



**HIGH SWARTZ**  
Attorneys At Law LLP

Richard C. Sokorai, Esquire  
(610) 275-0700  
Email: [RSokorai@highswartz.com](mailto:RSokorai@highswartz.com)  
[www.highswartz.com](http://www.highswartz.com)

April 20, 2018

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: West Goshen Township v. Sunoco Pipeline, L.P.,  
Docket No. C-2017-2589346**

Dear Secretary Chiavetta:

Enclosed is West Goshen Township's Answer to Sunoco Pipeline, L.P.'s Motion to Strike Testimony submitted on the Merits by West Goshen Township, copies of which were served upon the individuals listed below and in the enclosed Certificate of Service in accordance with 52 Pa. Code § 1.54.

Thank you for your attention to this matter.

Please feel free to contact me with any questions.

Sincerely,

Richard C. Sokorai

RCS:jmg/pro  
Enclosures

cc: Hon. Elizabeth H. Barnes (via email & U.S. Mail)  
Thomas J. Sniscak, Esquire (via email & U.S. Mail)  
Kevin J. McKeon, Esquire (via email & U.S. Mail)  
Whitney E. Snyder, Esquire (via email & U.S. Mail)  
David J. Brooman, Esquire (via email)  
Mark R. Fischer, Jr., Esquire (via email)

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HIGH SWARTZ LLP  
David J. Brooman, Esquire (I.D. No. 36571)  
Richard C. Sokorai, Esquire (I.D. No. 80708)  
Mark R. Fischer, Jr., Esquire (I.D. No. 94043)  
40 East Airy Street  
Norristown, PA 19404  
(t) 610-275-0700  
(f) 610-275-5290  
dbrooman@highswartz.com  
rsokorai@highswartz.com  
mfischer@highswartz.com

*Attorneys for West Goshen Township*

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

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**WEST GOSHEN TOWNSHIP’S ANSWER TO SUNOCO PIPELINE, L.P.’S  
MOTION TO STRIKE TESTIMONY SUBMITTED ON THE MERITS  
BY WEST GOSHEN TOWNSHIP**

West Goshen Township (“Township”), through its attorneys, High Swartz LLP, pursuant to 52 Pa. Code § 5.103 and Administrative Law Judge Elizabeth Barnes’ (“ALJ Barnes”) directive of April 12, 2018, submits the following answer to Sunoco Pipeline, L.P.’s (“SPLP”) Motion to Strike Testimony Submitted on the Merits by West Goshen Township.

This action concerns the enforcement of a contract between the Township and SPLP made in settlement of a prior case. In exchange for withdrawing an appeal and other mutual promises, SPLP promised that it would install an automated Valve on a tract of land referred to as the SPLP Use Area and that no other above ground facilities would be placed in the Township for SPLP’s Mariner East pipeline project other than at the site of its existing pump station. There is an ambiguity on the face of the contract in that some of SPLP’s promises are set forth under a

section of the contract entitled “Pertinent Information Provided by SPLP,” which contains the introductory language WGT and CCWGT expressly rely upon the accuracy of the SPLP Information in reaching this Agreement,” while other promises are set forth under a section of the contract called “The Parties’ Promises, Covenants and Agreements.” With respect to the “Pertinent Information” section, the language used in some of the representations therein support the Township’s position that they are not all mere representations of fact, but rather promises of what SPLP “will” do. There contract contains no provision regarding the effect of the headings on the interpretation of the contract. SPLP maintains that the promises set forth under the “Pertinent Information” section are not binding promises because they are not set forth under the “Promises, Covenants and Agreements” section. This construction of the contract gives rise to an ambiguity, as evidenced by, not caused by, the competing contractual interpretations.

This ambiguity was fully argued, considered and confirmed by ALJ Barnes at the July 2017 hearing on the Township’s Petition for an Interim Emergency Order. As such, ALJ Barnes allowed parol evidence to be admitted to help resolve the ambiguity, which it does. Specifically, SPLP’s prior counsel advised the Township’s counsel that the promises that the parties negotiated would be honored by SPLP, but because of fear that other Township’s would try to assert more control over SPLP’s operations, the promises would have to be recited as “factual representations” rather than promises. Thus, this ambiguity was purposely created by SPLP, but is resolved by the parol evidence.<sup>1</sup> The contractual language written as promises are promises, regardless of the section heading under which they appear. Knowing that this evidence is fatal to SPLP’s position, SPLP now attempts to “put the toothpaste back in the tube” and prevent consideration of this important evidence that resolves the ambiguity.

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<sup>1</sup> There are other ambiguities as will be discussed more thoroughly herein.

1. Admitted in part, denied in part. It is admitted that at the July 18, 2017 hearing counsel for SPLP made a motion in limine and that the transcript is a writing that sets forth the motion and ALJ Barnes' ruling at the cited pages. Any characterization of the ruling by SPLP is denied. Further, while the Township acknowledges that ALJ Barnes may reconsider her own prior evidentiary rulings, any suggestion by SPLP that the subject ruling was temporary or has limited impact because it was made in the context of an emergency injunction hearing is strictly denied. As set forth in the portion of the transcript quoted by SPLP, ALJ Barnes determined that there was ambiguity in the language of the Settlement Agreement, which provides a sufficient basis for the consideration of parol evidence. Neither the quoted language, nor any other circumstances pertaining to the disputed language has changed since ALJ Barnes' ruling. Therefore, there is no basis to revisit that evidentiary ruling at this juncture, simply because the ruling was made during an injunction hearing.

2. Denied. The allegations in this paragraph of SPLP's motion are denied for the reasons set forth in paragraph 1 above and throughout this response. Any insinuation that ALJ Barnes made a hasty decision in an effort to "fast track" the hearing, rather than making a sound legal judgment that the contract contained ambiguity is denied. Further, the parol evidence at issue does not in any way implicate settlement negotiations in this case, but rather, involves the negotiation of a contract to settle a separate case, which the Township now seeks to enforce.

3. Denied. SPLP is arguing for the misapplication of the law relating to rulings on injunctions. While correct that a ruling on an application for an injunction does not constitute a final ruling on the merits, that rule of law does not mean that an evidentiary ruling made during the injunction hearing must be disregarded or revisited, especially where the underlying facts

pertaining to said evidentiary ruling have not changed, i.e. the Settlement Agreement has not changed and remains ambiguous.

4. Denied. ALJ Barnes' ruling at the July 18, 2017 hearing specifically stated that there is ambiguity in the language of the contract. Further, the Pennsylvania Supreme Court's definition of an ambiguous contract term directly supports ALJ Barnes' ruling and contradicts SPLP's allegations in this paragraph. *See Com. ex rel. Kane v. UPMC*, 129 A.3d 441, 463 (Pa. 2015) ("A contract's terms are considered ambiguous 'if they are subject to more than one reasonable interpretation when applied to a particular set of facts.'" (emphasis added)). Further, SPLP conveniently focuses on the language "due to engineering constraints," as the "key provision" at issue, when the parol evidence offered at the July 18, 2017 hearing focused on whether the entire paragraph in which that language is contained was considered background information or a promise, based on the heading preceding that language in the Settlement Agreement. Moreover, SPLP omits relevant language from the pertinent provision, which provides, "If due to engineering constraints, SPLP is unable to construct a valve station in the SPLP Use Area, SPLP will notify WGT," that gives rise to an ambiguity. Further as set forth in paragraph II.A.2. of the Settlement Agreement, it is clear that even if the Valve cannot be placed on the SPLP Use Area, the valve is to be placed on the SPLP Additional Acreage, not anywhere in the world SPLP feels like putting it.<sup>2</sup> SPLP is simply attempting to re-litigate an evidentiary ruling, which was briefed by SPLP and properly considered and decided by ALJ Barnes (*see* Tr. at 41:16-17, 44:6-21), based on the misapplication of rules relating to injunction decisions. With respect to SPLP's contention that there is a "steep burden of proving language that is so ambiguous that its express terms should be disregard[ed]", this is mere hyperbole. The burden is

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<sup>2</sup> Another ambiguity arises from this language because paragraph IV.A.1.a. contains similar language but the restrictions in II.A.2. are not repeated. SPLP of course only focuses on the paragraph without the restrictions.

to demonstrate an ambiguity, the law does not require a “steep burden” nor is a case cited for this proposition. Further, the Township is not seeking to disregard or supersede any express language, but rather, is demonstrating that the contract read as a whole to give all clauses in the contract meaning and resolve apparent ambiguities.

5. Denied as stated. SPLP correctly notes that the subject testimony did not focus on “engineering constraints,” because that language was not the focus of the ambiguity or the reason for the introduction of parol evidence. SPLP is trying to make the “engineering constraints” language the focus of the ambiguity because it is the only portion of the disputed provision on which it has offered evidence. As stated above, the ambiguities in the contract revolve around why promises are set forth under a “Pertinent Information” section, the meaning of the word “unable,” and what happens if SPLP is unable to locate the Valve on the SPLP Use Area due to engineering constraints. With respect to the contention that ALJ Barnes should do what courts do, she already has. She fully considered and decided the issue presented in SPLP’s motion, and allowed the introduction of parol evidence to resolve ambiguity.

6. Denied. See response to paragraph 5. What lacks believability is that SPLP would make these allegations in the face of clear testimonial and documentary evidence at the July 2017 hearing that supports exactly what the Township argues. *See* Tr. at 161:11-163:13 and Township Trial Exhibit “15.”

7. Denied. The Township is not seeking to admit any settlement negotiation from this case. Rather, the parol evidence proffered relates to the negotiation of a contract that resolved a prior case; a settlement that both parties agreed to. The Settlement Agreement is a contract and is interpreted according to contract law. As admitted by SPLP, parol evidence is permitted to resolve ambiguities in contracts.

8. Denied. SPLP's attempt to reduce this dispute to the Township just having a distaste for public utility pipelines is demeaning nonsense and should be ignored. The Township has a distaste for parties flagrantly disregarding promises it makes in binding contractual agreements. SPLP's status as a public utility is irrelevant to this issue. To be sure, the Township exists to protect and serve the health, safety and welfare of the public, and any insinuation that an energy company is more important to the welfare of the people than local government is silly and self serving. SPLP tries to cast the Township in a bad light, without evidence, to garner favor on an issue that ALJ Barnes already fully considered and decided against it.

9. Denied. The Township denies that the referenced testimony and exhibits should be stricken, for the reasons discussed throughout this response.

10. Denied. As set forth above, ALJ Barnes fully considered SPLP's argument and brief at the July 18, 2017 hearing and properly decided that the contract language was ambiguous as evidenced by the differing interpretations. It is unclear why SPLP contends that ALJ Barnes' did not simply rule that the Settlement Agreement is ambiguous, as the transcript reflects full consideration of the issue, including a brief submitted by SPLP. SPLP's arguments that parol evidence cannot be considered unless an ambiguity is first found are moot and without merit. Further, SPLP's entire argument relies on the idea that the location of the Valve is subject to "contingencies," but it does not explain what the contingencies are, what happens if such contingencies did or did not arise, and does not resolve why phrases that are clearly worded as promises are set forth under a section entitled "Pertinent Information." The key promises in the contract, upon which the Township largely relies, are set forth under the "Pertinent Information" section: SPLP will put an automated valve on the SPLP Additional Acreage; it will be placed on a specific area of the SPLP Additional Acreage known as the SPLP Use area, unless engineering

constraints render SPLP unable to do so, and if it is unable to do so, it will notify the Township to cooperate on where on the SPLP Additional Acreage it will go. SPLP limits its focus to language in another section to interpret the contract as merely requiring SPLP to do whatever it wants.

11. Denied. Admission of the parol evidence elicited at the preliminary hearing in no way violates 52 Pa. Code §5.231(d) that otherwise renders settlement negotiations inadmissible. WGT does not seek to admit evidence of settlement negotiations in this matter presently before the Commission. Rather, the evidence relates to discussions that formed the contract between the parties and did resolve prior litigation. Like the Commission's policy, the Pennsylvania Courts have a strong judicial policy favoring settling lawsuits. *See Mastroni-Mucker v. Allstate Insurance Company*, 976 A.2d 510, 518 (Pa. Super. Ct. 2009). Further, Pennsylvania law is clear that enforceability of settlement agreements is determined according to principles of contract law. *Mastroni-Mucker*, 976 A.2 at 518. When an ambiguity in contract law exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances. *See Windows v. Erie Insurance Exchange*, 161 A.3d 953 (Pa. Super. Ct. 2017). An ambiguity being apparent in the Settlement Agreement at issue in this case, the parol evidence of the discussions that formed that agreement in the prior case, not the present case, is admissible to resolve the ambiguity under normal contract principles.

The cases cited by SPLP are inapposite. *Mari Jo Jensen v. PECO*, 2012 WL 6706639 (Pa. PUC Dec. 20, 2012) did not involve a contract action in the nature of enforcing an settlement agreement between the parties, but rather a dispute regarding an end of year reimbursement calculation. The roughly three-page opinion included only a footnote after the



first sentence regarding the History of the Proceeding, explaining that those portions of the Complainant's statement of facts that referenced settlement negotiations were omitted pursuant to 52 Pa. Code §5.231(d), with no further discussion. *See Jensen* at n. 1. Jensen sought to improperly recite evidence of settlement discussions in the matter that was currently before the Commission. The Commission properly did not consider this evidence.

*Black v. Metropolitan Edison Company*, 2006 WL 6609318 (Pa. PUC Jan. 27, 2006) involved a complaint regarding alleged health risks relating to a substation's continued growth. During the course of the case, an informal meeting was held to discuss settlement, wherein the respondent offered to bury the electrical lines as a solution to the complainant's concerns. *Black* at \*3. The Commission affirmed the ALJ's decision sustaining the respondent's objection to the evidence as privileged, on the grounds that it pertained to a "settlement not agreed to among the parties." Unlike the instant matter, the offered evidence in *Black* related to settlement discussions to resolve the matter currently before the Commission, not enforcement of a settlement contract from an earlier case. In addition, unlike the parties in *Black*, the parties in this matter did agree to the settlement, albeit with different interpretations as to what that settlement contract means.

Further, the purpose of 52 Pa. Code § 5.231 is to encourage settlement. Being able to enforce a settlement, and introduce important information about the meaning of a settlement, is consistent with the policy of encouraging settlement. Allowing a public utility to thwart evidence supporting enforcement of a settlement would be antithetical to this stated policy.

12. Denied. As ALJ Barnes already decided, the pertinent provisions of the Settlement Agreement are ambiguous because the parties have advanced two reasonable interpretations of the provisions, irrespective of any parol evidence relating thereto. *See Com. ex*

*rel. Kane v. UPMC*, 129 A.3d at 463 (“A contract’s terms are considered ambiguous ‘if they are subject to more than one reasonable interpretation when applied to a particular set of facts.’”) If the contract is not ambiguous, it is because the Township’s interpretation is the only reasonable interpretation and a trial should not be required. Further, while SPLP has “represented” in petition practice that it will not locate a valve in the Township, there is no Commission Order precluding SPLP from installing any valve or other above ground facilities relating to the Mariner East project on Janiec 2 or elsewhere in the Township. It is evident from the facts underlying this case that SPLP does not feel bound by such representations. Therefore, the dispute regarding the location of a valve on Janiec 2 is not moot as alleged by SPLP.

Further, an ambiguity exists in the Settlement Agreement, as indicated by the language in Section II.A.2. when read in conjunction with the language in Section IV.A.1.a. *See Com. ex rel. Kane v. UPMC*, 129 A.3d at 463 (citing *Murphy v. Duquesne Univ. Of The Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001) (“If...contractual terms are ambiguous, then resort to extrinsic evidence to ascertain their meaning is proper.”) A contract must be read as a whole to give effect to its true purpose and all of its provisions; one provision cannot be interpreted in a manner that annuls another provision. *Com. ex rel. Kane v. UPMC*, 129 A.3d at 463–64 (citing *Pritchard v. Wick*, 178 A.2d 725, 727 (Pa. 1962) and *Murphy*, 777 A.2d at 429 and *LJL Transp. v. Pilot Air Freight*, 962 A.2d 639, 648 (Pa. 2009)). In addition, looking to the rules of statutory construction for guidance, the headings in the Settlement Agreement do not control the meaning of the ambiguous language. *See* 1 Pa.C.S.A. § 1924; *Med. Shoppe, Ltd. v. Wayne Mem’l Hosp.*, 866 A.2d 455, 463 (Pa. Commw. Ct. 2005) (“[A] heading is to be given consideration in the limited situation where ‘the plain words of the statute are ambiguous, and, even in those cases, is not conclusive.’”).

13. Denied. In addition to the ambiguity exception discussed above, the fraud in the execution exception to the parol evidence rule also applies in this instance. As previously argued at the July 18, 2017, where this issue was fully considered and decided, SPLP led the Township to believe that the Settlement Agreement contained a promise that SPLP would install a valve on the SPLP Additional Acreage, and unless it was unable to do so due to engineering constraints, specifically on the SPLP Use Area and not elsewhere. SPLP specifically represented that it would honor such representations as promises, despite inserting them under a “Pertinent Information” heading, for fear of empowering other Townships. But now SPLP argues that the Settlement Agreement contains no such promise because any language relating thereto is omitted from the section of the agreement entitled “Promises, Covenants and Agreements.” If they are correct, and the contract does not contain such promises, the contract does not because SPLP fraudulently represented they were included. Further, the Township has not argued fraud in the inducement.<sup>3</sup> Also, unlike the contract at issue in *1726 Cherry St.*, the Settlement Agreement does not contain an integration clause. See Township Trial Exhibit 4.

14. Denied. See the response to paragraph 12 and 13. Further, the evidence adduced at the July 28, 2017 hearing demonstrates that this is exactly what happened.

15. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraph 11 and 12.

16. Denied as stated. The Township is not trying to introduce evidence of settlement negotiations in this matter that did not result in an agreement reached by the parties. Rather, the Township is resolving an ambiguity in a contract by proffering evidence of the negotiations of that contract, in accordance with Pennsylvania law. The fact that the contract resolved prior

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<sup>3</sup> Although the Township could have made such an argument, as SPLP represented at the time of the settlement that it had no plan to put the valve anywhere else in the Township, when it already had planned on putting the valve on the Janiec 2 Tract.

litigation is of no moment. See answer to paragraph 11. To the extent that SPLP argues that the Commission may deviate from the Pennsylvania common law relating to contractual ambiguities and parol evidence, the allegations are denied.

17. Admitted in part, denied in part. It is admitted that the Commonwealth Court case cited by SPLP applied the principles of contractual interpretation in the context of an appeal from a Commission ruling. Any further characterization thereof by SPLP is denied.

18. Admitted in part, denied in part. It is admitted that the case law cited by SPLP are writings that speak for themselves. Any characterization thereof by SPLP is denied. Further, as discussed above, and as already determined by ALJ Barnes, an ambiguity exists in the Settlement Agreement.

19. Denied. SPLP's argument that the Township is attempting to create an ambiguity in the Settlement Agreement based on parol evidence is nonsensical and denied. The Settlement Agreement is ambiguous because the provisions at issue in this case are capable of two different interpretations, without considering parol evidence, as ALJ Barnes properly decided before even hearing any parol evidence at the July 18, 2017 hearing. The remainder of this paragraph is denied for the reasons set forth in the preceding paragraphs.

20. Admitted in part, denied in part. It is admitted that the case law cited by SPLP is a writing that speaks for itself. Any characterization thereof by SPLP is denied.

21. Denied. The allegations are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19.

22. Denied. The allegations are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19.

23. Denied. SPLP's argument conveniently ignores the other provisions of the Settlement Agreement relevant to the determination of whether an ambiguity exists, e.g. Section II.A.2. and II.A.3. SPLP's argument to disregard these provisions is contrary to the applicable principles of contract interpretation, including interpreting a contract such that all provisions have meaning, discussed above. *See* response to paragraph 12.

24. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19. SPLP is simply attempting to try the issues in this case and argue its position on the ambiguous contractual positions through this motion to exclude evidence. Further, the contract does not simply refer to engineering constraints, but rather, engineering constraints that make SPLP unable to place the valve on the SPLP Use Area. Further, the promise that valve will be on the SPLP Additional Acreage, and the acknowledgment that nothing in the Agreement shall be interpreted as permission to put the Valve anywhere else on the SPLP Additional Acreage, when considered together, mean that if SPLP is unable to put the valve on the SPLP Use Area portion of the SPLP Additional Acreage due to engineering constraints (unable, not made inconvenient or more costly) than SPLP would notify the Township to identify another acceptable location on the SPLP Additional Acreage.

25. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19.

26. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19. Further, contrary to SPLP's assertion in this paragraph, Section II.A.2 does not merely refer to SPLP's intention but also says that SPLP had no plan to construct other above ground facilities anywhere else in this Township, and, as the evidence

demonstrates, this representation is simply false, as SPLP had plans to use the Janiec 2 Tract even before the Agreement was formed.

27. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19. The terms of the contract are ambiguous. The parol evidence clears up the ambiguities.

28. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19. The testimony cited by SPLP in this paragraph was permitted by ALJ Barnes after she fully considered the parties' positions and determined that an ambiguity existed in the contract. *See* Tr. Tr. at 41:16-17, 44:6-21. Hence, the parol evidence was properly admitted to determine the meaning of the ambiguous language. *Com. ex rel. Kane v. UPMC*, 129 A.3d at 463 (citing *Murphy v. Duquesne Univ. Of The Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001)). To the extent SPLP wishes to dispute Mr. LaLonde's testimony, it can do so through cross-examination at the hearing on this matter, not in this hallow attempt to exclude evidence already properly admitted by ALJ Barnes.

29. Denied. See response to paragraph 28. Further, this procedure is set forth in the Settlement Agreement, as explained in paragraph 24.

30. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19. The testimony cited by SPLP in this paragraph was permitted by ALJ Barnes after she fully considered the parties' positions and determined that an ambiguity existed in the contract. *See* Tr. Tr. at 41:16-17, 44:6-21. Hence, the parol evidence was properly admitted to determine the meaning of the ambiguous language. *Com. ex rel. Kane v. UPMC*, 129 A.3d at 463 (citing *Murphy v. Duquesne Univ. Of The Holy Ghost*, 777 A.2d at 429). To the extent SPLP wishes to dispute Ms. Camp's testimony, it can do so through cross-

examination at the hearing on this matter, not in this hallow attempt to exclude evidence already properly admitted by ALJ Barnes.

31. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19. It is this testimony from Mr. Brooman, and supporting documentary evidence, that is the most helpful to resolve the ambiguity most central to the dispute between the parties: whether the promises by SPLP were not really promises because they were set forth under the “Pertinent Information” section. The testimony cited by SPLP in this paragraph was permitted by ALJ Barnes after she fully considered the parties’ positions and determined that an ambiguity existed in the contract. *See* Tr. Tr. at 41:16-17, 44:6-21. Hence, the parol evidence was properly admitted to determine the meaning of the ambiguous language. *Com. ex rel. Kane v. UPMC*, 129 A.3d at 463 (citing *Murphy v. Duquesne Univ. Of The Holy Ghost*, 777 A.2d at 429). To the extent SPLP wishes to dispute Mr. Brooman’s testimony, it can do so through cross-examination at the hearing on this matter, not in this hallow attempt to exclude evidence already properly admitted by ALJ Barnes.

32. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 1, 4, 5, 10, 11, 12 and 19. By way of further answer, the Township does not allege that substantive representations were simply not written at all in the contract. Rather, the substantive representations were put in the contract, but under a different heading to benefit SPLP, and despite an apparent fraudulent SPLP representation that it would comply with these promises despite the location in the contract, SPLP now maintains the promises are not promises. Therefore, if SPLP is correct and the plain meaning of the contract would otherwise indicate that the promises are not promises, the parol evidence is required to correct this fraud in the execution of the contract.

33. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 13 and 14.

34. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 13 and 14.

35. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 13 and 14. SPLP cannot put the toothpaste back in the tube. The evidence demonstrates that the parties agreed that the promises were promises, but that they would be set forth in a "representations" section due to SPLP's fear of empowering other Townships. Further, the pertinent language is written in the Settlement Agreement as a promise, despite the section heading, as follows:

The pump station, the VCU and all accessory and appurtenant aboveground 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").

*See* Township Trial Exhibit 4 at Section II.A.2. (emphasis added). However, SPLP now maintains that this language did not create promises, based on the headings in the Agreement, thereby giving rise to an ambiguity.

36. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 13 and 14. While there was in fact fraud in the inducement, as SPLP did in fact have plans to put the Valve on the Janiec 2 Tract prior to the Agreement, contrary to the express representations in the Agreement, that is not the basis of this claim.

37. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 13 and 14. Further, the Pennsylvania Supreme Court has described fraud in the



execution as “where a party alleges that he was mistaken as to the terms and the actual contents of the agreement he executed due to the other’s fraud.” *Toy v. Metro. Life Ins. Co.*, 593 Pa. 20, 52, 928 A.2d 186, 206 (2007) (emphasis added). SPLP’s fraudulent misrepresentation regarding the placement and effect of the disputed language led the Township to believe that the Settlement Agreement contained a promise, whereas SPLP now argues that it does not. SPLP should not be rewarded for its fraud by the exclusion of relevant evidence, especially when ALJ Barnes already determined, after full consideration of the issue, that the evidence is admissible.

38. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 13, 14 and 37.

39. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraphs 13, 14 and 37.

40. Denied as stated. The allegations in this paragraph are denied for the reasons set forth in paragraph 11.

41. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraph 11. Further, while the Township agrees with the necessity of candor in settlement discussions, resolving the ambiguity at issue through the offered parol evidence would not require the review of preliminary or unaccepted terms discussed by the parties. Rather, the evidence helps resolve the conflict within the language of the Settlement Agreement. Further, SPLP ignores the unique circumstances of this Settlement Agreement between a municipality and a public utility, which had to be publicly approved by the Commission. *See* 66 Pa.C.S.A. § 507. SPLP purposely created an ambiguity in the Settlement Agreement, because it pertained to the installation of pipelines, hotly-disputed by many municipalities and residents across the Commonwealth, and the public disclosure of certain promises would put SPLP at a disadvantage

in later discussions with other municipalities. Allowing SPLP to now escape the promises made in this Settlement Agreement, without review of the evidence relevant to the interpretation of the ambiguous language, would run contrary to the equitable policy considerations underlying the rules pertaining to confidential settlement discussions.

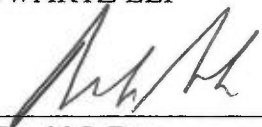
42. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraph 11 and 41. Further, if accepted, SPLP's argument would mean that an ambiguity in any settlement agreement must forever remain unresolved because of the Commission's or the Court's rules on confidentiality of settlement discussions. This is contrary to the principles of contract interpretation, which apply to the interpretation of settlement agreements as discussed above.

43. Denied. The allegations in this paragraph are denied for the reasons set forth in paragraph 11, 41, and 42.

WHEREFORE, West Goshen Township respectfully requests that SPLP's Motion to Strike Testimony Submitted on the Merits by West Goshen Township be denied.

HIGH SWARTZ LLP

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

4/20/18

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David J. Brooman, Esquire (I.D. No. 36571)  
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Mark R. Fischer, Jr., Esquire (I.D. No. 94043)  
HIGH SWARTZ, LLP  
40 East Airy Street  
Norristown, PA 19404  
(t) 610-275-0700  
(f) 610-275-5290  
dbrooman@highswartz.com  
rsokorai@highswartz.com  
mfischer@highswartz.com

*Attorneys for West Goshen Township*

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

**CERTIFICATE OF SERVICE**

I Richard C. Sokorai, Esquire, hereby certify that on April 20, 2018, I served a true and correct copy of West Goshen Township’s Answer to Sunoco Pipeline, L.P.’s (“SPLP”) Motion to Strike Testimony submitted on the Merits by West Goshen Township, upon the parties listed below by email and U.S. Mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

The Honorable Elizabeth H. Barnes  
Administrative Law Judge  
PA. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
*EBARNES@pa.gov*

Thomas J. Sniscak, Esquire  
Kevin J. McKeon, Esquire  
Whitney E. Snyder, Esquire  
Hawke McKeon & Sniscak, LLP  
100 North Tenth St.  
Harrisburg, PA 17101  
*tjsniscak@hmslegal.com; kjmckeon@hmslegal.com*  
*wesnyder@hmslegal.com*  
Attorneys for Sunoco Pipeline L.P

HIGH SWARTZ LLP

By:  \_\_\_\_\_

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

Date: 4/20/18