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December 4, 2017

VIA 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. BRIEF IN SUPPORT OF PETITION FOR INTERLOCUTORY COMMISSION REVIEW AND ANSWER TO MATERIAL QUESTIONS**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s ("SPLP") Brief in Support of Petition for Interlocutory Commission Review and Answer to Material Questions in the above-referenced matter.

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

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline, L.P.

TJS/jld
Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township

v.

Sunoco Pipeline, L.P.

C-2017-2589346

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

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DATED: December 4, 2017

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Pursuant to 52 Pa. Code § 5.302, and the Secretarial Letter issued November 21, 2017, respondent Sunoco Pipeline, L.P. (“SPLP”) submits this brief in support of its November 17, 2017 Petition for Interlocutory Commission Review and Answers to 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.¹

I. STATEMENT OF THE CASE

West Goshen Township (the “Township”) filed a first amended formal complaint in this matter on March 30, 2017, the gravamen of which was that SPLP should not install Valve 344 of its Mariner East 2 Pipeline (“ME2”) on a tract of property within the Township known as Janiec 2. On July 24, 2017, ALJ Barnes issued an interim emergency order and certification of material question, which enjoined SPLP from constructing Valve 344 and appurtenant facilities and from conducting horizontal directional drilling (“HDD”) on Janiec 2 until the entry of a final Commission Order.² On October 26, 2017, the Commission entered an opinion and order that answered the material question and imposed a more narrowly-drawn injunction of activities related specifically to Valve 344.³

¹ A copy of the November 14 Order is attached as **Exhibit A**. On November 21, 2017, pursuant to the suggestion of SPLP and the agreement of the parties, the Commission issued a Secretarial Letter establishing December 4, 2017 as the due date for filing briefs supporting and opposing the Petition.

² Interim Emergency Order and Certification of Material Question issued July 24, 2017.

³ On November 21, 2017, pursuant to 66 Pa. C.S. § 703(g), SPLP filed a petition to rescind or discontinue the Commission’s October 26, 2017 opinion and order. *See* Petition of Sunoco Pipeline L.P. to Rescind or Discontinue the October 26, 2017 Commission Order Enjoining Construction of Valve 344 and Construction and Drilling Related to Valve 344 in West Goshen Township, filed Nov. 21, 2017.

Also on July 24, 2017, ALJ Barnes entered an order establishing a procedural schedule that provides for resolution of this matter sometime in the latter half of 2018.⁴

On October 19, 2017, SPLP filed a verified motion to modify the procedural schedule, which sought to shorten the time required to resolve this matter.⁵ 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, ME2 would be capable of delivering product early in 2018, to the very substantial benefit of Pennsylvania's economy. Specifically, SPLP averred that as of the date of the motion, SPLP had resumed its HDD program at the remaining ME2 drilling locations in the Commonwealth and that the entire pipeline—except for the portion within the Township subject to this dispute—will be completed and ready to deliver product by the fourth quarter of 2017 or early 2018. SPLP further averred that the HDD site in the Township is the only location where drilling will not resume for the foreseeable future, and will soon be the only segment of ME2 that remains unfinished. (SPLP Motion at 4, 13.)⁶ SPLP also averred reasons why this case is not complex and should not require ten months to resolve. (*Id.* at 4-5.) SPLP therefore requested adoption of a modified procedural schedule with reply briefs due March 5, 2018. (*Id.* at 14.)

⁴ Order Denying Motion for Judgment on the Pleadings and Motion to Stay Discovery (issued July 24, 2017). The schedule provides for hearings to be held in late April, 2018, and briefing to be completed by June 18, 2018, followed by recommended decision, exceptions, reply exceptions, and Commission order.

⁵ Sunoco Pipeline L.P.'s Motion to Modify the Procedural Schedule (filed Oct. 19, 2017). A copy of SPLP's motion is attached hereto as **Exhibit B**.

⁶ The facts set forth in SPLP's motion were verified by Matthew L. Gordon, SPLP's Project Director for the ME2 pipeline project.

On November 3, 2017, The Township filed and served an answer to SPLP's motion.⁷ In order to dispute SPLP's representations about the timeline for completion of ME2, the Township's answer wrongly portrayed SPLP's statements about the remaining obstacles preventing flow on ME2 and, based on the affidavit of a non-party lawyer, asserted as a matter of fact that SPLP's averment about when ME2 would be operational but for the pendency of this proceeding was "simply false." (Township Answer at 2.) 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.⁸

Pursuant to Section 5.63 of the Commission's regulations, SPLP was entitled to file and serve a reply to The Township's new matter within 20 days of service of the Township's answer, or by November 23, 2017.⁹ In addition, as the proponent of the schedule modification, SPLP had the burden of proof with respect to its motion¹⁰ and thus was entitled to close the record on the motion pursuant to Section 5.242(a).¹¹ Although not due until the following week, SPLP planned file its reply to new matter on or about November 17, 2017, fourteen days after service of the Township's answer.

The November 14 Order denying SPLP's motion was issued just eleven days after the Township filed its answer with (unlabeled) new matter. In denying SPLP's motion, the ALJ relied upon the mischaracterizations and misleading assertions contained in the Township's new matter

⁷ Answer of West Goshen Township to Sunoco's Motion to Modify the Procedural Schedule (filed Nov. 3, 2017). A copy of the Township's answer is attached as **Exhibit C**.

⁸ 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."

⁹ 52 Pa. Code § 5.63(a).

¹⁰ 66 Pa. C.S. § 332(a).

¹¹ 52 Pa. Code § 5.242(a)

regarding SPLP's representations in support of its position.¹² The ALJ did not notify SPLP that the motion would be decided before the expiration of the 20 days provided for replies to new matter. The ALJ thus deprived SPLP of its rights to reply to new matter, to close the record on its motion, and to be heard on the Township's new factual allegations prior to disposition of the motion.

On November 17, 2017, SPLP filed a reply to the new matter contained in the answer in order to set the record straight and preserve its rights on review.¹³ Specifically, SPLP replied to Paragraphs 16, 17, 18 and 32 of the Township's answer and countered the Township's supporting affidavit of Alexander Bomstein, Esq. ("Bomstein Affidavit") with the affidavit of Mr. Larry Gremminger ("First Gremminger Affidavit"), the professional who manages SPLP's HDD permitting with the Pennsylvania Department of Environmental Protection ("DEP").

On November 17, 2017, SPLP filed the instant petition along with its reply to the township's new matter. The petition seeks interlocutory review of the November 14 Order and answers in the affirmative to the following material questions:

1. 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?

¹² 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.").

¹³ 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) ("SPLP Reply to New Matter"). A copy of SPLP's reply to new matter (which includes the Gremminger Affidavit) is attached as **Exhibit D**.

2. 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?
3. Should SPLP's motion to modify the procedural schedule be granted?¹⁴

On December 1, 2017, SPLP filed the Second Affidavit of Larry Gremminger ("Second Gremminger Affidavit"), which provided updated information regarding the progress of SPLP's ME2 HDD program.¹⁵

II. SUMMARY OF ARGUMENT

The reasons for granting interlocutory review are compelling. The Commission has repeatedly recognized that the Mariner East project will confer substantial affirmative benefits on the public.¹⁶ As Commissioner Sweet correctly pointed out at Public Meeting on October 26, 2017, the current procedural schedule is needlessly protracted given the straightforward issues

¹⁴ Petition of Sunoco Pipeline, L.P. for Interlocutory Commission Review and Answer to Material Questions (filed Nov. 17, 2017). A copy of the petition is attached as **Exhibit E**.

¹⁵ Second Affidavit of Larry Gremminger (filed Dec. 1, 2017) A copy of the Second Gremminger Affidavit is attached as **Exhibit F**.

¹⁶ 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 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.

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.¹⁷ Interlocutory review and affirmative answers to SPLP’s material questions at this time thus will remove a significant roadblock to realization of the substantial public benefits of the Mariner East project.

Each of the material questions should be answered in the affirmative. *First*, there is no question the ALJ’s denial of SPLP’s motion in reliance on the Township’s misleading new matter without affording SPLP the opportunity to reply deprived SPLP of the due process required by the Commission’s rules. *Second*, since the record on the motion is now complete and the issue straightforward, the Commission should grant the motion itself rather than incurring the further delay entailed by a remand to the ALJ for decision in light of reversal of the November 14 Order. *Third*, SPLP’s motion should be granted because the record clearly demonstrates that, but for the pendency of this proceeding and the obstruction of the Township, the initial ME2 line could be operational during the second quarter of 2018, long before the conclusion of this proceeding under the current schedule.

III. ARGUMENT

A. The Commission Should Grant Interlocutory Review of the November 14 Order.

During the course of a proceeding, a party may seek interlocutory review and answer to a material question that has arisen or is likely to arise.¹⁸ Upon the filing of a petition for interlocutory review and answer to a material question, the Commission has the authority to (1) continue, revoke

¹⁷ Oral statement by Commissioner Sweet, Pa. P.U.C., “Public Meeting of October 26, 2017,” available at <https://www.youtube.com/watch?v=geaeUKDuA3w&feature=youtu.be> beginning at 15:45.

¹⁸ 52 Pa. Code § 5.302.

or grant a stay of proceedings if necessary to protect the substantial rights of the parties; (2) determine that the petition was improper and return the matter to the presiding officer; (3) decline to answer the question; or (4) answer the question.¹⁹

The standards for interlocutory review are well established. Section 5.302 of the Commission's regulations requires that the petitioning party "state ... the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice - that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process.²⁰ Interlocutory Commission review is warranted where the petitions shows that, absent interlocutory review, some harm would result that would not be reparable through normal avenues, that the relief sought should be granted now rather than later, and that granting interlocutory review would prevent substantial prejudice or expedite the proceeding.²¹ The Commission has previously considered petitions "that seek to change a schedule previously approved by a presiding officer when there are allegations from a party that substantial prejudice may occur."²²

Compelling reasons exist for granting interlocutory review here. As Commissioner Sweet has observed, the inordinately protracted procedural schedule should not function as a "roadblock"

¹⁹ 52 Pa. Code § 5.303.

²⁰ *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002 (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985).

²¹ *Petition of Commc'ns Workers of Am. for A Pub., on-the-Record Comm'n Investigation of the Safety, Adequacy, & Reasonableness of Serv. Provided by Verizon Pennsylvania LLC*, P-2015-2509336, 2016 WL 1689627, at *8 (Apr. 21, 2016) (citing *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639 and R-2009-2139884 (Order entered April 15, 2010)).

²² *In Re Equitable Res., Inc.*, A-122250F5000, 2006 WL 2850141 (July 21, 2006).

to SPLP's completion of ME2 and the consequent benefits to the citizens of the Commonwealth. SPLP's motion to modify the schedule sought to remove that roadblock. The ALJ erred by denying the motion without affording SPLP the opportunity to correct the mischaracterizations set forth as unlabeled new matter in the Township's answer. The resulting prejudice to SPLP and the Commonwealth caused by leaving this "roadblock" to the operation of ME2 in place is not reparable through the usual avenues for review. By the time the current, "needlessly protracted" procedural schedule is completed, the unnecessary delay will have already occurred, and reversal and remand after exceptions would not adequately cure the prejudice to SPLP or the detriment to the Commonwealth caused by such delay.

B. The ALJ Deprived SPLP of its Due Process Rights.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.²³ Due process requires, at a minimum, notice and an opportunity to be heard. The Commission's regulations provide specific procedures to safeguard parties' due process rights. Proponents of a rule or order (who thus have the burden of proof) are afforded the opportunity to open and close the record.²⁴ To ensure that such proponents receive notice and an opportunity to be heard on new matter raised by opponents, new matter raised in answers must identified as such under the heading of "New Matter."²⁵ Most important, the

²³ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

²⁴ 52 Pa. Code § 242(a).

²⁵ 52 Pa. Code § 5.62(b); *see, e.g., Thomas Kielbasinski v. Columbia Gas of Pa., Inc.*, C-2015-2485659, 2015 WL 5173032, at *4 (Aug. 14, 2015) ("In order to protect Complainant's due process rights, the request to find Complainant abused the Commission's administrative process had to be denied because Respondent did not file a separate new matter, pursuant to 52 Pa. Code § 5.62.").

proponent is specifically provided the right to submit a reply to such new matter within 20 days after service of the answer (or within such other time as may be ordered by the Commission).²⁶

SPLP was afforded none of the foregoing procedural safeguards prior to denial of its motion and thus was deprived of its due process rights of notice and opportunity to be heard. As the proponent of an order modifying the procedural schedule in this matter, SPLP had the burden of proof.²⁷ It therefore had the right to open and close the record on its motion.²⁸ The Township's answer mischaracterized SPLP's statements concerning the timeline for completion of ME2 and the impact of DEP's HDD permitting process, and then condemned those "statements" (which SPLP never actually made) as "simply false," based on the Bomstein Affidavit attached to the Township's answer. (See Township Answer at pg. 2, and ¶¶ 16-18 and 32, and Bomstein Affidavit.) Although not labeled as such as required by Section 5.62(b), these mischaracterizations, condemnations and averments all constituted new matter.²⁹ SPLP was entitled to submit a reply to this new matter within 20 days of service of the answer, or by November 23, 2017.³⁰ However, the ALJ issued the November 14 Order, denying the SPLP motion, just eleven days after the filing of the Township's answer and (unlabeled) new matter, thus depriving SPLP of its right to be heard on the Township's new, misleading assertions, as well as its right to close the record on its motion.

This was not mere harmless error, for in denying SPLP's Motion, the ALJ clearly relied upon the mischaracterizations and misleading assertions contained in the Township's new matter

²⁶ 52 Pa. Code § 5.63(a).

²⁷ 66 Pa. C.S. § 332(a).

²⁸ 52 Pa. Code § 242(a).

²⁹ "New matter" in a responsive pleading comprises "material fact[s] which [are] not merely a denial of the averments of the preceding pleading." 52 Pa. Code § 5.62(b).

³⁰ 52 Pa. Code § 5.63(a).

regarding SPLP's representations in support of its position. The ALJ expressly noted the new matter raised by the Township – specifically, its contention that SPLP was “asserting false facts to support its position” (November 14 Order at 3) and that “delays in construction are within Sunoco's control and self-imposed” (*id.* at 4). The ALJ then stated:

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. (November 14 Order at 5.)

The “facts not currently in evidence” cited by the ALJ are precisely those facts contained in SPLP's reply to new matter and the supporting affidavit, which SPLP timely filed on November 17, 2017 in order to set the record straight. (SPLP Reply to New Matter, ¶¶ 16-18, 32 & Gremminger Affidavit.) These facts establish that the ME2 will be delayed unless the procedural schedule in this case is accelerated, that such a delay is unnecessary and unjustified, and that the Township's attempt to blame the delay on DEP's permitting process is self-serving, unsupported, inaccurate, and unavailing. (SPLP Reply to New Matter pp. 7-8.)

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 the ALJ deprived SPLP of its procedural and substantive due process rights.

C. The Commission Should Decide the SPLP Motion Rather Than Remanding the Motion to the ALJ for Disposition.

SPLP urges the Commission to decide SPLP's motion to modify the procedural schedule now in light of SPLP's reply to the new matter raised in the Township's answer, rather than

remanding the motion to the ALJ for decision³¹ in light of a Commission’s reversal of the November 14 Order. The question whether the schedule in this proceeding should be modified to eliminate inordinate delay is straightforward, and, now that SPLP has had the opportunity to submit its reply to the Township’s new matter, the record on the issue is complete. Therefore, remand to the ALJ for further proceedings is unnecessary. It would also be contrary to the public interest. As noted above, the Commission has repeatedly recognized that the Mariner East project will confer substantial affirmative benefits on the public.³² A remand would only add further, wholly unnecessary delay to the realization of those benefits.

D. SPLP’s Motion to Modify the Procedural Schedule Should be Granted.

The Commission has modified proceedings to facilitate their speedy resolution.³³ The Commission has also recognized the need for expedited proceedings when circumstances so require.³⁴ Such circumstances are present here, and SPLP’s motion therefore should be granted.

As set forth in SPLP’s verified motion, this case is a single-count contract dispute relating to the siting of Valve 344 within the municipal limits of the Township. The contractual interpretation issues are straightforward and simple, and the engineering constraints cited by SPLP relating to the siting of Valve 344 may be readily confirmed or refuted. (SPLP Motion ¶¶ 23-26.)

³¹ Legal issues caused by remanding the matter to the ALJ who made a premature substantive decision (largely due to the Township’s failure to properly label new facts as New Matter) can be cured or remedied by the Commission directly deciding the issue and prevents loss of additional time due to said due process error.

³² See note 16, *supra*.

³³ See *Pa. Pub. Util. Comm’n v. Nat’l Fuel Gas Distribution Corp.*, R-00016789, 2002 WL 31958785 (Pa. P.U.C. July 23, 2002) (ordering bifurcation of contract issue and 1307(f) gas cost rate proceeding in order to “encourage a timely resolution to the . . . contract issue.”); *Pa. Pub. Util. Comm’n v. Equitable Gas Co.*, 59 P.U.R. 4th 470, 474 (Nov. 22, 1983) (noting that Commission bifurcated the proceeding).

³⁴ See *A. Moses, Inc. v. Verizon Pa. Inc.*, Dkt. No. C-2010-2205259, 2011 WL 6008999, at *5 (Pa. P.U.C. Oct. 14, 2011) (ordering remand proceeding to be conducted on expedited basis); *In re PECO Energy Co.*, 87 Pa. P.U.C. 718, Dkt. No. R-00973953 (Oct. 9, 1997) (directing Office of Administrative Law Judge to issue expedited schedule).

Mainline open-cut construction of the pipeline required for service will be approximately 99% complete and buried in the ground by the end of this year. (SPLP Reply to New Matter ¶ 32.) In addition to the open-cut construction, there are dozens of HDD locations where construction is already complete, and dozens of other HDD locations where construction is currently underway. (SPLP Reply to New Matter ¶ 18.) While the DEP Environmental Hearing Board (“EHB”) had temporarily halted HDD operations at certain other HDD locations, it subsequently issued an order (the “Corrected Stipulated Order”) permitting those operations to resume subject to a DEP review process. (SPLP Motion ¶ 16; SPLP Reply to New Matter ¶ 16.) SPLP has therefore resumed its HDD program for its remaining drill sites, including the DEP review process for the sites that are subject to the Corrected Stipulated Order. (SPLP Motion ¶ 17; SPLP Reply to New Matter ¶ 17.)³⁵

³⁵ As explained in the First 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 Commonwealth where the necessary plans and data have not even been re-submitted” (Bomstein Affidavit at ¶ 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. (First Gremminger Affidavit at ¶¶ 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 ¶ 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 December 1, 2017, SPLP has already submitted reevaluation reports for 14 of the 23 HDD locations that require a reevaluation of the 20” line, and two HDD reports for a location that includes a 20” line have now been approved for resumed HDD drilling. (Second Gremminger Affidavit ¶ 6.) Two additional reevaluation reports have been submitted to DEP for HDD locations where only the 16” line location is at issue, and both of those locations have been approved by DEP. (*Id.*) The remaining reevaluation reports for an HDD location that includes a 20” line will be submitted to DEP in the near future. (First Gremminger Affidavit at ¶ 14.) 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

Therefore, but for the pendency of this proceeding and the obstruction of the Township, the initial ME2 line could be operational during *the second quarter of 2018*. (SPLP Reply to New Matter ¶ 32.)³⁶ However, 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 and “will probably take our processes *a year* to conclude.”³⁷ As Commissioner Sweet observed, the Commission’s procedural schedule for this matter should not be the “roadblock” that prevents ME2 from commencing service at an earlier time.³⁸

SPLP’s motion to modify the procedural schedule therefore should be granted, with the following modification. The motion proposed a schedule culminating with the parties’ reply briefs being filed and served on March 5, 2018. Due to the passage of time since the filing of the motion, some adjustment of the events prior to the submission of reply briefs will be required. Therefore, the Commission should grant SPLP’s motion with respect to the due date for reply briefs (March 5, 2018) and direct the ALJ and the parties to adopt a schedule for discovery, written testimony, hearings and main briefs accordingly. In addition, in order to eliminate the further delay entailed

sites in the Commonwealth,” is wrong. (*Id.* at ¶ 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.* ¶¶ 15-16.) *See* SPLP Reply to New Matter ¶ 17.

³⁶ 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. (SPLP Reply to New Matter ¶ 17; Gremminger Affidavit ¶¶ 8-9.)

³⁷ Oral statement by Commissioner Sweet, Pa. P.U.C., “Public Meeting of October 26, 2017,” *available at* <https://www.youtube.com/watch?v=geaeUKDuA3w&feature=youtu.be> beginning at 15:45 (emphasis added).

³⁸ *Id.*

by a recommended decision, exceptions and reply exceptions, the Commission should consider having the record certified to it for decision pursuant to 66 Pa. C.S. § 335(a).³⁹

IV. CONCLUSION

For all of the foregoing reasons, the Commission should grant the Petition and answer the material questions posed therein answered in the affirmative. SPLP respectfully requests that the Commission enter an order providing as follows:

1. That the Petition of SPLP for Interlocutory Commission Review and Answer to Material questions is granted.
2. That the Material Questions posed by the Petition of SPLP for Interlocutory Commission Review and Answer to Material questions are answered in the affirmative.
3. That the November 14, 2017 Order Denying Motion to Modify Procedural Schedule is reversed.
4. That SPLP's Motion to Modify Procedural Schedule is granted as modified consistent with the above discussion.
5. That that reply briefs in this matter shall be filed and served no later than March 5, 2018.
5. That the parties and the ALJ shall develop and adopt a schedule for discovery, written testimony, hearings and main briefs in this matter so as to permit the filing of reply briefs no later than March 5, 2018.
6. That the ALJ shall certify the record in this matter to the Commission for decision on or before March 26, 2018.

³⁹ "When the commission does not preside at the reception of evidence, the presiding officer shall initially decide the case, **unless the commission requires, either in specific cases or by general rule, the entire record to be certified to it for decision.**" 66 Pa. C.S. § 335(a) (emphasis added).

Respectfully submitted



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DATED: December 4, 2017

Attorneys for Sunoco Pipeline, L.P.

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

ORDER DENYING MOTION TO MODIFY PROCEDURAL SCHEDULE

Procedural History

On July 6, 2017, at a prehearing conference, oral argument was heard regarding Respondent Sunoco Pipeline, L.P.’s (Sunoco) Motion for Judgment on the Pleadings and Motion to Stay Discovery. Additionally, the parties’ respective proposed procedural schedules, which were over ten months apart, were discussed. West Goshen Township (West Goshen or Township) requested that its direct testimony be due on August 15, 2018 and that a hearing be held on December 11, 2018. West Goshen indicated that it would be filing a petition for interim emergency order to preclude construction in West Goshen Township because clearing for construction had begun. N.T. 5-6, 30. Sunoco indicated it would not stay construction pending a decision regarding an Interim Emergency order and it proposed the Township’s direct testimony be due November 6, 2017 and that hearings be held on January 29 – 30, 2018. N.T. 30. Sunoco requested no testimony due dates occur between December 15, 2017 and January 15, 2018 due to holiday schedules. N.T. 26-28.

On July 18, 2017, a hearing was held regarding West Goshen’s Petition for Interim Emergency Order. N.T. 34 – 254. The Petition for Interim Emergency Order was granted and a Material Question was certified to the Commission on July 24, 2017. Also on July 24, 2017, the Motion for Judgment on the Pleadings and Motion to Stay Discovery were denied and the following procedural schedule was ordered.

| | |
|--|---------------------|
| Direct Testimony of West Goshen Twp. | February 1, 2018 |
| Rebuttal Testimony of Sunoco Pipeline L.P. | March 1, 2018 |
| Surrebuttal Testimony of West Goshen Twp. | April 2, 2018 |
| Oral rejoinder outlines | April 19, 2018 |
| Hearings | April 25 & 26, 2018 |
| Main Briefs | May 28, 2018 |
| Reply Briefs | June 18, 2018 |

On October 19, 2017, Sunoco filed a Motion to Modify the Procedural Schedule (Motion to Modify) at Docket No. C-2017-2589346. The Motion to Modify requested an expedited briefing schedule requiring West Goshen to file its response within ten days of service.

On October 26, 2017, the Commission entered an Opinion and Order granting West Goshen’s Petition for Interim Emergency Relief and enjoining Sunoco from horizontal directional drilling (HDD) and other construction activities involving Valve 344 and appurtenant facilities on the Janiec 2 Tract in West Goshen Township until the entry of a final Commission Order ending the instant formal complaint proceeding. The Commission further denied Sunoco’s request that West Goshen Township be directed to post a bond under 52 Pa. Code §3.8. The Commission referred this matter back to the Office of Administrative Law Judge for further proceedings.

By Order entered October 31, 2017, the normal twenty-day period for a response to motions was shortened by five days to November 3, 2017. On November 3, 2017, West Goshen filed an Answer. The Motion to Modify is ripe for a decision.

Discussion

Sunoco’s Position

Sunoco argues the above-procedural schedule could significantly delay the completion of the Mariner East 2 Pipeline in West Goshen Township. Sunoco contends it has resumed horizontal directional drilling (HDD) at its remaining drilling locations in the Commonwealth and the entire pipeline, except for West Goshen Township’s portion, will be

complete and ready to deliver product by the fourth quarter of 2017 or early 2018. The HDD site in West Goshen Township is the only location where drilling will not resume for the foreseeable future, and will soon be the only segment of the pipeline that remains unfinished.

Regarding outstanding discovery requests, Sunoco “anticipates that it will complete the document production relating to the engineering constraints by November 8, 2017. At that point, the Township should have an expert review the material and opine whether the engineering constraints cited by Sunoco are real or imaginary.” Motion at 10. Sunoco requests the Commission require Township to make an initial showing that the engineering concerns cited by Sunoco for not locating the Valve on the SPLP Use Area are illusory and misplaced. Motion at 10. Sunoco requests the procedural schedule be shortened by three months such that hearings are held on January 22 and 23, 2018 instead of April 25 & 26, 2018. In support of its position that it is resuming HDD in this Commonwealth, Sunoco attached a Corrected Stipulated Order from the Environmental Hearing Board dated August 10, 2017, at Docket No. 2017-009-L to its Motion. Motion at Exhibit B.

West Goshen’s Position

West Goshen responds that its witnesses’ direct testimony is due on February 1, 2018, and the Township has been relying upon the current schedule, which has been in place for three months, since July 24, 2017. The Township opposes a dramatic change to the schedule, which would require it to produce an expert report analyzing complex engineering issues by November 28, 2017, in less than a month, when Sunoco has not yet provided all engineering documents required for the evaluation. Township contends it will be prejudiced if the procedural schedule were to be changed at this late date. Specifically, to require Township to produce expert testimony within 20 days of November 8th, the date Sunoco claims it will produce responses to discovery requests, is unfair to the Township.

Township also argues Sunoco should not be permitted to create a new threshold legal burden for the Township to meet. Township contends that Sunoco is asserting false facts to support its position that it is engaged in HDD drilling everywhere else in the Commonwealth except for West Goshen Township, and that only the current procedural schedule would delay

total completion of the Mariner 2 project. West Goshen objects to any bifurcation of the proceedings and contends that delays in construction are within Sunoco's control and self-imposed as it refuses to abide by the terms of the parties' Settlement Agreement.

Disposition

The Commission's regulations grant the presiding officer "all necessary authority to control the receipt of evidence." 52 Pa.Code § 5.403(a). Written testimony is encouraged. 52 Pa.Code § 5.412(a). The Commission's regulations also allow Presiding Officers the authority to "regulate the course of the proceeding." 52 Pa.Code § 5.483(a). Liberal construction is allowed to "secure the just, speedy and inexpensive determination of every action or proceeding" and the "presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties." 52 Pa.Code § 1.2(a); *see also*, 52 Pa.Code § 1.2(c) ("presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.").

I am unpersuaded to expedite the hearing date of April 25, 2017, which is approximately 85 days longer than the hearing date originally proposed by Sunoco in its prehearing conference memorandum and 229 days shorter than the date proposed by the Township. The current litigation schedule is a reasonable compromise given the complexity and subject matter of the proceeding. As of November 3, 2018, Sunoco had not yet provided complete responses to Interrogatories 6, 10, 13, 14, 19, 20 and 21. Sunoco is compelled to provide these responses on or about November 22, 2018. *Order Granting in Part and Denying in Part Motion to Compel Responses to West Goshen Township's Discovery Requests*, November 1, 2017. Even if Sunoco were to provide full and complete responses by November 22, 2017, it would be unfair to require Township to serve its expert(s)' report(s) by November 28, 2017 or December 8, 2017, over a Thanksgiving-holiday time-period. Expediting the due date for a report and direct testimony by three months when West Goshen has relied on the current schedule may negatively affect West Goshen's substantive rights. It is not clear if Sunoco is requesting a bifurcation of proceeding; however, Sunoco requests the Township be required to first "produce" a report regarding the feasibility of siting the valve on the SPLP Use Area by

November 28, 2017, then be required to serve direct written testimony by December 8, 2017. It is unclear whether Sunoco means “file” or just “serve” by the word “produce.” This production of an “expert report regarding the feasibility of siting valve on SPLP Use Area” is a newly proposed preliminary deadline in the procedural schedule introduced three months after the initial litigation schedule was entered. Sunoco could have made the request sooner, but did not. An earlier request would have been more reasonable.

I am not persuaded to bifurcate the proceeding requiring one issue be determined before all other issues are considered or 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. The Corrected Stipulated Order contains many terms and conditions including re-evaluations and reports required prior to resuming HDD. Motion at Exhibit B. The Corrected Stipulated Order does not direct unconditional HDD activities resume at all 55 sites, and I am not persuaded by it to find that but for the procedural schedule in the instant case, the entire Mariner East 2 project would be completed by the first quarter of 2018.

THEREFORE,

IT IS ORDERED,

1. That the Sunoco Pipeline L.P.’s Motion to Modify Procedural Schedule at Docket No. C-2017-2589346 is denied.

Date: November 14, 2017

Elizabeth Barnes
Administrative Law Judge

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

(Revised 11/01/2017)

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EXHIBIT B

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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
Philadelphia, PA 19103

Dated: October 19, 2017

Christopher A. Lewis

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

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*Attorneys for Defendant
Sunoco Pipeline L.P.*

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

**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)

One Logan Square

130 N. 18th Street

Philadelphia, PA 19103

(215) 569-5500

Lewis@BlankRome.com

FTamulonis@BlankRome.com

MMontalbano@BlankRome.com

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
ebarnes@pa.gov

David Brooman, Esq.
Richard C. Sokorai, Esq.
Mark R. Fischer, Jr., Esq.
Douglas Wayne, Esq.
High Swartz, LLP
40 East Airy Street
Norristown, PA 19404
dbrooman@highswartz.com
rsokorai@highswartz.com
mfischer@highswartz.com
dwayne@highswartz.com

Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105
(*via first class mail only*)

Office of Consumer Advocate
555 Walnut St.
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(*via first class mail only*)

Office of Small Business Advocate
300 North Second St., Suite 202
Harrisburg, PA 17101
(via first class mail only)

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

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
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

PROPOSED SETTLEMENT AGREEMENT -- NOT FINAL UNTIL SIGNED BY ALL
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: _____

Date: _____

Title: Chairman, Board of Supervisors

Attest: _____

Special Counsel:

CONCERNED CITIZENS OF WEST GOSHEN TOWNSHIP

By: Name: _____

Date: _____

Duly authorized representative of CCWGT

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


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

Attest: _____

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: _____

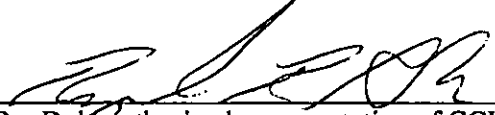

Counsel:

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
Raymond Allen
Date: 04/11/2025
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



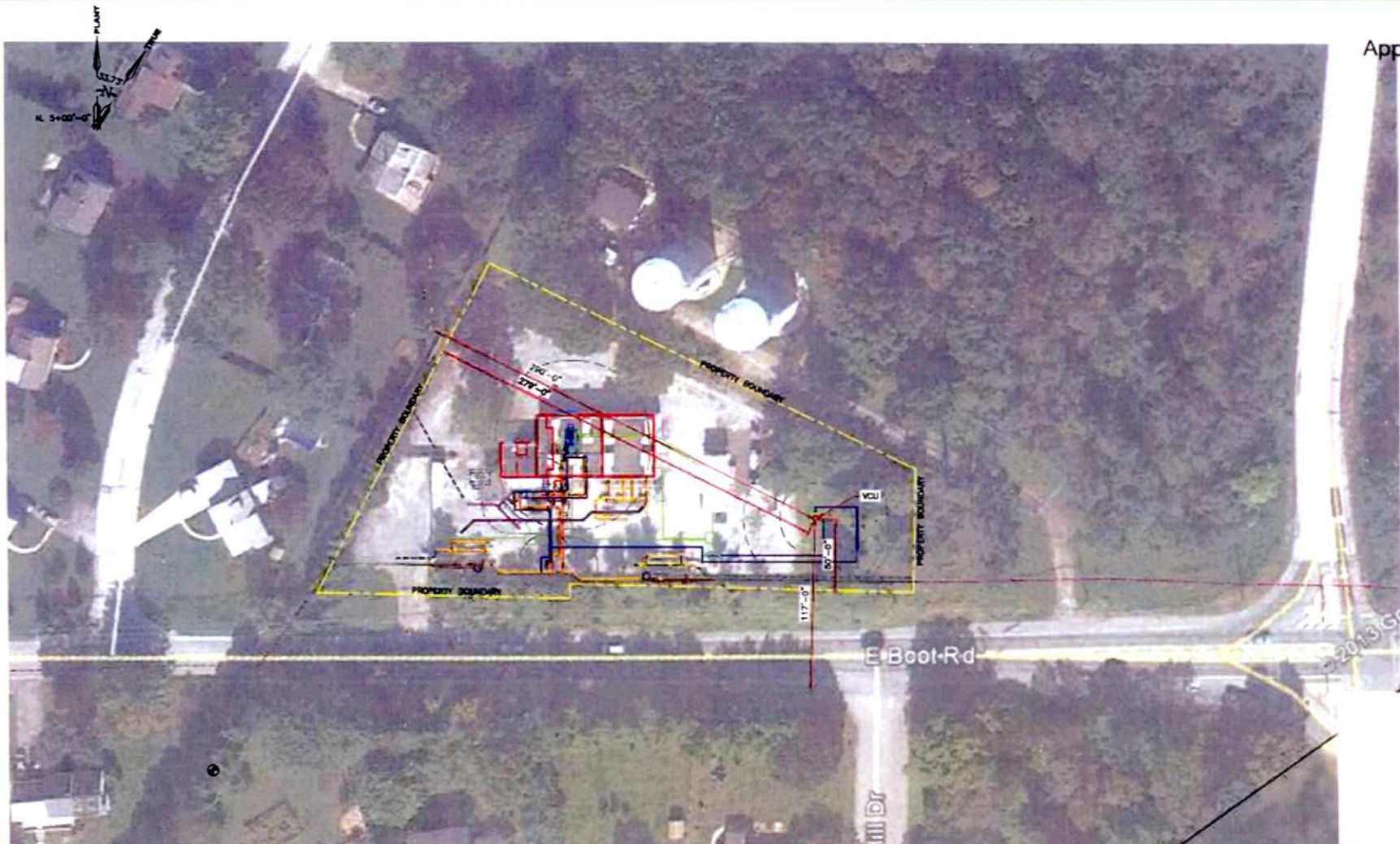
NOTES:
 1 CONTRACTOR SHALL VERIFY ALL DIMENSIONS.

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

| | | | |
|--------------------|------------|--|---------------|
| E 04/17/19 | | FOR TOWN ONLY | LLC |
| REV. DATE APPY | | NOT FOR CONSTRUCTION | INC |
| DESCRIPTION | | APPROVAL | |
| ENGINEERING RECORD | |  BOOT STATION GENERAL ARRANGEMENT SPLP USE AREA EXHIBIT | |
| DRAWN BY | LCDE | | |
| CHECKED BY | TJAG | | |
| APPROVED BY | J. LANGR | | |
| DATE | 2019-03-17 | | |
| SCALE | N.T.S. | | |
| NO. PROJ. | 0000 | DWG. NO. 2896-BOO2-EXHIBIT 2 | REV. NO. E |
| OLD DRAWING NO. | | | |

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

| ENGINEERING RECORD | | | |
|--------------------|------------|--|--|
| DESIGN BY | LJDR | | |
| CHECKED BY | LJDR | | |
| APPROVED BY | LJDR | | |
| DATE | 2015-05-11 | | |
| SCALE | 1" = 30' | | |
| NO. PROJ. / | 0888 | | |

| | | | | |
|----------------|----------|--|-------------|-------------------------------------|
| E1 | 05/14/15 | FOR OWNER ONLY NOT FOR CONSTRUCTION | LLC | REV |
| REV | DATE | APP | DESCRIPTION | APPROVAL |
| | | | | BOOT STATION GENERAL ARRANGEMENT |
| OLD DRAWING NO | | 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.

46'-13"

UNDERGROUND
DRIP HEADER

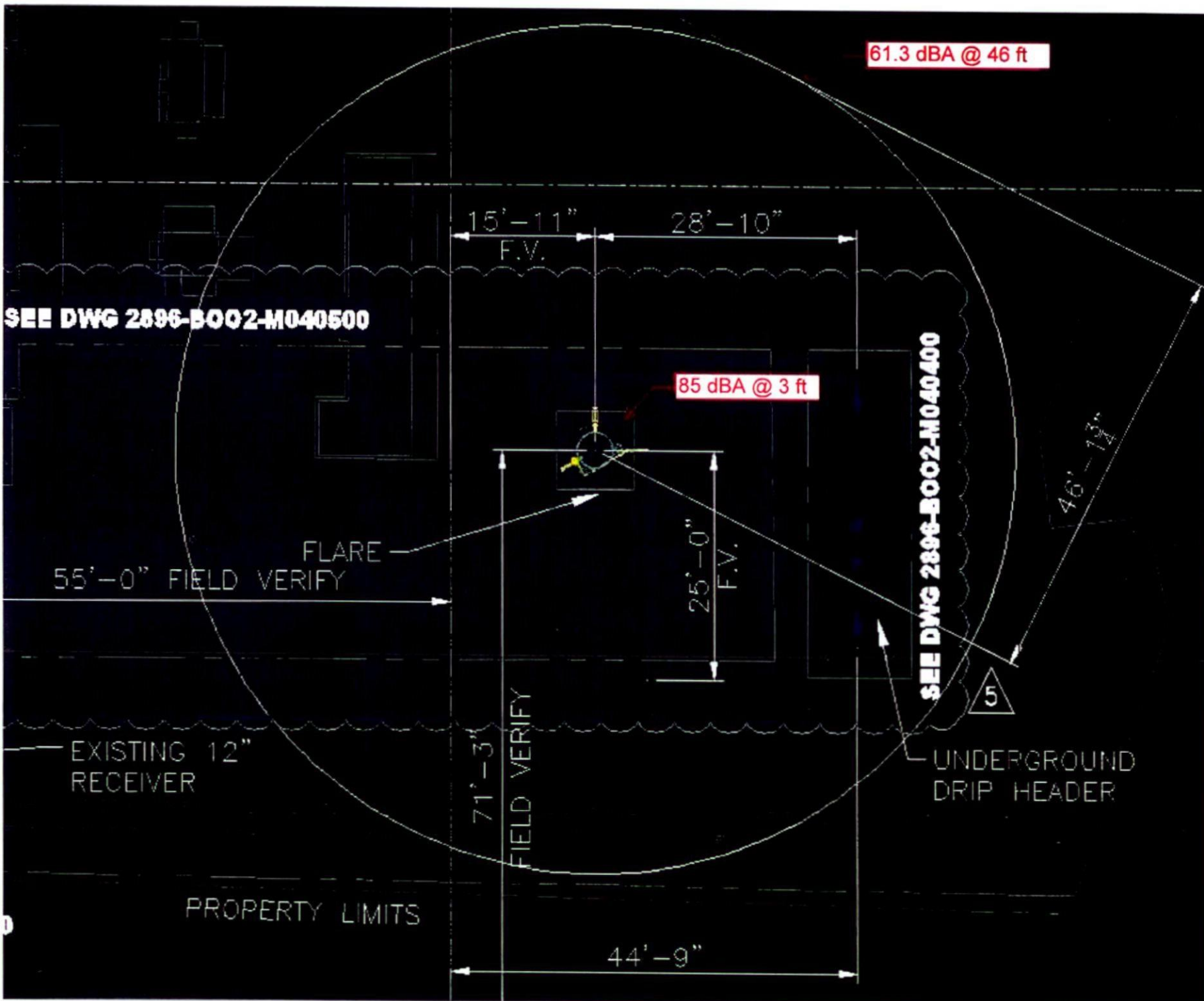
5

PROPERTY LIMITS

44'-9"

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.

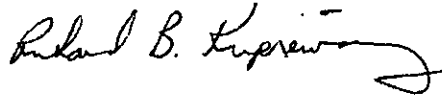
5. Accufacts' Conclusions

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, reading "Richard B. Kuprewicz". The signature is written in a cursive style 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
in 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
ELM 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
J. M 1307 Mary Jane Lane

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

SR Sharon Owen *SR 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

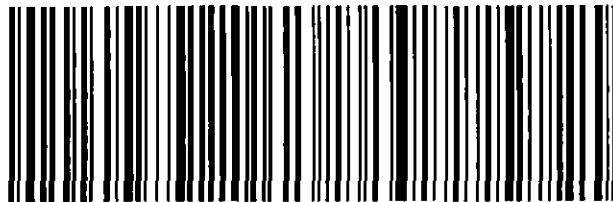
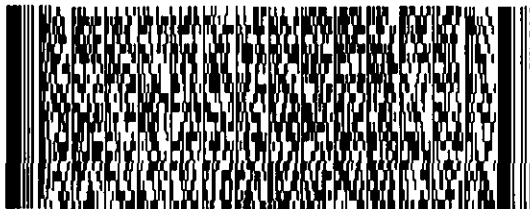
MON - 18 MAY 10:30A
 PRIORITY OVERNIGHT

TRK# 7806 6383 1010

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DSR
 17120
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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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Attorneys for West Goshen Township

WEST GOSHEN TOWNSHIP,
Petitioner

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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.

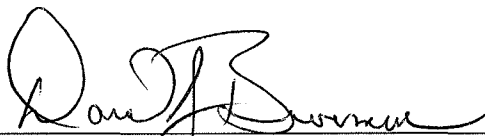
90. Under the Code, an emergency includes a situation which presents a clear and present danger to life or property that requires action prior to the next scheduled public meeting.
52 Pa.Code. §3.1

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: 

David J. Brooman, Esquire
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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Attorneys for West Goshen Township

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

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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Philadelphia, PA 19103-6998
Attorney for Sunoco Logistics, L.P.

Office of Trial Staff
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Office of Consumer Advocate
555 Walnut St.
5th Floor, Forum Place
Harrisburg, PA 17101-1923

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. Cmwlt. 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. Cmwlt. 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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EXHIBIT C

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

**ANSWER OF WEST GOSHEN TOWNSHIP TO SUNOCO’S MOTION TO
MODIFY THE PROCEDURAL SCHEDULE**

Complainant West Goshen Township (“Township”) hereby answers Respondent Sunoco Pipeline L.P.’s (“SPLP” or “Sunoco”) Motion to Modify the Procedural Schedule. The procedural schedule in this case was set approximately three months ago, on July 24, 2017, upon the denial of SPLP’s motion for judgment on the pleadings. The Township’s initial written testimony is due on February 1, 2018, in approximately three months. The Township has been acting in reliance on this schedule. Now, over 40% into the established schedule, SPLP is seeking a dramatic alteration in the schedule, requiring Township to come forward with an expert report analyzing complex engineering issues in less than a month, within which the

Thanksgiving holiday will occur, when SPLP has admittedly not even provided all of the engineering documents required for this evaluation.¹

SPLP's bases for such relief are essentially two-fold: 1) it is attempting to unilaterally create a prima facie burden on the Township to disprove SPLP's unsupported assertions that engineering constraints make it unable to site the subject Valve on the SPLP Use Area; and 2) it claims that all other HDD operations have resumed in the Commonwealth and this case is the only thing holding up the completion of the ME2 project, causing it costly delay. However, SPLP's legal assertions are incorrect and its factual assertions are false.

With respect to SPLP's attempt to impose an initial burden upon the Township to disprove SPLP's unsupported engineering conclusions, the Township's burden is to establish that SPLP has a contractual obligation to site the Valve on the SPLP Use Area and that it has not done so. If SPLP establishes by a preponderance of the evidence that it is actually unable to locate the Valve on the SPLP Use Area, which it has not yet proven, then the burden shifts to the Township to demonstrate that the contract requires SPLP to locate the Valve on another part of the SPLP Additional Acreage, as opposed to wherever in the Township it unilaterally decides.

With respect to SPLP's assertion that all other HDD operations have resumed in the Commonwealth, it is simply false.² There are multiple locations where HDD has not resumed following shutdowns by the Department of Environmental Protection ("DEP") related to frack-outs and inadvertent returns compromising waterways, water sources and water wells.

¹ SPLP's proposed relief establishes November 8, 2017 for SPLP to provide all engineering information which it considers relevant to the siting of Valve 344. Further, SPLP's discovery response to request No. 4-17, 22, 25, 27 and 28, explains that SPLP is still reviewing and gathering such information. Further, certain SPLP objections have been overruled and SPLP has been ordered to produce further documents, pursuant to an Order dated October 26, 2017.

² This is not the first time that SPLP has been less than truthful in this case. At the July 18, 2017 hearing, SPLP, upon being confronted with documents, admitted that it planned to site the Valve on the Janiec 2 Tract, when it promised in the Settlement Agreement submitted to the PUC for approval, that it would site the Valve on the SPLP Use Area and that it had no plans to site it elsewhere.

The Township will be severely prejudiced if the procedural schedule were changed at this late date. Sunoco has admittedly not yet produced the documents necessary to assess its contentions. Sunoco is trying to unilaterally create a new legal burden for Township to meet. Sunoco is asserting false facts to support its position. For all of these reasons, and the reasons set forth below, the Township respectfully requests that Your Honor deny SPLP's Motion to Modify the Procedural Schedule entered on July 24, 2017.

I. RESPONSE TO BACKGROUND

1. Admitted. By way of further answer, the Township filed this action challenging the placement of a valve and appurtenant facilities at a location completely inconsistent with the promises and representations of SPLP under the terms of the referenced Settlement Agreement.

2. Denied as stated. The Amended Complaint, as a writing, speaks for itself and any characterization thereof is denied. The Township is seeking to enforce the Settlement Agreement with SPLP regarding the placement and location of the subject Valve.

3. Denied as stated. The Amended Complaint, as a writing, speaks for itself and any characterization thereof is denied. The Township does not dispute that this is an important requested relief, however, also important is not allowing the Valve to be installed elsewhere.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied. Matthew Gordon did not testify that the Valve could not be placed on the SPLP Use Area. Rather, Gordon merely testified that:

(a) from an engineering standpoint it would not be "prudent" to site the valve on the SPLP Use Area, because it's extremely difficult and "potentially unsafe" (NT 194:2-11).

(b) he noted challenges in constructability (NT 223:8-12).

(c) he does not know whether “it’s practical” (NT 249:6-10).

It is also denied that Gordon testified that HDD was infeasible. Further, while Gordon did articulate a number of traffic or safety concerns regarding open cutting Boot Road, he did not testify that these issues were insurmountable and did not articulate reasonable efforts by SPLP to address these issues, rather than simply placing the Valve where it was most convenient to SPLP regardless of the consequences, or its promises, to West Goshen Township.

8. Admitted in part and denied in part. It is admitted that Kuprewicz testified that he did not speak with Mike Slough of SPLP as to whether the SPLP Use Area would be a prudent location. However, any implication by SPLP’s use of the word “conceded” is denied, as it implies that he failed to do so. Further, the Settlement Agreement does not condition SPLP’s agreement to locate the Valve on the SPLP Use Area on whether it was prudent. SPLP failed to comply with the terms of the Settlement Agreement. Finally, the Kruprewicz report referenced in this paragraph is a writing that speaks for itself and any characterizations thereof by SPLP are denied.

9. Admitted.

10. Admitted in part, denied in part. It is admitted that on July 24, 2017 Administrative Law Judge Elizabeth Barnes (“ALJ”) issued an Interim Emergency Order, which is a writing that speaks for itself. Any characterization of said writing by SPLP is denied. By way of further answer, after the instant Motion was filed, the PUC affirmed the Interim Emergency Order on October 26, 2017.

11. Admitted.

12. Admitted.

13. Admitted. By way of further answer, after the instant Motion was filed, the PUC affirmed the Interim Emergency Order on October 26, 2017.

14. Admitted.

15. Admitted.

16. Admitted in part and denied in part. The Stipulated Order, as a writing, speaks for itself and any characterization thereof is denied. It is admitted that the Stipulated Order at Exhibit B to the Motion was approved. It is denied that it permitted SPLP to immediately resume HDD activities. Rather, the Stipulated Order put in place significant requirements prior to the resumption of drilling at numerous locations, including but not limited to:

- (a) Re-examine the geology at each site using information and data gathered during HDD operations at that and other sites during construction of the pipelines subject to the permits in the above-captioned Appeal;
- (b) Consider data that is specific to the needs of each HDD being reevaluated, including at a specific HDD; geological strength at profile depth, overburden strength, HDD depth, entry angle, pipe stress radius, open cut alternatives, a re-route analysis for all HDDs (including those on Exhibit "D) and analysis of well production zones.
- (c) Conduct, as appropriate, additional geotechnical evaluation at each site using techniques generally recognized within the scientific community which may include:
 - (i) Additional field drilling and sampling
 - (ii) Seismic surveys
 - (iii) Ground penetrating radar; and
 - (iv) Electromagnetic surveys/electrical resistivity tomography
- (d) In karst areas, Sunoco shall consider the use of seismic surveys and electromagnetic surveys/electrical sensitivity tomography for the re-evaluation undertaken pursuant to this Order, and if it does not use these evaluation methodologies, it will provide the Department [of Environmental Protection] with an explanation for why they were not used at that side.

Further, under that same Stipulated Order, in addition to a number of other pre-requisites, SPLP after such re-evaluation, must then submit a report by a professional geologist, for review and comment by the Clean Air Council, and review and approval by the DEP, specifying all

actions to be taken by SPLP to eliminate, reduce, or control the release of inadvertent returns or HDD drilling fluids to the surface of the ground or impact to water supplies.

17. Denied. It is specifically denied that SPLP has resumed drilling at its remaining drilling locations in the Commonwealth, or that except for the West Goshen portion of the pipeline, the entire Pipeline will be completed and ready to deliver product by the fourth quarter of 2017 or 2018. To the contrary, on or about July 25, 2017, due to multiple frack outs and inadvertent returns throughout the Commonwealth, many of SPLP's HDD locations were temporarily halted by Stipulated Order in a case before the Pennsylvania Environmental Hearing Board ("EHB") pending a hearing on the issues for certain permits related to the HDD. *See Clean Air Council, et al. v. Commonwealth of Pennsylvania, Department of Environmental Protection and Sunoco Pipeline, L.P., Permittee*, EHB Docket No. 2017-009-L. That order was modified on July 28, 2017, August 1, 2017, and August 3, 2017, to allow HDD at some locations, but many were still halted. On August 8, 2017, the parties to the EHB case, entered into a Stipulated Order, that, among other things, SPLP would re-evaluate the HDD Plans for multiple halted locations throughout the Commonwealth and then submit the reevaluated plans to the DEP for approval, and submit them to the Clean Air Council for the opportunity to comment. Alex Bomstein, Esquire, Senior Litigation Counsel for the Clean Air Council, advises that revised plans have not even been resubmitted at multiple HDD locations within Pennsylvania and thus HDD at these locations has not resumed, contrary to the representation in SPLP's Motion. Further, discovery has continued in the EHB case. The DEP, through corporate designee deposition testimony on October 19, 2017, (the same date this Motion was filed) has also explained that there are HDD sites in the Commonwealth for which plans have not even

been resubmitted and HDD has not resumed, contrary to the representation in SPLP's Motion. See the affidavit of Alex Bomstein, attached hereto as Exhibit A.

18. Denied. The Township cannot determine if SPLP is referring to HDD within the Township or throughout the Commonwealth. Upon information and belief, the HDD associated with the Mariner East 2 project will be far longer than 6 months.

II. RESPONSE TO REQUESTED RELIEF

19. Denied. SPLP is attempting to create a non-existent prima facie burden and shift the obligation onto the Township to make an "initial showing that engineering concerns cited by SPLP for not locating the Valve on the SPLP Use Area are illusory and misplaced." The Township's burden is to prove that SPLP has a contractual obligation to place the Valve on the SPLP Use Area and that SPLP has breached that obligation. If SPLP believes it is "unable" to locate the Valve on the SPLP Use Area due to engineering constraints, the Agreement places the burden upon SPLP to provide notice of such constraints to the Township, after which the two parties could work out an acceptable location on the SPLP Additional Acreage. SPLP has to date provided only disputed testimony that it would not be prudent to locate the Valve on the SPLP Use Area, and has failed to provide any data or other information substantiating engineering constraints making it unable to locate the Valve on the SPLP Use Area as agreed. Further, SPLP has admittedly withheld documents on this subject (which were the subject of the Township's motion to compel granted on November 1, 2017), as its Motion proposes that SPLP produce such information by November 8, 2017. See Paragraph 20 of the Motion.

20. Denied. The schedule should not be so modified. SPLP has not even fully responded to the Township's initial discovery responses, which if anything, should add time to the schedule not take time away. In addition, SPLP has waited months to request a modification of the schedule, which the Township has relied upon to date. To suddenly expedite the schedule,

and add a deadline for the production of an expert report in less than a month, based on documents that have not even been produced, to meet a prima facie burden that does not exist for the Township, with the Thanksgiving Holiday right in the middle of the proposed new deadlines, is highly prejudicial to the Township, and an insult to the ALJ's initial determination of the schedule in this matter. The schedule should, at a minimum, stay in place as-is, if not be extended if SPLP's documents are not timely produced.

III. RESPONSE TO ARGUMENT

21. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further answer, the cases cited by SPLP are inapposite to its request to expedite the schedule in this matter, as there is nothing to bifurcate in this matter. *See Pennsylvania Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, R-00016789, 2002 WL 31958785 (July 23, 2002) (in which the Commission bifurcated the proceedings, after six (6) months of litigation, to allow the parties to continue settlement discussions on a specific issue, whereas here no settlement discussions have occurred); *Pennsylvania Pub. Util. Comm'n v. Equitable Gas Company*, 59 P.U.R.4th 470, 472 (Nov. 22, 1983) (in which the Commission bifurcated the proceedings just seven days after the filing of the complaint in order to separate out issues that did not impact the complainant's business, whereas here the location of the Valve impacts all pipeline activities in the Township).

22. Denied. This allegation is denied as a conclusion of law to which no response is required. By way of further answer, the cases cited by SPLP in support of its request are entirely distinguishable from the circumstances in this case. *See A. Moses, Inc. v. Verizon Pennsylvania Inc.*, C-2010-2205259, 2011 WL 6008999, at *5 (Oct. 14, 2011) (in which the Commission remanded the complaint to the ALJ and directed that any further proceedings be expedited due to the passage of over a year between the complaint and the Commission's order); *In re Peco*

Energy Co., 87 Pa. P.U.C. 718 (Oct. 9, 1997) (in which the Commission directed an expedited schedule in a complex consolidated litigation relating to the competing utilities' plans because the Commission was required to issue a decision by a certain deadline). In this case, there has been no excessive passage of time and the Commission is not under any imposed deadline to decide the Township's Amended Formal Complaint. Further, ALJ Barnes clearly issued the current schedule after consideration of the underlying issues, following a conference with the parties and an evidentiary hearing on the Township's Petition for Interim Emergency Order.

23. Admitted. Further, ALJ Barnes already acted upon her authority under 52 Pa. Code § 5.483 when she issued the current schedule in this matter.

24. Denied as stated. The Township's Amended Complaint is a writing that speaks for itself, but SPLP's defenses, assertions and testimony to date make clear that the underlying dispute involves complex legal, engineering and factual issues.

25. Denied. SPLP has defended this case in a number of ways, raising complex legal, engineering and factual issues.

26. Denied. SPLP has not even fully responded to the Township's discovery requests for the Township to fully evaluate SPLP's position. *See also* the Township's response in paragraph 19 above.

27. Denied. By way of further answer, the Township has relied on the testimony of SPLP's own witness at the July 18, 2017 hearing, regarding the lack of effort to even attempt to locate the Valve where promised because SPLP had already decided to locate it elsewhere before it made its promise. Further, a full analysis has not been possible because SPLP has not even fully responded to Township's discovery requests. *See also* the Township's response in paragraph 19 above.

28. Denied. SPLP has an obligation to address any safety and feasibility concerns related to siting the Valve where it promised in the Settlement Agreement, which it has not done or reasonably attempted to do. Even if the Valve could not be placed on the SPLP Use Area due to engineering constraints, the re-location, per the Agreement, would be on the remaining SPLP Additional Acreage in coordination with the Township.

29. Denied. The burden is on the Township to prove that SPLP has certain duties under the Settlement Agreement and that SPLP has not complied with the Settlement Agreement, and even if a re-location were warranted, it would be on the SPLP Additional Acreage, not wherever SPLP decides in the Township. *See also* the Township's response in paragraph 19 above.

30. Admitted in part and denied in part. It is admitted only that there are certain economic benefits for a major pipe line project such as Mariner East. It is denied that such benefits outweigh any contractual obligations that SPLP entered into with the Township, or that SPLP is free to cause whatever harm it chooses in the name of other benefits. Further, the opinions cited, as writings, speak for themselves and any characterization thereof is denied.

31. Denied as stated. It is admitted that the Township is seeking to compel SPLP to comply with its contractual obligations under the Settlement Agreement, not just delay the project or block the entire pipeline. However, if this case delays the project, SPLP caused the delay by not complying with the Settlement Agreement. Further, the Township denies SPLP's characterization that the Township has "repeatedly" represented what it does not intend.

32. Admitted in part and denied in part. It is specifically denied that SPLP has resumed drilling at its remaining drilling locations in the Commonwealth, or that except for the West Goshen portion of the pipeline, the entire Pipeline will be completed and ready to deliver

product by the fourth quarter of 2017 or 2018. To the contrary, see paragraph 17 above. It is admitted only that because SPLP refuses to abide by the terms of the Settlement Agreement, and until it does, SPLP will not be able to resume drilling in West Goshen Township for the foreseeable future.

33. Denied. Whether there are any engineering constraints as cited by SPLP is only part of the analysis. Assuming that there are legitimate engineering constraints, it would have to be determined if they make SPLP unable to put the Valve at the promised location. Even then, if unable to do so, the proper location for the Valve would be on the SPLP Additional Acreage, in coordination with the Township, as agreed.

34. Denied. First, SPLP waited almost three months following the entry of the injunction order to seek a modification of the schedule. This is problematic as the Township has been operating pursuant to the schedule approved on July 24, 2017 since that time. Second, by its own admission, SPLP has not even produced all of the discoverable documents requested by the Township. SPLP proposes that the Township produce an expert report within twenty (20) days of SPLP producing documents so voluminous and complex that heretofore it has not been able to produce. Lastly, it is SPLP's own conduct that is causing any delay by promising to do something when it had no intention of doing so. The proposed modified schedule is not fair or appropriate, the delay is not causing SPLP any harm, if it were, SPLP could modify its plans to conform with its agreement and resume operations.

35. Denied. Adjusting the schedule will do nothing to promote judicial economy, the same issues will have to be addressed, and such a late request will unduly prejudice the Township. Further, see paragraph 19 above regarding the imaginary burden SPLP is attempting to create.

36. Denied. SPLP has raised many complex and complicated legal, engineering and factual issues that must be addressed. To be sure, SPLP has not even responded fully to Township's discovery requests as of yet.

III. RESPONSE TO REQUEST FOR EXPEDITING BRIEFING SCHEDULE

37. Denied. Judge Barnes has already adjusted the motion response schedule to fifteen (15) days and therefore, this request is denied as moot.

IV. CONCLUSION

The Township respectfully request that the Order entered on July 24, 2017, remain in full force and effect, given the amount of time that has elapsed since the Order was entered in relation to the next deadlines, the prejudice that would be suffered by the Township if the schedule was accelerated, the fact that SPLP has not even responded fully to the Township's discovery requests and the fact that if any delay is being suffered by SPLP, it is of its own doing. SPLP knew even before making its promises to locate the Valve on the SPLP Use Area that it intended to site the Valve on the Janiec 2 Tract and instead of either changing its plans or negotiating a different agreement, it decided it would simply wait until it could argue that placing the Valve in the agreed location would cause delay to the project.

HIGHSWARTZ LLP

By: 

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

Date: 11/3/2017

Exhibit "A"

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

AFFIDAVIT OF ALEXANDER G. BOMSTEIN, ESQUIRE

I, Alexander G. Bomstein, Esquire, hereby depose and say as follows:

1. I am an adult individual and Senior Litigation Attorney at Clean Air Council, with a professional address at 135 South 19th Street, Suite 300, Philadelphia, Pennsylvania, 19103.

2. Clean Air Council is a nonprofit environmental organization serving the Mid-Atlantic region dedicated to protecting and defending everyone’s right to breathe clean air.

3. On or about February 13, 2017, Clean Air Council, along with other non-profit environmental organizations, the Delaware Riverkeeper Network and Mountain Watershed Association (Clean Air Council, Delaware Riverkeeper Network and Mountain Watershed Association are collectively referred to as the “Non-profit Appellants”) filed an appeal with the Environmental Hearing Board (“EHB”) to a series of water encroachment and erosion and sediment control permits issued by the Pennsylvania Department of Environmental Protection (“DEP”) to Sunoco Pipeline L.P. (“SPLP”). The bases of the appeal, among other reasons, was that the DEP did not perform a thorough enough review of each individual permit application, and that as a result, the environment, particularly exceptional value waters, were not adequately protected. The appeal is styled *Clean Air Council, the Delaware Riverkeeper Network and Mountain Watershed Association v. Commonwealth of Pennsylvania, Department of*

Environmental Protection and Sunoco Pipeline L.P., Permittee, EHB Docket No. 2017-009-L (the “EHB appeal”). A copy of the EHB appeal is attached as Exhibit 1.

4. The following day, the Non-profit Appellants filed an application for temporary supersedeas and supersedeas, seeking to suspend the relevant permits, and effectively to halt the horizontal directional drilling (“HDD”) and other pipeline installation operations within the Commonwealth of Pennsylvania, pending the outcome of their appeals.

5. The application on the temporary supersedeas was denied on February 22, 2017, and in that same order a hearing on the application for supersedeas was scheduled for March 1, 2017.

6. The petition for supersedeas was subsequently denied on or about March 3, 2017.

7. On July 19, 2017, due to a series of “frac-outs” and “inadvertent returns” during HDD operations that compromised exceptional value waters, as well as damage done to private potable water supplies throughout the Commonwealth from HDD operations, the Non-profit Appellants filed a new application for temporary partial supersedeas and petition for partial supersedeas. The supersedeas petition is attached as Exhibit 2.

8. On July 25, 2017, the Environmental Hearing Board granted a temporary partial supersedeas, which halted ongoing HDD at locations throughout the Commonwealth, prevented HDD operations from beginning at approximately 168 locations throughout the Commonwealth, and set a hearing for August 7, 2017. The July 25, 2017 EHB Order is attached as Exhibit 3.

9. Based on additional information that SPLP submitted to the Environmental Hearing Board, that EHB Order was modified several times, including July 28, 2017, August 1, 2017 and August 3, 2017, to allow HDD to continue at some locations in the Commonwealth based on representations by SPLP that continuing HDD operations at those sites would be more

protective to human health and the environment than the status quo, but approximately 39 HDD locations where work had begun remained halted. The July 28, 2017, August 1, 2017 and August 3, 2017 Orders are attached collectively as Exhibit 4.

10. Prior to the hearing on the renewed petition for partial supersedeas occurring, the Non-profit Appellants, DEP, and SPLP entered into a stipulated order, dated August 8, 2017, requiring SPLP, among other things, to re-evaluate the HDD plans for more than 50 HDDs throughout the Commonwealth, including those where work had begun and those where work had not yet begun, and then submit the re-evaluated plans to DEP for approval, with the submissions also to, and the opportunity to comment by, the Non-profit Appellants, including Clean Air Council. The August 10, 2017, EHB Corrected Stipulated Order (hereinafter “Corrected Stipulated Order”) is attached as Exhibit 5.

11. The Corrected Stipulated Order also contains a provision whereby SPLP must re-evaluate as well the HDD plans for installation of the second Mariner East 2 pipeline at HDD locations where a new inadvertent return occurs during the installation of the first Mariner East 2 pipeline.

12. As Senior Litigation Attorney for Clean Air Council, I receive, and I or my colleagues review, all revised SPLP HDD plans and related data submitted concurrently to the DEP and the Non-profit Appellants under the Corrected Stipulated Order.

13. To date, SPLP has submitted eight (8) of the required resubmissions to the DEP; seven (7) of the resubmissions have been commented on by the DEP, and only one of them has been approved by the DEP.

14. Counsel for West Goshen Township has provided me a copy of the Motion to Modify the Procedural Schedule in the case of *West Goshen Township v. Sunoco Pipeline, L.P.*,

Docket No. C-2017-2589346 and asked me to provide information relevant to SPLP's allegation in paragraphs 17 and 32 thereof that SPLP has resumed its HDD program at all of its remaining drilling locations in the Commonwealth, except for West Goshen Township.

15. SPLP's allegation is not correct.

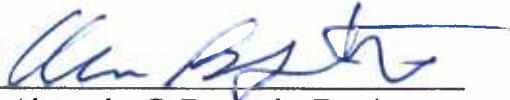
16. There are at least 50 HDDs throughout the Commonwealth where HDD operations are prohibited from taking place for the time being, pending approval of re-evaluated plans. In fact, there are at least 40 HDDs in the Commonwealth where the necessary plans and data have not even been re-submitted to the DEP or Clean Air Council.

17. Further, recently, on October 19, 2017, the same day as I understand SPLP's Motion to Modify the Procedural Schedule was filed in *West Goshen Township v. SPLP*, the Non-profit Appellants in the EHB case took the deposition of DEP representative, Scott Williamson ("Williamson"), head of the division responsible for handling issues related to Mariner East 2 in the DEP's Southcentral Region.

18. Williamson testified that there are HDD sites in his region alone where SPLP is awaiting DEP approval and HDD has not resumed, contrary to the representation of SPLP in its Motion to Modify the Procedural Schedule. *See* the October 19, 2017 deposition of Scott R. Williams at pages 178-180, attached hereto as Exhibit 6.

19. As of the date of this affidavit, based on the field investigations, re-evaluations, and probable permit modifications implicated as a result of the Corrected Stipulated Order, the pace and number of submissions to date, the public comments submitted to DEP, the DEP comment letters to SPLP, SPLP responses, and the status of DEP approvals, my best estimate is that it is likely to take at least several more months before SPLP will be legally able to perform HDD operations at all sites in the Commonwealth.

Further your affiant sayeth not.

By: 
Alexander G. Bomstein, Esquire

Date: Nov 3rd 2017

Sworn and subscribed before me this
3rd day of Nov,
2017.


Notary

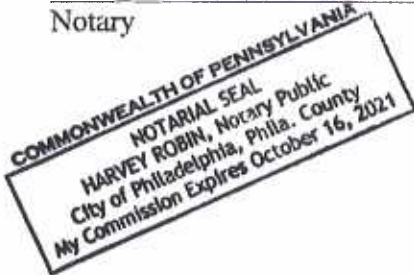


EXHIBIT 1



**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE
RIVERKEEPER NETWORK; AND MOUNTAIN
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Appellee,

and SUNOCO PIPELINE L.P.,

Permittee.

EHB Docket No. _____

ELECTRONICALLY FILED

NOTICE OF APPEAL



**NOTICE OF APPEAL FORM
APPEAL INFORMATION**

1. Name, address, telephone number, and email address (if available) of Appellant:

Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
(215) 567-4004

Delaware Riverkeeper Network
925 Canal St., Suite 3701
Bristol, PA 19007
(215) 369-1188

Mountain Watershed Association
1414-B Indian Creek Valley Road
PO Box 408
Melcroft, PA 15462
(724) 455-4200

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

Permits issued under 25 Pa. Code Chapters 102 and 105 for the Pennsylvania Pipeline Project a/k/a Mariner East 2 (Attached as Exhibit A – received by Appellants on February 13, 2017)

Chapter 105 permits, by county from West to East:

E63-674 (Washington)
E02-1718 (Allegheny)
E65-973 (Westmoreland)
E32-508 (Indiana)
E11-352 (Cambria)
E07-459 (Blair)
E31-234 (Huntingdon)
E34-136 (Juniata)
E50-258 (Perry)



E21-449 (Cumberland)
E67-920 (York)
E22-619 (Dauphin)
E38-194 (Lebanon)
E36-945 (Lancaster)
E06-701 (Berks)
E15-862 (Chester)
E23-524 (Delaware)

Chapter 102 permits, by Department region from West to East:
ESG0500015001 (Southwest Region)
ESG0300015002 (South-central Region)
ESG0100015001 (Southeast Region)

Please note that while the Department has stated that it has issued *each* county Chapter 105 permit and each Chapter 102 permit, it has not made publicly available the York County Chapter 105 permit, No. E67-920. Appellants have attached hereto each of the permits except for the York County Chapter 105 permit, which it will provide to the Board as soon as it is able to obtain a copy.

(b) Which Department official took the action?

The following Program Managers for Waterways and Wetlands:

- Dominic Rocco (Southeast Region)
- Scott Williamson (South-central Region)
- Rita Coleman (Southwest Region)

In addition, Gregory Holesh (Southwest Region)

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Chartiers Township, Washington County
North Strabane Twp, Washington County
Nottingham Twp, Washington County
Union Twp, Washington County
Elizabeth Twp, Allegheny County
Forward Twp, Allegheny County
Derry Twp, Westmoreland County
Hempfield Twp, Westmoreland County
Jeannette, Westmoreland County
Loyalhanna Twp, Westmoreland County
Murrysville Boro, Westmoreland County



Penn Twp, Westmoreland County
Rostraver Twp, Westmoreland County
Salem Twp, Westmoreland County
Sewickley Twp, Westmoreland County
South Huntingdon Twp, Westmoreland County
Burrell Twp, Indiana County
East Wheatfield Twp, Indiana County
West Wheatfield Twp, Indiana County
Cambria Twp, Cambria County
Cresson Boro, Cambria County
Jackson Twp, Cambria County
Munster Twp, Cambria County
Washington Twp, Cambria County
Allegheny Twp, Blair County
Blair Twp, Blair County
Frankstown Twp, Blair County
Juniata Twp, Blair County
Woodbury Twp, Blair County
Penn Twp, Huntingdon County
Shirley Twp, Huntingdon County
Tell Twp, Huntingdon County
Union Twp, Huntingdon County
Lack Twp, Juniata County
Jackson Twp, Perry County
Toboyne Twp, Perry County
Lower Allen Twp, Cumberland County
Lower Frankford Twp, Cumberland County
Lower Mifflin Twp, Cumberland County
Middlesex Twp, Cumberland County
Monroe Twp, Cumberland County
North Middleton Twp, Cumberland County
Silver Spring Twp, Cumberland County
Upper Allen Twp, Cumberland County
Upper Frankford Twp, Cumberland County
Fairview Twp, York County
Conewago Twp, Dauphin County
Derry Twp, Dauphin County
Highspire Boro, Dauphin County
Londonderry Twp, Dauphin County
Lower Swatara Twp, Dauphin County
Middletown Boro, Dauphin County
Cornwall Boro, Lebanon County
Heidelberg Twp, Lebanon County



South Annville Twp, Lebanon County
South Lebanon Twp, Lebanon County
South Londonderry Twp, Lebanon County
West Cornwall Twp, Lebanon County
Clay Twp, Lancaster County
West Cocalico Twp, Lancaster County
Brecknock Twp, Berks County
Caernarvon Twp, Berks County
Cumru Twp, Berks County
New Morgan Boro, Berks County
Robeson Twp, Berks County
South Heidelberg Twp, Berks County
Spring Twp, Berks County
East Goshen Twp, Chester County
East Nantmeal Twp, Chester County
East Whiteland Twp, Chester County
Elverson Boro, Chester County
Wallace Twp, Chester County
West Goshen Twp, Chester County
West Nantmeal Twp, Chester County
West Whiteland Twp, Chester County
Westtown Twp, Chester County
Upper Uwchlan Twp, Chester County
Uwchlan Twp, Chester County
Aston Twp, Delaware County
Brookhaven Boro, Delaware County
Chester Twp, Delaware County
Edgmont Twp, Delaware County
Middletown Twp, Delaware County
Thornbury Twp, Delaware County
Upper Chichester Twp, Delaware County

(d) How, and on what date, did you receive notice of the Department's action?

The Department issued the permits on or about February 13, 2017. Appellants received notice of the Department's actions on February 13, 2017, by publication of such notice on the Department's website.

3. Describe your objections to the Department's action in separate, numbered paragraphs. (NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets if necessary.)



See attached additional sheets.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

The appeal docketed at EHB Docket No. 2016-073.



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL; THE DELAWARE
RIVERKEEPER NETWORK; AND MOUNTAIN
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Appellee,

and SUNOCO PIPELINE L.P.,
Permittee.

EHB Docket No. _____

ELECTRONICALLY FILED

OBJECTIONS TO THE DEPARTMENT'S ACTIONS

Background

1. In July and August, 2015, in connection with its Mariner East 2 pipeline project (the "Project"), Sunoco Pipeline L.P. (hereinafter "Permittee") submitted seventeen applications for water encroachment and obstruction permits under 25 Pa. Code Chapter 105, and three applications for Erosion & Sediment Control General Permits (ESCGP-2) under 25 Pa. Code Chapter 102.
2. The Pennsylvania Department of Environmental Protection (the "Department") issued the permits for these applications ("Permits") after roughly a year and a half of back-and-forth with Permittee attempting to resolve a host of deficiencies and inconsistencies in the applications.



3. Despite that protracted process, when the Department issued the Permits, it had not yet completed its technical review. The applications were in large part incomplete, internally inconsistent, and in violation of the law.
4. The issuance of the Permits is especially egregious because of the magnitude of the project.
5. The area of land subject to earthmoving under the Chapter 102 permits exceeds 3,000 acres.
6. More than a hundred exceptional value wetlands would be trenched for the pipelines.
7. More than 800 streams would be crossed.
8. More than 1,500 acres of trees would be felled.
9. Several thousand parcels of land lie on the route, and so thousands of Pennsylvania landowners and residents would have their lives disrupted. 30,000 comments have already been submitted on the Project to the Department.
10. This appeal addresses each of those seventeen permits issued under Chapter 105 and three permits issued under Chapter 102.
11. Though there are multiple permits, the Department has consistently and correctly treated the Mariner East 2 project as a unified project, following the lead of the Southeast Regional Office though the Project spans three Department regions.

The Parties

12. The Appellants are Clean Air Council (the "Council"), Delaware Riverkeeper Network ("DRN") and Mountain Watershed Association, Inc. ("Mountain Watershed").



13. The Council is a tax-exempt non-profit organization started in 1967 under the laws of Pennsylvania. The Council works to protect everyone's right to a clean environment.
14. The Council has members and supporters throughout the Commonwealth, including individuals who are harmed by the issuance of the Permits.
15. The Council fights to improve the environment across Pennsylvania through public education, community organizing, and litigation.
16. The Council's interests are harmed by the Department's approvals because, *inter alia*, those approvals threaten to undo environmental improvements that the Council has fought for, and also threaten the health, welfare, and quality of life of Council members.
17. DRN is a non-profit organization established in 1988 to protect and restore the Delaware River, its associated watershed, tributaries, and habitats. DRN is a membership organization headquartered in Bristol, Pennsylvania, with more than 16,000 members.
18. To achieve these goals, DRN organizes and implements streambank restorations, a volunteer and scientific monitoring program, educational programs, environmental advocacy initiatives, recreational activities, and environmental law enforcement efforts throughout the entire Delaware River watershed and beyond when that litigation has direct implications for the watershed.
19. DRN's interests are harmed by the Department's approvals because, *inter alia*, those approvals threaten water quality within the Delaware River Basin and beyond, the health of Pennsylvania communities, future generations, and constitutionally-protected environmental rights, all of which Riverkeeper fights for on behalf of itself and its

members. Many of DRN's members live, work, and/or recreate in areas affected by the proposed project.

20. Mountain Watershed, home of the Youghiogheny Riverkeeper, is a non-profit, community-based environmental organization located at 1414 Indian Creek Valley Rd., Melcroft, Pennsylvania 15462, with more than 1,400 members.
21. Mountain Watershed's major purposes include bringing about remediation of the numerous abandoned mine discharges, developing community awareness, promoting cooperative community efforts for stewardship, and encouraging sound environmental practices throughout Pennsylvania's Laurel Highlands region and surrounding areas.
22. Mountain Watershed's mission is the protection, preservation and restoration of the Indian Creek and greater Youghiogheny River watersheds.
23. The Mariner East 2 pipelines would cut through miles of land in the Youghiogheny River watershed. Mountain Watershed's interests in protecting the Youghiogheny River watershed are harmed by the Department's approvals of the Permits, which authorize clearing many acres of forest, cutting through numerous streams, and doing large amounts of earthmoving within the watershed.
24. Permittee Sunoco Pipeline L.P., a subsidiary of Sunoco Logistics, is headquartered in Newtown Square, Pennsylvania.

Objections

25. The Project would be sited within over a hundred exceptional value wetlands despite the Permittee not having affirmatively demonstrated (and not being able to demonstrate) that



it has met *any* of the seven independent requirements for siting projects in exceptional value wetlands as set forth in 25 Pa. Code § 105.18a(a).

26. The Project would be sited in hundreds of other wetlands despite the Permittee not having affirmatively demonstrated (and not being able to demonstrate) that it has met *any* of the seven independent requirements for siting projects in other wetlands as set forth in 25 Pa. Code § 105.18a(b), or alternatively, that under Section 105.18a(c), it has met the independent requirements of Sections 105.18a(b)(2)-(7) and the Project is necessary to abate a substantial threat to the public health or safety. Quite the contrary—the Project itself *is* a substantial threat to the public health and safety.
27. The Project would be sited in and have an adverse effect upon exceptional value streams and areas which serve as habitat of threatened and endangered species, in violation of 25 Pa. Code §§ 105.16(c)(3),(4).
28. The Project would have an adverse effect on the environment and public natural resources which would not be outweighed by any public benefits of the Project, in violation of 25 Pa. Code §§ 105.16(a),(b).
29. The Project's wetlands mitigation plan does not satisfy the criteria for wetland replacement set forth in 25 Pa. Code § 105.20a, including by not replacing enough acreage of wetlands, not replicating the wetlands values and functions lost, and by unreasonably failing to replace wetlands within the same watershed.



30. The Department arbitrarily and unreasonably authorized earth disturbance activities without the use of best management practices that minimize the potential for accelerated erosion and sedimentation.
31. The Department arbitrarily and unreasonably accepted as complete Permittee's materially incomplete, inaccurate, and self-contradictory applications for Chapter 102 permits, in violation of 25 Pa. Code §§ 102.4, 102.6, and 102.8.
32. The Department arbitrarily and unreasonably accepted as complete Permittee's materially incomplete, inaccurate, and self-contradictory applications for Chapter 105 permits, in violation of 25 Pa. Code §§ 105.13(a) and 105.21(a)(1).
33. Permittee failed to comply with its requirements under Act 14 of 1984 to notify West Cornwall Township, Lebanon County and Cresson Borough, Cambria County that it intended to apply for Chapter 105 permits for Lebanon and Cambria Counties.
34. Permittee's applications under Chapter 105 grossly undercounted wetlands and wetland acreage and systematically misclassified wetlands as less-highly-protected "emergent" or scrub-shrub wetlands rather than forested wetlands.
35. The Department arbitrarily and unreasonably authorized backfilling into regulated waters of the Commonwealth without requiring Permittee to obtain permits for discharges of dredged or fill material.
36. The Department arbitrarily and unreasonably permitted the Project despite the grave threat it poses of contamination of water wells and aquifers along the pipeline route.



37. The Department arbitrarily and unreasonably permitted the Project despite Permittee's worst-in-the-nation record of hazardous liquids pipeline incidents and its atrocious environmental compliance history in Pennsylvania, which indicate that there will likely be non-compliance with the Permits.
38. The Department arbitrarily and unreasonably waived requirements to protect riparian buffers from clearing due to pipeline construction, per 25 Pa. Code § 102.14.
39. The Project as permitted fails to leave riparian buffers undisturbed to the extent practicable in violation of 25 Pa. Code § 102.14(d)(1)(vii).
40. The Department arbitrarily and unreasonably issued the Permits under Chapter 102 despite Permittee's failure to minimize thermal impacts to streams.
41. The Department arbitrarily and unreasonably issued the Permits, authorizing thousands of acres of earthmoving and installations in streams and wetlands for a right-of-way, despite the application's lack of calculations regarding the effect of clearing and installing equipment on stormwater or runoff from the right-of-way. *See* 25 Pa. Code § 105.13(e)(1)(vii).
42. The Department arbitrarily and unreasonably issued the Permits under Chapter 102 without Permittee providing any plan on how it would address the spread of toxic substances from disturbed earth despite knowing that the location of the earthmoving includes areas with contaminated soils.



43. In violation of 25 Pa. Code Chapters 102 and 105, the Department issued the Permits without Permittee having demonstrated compliance with the antidegradation requirements of 25 Pa. Code Chapter 93.
44. The Department arbitrarily and unreasonably approved Permittee's inappropriate site restoration plans, which include the planting of plants considered by the Department of Conservation and Natural Resources to be invasive in Pennsylvania.
45. The Department arbitrarily and unreasonably failed to consider Permittee's applications to be withdrawn per 25 Pa. Code §§ 102.6(c) and 105.13a(b), despite more than 60 days having passed since the Department found the applications to be incomplete, and instead continued to review the applications, ultimately issuing the Permits without understanding the full nature of the activities it was permitting.
46. A fair weighing of the factors to be considered in 25 Pa. Code § 105.14 shows that the Project would be detrimental to health, safety, and the environment. The Department's decision to issue the Permits despite the harm to health, safety, and the environment was arbitrary, unreasonable, and in violation of 25 Pa. Code § 105.21(a)(3).
47. The Department arbitrarily and unreasonably issued the Permits knowing that they authorized construction which would violate municipal ordinances enacted for the preservation of the health, safety, and welfare of the public.
48. The Permits authorize construction of the Project, which would involve backfilling streams, without requiring permit applications or the information required therein under 25 Pa. Code § 105.401.



49. The Department has made the Permits conditional on a set of conditions including those that are vague, unenforceable, and contradictory.
50. The Department issued the Permits in violation of its constitutional obligations under the Pennsylvania Environmental Rights Amendment, Article I, Section 27 (“Section 27”) of the Pennsylvania Constitution, and 25 Pa. Code § 105.21(a)(4).
51. In light of the Department’s duties under Section 27, the Department, *inter alia*, failed to properly consider the cumulative impacts on water quality, air quality, and other natural resources from issuing the Permits. These impacts include, without limitation, the environmental effects of upstream gas development and of additional industrial activities at the pipeline terminal at Marcus Hook, some of which are currently subject to an ongoing appeal at EHB Docket No. 2016-073.
52. The Department arbitrarily and unreasonably issued the Permits without having completed a full review of the Permit applications.
53. The Department arbitrarily and unreasonably issued the Permits without having received responses from Permittee to outstanding Departmental requests regarding the Permits.
54. The Department arbitrarily and unreasonably issued the Permits despite knowing that the plans were not final, and in fact would need to be materially changed before construction commenced at various locations due to inconsistencies between the plans and the on-the-ground conditions, and the lack of property rights allowing Permittee to do construction work in certain portions of the proposed Project location.

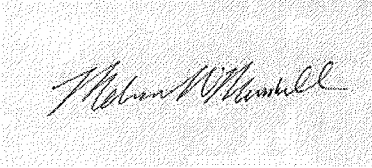


55. The Department arbitrarily and unreasonably issued the Permits without providing a new public comment period following Permittee's resubmission of the applications in response to hundreds of pages of deficiencies the Department found after the close of the comment period, and despite the nearly unparalleled public interest in the Project permitting process.
56. Issuance of these permits violates the regulations found in 25 Pa. Code Chapter 102.
57. Issuance of these permits violates the regulations found in 25 Pa. Code Chapter 105.
58. Issuance of these permits violates the regulations found in 25 Pa. Code Chapter 93.
59. Issuance of these permits violates the Clean Streams Law.
60. Issuance of these permits violates the Dam Safety and Encroachments Act.
61. Issuance of these permits violates Act 14 of 1984 regarding cooperation with municipalities.
62. Issuance of these permits violates Article I, Section 27 of the Pennsylvania Constitution.
63. Appellants reserve the right to amend this notice of appeal with any additional objections that may be relevant if and when more information becomes available through publication, the discovery process, or otherwise.

64. Because of the Department's actions and inactions as set forth above, the Department did not impose adequate protections and its issuance of the permits to Permittee was unlawful and beyond its authority.

By filing this Notice of Appeal with the Environmental Hearing Board, the undersigned hereby certify that the information submitted is true and correct to the best of our information and belief.

Date: February 13, 2017



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**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE
RIVERKEEPER NETWORK; AND MOUNTAIN
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Appellee,

and SUNOCO PIPELINE L.P.,
Permittee.

EHB Docket No. _____

ELECTRONICALLY FILED

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Notice of Appeal was filed with the Pennsylvania Environmental Hearing Board and was served on the following on the date listed below:

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EXHIBIT 2



**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

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EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

APPLICATION FOR TEMPORARY PARTIAL SUPERSEDEAS

Appellants, by and through counsel, respectfully submit this Application for Temporary Partial Supersedeas requesting that the Pennsylvania Environmental Hearing Board issue a temporary partial supersedeas of the appealed permits to the extent they authorize horizontal directional drilling to prevent Appellants from suffering further irreparable injury before the Board can conduct a hearing on Appellants' accompanying Petition for Partial Supersedeas. 25 Pa. Code § 1021.64. In support thereof, Appellants state as follows:

1. An appellant may apply for temporary supersedeas when she or he may suffer immediate and irreparable injury before the Board can conduct a hearing on a petition for supersedeas. 25 Pa. Code § 1021.64(a).

2. Pursuant to 25 Pa. Code § 1021.64(e), the Board will consider:

- a. The immediate and irreparable injury the applicant will suffer before a hearing on the petition for supersedeas is held;
- b. The likelihood that injury to the public, including the possibility of



pollution, will occur while the temporary supersedeas is in effect; and

c. The length of time required before the Board can hold a hearing on the petition for supersedeas.

3. An application for temporary supersedeas must be accompanied by a petition for supersedeas. 25 Pa. Code § 1021.64(b). Appellants' Petition for Partial Supersedeas and its accompanying affidavits and exhibits are incorporated herein by reference as if set forth in full.

4. While the default period for termination of a temporary supersedeas is six business days, the Board may order otherwise. 25 Pa. Code § 1021.64(f).

5. On February 13, 2017, the Pennsylvania Department of Environmental Protection (the "Department") granted to Permittee Sunoco Pipeline L.P. ("Sunoco") three (3) Erosion and Sediment Control Permits issued under 25 Pa. Code Chapter 102, and seventeen (17) Water Obstruction and Encroachment Permits issued under 25 Pa. Code Chapter 105 (collectively the "Permits").

6. Immediately after the Permits were issued, Sunoco began rushing to complete the construction of the Mariner East 2 pipelines. Horizontal directional drilling for crossing of surface features is underway all across the state.

7. Based on new information Appellants recently learned through discovery, news reports, and independent investigation, the drilling authorized by the Permits has already inflicted significant, irreparable harm upon the environment, the Appellants and their respective members, and the Pennsylvania public. Those harms mount with each day that drilling continues.

8. There have been at least 61 spills in a span of two months based just on the limited information made available to Appellants. The actual number of spills is likely far



greater as construction has been underway for five months and the Department's enforcement efforts appear to have been halted.

9. These spills have polluted multiple exceptional value wetlands, high-quality trout streams, ponds, groundwater, and uplands, endangering valuable ecosystems and threatening the health of aquatic life.

10. During drafting of this Petition, on July 17, 2017, Sunoco again spilled drilling fluids in Chester Creek in Delaware County, a location where there had already been repeated spills.

11. Even more troubling though, is that Sunoco's horizontal direction drilling has devastated private water supplies and threatens the safety of public water supplies.

12. Within the last few weeks, families in Chester County have been displaced from their homes because Sunoco destroyed an aquifer, resulting in contamination of the private water wells and loss of well pressure.

13. It appears the integrity of that aquifer, and thus the wells it serves, has been compromised.

14. The Department admits that private water supplies have also been damaged by Sunoco's drilling operations in at least two other parts of the state.

15. Additionally, just yesterday, Appellants learned that Sunoco's drilling operations have hit underground springs in Middletown Township, Delaware County. Copious amounts of cloudy water mixed with unknown substances was pouring for days out of what was clearly an inadequate and ineffective attempt at containment, and a water well is now being tested for possible contamination.



16. Nevertheless, drilling has continued all across Pennsylvania, even where there have been repeated spills, Sunoco's chosen methods and locations for drilling have proven unsuitable and unsafe, and Sunoco has failed to mitigate and contain the dozens of spills that have already occurred.

17. Tens of thousands of gallons of lost drilling fluid remain unaccounted for and threaten to cause irreparable harm to more wells and waterways.

18. The public's interest in protecting public health and safety, the local environment, and reliable sources of clean drinking water suffer escalating irreparable harm if Sunoco's horizontal directional drilling continues as planned. Accordingly, Appellants and their respective members will suffer immediate and irreparable harms unless the Board issues a temporary partial supersedeas.

19. Further, the granting of a temporary partial supersedeas will not result in any pollution or injury to the public health, safety or welfare. Indeed, the granting of a temporary supersedeas here would *prevent* such threats.

20. The granting of a temporary partial supersedeas will not alter the status quo as it now lawfully exists. Appellants simply ask for the status quo to be preserved.

21. For the foregoing reasons, and as more fully set forth in Appellants' accompanying Petition for Partial Supersedeas, Appellants respectfully request the Board to issue a temporary partial supersedeas effective immediately, suspending the permit authorization and twenty permits listed above to the extent that they authorize Sunoco's horizontal directional



drilling plans until such time as a hearing can be completed on the Petition for Partial Supersedeas.

Respectfully submitted this 19th day of July, 2017.

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Permittee.

EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Application for Temporary Partial Supersedeas was filed with the Pennsylvania Environmental Hearing Board and was served on all counsel of record on July 19, 2017.

s/Alexander G. Bomstein
Alexander G. Bomstein, Esq.



**COMMONWEALTH OF PENNSYLVANIA
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ELECTRONICALLY FILED

PETITION FOR PARTIAL SUPERSEDEAS

Appellants Clean Air Council, the Delaware Riverkeeper Network, and Mountain Watershed Association, Inc., by counsel, respectfully request that the Board supersede in part the three (3) Chapter 102 Permits and seventeen (17) Chapter 105 Permits (collectively, the “Permits”) that are the subject of this appeal to the extent that they authorize horizontal directional drilling.

The Board considered and denied a supersedeas petition Appellants filed in February of this year, in conjunction with their Notice of Appeal of the Permits (“February Petition”). The February Petition sought much broader relief than the instant petition and was filed when the harms to be forestalled were still largely in the future. Appellants had not intended to seek supersedeas a second time, but Sunoco’s escalating harm inflicted on the public now requires it.

Since the initial supersedeas hearing, Appellants have learned through discovery, news reports, and independent investigation that in its use of horizontal directional drilling as



authorized under the Permits, permittee Sunoco Pipeline L.P. (now a division of Texas corporation Energy Transfer) has spilled drilling fluid dozens of times into waters of the Commonwealth. The spills and drilling have polluted Exceptional Value wetlands, destroyed a pure drinking water aquifer in suburban Chester County, and contaminated or cut off the water supplies of many households. The Department knew that there was a strong possibility that these spills and contamination would occur--and initially requested that Sunoco take more protective measures--but recklessly permitted Sunoco to engage in these dangerous practices without requiring those protections.

With each passing day, Sunoco continues to endanger the health and private property of residents all over the state who are unfortunate enough to live near its horizontal directional drilling.

In just the past few weeks in Chester County, Sunoco's drilling has contaminated and depleted the private water wells of over a dozen households. As the finishing touches are being put on this petition, it is breaking news that Sunoco has breached two underground springs in Delaware County and may have impaired water supplies in that location as well. Several Pennsylvania legislators have called for Sunoco to halt the construction of Mariner East 2 while measures can be taken to ensure that no further harm will be done. Yet even as Appellants seek relief from this Board, drilling continues, impacted residents have no guarantees of protection from further harm, and the Department has taken no action.

Appellants seek an immediate partial supersedeas to protect Pennsylvania residents from further harm while the Board considers the legality of the Permits' authorization of horizontal directional drilling as planned and executed by Sunoco.



In support of this Petition, Appellants state as follows:

I. Factual and Procedural Background

1. In February 2017, permittee Sunoco Pipeline L.P., now Energy Transfer Partners, L.P., (“Sunoco”) began to dig and install a pair of pipelines as part of a project it calls Mariner East 2. This pipeline project consists of a 20-inch diameter and a 16-inch diameter line carrying highly volatile natural gas liquids, which would traverse hundreds of miles across 17 counties in Pennsylvania alone.
2. In order to build these pipelines, Sunoco is cutting through hundreds of streams and wetlands, and crossing many roads and developed areas.
3. On February 13, 2017, the Pennsylvania Department of Environmental Protection (the “Department”) approved Sunoco’s construction plans for Mariner East 2 as submitted in a series of applications, issuing three (3) individual Erosion and Sediment Control permits under 25 Pa. Code Chapter 102 (“Chapter 102 Permits”), and seventeen (17) Water Obstruction and Encroachment permits under 25 Pa. Code Chapter 105 (“Chapter 105 Permits”) (collectively, “Permits”).
4. During its technical review of the Permit applications, the Department issued several rounds of technical deficiency letters and emails, amassing long lists of problems with the applications. Some of these technical deficiency letters are available to view and download on a public website hosted by the Department at <http://www.dep.pa.gov/Business/ProgramIntegration/Pennsylvania-Pipeline-Portal/Pages/Mariner-East-II.aspx>.
5. Among the chief concerns of the Department before issuing the Permits was the safety of



Sunoco’s horizontal directional drilling (sometimes called “HDD”) plans. The risks the Department was concerned about included water supply contamination and spills of drilling fluids, sometimes known euphemistically as “inadvertent returns,” or “IRs.” Up through the very end of the review process, the Department was raising these concerns with Sunoco and seeking its resolution of them.

6. On February 6, 2017, exactly one week before the Department issued the permits, Sunoco responded to the then-latest round of technical deficiencies from the Department, in a letter addressed to Ann Roda, Director of Program Integration for the Department. *See* Feb. 6, 2017 letter to Ms. Roda, attached hereto as Exhibit A.
7. The Department raised the following deficiency with Sunoco, among many others:

Karst area near Exton and the East Whiteland compressor branch present additional risks of IRs during HDD. Provide a detailed assessment of measures to reduce the risk of drilling in these area. There are two areas are [sic] the most concerning, especially Exton. There are carbonate rocks, karst surface depressions; and identification of other public water supplies (groundwater or surface water) within one mile. The “water supply areas” geography used in the report [Sunoco submitted] is irrelevant to well locations. Locations assessed as medium risk to water wells should have more monitoring and response during the HDD process and for an extended time period after. Also risk categorization should include the distance from the HDD to the wells and the available categories indicating the amount of water and people supplied from the well. Groundwater impacts from an inadvertent return cannot be directly visually observed from the surface. Any loss of circulation is the only indicator of drilling fluid migrating out of the borehole into the groundwater.

Exhibit A at pp. 12-13.

8. Sunoco’s response only addressed coordination with the local public water supplier, not the risks of inadvertent returns generally, or protection of private water supplies. *Id.*



9. The Department had raised other concerns, including ensuring Sunoco had identified “All water wells within 400 ft. of HDD.” Exhibit A at 24. Sunoco had not. Testimony from the supersedeas hearing in March of this year--after construction had begun and drilling had been expedited--revealed that Sunoco still had not identified all private wells within even 150 feet of horizontal directional drilling. This identification effort was required by the approved Water Supply Assessment Preparedness, Prevention, and Contingency Plan. *See* transcript of Supersedeas Hearing in this appeal, attached hereto as Exhibit B, at pp. 828-830; Water Supply Plan, attached hereto as Exhibit C, at Section 6.1.
10. Besides identifying the Exton location as particularly worrisome, the Department had also identified a location in Fairview Township, York County, as a place where drilling would pose a high risk to water wells. *See* Exhibit A at 24; *see also* Para. 31, *infra*, detailing later spill.
11. Additional related Department comments can be seen in Exhibit A under the heading “Misc. Comments on Water Supply, PPC, IR, & Karst Aspects of Chapter 105 Applications.”
12. The Department knew of significant problems with Sunoco’s horizontal directional drilling for the earlier Mariner East 1 pipeline and, as revealed in documents recently obtained through discovery, also knew that contamination of wells by Mariner East 2 “has the potential to really blow up.” *See* January 17, 2017 email from Southeast Regional Office Waterways and Wetlands Program Manager, attached hereto as Exhibit D.
13. Rather than resolving these risks before issuing the permits, the Department approved Sunoco’s inadequate plans and merely incorporated a few “special conditions” into the permits to paper over the public endangerment.



14. The water supply special conditions do not actually prevent or limit risks to water supplies and did not alter how Sunoco would conduct its horizontal directional drilling or make it safer. They are by and large notice requirements. *See, e.g.,* Chester County Chapter 105 Permit, attached to Notice of Appeal, pp. 4-5. That notice does not go far, as Sunoco has failed to even identify most at-risk water wells.
15. Appellants submitted an affidavit from Dr. James A. Schmid with their February Petition and presented his testimony at the supersedeas hearing in March, 2017.
16. In his affidavit, Dr. Schmid explained that “trenchless pipeline construction,” which includes horizontal directional drilling, “still poses a risk of inadvertent return of drilling fluids, which have damaged a number of Pennsylvania streams.” Schmid Aff. at ¶ 52.
17. The Department recognizes that sedimentation of streams, such as from drilling fluids, causes numerous problems for the health of the stream ecology. *See, e.g.,* “Minimizing Accelerated Soil Erosion and Preventing Sediment Pollution,” Pennsylvania Department of Environmental Protection Fact Sheet, June 2015, available at <http://www.cumberlandcd.com/esc/3150-FS-DEP1841.pdf>.
18. Dr. Schmid also weighed in on the risks of the project to private water supplies and springs. Schmid Aff. at ¶¶ 53-58.
19. Dr. Schmid noted that “Sunoco’s primary resource for locating private wells ... is demonstrably and grossly inaccurate for purposes of assessing the impacts of this project.” Schmid Aff. at ¶ 55. “The Department’s deficiency letters ... specifically note that long-term impacts on wells can occur as far as 0.5 mile from pipelines, and short-term impacts can occur within 400 feet. There are hundreds of nearby wells along the proposed pipelines.



Yet the applicant has not shown the location of wells or springs on drawings, thus precluding public review of private water supplies at risk. Unknown wells can receive no consideration during pipeline construction.” *Id.* at ¶ 57.

20. “Pipeline construction and operation are expected by the applicant to be most likely to impact private water supplies in areas where horizontal directional drilling (HDD) is utilized,” explained Dr. Schmid, “because the pressurized slurry mixture of bentonite, water, and additives can escape a drill hole and enter aquifers as well as streambeds and wetlands through faults, cracks, and unstable geological materials.” *Id.* at ¶ 56.
21. Not only is contamination a risk, but also water supply, due to the dewatering necessary for drilling. *Id.*
22. Had they remained in effect, the Erosion and Sediment Control Plans (the “E&S Plans”) that the Department approved as part of the Permits at the time of issuance might have helped to make up for Sunoco’s initial failure to identify private wells.
23. The approved E&S Plans required landowners be invited to pre-construction meetings. Those meetings would have been an opportunity for Sunoco to talk to landowners about their wells and whether their neighbors have wells that might be at risk from construction. It is thus especially unsettling that after the Permits were issued, as recently revealed through discovery, Sunoco submitted revised E&S Plans to the Department, specifically removing landowners from pre-construction meetings. *See e.g.*, first pages of Revised Washington County E&S Plans, May 04, 2017, attached hereto as Exhibit E, at p. 4 (see modifications in red).
24. Unbeknownst at first to the public, the Department has started receiving reports from



Sunoco of drilling fluids spilled into the waters of the Commonwealth. Appellants have compiled documents obtained from the Department on the spills as a composite exhibit, with a demonstrative summary at the front of the exhibit for clarity. *See generally* Exhibit F.¹

25. Spill reports dating between late April and mid-June that Appellants have recently obtained reveal at least 61 drilling fluid spills in just that period of less than two months. These spills span the breadth of the state, from westernmost Washington County to easternmost Delaware County.
26. The total number of spills to-date is likely far greater. Construction has been underway for over five months, and rather than demanding safer practices from Sunoco to avoid further spills, or putting a halt to the drilling, the Department appears to have backed off of issuing notices of violation altogether.
27. Appellants have seen no evidence of a notice of violation having been issued for any spills occurring after May 17, 2017, despite some of those spills amounting to hundreds, thousands, and in one case, tens of thousands of gallons of drilling fluid.
28. Drilling fluid has been spilled into Exceptional Value wetlands, trout streams, ponds, groundwater, and uplands. The ultimate destination of much of the lost drilling fluid, though, remains unknown. *See discussion below.*
29. Most spills are in clusters, indicating that Sunoco failed to fix the problems that caused the first spill and continued to drill despite methods and locations that may be unsuitable. There have also been locations where Sunoco has been notified that its activities threaten to pollute

¹ Due to its size being greater than the electronic filing size limit, Appellants have split Exhibit F into two files, Exhibit F (Section I) and Exhibit F (Sections II & III).



waterways and Sunoco has later spilled at those very places.

30. For example, in Middlesex Township, Cumberland County, Sunoco had separate spills into two forested Exceptional Value wetlands (labeled I30 and I32) associated with High Quality, Cold Water Fishery, LeTort Spring Run. One of those spills was reported as totaling 1500-2000 gallons of drilling fluid. Exhibit F at Section I, pages SCRO 003597 through SCRO 003601. There have been several spills in that watershed. *See* transcript of the deposition of Ann Roda, July 14, 2017, attached hereto as Exhibit G, Tr. 185:16-21.
31. In Fairview Township, York County, Department inspectors warned that operations posed a potential for pollution of the Susquehanna, Marsh Run, and Yellow Breeches Creek. *See* Exhibit F at Section II, pages SCRO 003747 through SCRO 003748; *see also supra* at Para. 10 (pre-permit issuance warning). Less than ten days later, a spill of 500 gallons into Yellow Breeches Creek was reported. Exhibit F at Section I, page SCRO 003830.
32. There appear to have been ten or more spills in and around Loyalhanna Lake alone, a reservoir and recreational destination in the Laurel Highlands of Westmoreland County. Exhibit F at Section I, pages SWOCC 001316 through SWOCC 001321.
33. Sunoco also contaminated a residential water well on the shore of Loyalhanna Lake. *Id.*
34. A series of spills in Chester Creek, Delaware County starting in May, 2017 are, upon information and belief, the only drilling fluid spills so far made public. These spills came to light due to actions of impacted residents rather than Sunoco or the Department. While Sunoco claims those spills are in the hundreds of gallons of drilling fluid, the Department noted that “they lost 20,000 gallons of fluid over the past few days so who knows where that went.” *See* DEP May 4, 2017 email and incident report, attached as Exhibit H.



35. On or about July 16, 2017, Sunoco spilled drilling fluids in Chester Creek yet again. *See* “Leak at Sunoco Pipeline Site in Delaware County Causes Mud to Flow Into Creek,” NBC10, July 18, 2017, attached as Exhibit I.
36. Based on the latest available information, Sunoco’s drilling hit two springs on the east side of Chester Creek in Middletown Township. Sunoco pumped cloudy water up the hill and into a straw bale containment pond on the pipeline right-of-way the size of a swimming pool. As of July 18, 2017, that containment pond was overflowing into the woods while contractors were building a second straw bale structure. *See* Affidavit of Faith Zerbe attached hereto; *see also* Exhibit I.
37. Upon information and belief, a water well in that area is now being tested to determine whether it too has been impaired by Sunoco’s drilling.
38. As of July 18, 2017, Delaware County State Representative Chris Quinn is calling for Sunoco to halt activities on the Mariner East 2 pipelines in Delaware County until proper safeguards can be put in place. NBC10 reported Rep. Quinn as declaring, “What is occurring here is unacceptable.” *See* Exhibit I.
39. Despite the significant impacts of these spill on water resources, the Department and Sunoco have not alerted local residents about the spills. *See* Exhibit G, Tr. 190:9-11.
40. Sunoco, now Energy Transfer, has assured residents that the drilling fluid is non-toxic, harmless bentonite clay. Energy Transfer provided that same assurance to the Federal Energy Regulatory Commission for its horizontal directional drilling of the Rover pipeline in Ohio. After Energy Transfer spilled two million gallons of drilling fluid into an Ohio wetland, the Commission ordered Energy Transfer to halt new horizontal directional



- drilling. *See* May 10, 2017 FERC Order, attached hereto as Exhibit J.
41. Within a month, diesel fuel was discovered in the spilt drilling fluid, contrary to Energy Transfer's representations to regulators as to the contents of the drilling fluid. *See* June 1, 2017 FERC Letter, attached hereto as Exhibit K.
 42. Perhaps more troubling than Sunoco's drilling fluid spills is the damage to water supplies and wells across the Commonwealth.
 43. Appellants have just learned that each of the three Department regional offices monitoring construction under the Permits has received reports of water supply problems in the vicinity of the construction. Reports have come in from Westmoreland County, outside of Pittsburgh; Blair County, outside of Altoona; and Chester County, in the Philadelphia area. *See* Exhibit G, Tr. 190:12-17, 193:19-25, 194:1-8.
 44. Only the dire events in the suburbs of Philadelphia have come to light in the public eye.
 45. The Schoen Road horizontal directional drilling site in the Exton area of Chester County was one of the first sites where Sunoco began setting up drilling operations, in early March, 2017. *See* Affidavit of Matthew L. Gordon, attached as Exhibit A to Appellants' Emergency Motion for Expedited Hearing and for Reconsideration of the Denial of Temporary Supersedeas, at ¶ 31.
 46. On June 22, 2017, Sunoco drilled into the spring that fed the wells of perhaps fifteen households in the Exton area, straddling West Whiteland and Uwchlan Townships. *See* July 14, 2017 *StateImpact* article, "Sunoco halts drilling in Chester County where pipeline construction damaged drinking water wells," attached hereto as Exhibit L.
 47. David Mano's household was among those impacted. On July 5, 2017, Mr. Mano, of 158



Valleyview Road, learned that the well pumps of some neighbors were not working.

Another's well water was brown. *See* Affidavit of David A. Mano, attached hereto, at ¶¶ 6, 10-11.

48. Mr. Mano and his fiancée drew their water from a spring-fed well for all the years they have lived on Valleyview Road. It had been pristine. Mano Aff. at ¶¶ 3-4.

49. When Mr. Mano checked the unfiltered water in his well tank, after learning of his neighbor's problems, he discovered it was chocolate brown with a lot of sediment. Mano Aff. at ¶ 8.

50. The neighbors did not know at the time, but suspected that Sunoco's drilling down the street was the cause of their collective water well problems. Mano Aff. at ¶ 12.

51. Sunoco alerted Mr. Mano that the water was not safe to drink, but that he could shower with it. Sunoco provided him bottles of water. Mano Aff. at ¶¶ 14-15, 22.

52. Mr. Mano is concerned about the water from his well that he and his fiancée had been drinking before they discovered their well was contaminated, and is upset about the damage that Sunoco's drilling did to his well and the communal aquifer. Mano Aff. at ¶¶ 23, 25.

53. As it turns out, the Department had anticipated water supply problems *especially in the Exton area*. *See* Exhibit A at pp. 12-13. In its rush to get the permits issued, the Department neglected to do what was needed to protect residents. *See* Exhibit G, Tr. 41:18-42:10; 76:7-93:5 (discussing condensed timeframe for issuing the Permits); 100:11-102:4 (Conservation District concerned about "unreasonably short timetable").

54. Only after Mr. Mano broke the news to the press about the water contamination in Chester County did Sunoco do anything in response. Mano Aff. at ¶¶ 20-21.



55. State elected officials representing Chester County have called for Sunoco to halt all construction on Mariner East 2 until safety can be assured. *See* July 15, 2017 *Daily Local News* article, “Dinniman calls for halt to all Mariner East 2 pipeline construction,” attached hereto as Exhibit M; *see also* July 9, 2017 *WCHE* 1520 AM article, “Dinniman, Comitta Calling for Halt on Construction of Mariner II Pipeline,” attached hereto as Exhibit N.
56. On July 13, 2017, Sunoco agreed to a temporary pause of drilling, of uncertain duration, at the Schoen Road location. *See* Exhibit L.
57. Because the Department has not taken action in response to these contamination incidents, there are likely to be more as drilling continues. *See* Exhibit G, Tr. 195:15-19.
58. The horizontal directional drilling authorized by the Permits, as Appellants warned and as foretold by the concerns the Department communicated to Sunoco, has caused widespread and grave harm to the public and the environment.
59. This did not have to happen. Department officials initially sought from Sunoco further protections from drilling fluid spills and water supply problems before issuing the Permits. Sensitive areas such as the Exceptional Value wetlands in the LeTort Spring Run watershed into which Sunoco spilled drilling fluids could have been routed around. Extra precautions could have been taken to protect water supplies in dense neighborhoods relying on well water. Particularly vulnerable geologies such as the karst in Exton could have been routed around as well.
60. Instead, Sunoco continues drilling and the Department stepped aside.
61. The horizontal directional drilling will likely continue for months, and--based on the newly uncovered information summarized here--there is every reason to believe that more and



more damage to residents, their property, and the environment will take place in that time without timely action by the Board. *See* Exhibit B, Tr. 492:20-22; 493:6-9 (testimony of Matthew L. Gordon on length of drilling).

62. For these reasons, and as explained in more detail below, Appellants respectfully request that the Board grant this Petition for Partial Supersedeas.

II. Standard of Review

63. The Board reviews Departmental actions *de novo*. *Warren Sand & Gravel Company v. DEP*, 341 A.2d 556, 565 (Pa. Commw. Ct. 1975); *Consol Pa. Coal Co. v. DEP*, 2011 EHB 571, 573; *Smedley v. DEP*, 2001 EHB 131.
64. This *de novo* review by the Board extends to the issue of whether a continuation of the permitted activity is appropriate based upon up-to-date information. *Solebury School v. DEP*, 2014 EHB 482, 526; *Tinicum Township v. DEP*, 2002 EHB 822, 835
65. Where the Board finds that the Department has abused its discretion, the Board may substitute its own discretion for that of the Department. *Pequea Township v. Herr*, 716 A.2d 678 (Pa. Commw. Ct. 1998).
66. A supersedeas is an extraordinary remedy that will not be granted absent a clear demonstration of appropriate need. *Hopewell Township v. DEP*, 2011 EHB 732, 733.
67. The grant or denial of a supersedeas is guided by statutory and regulatory criteria, relevant judicial precedent, and the Board's own precedent. 35 P.S. § 7514(d)(1); 25 Pa. Code § 1021.63(a).
68. Among the factors that the Board considers are: (1) the likelihood of the petitioner prevailing on the merits; (2) irreparable harm to the petitioner; and (3) the likelihood of



injury to the public or other parties. 35 P.S. § 7514(d); 25 Pa. Code § 1021.63(a)(1)-(3); *Hudson v. DEP*, 2015 EHB 719, 725-26; *Hopewell Township v. DEP*, 2011 EHB 732, 733; *Neubert v. DEP*, 2005 EHB 598, 601; *Westmoreland Land, LLC v. DEP*, 2011 EHB 700, 702; *Kennedy v. DEP*, 2008 EHB 423, 424.

69. The issuance of a supersedeas is committed to the Board's discretion based upon a balancing of the three aforementioned factors. *Hudson v. DEP*, 719 EHB 726; *UMCO Energy, Inc.*, 2004 EHB 797, 802; *Global Eco-Logical Services, supra*; *Svonavec, Inc. v. DEP*, 1998 EHB 417, 420.
70. The Board's rules prioritize the prevention of pollution or injury to the public health, safety, or welfare. 25 Pa. Code § 1021.63(b).
71. Where the Department has taken an action which permits pollution and environmental injury, the Board may issue a supersedeas to prevent those harms during the pendency of an appeal. *See generally Center for Coalfield Justice v. DEP*, EHB Docket No. 2016-155-B (February 1, 2017).
72. In order for the Board to grant a supersedeas, a petitioner must make a credible showing as to irreparable harm and the likelihood of injury to the public or other parties and must make a strong showing that it is likely to succeed on the merits of its appeal. *Hudson v. DEP*, 2015 EHB 719, 726; *Carter v. DEP and Cabot Oil & Gas Co.*, 2011 EHB 845, 852.

III. The Board Should Supersede the Permits Because They Clearly Violate Pennsylvania Law and Threaten Irreparable Harm.

73. Appellants are likely to prevail on the merits and can identify clear violations of law, including of 25 Pa. Code §§ 105.14, 105.15, and 105.18a, as well as Article I, Section 27 of the Pennsylvania Constitution.



74. Appellants support their arguments with affidavits (attached hereto and to the February Petition) from members of the public who have been harmed by the Department's actions and other exhibits demonstrating that irreparable harm is ongoing and will continue unabated unless the Board supersedes the Permits in part to the extent they allow horizontal directional drilling.
75. Appellants establish herein that the horizontal directional drilling has caused and will cause impairment and destruction of water supplies and widespread pollution into waters of the Commonwealth.
76. Appellants seek to preserve the status quo while the Board has a chance to hear this Appeal. Failure to preserve the status quo would result in continued pollution into streams, lakes, and wetlands, and continued destruction and/or contamination of water supplies.
77. In this case, harm to the public and harm to Appellants are aligned, as Appellants seek to further the public interest, and establish harm to the Appellants based in part on harms to individual members of the public.
78. Appellants demonstrate that, while Sunoco will likely claim economic damage and harm to the public, those claims are due to its own actions, do not outweigh the harm to the public, and are mitigated by the limited scope of the requested supersedeas.
79. Finally, Appellants request that a bond not be required of Appellant public interest groups here. To do so would be unprecedented and contrary to a proper weighing of the equities.
80. All told, Appellants have more than met the requirements for the issuance of a supersedeas. Appellants urge the Board to grant their request in the interest of justice.



IV. Likelihood of Success on the Merits

A. Standard for Establishing Likelihood of Success on the Merits

81. To establish the likelihood of success on the merits, a petitioner must make a showing sufficient to establish a reasonable probability of success on the merits. *Achenbach v. DEP*, 2005 EHB 536, 539.
82. A petitioner need not establish the claim absolutely, but the petitioner's chance of success on the merits must be more than speculative. *Id.*
83. To prevail in an appeal of a permit decision, third-party appellants bear the burden of proving by a preponderance of the evidence that the Department's decision to issue the permit was arbitrary, capricious, or contrary to law. 25 Pa. Code § 1021.101(a); *Blose v. DEP*, 2000 EHB 189.
84. Where the Department "does not review an application as required by the statutes and regulations, it abuses its discretion." *Oley Township v. DEP*, 1996 EHB 1098, 1119.
85. Where an agency ignores or fails to apply its own regulations properly in reviewing a permit application, and issues the permit, the agency acts contrary to law. *Zlomsowitch v. DEP*, 2004 EHB 756; *see also Teledyne Columbia-Summerhill Carnegie v. Unemployment Compensation Board of Review*, 634 A.2d 665, 668 (Pa. Commw. Ct. 1993) ("A duly promulgated regulation has the force and effect of law and it is improper for the [agency] to ignore or fail to apply its own regulation.").

B. Appellants Are Likely to Succeed on the Merits

86. There are two principal harms which this petition addresses: (1) destruction and contamination of water supplies; and (2) spills of drilling fluids from horizontal directional



drilling.

87. The Department knew that each posed a great danger, but nevertheless permitted the Mariner East 2 as planned.
88. Prevention of these harms falls squarely within the Department's purview under Chapter 105.
89. 25 Pa. Code § 105.14(b)(3), together with Section 105.15(a)(1), requires the Department, in considering the impact of an encroachment (in this case the pipelines installed using horizontal directional drilling), to evaluate the effect on "the property or riparian rights of owners upstream, downstream or adjacent to the project." *See Lyons v. DEP*, 2011 EHB 169, 183-184 (Labuskes, J.) (applying Section 105.14(b)).
90. Water wells along the pipeline route are property, and the impact of Mariner East 2 drilling on the rights of the wells' owners is a factor Section 105.14(b)(3) required the Department to weigh. *See, e.g., Angela Cres Trust of June 25, 1998 v. DEP*, 2009 EHB 342, 369 (effects on fish hatchery must be given consideration under Chapter 105).
91. Spills of drilling fluid on properties along the route, and into waters which nearby residents use, injure adjacent and downstream owners as well.
92. Likewise, the Department must consider "other significant environmental factors" under Section 105.14(b)(4), which would include the effects of contamination and sedimentation of waters from spills as well as contamination of water supplies.
93. Under Sections 105.18a(a)(5) and (b)(5), the Department may not permit a project crossing an Exceptional Value or other wetland (such as this project) unless the applicant demonstrates that the project will not "cause or contribute to pollution of groundwater or



surface water resources or diminution of resources sufficient to interfere with their uses.”

See also 35 P.S. § 691.1 (defining pollution broadly).

94. Sunoco’s reckless horizontal directional drilling for Mariner East 2 has caused both pollution and diminution of groundwater sufficient to interfere with its use.
95. The Department unreasonably issued the Permits, approving Sunoco’s drilling plans, despite knowing the likely damage that would be done from spills and to water supplies. It expressed those concerns to Sunoco on numerous occasions but ultimately issued permits allowing the damage to occur. *See, e.g.*, Exhibit A (acknowledgment of concerns in technical deficiencies) and Exhibit D (acknowledgment of water well impairment concern).
96. Since the issuance of those Permits, it has become clear that the Department has no intention of doing anything meaningful to protect the public or the environment from Sunoco’s reckless horizontal directional drilling. The Department appears to have stopped issuing violations to Sunoco for spills and has admitted that it has not taken action despite several separate water supply incidents. Exhibit G, Tr. 195:15-19.
97. The gravity of the foreseen harms which have occurred and which continue to occur should have led the Department to refrain from issuing the Permits until Sunoco responded meaningfully to its technical deficiencies addressing water supply and inadvertent return risks. The Department’s failure to do so renders the issuance of the Permits arbitrary, capricious, and contrary to law in light of 25 Pa. Code Sections 105.14(b)(3), 105.14(b)(4), and 105.15(a)(1).
98. The Department’s decision to issue the Permits was also barred by Section 105.18a. While Sections 105.18a(a)(5) and (b)(5) do not define what constitutes “pollution” of groundwater



or surface water resources, rendering such drinking water undrinkable, as has happened in Chester County, certainly counts.

99. The dozens of spills of drilling fluid also constitute significant pollution of groundwater or surface water resources. The main component of drilling fluid besides water--bentonite--smothers aquatic life where it settles in water bodies. *See* May 15, 2017 *StateImpact* article, "Sunoco's pipeline construction releases drilling mud into Delco Creek," attached hereto as Exhibit O.
100. Sunoco has not disclosed all of the components of its drilling fluids, which may include more toxic elements. *See, e.g.,* Exhibit K ("On May 26, 2017, the Ohio Environmental Protection Agency (Ohio EPA) notified FERC staff and Rover of the presence of petroleum hydrocarbon constituents, commonly found in diesel fuel, in samples of drilling fluid from various locations near the HDD of the Tuscarawas River.
101. While some of the spills Sunoco has reported as small amounts, e.g. Exhibit F at Section II, pages SERO 001325 through SERO 001328, others involve thousands of gallons, e.g. Exhibit F at Section II, pages SCRO 003643 through SERO 003646, and for at least one, tens of thousands of gallons of drilling fluid was lost and could be seeping into water resources. Exhibit H (May 2017 Chester Creek DEP email).
102. Much drilling has yet to be done, and Energy Transfer three months ago on another pipeline project just one state over proved that its horizontal directional drilling has the potential to cause a catastrophic release of millions of gallons of drilling fluid. *See* Exhibit J.
103. The Department let Sunoco ignore concerns about drilling fluid spills and water supply impairment, knowing the significant risk of such damaging problems. In doing so, the



Department violated Appellants' substantive rights to clean water under Article I, Section 27 of the Pennsylvania Constitution, and acted unreasonably as a trustee of the Commonwealth's natural resources. See *Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania, et al.*, No. 10 MAP 2015, 2017 Pa. LEXIS 1393, *36-37 (June 20, 2017); Pa. Const. art. I, § 27.

104. The Department's act of permitting Sunoco's plans for horizontal directional drilling thus violated Article I, Section 27 as well.
105. For these reasons, Appellants are likely to succeed on the merits of their claims with respect to Sunoco's horizontal directional drilling.

V. **Appellants Will Suffer Continued Irreparable Harm if Partial Supersedeas Is Not Granted.**

106. The central purpose of a supersedeas is to prevent an appellant from suffering irreparable harm while the Board considers the appeal. *Center for Coalfield Justice v. DEP*, EHB Docket No. 2016-155-B, slip op. at 18 (February 1, 2017).
107. Sunoco's continued and expanded use of horizontal directional drilling will almost certainly result in continued and additional spills of drilling fluids into waters of the Commonwealth, and contaminate and/or destroy additional water supplies. Precedent from the Board and Pennsylvania appellate courts is very clear that harms of this nature are to be considered irreparable. *Commonwealth v. Kennedy*, 87 A. 605, 606 (Pa. 1913) (pollution of a stream constitutes irreparable harm warranting an injunction); *Tinicum Township v. DEP*, 2002 EHB 822, 832 (damage to a hydrologic regime constitutes irreparable harm *per se*, and the violation of statutes prohibiting water losses and pollution constitutes irreparable harm *per se*); *Indian Lake Borough v. DEP*, 1996 EHB 1372, 1373-74 (dewatering of lake, if



shown, would have constituted irreparable harm).

108. The irreparable harm that this Project will continue to inflict if the Permits are not partially superseded while the Appeal progresses will happen not just to the natural environment itself, but to many individuals along and downstream of the pipeline route. Appellants have attached a statement from one of these individuals, and refer back to affidavits attached to the February Petition.

109. As explained more fully in the February Petition and the affidavits attached thereto, a number of Appellants' members live on or alongside horizontal directional drilling locations. Those include:

- Dawn Law (Law Aff. at ¶ 19)
- Ellen Gerhart (Gerhart Aff. at ¶¶ 14, 17-19)
- William Poteau (Poteau Aff. at ¶¶ 11, 15-20)
- Eric Friedman (Friedman Aff. at ¶ 14)
- Robert and Terri Joran (Joran Aff. at ¶¶ 9, 12)

110. The Jorans live in Exton very close to the site of the contamination discovered in Chester County, and about thirty yards from a horizontal directional drilling site. Joran Aff., attached to February Petition, at ¶¶ 3, 9. They are at risk of injury from the drilling.

111. Mr. Poteau described in detail his concerns about contamination of his water well from the horizontal directional drilling that is currently slated to take place next door to his house. As he explained in his affidavit, his water table is at the same level as the drilling would be. Poteau Aff., attached to February Petition, at ¶¶ 11, 15-20. His household is at risk too.

112. Appellants, through their members including these individuals, will suffer irreparable



harm if the Permits are not superseded to the extent they authorize horizontal directional drilling.

113. Appellants will also suffer irreparable harm through the damage done to the environment by horizontal directional drilling for the project that sets back the work they fight for in support of their missions of environmental protection.

114. Horizontal directional drilling of the Mariner East 2 pipelines threatens continued grave and irreparable harm to the environment and to Pennsylvanians if it continues under the flawed and unlawful Permits the Department issued.

VI. Harm to Appellants and the Public Outweighs Any Potential Harm to Others

115. Besides considering likelihood of success on the merits and irreparable harm, “injury to the public and other parties” is among the key factors the Board considers and balances in determining whether to grant a supersedeas. *UMCO Energy, Inc. v. DEP*, 2004 EHB 797; *Global Eco-Logical Services, Inc. v. DEP*, 2000 EHB 829; *see also Harriman Coal Corp. v. DEP*, 2001 EHB 234.

116. In the case at hand, harm to the public aligns very closely with irreparable harm to Appellants.

117. As with all relevant factors, injury to the public and other parties should be considered in light of the purpose of supersedeas, which is to “preserve the lawful status quo while the appeal is proceeding to final disposition.” *Solomon v. DEP*, 1996 EHB 989.

118. Here, the harm the public would suffer if partial supersedeas is not granted far outweighs any harm Sunoco might claim, and granting partial supersedeas would preserve the legal status quo.



A. Denial of supersedeas would pose significant harm to the public.

119. The environmental degradation and damage to public health and property that will result from the spills and water supply damage caused by horizontal directional drilling for the Mariner East 2 pipeline project is harm to the public.
120. As stated *supra*, Sunoco's construction has and will continue to damage aquifers that feed the water supplies of residents located in the path of the construction. If anything, such damage appears to be accelerating. The resulting irreparable harm to those residents and their inability to access clean water constitutes harm to the public.
121. Aside from Appellants' own members, certain individuals have come forth with their own stories of the damage this drilling, as permitted, would inflict.
122. Michael Di Domenico executed an affidavit attached to the February Petition.
123. Mr. Di Domenico is the Chairman of the Westtown Township Board of Supervisors, in Chester County. Di Domenico Aff., attached to February Petition, at ¶¶ 2-3. Mr. Di Domenico gets the drinking water at his house from a water well on his property that lies less than 250 feet from the route the Department has permitted for Mariner East 2. Di Domenico Aff. at ¶ 5. That segment of the pipelines would be bored underground using horizontal directional drilling, at depths between 70 and 180 feet according to Sunoco. Di Domenico Aff. at ¶¶ 5-6.
124. Concerned about his well water quality, Mr. Di Domenico has spoken with two hydrogeologists and three well drillers to understand the risks of the boring to his well water. Based on his conversations with those professionals, it is Mr. Di Domenico's understanding that there is a very good chance the boring will negatively impact the aquifer and his well water. Di Domenico Aff. at ¶ 9.



125. If the boring takes place by his house and his well water is contaminated or depleted, Mr.

Di Domenico will not be able to connect to public water due to the mismatch between the piping used in his home and the water pressure used by the municipal water supplier, and will have no water supply at his home. Di Domenico Aff. at ¶ 12.

126. Mr. Di Domenico is not alone in being at risk of having his water supply contaminated.

Many houses along that segment of horizontal directional drilling get their water from wells, and in fact most Westtown Township water towers store groundwater from wells. Di Domenico Aff. at ¶¶ 8 and 13.

127. As explained above, David Mano and his neighbors have already had their water contaminated. *See generally* Mano Aff. The drilling at that site is not yet complete and further damage may result from the continued risky drilling in the same location. *See* Exhibit A at pp. 11-12 (DEP acknowledging danger of drilling in areas with previous spills, asking Sunoco questions such “How the previous occurrence of an IR at this location was accounted for in the design of the proposed crossing”).

128. These public harms are already mounting, and cannot be offset by any alleged utility of the Mariner East 2 pipeline project.

129. In sum, the harm the Project would continue to inflict if the Permits are not partially superseded to the extent they authorize horizontal directional drilling would be enormous, and not outweighed by any speculative benefits.

B. Grant of partial supersedeas would not significantly harm Sunoco.

130. Any harm that Sunoco claims will result from an order suspending its ability to continue one discrete portion of the construction activities of Mariner East 2 is purely economic and a



consequence of its own reckless disregard of pollution prevention and the rights of residents along the pipeline route.

131. The harm to Sunoco is outweighed by the harm to the public. The Federal Energy Regulatory Commission implicitly found as much in parallel circumstances when it ordered a halt to new horizontal directional drilling on the even larger Energy Transfer pipeline in Ohio, Rover. The same is true of State Senator Andy Dinniman and State Representative Carolyn Comitta of Chester County, who have called for a halt on activity on the pipeline project after the revelation of water well contamination in their districts, and State Representative Chris Quinn, who has joined their calls. *See* Exhibits I, J, M, and N.

132. With respect to past costs, courts have recognized that oil and gas companies are on notice that their permits can be revoked or suspended through court challenges, and should take precautions to protect their interests at their own expense. *Harrison v. Cabot Oil & Gas Corp.*, 110 A.3d 178, 186 (Pa. 2015) (recognizing “that oil-and-gas-producing companies are free to proceed according to their own devices to negotiate express tolling provisions for inclusion in their lease” and, therefore, can protect their investments without help from the courts).

133. Any past costs incurred by Sunoco prior to the issuance of a permit should not be considered in deciding whether to grant supersedeas relief. *See Center for Coalfield Justice v. DEP*, slip op. 1, 22 (February 1, 2017) (“we conclude that the harm asserted by Consol is less than it claims and is at least in part the result of operational choices that Consol made on its own,” because the alleged need to revise the company’s plans was “directly the result of Consol proceeding with the planning and development of the 3L panel as if it had Permit



Revision No. 204 in hand even though it did not”).

134. When considering potential harm to a permittee, the Board appropriately considers whether harms related to project delay are a result of the permittee’s own decisions and conduct. *See UMCO v. DEP*, 2004 EHB at 818-822.
135. Here, Sunoco has not only had ample consultation with the Department and was several times formally notified of numerous, egregious deficiencies in its Chapter 102 and 105 permit applications, but has nevertheless recklessly endangered the public living near its horizontal directional drilling operations. Therefore, any harm to Sunoco associated with the delay in drilling would be attributable to its own recklessness, not the grant of a partial supersedeas.
136. Similarly, any harm to Sunoco done by granting the partial supersedeas sought here would be mitigated by its limited scope, which would allow Sunoco to continue other work authorized under the Permits.
137. The public has already suffered greatly from this preventable harm. Sunoco has within its power the ability to stop future harm from occurring. Any cost to Sunoco in going to that trouble is dwarfed by the costs of inaction.

VII. The Grant of Supersedeas Should Not Be Subject to a Bond Requirement

138. While the Board has authority under 25 Pa. Code § 1021.63(c) to require a bond when granting a petition for supersedeas, there does not appear to be any precedent for the Board imposing such a condition on the public or public interest groups.
139. Section 1021.63(c) states: “In granting a supersedeas, the Board may impose such conditions as are warranted by circumstances including, where appropriate, the filing of a



bond or other security.” 25 Pa. Code § 1021.63(c). The rules do not further address bond requirements. See 25 Pa. Code §§ 1021.61-1021.64.

140. Historically, the Board has required a bond under Section 1021.63(c) only as a tool to protect the public interest and to guard against environmental harm. See *Tire Jockey Services, Inc. v. DEP*, 2001 EHB 1141, 1163 (finding that issuing a bond against Tire Jockey Services was “necessary to protect, at least to some degree, the interests of the public.”); *Global Eco-Logical Services, Inc. v. DEP*, 1999 EHB 649, 653 (where “likelihood of injury to the public or of pollution occurring during a supersedeas [was] low,” the granting of petition for supersedeas was conditioned, pursuant to § 1021.63(c), on additional requirements, and not just on waste demolition facility’s compliance with its permit); *UMCO Energy, Inc., v. DEP*, 2004 EHB 797, 822-823 (declining to grant energy company’s petition for supersedeas, even with a bond that would address potential long-term natural resource damage, where irreparable damage to the environment was predicted).
141. Here, requiring a bond would not serve to protect the public interest or protect against environmental harm. On the contrary, Appellants seek the partial supersedeas itself specifically in order to prevent further harm to the public and the environment.
142. The balance of the equities weighs in favor of protecting the public interest that Appellants pursue in their appeal, and thus the imposition of a bond would be detrimental to the public interest.

VIII. The Nature of the Relief

143. Appellants seek a partial supersedeas of the Permits to the extent they permit Sunoco to conduct horizontal directional drilling.



144. The reason Appellants request this remedy in particular is that the most dire illegal conduct of which Appellants are aware has been caused by Sunoco's horizontal directional drilling.

145. Appellants are not aware of a principle by which the Board could logically limit this remedy and still prevent the most serious harms. The problems of which Appellants are aware have occurred all across Pennsylvania.

146. However, Appellants recognize that a supersedeas, even partial, is a rare and serious remedy. If the Board does not grant a supersedeas as to all horizontal directional drilling, Appellants alternatively request that the Board use its discretion to grant a supersedeas that addresses the concerns raised in this Petition to the extent possible.

IX. Conclusion

147. When the public's water supplies are being destroyed, when Exceptional Value wetlands are being filled with drilling fluids, when dozens of spills dot the landscape, and when these harms are escalating, it is time to step in and act.

148. The harms now being inflicted on the public and on Pennsylvania's natural environment were foreseen by the Department and by Appellants, and are preventable. The Department had the right idea in pushing Sunoco to improve its plans for horizontal directional drilling, but it backed off and permitted the plans anyway. The result is the current unspooling disaster.

149. The Department's permitting of Sunoco's horizontal directional drilling plans violates Chapter 105 and Article I, Section 27 of the Pennsylvania Constitution. Appellants and the public have been and will further be harmed if Sunoco is allowed to continue drilling under



the Permits while this Appeal is heard. Any harm to Sunoco in partially superseding the Permits is minor compared to the harm to the public, is mitigated by the partial scope of the supersedeas, and is of Sunoco's own doing.

WHEREFORE, for the foregoing reasons, Appellants respectfully request that the Board grant this Petition for Partial Supersedeas and suspend the Chapter 102 and Chapter 105 permits at issue in this matter to the extent they authorize horizontal directional drilling until such time as the Board can reach a final decision on this appeal.

Respectfully submitted this 19th day of July, 2017.

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**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CLEAN AIR COUNCIL; THE DELAWARE
RIVERKEEPER NETWORK; AND MOUNTAIN
WATERSHED ASSOCIATION, INC.

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Appellee,

and SUNOCO PIPELINE L.P.,

Permittee.

EHB Docket No. 2017-009-L

ELECTRONICALLY FILED

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Petition for Partial Supersedeas was filed with the Pennsylvania Environmental Hearing Board and was served on all counsel of record on July 19, 2017.

s/Alexander G. Bomstein
Alexander G. Bomstein, Esq.

EXHIBIT 3



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 25th day of July, 2017, following two conference calls during which the parties presented extensive argument in support of their respective positions, it is hereby ordered that the Appellants' application for a temporary partial supersedeas is **granted**. The permits that are the subject of this appeal are hereby superseded effective immediately to the extent they authorize the Permittee to conduct horizontal directional drilling. However, this Order may be modified in part if the Permittee provides the Board with detailed affidavits explaining why it would cause equipment damage, a safety issue, or more environmental harm than good to stop drilling at the 55 locations where drilling is actively underway. This temporary partial supersedeas shall expire at 9:00 a.m. on August 7, 2017, unless further extended by the Board. The hearing on the Appellants' petition for a partial supersedeas shall commence in the Board's Harrisburg hearing room on the date requested by the parties; namely, **9:00 a.m. on August 7, 2017.**



ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. _____
BERNARD A. LABUSKES, JR.
Judge

DATED: July 25, 2017

c: For the Commonwealth of PA, DEP:

William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(*via electronic filing system*)

For Appellant, Clean Air Council:

Alexander G. Bomstein, Esquire
Kathryn L. Urbanowicz, Esquire
Joseph O. Minott, Esquire
(*via electronic filing system*)

For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
(*via electronic filing system*)

For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
(*via electronic filing system*)

For Permittee:

Robert D. Fox, Esquire
Neil S. Witkes, Esquire
Diana A. Silva, Esquire
Jonathan E. Rinde, Esquire
Terry R. Bossert, Esquire
(*via electronic filing system*)

Court Reporter:

Premier Reporting, LLC
(*via electronic mail*)

EXHIBIT 4



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 28th day of July, 2017, in consideration of the Permittee's emergency motion to modify our July 25, 2017 Order and the affidavit submitted in support thereof, and the Appellants' response in opposition to the Permittee's motion, which also included an affidavit, it is hereby ordered that the motion is granted in part. The temporary partial supersedeas imposed by our previous Order of July 25, 2017 is lifted with respect to the following three horizontal directional drilling locations as identified in the Permittee's motion:

- The HDD at Harrisburg Pike in Cumberland County, where the only drilling work to be completed as of July 25, 2017 was the final cleaning ream
- The HDD at Wetland 161 in Lebanon County, where the reamed hole was 95 percent completed
- The HDD at Creek 110 in Lebanon County, where 1,500 feet of the total hole of 1,527 feet (98 percent) of the reamed hole was completed

The Board takes the Permittee's motion with respect to the other 14 locations listed in the motion under advisement.



ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: July 28, 2017

c: For the Commonwealth of PA, DEP:
William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(via electronic filing system)

For Appellant, Clean Air Council:
Alexander G. Bomstein, Esquire
Kathryn L. Urbanowicz, Esquire
Joseph O. Minott, Esquire
(via electronic filing system)

For Appellant, Delaware Riverkeeper Network:
Aaron J. Stemplewicz, Esquire
(via electronic filing system)

For Appellant, Mountain Watershed Association, Inc.:
Melissa Marshall, Esquire
(via electronic filing system)

For Permittee:
Robert D. Fox, Esquire
Neil S. Witkes, Esquire
Diana A. Silva, Esquire
Jonathan E. Rinde, Esquire
Terry R. Bossert, Esquire
(via electronic filing system)



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 1st day of August, 2017, in consideration of the Permittee’s affidavit correcting certain information provided in its July 27, 2017 affidavit and seeking confirmation that it may resume drilling at the horizontal directional drilling locations subject to the Board’s Order of July 28, 2017, it is hereby ordered that the temporary partial supersedeas continues to be lifted with respect to the following horizontal directional drilling locations as identified in the Permittee’s affidavit:

- The HDD at Harrisburg Pike in Cumberland County, PA-CU-0136.0000-RD
- The HDD at Wetland S161 in Lancaster County, PA-LA-0014.0000-SR

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. _____
BERNARD A. LABUSKES, JR.
Judge

DATED: August 1, 2017



c: For the Commonwealth of PA, DEP:
William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(*via electronic filing system*)

For Appellant, Clean Air Council:
Alexander G. Bomstein, Esquire
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Joseph O. Minott, Esquire
(*via electronic filing system*)

For Appellant, Delaware Riverkeeper Network:
Aaron J. Stemplewicz, Esquire
(*via electronic filing system*)

For Appellant, Mountain Watershed Association, Inc.:
Melissa Marshall, Esquire
(*via electronic filing system*)

For Permittee:
Robert D. Fox, Esquire
Neil S. Witkes, Esquire
Diana A. Silva, Esquire
Jonathan E. Rinde, Esquire
Terry R. Bossert, Esquire
(*via electronic filing system*)



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 3rd day of August, 2017, in further consideration of the Permittee's emergency motion to modify our July 25, 2017 Order, it is hereby ordered that the temporary partial supersedeas is lifted with respect to all horizontal directional drilling locations identified in the Permittee's motion, except for the HDD at Creek 110 in Lebanon County, PA-LE-0117.0000-WX.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. _____
BERNARD A. LABUSKES, JR.
Judge

DATED: August 3, 2017

c: For the Commonwealth of PA, DEP:
William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(via electronic filing system)



For Appellant, Clean Air Council:

Alexander G. Bomstein, Esquire
Kathryn L. Urbanowicz, Esquire
Joseph O. Minott, Esquire
(*via electronic filing system*)

For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
(*via electronic filing system*)

For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
(*via electronic filing system*)

For Permittee:

Robert D. Fox, Esquire
Neil S. Witkes, Esquire
Diana A. Silva, Esquire
Jonathan E. Rinde, Esquire
Terry R. Bossert, Esquire
(*via electronic filing system*)

EXHIBIT 5



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

| | | |
|---------------------------------|---|---------------------------|
| CLEAN AIR COUNCIL; THE DELAWARE | : | |
| RIVERKEEPER NETWORK; and | : | |
| MOUNTAIN WATERSHED | : | |
| ASSOCIATION, INC., | : | |
| | : | |
| Appellants, | : | EHB DOCKET NO. 2017-009-L |
| | : | |
| v. | : | |
| | : | |
| COMMONWEALTH OF PENNSYLVANIA, | : | |
| DEPARTMENT OF ENVIRONMENTAL | : | |
| PROTECTION, | : | |
| | : | |
| Appellee, | : | |
| | : | |
| and | : | |
| | : | |
| SUNOCO PIPELINE L.P., | : | |
| | : | |
| Permittee. | : | |

CORRECTED STIPULATED ORDER

AND NOW this 10th day of August, 2017, the Clean Air Council, the Delaware Riverkeeper Network, the Mountain Watershed Association, Inc. (collectively "Appellants"), Sunoco Pipeline L.P. ("Sunoco"), and the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), by and through their respective counsel, hereby agree to resolve the Appellants' Application for Temporary Partial Supersedeas and Petition for Partial Supersedeas, both of which were filed on July 19, 2017, through a negotiated agreement with regard to the following terms and conditions, which shall be entered by the Environmental Hearing Board ("Board") as a Stipulated Order, and which supersedes and replaces the Stipulated Order approved by the Board on August 9, 2017, as follows:



1. Appellants' Petition for Temporary Partial Supersedeas and Petition for Partial Supersedeas are hereby withdrawn without prejudice. The Board's Orders dated July 25, 2017, July 28, 2017, August 1, 2017, August 3, 2017, and August 4, 2017 (attached as Exhibit "1") are hereby vacated. Appellants reserve the right to seek a temporary or permanent supersedeas for conduct after the Board's entry of this Stipulated Order, including any activities related to horizontal directional drilling ("HDD").

2. Sunoco will perform a re-evaluation of the 41 HDDs listed on Exhibit "2" attached hereto. Exhibit "2" provides the rationale for selecting these HDDs for re-evaluation as well as the nature of the re-evaluation.

3. Sunoco will also perform a re-evaluation of the HDDs listed on Exhibit "3." These HDDs constitute drills for which an inadvertent return ("IR") occurred during the installation of one pipe (20" or 16" diameter) and where a second pipe will hereafter be installed in the same right-of-way ("ROW"). In addition, Sunoco will perform a re-evaluation of HDDs for which an IR occurs in the future during the installation of one pipe where a second pipe will thereafter be installed in the same ROW.

4. In re-evaluating the design of the HDD techniques for the sites referenced in Paragraphs 2 and 3 herein, Sunoco shall:

- i. Re-examine the geology at each site using information and data gathered during HDD operations at that and other sites during construction of the pipelines subject to the permits in the above-captioned Appeal;
- ii. Consider data that is specific to the needs of each HDD being reevaluated, including at a specific HDD: geologic strength at profile depth, overburden strength, HDD depth, entry angle, pipe stress radius, open cut alternatives, a



re-route analysis for all HDDs (including those on Exhibit “2”) and analysis of well production zones;

iii. Conduct, as appropriate, additional geotechnical evaluation at each site using techniques generally recognized within the scientific community which may include:

- Additional field drilling and sampling;
- Seismic surveys;
- Ground penetrating radar; and
- Electromagnetic surveys/electrical resistivity tomography.

iv. In karst areas, Sunoco shall consider the use of seismic surveys and electromagnetic surveys/electrical resistivity tomography for the re-evaluation undertaken pursuant to this Order, and if it does not use these evaluation methodologies, it will provide the Department with an explanation for why they were not used at that site.

5. Upon completion of Sunoco’s re-evaluation of each HDD site referenced in Paragraphs 2 and 3 herein, Sunoco shall provide for each such site a report signed and sealed by a Professional Geologist, describing and presenting the results of its study for that location (“Report”). The Professional Geologist shall be a person trained and experienced in geotechnical and hydrogeologic investigation. The Report shall specify all actions to be taken by Sunoco to eliminate, reduce, or control the release or IR of HDD drilling fluids to the surface of the ground or impact to water supplies at that location during HDD operations.

i. The Report shall document in detail the information considered for the re-evaluation of the design of the HDD at that site.



- ii. The Report shall contain an evaluation of the feasibility of constructing the proposed HDD crossing at that location and, as appropriate, propose modification of the design of the HDD or relocation of the pipeline based upon the results of its study for that location.
6. Sunoco will submit the Reports to the Department for review and approval.
 - i. For any recommendation that requires a major permit modification, the Department's procedures for major permit modifications shall apply.
 - ii. For all recommendations for which a minor permit modification is required, including, but not limited to, certain changes from HDD to an open cut or certain changes to the Limit of Disturbance ("LOD"), the Department will have 21 days to review the submission and render a determination with respect to such minor permit modification, unless Sunoco agrees to extend the 21-day time period. Appellants and private water supply landowners, who have received notice pursuant to Paragraph 7 below, shall submit comments, if any, within 14 days of the Department's posting of Sunoco's Reports on the Department's Pennsylvania Pipeline Portal website. Comments on the Reports shall be submitted to the Department at: Karyn Yordy, Executive Assistant, Office of Programs, Department of Environmental Protection, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101; Email – kyordy@pa.gov; Phone – (717) 772-5906; Fax – (717) 705-4980. Appellants will provide copies of their comments by email to Sunoco to the email address provided to Appellants'



counsel. The Department shall consider comments received and document such consideration.

- iii. For all other recommendations, including, but not limited to, recommendations of no change or of changes that do not require a minor permit modification, the Department will have 21 days to review the submission and render a determination with respect thereto, unless Sunoco agrees to extend the 21-day time period. Appellants and private water supply landowners who have received notice pursuant to Paragraph 7 below, shall submit comments, if any, within 14 days of the Department's posting of Sunoco's Reports on the Department's Pennsylvania Pipeline Portal website. Comments on the Reports shall be submitted to the Department at: Karyn Yordy, Executive Assistant, Office of Programs, Department of Environmental Protection, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101; Email – kyordy@pa.gov; Phone – (717) 772-5906; Fax – (717) 705-4980. Appellants will provide copies of their comments by email to Sunoco to the email address provided to Appellants' counsel. The Department shall consider comments received and document such consideration.

7. At the same time that Sunoco provides the Report to the Department, Sunoco will also provide a copy of the Report to Appellants by email to the address provided to Sunoco's counsel. The Department shall post Sunoco's Report to the Pennsylvania Pipeline Portal website within one business day of receipt. Sunoco shall send a copy of the Report (by U.S. Postal



Service Certified Mail and First Class Mail) to all landowners who have a private water supply that is located within 450 feet of the HDD addressed by the Report.

8. Ten days before HDD operations start at an HDD location, or re-start at an HDD location at which there was an IR (as listed on Exhibit "4"), Sunoco will identify all landowners within 450 feet of HDD alignments, and notify all such landowners (by U.S. Postal Service Certified Mail and First Class Mail) and offer such landowners the opportunity to have their water supplies within 450 feet of the HDD alignment sampled before, during, and after start or re-start of such HDD in accordance with the parameters in the water supply testing plan (Appendix B of the Water Supply Assessment, Preparedness, Prevention and Contingency Plan). For any such water supplies, the drill path will be compared to the well depth and geology of the area. Those water supplies in geologies with potentially significant interconnected secondary porosity (solution openings and structural features) will be considered for monitoring during HDD installs depending on specific individual water supplier requirements.

9. At the 22 HDDs identified on Exhibit "5," water supplies within 150 feet shall receive 72 hours' notice (by U.S. Postal Service Certified Mail and First Class Mail) in advance of restarting these HDDs, and Sunoco will provide notice to landowners (by U.S. Postal Service Certified Mail and First Class Mail) between 150 feet and 450 feet of the HDD within 30 days of the HDD restarting. Such notice shall offer the landowner with the opportunity to have a water supply located within 450 feet of the HDD alignment sampled in accordance with the parameters in the water supply testing plan (Appendix B of the Water Supply Assessment, Preparedness, Prevention and Contingency Plan) within 10 days of the landowner's request.

10. Sunoco shall provide copies of the Certified Mail receipts and landowner responses to the Department, and copies of the Certified Mail receipts to Appellants.



11. Sunoco will immediately notify a landowner with a water supply within 450 feet of an HDD when Sunoco or the Department has determined that there is a substantial possibility that the operation of the HDD will impact his or her water supply.

12. Within 14 days of the Board's entry of this Stipulated Order, Sunoco will provide the Department with a complete list of drilling instructions and specifications provided to all drillers performing HDD operations associated with the permits that are subject to the above-captioned Appeal, which provide the general operational parameters and best management practices to be utilized by the drillers during the performance of HDD operations under said permits.

13. The Department may review the drilling instructions and specifications, and suggest modifications to be incorporated into the instructions and specifications. If appropriate, the Department and Sunoco will discuss the feasibility of incorporating the Department's suggested modifications into the drilling instructions and specifications.

14. Within 14 days of the Board's entry of this Stipulated Order, Sunoco will provide the Department with as-builts for six HDDs that have been completed and at which an IR occurred to assure that the HDDs are being built in accordance with approved plans. To the extent possible, the as-builts shall represent the work of at least three different drilling contractors for HDD work performed in at least three different spreads of the pipelines subject to the permits in the above-captioned Appeal.

15. The parties have agreed to revisions to: the HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan; the Water Supply Assessment, Preparedness, Prevention and Contingency Plan; and, the Void Mitigation Plan for Karst Terrain and



Underground Mining (collectively, the "Plans"), as revised, such revisions dated August 8, 2017.

Sunoco agrees to abide by these Plans, as revised.

16. Sunoco shall inform, as appropriate, its officers, agents, employees, and contractors of the August 8, 2017 revisions to the Plans and ensure that the Plans as revised are present onsite during drilling operations and are made available to the Department.

SUNOCO PIPELINE L.P.:

/s/ Robert D. Fox
Robert D. Fox, Esq.

THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

/s/ Nels J. Taber
Nels J. Taber, Esq., Regional Counsel

CLEAN AIR COUNCIL:

/s/ Joseph O. Minott
Joseph O. Minott, Esquire

DELAWARE RIVERKEEPER
NETWORK:

/s/ Aaron J. Stemplewicz
Aaron J. Stemplewicz, Esquire

s/ Maya K. van Rossum
Maya K. van Rossum

MOUNTAIN WATERSHED
ASSOCIATION:

/s/ Melissa Marshall
Melissa Marshall, Esquire

APPROVED AND SO ORDERED
ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: August 10, 2017



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 25th day of July, 2017, following two conference calls during which the parties presented extensive argument in support of their respective positions, it is hereby ordered that the Appellants' application for a temporary partial supersedeas is **granted**. The permits that are the subject of this appeal are hereby superseded effective immediately to the extent they authorize the Permittee to conduct horizontal directional drilling. However, this Order may be modified in part if the Permittee provides the Board with detailed affidavits explaining why it would cause equipment damage, a safety issue, or more environmental harm than good to stop drilling at the 55 locations where drilling is actively underway. This temporary partial supersedeas shall expire at 9:00 a.m. on August 7, 2017, unless further extended by the Board. The hearing on the Appellants' petition for a partial supersedeas shall commence in the Board's Harrisburg hearing room on the date requested by the parties; namely, **9:00 a.m. on August 7, 2017.**



ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: July 25, 2017

c: For the Commonwealth of PA, DEP:

William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(via electronic filing system)

For Appellant, Clean Air Council:

Alexander G. Bomstein, Esquire
Kathryn L. Urbanowicz, Esquire
Joseph O. Minott, Esquire
(via electronic filing system)

For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
(via electronic filing system)

For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
(via electronic filing system)

For Permittee:

Robert D. Fox, Esquire
Neil S. Witkes, Esquire
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Jonathan E. Rinde, Esquire
Terry R. Bossert, Esquire
(via electronic filing system)

Court Reporter:

Premier Reporting, LLC
(via electronic mail)



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
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EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 28th day of July, 2017, in consideration of the Permittee’s emergency motion to modify our July 25, 2017 Order and the affidavit submitted in support thereof, and the Appellants’ response in opposition to the Permittee’s motion, which also included an affidavit, it is hereby ordered that the motion is granted in part. The temporary partial supersedeas imposed by our previous Order of July 25, 2017 is lifted with respect to the following three horizontal directional drilling locations as identified in the Permittee’s motion:

- The HDD at Harrisburg Pike in Cumberland County, where the only drilling work to be completed as of July 25, 2017 was the final cleaning ream
- The HDD at Wetland 161 in Lebanon County, where the reamed hole was 95 percent completed
- The HDD at Creek 110 in Lebanon County, where 1,500 feet of the total hole of 1,527 feet (98 percent) of the reamed hole was completed

The Board takes the Permittee’s motion with respect to the other 14 locations listed in the motion under advisement.



ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: July 28, 2017

c: For the Commonwealth of PA, DEP:

William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(via electronic filing system)

For Appellant, Clean Air Council:

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Joseph O. Minott, Esquire
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For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
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For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
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For Permittee:

Robert D. Fox, Esquire
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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
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EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 1st day of August, 2017, in consideration of the Permittee's affidavit correcting certain information provided in its July 27, 2017 affidavit and seeking confirmation that it may resume drilling at the horizontal directional drilling locations subject to the Board's Order of July 28, 2017, it is hereby ordered that the temporary partial supersedeas continues to be lifted with respect to the following horizontal directional drilling locations as identified in the Permittee's affidavit:

- The HDD at Harrisburg Pike in Cumberland County, PA-CU-0136.0000-RD
- The HDD at Wetland S161 in Lancaster County, PA-LA-0014.0000-SR

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr. _____
BERNARD A. LABUSKES, JR.
Judge

DATED: August 1, 2017



c: For the Commonwealth of PA, DEP:

William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(via electronic filing system)

For Appellant, Clean Air Council:

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Joseph O. Minott, Esquire
(via electronic filing system)

For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
(via electronic filing system)

For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
(via electronic filing system)

For Permittee:

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COMMONWEALTH OF PENNSYLVANIA
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CLEAN AIR COUNCIL, THE DELAWARE :
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COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 3rd day of August, 2017, in further consideration of the Permittee's emergency motion to modify our July 25, 2017 Order, it is hereby ordered that the temporary partial supersedeas is lifted with respect to all horizontal directional drilling locations identified in the Permittee's motion, except for the HDD at Creek 110 in Lebanon County, PA-LE-0117.0000-WX.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: August 3, 2017

c: For the Commonwealth of PA, DEP:
William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(via electronic filing system)



For Appellant, Clean Air Council:

Alexander G. Bomstein, Esquire
Kathryn L. Urbanowicz, Esquire
Joseph O. Minott, Esquire
(*via electronic filing system*)

For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
(*via electronic filing system*)

For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
(*via electronic filing system*)

For Permittee:

Robert D. Fox, Esquire
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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
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v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 4th day of August, 2017, except as otherwise provided in the Board's Orders of July 25, 2017, July 28, 2017, August, 1, 2017, and August 3, 2017, it is hereby ordered that the temporary partial supersedeas previously set to expire at 9:00 a.m. on August 7, 2017 shall now expire at 9:00 a.m. on August 9, 2017.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: August 4, 2017

c: For the Commonwealth of PA, DEP:
William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(via electronic filing system)



For Appellant, Clean Air Council:

Alexander G. Bomstein, Esquire
Kathryn L. Urbanowicz, Esquire
Joseph O. Minott, Esquire
(via electronic filing system)

For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
(via electronic filing system)

For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
(via electronic filing system)

For Permittee:

Robert D. Fox, Esquire
Neil S. Witkes, Esquire
Diana A. Silva, Esquire
Jonathan E. Rinde, Esquire
Terry R. Bossert, Esquire
(via electronic filing system)

**Ex. 2 -Horizontal Directional Drills For Design Review
Sunoco Mariner 2 Project**



Factors For Selecting These HDDs

Sunoco considered a variety of screening factors in identifying HDDs for reevaluation. No one factor was dispositive. These factors included proximity to public and private water supplies, proximity to natural features (e.g. streams and wetlands) and the value of those natural features, proximity to man-made features (e.g. underground utilities and pipelines, railroad crossings), known impacts to rock from historic blasting, geologic conditions, depth of cover, and occurrence of inadvertent returns. In addition to these HDDs that will undergo reevaluation, Sunoco is reevaluating every HDD for the 16 inch line where there was an IR on the HDD for the proximate 20 inch line. In three cases there was an IR on the HDD for the 16 inch line and Sunoco will reevaluate the proximate 20 inch line for that HDD.

Data Review to Perform

In re-evaluating the design of the HDD techniques for the HDDs, Sunoco shall:

- (1) Re-examine the geology at each site using information and data gathered during HDD operations at that and other sites during construction of the pipeline subject to the permits in this Appeal.
- (2) Consider data that is specific to the needs of each HDD being reevaluated, including at a specific HDD, geologic strength at profile depth, overburden strength, HDD depth, entry angle, pipe stress radius, open cut alternatives, a re-route analysis for all HDDs (including those on this Exhibit) and analysis of well production zones.
- (3) Conduct, as appropriate, additional geotechnical evaluation at each site using techniques generally recognized within the scientific community which may include: (i) Additional field drilling and sampling; (ii) Seismic surveys; (iii) Ground penetrating radar; and (iv) electromagnetic surveys/electrical resistivity tomography.
- (4) In karst areas, Sunoco shall consider the use of seismic surveys and electromagnetic surveys/electrical resistivity tomography for the re-evaluation undertaken pursuant to this Order, and if it does not use these methodologies, it will provide the Department with an explanation for why they were not used at that site.

| Construction | | | | | |
|---------------------|---------------|------------------------------|--------------|--------------------------------|---------------|
| | Spread | HDD Name | HDD # | PADEP 105 Permit HDD # | County |
| 1 | Spread 1 | Wheeling and Lake Erie RR | S1B-0120 | PA-WA-0171.0000-RR (20") | Washington |
| 2 | Spread 1 | Gombach Road | S1B-0260 | PA-WM1-0111.0000-RD (20") | Westmoreland |
| 3 | Spread 1 | Hildebrand Road | S1B-0190 | PA-WM1-0023.0000-RD (20") | Westmoreland |
| 4 | Spread 1 | Norfolk Southern | S1B-0250 | PA-WM1-0088.0000-RR (20") | Westmoreland |
| 5 | Spread 2 | Goldfinch Lane | S2-0069 | PA-CA-0016.0000-RD (20" & 16") | Cambria |
| 6 | Spread 2 | William Penn Ave (Route 271) | S2-0070 | PA-CA-0023.0000-RD (20" & 16") | Cambria |
| 7 | Spread 2 | Wetland C-17 | S2-0075 | PA-CA-0047.0000-SR (20" & 16") | Cambria |
| 8 | Spread 2 | Spinner Road | S2-0080 | PA-CA-0069.0000-RD (20" & 16") | Cambria |
| 9 | Spread 3 | Piney Creek | S2-0142 | PA-BL-0126.0000-RD (20") | Blair |
| 10 | Spread 3 | Juniata River | S2-0140 | PA-BL-0122.0000-WX (20" & 16") | Blair |
| 11 | Spread 3 | Aughwick Creek | S2-0153 | PA-HU-0078.0000-WX (20") | Huntingdon |

Ex. 2 -Horizontal Directional Drills For Design Review
Sunoco Mariner 2 Project



| Construction | | HDD Name | HDD # | PADEP 105 Permit HDD # | County |
|--------------|----------|-----------------------|---------|--------------------------------|------------|
| Spread | | | | | |
| 12 | Spread 3 | Horse Valley | S2-0157 | PA-PE-0002.0000-RD (20" &16") | Perry |
| 13 | Spread 4 | Creek Rd | S2-0181 | PA-CU-0125.0001-WX (20" &16") | Cumberland |
| 14 | Spread 4 | Yellow Breeches Creek | S2-0250 | PA-CU-0203.0000-WX (20" &16") | Cumberland |
| 15 | Spread 5 | Wetland J-47 | S3-0090 | PA-LE-0001.0000-SR (20" &16") | Lebanon |
| 16 | Spread 5 | Route 897 | S3-0170 | PA-LA-0024.0000-RD (20" &16") | Lancaster |
| 17 | Spread 6 | N. Pottstown Pike | S3-0370 | PA-CH-0212.0000-RD (20" &16") | Chester |
| 18 | Spread 6 | Swedesford Rd | S3-0381 | PA-CH-0219.0000-RD (20" &16") | Chester |
| 19 | Spread 6 | Chester Rd | S3-0541 | PA-CH-0421.0000-RD (20" &16") | Chester |
| 20 | Spread 6 | Gradyville Rd | S3-0580 | PA-DE-0032.0000-RD (20" &16") | Delaware |
| 21 | Spread 6 | Valley Rd | S3-0591 | PA-DE-0046.0000-RD (20" &16") | Delaware |
| 22 | Spread 6 | Devon Dr. - Shoen Rd. | S3-0360 | PA-CH-0199.0000-RD (16") | Chester |
| 23 | Spread 6 | Eagleview Blvd. | S3-0321 | PA-CH-0135.0000-RD (16") | Chester |
| 24 | Spread 5 | Joanna Road | S3-0250 | PA-BR-0181.0000-RD (20" & 16") | Berks |
| 25 | Spread 6 | Bow Tree Drive | S3-0520 | PA-CH-0413.0000-RD (20") | Chester |

Ex. 3 - HDDs for Reevaluation



| | Construction Spread | Drill Name | HDD # | PADEP 105 Permit HDD # | First HDD Pipe Diameter | Second HDD Pipe Diameter |
|-----|---------------------|--|---------|------------------------|-------------------------|--------------------------|
| 1. | 2 | Loyalhanna Lake | S2-0010 | PA-WM2-0064.0000-WX | 20 | 16 |
| 2. | 2 | Livermore Rd | S2-0016 | PA-WM2-0093.0000-RD | 20 | 16 |
| 3. | 2 | Kendall Rd/Norfolk Southern RR | S2-0040 | PA-IN-0019.0000-RR | 20 | 16 |
| 4. | 3 | Old US220 | S2-0109 | PA-BL-0001.0027-RD | 20 | 16 |
| 5. | 3 | Everett RR | S2-0121 | PA-BL-0001.0048-RR | 20 | 16 |
| 6. | 3 | Finney Creek | S2-0142 | PA-BL-0126.0000-RD | 20 | 16 |
| 7. | 3 | Aughwick Creek | S2-0153 | PA-HU-0078.0000-WX | 20 | 16 |
| 8. | 4 | Letorte Springs Run | S2-0210 | PA-CJ-0136.0002-WX | 20 | 16 |
| 9. | 4 | I-81 | S2-0220 | PA-CJ-0136.0003-RD | 20 | 16 |
| 10. | 4 | Hwy 15 | S2-0247 | PA-CJ-0176.0019-RD | 20 | 16 |
| 11. | 4 | Lewisberry Road | S2-0260 | PA-YO-0016.0000-RD | 20 | 16 |
| 12. | 5 | Laural Lane | S3-0091 | PA-LE-0005.0000-RD | 20 | 16 |
| 13. | 5 | T307 & Creek SC86 | S3-0110 | PA-LE-0117.0000-WX | 20 | 16 |
| 14. | 5 | Wetland K32 & SK35 | S3-0111 | PA-LA-0004.0000-SR | 20 | 16 |
| 15. | 5 | Wetland A54 & A55 | S3-0161 | PA-LA-0014.0000-SR | 20 | 16 |
| 16. | 5 | Hwy 222 | S3-0200 | PA-BR-0075.0000-RD | 20 | 16 |
| 17. | 6 | Milford Rd. S3-0290 | S3-0290 | PA-CH-0100.0000-RD | 20 | 16 |
| 18. | 6 | Wetland 043 - Park Road S3-0300 | S3-0300 | PA-CH-0111.0000-RD | 20 | 16 |
| 19. | 6 | Bow Tree Dr. S3-0520 | S3-0520 | PA-CH-0413.0000-RD | 20 | 16 |
| 20. | 6 | Glen Riddle/SEPTA S3-0620 (16") | S3-0620 | PA-DE-0100.0000-RR | 16 | 20 |
| 21. | 6 | Chester Creek (Gun Club) S3-0631 (16") | S3-0631 | PA-DE-0104.0008-WX | 16 | 20 |
| 22. | 6 | Commerce Drive S3-0670 (16") | S3-0670 | PA-DE-0104.0023-RR | 16 | 20 |



Ex. 4

| | Spread | Drill Name | HDD # | PADEP 105 Permit HDD # | Diameter |
|-----------|---------------|---------------------------|--------------|-------------------------------|-----------------|
| 1 | Spread 1 | LINDEN ROAD | S1B-0080 | PA-WA-0119.0000-RD | 20 |
| 2 | Spread 1 | WHEELING AND LAKE ERIE RR | S1B-0120 | PA-WA-0171.0000-RR | 20 |
| 3 | Spread 3 | Old US 220 | S2-0109 | PA-BL-0001.0027-RD | 20 |
| 4 | Spread 3 | Everett RR | S2-0121 | PA-BL-0001.0048-RR | 20 |
| 5 | Spread 3 | Piney Creek | S2-0142 | PA-BL-0126.0000-RD | 20 |
| 6 | Spread 3 | Aughwick Creek | S2-0153 | PA-HU-0078.0000-WX | 20 |
| 7 | Spread 4 | Letorte Springs Run | S2-0210 | PA-CU-0136.0002-WX | 20 |
| 8 | Spread 4 | I-81 | S2-0220 | PA-CU-0136.0003-RD | 20 |
| 9 | Spread 4 | Hwy 15 | S2-0247 | PA-CU-0176.0019-RD | 20 |
| 10 | Spread 4 | Lewisberry Road | S2-0260 | PA-YO-0016.0000-RD | 20 |
| 11 | Spread 5 | Laural Lane | S3-0091 | PA-LE-0005.0000-RD | 20 |
| 12 | Spread 5 | T307 & Creek S-C86 | S3-0110 | PA-LE-0117.0000-WX | 20 |
| 13 | Spread 5 | Hwy 222 | S3-0200 | PA-BR-0075.0000-RD | 20 |
| 14 | Spread 6 | Milford Rd. | S3-0290 | PA-CH-0100.0000-RD | 20 |
| 15 | Spread 6 | Wetland C43 - Park Road | S3-0300 | PA-CH-0111.0000-RD | 20 |
| 16 | Spread 6 | Bow Tree Dr. | S3-0520 | PA-CH-0413.0000-RD | 20 |
| 17 | Spread 6 | Riddlewood Dr | S3-0620 | PA-DE-0100.0000-RR | 16 |



| Ex. 5 | | | | | |
|-------|----------|-------------------------|----------|------------------------|----------|
| | Spread | Drill Name | HDD # | PADEP 105 Permit HDD # | Diameter |
| 1 | Spread 1 | Norfolk RR | S1B-0250 | PA-WM1-0088.0000-RR | 20 |
| 2 | Spread 1 | Old William Penn | S1B-0270 | PA-WM1-0144.0000-RD | 20 |
| 3 | Spread 2 | Grange Hall Rd | S2-0064 | PA-IN-0086.0000-RD | 20 |
| 4 | Spread 3 | Raystown Lake | S2-0150 | PA-HU-0020.0008-WX | 20 |
| 5 | Spread 4 | Pipeline/Double Gap Rd | S2-0160 | PA-CU-0015.0000-RD | 20 |
| 6 | Spread 4 | Wildwood Road | S2-0180 | PA-CU-0067.0000-RD | 20 |
| 7 | Spread 4 | Appalachian Trail | S2-0230 | PA-CU-0136.0012-RD | 20 |
| 8 | Spread 4 | Arcona Rd, Lisburn Rd | S2-0249 | PA-CU-0189.0000-RD | 20 |
| 9 | Spread 4 | S Market Street | S2-0246 | PA-CU-0174.0001-RD | 20 |
| 10 | Spread 4 | Waltonville Road | S3-0080 | PA-DA-0056.0000-RD | 20 |
| 11 | Spread 5 | Peach Tree Lane | S3-0201 | PA-BR-0079.0000-RD | 20 |
| 12 | Spread 5 | Gebhart School Road | S3-0230 | PA-BR-0138.0001-RD | 20 |
| 13 | Spread 5 | Joanna Road | S3-0250 | PA-BR-0181.0000-RD | 20 |
| 14 | Spread 6 | Pennsylvania Drive | S3-0310 | PA-CH-0124.0000-RD | 20 |
| 15 | Spread 6 | Dairy Queen Parking Lot | S3-0331 | PA-CH-0138.0000-RD | 20 |
| 16 | Spread 6 | Devon Dr. - Shoen Rd. | S3-0360 | PA-CH-0199.0000-RD | 20 |
| 17 | Spread 6 | Exton Bypass | S3-0400 | PA-CH-0256.0000-RR | 20 |
| 18 | Spread 6 | Hollyview Ln. | S3-0421 | PA-CH-0290.0000-RD | 20 |
| 19 | Spread 6 | Greenhill Road | S3-0460 | PA-CH-0326.0000-RD | 20 |
| 20 | Spread 6 | Carriage Dr. | S3-0461 | PA-CH-0326.0004-SR | 20 |
| 21 | Spread 6 | Village Square Dr. | S3-0471 | PA-CH-0326.0006-RD | 20 |
| 22 | Spread 6 | Highway 23 | | PA-CH-0002.0000-RD | 20 |

EXHIBIT 6

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL; THE : EHB Docket NO.
DELAWARE RIVERKEEPER : 2017-009L
NETWORK; AND MOUNTAIN :
WATERSHED ASSOCIATION, :
INC., :

APPELLANTS :

vs. :

COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF ENVIRONMENTAL :
PROTECTION, :

APPELLEE :
and SUNOCO PIPELINE L.P., :

PERMITTEE :

DEPOSITION OF SCOTT R. WILLIAMSON - VOLUME I
Taken in the offices of Bureau of
Regulatory Counsel, 400 Market Street, Harrisburg,
Pennsylvania, on Thursday, October 19, 2017,
commencing at 9:35 a.m. before Gina L. Clements,
Registered Professional Reporter.

APPEARANCES:

CLEAN AIR COUNCIL

By: KATHRYN URBANOWICZ, ESQ.
and

ALEXANDER G. BOMSTEIN, ESQ.
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-- For the Plaintiffs

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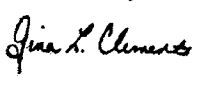
Page 5

1 SCOTT R. WILLIAMSON, having been duly
 2 sworn, was examined and testified as follows:
 3 * * *
 4 EXAMINATION
 5 BY MS. URBANOWICZ:
 6 Q. Good morning, Mr. Williamson.
 7 A. Good morning.
 8 Q. Thank you for being here today. I'm going
 9 to ask you a lot of questions today and I'm just going
 10 to ask that you answer to the best of your knowledge.
 11 If there is something that you don't
 12 understand or need me to repeat, please let me know.
 13 And if I don't hear anything from
 14 you about not understanding a question, I'm just going
 15 to assume that you understood it. Okay?
 16 A. Okay.
 17 Q. The court reporter is recording your
 18 answers, so we need verbal responses to questions. So
 19 obviously nodding, shaking heads can't be recorded for
 20 the record, so that's going to be important.
 21 If you need a break at any time,
 22 just let me know. The only thing I'm going to ask is
 23 that if there's a question pending, please provide an
 24 answer to the question first and then we can take a
 25 break after that.

1 returns to waters of Commonwealth.
 2 Q. Are you aware of your staff implementing
 3 these protocols on page six and seven differently
 4 for uplands and wetlands?
 5 A. I think I would need to review the rest
 6 of the PPC plan because I think -- or other components
 7 of the PPC plan because I think that there's some
 8 better clarification, as I recall, in certain sections
 9 of it about what happens in uplands versus what
 10 happens in waters. And that also helps guide our
 11 decision making.
 12 I can say that we do, even in
 13 my region for this project, even if there's an
 14 inadvertent return that occurs in uplands, we're still
 15 inspecting that the same day, if at all possible, or
 16 getting boots on the grounds to go look at it.
 17 Q. Are there HDD sites where Sunoco is
 18 currently awaiting DEP approval before it can restart
 19 drilling?
 20 A. That's my recollection, yes.
 21 Q. And what sites are those?
 22 A. One site that my recollection is they're
 23 waiting for a decision from us for is Smiths Creek,
 24 the Smiths Creek HDD in Lebanon County.
 25 I believe there are also several on

1 the list of HDDs in the corrected stipulated order
 2 where the department has not rendered a determination
 3 yet.
 4 We've -- I don't believe that we've
 5 rendered a decision on the LeTort Spring Run drill in
 6 Cumberland County, which I believe is the wetland
 7 complex and the stream itself separate from the I-81
 8 drill.
 9 Beyond that, those are a couple
 10 of the specifics that I can speak to where my
 11 recollection is they're waiting for us to provide some
 12 sort of response and determination.
 13 Q. And why hasn't that determination been made
 14 yet?
 15 A. I think for the HDDs that are currently
 16 under review that are part of the corrected stipulated
 17 order list, I believe we're still evaluating
 18 additional information that Sunoco had provided
 19 to the department's letters or the department is
 20 evaluating the initial package of information that
 21 was provided on the re-evaluation for a specific HDD.
 22 Again, I'm only speaking for south
 23 central region and what I'm charged with reviewing or
 24 my staff is charged with reviewing.
 25 In the case of Smiths Creek and the

1 LeTort, I don't believe that we're satisfied with the
 2 information that Sunoco has provided yet.
 3 Q. Thank you.
 4 MS. URBANOWICZ: And we are at 4:26.
 5 And I want to be respectful of your time.
 6 THE WITNESS: Appreciate that.
 7 MS. URBANOWICZ: We have a little bit
 8 that will need to be wrapped up tomorrow. A lot, lot
 9 shorter.
 10 MR. TABER: I should hope.
 11 * * *
 12 (Witness excused.)
 13 * * *
 14 (Deposition concluded at 4:26 p.m.)
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1
 2 C E R T I F I C A T E
 3
 4
 5
 6 I do hereby certify that I am a
 7 Notary Public in good standing, that the aforesaid
 8 testimony was taken before me, pursuant to notice, at
 9 the time and place indicated; that said deponent was
 10 by me duly sworn to tell the truth, the whole truth,
 11 and nothing but the truth; that the testimony of said
 12 deponent was correctly recorded in machine shorthand
 13 by me and thereafter transcribed under my supervision
 14 with computer-aided transcription; that the deposition
 15 is a true and correct record of the testimony given by
 16 the witness; and that I am neither of counsel nor kin
 17 to any party in said action, nor interested in the
 18 outcome thereof.
 19
 20 WITNESS my hand and official seal
 21 this 22nd day of October, 2017.
 22 
 23 _____
 24 Notary Public
 25

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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WEST GOSHEN TOWNSHIP,

Docket No. C-2017-2589346

v.

SUNOCO PIPELINE, L.P.,

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2017, a true and correct copy of West Goshen Township's Answer to Sunoco Pipeline, L.P.'s Motion To Modify the Procedural Schedule 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).

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EXHIBIT D



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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 filing¹ 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

¹ 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 long horizontal line extending from the start of the name.

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. | : | |
| | : | |

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

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.¹

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

¹ 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.²

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

² 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.³

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

³ 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 completed⁴ 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

⁴ 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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:
:
:
:

C-2017-2589346

AFFIDAVIT OF LARRY GREMMINGER

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

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

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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.¹ 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.²

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, 2017.³ 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.⁴

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

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

² 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."

³ 52 Pa. Code § 5.63(a).

⁴ 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.⁵ 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.⁶

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.⁷ As Commissioner Sweet correctly pointed out

⁵ 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.").

⁶ 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).

⁷ 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.⁸ 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.

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.

⁸ 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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Counsel for West Goshen Township



Thomas J. Sniscak
Kevin J. McKeon
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Dated this 17th day of November, 2017.

EXHIBIT E



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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 filing¹ 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

¹ 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 long horizontal line extending from the start of the name.

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

v.

Sunoco Pipeline, L.P.

C-2017-2589346

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

Thomas J. Sniscak, Attorney I.D. # 33891
Kevin J. McKeon, Attorney I.D. # 30428
Whitney E. Snyder, Attorney I.D. # 316625
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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.¹ 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.²

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, 2017.³ 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.⁴

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

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

² 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."

³ 52 Pa. Code § 5.63(a).

⁴ 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.⁵ 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.⁶

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.⁷ As Commissioner Sweet correctly pointed out

⁵ 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.").

⁶ 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).

⁷ 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.⁸ 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.

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.

⁸ 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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Counsel for West Goshen Township



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

Dated this 17th day of November, 2017.

EXHIBIT F



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December 1, 2017

BY ELECTRONIC FILING

Rosemary Chiavetta, Secretary
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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.**
SECOND AFFIDAVIT OF LARRY GREMMINGER

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s ("SPLP") Second Affidavit of Larry Gremminger which updates, due to the passage of time, the number of HDD site reevaluation reports SPLP has submitted to the Department of Environmental Resources and approvals of the same which have changed from his Affidavit filed November 17, 2017. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions please do not hesitate to contact me or counsel for the Township.

Very truly yours,

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

Counsel for Sunoco Pipeline L.P.

TJS/ das

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township

v.

Sunoco Pipeline, L.P.

:
:
:
:
:

C-2017-2589346

SECOND AFFIDAVIT OF LARRY GREMMINGER

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 prepared an affidavit (First Affidavit) in this case on November 16, 2017, that was filed on November 17, 2017 in support of Sunoco Pipeline L.P.'s (SPLP) 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. The First 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. In Paragraph 14 of the First Affidavit, I reported that as of November 16, 2017, SPLP had submitted for DEP review reevaluation reports for 9 HDD locations that included a reevaluation of the 20" line, and that 1 HDD report for a location that included a 20" line has been approved for resumed HDD drilling. I also reported that three¹ 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.

4. In Paragraph 16 of the First Affidavit I also reported that 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.

5. The purpose of this Second Affidavit is to update Paragraph 15 of the First Affidavit.

6. As of December 1, 2017, SPLP has submitted for DEP review reevaluation reports for 14 HDD of the 23 locations that require a reevaluation of the 20" line, and 2 HDD reports for a location that includes a 20" line have now been approved for resumed HDD drilling. Two additional reevaluation reports have been submitted to DEP for HDD locations where only the 16" line location is at issue, and both of those locations have been approved by DEP.

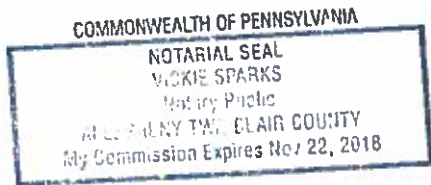
¹ As of November 16, 2017, two, not three additional reevaluation reports had been submitted to DEP for HDD locations where only the 16" line was at issue. This Affidavit corrects that typo in my First Affidavit.

Sworn and subscribed before me this
1st day of December, 2017,


Larry Greminger


NOTARY PUBLIC

(Seal)



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.

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Counsel for West Goshen Township



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

Dated this 1st day of December, 2017.

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.

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Counsel for Sunoco Pipeline L.P.



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

Dated this 4th day of December, 2017.