time limits and which, when completed for a particular site, will result in a resumption of drilling at that site.<sup>3</sup>

The Township in its answer to Paragraph 17 also references the Bomstein Affidavit to buttress its claim that “revised plans have not even been submitted” for multiple HDD locations, and thus “HDD at these locations has not resumed, contrary to the representations of SPLP’s Motion.” But SPLP did not state or imply that it had submitted revised plans for every HDD location subject to the requirements of the Corrected Stipulated Order, or that drilling had resumed at any of these specific locations. Moreover, after the Corrected Stipulated Order was entered, HDD operations did in fact resume at a significant number of locations throughout the Commonwealth, and construction at these locations continues to proceed steadily throughout the entire ME2 project area.

As explained in the attached Gremminger Affidavit, SPLP is permitted to resume HDD drilling at each site subject to the requirements of the Corrected Stipulated Order once DEP approves a report submitted by SPLP for that site, based on SPLP’s reevaluation of the site specifying the actions SPLP will take to eliminate, reduce, or control the inadvertent returns of drilling fluids (IR) at the site. Although the Bomstein Affidavit states that there are “at least 50 HDDs throughout the Commonwealth where HDD operations are prohibited from taking place ... pending approval of re-evaluated plans,” and that “there are at least 40 HDDs in the

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<sup>3</sup> DEP’s review procedures are set forth at Paragraph 6 of the Corrected Stipulated Order. In general, after submission of a re-evaluation report, DEP has a 21 day period, during which the Clean Air Council, other appellants, and affected landowners have 14 days to comment, and thereafter DEP renders a “determination” about the reevaluation report.

Commonwealth where the necessary plans and data have not even been re-submitted,” Bomstein Affidavit at P 16, its highlighting of the need for approval of “over 50 sites” in the context of a discussion about when ME2 will be ready to commence the delivery of NGL products is a significant misrepresentation.

As Mr. Gremminger explains, ME2 involves two separate pipelines, a 20-inch diameter line and a 16-inch diameter line, and SPLP’s plan is to complete and initiate service on the 20” line first for the majority of areas where ME2 is being constructed, followed as quickly as is practicable by the 16” line. Gremminger Affidavit at PP 8-9. Of the more than 50 HDD sites the Bomstein Affidavit identifies that are listed in the Corrected Stipulated Order, only 23 locations require a reevaluation report be submitted for the initial HDD for the 20” line. *Id.* at P 10. Therefore, but-for the delay of construction in West Goshen Township occasioned by the preliminary injunction and the protracted procedural schedule in this case, in order to make ME2’s initial line operational, SPLP need only receive DEP permission to re-commence and then complete HDD drilling at 23 sites, not “more than 50.” As of November 16, 2017, SPLP has already submitted 9 HDD reevaluation reports to DEP for review and approval for an HDD location that includes a 20” line; 1 reevaluation report for a HDD location that includes a 20” line has already been approved for resumed HDD drilling. The remaining 14 reevaluation reports for an HDD location that includes a 20” line will be submitted to DEP in the near future. *Id.* at P 14. Mr. Gremminger is confident that delays that occurred during DEP’s processing of the first 9 reports SPLP submitted for HDD locations that include a 20” line that were due to misunderstandings as to the scope of information SPLP needs to include in the reevaluation reports will not recur for the remaining 14, such that the approval process for the remaining 14 will be in a position for earlier disposition by DEP than prior reevaluations. *Id.* at 13. Mr. Gremminger

therefore concludes that the Bomstein Affidavit's speculation that it will be "at least several more months [after November 3, 2017] before SPLP will be legally able to perform HDD operations at all sites in the Commonwealth," is wrong. *Id.* at P 15. It overstates the number of HDD reevaluation reports that need to be approved by more than double, it overstates the time needed for DEP approval for the remaining HDD locations, and it wrongly suggests that approval for all HDD locations is required before drilling can commence at any one HDD location, when in fact drilling can commence at each HDD location as soon as that site's report is approved by DEP. There is thus every reason to believe that drilling at most of the 23 HDD locations with a 20" line that are listed in the Corrected Stipulated Order will have been commenced, and in some cases completed, by the time DEP approves the reevaluation report for the very last of these locations. *Id.* at PP 15-16.

18. In Paragraph 18 of its motion, SPLP stated that it anticipates that "HDD could be completed" in West Goshen Township "in approximately 6 months from the start." The Township in its answer states that it "cannot determine if SPLP is referring to HDD within the Township or throughout the Commonwealth," and goes on to represent that, if the later, HDD will take "far longer."

Although SPLP does not believe clarification is necessary because the statement clearly related to West Goshen Township, SPLP clarifies that it meant it will take 6 months from commencement to complete drilling activities in West Goshen Township, assuming installation of Valve 344 as presently sited. SPLP's point on this has been as Commissioner Sweet observed, the schedule should not be the "roadblock" that prevents ME2 from commencing service at an earlier time. As for the claim that the HDD activities needed to make ME2 operational throughout the Commonwealth will take "far longer" than 6 months, SPLP incorporates its response to Paragraph



17: in addition the dozens of HDD locations where construction is already complete, and dozens of other HDD locations where construction is currently underway, other than West Goshen Township, only 23 HDD locations with the 20-inch line listed in the Corrected Stipulated Order need to be completed<sup>4</sup> in order to render the initial ME2 line operational, and SPLP's current estimate is that product delivery could commence early in 2018, sometime in the second quarter. SPLP filed its motion to accelerate the procedural schedule because, as demonstrated above, if SPLP is unable to even commence drilling in West Goshen Township until after a final Commission order in late October 2018, the operational date of the initial ME2 line will be delayed.

32. In Paragraph 32 of its motion, SPLP stated that it anticipates that but-for the delay in West Goshen Township, ME2 could be completed "and ready to deliver product" by the fourth quarter of 2017 or early 2018. The Township in its answer denies that assertion for the reasons it stated in response to Paragraph 17 and the Bomstein Affidavit. Because of unexpected delays in processing reevaluation reports, SPLP expects to complete installation of the initial line for all remaining HDD locations other than West Goshen Township such that, but for West Goshen Township, the initial ME2 line could be operational during the second quarter of 2018. Mainline open-cut construction of the pipeline required for in-service will be approximately 99% complete and in the ground and buried by the end of this year.

The facts thus reveal that the fundamental point of SPLP's motion – that unless the procedural schedule in this case is accelerated the initial ME2 line will be delayed. Such a delay is unnecessary given the straightforward legal issues presented in this case, and unjustified in light of the economic loss Pennsylvania will suffer as a result of the delay. The Township's attempt to

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<sup>4</sup> There are two additional HDD locations with a 20" line that are subject to separate Consent Order and Agreements with DEP, that are currently in the process of receiving approval from DEP.

blame the delay on DEP's permitting process is self-serving, unsupported, inaccurate, and unavailing.

Respectfully submitted,



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DATED: November 17, 2017

*Attorneys for Sunoco Pipeline L.P*

## VERIFICATION

I, Harry J. Alexander, on behalf of Sunoco Pipeline L.P., hereby state that the facts set forth in the foregoing documents are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Harry J. Alexander  
Senior Vice President  
Sunoco Pipeline, L.P.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township

v.

Sunoco Pipeline, L.P.

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:  
:  
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C-2017-2589346

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**AFFIDAVIT OF LARRY GREMMINGER**

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LARRY GREMMINGER, having been duly sworn, deposes and says as follows:

1. I am the manager of Gremminger & Associates, Inc. (GAI), an environmental consulting firm that specializes in natural resource sciences, project planning, and permitting. My business address is 226 South Live Oak Street, Bellville, Texas, 77418.

2. I am making this affidavit on behalf of Sunoco Pipeline L.P. (SPLP) in response to West Goshen Township's (Township) November 3, 2017 answer in opposition to SPLP's motion to modify the procedural schedule in this case. In particular, my affidavit addresses statements made in the Affidavit of Alexander G. Bomstein, Esquire (Bomstein Affidavit) concerning the timing within which SPLP will be able to resume horizontal directional drilling (HDD) activities at sites in Pennsylvania in order to render the Mariner East 2 Pipeline operational (other than needed HDD drilling in the Township presently stayed by order of the Pennsylvania Public Utility Commission for unrelated reasons).

3. SPLP applied for and received permits from the Pennsylvania Department of Environmental Protection (DEP) under which it may conduct HDD activities throughout Pennsylvania in specified locations in order to construct the Mariner East 2 Pipeline (ME2).

4. The ME2 permits are subject of an appeal filed with the Pennsylvania Environmental Hearing Board (EHB), at EHB Docket No. 2017-009-L.

5. On July 19, 2017, the Clean Air Council, represented by Alexander Bomstein, filed a Petition for Partial Supersedeas and Petition for Temporary Partial Supersedeas that focused on halting HDD operations for the construction of ME2.

6. On July 25, 2017, the EHB issued an order granting a temporary partial supersedeas that temporarily suspended SPLP's HDD operations throughout the Commonwealth.

7. The parties engaged in settlement negotiations that ultimately resulted in the EHB issuing an August 10, 2017 Corrected Stipulated Order, which included lists of HDD locations on the ME2 project where SPLP agreed to perform a reevaluation for each identified HDD, which culminates in the submission of a report to DEP that summarizes the analysis and conclusion of the reevaluation process. SPLP is permitted to resume HDD operations at each location once DEP approves the reevaluation report submitted by SPLP for that site.

8. SPLP has contracted with GAI to manage and coordinate the reevaluations and report submissions to DEP, and I am familiar with the progress of the reevaluation and report submission for each site.

9. The Bomstein Affidavit states that there are "at least 50 HDDs throughout the Commonwealth where HDD operations are prohibited from taking place ... pending approval of re-evaluated plans," and that "there are at least 40 HDDs in the Commonwealth where the necessary plans and data have not even been re-submitted." Bomstein Affidavit at P 16. The

Bomstein Affidavit then states that based on the “pace and number of submissions to date” and the process required before a DEP approval, Mr. Bomstein’s “best estimate is that it is likely to take at least several more months [after November 3, 2017] before SPLP will be legally able to perform HDD operations at all sites in the Commonwealth.” Bomstein Affidavit P 19.

10. ME2 involves two separate pipelines, a 20-inch diameter line and a 16-inch-diameter line.

11. For the majority of areas where ME2 is being constructed, SPLP’s plan is to complete and initiate service on the 20-inch diameter line first, followed as quickly as is practicable by the 16-inch diameter line.

12. Of the more than 50 HDD locations identified in the Corrected Stipulated Order, only 23 sites involve HDD for the 20” line where that line is necessary for the initial line of the ME2 pipeline to be in-service.

13. Therefore, except for the unrelated delay in West Goshen Township, in order to make ME2’s initial line operational, SPLP need only receive DEP permission to re-commence and then complete HDD drilling at 23 sites listed in the Corrected Stipulated Order, not “more than 50.”

14. As of November 16, 2017, SPLP has submitted for DEP review reevaluation reports for 9 HDD locations that included a reevaluation of the 20” line, and 1 HDD report for a location that included a 20” line has been approved for resumed HDD drilling. Three additional reevaluation reports were submitted to DEP for HDD locations where only the 16” line location was at issue, and have been approved by DEP.

15. In the process of submitting the first 11 reports to DEP, SPLP has become more and more efficient in providing DEP with the data and other information it needs to review the re-

evaluations. As a result, we reasonably expect that future submissions that SPLP files with DEP will contain all of the information DEP needs to review in order to make a determination for each HDD location. As a result, I expect that the next 14 reevaluation reports for a HDD location that includes a 20" line will progress more quickly through the review process than the first 11 reevaluation reports that were submitted to DEP.

16. SPLP is working on and expects to submit to DEP the reevaluation reports for the 14 remaining HDD locations that include a 20" line in the near future.


17. Given (a) that the number of HDD reevaluation report approvals needed to commence the HDD operations that are necessary to complete the initial ME2 line is less than half of the number that the Bomstein Affidavit assumes (23 sites versus more than 50), (b) that the remaining 14 reevaluation reports for HDD locations that include a 20" line will be filed in the near future, and (c) that SPLP has become more efficient in providing in its reevaluation reports all of the information DEP needs as of the time the report is filed, the Bomstein Affidavit's speculation that it will be "at least several more months [after November 3, 2017] before SPLP will be legally able to perform HDD operations at all sites in the Commonwealth," Bomstein Affidavit P 19, overstates the time for DEP approval and thus the delay in resumption of SPLP's HDD operations needed to complete the ME2 initial line at sites other than West Goshen Township.

18. In addition, resumption of HDD drilling will occur on a site-by-site basis, as each reevaluation report is submitted and approved by DEP. The Bomstein Affidavit could be read to suggest that drilling cannot be resumed at any site until DEP approves reevaluation reports for more than 50 sites, but in fact SPLP will be able to resume drilling at each site as it is approved,

and approvals are required for only 23 sites listed in the Corrected Stipulated Order in order to complete the HDD operations needed to make the ME2 initial line operational.

Sworn and subscribed before me this  
~~16~~ 15th day of November, 2017,

  
Larry Greeninger  


  
NOTARY PUBLIC  
(Seal)

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Tiffany A. Sholly, Notary Public  
Sinking Spring Boro. Berks County  
My Commission Expires Sept. 24, 2021  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township

v.

Sunoco Pipeline, L.P.

C-2017-2589346

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**PETITION OF SUNOCO PIPELINE, L.P. FOR INTERLOCUTORY  
COMMISSION REVIEW AND ANSWER TO MATERIAL QUESTIONS**

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Thomas J. Sniscak, Attorney I.D. # 33891  
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DATED: November 17, 2017

*Attorneys for Sunoco Pipeline L.P.*

Pursuant to 52 Pa. Code § 5.302, respondent Sunoco Pipeline, L.P. (SPLP) hereby requests that the Pennsylvania Public Utility Commission (Commission) grant interlocutory review of and answer material questions relating to the Order Denying Motion to Modify Procedural Schedule issued November 14, 2017 (November 14 Order), by Administrative Law Judge (ALJ) Elizabeth Barnes. In support of this Petition, SPLP avers as follows:

1. On October 19, 2017, SPLP filed a motion to modify the procedural schedule, which sought to shorten the time required to resolve this matter. SPLP's motion was premised on the fact that but for the current extended procedural schedule in this case and the attendant delay in pipeline construction in the Township because of the dispute over the siting of Valve 344, SPLP's Mariner East 2 Pipeline (ME2) would be capable of delivering product early in 2018, to the very substantial benefit of Pennsylvania's economy.

2. On November 3, 2017, complainant West Goshen Township (Township) filed and served its answer to SPLP's motion. In order to dispute SPLP's representations about the timeline for completion of ME2, the Township's answer misleadingly mischaracterized SPLP's statements about the remaining obstacles preventing flow on ME2 and then purported to refute them based on the affidavit of a non-party lawyer.<sup>1</sup> Although not labeled as such, the new facts alleged in the Township's answer and the supporting affidavit constituted "new matter" within the meaning of the Commission's rules.<sup>2</sup>

3. SPLP was required to file and serve its reply to this new matter within 20 days of service of the Township's answer, or by November 23, 2017.<sup>3</sup> Upon receipt of the Township's answer SPLP immediately began to prepare a reply to set the record straight. Although not due until the following week, SPLP intended to file its reply to new matter on or about November 17, 2017, and in fact has done so.<sup>4</sup>

4. The November 14 Order denying the motion was issued just eleven days after the Township filed its answer with (unlabeled contrary to the Commission's regulations) new matter. In denying SPLP's

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<sup>1</sup> See Township Answer filed November 3, 2017, ¶¶ 16, 17, 18, 32, and Affidavit of Alexander Bomstein, Esq.

<sup>2</sup> 52 Pa. Code § 5.62(b) provides that "a party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading."

<sup>3</sup> 52 Pa. Code § 5.63(a).

<sup>4</sup> See Sunoco Pipeline, L.P.'s Reply to New Matter Contained in West Goshen Township's Answer to Motion to Modify Procedural Schedule (filed Nov. 17, 2017).

motion, the ALJ relied upon the mischaracterizations and misleading assertions contained in the Township's new matter regarding SPLP's representations in support of its position.<sup>5</sup> The ALJ thus deprived SPLP of its substantive and procedural rights to reply to the Township's new matter and to be heard on the Township's new factual allegations prior to disposition of the motion.<sup>6</sup>

5. SPLP therefore seeks interlocutory review of the November 14 Order and the answer to the following material questions, which SPLP suggests should be answered in the affirmative:

- A. Did the ALJ deprive SPLP of its procedural and substantive due process rights by denying SPLP's motion in reliance on the new facts alleged in the Township's answer without giving SPLP the opportunity afforded by 52 Pa. Code § 5.63 to reply to new such new matter?
- B. Should the Commission decide SPLP's motion to modify the procedural schedule in light of SPLP's reply to the new matter raised in the Township's answer rather than remanding it to an ALJ who has already ruled and reached conclusions upon the motion in reliance on such new matter?
- C. Should SPLP's motion to modify the procedural schedule be granted?

6. Interlocutory review will both prevent substantial prejudice to SPLP and expedite the conduct of this proceeding. Due process requires (i) review of the November 14 Order in light of SPLP's reply to the misleading new matter raised by the Township and relied upon by the ALJ and (ii) disposition of SPLP's motion by the Commission, rather than by the ALJ who has already decided the issue. Interlocutory review and reversal of the November 14 Order, thus granting SPLP's motion, will, by definition, expedite this proceeding.

7. The reasons for granting review, answering the above questions in the affirmative, and thus expediting this proceeding are compelling. The Commission has repeatedly recognized that the Mariner East project will confer substantial affirmative benefits on the public.<sup>7</sup> As Commissioner Sweet correctly pointed out

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<sup>5</sup> See November 14 Order at 3 ("Township contends that Sunoco is asserting false facts to support its position..."); *id.* at 4 (Township "contends that delays in construction are within Sunoco's control and self-imposed"); *id.* at 5 ("I am not persuaded ... to shorten the time-frame because of Sunoco's assertion that it has resumed HDD at its remaining drilling locations in the Commonwealth and the entire pipeline, except for the West Goshen portion, will be complete and ready to deliver product by the fourth quarter of 2017 or early 2018. Sunoco has not yet completed the installation of the Mariner East 2 pipeline in all other areas of the Commonwealth and its assertion that West Goshen Township's segment will soon be the only segment of the pipeline that remains unfinished assumes facts not currently in evidence.").

<sup>6</sup> As the proponent of the schedule modification, SPLP had the burden of proof, 66 Pa. C.S. § 332(a), and thus was entitled to close the record on the motion, 52 Pa. Code § 5.242(a).

<sup>7</sup> See, e.g., Opinion and Order dated July 24, 2014, Docket No. P-2014-2422583; Order dated August 21, 2014, Docket No. A-2014-2425633 (granting CPC for Washington County); Order and Opinion dated October 29, 2014, Docket Nos. P-2014-2411941, *et seq.* These benefits include: (1) providing take away capacity for natural gas liquids produced

at Public Meeting on October 26, 2017, the current procedural schedule is needlessly protracted given the straightforward issues presented, “will probably take our processes a year to conclude,” and should not be the “roadblock” that prevents ME2 from commencing service at an earlier time.<sup>8</sup> Interlocutory review thus will remove a significant roadblock to realization of the substantial public benefits of the Mariner East project.

WHEREFORE, Sunoco Pipeline, L.P. respectfully requests that the Commission undertake interlocutory review of the November 14 Order, answer the above-described material questions in the affirmative, and grant such further relief as may be just.

Respectfully submitted



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DATED: November 17, 2017

*Attorneys for Sunoco Pipeline L.P.*

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from the Marcellus Shale in Pennsylvania, allowing these valuable resources to reach commercial markets and promoting the continued growth and development of Pennsylvania’s oil and gas industry; (2) ensuring that the route to the commercial markets remains within the Commonwealth as opposed to the Gulf Coast, so that the Marcus Hook Industrial Complex can become a Northeast hub for the distribution of natural gas liquids to local, regional, national and international markets; (3) anchoring the revitalization of the Marcus Hook Industrial Complex, so that jobs and economic opportunities can be created in southeastern Pennsylvania; (4) providing intrastate transportation capacity for propane, so that shippers can arrange reliable, safe, and economical transportation of propane during the winter season, when demand for propane peaks, and supplies of propane are available but existing transportation alternatives are inadequate; and (5) providing an increased supply of propane to the market which will allow consumers, including Pennsylvania residents, to benefit from lower cost propane during the winter season.

<sup>8</sup> Oral statement by Commissioner Sweet, Pa. P.U.C., “Public Meeting of October 26, 2017,” available at <https://www.youtube.com/watch?v=geacUKDuA3w&feature=youtu.be> beginning at 15:45.

## VERIFICATION

I, Harry J. Alexander, on behalf of Sunoco Pipeline L.P., hereby state that the facts set forth in the foregoing documents are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Harry J. Alexander  
Senior Vice President  
Sunoco Pipeline, L.P.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

This document has been filed electronically on the Commission's electronic filing system.

**VIA EMAIL AND FIRST CLASS MAIL**

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Dated this 17<sup>th</sup> day of November, 2017.