



Thomas J. Sniscak  
(717) 703-0800  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

Kevin J. McKeon  
(717) 703-0801  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
Whitney E. Snyder  
(717) 703-0807  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

February 5, 2018

**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.'s ANSWER IN OPPOSITION REGARDING WEST GOSHEN TOWNSHIP'S JANUARY 24, 2018 PETITION FOR RECONSIDERATION, OR, IN THE ALTERNATIVE, AMENDMENT OF THE COMMISSION'S ORDER ENTERED JANUARY 9, 2018**

Dear Secretary Chiavetta:

Enclosed please find Sunoco Pipeline L.P.'s ("SPLP") Answer in Opposition Regarding West Goshen Township's January 24, 2018 Petition for Reconsideration, or, in the Alternative, Amendment of the Commission's Order Entered January 9, 2018 in the above-referenced matter. Copies of the Answer have been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours

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

TJS/WES/jld  
Enclosure

cc: Chairman Gladys M. Brown (via hand delivery)  
Commissioner John F. Coleman, Jr. (via hand delivery)  
Commissioner Norman J. Kennard (via hand delivery)  
Commissioner David W. Sweet (via hand delivery)  
Vice Chairman Andrew G. Place (via hand delivery)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township,

Complainant,

v.

Sunoco Pipeline, L.P.,

Respondent.

Docket No. C-2017-2589346

---

**ANSWER IN OPPOSITION OF SUNOCO PIPELINE, L.P. REGARDING WEST  
GOSHEN TOWNSHIP'S JANUARY 24, 2018 PETITION FOR RECONSIDERATION,  
OR, IN THE ALTERNATIVE, AMENDMENT OF THE COMMISSION'S ORDER  
ENTERED JANUARY 9, 2018**

---

Sunoco Pipeline, L.P. (SPLP) submits its Answer Opposing West Goshen Township's (WGT) Petition for Reconsideration or, in the Alternative, Amendment of the Commission's Order Entered January 9, 2018 (Petition). WGT seeks two forms of relief: (1) "Reconsideration" of the January 9, 2018 Order that discontinued the injunction the Commission imposed in its October 26, 2017 Order; and (2) "Amendment" of the January 9, 2018 Order to allow interlocutory appeal. The Petition should be denied as described below.

**I. Summary of Legal Argument and Identification of Factual Misstatements in the Petition.**

- A. Reconsideration is an improper vehicle, with different legal standards, to seek *imposition* of a new or different injunction which during a proceeding is governed by the stringent proof standards in 52 Pa. Code § 3.6(b). The reconsideration arguments or allegations are neither new nor novel under *Duick*, suffer from materiality and relevancy deficits regarding the January 9, 2018 Order, and are contested. The facts offered by WGT in support are riddled with errors or are based on stale or inapplicable information. Finally, the petition should be denied as it is either untimely or unripe or both.**

**B. WGT's petition request for certification of interlocutory appeal must be rejected as it is (a) untimely under 52 Pa. Code § 5.633, (b) is not, as required by the Commission's regulations, in the form of a motion which is subject to a different response procedure, and (c) in any event fails to raise any novel, ripe, or other issue necessitating interlocutory appellate review of the January 9, 2018 Order lifting the narrow injunction which rendered moot the issue WGT wants to continue to litigate.**

WGT's Petition is styled as a request for reconsideration under 52 Pa Code § 5.572 of the January 9, 2018 Order, which lifted the injunction the Commission granted in its October 26, 2017 Order (Commission Injunction). It is not. That injunction was narrow<sup>1</sup> and confined to the only relief requested in WGT's Amended Complaint<sup>2</sup>—that SPLP be prohibited from placing Valve 344 on SPLP's property known as Janiec 2. WGT neither sought timely reconsideration nor permission to appeal the scope of the Commission Injunction, and is now back under the guise of seeking reconsideration of the January 9, 2018 Order, for what really is a collateral attack or second bite at the argument-apple regarding the scope of the Commission Injunction.

As explained below, citing facts that were either available<sup>3</sup> to WGT when it could have timely sought reconsideration of the October 26, 2017 Order and/or which are irrelevant to the January 9, 2018 Order lifting the narrow injunction in place which rendered that dispute moot, WGT contends that a completely new and broader injunction essentially based upon a new cause of action (improperly plead) should be adopted based upon its mere post-decision allegations which, as discussed in detail below, are wrong and have nothing to do with the Janiec 2 injunction which is now moot.

---

<sup>1</sup> See n. 13 *infra*, *Woodward Twp.*, for the legal proposition that any injunction should be narrow.

<sup>2</sup> See Exhibit 1 attached hereto, WGT's Amended Complaint. Note that the sole issue raised in the Amended Complaint with respect to locating a valve is WGT's opposition to siting a valve on the Janiec 2 tract.

<sup>3</sup> To this extent, as discussed below, WGT has waived presenting those facts such as reports it had in its possession via discovery which it in any event interprets incorrectly and out of proper context.

In short, a petition for reconsideration (even if it were timely, which it is not because it is a collateral attack on the scope of the injunction of the October 26, 2017 Order) is an inappropriate legal and procedural vehicle<sup>4</sup> to *impose a new injunction or different injunction based on different allegations particularly where, as here, WGT's allegations are contested, may have been waived, clearly are insufficient and flat-out wrong, and therefore offers no basis to grant the extraordinary remedy of an injunction.*

None of the requirements of 52 Pa Code § 3.6 *et al.* which govern *imposing* emergency orders during complaint<sup>5</sup> proceedings occurred—including its requirement for an underlying complaint pleading regarding the allegations purportedly supporting the injunction request, an opportunity to answer or challenge preliminarily (preliminary objections) the underlying complaint allegations, answer to the petition for an injunction, and a hearing<sup>6</sup> required by 52 Pa

---

<sup>4</sup> For starters, the standard for reconsideration is fundamentally different (new or novel or something overlooked which a party could not have raised previously) from the standard for petitions for interim emergency orders during a properly plead proceeding under 52 Pa. Code § 3.6 with *facts from an emergency order hearing* being needed for the petitioner to prove:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if not granted.
- (4) The relief requested is not injurious to the public interest.

<sup>5</sup> Note that a complaint pleading is a prerequisite under Section 3.6 to the interim injunction relief WGT seeks. WGT's present Complaint and Amended Complaint does not satisfy that and its continuing procedural error is to treat its complaint and the injunction like they are a "blank check" capable of being endorsed and changed to fit WGT's evolving allegations it uses to delay or stop ME2. That is not legally proper.

<sup>6</sup> Importantly while a hearing is required in the context of granting an injunction, a hearing is not required to dissolve an injunction as the Commission did in its January 9, 2018 Order or deny an injunction as the Commission should do here. *See Vianello v. Commonwealth Telephone Co.*, 70 Pa. P.U.C. 489 (1989) ("The Regulations fail to require the convening of an evidentiary hearing prior to the rendition of an Order denying interim emergency relief, however. This procedure comports with the well-established body of law applicable to the law courts. The Commission's Regulations providing for "emergency relief" are this administrative agency's equivalent to the law court's equitable powers to issue an injunction. In the law courts, it has been held that a hearing is required before a preliminary injunction can be issued, but that a chancellor need not conduct an evidentiary hearing before denying requested relief in the nature of a preliminary injunction.") (citing *Myshko v. Galanti*, 309 A.2d 729 (Pa. 1973)).

Moreover, while a hearing was held on WGT's original injunction request, that hearing record is not an adequate opportunity to be heard in the context of granting WGT's current request which present different allegations in support of relief. That hearing focused solely on whether siting a valve on Janicc 2 presented safety issues and/or

Code § 3.6a. Not only does WGT's Petition flout standard pleading requirements and constitutionally and statutorily required due process, but its allegations prove none of the criteria set forth in Section 3.6 regarding its newly requested injunction, which is different than the October 26, 2017 Commission Injunction and the lift thereof via the January 9, 2018 Order. It is therefore entitled to no relief by its legally defective petition. Equally deficient and unsuitable as a basis for the extraordinary and different injunctive relief WGT seeks are the "facts" in WGT's petition. These facts are riddled with errors and/or are based upon stale and inapplicable information. For example:

- a) WGT claims SPLP's petition was not sworn. Petition at P 43. That is untrue as it was properly verified under the Commission's rules of practice and procedure.
- b) WGT continues to claim and infer that a valve is mandated at the SPLP Use Area under the Settlement Agreement. Petition at PP 1, 23. That is untrue as a plain reading of the settlement is that it is "subject to engineering constraints" and by its express terms thus contemplates the valve may not be able to be constructed. Settlement at Section II (A)(2). SPLP's position in this litigation is and continues to be that there are engineering constraints which render the SPLP Use Area unsuitable and imprudent. SPLP has provided an exhaustive amount of discovery to WGT establishing this. SPLP's position also is that a valve at that location is no longer necessary based on its managerial discretion and recent modifications to a valve immediately upstream.
- c) WGT claims that having no valve at SPLP Use Area results in a 15-mile gap where there are no valves and then uses that to conjure a conclusion that this creates a safety problem. Petition at PP 34-35. This is untrue and is based on stale information, and misstates the 7.5-mile ASME reference as being some type of inflexible mandate, which it is not. SPLP's Engineering Design Basis Memorandum (EDBM), which has been discussed with both the PUC and PHMSA, states "*approximately*<sup>7</sup> 7.5 miles." Moreover, WGT's claim ignores system revisions in late 2017 or which postdate the Settlement Agreement and change the need for Valve 344. Specifically, SPLP modified its plans in late 2017 to provide for an automated valve at East Lincoln Highway which is 2.5 miles upstream of the

---

violated the Settlement Agreement. Notably, WGT does not provide any cites to the hearing record that specifically support its current request.

<sup>7</sup> Approximations in determining distance depend on circumstances such as topography, local conditions, impact on adjoining property, constructability, and whether other features of the system such as the type and speed of remote or automatic valves.

eliminated valve. There will also be an automated valve along Middletown Road, which is 5.9 miles downstream of the eliminated valve. In conjunction with the safety features SPLP is implementing that go above and beyond safety requirements, there is no question that the Mariner East 2 (ME2) Line will be safe regardless of whether a valve is located on the SPLP Use Area. Valve placement is only one aspect of safety, and it is a mitigating aspect in the event of a release. SPLP goes above and beyond on other measures such as using higher quality pipe standards than required and performing more inspections of the pipe and welds before installation than are required, which decreases the chances of a release in the first place and therefore goes further towards safety than any mitigation measure. In short, there is no 15-mile gap and WGT's claims and concerns based on the faulty or outdated facts it presents lack merit.

- d) WGT claims its injunction must be issued because if Horizontal Directional Drilling (HDD) occurs the valve must be installed then. Petition at PP 20-21. That is untrue, as it can be installed later or separately if it were necessary (which it is not) or if the valve was not subject to "engineering constraints" per the Settlement at Section II (A)(2) at the SPLP Use Area. WGT's claim is a pretext to delay ME2 and HDD by incorrectly and inextricably attempting to link activities which are separate and can proceed separate from installation of a valve if one was needed (which it is not) based on engineering judgment.
- e) WGT claims that the DEP's January 3, 2018 Administrative Order is proof that the narrow injunction lifted in the January 9, 2018 Order should be reinstated and transformed into a much broader injunction. Petition at PP 24-27. That is untrue and has nothing to do with construction practices and conditions in WGT. First, the DEP Order can in no way change or impact the Commission's January 9, 2018 Order lifting the injunction against a valve on Janiec 2 because of SPLP's acceptance of a condition that it will not locate a valve on the Janiec 2 property nor do construction activity related to locating the valve there. The matter is moot, and the subsequent DEP Order does not change that. Even if it were relevant, which it is not, the conditions that were the subject of the DEP Order are neither present nor could replicate themselves in WGT. They also have nothing to do with Janiec 2 and constructing a valve there. Thus, WGT's generalized new safety allegations raised improperly in its Petition, and its questionable attempt to tie the DEP Order to the now moot subject of the January 9, 2018 Order, must be rejected.

After WGT's Petition is denied due to deficiencies identified in this Answer in Opposition, and mindful of Vice Chairman Place's admonition in his statement relative to the January 9, 2018 Order regarding settlement,<sup>8</sup> to prevent time and expense of unnecessary litigation such as this

---

<sup>8</sup> December 21, 2017 Statement of Vice Chairman Place at 2.

petition and to conserve the costs and time of the parties and this Commission, SPLP would be willing to have a separate settlement Judge appointed pursuant to 52 Pa. Code § 5.223(c) (“A different presiding officer or a mediator, if appropriate, will be assigned by the Chief Administrative Law Judge to participate in settlement discussions upon the request of a party”) to see if the parties can resolve the few remaining issues in this litigation.

It takes two parties in this matter to negotiate, and SPLP has been repeatedly unsuccessful in its efforts to achieve bi-lateral settlement discussions. SPLP hopes WGT will accept this overture to have that occur under the auspices of a Settlement Judge. SPLP notes that one of WGT’s claims and concerns noted in ALJ Barnes’ decision,<sup>9</sup> and recognized in the Commission’s October 26, 2017 decision,<sup>10</sup> was potential impact upon WGT’s local property tax basis and its residents if the Janiec 2 property (that SPLP owns) is not used for a potential \$35 million-dollar retirement home project, which was contemplated to occur on the property prior to SPLP’s ownership of Janiec 2. October 26, 2017 Order at 32. SPLP is willing, among other things, to revisit that issue if a global settlement of the parties’ differences can be achieved. In fact, SPLP has been in discussions with a developer to potentially make that happen.

## **II. Procedural History**

In 2015, SPLP and WGT,<sup>11</sup> entered into a Settlement Agreement concerning the siting of Valve 344, in West Goshen Township in connection with SPLP’s ME2 whereby SPLP agreed to (i) limit construction and siting of the valve to a specified area referred to in the Settlement

---

<sup>9</sup> July 24, 2017 ALJ RD at 7 (“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.”).

<sup>10</sup> October 26, 2017 Order at 29 (“Sunoco’s construction plans have had a direct impact on the \$35 million Traditions Project the Township approved to be located on the Janiec 2 Tract.”).

<sup>11</sup> The Concerned Citizens of West Goshen Township was also a party to the Settlement Agreement, but is no longer a party under Docket No. C-2017-2589346.

Agreement as the “SPLP Use Area” unless it is “subject to engineering constraints”<sup>12</sup> and (ii) not construct any other above-ground pipeline facility, like Valve 344, in the township.

On March 29, 2017, WGT filed the underlying Amended Complaint which alleged *only* that SPLP was in breach of the 2015 Settlement Agreement by intending to construct Valve 344 on the Janiec 2 tract of land, a parcel across the road from the SPLP Use Area, and importantly requested *only* SPLP be required to “cease and desist with any actions in support of constructing, installing, or operating any valve or appurtenant facilities” in the township other than on the SPLP Use Area. *See* WGT Amended Complaint. On July 7, 2017, WGT filed a Petition for an Ex Parte Emergency Order and an Interim Emergency Order that sought *only* to enjoin SPLP from “beginning any construction on the Janiec 2 Tract, related to the Janiec 2 Tract, or anywhere else in the Township” other than in the SPLP Use Area. On July 18, 2017, prior to ALJ Barnes’ granting WGT’s petition for an emergency order, a hearing was held during which time four WGT witnesses testified concerning *only* how important it was that, if Valve 344, was to be constructed in the township, then it needed to be sited in the SPLP Use Area. On July 24, 2017, ALJ Barnes granted WGT’s Petition and entered an overbroad injunction which enjoined SPLP from “all current construction.” On October 26, 2017, this Commission issued a final interim order that corrected the overbroad issue by significantly narrowing<sup>13</sup> ALJ Barnes’ injunction against SPLP to *only* enjoin construction activities related to the siting of Valve 344 on Janiec 2. On November 21, 2017, SPLP filed a Petition to Rescind or Discontinue the October 26 Order based on SPLP’s

---

<sup>12</sup> SPLP’s position on the merits is that it is subject to engineering constraints which render it imprudent and unnecessary under present conditions and modifications to other valves. The Commission clearly has the power to disregard a term of a settlement where it no longer is apt. *See, e.g., ARIPPA v. Pennsylvania Pub. Util. Comm’n*, 792 A.2d 636, 662 (Pa. Cmwlth. 2002).

<sup>13</sup> *Pye v. Com., Ins. Dep’t.*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, the court *must narrowly tailor its remedy* to abate the injury.”).



engineering and managerial discretion to not site a new valve on Janiec 2. On December 21, 2017, the Commission issued an order that bifurcated SPLP's request and denied the request to rescind the October 26, 2017 Order but lifted the injunction prohibiting construction on Janiec 2 because construction on Janiec 2 was no longer at issue, and said order was entered and became effective on January 9, 2018.

The instant WGT Petition purports to seek a rescission of the January 9, 2018 Order<sup>14</sup> – relief that, if granted, would reinstate the October 26, 2017 Order and thus the injunction related to Janiec 2 – based on conclusions not supported by the record and facts not relevant to Valve 344; however, what WGT actually seeks is the rescission of the October 26, 2017 Order so that ALJ Barnes' July 24, 2017 overbroad-sweeping injunction can be reinstated, which never became a Commission order by virtue of the intervening October 26, 2017 Order and the October 26, 2017 order cannot now be challenged 91 days after having been entered.

### III. Argument

- A. **Reconsideration is an improper vehicle, with different legal standards, to seek imposition of a new or different injunction which during a proceeding is governed by the stringent proof standards in 52 Pa. Code §3.6(b). The reconsideration arguments or allegations are neither new nor novel under Duick, and suffer from materiality and relevancy deficits regarding the January 9, 2018 Order, and are contested. The facts offered by WGT in support are riddled with errors or are based on stale or inapplicable information. Finally, the petition should be denied as it is either untimely or unripe or both.**

The Commission should reject WGT's Request for Reconsideration for at least any of the reasons that follow.

1. **Reconsideration is an improper vehicle, with different legal standards, to seek imposition of a new or different injunction which during a**

---

<sup>14</sup> WGT's Petition alternatively seeks to certify the January 9, 2018 Order for interlocutory review pursuant to 42 Pa. C.S. § 702(b), but as discussed *infra*, under the Commission's regulations, such a request was not filed within the 10-day timeline to do so and thus must be denied. *See* 52 Pa. Code § 5.633.

**proceeding is governed by the stringent proof standards in 52 Pa. Code §3.6(b).**

WGT has already admitted that if the Commission discontinued the Commission Injunction, WGT would have to file a new request before the ALJ for emergency relief based presumably upon the allegations it makes in its petition for reconsideration of the January 9, 2018 Order. *See* WGT Opposition at P 8 (“[i]f this request [SPLP’s petition to lift the injunction] is granted, WGT would be forced to file a new petition for interim emergency relief and have a new hearing”). This is because, as discussed below, the record created below for the new injunction WGT seeks based on new or different factual allegations does not (and legally cannot) support its current request. WGT’s attempt to seek an injunction here through reconsideration is procedurally and substantively improper and is an end-run about the Commission’s regulation at 52 Pa Code §3.6(b) and the strident requirements set forth therein for imposing an injunction. The Commission should deny it without addressing the merits of WGT’s request.

In short, a petition for reconsideration (even if it were timely, which it is not because it is a collateral attack on the scope of the injunction of the October 26, 2017 Order) is an inappropriate legal and procedural vehicle<sup>15</sup> to *impose a new injunction or different injunction based on different allegations particularly where, as here, WTG’s allegations are contested, may have*

---

<sup>15</sup> For starters, the standard for reconsideration is fundamentally different (new or novel or something overlooked which a party could not have raised previously) from the standard for petitions for interim emergency orders during a properly plead proceeding under 52 Pa. Code §3.6 with *facts from an emergency order hearing* being needed for the petitioner to prove:

- (1) The petitioner’s right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if not granted.
- (4) The relief requested is not injurious to the public interest.

*been waived, clearly are insufficient and flat-out wrong, and therefore offer no basis to grant the extraordinary remedy of an injunction.*

a. The Petition is contrary to both statutory and constitutional due process.

None of the due process requirements of 52 Pa Code § 3.6 which govern *imposing* emergency orders during complaint<sup>16</sup> proceedings occurred—including the requirement for an underlying complaint pleading regarding the allegations purportedly supporting the injunction request, an opportunity to answer or challenge preliminarily (preliminary objections) the underlying complaint allegations, an answer to the petition for an injunction, and a hearing required by 52 Pa Code § 3.6a.<sup>17</sup> Not only does WGT’s end-run flout standard pleading requirements and constitutionally and statutorily required due process, but its allegations prove none of the criteria set forth in Section 3.6 regarding its newly requested injunction, which is different than the October 26, 2017 Commission Injunction and the lift thereof via the January 9, 2018 Order. It is therefore entitled to no relief by its legally defective petition.

---

<sup>16</sup> Note that a complaint pleading is a prerequisite under Section 3.6 to the interim injunction relief WGT seeks. WGT’s present Complaint and Amended Complaint do not satisfy that and its continuing procedural error is to treat its complaint and the injunction like they are a “blank check” capable of being endorsed and changed to fit WGT’s evolving allegations it uses to delay or stop ME2. That is not legally proper.

<sup>17</sup> Importantly while a hearing is required in the context of granting an injunction, a hearing is not required to dissolve an injunction as the Commission did in its January 9, 2018 Order or deny an injunction as the Commission should do here. *See Vianello v. Commonwealth Telephone Co.*, 70 Pa. P.U.C. 489 (1989) (“The Regulations fail to require the convening of an evidentiary hearing prior to the rendition of an Order denying interim emergency relief, however. This procedure comports with the well-established body of law applicable to the law courts. The Commission’s Regulations providing for “emergency relief” are this administrative agency’s equivalent to the law court’s equitable powers to issue an injunction. In the law courts, it has been held that a hearing is required before a preliminary injunction can be issued, but that a chancellor need not conduct an evidentiary hearing before denying requested relief in the nature of a preliminary injunction.”) (citing *Myshko v. Galanti*, 309 A.2d 729 (Pa. 1973)).

Moreover, while a hearing was held on WGT’s original injunction request, that hearing record is not an adequate opportunity to be heard in the context of granting WGT’s current request which present different allegations in support of relief. That hearing focused solely on whether siting a valve on Janiec 2 presented safety issues and/or violated the Settlement Agreement. Notably, WGT does not provide any cites to the hearing record that specifically support its current request.

**2. The Petition, in addition to due process insufficiency, fails to meet the proof standards of 52 Pa. Code § 3.6(b)**

To obtain the new emergency relief WGT seeks, it must show:

- (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). The party seeking relief (here, WGT) bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6(b); 66 Pa. C.S. § 332(a). 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), *allot. den.*, 62 A.2d 863 (Pa. 1992).

Attempting to rely on its sleight of hand in requesting reconsideration, WGT fails to even attempt to show it meets this standard. The requested relief should be denied for this reason alone.

WGT cannot rely on the Commission's prior findings in the October 26, 2017 Order to show a substantial legal question because many of those findings and circumstances are irrelevant to the injunction WGT now requests. Obviously, many substantial legal questions may be present in a proceeding, but to fulfill the emergency relief standard, there must be substantial legal questions that actually pertain to the emergency relief requested. For example, the Commission found substantial legal questions existed:

- “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.” October 26, 2017 Order at 21.

- “concerning the safety and reasonableness of locating Valve 344 on the Janiec 2 Tract.” *Id.* at 22. and
- concerning “whether Sunoco has the authority to construct a valve on the Janiec 2 Tract.” *Id.* at 23.

Given SPLP will no longer locate a valve on Janiec 2, circumstances have changed and these are no longer substantial legal questions pertinent to the requested emergency relief, even though these issues may remain to be litigated before the ALJ.

The same argument holds true as to whether the need for relief is immediate. The Commission based its findings on the fact that at that time SPLP was proceeding with steps towards construction of the valve on Janiec 2. *Id.* at 25-26. SPLP is no longer engaged in activities to construct a valve on Janiec 2 and will not engage in those activities. There is no immediacy here.

WGT also can no longer show irreparable harm. The Commission noted both monetary harm (SPLP was planning to sell the Janiec 2 property to a developer to create a \$35 million-dollar independent living facility, which would benefit WGT and could be prevented if the valve was placed on Janiec 2) and non-monetary harm (if SPLP “installs a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area”). *Id.* at 32. Again, neither of these conditions exist since SPLP will not site the valve on Janiec 2. As to non-monetary harm, SPLP in fact can later install a valve on the SPLP Use Area if the Commission so orders at any time. Likewise, SPLP could still sell the Janiec 2 tract to the developer to benefit WGT. SPLP is interested in reaching a settlement that will benefit WGT and allow SPLP to move forward with ME2 construction free of this litigation, but SPLP cannot settle the case alone. As discussed above, SPLP is willing to commit to a settlement judge procedure to assist the parties negotiate.

Likewise, the factors relating to whether an injunction is injurious to the public have changed since the October 26, 2017 Order. The Commission stated: “We agree 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.” *Id.* Given the misrepresentations, inaccuracies, and unsupported allegations WGT raises in its current Petition, the fact that the Settlement Agreement does not require SPLP to place a valve in WGT, and WGT’s unwillingness to engage in settlement discussions, it appears WGT’s actual intent is to prevent construction of ME2.<sup>18</sup> Moreover, the Commission also found “that maintaining the current status quo without valve construction on the Janiec 2 Tract until we hold an evidentiary hearing and issue a decision addressing the instant Settlement Agreement dispute, is the most appropriate way to satisfy the public interest under the circumstances in this case.” October 26, 2017 Order at 32. Right now, that status quo remains in place – no valve is being constructed on Janiec 2 and SPLP is not taking actions inconsistent with the obligations of the Settlement Agreement.

An injunction here would change the status quo and injure the public via further delay and expense in constructing ME2. This Commission has already found that SPLP’s actions as a public utility in constructing the ME2 Line are in the public interest. *See, e.g., Petition of Sunoco Pipeline, L.P. for Amendment of the Order Entered on August 29, 2013*, Docket No. P-2014-2422583 at 9-10 (Order entered Jul. 24, 2014). Even assuming SPLP’s decision not to site a valve could be found to be a breach of the Settlement Agreement (it is not), “it is well settled that a court will not

---

<sup>18</sup> Notwithstanding WGT’s prior claim that it does not seek to halt construction of the pipeline altogether, the two newly-elected WGT Supervisors which, created a new majority at the Board, were elected after running on a campaign platform that vowed to do just that. *See Mary LaSota and Robin Stuntebeck: Protecting West Goshen from Sunoco’s Dangerous Pipeline*, Food & Water Action Fund (Oct. 5, 2017), available at <https://www.foodandwateractionfund.org/content/mary-lasota-and-robin-stuntebeck-protecting-west-goshen-sunoco%E2%80%99s-dangerous-pipeline>; Kelly Witman, *Local Activists Fight to Halt Future Pipeline*, The Quad (Nov. 14, 2017), available at <https://www.wcuquad.com/6009467/news/local-activists-fight-to-halt-future-pipeline/>; *4 Antis in Chester County, PA Win Election Big Green \$*, Marcellus Drilling News (Nov. 9, 2017) available at <https://marcellusdrilling.com/2017/11/4-antis-in-chester-county-pa-win-election-using-big-green/>; Bill Rettew Jr., *Dem Supervisor Winners in West Goshen and Uwchlan Chalk Up Victories to Conversations With Neighbors*, Daily Local News (Nov. 8, 2017), available at <http://www.dailylocal.com/article/DL/20171108/NEWS/171109801>.

enjoin the breach of an agreement where performance would be contrary to the public welfare” *Stellwagon v. Pyle*, 390 Pa. 17, 24–27 (1957) (holding no injunction would issue to prevent breach of agreement where injunction would interfere with utility’s Commission duties to construct transmission line that Commission had already found to be in the public interest.). WGT clearly cannot rely on the Commission’s prior findings on the emergency relief standard and the “new” arguments<sup>19</sup> WGT attempts to raise concerning the safety of eliminating the valve cannot fulfill the standard either because WGT is wrong. Elimination of the valve does not present any safety concerns. Elimination of the valve only results in only 8.4 miles between valves, contrary to WGT’s representations. In February 2017, SPLP obtained DEP permits for the valve 5.9 miles downstream from the SPLP Use Area and the valve 2.5 miles upstream from the SPLP Use Area. When SPLP determined it did not need to site a valve in WGT, it did so on the basis that the distance between these valves is compliant with its EDBM and industry guidance, especially considering SPLP also decided to automate the upstream valve in November 2017. Automated valves are a significant upgrade from manual valves; the automated valves SPLP installs can both sense on their own changes in pressure and close the valve and can be remotely closed by the operators that monitor the pressure on the pipeline 24/7.

SPLP made its decision based on its EDBM, which has been discussed with both the Commission and PHMSA, that states: “The pipeline will have valve sites spaced approximately 10 miles apart in rural locations, and *approximately* 7.5 miles apart in commercial, industrial and urban locations.” EDBM at 2.7.4 (emphasis added). This is based on SPLP’s expertise and allows it to exercise its discretion, because as WGT’s witness Mr. Kuperwicz admits, there are no

---

<sup>19</sup> As described above, these new arguments also cannot serve as the basis for an injunction because they are challenged and due process requires a hearing be held before they become the basis of any injunctive relief.

regulations concerning the placement of this type of valve. Further, Mr. Kuperwicz informed WGT in his January 6, 2017 report, “the specific placement of valves and their possible remote actuation is not an exact science.” *See* Accufacts Report on Mariner East 2 Expansion Project at 6 (attached hereto as Exhibit 2).

WGT incorrectly makes great weight of the guidance in ASME B31.4, Section 434.15.2(e)’s use of the word “shall” (“valves shall be installed at 7.5-mile (12 km) maximum spacing on piping systems”). But as any regulator knows, guidance is non-binding. Further, Mr. Kuperwicz informed WGT in his January 6, 2017 report, “the specific placement of valves and their possible remote actuation is not an exact science.” *See* Exhibit 2, Accufacts Report on Mariner East 2 Expansion Project, at 6. He also admits that this guidance does not take into account various factors that can determine the safe distance between valves, including terrain and safety equipment, such as use of automated valves or the speed at which the valve can close. WGT Exhibit F at 32. Moreover, valves are not a primary safety feature of the pipeline, as Mr. Kuperwicz told WGT in his January 2017 Memorandum. *See* Exhibit 2 at 6. Valve placement is only one aspect for mitigating a release. SPLP goes above and beyond on other measures such as using higher quality pipe standards than required and performing more inspections of the pipe and welds before installation than are required, which decreases the chances of a release in the first place and therefore goes further towards safety than any mitigation measure. *See* Mariner East 2 Pipeline Practices and Design, attached hereto as Exhibit 3. SPLP’s determination to eliminate the valve, considering all of the factors related to safety and overall design of ME2 is consistent with industry guidance, its EDBM, and is not a safety concern.

WGT is not simply seeking, as it states, “reinstatement” of the Commission Injunction. *See, e.g.*, WGT Petition at P 38 and p. 11 (Wherefore clause). That injunction was limited and



specifically tailored, and is now moot because SPLP no longer intends to engage in the specific activities that were enjoined. January 9, 2018 Order at 17 (“Our directive in the October 2017 Order was specifically tailored”).

Instead, WGT seeks the Commission to impose a new injunction based on new claims or allegations moving to its next argument attempt and invitation to use the Commission to stop or delay ME2. For instance, WGT’s attempt is revealed in its request here to revive (again evading the Section 3.6 and pleading requirements discussed above) the overbroad ALJ Injunction, which the Commission refused to do in its October 26, 2017 Order. *See* WGT Petition at P 5 (“On July 24, 2017, Administrative Law Judge Elizabeth Barnes (“ALJ”) entered an Interim Emergency Order (“Injunction”)”). A comparison of the plain terms of the ALJ Injunction and Commission Injunction demonstrate that the Commission narrowed the injunction in its October 26, 2017 Order. The ALJ Injunction stated that SPLP:

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.

July 24, 2017 ALJ Order on Emergency Relief at 10 (emphasis added).

Recognizing the overbreadth<sup>20</sup> of this injunction, in its October 26, 2017 Order (*see also* January 9, 2018 Order at 17 (“Our directive in the October 2017 Order was specifically tailored”)), the Commission narrowed the ALJ Injunction by:

- Removing the phrase “all current construction including” which could have been interpreted to imply prohibition of all construction of the ME2 Line; and

---

<sup>20</sup> *See* fn 12 *infra.*, *Woodward Twp.*, for the legal proposition that any injunction should be narrowly crafted.

- Limiting the prohibition on horizontal directional drilling activities in “3)” to those drilling activities related to installing the valve on Janiec 2, not all drilling activities on Janiec 2.

*See* October 26, 2017 Order at 34, P 3. (“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.”) (emphasis added).

- 3. The reconsideration arguments or allegations are neither new nor novel under *Duick*, and suffer from materiality and relevancy deficits regarding the January 9, 2018 Order, and are contested.**

Even if a petition for reconsideration was an appropriate way to impose a new Commission injunction (which it is not), the petition still would fail under the *Duick* standard. There is nothing “new or novel” about the petition’s allegations which change anything regarding the January 9, 2018 Order lifting the injunction and rendering the issue of constructing a valve on Janiec 2 moot. Thus, all allegations WGT makes are immaterial as discussed below.

For the Commission to consider a petition for reconsideration, the petitioner must raise new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission, and must support those arguments with materials from the record. *See Duick v. Pa. Gas and Water Co.*, Docket No. C-R0597001, *Order Denying Petition for Reconsideration* (Pa. PUC. Dec. 17, 1982) (“[w]hat we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matter being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a

matter or issue was either unwise or in error.”); *Palmerton Telephone Co. v. Global NAPs South Inc., et al.*, Docket No. C-2009-2093336, *Order Denying Petition for Reconsideration* (Pa. PUC. July 29, 2010) (stating that the Commission will not “review and reconsider the same questions ... specifically addressed” in a previous order); *Peluso v. Pa. Power Co.*, Docket No. F-2010-2152607, *Order Denying Petition for Reconsideration* (Pa. PUC. Oct. 28, 2011) (stating that new or novel arguments presented in consideration of a petition for reconsideration must be supported by the record).

WGT has not met this standard. Each of the four arguments it raises in support cannot alone or considered together merit reconsideration based on the record created before the ALJ.

First, WGT argues the Commission overlooked that the January 9 Order “has the effect of ... deciding the Township's Complaint before a full hearing on the merits.” Petition at P 17. This argument is not new nor novel and was not a consideration the Commission “overlooked.” In fact, the Commission has already rejected WGT’s argument. WGT made this argument in its Opposition to the Petition for Reconsideration of the October 26, 2017 Order. *See, e.g., id.* at P 5 (arguing “SPLP is now seeking to avoid the Injunction and the remainder of this litigation by unilaterally asserting that Valve 344 is unnecessary and may be eliminated.”), P 7 (arguing “SPLP is essentially asking the Commission to decide the entire case now under the guise of Section 703(g).”). The Commission did consider this argument and rejected it, stating: “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.” January 9, 2018 Order at 20. WGT’s first argument does not meet the *Duick* standard.

Second, WGT’s argument that the January 9, 2018 Order “subject[s] the Township to unnecessary risks and harm related to re-drilling to allow for the promised installation of the Valve

at the correct location” is likewise neither new, novel, or something the Commission overlooked. WGT argued this in its Opposition to the Petition For Reconsideration of the October 26, 2017 Order. *See, e.g., id.* at P 9 (arguing “This would give rise to the same dilemma that existed before the Injunction and subject the Township to the possibility of needless duplication of the HDD, along with the attendant risks and costs to the public.”). The Commission did not overlook this consideration – the argument was a red herring that relied on WGT blatantly misconstruing the October 26, 2017 Commission Injunction. The Commission never enjoined SPLP from engaging in activities inconsistent with installation of the valve on Janiec 1 (WGT’s alleged “promised” and “correct” location). The Commission injunction was specific and enjoined activities related to actively installing a valve on Janiec 2. The January 9, 2018 Order did nothing more than dissolve the October 26, 2017 Commission Injunction. WGT’s second argument is not new or novel and is not a consideration the Commission overlooked.

Third, WGT attempts to present a wholly irrelevant DEP order as evidence that SPLP’s verified representations to the Commission are not credible. Notably, WGT does not argue any of the alleged violations in the DEP order have anything whatsoever to do with SPLP’s activities in WGT or even Chester County or that the issues raised there could replicate themselves in WGT, and thus WGT concedes the DEP order does not address any issues relevant to this proceeding. Instead, WGT attempts to use the DEP order to sling mud and undermine SPLP’s credibility. This credibility allegation is wholly irrelevant and improper in the context of a request for reconsideration and cannot be considered. While the Commission may take administrative notice of another agencies’ orders, it cannot use those orders as evidence of facts without the opportunity for a full evidentiary hearing of those facts. *See Sanchez v. Pa. Bd. Of Probation and Parole*, 616 A.2d 1097, 1101 (Pa. Cmwlth. 1992); *Peluso v. Pa. Power Co.*, Docket No. F-2010-2152607,

*Order Denying Petition for Reconsideration* (Pa. PUC. Oct. 28, 2011) (stating that arguments presented in consideration of a petition for reconsideration must be supported by the record). Irrelevant and improper arguments such as WGT's use of the DEP order do not meet the *Duick* standard for reconsideration.

Fourth, WGT attempts a second-bite at the apple, presenting an out-of-context discovery response available to it well in advance of submitting its Opposition to the Petition for Rescission of the October 26, 2017 Order. Petition at P 28. Notably, WGT does not state when it received the response – it was November 21, 2017, a full ten days prior to WGT filing its Opposition to the Petition for Rescission of the October 26, 2017 Order. Moreover, this document does not show any new facts – it is no revelation that SPLP uses the guidance discussed therein when considering valve placement and WGT's consultant, as a pipeline expert, must have known this all along. SPLP's EDBM, which has been discussed with both the Commission and PHMSA, expressly states: "The pipeline will have valve sites spaced approximately 10 miles apart in rural locations, and *approximately* 7.5 miles apart in commercial, industrial and urban locations." These facts are not "new evidence." *Application of Buffalo & Pittsburgh Railroad, Inc.*, Docket No. A-00121329, *Order Denying PennDOT's and Snyder Township's Petitions for Reconsideration* (Pa. PUC. Jul. 29, 2010) ("'newly-discovered evidence' to support a request for rehearing must be evidence that was not in existence, or could not have been discovered through the exercise of due diligence, prior to the close of the record."); *Shoemaker v. State Emp. Ret. Bd.*, 688 A.2d 751 (Pa. Cmwlth. 1997) (new evidence "must not have been discoverable prior to the conclusion of the hearing.").

WGT then purports to interpret this document via Mr. Kuprewicz's Affidavit and give an entirely inaccurate, speculative, and unsupported doomsday scenario of what will happen if SPLP does not install a valve in the township. WGT has presented no reason why it could not have

raised these arguments previously, and should not be entitled to do so here, especially without a hearing to which SPLP is entitled in this scenario. These new allegations are not based on the record and thus cannot support WGT's request for reconsideration and instatement of an injunction. *Peluso v. Pa. Power Co.*, Docket No. F-2010-2152607, *Order Denying Petition for Reconsideration* (Pa. PUC. Oct. 28, 2011) (stating that arguments presented in consideration of a petition for reconsideration must be supported by the record). Moreover, these allegations are meritless. There is no safety issue associated with the lack of a valve because SPLP will locate automated remote block valves both upstream and downstream of the SPLP Use Area for a total distance between valves of only 8.47 miles, not the 15 miles WGT alleges. This valve distancing is fully compliant with industry safety guidance, SPLP's EDBM, and is a decision within SPLP's managerial discretion. Notably, WGT admits in its petition that 7.5 miles is not mandated by law or regulation.

Moreover, WGT's factual allegations are riddled with errors and/or are based upon stale and inapplicable information. For example:

- a) WGT claims SPLP's petition was not sworn. Petition at P 43. That is untrue as it was properly verified under the Commission's rules of practice and procedure.
- b) WGT continues to claim and infer that a valve is mandated at the SPLP Use area under the Settlement Agreement. Petition at PP 1, 23. That is untrue as a plain reading of the settlement is that it is "subject to engineering constraints" and by its express terms thus contemplates the valve may not be able to be constructed. Settlement at Section II (A)(2). SPLP's position in this litigation is and continues to be that there are engineering constraints which render the SPLP Use area unsuitable and imprudent. SPLP has provided an exhaustive amount of discovery to WGT establishing this. SPLP's position also is that a valve at that location is no longer necessary based on its managerial discretion and recent modifications to the valve immediately upstream.
- c) WGT claims that having no valve at SPLP Use Area results in a 15-mile gap where there are no valves and then uses that to conjure a conclusion that this creates a safety problem. Petition at PP 34-35. This is untrue and is based on stale information, and misstates the 7.5-mile reference as being some type of inflexible

mandate, which it is not. SPLP's approved EDBM states "*approximately*"<sup>21</sup> 7.5 miles" and ignores system revisions in late 2017 which postdate the Settlement Agreement and change the need for Valve 344. Specifically, SPLP modified its plans in late 2017 to provide for an automated valve at East Lincoln Highway which is 2.5 miles upstream of the eliminated valve. There will also be an automated valve along Middletown Road, which is 5.9 miles downstream of the eliminated valve. In conjunction with the safety features SPLP is implementing that go above and beyond safety requirements, there is no question that the ME2 Line will be safe regardless of whether a valve is located on the SPLP Use Area. Valve placement is only one aspect of safety, and it is a mitigating aspect in the event of a release. SPLP goes above and beyond on other measures such as using higher quality pipe standards than required and performing more inspections of the pipe and welds before installation than are required, which decreases the chances of a release in the first place and therefore goes further towards safety than any mitigation measure. In short, there is no 15-mile gap and WGT's claims and concerns based on the faulty or outdated facts it presents lack merit.

- d) WGT claims its injunction must be issued because if Horizontal Directional Drilling (HDD) occurs the valve must be installed then. Petition at PP 20-21. That is untrue, as it can be installed later or separately if it were necessary (which it is not) or if the valve was not subject to "engineering constraints" per the Settlement at Section II (A)(2) at the SPLP Use Area. WGT's claim is a pretext to delay ME2 and HDD by incorrectly and inextricably attempting to link activities which are separate and can proceed separate from installation of a valve if one was needed (which it is not) based on engineering judgment.
- e) WGT claims that the DEP's January 3, 2018 Administrative Order is proof that the narrow injunction lifted in the January 9, 2018 Order should be reinstated and transformed into a much broader injunction. Petition at PP 24-27. That is untrue and has nothing to do with construction practices and conditions in WGT. First, the DEP Order can in no way change or impact the Commission's January 9, 2018 Order lifting the injunction against a valve on Janiec 2 because of SPLP's acceptance of a condition that it will not locate a valve on the Janiec 2 property nor do construction activity related to locating the valve there. The matter is moot, and the subsequent DEP Order does not change that. Even if it were relevant, which it is not, the conditions that were the subject of the DEP Order are neither present nor could replicate themselves in WGT. They also have nothing to do with Janiec 2 and constructing a valve there. Thus, WGT's generalized new safety allegations raised improperly in its Petition, and its questionable attempt to tie the DEP Order to the now moot subject of the January 9, 2018 Order, must be rejected.

---

<sup>21</sup> Approximations in determining distance depends on the circumstances such as topography, local conditions, impact on adjoining property, constructability, and whether other features of the system such as the type and speed of remote or automatic valves.

**4. The petition should be denied as it is either not ripe or filed out of time or both.**

a. Lack of Ripeness

WGT's request is not ripe because WGT has not brought the issue of whether a valve is required in the township before the Commission via a complaint. As the Amended Complaint attached hereto as Exhibit 1 shows, WGT did not initiate this Complaint proceeding to require SPLP to install a control valve in a specific area within the township; instead, the plain terms of the relief WGT requested in its Amended Complaint show that WGT initiated this matter to prevent SPLP from installing a valve in the township unless that valve was installed on the SPLP Use Area also known as the Janiec 1 Tract. WGT First Amended Complaint at pp. 6-7 (Wherefore clause); 52 Pa Code § 5.22(6) (a complaint must set forth "[a] clear and concise statement of the relief sought). Prior to its Petition, WGT has not raised in this proceeding alleged safety issues related to not installing a valve in the township. Rather, WGT has wholly focused on the Settlement Agreement between the parties and whether SPLP's actions that proposed locating a Valve on Janiec 2 breached that Agreement.

However, SPLP has no contractual obligation to install a valve in WGT. Contrary to WGT's misleading assertions that SPLP has an affirmative obligation to site a valve in the township, the only obligations SPLP has under the Settlement Agreement appear in Section IV entitled "The Parties' Promises, Covenants and Agreements" which prohibits SPLP from installing



a valve in WGT anywhere except in the SPLP Use Area<sup>22</sup> “subject to engineering constraints.”<sup>23</sup> Any interpretation of the Settlement Agreement that conflates Section IV with Section II (entitled “Pertinent Information Provided by SPLP”) fails to give effect to the plain meaning of the Settlement Agreement because SPLP and WGT mutually identified important, specific, and discrete promises each party required of the other before either would enter into the Settlement Agreement. Acceptance of WGT’s argument acts to read out the significance of the promises contained in Section IV of the Settlement Agreement in contravention of established Pennsylvania law. *Cooper v. East Penn. Sch. Dist.*, 903 A.2d 608, 616 (Pa. Cmwlth. 2006) (“we must review and consider the entire instrument giving effect to all its provisions and construing it according to the plain meaning of its language.”).

Thus, whether a valve is needed in WGT at all is not a matter properly brought by a complaint pleading (nor is or can it be proven) before this Commission at this time and thus is not ripe for consideration. See *Woods Schools v. Department of Education*, 514 A.2d 686 (Pa. Cmwlth. 1986) (a case must be ripe for adjudication before it can be heard); *Sgarlat v. Board of Adjustment of Kingston Borough*, 180 A.2d 769 (Pa. 1962) (same); *Concerned Taxpayers v. Commonwealth of Pennsylvania*, 382 A.2d 490 (Pa. Cmwlth. 1978) (there must be actual, palpable injury before a case will be ripe for adjudication); *Raezer v. Raezer*, 236 A.2d 513 (Pa. 1968)

---

<sup>22</sup> Section IV.A.1.a, reads in relevant part:

**IV. The Parties Promises, Covenants and Agreements**

A. ... the Parties agree to make the following promises, covenants and agreements:

1. SPLP covenants and agrees as follows:

a. ... SPLP covenants and agrees that it shall not construct or install any pump stations ... on the SPLP Additional Acreage [Janiec 1 tract].

<sup>23</sup> Section II.A.4.

(hypothetical or abstract questions are precluded); *Silver v. Zoning Board of Adjustment*, 112 A.2d 84 (Pa. 1955) (same); *Process Gas Consumers Group v. Pa. Pub. Util. Comm'n*, 480 A.2d 1273 (Pa. Cmwlth. 1984) (ripeness requirements apply with equal force to formal proceedings before administrative agencies).

b. WGT's Request is Time-Barred

Despite disguising its Petition as a request for reconsideration of the January 9, 2018 Order, WGT is requesting the Commission to adopt the July 24, 2017 ALJ Injunction. *See* Petition at P 5 (defining "Injunction" as the ALJ Injunction). But, the Commission rejected the ALJ Injunction in its October 26, 2017 Order when it significantly narrowed the injunction; the January 9, 2018 Order had nothing to do with the ALJ Injunction.

Thus, to properly challenge the Commission's rejection of the ALJ Injunction, WGT had to seek reconsideration of the October 26, 2017 Order because that is the order that rejected the ALJ Injunction, not the January 9, 2018 Order. It did not and it is now too late to do so. Pursuant to 52 Pa. Code § 5.572 any petition for reconsideration must be filed within 15 days of the entry of the order at issue. WGT's request is woefully late and must be denied.

**B. WGT's petition request for certification of interlocutory appeal must be rejected as it is (1) untimely under 52 Pa. Code §5.633, (2) is not, as required by the Commission's regulations, in the form of a motion which is subject to a different response procedure, and (3) in any event fails to raise any novel, ripe, or other issue necessitating interlocutory appellate review of the January 9, 2018 Order lift of the narrow injunction which also rendered moot the issue WGT wants to continue to litigate.**

**1. WGT's Request is Time-Barred**

While WGT costumes its Petition as a request to amend (pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572) the January 9, 2018 Order to allow it to pursue an interlocutory appeal of the Order, instead, it is plainly requesting (fatally out of time) the Commission to certify the January 9, 2018 order for appeal pursuant to 52 Pa. Code § 5.633. However, certification of an

interlocutory appeal is due within 10 days after service of the order, and WGT filed its request 5 days too late. 52 Pa. Code § 5.633. WGT's attempt to circumvent the Commission's regulations must be rejected. *See Consolidated Commun.'s Enterprise Serv's, Inc. v. Omnipoint Commun., Inc.*, Docket No. C-2010-2210014, 2012 WL 1453935 at \*1 (Order entered Apr. 12, 2012) (denying request for certification of interlocutory order and refusing to address merits where request filed within 15 days instead of 10 days).

## **2. WGT's Request is Procedurally Improper**

A request to certify an interlocutory order must be made via motion, with a corresponding 20-day reply time (not the 10-day reply time associated with a Petition under Section 703(g)). *See* 5.633. WGT made its request via a petition. This is not a mere nomenclature issue because WGT also failed to provide the required notice for motions in its Petition. 52 Pa. Code § 6.103 (b) ("Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.").

## **3. WGT's Request Does Not Meet the Standard For Certification**

To obtain certification of an interlocutory order for appeal, WGT must show that the January 9, 2018 Order "involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter." 52 Pa. Code § 5.633(a) (emphasis added). WGT shows neither.

WGT fails to identify any controlling question of law. Tellingly, WGT provides no citation to any law that it alleges is controlling. WGT likewise fails to specifically state what aspect of the January 9, 2018 is a matter of law to which there is a substantial ground for difference of opinion. Petition at PP 40-43. There is no controlling question of law here to which reasonable minds could

differ – the Commission Injunction is moot and even if it were reinstated via an appeal, WGT would not obtain the relief it seeks because it is seeking a much broader injunction.

WGT likewise fails to show that an appeal would advance the ultimate termination of this matter. Petition at P 44. It cannot because any appeal, like the Commission Injunction, would be moot. The only order the Commonwealth Court could consider on appeal is the January 9, 2018 Order and that Order did nothing more than dissolve a moot injunction that enjoined activity SPLP is not and will not engage in. Again, WGT is actually seeking to challenge the October 26, 2017 Order that rejected the overbroad injunction WGT now wants imposed. But, the Commonwealth Court could not reverse or even consider the merits of the October 26, 2017 Order because WGT did not timely appeal or seek to appeal that order. *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n.*, 535 A.2d 1246, 1248 (Pa. Cmwlth. 1988) (explaining petition for reconsideration does not toll time period to appeal underlying order and quashing appeal of underlying order as untimely where not filed within 30 days); *see also* Pa. R.A.P. Rule 1512(a)(1) (“A petition for review of a quasi-judicial order, or an order appealable under 42 Pa. C.S. § 763(b) (awards of arbitrators) or under any other provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order.”) (emphasis added).

#### **IV. Paragraph by Paragraph Rebuttal of the Petition**

1. Denied. WGT did not initiate this Complaint proceeding to require SPLP to install a control valve in a specific area within WGT; instead, the plain terms of the relief WGT requested in its Amended Complaint show that WGT initiated this matter to prevent SPLP from installing a valve in WGT unless that valve was installed on the SPLP Use Area also known as the Janiec I Tract. WGT First Amended Complaint at pp. 6-7 (Wherefore clause); 52 Pa Code § 5.22(6) (a complaint must set forth “[a] clear and concise statement of the relief sought). SPLP has no

contractual obligation to install a valve in WGT. Contrary to WGT's misleading assertions that SPLP has an affirmative obligation to site a valve in WGT, the only obligations SPLP has under the Settlement Agreement appear in Section IV entitled "The Parties' Promises, Covenants and Agreements" which prohibits SPLP from installing a valve in WGT anywhere except in the SPLP Use Area.<sup>24</sup> Any interpretation of the Settlement Agreement that conflates Section IV with Section II (entitled "Pertinent Information Provided by SPLP") fails to give effect to the plain meaning of the Settlement Agreement because SPLP and WGT mutually identified important, specific, and discrete promises each party required of the other before either would enter into the Settlement Agreement and acceptance of WGT's argument acts to read out the significance of the promises contained in Section IV of the Settlement Agreement in contravention of established Pennsylvania law. *Cooper v. East Penn. Sch. Dist.*, 903 A.2d 608, 616 (Pa. Cmwlth. 2006) ("we must review and consider the entire instrument giving effect to all its provisions and construing it according to the plain meaning of its language.").

2. Denied. As Mr. Gordon testified at hearing, locating the valve on Janiec 2 was discussed in a January 2016 meeting with WGT, and WGT also received copies of various DEP permitting packages that included the location of the valve in 2016. *See* Tr. at 206:20-210:9, 211:21-213:16, 233:16-20. SPLP also met with WGT 10 days prior to WGT filing its complaint

---

<sup>24</sup> Section IV.A.1.a, reads in relevant part:

**IV. The Parties Promises, Covenants and Agreements**

A. ... the Parties agree to make the following promises, covenants and agreements:

1. SPLP covenants and agrees as follows:

a. ... SPLP covenants and agrees that it shall not construct or install any pump stations ... on the SPLP Additional Acreage [Janiec 1 tract].

and explained the technical engineering reasons it would not be prudent to locate a valve on Janiec 1.

3. Denied in part. Prior to WGT's filing of its petition for an emergency order in 2017, SPLP had grubbed the site vegetation so that erosion and settlement controls could be installed and a temporary construction entrance was constructed.

4. Denied. It is denied that once HDD proceeds a valve could not be on the SPLP Use Area later. Regardless of when the installation would occur (during construction or later) SPLP's engineering analysis indicates it is technically able to place a valve on the SPLP Use Area, but that it is neither safe nor feasible to locate the valve on the SPLP Use Area. These are the engineering constraints on which SPLP based its decision, consistent with the Settlement Agreement at Section II (A)(2) not to locate a valve on the SPLP Use Area. Nonetheless, SPLP can place the valve on the SPLP Use Area after HDD occurs. WGT's claim is a pretext to delay ME2 and HDD by incorrectly and inextricably attempting to link activities which are separate and can proceed separate from installation of a valve if one was needed (which it is not) based on engineering judgment.

5. Admitted.

6. Denied. The Commission did not grant the same injunction that the ALJ ordered. The terms of the ALJ Injunction were much broader than the terms of the Commission Injunction, it was not a "slight modification." The ALJ Injunction (which WGT now seeks to have imposed) stated SPLP:

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.

Recognizing the overbreadth of this injunction, in its October 26, 2017 Order (*see also* January 9, 2018 Order at 17 (“Our directive in the October 2017 Order was specifically tailored”)), the Commission narrowed the injunction by:

- Removing the phrase “all current construction including” which could have been (wrongly) interpreted to imply prohibition of all construction of the ME2 Line; and
- Limiting the prohibition on horizontal directional drilling activities in 3) to those drilling activities related to the valve on Janiec 2, not all drilling activities on Janiec 2.

As the Commission stated, “The purpose of a Commission Order granting interim emergency relief is to enjoin a party from specific action for a certain time period.” January 9, 2018 Order at 18.

7. Denied in Part. It is admitted that SPLP filed its Petition to Rescind on November 21, 2017 and that the Petition to Rescind discussed SPLP’s decision not to site a valve in WGT. SPLP’s November 21, 2017 Petition to Rescind speaks for itself and any characterization of the document is denied. SPLP was under no duty to obtain permission from WGT to not site a valve in WGT. As the Commission recognized, the decision to not site a valve in WGT mooted the Commission Injunction. January 9, 2018 Order at 20.

8. Denied in Part. It is admitted that on December 1, 2017 WGT filed its Opposition to SPLP’s Petition. It is also admitted that WGT argued (incorrectly) in its Opposition, as it again argues in its Petition, that not siting a valve in WGT violates the Settlement Agreement and raises safety concerns. It is denied that the Settlement Agreement requires SPLP to install a valve on the SPLP Use Area, *supra* P 1. The section of the Settlement Agreement WGT misleadingly cites in n.1 is contained in the “Pertinent Information Provided by SPLP,” Section II. of the Agreement,

and is not a promise, covenant, or agreement of Section IV or any other obligation under the Agreement and therefore is not a legal obligation. *Supra* P 1.

9. Denied in Part. It is admitted that the Commission did not rescind the October 26, 2017 Order, but instead dissolved the Commission Injunction contained therein because it was moot. *See* January 9, 2018 Order at 20.

10. Admitted.

11. Denied. It is denied that WGT is seeking reconsideration of the January 9, 2018 Order, which dissolved the Commission Injunction. Instead, WGT is seeking to impose the ALJ Injunction the Commission refused to put in place in its October 26 Order, thus WGT is seeking (fatally out of time) reconsideration of the October 26, 2017 Order. *See Supra* Section Section III.A. Moreover, the Commission did not overlook the consequences of dissolving the Commission Injunction and could not have because the Injunction was moot. Reinstating the Commission Injunction would not prevent SPLP from engaging in planned construction in WGT at all because SPLP will not be siting a valve in WGT, and therefore not engaging in the activities the Commission Injunction enjoined. It is further denied that new evidence has arisen since the January 9, 2018 Order. The “new evidence” WGT raises is (1) a DEP Order that is irrelevant to this proceeding and therefore not “evidence” and (2) a discovery response produced on November 21, 2017 in this proceeding that was available to WGT to use prior to filing its December 1, 2018 Opposition and is therefore not “new.” Moreover, Petitions for Reconsideration must be based on the record, and neither of these materials are part of the record. *See supra* Section III.A.4.

12. Denied. While WGT purports to seek an amendment (pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572) of the January 9, 2018 Order to allow it to pursue an interlocutory appeal of the Order, instead, it is actually seeking (fatally out of time) the Commission to certify



the January 9, 2018 Order for appeal pursuant to 52 Pa. Code § 5.633. Certification under this provision is due within 10 days after service of the order, and WGT filed its request 5 days too late. WGT's attempt to circumvent the Commission's regulations must be rejected. *See Consolidated Commun.'s Enterprise Serv's, Inc. v. Omnipoint Commun., Inc.*, Docket No. C-2010-2210014, 2012 WL 1453935 at \*1 (Order entered Apr. 12, 2012) (denying request for certification of interlocutory order and refusing to address merits where request filed within 15 days instead of 10 days). *See also supra* Section III.B.

13. This is a legal conclusion to which no response is required.

14. This is a legal conclusion to which no response is required.

15. This is a legal conclusion to which no response is required. By way of further answer, while a petition for reconsideration does not require new evidence, it does require "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Duick vs. Pa. Gas and Water Co.*, Docket No. C-R0597001, Order Denying Petition for Reconsideration (Pa. PUC. Dec. 17, 1982). WGT's Petition does not meet this standard and the merits should not be considered. *See supra* Section III.A.3.

16. This is a legal conclusion to which no response is required. By way of further answer, a petition for reconsideration requires "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Duick vs. Pa. Gas and Water Co.*, Docket No. C-R0597001, *Order Denying Petition for Reconsideration* (Pa. PUC. Dec. 17, 1982). WGT's Petition does not meet this standard and the merits should not be considered. *See supra* Section III.A.3.

17. Denied. The January 9, 2018 Order does not have the effect of deciding WGT's Complaint before a full hearing on the merits and this is not a consideration the Commission overlooked in its January 9, 2018 Order. WGT argued this in its December 1, 2017 Opposition. *See, e.g., id.* at P 5 (arguing "SPLP is now seeking to avoid the Injunction and the remainder of this litigation by unilaterally asserting that Valve 344 is unnecessary and may be eliminated.") (emphasis added). The Commission did consider this argument and found it without merit, stating: "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." January 9, 2018 Order at 20. For example, WGT raised various claims that SPLP's alleged actions taken prior to filing the Complaint violated the Settlement Agreement. *See, e.g.,* Amended Complaint at PP 24-26. While these claims are meritless, dissolving the moot injunction has no effect on WGT's ability to litigate the claims and does not decide the Complaint. It is further denied that the January 9, 2018 Order has the effect of subjecting WGT to risks and harms related to re-drilling associated with "the promised installation of the Valve at the correct location" because there is no promise to install a valve at any location in the township. Moreover, WGT's allegations of risk and harm are unsupported. SPLP could, if the Commission so orders (which it should not because it is not necessary and the valve is subject to engineering constraints per the Settlement Agreement at Section II (a)(2) at the SPLP Use Area), place a valve on the SPLP Use Area after HDD occurs, although it is neither safe nor feasible to do so, regardless of when the valve would be placed. *Supra* P 4.

18. Denied. The Commission's January 9, 2018 Order speaks for itself and any characterization thereof is denied. The Commission dissolved the Commission Injunction because it was moot – if SPLP is not locating a valve in WGT, there is no reason to enjoin SPLP from

taking actions towards placement of a valve on Janiec 2 because SPLP would not, is not, and will not engage in those activities. SPLP is not required to obtain WGT's consent not to place a valve in WGT. SPLP's decision and determination was not and is not "unsupported." To the contrary not locating a valve in WGT will have no consequence on WGT because it only creates a span of 8.4 miles between valves, and with the additional safety measures SPLP has decided to put in place (including but not limited to automating the valve upstream of WGT), there is no question as to the safety of SPLP's decision. SPLP consistently goes above and beyond requirements concerning the safety features of the ME2 Line. *See, e.g.,* Exhibit 3, Mariner East 2 Pipeline Project Safety Practices and Design. Moreover, SPLP's Petition was verified by Mr. Hank Alexander.

19. Denied. The Commission correctly found the Commission Injunction was moot; SPLP did not, is not, and will not engage in the activities the Commission Injunction enjoined. Discontinuance of the Commission Injunction therefore had no effect on SPLP's construction activities because SPLP is not and will not engage in the activities enjoined. Moreover, the adjudication of the Complaint does not depend on a determination as to whether SPLP is required to install a valve on the SPLP Use Area pursuant to the Settlement Agreement. That is not the relief WGT requested. Instead, WGT requested that SPLP not construct a valve on Janiec 2 and alleged various breaches of the Settlement Agreement concerning activities that occurred prior to the filing of the Complaint. As the Commission stated, a petition for reconsideration in this scenario is not the proper procedural mechanism to narrow the issues of this case or determine how this Complaint may ultimately be decided. January 9, 2018 Order at 19-20.

20. Denied for the reasons stated *supra* P 4.

21. Denied in Part. SPLP agreed not to install a valve in WGT. The Settlement Agreement has absolutely no obligation for SPLP to site a valve in WGT, so any allegations concerning contractual obligations under the Settlement Agreement are irrelevant.

22. Denied. Chairman Brown and Vice Chairman Place's statements speak for themselves and any characterization thereof is therefore denied. Moreover, Chairman Brown's explanation of her dissenting position does not support WGT's allegation that she acknowledged the elimination of the valve would impact the disposition of the underlying Amended Complaint.

She said:

I do not support rescinding our prior injunction. Our October 2017 Order addresses prior relevant Commission and appellate decisions relating to our determination to grant the Township's request for emergency relief. Most significantly 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 contested issues remain before the Commission.

23. Denied in Part. It is admitted that WGT, to obtain the injunction it seeks here, is required to file a new petition for interim emergency relief; it admitted this in its December 1, 2017 Opposition at P 8. *Supra* Section III.A.1. It is further admitted that WGT's continued request for an injunction is a waste of the parties' and this Commission's time and resources. It is denied that WGT is seeking reconsideration of the January 9, 2018 order and "reactiv[ation]" of the injunction contained therein. Instead, WGT seeks the overboard ALJ Injunction that the Commission refused to grant in the October 26, 2017 Order. Thus, WGT actually seeks reconsideration of the October 26, 2017 Order, and its request should be denied because it is time-barred. *Supra* Section III.A.4. Further, it is denied that SPLP has any obligation to place a valve in WGT, *supra* P 1. It is denied a valve in WGT is "important," *supra* P 18. *See also supra* P 4.

24. Denied in part. It is admitted that on December 21, 2017 DEP issued an order. That document speaks for itself and therefore any characterization of that document is denied.

25. Denied. The DEP Order speaks for itself and therefore any characterization of that document is denied.

26. Denied. The DEP Order is wholly irrelevant to this proceeding. Notably, WGT does not argue any of the alleged violations in the DEP order have anything whatsoever to do with SPLP's activities in WGT or even Chester County or that the issues raised there could replicate themselves in WGT, and thus WGT concedes the DEP order does not address any issues relevant to this proceeding. Instead, WGT attempts to use the DEP order to sling mud and undermine SPLP's credibility. This credibility allegation is wholly irrelevant and improper in the context of a request for reconsideration and cannot be considered. While the Commission may take administrative notice of another agencies' orders, it cannot use those orders as evidence of facts without the opportunity for a full evidentiary hearing of those facts. *See Sanchez v. Pa. Bd. Of Probation and Parole*, 616 A.2d 1097, 1101 (Pa. Cmwlth. 1992); *Peluso v. Pa. Power Co.*, Docket No. F-2010-2152607, *Order Denying Petition for Reconsideration* (Pa. PUC. Oct. 28, 2011) (stating that arguments presented in consideration of a petition for reconsideration must be supported by the record).

27. Denied. The Commission's January 9, 2018 Order speaks for itself and therefore any characterization of that document is denied. Moreover, the January 9, 2018 Order did not state that it based the decision to dissolve the injunction based on delays of construction of the ME2 line. To the contrary, the Commission expressly found the Commission Injunction was moot and stated that was the basis for dissolution. January 9, 2018 Order at 20.

28. Denied. The Site Restoration and Post-Construction Management Plan speaks for itself and therefore any characterization of that document is denied. Moreover, the Plan is not new evidence; it was produced on November 21, 2017, a full ten days before WGT's Opposition to the Petition to Rescind the Injunction was due, and WGT should have raised this argument at that time. WGT is not entitled via a petition for reconsideration to raise evidence and arguments based thereon that it could have raised in response to SPLP's request. WGT has presented no reason why it could not have raised these arguments in opposing dissolution of the injunction, and should not be entitled to do so here, especially without a hearing to which SPLP is entitled in this scenario. These new allegations are not based on the record and thus cannot support WGT's request for reconsideration and reinstatement of an injunction. *Peluso v. Pa. Power Co.*, Docket No. F-2010-2152607, *Order Denying Petition for Reconsideration* (Pa. PUC. Oct. 28, 2011) (stating that arguments presented in consideration of a petition for reconsideration must be supported by the record). Moreover, the fact that SPLP used ASME B31.4 in its evaluation of the site of the valve in November 2016 shows nothing. SPLP prudently referred to this industry guidance then, but that has no impact on the prudence of its decision in late 2017 not to site a valve in WGT because SPLP's decision is not inconsistent with that guidance or SPLP's EDBM, which has been discussed with both PHMSA and the PUC. The EDBM expressly states: "The pipeline will have valve sites spaced approximately 10 miles apart in rural locations, and approximately 7.5 miles apart in commercial, industrial and urban locations." EDBM at 2.7.4 (emphasis added). Not siting a valve in WGT results in only 8.4 miles between valves, contrary to WGT's representations. In February 2017, SPLP obtained DEP permits for the valve 5.9 miles downstream from the SPLP Use Area and the valve 2.5 miles upstream from the SPLP Use Area. When SPLP determined it did not need to site a valve in the township, it did so on the basis that the distance between these

valves is compliant with industry standards, especially considering SPLP also decided to automate the upstream valve in November 2017. Automated valves are a significant upgrade from manual valves; the automated valves SPLP installs can both sense on their own changes in pressure and close the valve and can be remotely closed by the operators that monitor the pressure on the pipeline 24/7.

29. Admitted. By way of further response, the ASME B31.4 is industry guidance, not a requirement. As Mr. Kuperwicz, WGT's witness, admits, it does not take into account various factors that can determine the safe distance between valves, including terrain and safety equipment, such as use of automated valves or the speed at which the valve can close. WGT Exhibit F at 32. As Mr. Kuperwicz informed WGT in his January 6, 2017 report, "the specific placement of valves and their possible remote actuation is not an exact science." See Exhibit 2, Accufacts Report on Mariner East 2 Expansion Project, at 6.

30. Denied in part. It is admitted that ASME B31.4 is not a codified regulation. By way of further response, no regulations mandate specific spacing of mainline installation valves, instead, the operator has the managerial discretion to determine placement of mainline isolation valves.

31. Admitted.

32. Admitted. By way of further response, SPLP is installing automated remotely operated block valves both approximately 2 miles upstream and 6 miles downstream from the SPLP Use Area. These valves are a significant upgrade over manual block valves the automated valves SPLP installs can both sense on their own changes in pressure and close the valve and can be remotely closed by the operators that monitor the pressure on the pipeline 24/7.

33. Admitted in part. The distance between valves is a safety concern for any pipeline, which is why SPLP has developed its own, industry standard compliant guidelines on the siting and features of valves that it has followed in deciding it is not necessary to locate a valve in the township. Moreover, valves are not a primary safety feature of the pipeline, as Mr. Kuperwicz told WGT in his January 2017 Memorandum. *See Exhibit 2 at 6.* Valve placement is only one aspect for mitigating a release. SPLP goes above and beyond on other measures such as using higher quality pipe standards than required and performing more inspections of the pipe and welds before installation than are required, which decreases the chances of a leak in the first place and therefore goes further towards safety than any mitigation measure. *See Exhibit 3, Mariner East 2 Pipeline Practices and Design.*

34. Denied. Eliminating the valve in the township does not create a 15 mile stretch of pipeline between valves. SPLP will install a remotely operated valve at East Lincoln Highway, which is 2.5 miles upstream of the eliminated valve. SPLP will also install a remotely operated valve along Middletown Road, which is 5.9 miles downstream of the eliminated valve. Eliminating the valve only leaves an 8.4 mile pipeline segment between automated valves. SPLP obtained DEP permits to site these valves in February 2017. The upstream valve was originally planned to be a manual valve, but SPLP decided in November 2017 to change this to an automated valve in conjunction with its decision to eliminate the valve in the township.

35. Denied. Elimination of the valve will not result in hundreds of thousands of gallons of additional HVL being available for release into the township. This unfounded and inaccurate allegation relies on the false assumption rebutted in P 34 *supra*, that there would be an additional 7.5 mile stretch between valves as a result of eliminating the valve; in fact, there will only be an additional 1 mile stretch. Moreover, this allegation fails to take into consideration other safety



measures SPLP has put in place that both reduce the potential for a release and help mitigate any potential release. The elimination of the valve is de minimus as to the amount of HVL that could be available for release. The elimination of the valve will have no adverse safety consequences for the township.

36. Denied. The Philadelphia Inquirer document referenced speaks for itself and any characterization thereof is denied. SPLP already planned as of February 2017 to site valves both upstream and downstream of the SPLP Use Area as described *supra* P 34. SPLP had also decided as of November 2017 to change the upstream valve to a remote automated valve.

37. Denied in part. It is denied that WGT or its consultant have any right to the information discussed concerning SPLP's decision. WGT did not make any discovery requests specific to SPLP's decision to eliminate the valve since SPLP notified WGT that it would not site a valve in the township. Moreover, this consideration is wholly outside the scope of the Amended Complaint and is not ripe for consideration. The Amended Complaint only raised safety concerns as to siting a Valve on Janiec 1 instead of Janiec 2, not whether a valve is needed in WGT. To the extent WGT alleges SPLP was required to submit information to WGT concerning this decision, its remedy is to file a safety complaint with the Commission. *See* Settlement Agreement at Section IV.A.2.d. WGT has not filed such a Complaint nor amended its Amended Complaint in this proceeding to bring these allegations within the scope of this proceeding. The allegations in n. 4 are also denied. Mr. Kuprewicz's safety review speaks for itself. Moreover, the report he provided to WGT in January 2017 expressly states that siting of valves is not an exact science and that the placement of valves is not a primary safety concern. *See* Exhibit 2 at 6.

38. Denied for the reasons stated *supra* PP 1-37.

39. This is a legal conclusion to which no response is required.

40. Denied for the reasons stated *supra* P 23.

41. Denied. While WGT purports to seek an amendment (pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572) of the January 9, 2018 Order to allow it to pursue an interlocutory appeal of the Order, instead, it is actually seeking (fatally out of time) the Commission to certify the January 9, 2018 order for appeal pursuant to 52 Pa. Code § 5.633. Certification under this provision is due within 10 days after service of the order, and WGT filed its request 5 days too late. WGT's attempt to circumvent the Commission's regulations must be rejected. *See Consolidated Commn.'s Enterprise Serv's, Inc. v. Omnipoint Commn., Inc.*, Docket No. C-2010-2210014, 2012 WL 1453935 at \*1 (Order entered Apr. 12, 2012) (denying request for certification of interlocutory order and refusing to address merits where request filed within 15 days instead of 10 days). Moreover, WGT's request is procedurally improper. A request to certify an interlocutory order must be made via motion, with a corresponding 20-day reply time (not the 10-day reply time associated with a Petition under Section 703(g)). *See* 52 Pa. Code § 5.633. This is not a mere nomenclature issue because WGT also failed to provide the required notice for motions in its Petition. 52 Pa. Code § 6.103 (b) ("Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.").

42. Denied. This is a legal conclusion to which no response is required. Moreover, WGT fails to identify any controlling question of law that may materially advance the ultimate termination of the matter.

43. Denied. WGT fails to identify any controlling question of law that may materially advance the ultimate termination of the matter. Tellingly, WGT provides no citation to any law that it alleges is controlling. Moreover, SPLP included the verification of Hank J. Alexander, the Vice President of Sunoco Pipeline L.P, pursuant to 1 Pa. Code § 1.36, which verified the facts of

its Petition subject to criminal penalties in 18 Pa. C.S. § 4904. It is denied that the Commission dissolved the injunction without any supporting evidence or information. SPLP's Petition represented that a valve would not be installed in WGT, making the Commission Injunction moot. SPLP expressly averred that the valve is "neither needed operationally nor required by any applicable code or regulation." SPLP Petition at P 5.

44. Denied. An appeal would not advance the ultimate termination of this matter. Any appeal would be moot. The only order the Commonwealth Court could consider on appeal is the January 9, 2018 Order and that Order did nothing more than dissolve a moot injunction. *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n.*, 535 A.2d 1246, 1248 (Pa. Cmwlth. 1988) (explaining petition for reconsideration does not toll time period to appeal underlying order and quashing appeal of underlying order as untimely where not filed within 30 days). Thus, even if WGT ultimately prevailed in an appeal, the most the court would do is reverse the dissolution of the Commission Injunction, but that would not have any effect on the outcome of this proceeding because SPLP is not and will not engage in the activities the October 26, 2017 Order enjoined. WGT actually seeks an appeal of the October 26, 2017 Order, which refused to grant the overbroad injunction that the ALJ ordered because that is the injunction WGT is truly seeking. But, WGT's opportunity to seek such appeal has long since passed. *See* Pa. R.A.P. Rule 1512(a)(1) ("A petition for review of a quasi-judicial order, or an order appealable under 42 Pa. C.S. § 763(b) (awards of arbitrators) or under any other provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order.") (emphasis added).

45. Denied. The Commission should not certify the January 9, 2018 Order as interlocutory for the reasons stated in PP 41-44 and *supra* Section III.B.

WHEREFORE, SPLP respectfully requests the Commission Deny WGT's Petition.

Respectfully submitted,



---

Thomas J. Sniscak, Attorney I.D. # 33891  
Kevin J. McKeon, Attorney I.D. # 30428  
Whitney E. Snyder, Attorney I.D. # 316625  
Hawke McKeon & Sniscak, LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
(717) 236-1300  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

DATED: February 5, 2018

*Attorneys for Sunoco Pipeline L.P.*

# EXHIBIT 1

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David J. Brooman, Esquire  
 Attorney I.D. No. 36571  
 Douglas Wayne, Esquire  
 Attorney I.D. No. 69410  
 HIGH SWARTZ, LLP  
 40 East Airy Street  
 Norristown, PA 19404  
 610-275-0700 [phone]  
 610-275-5290 [facsimile]  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)  
[dwayne@highswartz.com](mailto:dwayne@highswartz.com)

*Attorneys for West Goshen Township*

**WEST GOSHEN TOWNSHIP,**

*Complainant*

v.

**SUNOCO PIPELINE, L.P.,**

*Respondent*

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Docket No. C-2017-2589346

**NOTICE TO PLEAD**

Pursuant to 52 Pa.Code §§5.63(a) and (b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed First Amended Complaint to Enforce Settlement Agreement of West Goshen Township within twenty (20) days from service of this notice, a decision may be rendered against you. All pleadings, such as an Answer, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel for West Goshen Township, 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:

David J. Brooman, Esquire  
Douglas Wayne, Esquire  
HIGH SWARTZ, LLP  
40 East Airy Street  
Norristown, PA 19404

Dated: March 29, 2017

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David J. Brooman, Esquire  
 Attorney I.D. No. 36571  
 Douglas Wayne, Esquire  
 Attorney I.D. No. 69410  
 HIGH SWARTZ, LLP  
 40 East Airy Street  
 Norristown, PA 19404  
 610-275-0700 [phone]  
 610-275-5290 [facsimile]  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)  
[dwayne@highswartz.com](mailto:dwayne@highswartz.com)

*Attorneys for West Goshen Township*

**WEST GOSHEN TOWNSHIP,**

*Complainant*

v.

**SUNOCO PIPELINE, L.P.,**

*Respondent*

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Docket No. C-2017-2589346

**WEST GOSHEN TOWNSHIP'S FIRST AMENDED FORMAL COMPLAINT TO ENFORCE SETTLEMENT AGREEMENT**

Complainant, West Goshen Township (“Township”), by and through its attorneys, High Swartz, LLP., respectfully files this First Amended Formal Complaint pursuant to 52 Pa. Code §5.21, and in support thereof avers as follows:

1. Complainant, West Goshen Township, is a Township of the Second Class, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 1025 Paoli Pike, West Chester, Pennsylvania 19380 (hereinafter, the “Township”).
2. Respondent Sunoco Pipeline, L.P., (“SPLP”) is a public utility that owns and operates a repurposed eight inch (8”) pipeline known as Mariner East 1. The pipeline is presently used to transport highly volatile liquids as that term is defined at 49 CFR §195.2,



including propane, ethane, butane and other natural gas liquids. *See generally*, 49 CFR Part 195.

3. The Township is represented in this action by David J. Brooman and Douglas Wayne, High Swartz, LLP, 40 East Airy Street, Norristown, Pennsylvania 19404 ((610) 275-0700) ([dbrooman@highswartz.com](mailto:dbrooman@highswartz.com) and [dwayne@highswartz.com](mailto:dwayne@highswartz.com)), and all documents should be served upon said counsel. Counsel for the Township consents to the service of documents by electronic mail at the addresses listed in this paragraph, as provided in 52 Pa. Code § 1.54(b)(3).

4. The Mariner East 1 pipeline passes through the Township.

5. On March 21, 2014, SPLP 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 West Goshen Township to house facilities related to a pump station (“SPLP Petition”). The Commission docketed this proceeding at P-2014-2411966.

6. On April 18, 2014, Concerned Citizens of West Goshen Township (“CCWGT”) filed a Protest and Preliminary Objections to the SPLP Petition. On April 21, 2014, the Township intervened as of right in the Commission docket.

7. On November 7, 2014, CCWGT filed a Formal Complaint with the Commission against SPLP based on alleged safety concerns with the proposed SPLP facilities in the Township. This Formal Complaint was docketed at C-2014-2451943.

8. The SPLP Petition and Formal Complaint were resolved by a Settlement Agreement reached by the parties and dated June 15, 2015 (“Settlement Agreement”). The Settlement Agreement is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full.

**FIRST COUNT:  
VIOLATIONS AND MATERIAL BREACHES OF PARAGRAPHS  
II.A., II.A.2. , II.A.3. AND IV.A. OF THE SETTLEMENT AGREEMENT**

9. The Township incorporates by reference Paragraphs 1 to 8 herein as though same were fully set forth.

10. Paragraph II.A. of the Settlement Agreement states:

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

11. Paragraph II.A.1. of the Settlement Agreement states:

“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.*” (Emphasis added)

12. Paragraph II.A.2. of the Settlement Agreement states:

“The pump station, the VCU and all accessory and appurtenant above-ground facilities *associated with all phases of the Mariner East Project will be maintained within the present active site, Parcel No. 52-1-8-U, on which the existing Boot Road Pump Station currently operates (the “SPLP Existing Site”)*, except that a remote operated valve station will be constructed and maintained on SPLP’s adjacent 4.42 acre property, Parcel No. 52-0-10-10.1, also known as the former Janiec Tract (the “SPLP Additional Acreage”). The proposed location of such valve station on the SPLP Additional Acreage is depicted on the map attached hereto as Appendix 1 and incorporated by reference (the “SPLP Use Area”). 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.**” (Emphasis added).

13. Paragraph II.A.3. of the Settlement Agreement states:

“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.”

14. Paragraph IV.A. of the Settlement Agreement notes that the promises, covenants and agreements reached in the Agreement were “[b]ased on the SPLP Information recited in Section II of this Agreement . . .”

15. On or about January 12, 2017, the Township received engineered drawings from SPLP concerning the SPLP pipeline project commonly known as Mariner East 2 (“ME2”).

16. The ME2 project consists of two proposed parallel pipelines, 20 inch and 16 inch respectively, as well as various facilities and appurtenances, which if constructed will cross the Township, thus placing the proposed ME2 pipeline squarely within the purview of Paragraph II.A.1 of the Settlement Agreement.

17. According to the engineering plans submitted to the Township in January 2017, SPLP proposes to install and operate an above-ground remotely operated valve at ME2 pipeline mile marker 344 in the Township (“Valve 344”), on a 6.646 acre tract of property owned by the Janiec Family more particularly identified as Chester County Tax Parcel No. 52-3-60, which tract is located on the north side of Boot Road near its intersection with the U.S. Route 202 northbound on-ramp and Greenhill Road (the “Janiec Tract”).

18. While the Settlement Agreement, at Paragraph II.A.2. does contemplate a remotely operated valve on the SPLP Additional Acreage, this language is limited by further language in the same paragraph stating that “[n]othing in the 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.”

19. The proposed site of Valve 344 on the Janiec Tract in the Township is outside the SPLP Use Area.

20. SPLP did not ask for the Township’s consent for the Valve 344 siting, nor even notify the Township that this was under consideration, in violation and material breach of Paragraph II.A.2 of the Settlement Agreement. Any representation by SPLP that the Township was notified that SPLP intended to site Valve 344 on the Janiec Tract and not the SPLP Use Area is denied by the Township.

21. SPLP has provided the Township no engineering justification for relocating Valve 344 from the SPLP Use Area to the Janiec Tract.

22. The plans submitted to the Township in January 2017, and reviewed by Richard Kuprewicz, Accufacts, Inc., indicate that the decision to locate Valve 344 on the Janiec Tract, and not the SPLP Use Area, was made on or about March 26, 2015.

23. The Settlement Agreement is dated June 15, 2015. Accordingly, the decision by SPLP to move the location of Valve 344 was made at least eighty-one (81) days prior to the execution of the Settlement Agreement.

24. As SPLP had already decided to site Valve 344 on the Janiec Tract at least eighty-one (81) days prior to finalizing the Settlement Agreement, SPLP’s action violates and is a material breach of Paragraph II.A.3. of the Settlement Agreement, in which SPLP asserted that, as of the date of execution of the Settlement Agreement, SPLP had no plan or intention to construct any additional above-ground permanent facilities in

WGT except as otherwise expressly set forth in the Agreement.

25. SPLP's action of preparing engineering plans on or before March 26, 2015 to locate Valve 344 on the Janiec Tract, rather than on the SPLP Use Area, also violates and is a material breach of Paragraph II.A. of the Settlement Agreement, in which WCT and CCWGT expressly state that they are relying on the accuracy of the information provided by SPLP in reaching the Settlement Agreement.

26. SPLP's action of preparing plans on or before March 26, 2015, to locate Valve 344 on the Janiec Tract, rather than the SPLP Use Area, also violates and is a material breach of Paragraph IV.A. of the Settlement Agreement, in which the parties agree that the promises, covenants, and agreements therein set forth are "[b]ased on the SPLP Information recited in Section II. of this Agreement . . . " As WCT and CCWGT expressly state that they are relying on the accuracy of the information provided by SPLP in reaching the Settlement Agreement, SPLP's action of falsely representing therein that Valve 344 would be located on the SPLP Use Area, and not on the Janiec Tract, amounts to a material misrepresentation of fact by SPLP and a breach of the Agreement.

**WHEREFORE**, the Township of West Goshen hereby petitions the Commission to issue an Order declaring Sunoco Pipeline, LP in material violation and breach of Paragraphs II.A., II.A.2, II.A. and IV.A. of the Settlement Agreement of June 15, 2015. The Township further requests that the Commission issue an Order directing SPLP to (a) cease and desist with any actions in support of constructing, installing or operating any valve or appurtenant facilities for the ME2 pipelines on any property located in West Goshen Township other than the SPLP Use Area without the express written consent of both the Township and CCWGT; (b) remove any value or appurtenant facilities for the ME2 pipelines that have been installed on any property

located in West Goshen Township other than on the SPLP Use Area within thirty (30) days of the Commission's ruling or face sanctions, including but not limited to: (1) a substantial daily fine for each day that a valve or appurtenant facilities for the ME2 pipelines exist in the Township other than on the SPLP Use Area; (2) an injunction preventing SPLP from siting a valve or appurtenant facilities for the ME2 pipelines anywhere in the Township other than on the SPLP Use Area; and (3) such other relief that the Commission deems appropriate and in accordance with Pennsylvania law to mitigate the danger to Township residents resulting from SPLP's lack of compliance with the aforementioned paragraphs of the Settlement Agreement.



HIGH SWARTZ, LLP

By: David J. Brooman, Esquire

Douglas Wayne, Esquire

Attorneys for Complainant,

Township of West Goshen

Dated: March 29, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of March, 2017, I caused a true and correct copy of West Goshen Township's First Amended Formal Complaint to Enforce Settlement Agreement, 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).

Christopher A. Lewis, Esquire  
Blank Rome, LLP  
One Logan Square  
130 North 18<sup>th</sup> Street  
Philadelphia, PA 19103-6998  
Attorney for Sunoco Logistics, L.P.

High Swartz, LLP



David J. Brooman, Esquire  
Attorney for West Goshen Township

David Brooman, Esquire  
Attorney I.D. No. 36571  
Douglas Wayne, Esquire  
Attorney I.D. No. 69410  
HIGH SWARTZ, LLP  
40 East Airy Street  
Norristown, PA 19404  
610-275-0700 [phone]  
610-275-5290 [facsimile]  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)  
[dwayne@highswartz.com](mailto:dwayne@highswartz.com)

*Attorneys for West Goshen Township*

WEST GOSHEN TOWNSHIP,

*Complainant*

v.

SUNOCO PIPELINE, L.P.,

*Respondent*

Docket No. C-2017-2589346

**VERIFICATION**

I, Casey Lalonde, Township Manager of West Goshen Township, hereby states that the facts above set forth in the attached First Amended Formal Complaint to Enforce Settlement Agreement 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 held in this matter.

I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Casey Lalonde  
Township Manger  
West Goshen Township

Date: 3/29/17



# **EXHIBIT 2**

# **Accufacts Inc.**

“Clear Knowledge in the Over Information Age”

4643 192<sup>nd</sup> 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.<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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

---

<sup>2</sup> 49CFR§195.452 Pipeline integrity management in high consequence areas.

<sup>3</sup> 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).<sup>4</sup> 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

---

<sup>4</sup> 49CFR§195.304 Test pressures.  
Accufacts Inc.

by the pipeline operator.<sup>5</sup> 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

---

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.

---

<sup>6</sup> 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.

<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.

## **4. Keeping Township Informed of Future Major Changes in the Pipeline’s Integrity within the Township**

---

<sup>8</sup> 49CFR§195.402 Procedural manual for operations, maintenance, and emergencies.

<sup>9</sup> 49CFR§195.402(e)(7).

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.<sup>10</sup> 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 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

---

<sup>10</sup> 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.

enhancements discussed above, meets or exceeds the prudent technical approaches commensurate with the safe transportation of HVL.

Richard B. Kuprewicz  
President,  
Accufacts Inc.

# EXHIBIT 3

# Mariner East 2

## PIPELINE PROJECT SAFETY PRACTICES AND DESIGN

At Energy Transfer and Sunoco Pipeline, safety is our top priority. Our goal is to provide safe and reliable transportation of natural gas liquids (NGLs) for our customers. Using advanced technology and a proven safety design, Mariner East 2 has added features that exceed federal requirements and will minimize the impact to the environment and local communities along the route.

Energy Transfer and Sunoco Pipeline are committed to the long-term integrity and safe operation of the Mariner East 2 Pipeline. Once in operation, there are many safety precautions we will employ for the protection of the pipeline and the safety of the communities along the route.

The U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) Office of Pipeline Safety (OPS) is the federal safety authority for ensuring the safe, reliable and environmentally sound operations of our nation's pipeline transportation system. PHMSA's "Transportation of Hazardous Liquids by Pipeline" regulation (49 CFR 195), incorporates by reference 48 industry standards and specifications that have been developed by organizations such as American Petroleum Institute (API), National Fire Protection Association (NFPA) and ASME International.

Some of these safety measures include, but are not limited to:

- A SCADA (Supervisory Control And Data Acquisition) system will be installed that provides real-time data acquisition, monitoring and control of key operating points such as pressures, temperatures, flows and equipment status, including alarming of any conditions outside established parameters. The system can shut itself down safely without human intervention, but it is monitored by a live operator at all times.
- We also use a subsystem of SCADA, known as the Computational Pipeline Monitoring System ("CPM"), which analyzes deviations in the flow of liquids using computational algorithms, thus improving the operator's ability to identify abnormal operating conditions.
- Sunoco Pipeline will maintain a robust and continuously updated Facility Response Plan for effective and timely response to abnormal operating conditions. The Facility Response Plan is used as a basis for emergency response training and drills with local, regional, state and federal agencies.
- Sunoco Pipeline has teamed with local emergency responders along the route to provide information and training on emergency pipeline response. Strategic contracts will also be executed with private response organizations in the area.
- Sunoco Pipeline provides biennial neighbor stakeholder outreach and implementation of a Public Awareness Program.

### ABOVE AND BEYOND EXTRA ATTENTION TO SAFETY.

DOT CFR 195 Requirements	Mariner East 2 Standard	Benefit of Exceeding Requirement
<b>Pipeline Coverage and Separation Distances for New Construction</b>		
The minimum required coverage in rural areas (excluding certain water bodies, drainage ditches, public roads and railroad crossings) is 30 inches.	Mariner East 2 will have a minimum cover (from the top of the pipe to ground level) of 48 inches for all conventional lays.	The additional coverage enhances protection from potential third-party damage.
The minimum required coverage in industrial, commercial and residential areas that are not within 50 feet of any private dwelling, industrial building or places of public assembly areas is 36 inches.	Mariner East 2 will have a minimum cover (from the top of the pipe to ground level) of 48 inches through these industrial, commercial and residential areas.	
The minimum required coverage for crossings of inland waterbodies that are less than 100 feet wide is 30 inches and in some cases 36 inches.	Mariner East 2 will have a minimum cover of 60 inches at these inland waterbody crossings.	The additional coverage enhances protection from potential third-party damage and from other outside forces, such as flooding, scouring and washouts.
Horizontal Directional Drills (HDDs) underneath waterbody crossings that are wider than 100 feet must be at least 48 inches under the natural bottom of the waterbody.	Sunoco Pipeline starts HDDs at a minimum of 48 inches and drills to a minimum of 60 inches below the natural bottom of these waterbodies.	The additional depth of the HDD will improve the safety and protection of the pipeline and the environment.



# PIPELINE PROJECT SAFETY PRACTICES AND DESIGN

DOT CFR 195 Requirements	Mariner East 2 Standard	Benefit of Exceeding Requirement
<b>Pipeline Strength</b>		
The required design factor for inland pipelines not on a platform in navigable waters is .72 inches. The minimum thickness for this design factor is .316 inches.	The minimum pipe thickness utilized is .39 inches with a .6 design factor. This means that the system will never exceed 60 percent of the pipe's minimum yield strength.  Mariner East 2 will employ heavier pipe wall thickness (.456 inches and 0.5 design factor) for horizontal directional drills (HDDs) under certain waterbodies, roads and sensitive areas.	The higher quality of pipe standards increases the resistance to third-party damage, ground movement, shipping damage, and overall pipe body cleanliness and weldability.
Line pipe must be fit-for-purpose per the API 5L Specification for Line Pipe.	Mariner East 2 pipe is specified to the API 5L's more stringent PSL-2 standard, which has stricter requirements for metallurgy, testing frequencies, factory inspections and record retention.	The higher quality of pipe standards increases the resistance to third-party damage, ground movement, shipping damage, and overall pipe body cleanliness and weldability.
	The longitudinal seam of all pipe has been 100% examined by Nondestructive Testing (NDT). Qualified third-party inspection is required during pipe production to monitor product quality and processing.	By placing qualified third-party NDT inspection personnel full-time at this production station, it provides an added level of verification that the NDT was completed per requirements.
Manufacturers are not required by API to be certified by ISO or have Q1 certification.	All pipe mills were inspected for their quality assurance and quality testing programs prior to being allowed to bid as a contractor for the project. We require all manufacturers to be certified to ISO 9001, ISO/TS 29001 or an equivalent such as API Q1, so that they comply with all (not just a few) requirements of API 5L.	Pipe manufacturers are subjected to frequent audits verifying their capabilities and adherence to API 5L requirements. This provides added assurance that pipe produced exceeds quality standards including but not limited to visual, mechanical and dimensional properties.
Line pipe inspection is only required at the job site during installation.	For Mariner East 2, inspectors were placed in each pipe mill while the pipe was being produced, and inspection was carried out all the way through installation.	This extra inspection provides an additional measure of compliance with quality control measures and additional safety and serviceability.
<b>Pipeline Valves</b>		
Regulation defers to the operator to determine placement of mainline isolation valves, some of which are remotely controlled.	The Mariner East 2 pipeline will have strategically placed automated valves that will enable pipeline segments to be quickly isolated. These valves are programmed to automatically close along with other programming that safely shuts down and isolates the pipeline if certain parameters meet a predefined level.	The automated valves reduce response time allowing a given pipeline segment to be quickly isolated should the need arise.
<b>Pipeline Integrity Testing</b>		
Regulation requires that we perform Nondestructive Testing (NDT), by either radiographic or ultrasonic methods, for 10% of the girth welds made by each welder each day.	100% of all mainline girth welds will be subjected to NDT inspection.	This provides a higher level of the integrity and strength of the welds.
Prior to being placed into service, regulation requires that the line must be hydrostatically pressure tested for 4 hours at 125% of the Maximum Operation Pressure (MOP), and an additional 4 hours at 110% or more of MOP.	Mariner East 2 will be hydrostatically pressure tested for at least 8 hours to a pressure equal to 125% MOP.	This additional time at 125% of MOP confirms there are no leaks, deleterious material or construction flaws.
The code references ASME B31.4 which states that "testing for buckles, dents and other diameter restrictions shall be performed after installation." The code does not require use of an Internal Line Inspection (ILI) deformation tool run through the entire pipeline prior to start-up.	Mariner East 2 will run an Internal Line Inspection deformation tool through the entire pipeline prior to start-up to identify and address any potential defects.	This will help to validate the pipeline's integrity by identifying any previously unrecognized construction damage and providing a baseline for future inspections.
Regulation requires that the pipeline Cathodic Protection System must be activated within 1 year after the pipeline is ready for operation.	Mariner East 2 will tie into an active preexisting Cathodic Protection System once the pipeline is backfilled and completed. The system will be activated in stages along the route as the pipeline is backfilled and completed.	This system helps to prevent corrosion and prevent the pipeline from reacting to other elements in the environment.
<b>Operations</b>		
Regulation requires inspection of the right-of-way 26 times per year, not to exceed 3 weeks between inspections.	Mariner East 2 right-of-way will be inspected once every 7 days, not to exceed 10 days, weather permitting.	The increased inspections of the right-of-way provide heightened awareness of activities taking place along the pipeline route.



## VERIFICATION

I, Matthew Gordon, certify that I am Project Director, for Sunoco Pipeline LP, and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Sunoco Pipeline LP, expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



---

Matthew Gordon  
Project Director

DATED: 2-5-2018

**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**

Douglas Wayne, Esq.  
High Swartz LLP  
116 East Court Street  
Doylestown, PA 18901  
[dwayne@highswartz.com](mailto:dwayne@highswartz.com)

David J. Brooman, Esq.  
Richard Sokorai, Esq.  
Mark R. Fischer, Jr., Esq.  
High Swartz LLP  
40 East Airy Street  
Norristown, PA 19404  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)  
[rsokorai@highswartz.com](mailto:rsokorai@highswartz.com)  
[mfischer@highswartz.com](mailto:mfischer@highswartz.com)

*Counsel for West Goshen Township*

Frank Tamulonis, Esq.  
Christopher A. Lewis, Esq.  
Michael Montalbano, Esq.  
Blank Rome LLP  
One Logan Square  
130 North 18<sup>th</sup> Street  
Philadelphia, PA 19103  
[ftamulonis@blankrome.com](mailto:ftamulonis@blankrome.com)  
[lewis@blankrome.com](mailto:lewis@blankrome.com)  
[mmontalbano@blankrome.com](mailto:mmontalbano@blankrome.com)

*Counsel for Sunoco Pipeline L.P.*



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

Dated this 5<sup>th</sup> day of February, 2018.