**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 21, 2017

Commissioners Present:

Gladys M. Brown, Chairman, Statement, dissenting

Andrew G. Place, Vice Chairman, Statement, dissenting

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

West Goshen Township C-2017-2589346

v.

Sunoco Pipeline, L.P.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition to Rescind or Discontinue (Petition), filed by Sunoco Pipeline, L.P. (Sunoco) on November 21, 2017, relative to the Opinion and Order entered on October 26, 2017 (*October 2017 Order*) in the above-captioned proceeding. On December 1, 2017, West Goshen Township (the Township) filed an Answer to the Petition (Answer). For the reasons detailed herein, we shall: (1) deny Sunoco’s request for rescission of our *October 2017 Order*; (2) discontinue the injunction in our *October 2017 Order*, effective on the entry date of this Opinion and Order; and (3) provide that the Office of Administrative Law Judge (OALJ) return the matter to this Commission for final consideration and resolution no later than the September 20, 2018 Public Meeting.

**I. History of the Proceeding**

On March 21, 2014, at Docket No. P-2014-2411966, Sunoco filed a Petition (Sunoco Petition) requesting a finding that a building to shelter the Boot Road Pump Station in the Township was reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning ordinances. The Boot Road Pump Station and an associated Vapor Combustion Unit would serve a natural gas liquids pipeline owned by Sunoco that is part of the Mariner East Project to transport propane, ethane, and other natural gas liquids from points west and north of the Township to points in Delaware County, Pennsylvania, and the State of Delaware. On April 18, 2014, the Concerned Citizens of West Goshen Township (CCWGT)[[1]](#footnote-1) filed a Protest and Preliminary Objections to the Sunoco Petition. On April 21, 2014, the Township filed a Petition to Intervene.

On November 7, 2014, CCWGT filed a Formal Complaint (CCWGT Complaint) against Sunoco, at Docket No. C-2014-2451943, alleging safety concerns about the proposed Sunoco facilities in the Township. The Sunoco Petition and the CCWGT Complaint were resolved by a Settlement Agreement between Sunoco, the Township, and the CCWGT. By Order entered May 28, 2015, the Commission granted Sunoco’s request to withdraw the Sunoco Petition. The Settlement Agreement was certified by the Commission’s Secretary on June 15, 2015, at Docket No. U-2015-2486071, pursuant to Section 507 of the Public Utility Code (Code), 66 Pa. C.S. § 507.[[2]](#footnote-2) On June 16, 2015, the CCWGT filed a Certificate of Satisfaction and Withdrawal of Formal Complaint regarding the CCWGT Complaint.

On March 30, 2017, the Township filed an Amended Complaint (Complaint) against Sunoco, at the instant Docket No. C-2017-2589346, seeking enforcement of the Settlement Agreement filed at Docket No. U-2015-2486071,[[3]](#footnote-3) pertaining to, *inter alia*, Sunoco’s proposal to site Valve 344 on the Janiec 2 Tract. On April 17, 2017, Sunoco filed an Answer to the Complaint and New Matter. Sunoco denied the material allegations in the Complaint and averred that siting Valve 344 on the Janiec 2 Tract would not constitute a violation of the Settlement Agreement. On May 5, 2017, the Township filed an Answer to the New Matter.

On July 10, 2017, the Township filed a Petition seeking, *inter alia*, an Interim Emergency Order (Emergency Petition) pursuant to 52 Pa. Code § 3.6, to enjoin Sunoco from beginning or continuing construction of a valve and any other facilities appurtenant to Sunoco’s Mariner East 2 pipeline on the Janiec 2 Tract, or at any location not specifically agreed to in the Settlement Agreement, until after the Commission issues a final order on the Complaint.[[4]](#footnote-4) On July 17, 2017, Sunoco filed an Opposition to the Township’s Emergency Petition.

On July 18, 2017, ALJ Barnes conducted a hearing on the Emergency Petition. The hearing record includes twenty Township exhibits, fifteen Sunoco exhibits, and a 254-page transcript. Both Parties filed Briefs regarding the Emergency Petition on July 24, 2017.

In the *Interim Emergency Order and Certification of Material Question* issued by ALJ Barnes on July 24, 2017 (*July 24 Order*), the ALJ granted the Township’s Emergency Petition and certified the decision to grant interim emergency relief to the Commission as a material question to be processed in accordance with Section 5.305 of the Commission’s Regulations, 52 Pa. Code § 5.305. On July 31, 2017, the Township and Sunoco each filed a Brief pertaining to the *July 24 Order*.

By Order entered October 26, 2017 (*October 2017 Order*), we answered the Material Question in the affirmative, granted the Township’s Emergency Petition, and referred this matter back to the Office of Administrative Law Judge. We specifically directed the following:

That Sunoco is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

*October 2017 Order* at 34, Ordering Paragraph No. 3.

On October 19, 2017, Sunoco filed a Motion to Modify the Procedural Schedule (Motion to Modify) at Docket No. C-2017-2589346. On November 3, 2017, West Goshen filed an Answer. By Order dated November 14, 2017 (*November 14 Order*), ALJ Barnes denied the Motion to Modify.

On November 17, 2017, Sunoco filed a Petition for Interlocutory Review and Answer to Material Questions (Interlocutory Review Petition) relating to the ALJ’s *November 14 Order*. Both Sunoco and the Township thereafter requested an extension on the deadline for filing briefs. By Secretarial Letter issued November 21, 2017, the Commission established December 4, 2017, as the due date for filing briefs and waived the thirty-day period for consideration set forth in 52 Pa. Code § 5.303 to afford adequate time to address the questions raised. On December 4, 2017, Sunoco filed a Brief in Support of the Interlocutory Review Petition, and the Township filed a Brief in Opposition to the Interlocutory Review Petition.

As previously noted, Sunoco filed the instant Petition on November 21, 2017. On December 1, 2017, the Township filed an Answer.

**II. Background Regarding the Settlement Agreement**

The Settlement Agreement resolved the concerns of the Township and the CCWGT regarding, among other things, Sunoco’s proposed construction and operation of the Boot Road Pump Station and associated Vapor Combustion Unit in connection with Sunoco’s Mariner East Project. The Settlement Agreement provisions at issue in this case include Sections II, III, and IV, as set forth below, in relevant part:

**II.** **Pertinent Information Provided by [Sunoco]**

A. [Sunoco] has provided [the Township and the Township’s] consulting expert with the following information (“SPLP Information”). [The Township] 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 [Sunoco] in [the Township] 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 currently operates (the “SPLP Existing Site”), except that a remote operated valve station will be constructed and maintained on [Sunoco’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, [Sunoco] intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If, due to engineering constraints, [Sunoco] is unable to construct the valve station in the SPLP Use Area, SPLP will notify [the Township]. Nothing in this Settlement Agreement constitutes an authorization or agreement for [Sunoco] 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, [Sunoco] has no plan or intention to construct any additional above-ground permanent utility facilities in [the Township] except as otherwise expressly set forth in this Agreement.

**III.** **[The Township’s] Safety Review**

1. [The Township] 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 [Sunoco]. 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. [Sunoco] covenants and agrees as follows:

a. Because of its existing Pump Station Facility at Boot Road, except with respect to the SPLP Use Area, [Sunoco] 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. [Sunoco] 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 [Sunoco] will restore the surface to its former condition following the completion of such activity.

\* \* \*

2. [The Township] covenants and agrees as follows:

\* \* \*

d. As long as [Sunoco] (i) constructs and operates facilities in [the Township] 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 [the Township’s] consultant, [the Township] agrees that it will not file or join in any complaint against the safety of [Sunoco’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 [Sunoco] with respect to the safety of Mariner East 1 or the valve station described in paragraph II.A.2 of this Agreement.

Settlement Agreement at 2-3, 5-6, 7.

The Boot Road Pump Station is located 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. Tr. at 47-48; Township Exhs. 1 and 2. The SPLP Use Area referenced in the Settlement Agreement is located west of Route 202 on Boot Road. The Janiec 2 Tract at issue in this proceeding is a wooded property that is located on the east side of Route 202 and north of Boot Road and is owned by the Janiec family. Tr. at 57‑58; Township Exh. 2; Sunoco Exh. 4.

**III. Discussion**

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC*,* 625 A.2d 741 (Pa. Cmwlth. 1993)*;*](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink) *also* see, generally, [University of Pennsylvania v. Pa. PUC*,* 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink)

**Legal Standards**

Initially, we note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsyl­vania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations,

52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

***October 2017 Order***

In our *October 2017 Order*, we determined, *inter alia*, to grant the Township’s Emergency Petition. We evaluated the Emergency Petition and the Parties’ positions under the standards that govern the issuance of interim emergency orders set forth at 52 Pa. Code § 3.6.[[5]](#footnote-5) First, we concluded that the Township established, by a preponderance of the evidence, substantial legal questions. *October 2017 Order* at 20. We found compelling the legal issues developed by the Township on the record pertaining to whether, at the time of the execution of the Settlement Agreement, Sunoco misrepresented its intention to site Valve 344 on the Janiec 2 Tract and whether Sunoco withheld material information about its plans for Mariner East 2. We stated that these legal issues implicate our authority under Section 508 of the Code to vary, reform, and revise contracts.[[6]](#footnote-6) *October 2017 Order* at 21. We also stated that the Settlement Agreement between the Township and Sunoco concerns the public interest and the well-being of the Commonwealth and, accordingly, presents substantial legal questions for litigation and a ruling on the Settlement Agreement. We noted that both Parties identified separate public interest concerns regarding Sunoco’s operations: the Township’s concerns relating to the health and safety of its residents, and Sunoco’s concerns relating to propane supply and the shippers and producers that intend to use the Mariner East 2 pipeline to ship their products. *Id*. at 22 (citing Tr. at 219).

Additionally, we stated that the Township identified substantial legal issues concerning the safety and reasonableness of locating Valve 344 on the Janiec 2 Tract. We found that the Township presented issues that implicate “service” as broadly defined in the Code and involve the reasonableness, adequacy, and sufficiency of Sunoco’s public utility service, especially regarding the circumstances surrounding the Parties’ decision to enter into the Settlement Agreement and regarding the safety of the valve. *October 2017 Order* at 22. We explained that issues concerning the reasonableness, adequacy, and sufficiency of public utility service, be they contractual or otherwise, are squarely within the Commission’s jurisdiction. *Id*. (citing 66 Pa. C.S. §§ 1501 and 1505; *Disanto v. Dauphin Consolidated Water Supply Co*., 291 Pa. Super. 440, 436 A.2d 197 (1981)). We indicated that since the Commission has the power to modify contracts under Section 508 of the Code, the ALJ has the authority to rule on the validity of agreements between public utilities and municipal corporations. We noted in detail the testimony the Township presented regarding the public safety risks associated with HDD at the valve site. *October 2017 Order* at 22-23 (citing Tr. at 128, 129). We also noted the Township’s testimony that the Settlement Agreement purposefully confined Sunoco’s construction activities to Sunoco’s existing pump station site and the SPLP Use Area in order to protect the safety, health, and welfare of the Township’s residents. *October 2017 Order* at 23 (citing Tr. at 63).

Furthermore, we addressed our jurisdiction concerning the issues in this proceeding. We stated that based on the framing of some of the issues by the ALJ, the Township, and Sunoco at this stage of the proceeding, one of the decisions we are being asked to reach is whether Sunoco has the authority to construct a valve on the Janiec 2 Tract, specifically, whether the Settlement Agreement provides Sunoco the right to construct the valve on the tract of land in question. We noted that with the exception of high voltage electric transmission lines, our authority regarding the siting of public utility facilities is limited. *October 2017 Order* at 23. We explained that our authority stems from Section 10619 of the Pennsylvania Municipalities Planning Code (MPC),

53 P.S. § 10619, which provides that the Commission is authorized to determine, *upon petition by such public utility and after notice and opportunity for a hearing*, whether a building proposed by a public utility is “reasonably necessary for the convenience or welfare of the public.” *Id*. (citing 53 P.S. § 10619). We continued that the effect of such a determination would be to exempt the proposed public utility building from the local township or municipality’s zoning authority under the MPC.[[7]](#footnote-7) We concluded that it is not clear that we have the authority to provide such an exemption in the context of the instant proceeding.  *October 2017 Order* at 23-24.

Second, we determined that the Township established, by a preponderance of the evidence, that the need for relief was immediate. Based on the testimony from both Parties as detailed in our *October 2017 Order*, we concluded that it was undisputed that Sunoco intended to immediately proceed with the work for constructing Valve 344 on the Janiec 2 Tract*. See* *October 2017 Order* at 25-26. Third, we determined that the Township met its burden of demonstrating that there would be irreparable harm, both non-monetary and monetary, unless emergency relief was granted. Based on the evidence presented, we found it significant that if Sunoco installed a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area, as Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, which would create a second round of risks to the public, including breakouts and frac-outs during drilling. Further, we addressed the direct impact that Sunoco’s construction plans had on the $35 million Traditions Project the Township approved to be located on the Janiec 2 Tract. *Id*. at 29.

Fourth, we concluded that the Township met its burden of demonstrating that emergency relief would not be injurious to the public interest. We agreed with the ALJ’s rationale that the Township is not seeking to permanently stop construction of the Mariner East Pipeline or to prevent a pipeline through the Township altogether, but is instead, seeking enforcement of the Settlement Agreement in the interest of its residents. We stated that because the Settlement Agreement was executed to resolve the safety concerns of the Township and the CCWGT regarding Sunoco’s facilities in the Township, ensuring that the Parties comply with the Settlement Agreement is consistent with the public interest and the interest of the Township residents. We also acknowledged that a delay in construction would delay shippers and producers from using the Mariner East 2 pipeline to ship their products; however, we noted that Sunoco indicated that there has not been a propane shortage since Mariner East 1 was completed. We found that maintaining the current *status quo* without valve construction on the Janiec 2 Tract until we held an evidentiary hearing and issued a decision addressing the Settlement Agreement disputes, was the most appropriate way to satisfy the public interest under the circumstances in this case. *Id*. at 32.

**Petition and Answer**

In its Petition, Sunoco requests that the Commission enter an Order as follows:

1. The [*October 2017 Order*,] specifically Ordering Paragraph No. 3[,] is rescinded or discontinued.

2. [Sunoco] will: (a) not locate for the Mariner East 2 line Valve 344 on the Janiec 2 Tract and conduct the activities relative to Valve 344 which were the subject of the injunction as specified in [Ordering Paragraph No. 3 of the *October 2017 Order*]; and, (b) not locate such a valve for the Mariner East 2 line anywhere in West Goshen Township.

Petition at 3-4. In support of its Petition, Sunoco states that since the entry of the *October 2017 Order*, Sunoco has reevaluated Valve 344 based on the Township’s representations about its residents’ concerns regarding the proposed installation. Sunoco submits that it has decided that such a valve is not needed operationally nor required by any applicable code or regulation. Sunoco avers that as a matter of managerial and construction judgment and discretion, it no longer plans to locate and construct a valve on the Janiec 2 Tract or anywhere else in the municipal limits of the Township. Petition at 2.

Accordingly, Sunoco claims there is no longer any construction or activity to enjoin in relation to Valve 344 and, thus, no need for the continuation of enjoining such construction or activities that were the subject of the *October 2017 Order*. Sunoco avers that granting its request to rescind or discontinue the injunction will conserve the time and resources of the Commission and the Parties on the now moot issue of locating Valve 344 on the Janiec 2 Tract. Sunoco submits that it is willing to accept, as a condition of approval of its Petition, that Sunoco will not locate Valve 344 or any such valve for the Mariner East 2 Pipeline on the Janiec 2 Tract or elsewhere in the Township. Sunoco asks that we address its Petition immediately or as soon as possible to avoid delaying Sunoco’s work on the Mariner East 2 Pipeline due to a dispute that no longer exists. Petition at 3.

In its Answer, the Township requests that the Commission deny Sunoco’s Petition. The Township states that Sunoco is attempting to avoid its obligations under the Settlement Agreement by reframing the Township’s case in a manner that suggests that the only relief the Township sought was to stop Sunoco from constructing Valve 344 on the Janiec 2 Tract and that because Sunoco has unilaterally decided not to locate the valve in the Township, the injunction is no longer necessary. The Township avers that Sunoco’s characterization of the case is incorrect because the Township’s intent has always been to enforce Sunoco’s promise to locate the valve on the SPLP Use Area consistent with the Settlement Agreement terms. Answer at 2. The Township cites to Section II.A.2 of the Settlement Agreement, which provides the following, in pertinent part:

. . . a remote operated valve station will be constructed and maintained on [Sunoco’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”).

*Id*. (citing Settlement Agreement at 3). The Township explains that because Sunoco intended to install Valve 344 at the wrong location, a significant amount of evidence and argument was devoted to stopping Sunoco from installing the valve on the Janiec 2 Tract; however, that does not mean that Sunoco should be relieved from installing the valve at the location it promised. Answer at 2-3. The Township believes that the injunction remains necessary because there is no evidence or assertion that the HDD and pipelines Sunoco plans to run in the Township are consistent with Sunoco’s promise to construct the valve in the SPLP Use Area. The Township continues that there is also no evidence or assertion regarding the impact that Sunoco’s unilateral decision will have on the Township and Sunoco has not presented alternative plans for the Township’s safety expert to review. *Id*. at 3. The Township emphasizes that it filed and continues to pursue this action to enforce Sunoco’s obligations under the Settlement Agreement in the best interests of its residents. *Id*. at 4.

The Township avers that the elimination of Valve 344 does not end the disputes in its Complaint. The Township argues that Sunoco agreed in the Settlement Agreement that it would install a valve for the Mariner East 2 pipeline on the SPLP Use Area and until the Commission issues a final Order determining Sunoco’s obligations under the Settlement Agreement, the injunction must remain, and the litigation must continue. *Id*. at 5. The Township contends that Sunoco is attempting to present important new evidence about its unilateral determination that Valve 344 is not necessary and can be eliminated from the Township under the guise of Section 703(g) without the benefit of cross-examination or review by the Township’s consultants. *Id*. at 5-6. The Township asserts that eliminating the injunction will allow Sunoco to perform the HDD and run the pipelines in a manner inconsistent with installing the valve on the SPLP Use Area. *Id*. at 6-7. The Township believes that this will result in the same dilemma that existed before the injunction and subject the Township to the possibility of duplication of the HDD as well as the associated risks and costs to the public. *Id*. at 7.

**Disposition**

Based on our review of the record, the Parties’ positions, and the applicable law, we deny Sunoco’s request for rescission of our *October 2017 Order* under the present circumstances. Our Order granting the Township’s Emergency Relief Petition is soundly based on the record that has been developed, the law that applies to petitions for emergency relief, and the factual circumstances that existed when the Order was entered. Our directive in the *October 2017 Order* was specifically tailored, as follows:

That Sunoco is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final

Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

*October 2017 Order* at 34, Ordering Paragraph No. 3.

The purpose of a Commission Order granting interim emergency relief is to enjoin a party from specific action for a certain time period. The *October 2017 Order* should not be rescinded in the event that the Township wishes to challenge Sunoco’s compliance with the injunction for the time period beginning when the injunction was issued and ending when Sunoco indicated it abandoned the specific enjoined action.

We have previously declined to rescind our Orders under similar circumstances. *See, e.g., Application of Laser Northeast Gathering Company, LLC (Laser)*, Docket No. A-2010-2153371 (Order entered December 5, 2011); *Pa. PUC v. T.W. Phillips Gas and Oil Company* (*T.W. Phillips)*, Docket No. R-2008-2013026 (Order entered April 16, 2010). In the *Laser* proceeding, we granted Laser Northeast Gathering Company, LLC’s (Laser’s) Petition to Withdraw its application to provide natural gas gathering and transporting service by pipeline to the public on the basis that Laser no longer intended to hold itself out as offering service “for the public” and therefore was no longer providing “public utility” service as we had concluded in our prior Orders in that proceeding. *Laser* at 15-16. While we granted the Petition to Withdraw in that proceeding, we did not rescind our prior Orders that found Laser’s proposed service constituted “public utility service.” We noted that while the determinations in those prior Orders were specific to the interlocutory issues presented to us, other statements in those Orders were of generally applicable legal principles, and the Orders also addressed prior Commission and Commonwealth Court decisions that were relevant. *Id*. at 17-18. We stated, “The Commission has the full authority and the obligation to affirm its prior Orders, correct the misapplication of Commonwealth Court precedent, and provide guidance to the public regarding issues within its jurisdiction for future adjudications.” *Id*. at 18.

In the instant case, our *October 2017 Order* addresses prior relevant Commission and appellate decisions relating to our determination to grant the Township’s request for emergency relief and to deny Sunoco’s request that the Township be required to post a bond. Most significantly, as detailed herein, our Order provides a jurisdictional road map for this proceeding and explains our authority over the issues presented in this case. The Parties have not settled this case, the Township has clearly expressed its intent to continue to pursue this action, and it appears that contested issues remain before us.[[8]](#footnote-8) Based on our review of the record, the Township has raised legal issues that implicate our authority under Section 508 of the Code to vary, reform, and revise contracts, as well as legal issues that implicate “service” as broadly defined in the Code and involve the reasonableness, adequacy, and sufficiency of Sunoco’s public utility service under Sections 1501 and 1505 of the Code.

Sunoco avers that granting its Petition will conserve the time and resources of this Commission and the Parties regarding the issue of locating Valve 344 on the Janiec 2 Tract. Through its Petition, it appears that Sunoco is requesting that we dismiss certain issues in this proceeding. For the reasons that have been addressed herein, we find that a petition for rescission is not the appropriate procedural mechanism for such a request. The Parties and the ALJ have other procedural avenues at their disposal at this stage in the proceeding to focus or narrow the issues in this case, if necessary, including settlement, motions made by the Parties, and the ALJ’s authority to exclude irrelevant or immaterial evidence and otherwise regulate the course of the proceeding pursuant to 52 Pa. Code § 5.483(a).

While we are denying Sunoco’s request for rescission, we shall grant Sunoco’s request for a discontinuance of the injunction ordered in the *October 2017 Order* on a going forward basis. The *October 2017 Order* was predicated on Sunoco constructing Valve 344 in the Township. Because Sunoco has stated on the record that it will not construct the valve within the Township, the specific action from which Sunoco was enjoined is moot. Sunoco specifically indicated in its Petition that it will not locate Valve 344 on the Janiec 2 Tract and conduct the activities related to Valve 344 that were the subject of the injunction specified in Ordering Paragraph No. 3 of the *October 2017 Order* and that it would not locate such a valve anywhere in the Township. As such, we find it reasonable to discontinue the injunction in our *October 2017 Order*, effective on the entry date of this Opinion and Order. We emphasize that discontinuing the injunction regarding construction of Valve 344 on a going forward basis will not impact the Township’s ability to prosecute the issues raised in its Complaint in any way.

Additionally, we find it appropriate to address some procedural issues. We note that under the existing procedural schedule, hearings are scheduled for the end of April 2018, which is more than one year after the Township filed its Complaint against Sunoco, with briefing scheduled to conclude in June 2018. We recognize that the procedural schedule is an issue currently before the Commission as part of our interlocutory review process. However, given that outstanding issues appear to remain for litigation and in the interest of administrative efficiency, we direct the OALJ to return this matter to us for final consideration and resolution no later than the September 20, 2018 Public Meeting.

**IV. Conclusion**

Based on our review of the record, the Parties’ positions, and the applicable law, we shall: (1) deny Sunoco’s request for rescission of our *October 2017 Order*; (2) discontinue the injunction in our *October 2017 Order*, effective on the entry date of this Opinion and Order; and (3) provide that the OALJ return the matter to this Commission for final consideration and resolution no later than the September 20, 2018 Public Meeting, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition to Rescind or Discontinue, filed by Sunoco Pipeline, L.P. on November 21, 2017, relative to the Opinion and Order entered on October 26, 2017, is granted, in part, consistent with this Opinion and Order.

2. That Sunoco Pipeline, L.P.’s request for rescission of the Opinion and Order entered on October 26, 2017, is denied.

3. That the injunction ordered in Ordering Paragraph No. 3 of the Opinion and Order entered on October 26, 2017, is discontinued, effective on the entry date of this Opinion and Order.

4. That the Office of Administrative Law Judge return this matter to us for final consideration and resolution no later than the September 20, 2018 Public Meeting.

****  **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 21, 2017

ORDER ENTERED: January 9, 2018

1. The CCWGT is an *ad hoc* association of individuals who own and reside on property adjacent to or within approximately 1,000 feet of the properties Sunoco owns near Boot Road in the Township. [↑](#footnote-ref-1)
2. Section 507 provides the following:

   Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the commission grants its approval thereof. [↑](#footnote-ref-2)
3. The Settlement Agreement is also Township Exhibit 4 in this proceeding. [↑](#footnote-ref-3)
4. The Township originally filed its Emergency Petition as a petition seeking both *ex parte* emergency relief under 52 Pa. Code § 3.2 and interim emergency relief under 52 Pa. Code § 3.6. By Secretarial Letter issued July 11, 2017, the Commission declined to issue an *ex parte* emergency order under Section 3.2. The Commission directed that the Petition proceed solely at Docket Number C-2017-2589346 as a petition for interim emergency relief pursuant to Sections 3.6 to 3.12 of the Commission’s Regulations, 52 Pa. Code §§ 3.6-3.12. [↑](#footnote-ref-4)
5. 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). [↑](#footnote-ref-5)
6. Section 508 provides the following:

   The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of

   the commission, shall become effective 30 days after service of such order upon the parties to such contract.

   66 Pa. C.S. § 508. [↑](#footnote-ref-6)
7. Sunoco originally filed a MPC Section 619 petition, at Docket No. P-2014-2411966, that requested the Commission to determine that the public utility facilities it planned to construct in West Goshen Township are reasonably necessary for the convenience or welfare of the public. Sunoco subsequently withdrew its MPC Section 619 Petition after reaching the Settlement Agreement. Because the Commission granted Sunoco’s petition to withdraw its Section 619 MPC Petition, the Commission did not reach a determination under 53 P.S. 10619 that Sunoco’s proposed facilities in West Goshen Township are reasonably necessary for the convenience or welfare of the public. [↑](#footnote-ref-7)
8. The fact that the Parties have not reached a settlement and/or the Township has not filed a Petition to Withdraw its Complaint makes this case distinguishable from both the *Laser* and *T.W. Phillips* proceedings in which the Parties resolved the contested matters. Even in those proceedings where the cases were resolved to the Parties’ satisfaction, we did not rescind our prior Orders on the matters that were previously before us. Because the instant proceeding has not been resolved and contested issues appear to remain for litigation, there are even more compelling reasons in this case not to rescind the *October 2017 Order*. [↑](#footnote-ref-8)