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BY ELECTRONIC AND FIRST CLASS MAIL

Honorable Elizabeth Barnes
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Re: West Goshen Township v. Sunoco Pipeline L.P.; Docket No. C-2017-2589346;
SUNOCO PIPELINE L.P.'S MAIN BRIEF (PUBLIC VERSION)

Dear ALJ Barnes:

Enclosed you will find Sunoco Pipeline L.P.'s ("SPLP") Main Brief (Public Version) in the above-captioned proceeding. Copies of SPLP's Brief have been served in accordance with the attached Certificate of Service. If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

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

Counsel for Sunoco Pipeline L.P.

TJS/WES/das
Enclosure

cc: Rosemary Chiavetta (by 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

RESPONDENT SUNOCO PIPELINE L.P.'S MAIN BRIEF

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Dated: June 5, 2018

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I. INTRODUCTION AND STATEMENT OF THE CASE

This is a case where the party with the burden of proof has universally failed to meet its burden. West Goshen Township (WGT or the Township) has opposed construction of Sunoco Pipeline L.P.'s (SPLP) Mariner East 2 (ME2) pipeline since its inception. Its first opposition in 2014 resulted in the May 2015 Settlement Agreement at issue here. In that Settlement Agreement, SPLP agreed to certain terms, one of which is central to this litigation, and was expressly subject to being done only if there were no "engineering constraints." None of the provisions of the Settlement Agreement has been violated by SPLP. Concerning the construction of ME2, SPLP was willing only to give representations in the Settlement Agreement concerning its future intent of construction, regarding location of the valve. This is because, as Mr. Gordon explained, flexibility and managerial discretion is needed for the company to be able to safely complete the project. Engineering was necessary to determine what could or could not be done, and therefore the engineering constraints language had to be included in the Settlement Agreement. That is why SPLP was only willing to make representations about its future intent concerning the valve, and not an unconditional promise as WGT claims.

SPLP intended to place a valve on the SPLP Use Area. SPLP was not willing to promise anything more about the valve or its location except that it would not place a valve on the SPLP Additional Acreage. Once SPLP learned that engineering constraints prevented placement of the valve on the SPLP Use Area, it promptly notified the Township – numerous times and in numerous ways. SPLP obtained additional property, the Janiec 2 parcel, on which it could place the valve. SPLP never promised not to place a valve on the Janiec 2 parcel. But the Township, concerned with aesthetics and its economic interest (as opposed to safety) of not losing potential tax base

revenues from other proposed uses of that property by a developer, found this unacceptable and brought this Complaint. It is undeniable that this Complaint was all about aesthetics because the Township's own safety expert found that construction of ME2 with placement of a valve on the Janiec 2 parcel was safe and prudent. Township Exhibit 23. Nonetheless, the Township had SPLP's construction enjoined over mere aesthetic and economic concerns.

SPLP was faced with a catch-22. It cannot, due to proven and un rebutted evidence of engineering constraints (consistent with the Settlement Agreement) safely and feasibly construct the valve where the Township wants it – the SPLP Use Area. It cannot, due to the Township's aesthetics complaints and economic interests, construct the valve on the Janiec 2 parcel. So, SPLP explored whether in fact a valve was necessary at all. It reviewed its prior analysis, undertook new analyses, and confirmed that in fact, the valve is not necessary and eliminating it presented no safety concerns if an immediately upstream valve only 2.5 miles away was changed from manual to automated. In fact, the valve response performance of doing that was virtually identical to the performance of placing Valve 344 on the SPLP Use Area as intended under the Settlement Agreement (subject to engineering constraints) and WGT's safety expert approved that Settlement Agreement performance as safe.

SPLP has presented un rebutted expert testimony that the effects of eliminating the valve and automating the upstream valve are equally safe to the valve response times in the Settlement Agreement valve configuration and composition. Specifically, **upstream performance improves under SPLP's present plan compared to the Settlement Agreement valve plan and the change to downstream performance was described by SPLP's nationally renowned pipeline safety expert as insignificant, which he analogized as the difference from driving "50 miles per hour compared to 50.05 miles per hour."** Tr. at 612:21-23. This should have resolved the Township's

complaint. But apparently caught in the current of litigation, and having an agenda to stop ME2, the Township persists.

The Township's case however is nothing more than an untethered bundle of allegations as opposed to facts. This does not suffice – the Township has the burden of proof. Nonetheless, the Township has presented no empirical evidence that removing the valve makes the ME2 pipeline unsafe. The Township has presented no evidence that engineering constraints do not prevent SPLP from safely and feasibly constructing the valve on the SPLP Use Area. In fact, the Township withdrew its only expert witness on the issue of the engineering constraints at the first day of hearings, leaving a gaping hole in the record for the party with the burden of proof. The Township was left with a geologist and a traffic engineer that have no expertise with Horizontal Directional Drilling (HDD) for liquid petroleum pipelines or pipeline safety. The geologist made no conclusions concerning engineering constraints. The traffic engineer made no conclusions regarding the use of HDD.

In contrast, SPLP provided expert testimony by:

- Premier national and international expert (Dr. Samuel Ariaratnam, P.E.) on HDD and pipeline construction methods;
- Professional Engineer (Christopher Antoni, P.E.) who concentrates his work on designing HDD projects, including in Pennsylvania;
- Nationally renowned pipeline safety expert (Patrick Vieth) who was the past Vice-Chair of the ASME B.31.4 guidelines, has been awarded the designation of ASME Fellow, and has testified as an expert in over 50 matters;

- Professional Engineer (Richard Cotter P.E.) who focuses on traffic consideration relative to pipeline construction in many projects in Pennsylvania including ME2; and,
- Professional Geologist (Douglas Hess P.G.) who provides services relative to pipelines and geological matters.

Additionally, SPLP presented the testimony of Mr. Gordon, the ME2 project director, to explain how and why SPLP has made the decisions that it did. This line-up of preeminent nationally known, HDD, construction, safety, traffic and geology experts reviewed SPLP's managerial and operations decisions and have confirmed and testified that SPLP has prudently decided (a) that the valve is not necessary and removal of the valve does not present safety issues and (b) engineering constraints prevent safely and prudently constructing the valve on the SPLP Use Area.

In short, WGT is attempting to shoe-horn a valve into the SPLP Use Area in a manner which creates major construction and safety problems due to the steep V or U shape of the HDD installation to connect the valve to ME2, elevation/topography issues, unsuitable geology, the fact that the connecting pipe would run under a very busy four lane state highway, and creates huge risk to the motoring public, first responders and other public and municipal utilities in the area at issue.

There can be no doubt based on the record of this case that SPLP has not violated the Settlement Agreement. The Settlement Agreement is clear on the valve placement being subject to "Engineering Constraints"; therefore, under controlling law there is no need for the extreme contract remedy of delving into parol evidence. However, even if this un rebutted evidence were ignored, injunction of SPLP from construction is not the remedy because it is not in the public

interest. Instead, the Settlement Agreement should be reformed so that it reflects the public interest. *ARIPPA v. Pennsylvania Pub. Util Comm'n*, 792 A.2d 636, 662 (Pa. Cmwlth. 2002) (private agreements are subject to change by the Commission to conform to the public interest). The public interest requires that SPLP is absolved of any alleged duty to construct a valve in the Township or, in the event the evidence that a valve is not needed is ignored, SPLP is allowed to construct the valve on the only place it is safe and feasible to do so – the Janiec 2 parcel.

WGT's constantly shifting positions from initially no above ground facilities, to if SPLP wants a valve it must be on the SPLP Use area, then to not wanting a valve on Janiec 2 for aesthetic reasons, and now to a valve must be installed 2.5 miles from the next upstream valve (even though WGT's expert cited 7.5 miles as the interval he believes applies) despite a major upgrade automating the upstream valve, is little more than an agenda to oppose ME2 and should be rejected.

II. BURDEN OF PROOF

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, than that presented by the Respondent. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. It is axiomatic

that a legal decision must be based on real and credible evidence that is found in the record of the proceeding. *Pocono Water Co. v. Pa. PUC*, 630 A.2d 971, 973-74 (Pa. Cmwlth. 1993) (finding that the Commission violated the utility's due process rights "because it assessed liability after determining an issue which [the utility] had not been afforded a reasonable opportunity to defend at the hearing."); *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433, 437 (Pa. Cmwlth. 1986) (holding that the Commission violated the utility's due process rights because the utility was "not given adequate notice of the specific conduct being investigated, and hence its defense was gravely prejudiced."). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially establish a *prima facie* case, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to the Respondent. If the evidence presented by the Respondent is of equal weight, the Complainant has not satisfied his burden of proof. The Complainant now must provide some additional evidence to rebut that of the Respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). In sum, WGT always has the burden of proof in this proceeding.

III. SUMMARY OF ARGUMENT

Section A explains that SPLP's decision not to place a valve in the Township does not violate the Settlement Agreement because the Settlement Agreement does not require that a valve be placed in the Township. The Settlement Agreement is not ambiguous and must be interpreted by its plain terms regarding whether SPLP agreed to place a valve in the Township. Those plain terms are clear that SPLP never agreed to place a valve in the Township, but instead reserved its managerial discretion in the event of engineering constraints. Even if parol evidence were considered on this issue, the parol evidence regarding whether SPLP agreed to place a valve in the Township shows it did not.

Most importantly, SPLP has shown via unrebutted expert testimony that not placing a valve in the Township does not create safety issues. WGT presented absolutely no evidence that elimination of the valve makes the pipeline unsafe. While WGT Witness Kuprewicz testified there would be a safety concern based on his faulty assumption that elimination of the valve resulted in a 15-mile span between remotely operated automated block valves, Complainant St. No. 2 at 4:19-5:7, the evidence shows that this span is in fact only 8.4 miles. *See, e.g.*, SPLP St. No. 2 at 10:13. When Kuprewicz opined as to the correct 8.4-mile span, he was clearly unwilling to state that elimination of the valve would make the pipeline unsafe, instead hedging and only going so far as to say eliminating the valve "wouldn't make sense" and that he thinks the "better approach" would be to maintain the remotely operated valve at Boot Road and convert the Lincoln Highway valve to remotely operated. Complainant St. No. 8 at 2:4-7. Mr. Kuprewicz provided absolutely no technical basis for these statements. SPLP St. No. 2-RJ at A.4. Moreover, Mr. Kuprewicz's "better approach" flies in the face of his original safety analysis of the ME2 pipeline, where he concluded that it was safe to have the Lincoln Highway valve as manual and the Boot Road valve as

automated and his statements that: "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." *Id.* (quoting Complainant Ex. 22, Kuprewicz Accufacts Report). WGT wholly failed to meet its burden of proof to show elimination of the valve is unsafe.

In contrast to the inconclusive, equivocal testimony WGT presented, SPLP presented the un rebutted, conclusive independent expert testimony of Mr. Patrick Vieth that elimination of the valve presents no safety concerns and has a negligible effect. *See generally* SPLP St. Nos. 2 and 2-RJ; SPLP Ex. PV-2. Mr. Vieth is a distinguished expert in pipeline risk and integrity management. He has over 30 years technical expertise related to risk and integrity management of pipelines, including HVL pipelines, is the past Vice Chair of the ASME B.31.4 guideline, has been awarded the designation of ASME Fellow, and has testified as an expert in over 50 matters. SPLP St. No. 2 at 1:5-19; SPLP Ex. PV-1 (Curriculum Vitae of Patrick Vieth).

Mr. Vieth explained that decisions concerning valve spacing can be made based on dispersion modelling "to predict the trajectory, concentrations, and distances from the pipeline to determine the extent of certain hazards for various combinations of release types and meteorological conditions." *Id.* at 5:8-13. **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[END HIGHLY CONFIDENTIAL] Mr. Vieth concluded that “SPLP’s decision here to eliminate Valve 344 is supported by sound existing technical, operational, and safety reasons including adding automated control at the immediately upstream Valve and appropriate consideration of the assessment analysis to evaluate the effects.” SPLP St. No. 2 at 10-13.

Mr. Vieth also concluded that the analysis shows “the elimination of MP 344 (Boot Road) valve had negligible effect on the consequence impact radius.” SPLP St. No. 2-RJ at A.2.; Tr. at 578:20-23. In fact, the valve response performance of eliminating the valve was virtually identical to the performance of placing Valve 344 on the SPLP Use Area as intended under the Settlement Agreement (subject to engineering constraints) and WGT’s safety expert approved that Settlement Agreement performance as safe.

SPLP has presented unrebutted expert testimony that the effects of eliminating the valve and automating the upstream valve are equally safe to the valve response times in the Settlement Agreement valve configuration and composition. Specifically, **upstream performance improves under SPLP’s present plan compared to the Settlement Agreement valve plan and the change to downstream performance was described by SPLP’s nationally renowned pipeline safety**

expert as insignificant, which he analogized as the difference from driving “50 miles per hour compared to 50.05 miles per hour.” Tr. at 612:21-23.

Section B explains that even if the Settlement Agreement contains a requirement to place a valve in the Township (which it does not), that is subject to engineering constraints that are present and prevent placement of the valve on the SPLP Use Area.

Assuming *arguendo* that the Pertinent Information Section of the Settlement Agreement could be interpreted as a covenant (even though the law clearly requires that it cannot be interpreted as such), the plain terms of that section are very clear that any indication SPLP would place a valve on the SPLP Use Area was subject to engineering constraints. Those engineering constraints are plain terms of the Settlement Agreement and must be given effect. *Central Dauphin School Dist. v. American Cas. Co.*, 493 Pa. 254, 258, 426 A.2d 94, 96 (1981) (“It is axiomatic, however, that **‘(t)o determine an agreement, a writing must be interpreted as a whole, giving effect to all its provisions.’**”) (quoting *Atlantic Richfield Co. v. Razumic*, 40 Pa. 366, 372 390 A.2d 736, 739 (1978)). WGT has the burden to show that those engineering constraints do not exist. WGT completely failed to adduce any such evidence, especially because it withdrew the testimony of its only professional engineer that submitted pre-filed testimony on the topic.

In stark contrast, SPLP presented Mr. Gordon, SPLP Project Director for the ME2 project, who explained the engineering constraint SPLP considered. SPLP then presented the expert testimony of four experts that concluded these constraints prevent installation of the valve on the SPLP Use Area. Thus, even under the incorrect interpretation of the Settlement Agreement that SPLP agreed to place a valve in the Township, that alleged agreement was subject to engineering constraints. SPLP’s detailed explanation and analysis of the evidence of these constraints proves SPLP has not violated the Settlement Agreement concerning placement of the valve.

To construct the valve, the pipeline must come to the surface in the location of the valve. Thus, to place the valve on the SPLP Use Area, SPLP must be able to construct the pipeline such that the pipeline can approach the valve from each direction and meet the ground surface at the valve site. There are two general approaches to engage in this construction – open cut and HDD. Regarding the western portion of the pipeline, WGT made no challenge to SPLP’s testimony that HDD cannot be used.

WGT alleged, but failed to carry its burden to show that in fact open cut construction could be used to install the portion of the pipeline to the east of the SPLP Use Area. Mr. Gordon explained that due to the highly congested nature of the existing private and municipal utilities facilities underneath and along Boot Road to the West of the SPLP Use Area and the unlikelihood of obtaining a permit to open cut Boot Road, using open cut construction to install the pipeline to allow a valve to be placed on the SPLP Use area is impracticable. SPLP St. No. 1 at 11:11-12:12. Mr. Cotter confirmed Mr. Gordon’s analysis, testifying that open cutting Boot Road is infeasible. SPLP St. No. 3 at 2:19-3:3. Mr. Cotter also testified that PennDOT would not allow SPLP to open cut Boot Road. SPLP St. No. 3 at 4:20. WGT Witness Carlin’s unsupported allegations, which took Mr. Cotter’s testimony out of context, are the only evidence WGT presented on this issue. But, as Mr. Cotter explained: “PennDOT has refused to grant detours on roads or routes where the level of service is severely impacted or where the nature of the road may present a hazard. That is the case here.” Tr. at 346:12-15. Mr. Cotter explained that when SPLP met with PennDOT, they were “relieved” that SPLP would not be open cutting Boot Road. Tr. at 346:16-23.

Regarding the eastern portion of the pipeline, WGT made no challenge to SPLP’s testimony that open cut construction cannot be used. WGT alleged, but presented no evidence that HDD could be conducted in the manner necessary to construct the eastern portion of the pipeline

and place the valve on the SPLP Use Area. Mr. Gordon explained that minimum curvature issues (the extent to which the pipe can be bent without negatively impacting its strength) coupled with the geology beneath Route 202 (which SPLP's professional geologist and its HDD experts conclude presents safety risks of inadvertent return beneath Route 202 that would cause safety issues for traffic) prevent installation of the valve on the SPLP Use Area. SPLP St. No. 1 at 13:7-14:12.

As to geology, Professional Geologist Douglas Hess reviewed the geologic data SPLP had collected on which it based its decision and concluded Mr. Gordon was correct that the drill path alternatives necessary to place a valve on the SPLP Use Area all come at a great risk of inadvertent return and potential heaving of the highway. Mr. Hess explained that the key feature of the geology is not the specific type of material, but that it is highly weathered, intensely fractured, and decomposed. SPLP St. No. 4 at 2:22-3:14. Relying on Mr. Antoni and Dr. Ariaratnam's evaluation of the necessary drill path and their conclusions that such steep drill path cannot be constructed to reach the industry preferred minimum 20 feet of competent bedrock cover, Mr. Hess concluded that it would be inappropriate to use HDD to install the valve based on the geology due to the risk of inadvertent returns under Route 202. WGT presented no evidence to rebut Mr. Hess's conclusions regarding geology. Tr. at 384:9-16.

As to construction design, Mr. Antoni analyzed all the potential drill design paths to place a valve on the SPLP Use Area or even the SPLP Additional Acreage. Tr. at 542:22-544:24, 546:10-13. He concluded none are feasible. *Id.*; *see also* SPLP St. No. 5 at 5:9-8:20; Tr. at 536:11-541:17. He explained in detail how minimum curvature issues prevent any HDD path from reaching an adequate depth of cover for the drill path surfacing on the SPLP Use Area and the Janiec 2 tract. SPLP St. No. 5 at 5:9-8:2.

Again, WGT presented absolutely no evidence on this issue. They did not even present an engineer with any experience or responsibility regarding pipeline construction and design. Instead, they presented their safety expert Mr. Kuprewicz's unsupported assertion that "there is no apparent reason to re-surface at the Janiec 2 Tract." Complainant St. No. 8 at 5:12-18. Both Mr. Antoni and Dr. Ariaratnam rebutted this conclusion, explaining that surfacing on the Janiec 2 tract to meet ME2 is less risky than extending the drill, Tr. at 539:17-21, and extending the drill does not solve the geology issues and minimum curvature problems with having an entry point on the SPLP Use Area. Tr. at 540:13-541:17; SPLP Hearing Ex. 3.

Dr. Ariaratnam also analyzed SPLP's construction design decisions, focusing on "how that project should best be undertaken to minimize a public safety and disturbance to the general public and environmental impacts." Tr. at 430:21-23. He concluded that a valve cannot feasibly be installed on the SPLP Use Area. SPLP St. No. 6 at 4:19-6:13. Dr. Ariaratnam also explained, based on his experience and visit to the site that any exit/entry point suffers from the same "pinch point" issue Mr. Antoni described. Tr. at 435:13-436:5; 448:1-17.

Section C explains that SPLP did not breach the notice or information provisions of the Settlement Agreement. Regarding notice, WGT falsely alleges that SPLP was required under the Settlement Agreement to give some particularized notice to WGT of the changes regarding the valve and did not do so. First, the Settlement Agreement requires no particular type of notice or information. Second, SPLP did provide WGT with notice of the valve location and engineering constraints in January 2016 at an in-person meeting, as four SPLP witnesses testified. SPLP St. No. 1 at 17:6-15; SPLP St. No. 7 at 1:18-3:4; SPLP St. No. 8 at 1:15-2:6; SPLP St. No. 9 at 1:14-2:20; SPLP DZ-1 (Highly Confidential). Regarding removal of the valve, SPLP notified WGT of this change via its pleadings in this proceeding in November 2017 when it made its decision. SPLP

notified WGT of the reasons for this decision via its testimony and exhibits in this proceeding. WGT has provided no evidence that SPLP did not provide the notice required under the Settlement Agreement.

WGT falsely alleges SPLP has not provided it with information or notice. However, WGT has presented absolutely no evidence of what specific information SPLP supposedly has not provided or why that information is necessary to be provided. When SPLP decided not to locate a valve in the Township, SPLP provided via its testimony and exhibits the pertinent information regarding this change. *See, e.g.*, SPLP St. No. 1 at 7:5-10; SPLP St. No. 2-RJ at B.8.

Again, the Settlement Agreement did not require SPLP to provide information in any specific form, and did not require SPLP to update the information previously provided at all. But, SPLP did provide WGT and Mr. Kuprewicz with the information pertinent to his safety review in its testimony. WGT bears the burden of proof and has presented no evidence to the contrary after SPLP submitted its direct testimony.

Section D explains that if SPLP Violated the Settlement Agreement (which it did not), injunction of construction or ordering placement of the valve on the SPLP Use area is not the proper remedy: reformation is the proper remedy to foreclose the many risks upon the public by locating the valve as wanted by WGT.

Even if the overwhelming evidence that SPLP has not violated the Settlement Agreement were ignored, an injunction is not the proper remedy. The Commission has the power to reform settlement agreements involving utilities where it is in the public interest to do so. *See, e.g.*, *ARIPPA v. Pennsylvania Pub. Util Comm'n*, 792 A.2d 636, 662 (Pa. Cmwlth. 2002) (private agreements are subject to change by the Commission to conform to the public interest). In the alternative, that can be done here to protect the public from the risky and infeasible construction

necessary to place Valve 344 where WGT insists. The Commission has already found that SPLP's utility service is in the public interest by granting it a certificate of public convenience and confirming that certificate of public convenience applies to the service to be provided on Mariner East 2. Enjoining construction, where it has been proven there are no safety concerns and there is no irreparable harm to the Township is not in the public interest. Instead, if any violation of the Settlement Agreement is found, the Commission has the power to modify the Agreement consistent with the public interest – *i.e.* removing any alleged agreement to place a valve in the Township on the SPLP Use Area.

Moreover, even if it was found that a valve is necessary, it has been proven that engineering constraints prevent SPLP from placing a valve on the SPLP Use Area. The last thing Your Honor or this Commission should do is require SPLP to engage in construction SPLP deems unsafe and risky where there is a perfectly safe option – placing the valve on the Janiec 2 tract, which WGT opposed and this Commission foreclosed by its Orders in this docket. WGT's safety expert has already evaluated placement of the valve in that location and found it safe and prudent. Township Exhibit 23. Again, it is consistent with the public interest (if it is found a valve is necessary, which it is not) to modify the Settlement Agreement and allow SPLP to place the valve where it is safe and feasible to do so. In fact, given the engineering constraints, if Your Honor or this Commission found that safety and prudence required a valve, the only safe location to install it would be on Janiec 2, and the only location where it can be installed without open cutting Boot Road (which expert testimony says cannot be done) is on Janiec 2. The foregoing should not be misconstrued as SPLP intending to place Valve 344 on Janiec 2. SPLP would only do so if the Commission so directed.

IV. ARGUMENT**A. SPLP's Decision Not To Place A Valve In The Township Does Not Violate The Settlement Agreement because The Settlement Agreement Does Not Require That A Valve Be Placed In The Township**

The Settlement Agreement is not ambiguous and must be interpreted by its plain terms regarding whether SPLP agreed to place a valve in the Township. *Metzger v. Clifford Realty Corp.*, 476 A.2d 1, 5 (Pa. Super. 1984) (“A contract is not ambiguous if the court can determine its meaning without any guide other than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends; and a contract is not rendered ambiguous by the mere fact that the parties do not agree upon the proper construction.”) The parol evidence rule preserves the integrity of written agreements by precluding extrinsic evidence that contradicts the final written agreement. *Rose v. Food Fair Stores, Inc.*, 437 Pa. 117, 262 A.2d 851 (Pa. 1970). “Put differently, the law views written agreements to not only be the best, but the only evidence of the agreement and therefore, absent ambiguity, fraud, or mistake, parol (extrinsic) evidence is excluded.” *LeDonne v. Kessler*, 389 A.2d 1123 (Pa. Super. 1978). Those plain terms are clear that SPLP never agreed to place a valve in the Township, but instead reserved its managerial discretion in the event of engineering constraints. Even if parol evidence were considered on this issue, the parol evidence regarding whether SPLP agreed to place a valve in the Township shows it did not. Most importantly, SPLP has shown via unrebutted expert testimony that not placing a valve in the Township does not create safety issues. No valve is necessary, SPLP never agreed to place a valve in the Township, and thus the Township cannot and has not shown a violation of the Settlement Agreement regarding the valve. In fact, the valve response performance of eliminating the valve was virtually identical to the performance of placing Valve 344 on the SPLP Use Area as intended

under the Settlement Agreement (subject to engineering constraints) and WGT's safety expert approved that Settlement Agreement performance as safe.

SPLP has presented un rebutted expert testimony that the effects of eliminating the valve and automating the upstream valve are equally safe to the valve response times in the Settlement Agreement valve configuration and composition. Specifically, **upstream performance improves under SPLP's present plan compared to the Settlement Agreement valve plan and the change to downstream performance was described by SPLP's nationally renowned pipeline safety expert as insignificant, which he analogized as the difference from driving "50 miles per hour compared to 50.05 miles per hour."** Tr. at 612:21-23.

1. The Settlement Agreement Is Not Ambiguous

When a contract's meaning can be ascertained from the document itself and knowledge of simple facts surrounding the contract, then it is not ambiguous and thus parol evidence is not admissible. *Metzger v. Clifford Realty Corp.*, 476 A.2d 1, 5 (Pa. Super. 1984). Further, a contract is not ambiguous simply because the parties do not agree on its construction. *Id.* It is a question of law to determine whether the contract contains ambiguous language. *Id.*

Here, the plain terms of the Settlement Agreement are unambiguous. Section II. of the Settlement Agreement, is labeled "Pertinent Information Provided by SPLP" and begins with "SPLP has provided WGT and WGT's consulting expert with the following information." Settlement Agreement at 2. The Pertinent Information section, under the plain and unambiguous terms of the contract cannot be interpreted as a covenant or promise by SPLP. Instead, the plain terms of the agreement show the Pertinent Information was SPLP representing its future intentions: "Subject to engineering constraints, SPLP *intends* to construct the valve station" Settlement Agreement at II.A.2. (Emphasis added).

The terms where SPLP agreed to make a covenant or promise are contained solely in Section IV. Section IV., is labeled “The Parties’ Promises, Covenants and Agreements” and begin with “Based on the SPLP Information recited in Section II of this Agreement, the Parties agree to make the following promises, covenants and agreements.” Settlement Agreement at 5.

There is nothing ambiguous about this. Your Honor cannot place the cart before the horse and say there might be ambiguity as to whether the parties intended the Pertinent Information Section to contain covenants or promises on the part of SPLP based on parol evidence, especially based on WGT’s attorneys’ “belief” regarding the meaning of the contract. Both Ms. Camp and Mr. Brooman participated in the negotiation and drafting of the Settlement Agreement and advised WGT concerning the Settlement Agreement, and *both testified that they would not advise their clients to sign an ambiguous agreement.* Tr. at 276:3-25 (Attorney and WGT Solicitor Camp) (“I would not recommend a client to sign an ambiguous agreement, that is correct.”), 285:7-21 (Attorney and Special WGT Counsel in PUC matters Brooman) (same). The Settlement Agreement is not ambiguous concerning what constitutes non-binding background information regarding SPLP’s intentions for construction versus the terms SPLP agreed to as binding covenants. With no ambiguity, parol evidence (evidence of the parties’ intent) cannot be considered. The plain language of the Settlement Agreement controls.

2. The Unambiguous Terms Of The Settlement Agreement Do Not Require A Valve

There is absolutely no promise on the part of SPLP to place a valve in the Township. The agreed to covenant (as opposed to informational parts) of the Settlement Agreement is contained in Section IV.A.1.a. The fact that the informational sections are labeled “Pertinent Information” and not “The Parties’ Promises, Covenants and Agreements” cannot be ignored. *Central Dauphin*

School Dist. v. American Cas. Co., 493 Pa. 254, 258 426 A.2d 94, 96 (1981) (“It is axiomatic, however, that **‘(t)o determine an agreement, a writing must be interpreted as a whole, giving effect to all its provisions.’**”) (quoting *Atlantic Richfield Co. v. Razumic*, 480 Pa. 366, 372, 390 A.2d 736, 739 (1978)). Section IV.A.1.a., the only section containing SPLP’s binding promises, states:

Because of its existing Pump Station Facility at Boot Road, except with respect to the SPLP Use Area, SPLP covenants and agrees that it shall not construct or install any pump stations, VCUs or above-ground permanent public utility facilities on the SPLP Additional Acreage for any phase of the Mariner East Project. SPLP also agrees that, except for the SPLP Use Area, any use of the SPLP Additional Acreage for staging construction, laydown or other operational activity will be temporary, and SPLP will restore the surface to its former condition following the completion of such activity. SPLP will execute and record a deed restriction reflecting this limitation within sixty (60) days of the Effective Date of this Agreement, in a form substantially similar to the Form of Dated Restriction attached hereto as Appendix 4. SPLP will provide copies of the recorded deed restriction to counsel for WGT and CCWGT within five business days of the date of recording.

It does not even mention the word “valve.” This provision shows SPLP’s binding agreement that it shall not place above ground facilities except if SPLP chose to on the SPLP Additional Acreage. There is no provision in the Settlement Agreement where SPLP *agreed* to construct a valve in the Township. In other words, if Sunoco decided a valve was necessary on the Janiec 1 property, it was to be in the SPLP Use Area.

3. Parol Evidence Shows There Was No Agreement To Place A Valve In The Township

SPLP believes it is plain legal error to allow parol evidence as stated in its Motion to Strike such testimony which is incorporated herein by reference. But, even if parol evidence were appropriate (which it is not) it shows there was no agreement to place a valve in the Township.

The testimony of WGT witnesses, Mr. Lalonde, the Township Manager, Ms. Camp, the Township Solicitor, and Mr. Brooman, the Township's outside counsel in this matter all show that the Township merely wanted to contain above-ground facilities in a certain location, not require a valve. *See, e.g.*, Tr. at 59:6-10 (Lalonde) ("The primary goal was to ensure that any above-ground facilities were maintained in this general area on the existing pump station and to insure that we did not have above-ground facilities spreading out again over the entirety of the township"), 137:16-138-1 (Camp).

In fact, as Mr. Brooman repeatedly stated, it was SPLP that raised the issue of having a valve. Tr. 164:23-165:1. "When they said they wanted to put a valve, the township wanted to put it as close to the Boot area pump station that currently existed." Tr. at 165:19-21. Thus, the Township's own parol evidence shows it never cared about whether there would in fact be a valve, only that it would not be an eyesore. Accordingly, even if the Settlement Agreement were ambiguous, there is no parol evidence showing that it should be interpreted to require a valve to be located in the Township.

Moreover, as Mr. Lalonde admitted, the Township had two concerns, safety and aesthetics concerning location of above ground facilities, and not locating a valve in the Township removes all concerns related to aesthetics.¹ Tr. at 278:20-279:7. Given that, as detailed below, safety is not a concern regarding elimination of the valve, it is unclear why the Township continues to pursue this Complaint. Regardless of the Township's motives, SPLP has not violated the Settlement Agreement with its decision not to place a valve in the Township.

¹ Automating the upstream valve instead of it being manual has improved response upstream of the SPLP Use Area (the then proposed Valve 344 site) and there is a negligible impact on response downstream, as explained by SPLP Pipeline Safety expert Vieth as discussed below in this brief.

4. Eliminating The Valve Does Not Make the Pipeline Unsafe

WGT presented absolutely no evidence that elimination of the valve makes the pipeline unsafe. While WGT Witness Kuprewicz testified there would be a safety concern based on his faulty assumption that elimination of the valve resulted in a 15-mile span between remotely operated automated block valves, Complainant St. No. 2 at 4:19-5:7, the evidence shows that this span is in fact only 8.4 miles. *See, e.g.,* SPLP St. No. 2 at 10:13. When Mr. Kuprewicz opined as to the correct 8.4-mile span, he was clearly unwilling to state that elimination of the valve would make the pipeline unsafe, instead hedging and only going so far as to say eliminating the valve “wouldn’t make sense” and that he thinks the “better approach” would be to maintain the remotely operated valve at Boot Road and convert the Lincoln Highway valve to remotely operated. Complainant St. No. 8 at 2:4-7. Mr. Kuprewicz provided absolutely no technical basis for these statements. SPLP St. No. 2-RJ at A.4. Moreover, Mr. Kuprewicz’s “better approach” flies in the face of his original safety analysis of the ME2 pipeline, where he concluded that it was safe to have the Lincoln Highway valve as manual and the Boot Road valve as automated and his statements that “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.” *Id.* (quoting Complainant Ex. 22, Kuprewicz Accufacts Report). WGT wholly failed to meet its burden of proof to show elimination of the valve is unsafe.

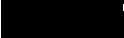
In contrast to the inconclusive, equivocal testimony WGT presented, SPLP presented the un rebutted, conclusive independent expert testimony of Mr. Patrick Vieth that elimination of the valve presents no safety concerns and has a negligible effect. *See generally* SPLP St. Nos. 2 and 2-RJ; SPLP Ex. PV-2. Mr. Vieth is a distinguished expert in pipeline risk and integrity management. He has over 30 years technical expertise related to risk and integrity management






of pipelines, including HVL pipelines, is the past Vice Chair of the ASME B.31.4 Standards, has been awarded the designation of ASME Fellow, and has testified as an expert in over 50 matters. SLPL St. No. 2 at 1:5-19; SPLP Ex. PV-1 (Curriculum Vitae of Patrick Vieth).

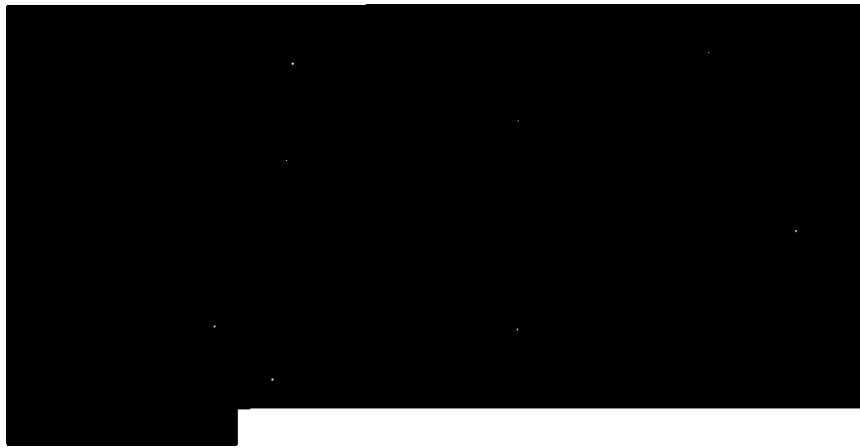
Regarding Mr. Kuprewicz's reliance on ASME B31.4, Mr. Vieth explained that the recommendation of B31.4 concerning 7.5 mile spacing of automated block valves is based on operational needs, not safety concerns and that it is industry guidance, not a law or regulation, and "does not serve as a substitute for sound engineering judgements by the operating company and the designer." SPLP St. No. 2 at 2:18-3:5. "[T]he basis for the valve placement guideline in ASME B 31.4 is operational, to facilitate operational control, to limit the duration of an outage, and to expedite repairs." *Id.* at 3:13-14.

Mr. Vieth explained that the B31.4 valve placement guidance is flexible. "[T]his general valve spacing guideline cannot control every valve placement decision as there is no one-size-fits-all aspect as each valve siting can and often does vary." *Id.* at 3:16-17. Thus, Mr. Vieth concluded that the ASME B31.4 guidance is "general in nature and not something specifically applicable to every situation." *Id.* at 4:11-12. Instead, determining valve spacing "requires the exercise of discretion that includes and considers factors . . . such as specific operations (e.g., pressure, flow), pipe properties (diameter), topography, and/or terrain. *Id.* at 3:18-21. SPLP has an Engineering Design Basis Memorandum that recognizes the guidance of ASME B31.4 is not a one-size-fits-all mandate, and recognizes the more specific factors discussed above that determine valve interval spacing. *Id.* at 4:14-5:4.

Regarding safety, Mr. Vieth explained that decisions concerning valve spacing can be made based on dispersion modelling "to predict the trajectory, concentrations, and distances from the pipeline to determine the extent of certain hazards for various combinations of release types

and meteorological conditions." *Id.* at 5:8-13. [BEGIN HIGHLY CONFIDENTIAL] 





[END HIGHLY CONFIDENTIAL] Mr. Vieth concluded that "SPLP's decision here to eliminate Valve 344 is supported by sound existing technical, operational, and safety reasons including adding automated control at the immediately upstream Valve and appropriate consideration of the assessment analysis to evaluate the effects." SPLP St. No. 2 at 10-13.

Mr. Vieth also concluded that the analysis shows "the elimination of MP 344 (Boot Road) valve had negligible effect on the consequence impact radius." SPLP St. No. 2-RJ at A.2., Tr. at 578:20-23. He explained that this negligible effect means minimal, similar to "the effects of, say, driving at 50 miles per hour compared to 50.05 miles per hour, that it's a very minimal or negligible effect." Tr. at 612:21-23.

WGT's only attempt to rebut Mr. Vieth was Mr. Kuprewicz's five-page surrebuttal testimony. However, Mr. Kuprewicz did not make any actual conclusions concerning the safety of the elimination of the valve. Instead, he makes the bald assertion that there are "misleading assumptions" in the assessment, but he does not quantify the impact of any of the differences he identified. SPLP St. No. 2-RJ at B.1. Mr. Vieth explained that Mr. Kuprewicz's assertions are meritless: [BEGIN HIGHLY CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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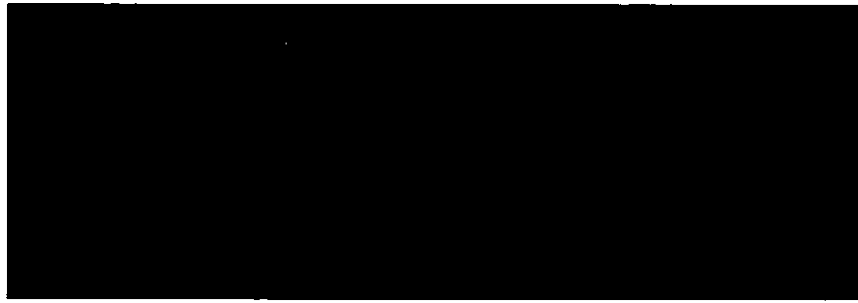
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[END HIGHLY CONFIDENTIAL]

Finally, Mr. Kuprewicz identified a laundry list of topics in attempt to discredit the analysis. *Id.* at B.8. Mr. Vieth explained that this allegation makes “no sense.” SPLP St. No. 2-RJ at B.8. Mr. Kuprewicz’s allegations make no sense because they contradict his own prior conclusions saying that the pipeline was safe. *Id.*

For example, witness Kuprewicz previously opined (Item 3a) on the pipeline mainline valve remote actuation and stated that he ‘..reviewed the surge analysis and sensitivity cases for the proposed valve installations and finds them appropriate..’ and re-states that mainline valving plays a secondary (sic) role .. in the 20-inch pipeline’s overall safety’. The laundry list of topics identified in Item B(8) above have not changed, but the Witness has now changed his opinion.

Likewise, Witness Kuprewicz previously opined (Item 3c) that “..Information provided by Sunoco indicates a rational and progressive approach in trying to achieve a pipeline rupture release detection with automated shutdown response without excessive false alarms.”. He goes on to further explain leak detection and automatic shutdown indicating that he is aligned with the monitoring, detection and response should a release occur.

The above two examples show that Mr. Kuprewicz previously opined that that the ME2 design was safe. Now that he is presented with analysis that shows there is no substantive change by eliminating valve 344, due to enhancement to controls for the immediately upstream valve, he highlights a laundry list of concerns in an to attempt to discredit the analysis, but none of the items in the laundry list have changed since he last analyzed the pipeline’s safety. Notably, he presents no actual quantitative analysis of the issue.

Id.

In conclusion, WGT completely failed to meet its burden of proof, while SPLP has shown through conclusive expert testimony that eliminating the valve has a negligible effect and does not make the pipeline unsafe.

B. Even If The Settlement Agreement Were Found To Contain An Agreement To Place A Valve In The Township, That Agreement Is Subject To Engineering Constraints That Are Present And Prevent Placement Of The Valve On The SPLP Use Area

Assuming arguendo that the Pertinent Information Section of the Settlement Agreement could be interpreted as a covenant (even though it cannot be interpreted as such), the plain terms of that section are very clear that any indication SPLP would place a valve on the SPLP Use Area was subject to engineering constraints. WGT has the burden to show that those engineering constraints do not exist. WGT completely failed to adduce any such evidence, especially because it withdrew the testimony of its only professional engineer that submitted pre-filed testimony on the topic. In stark contrast, SPLP presented Mr. Gordon, SPLP Project Director for the ME2 project, who explained the engineering constraint SPLP considered. SPLP then presented the expert testimony of four experts that concluded these constraints prevent installation of the valve on the SPLP Use Area. Thus, even under the incorrect interpretation of the Settlement Agreement that SPLP agreed to place a valve in the Township, that alleged agreement was subject to engineering constraints. SPLP's detailed explanation and analysis of the evidence of these constraints proves SPLP has not violated the Settlement Agreement concerning placement of the valve.

1. The Settlement Agreement is Clear that Placement of the Valve is Subject to Engineering Constraints

The Settlement Agreement's plain terms very obviously state that SPLP's intent to place a valve on the SPLP Use Area is subject to engineering constraints (ie. placement of the valve is contingent on being able to in fact place the valve on the SPLP Use Area):

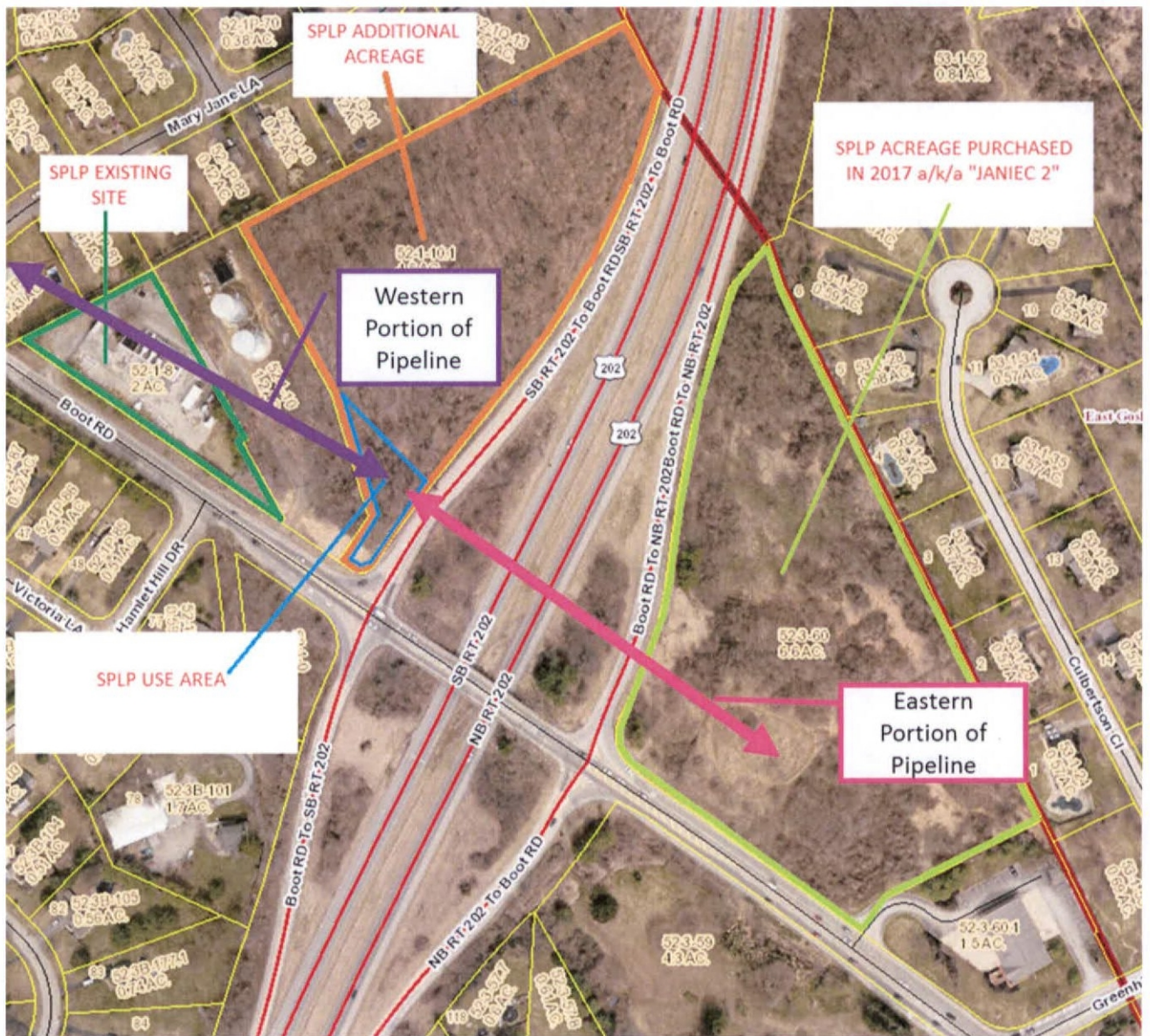
The pump station, the VCU and all accessory and appurtenant above-ground facilities associated with all phases of the Mariner East Project will be maintained within the present active site, Parcel No. 52-1-8-U, on which the existing Boot Road Pump Station currently operates (the "SPLP Existing Site"), 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.

Settlement Agreement at II.A.2 (emphasis added). As described below, SPLP encountered engineering constraints that make construction so risky and impracticable that SPLP is unable to construct the valve on the SPLP Use Area. Under the plain terms of the Settlement Agreement, the proven engineering constraints prevent placement of the valve and thus SPLP has not violated the Settlement Agreement.

2. SPLP's Unrebutted Evidence Shows Engineering Constraints Prevent Placement of the Valve on the SPLP Use Area

To construct the valve, the pipeline must come to the surface in the location of the valve. Thus, to place the valve on the SPLP Use Area, SPLP must be able to construct the pipeline such

that the pipeline can approach the valve from each direction and meet the ground surface at the valve site.



There are two general approaches to engage in this construction – open cut and HDD. Regarding the western portion of the pipeline, WGT made no challenge to SPLP’s testimony that HDD cannot be used. WGT alleged, but failed to carry its burden to show that in fact open cut construction could be used to install the portion of the pipeline to the east of the SPLP Use Area.

Regarding the eastern portion of the pipeline, WGT made no challenge to SPLP's testimony that open cut construction cannot be used. WGT alleged, but presented no evidence that HDD could be conducted in the manner necessary to construct the eastern portion of the pipeline and place the valve on the SPLP Use Area.

WGT wholly failed to meet its burden of proof on this issue. In contrast, SPLP presented the testimony of Mr. Gordon to explain the engineering constraints SPLP found that prevent construction of the valve on the SPLP Use Area because the construction would be too risky and impracticable. A series of expert witnesses reviewed SPLP's decisions, and agreed with Gordon's conclusion that engineering constraints prevent placement of the valve on the SPLP Use Area.

These experts include:

- **Dr. Samuel Ariaratnam, Ph.D., P.E., P.Eng.**, is a Professor and the Construction Engineering Program Chair in the Ira A. Fulton Schools of Engineering at Arizona State University in Tempe, Arizona. SPLP St. No. 6 at 1:2-3. He has served as an independent consultant for various pipeline design projects and is currently engaged in preparing a study and report to the U.S. Congress concerning the regulation of propane lines and pipeline safety. Tr. at 424:20-425:16. He serves in leadership positions with: the American Society of Civil Engineers Pipelines Division (Chairman); the International Society for Trenchless Technology (Past Chairman); and the Distribution Contractors Association (HDD Committee). He is also a co-author of the "Horizontal Directional Drilling Good Practices Guidelines", which had its 4th Edition released in March 2017. SPLP St. No. 6 at 1:12-16.

- **Christopher Antoni, P.E., P.Eng.**, is Chief Pipeline Engineer, Energy Operations Manager, and Senior Vice President at STV Energy Services, Inc. He is responsible for overseeing civil and environmental engineering for various pipeline and facility projects in the petroleum and gas industries. He has 22 years of experience in site development, hydrologic and hydraulic analyses, environmental permitting, stormwater management, floodplain analysis, and geotechnical and subsurface investigations. Listed in his CV, SPLP Ex. CA-1, are numerous pipeline projects in which he was directly involved in various aspects of design and management of engineering teams, including Mariner 1, the Colonial Pipeline, and various other pipelines for companies including Sunoco Pipeline LP, Buckeye Partners, and Shell Pipeline. He holds 43 Professional Engineering licenses encompassing 40 states in the US, including Pennsylvania, and two provinces in Canada. He has extensive experience with design of Horizontal Directional Drill (HDD) paths. SPLP St. No. 5 at 1:1-15.
- **Richard Cotter, P.E.** is a Senior Engineer at STV Energy Services, Inc. Mr. Cotter is responsible to manage energy projects including the design and all related permitting. He has been responsible for the traffic control plans and detours developed for the Mariner East 2 (ME2) project. He began his career as a PennDOT employee and worked there for 8 years. Since that time, he has been responsible for obtaining numerous permits for the installation of water, sewer, stormwater and energy pipelines in public roads in Pennsylvania, as well as Michigan and Ohio. SPLP St. No. 3 at 1:1-12.

- **Douglas Hess, P.G.** is the Director of Groundwater and Site Characterization Services at Skelly and Loy, Inc. He is responsible for providing public and private sector clients with technical advice to assist them in solving their environmental problems. He has been a professional geologist for 35 years and has provided geologic and hydrogeologic services involving subsurface geologic evaluations; investigation and remediation of contaminated sites; assessments of water quantity and water quality related to groundwater supply development and protection; design, drilling and installation of numerous groundwater supply and monitoring wells utilized for the testing, analysis, and characterization of soils, rock types, and groundwater aquifers; computer modeling of groundwater flow systems; and hydrogeologic studies involving the assessment of mining and construction-related groundwater dewatering impacts to sensitive surface and groundwater resources. Over the past year (since March 2017), he has worked closely with SPLP's staff and contractors responsible for the engineering and design of horizontal directional drilling (HDD) profiles and has assisted with the installation and hydrogeologic evaluation of HDD bores for the Mariner East II (ME2) pipeline project in Pennsylvania. His specific duties as an SPLP contractor have included serving as a P.G. and environmental field inspector at numerous active HDD drilling sites; attending meetings with Pennsylvania Department of Environmental Protection regulatory personnel to discuss HDD methods, HDD site geologic conditions, and procedures available to reduce the occurrence of inadvertent returns (IRs); attending SPLP-sponsored HDD training sessions; and, preparing hydrogeologic

evaluation reports to characterize the hydrogeology of HDD sites and address regulatory concerns expressed by PA DEP. SPLP St. No. 4 at 1:6-2:2.

These witnesses analyzed and confirmed that engineering constraints prevent locating the valve on the SPLP Use Area.

- i. *HDD cannot be used to construct the eastern portion of the pipeline such that the valve could be placed on the SPLP Use Area*

Mr. Gordon explained that minimum curvature issues (the extent to which the pipe can be bent without negatively impacting its strength) coupled with the geology beneath Route 202 (which presents safety risks of inadvertent return beneath Route 202 that would cause safety issues for traffic) prevent installation of the valve on the SPLP Use Area:

Minimum radius curvature issues, the length of the drill profile, the geology beneath and around Route 202, under which the line would have to traverse, and the location of the fire station to the east of the Janiec 2 parcel make HDD installation in this area impracticable and unsafe. I testified at hearing that both minimum radius constraints and the underlying geology present constraints that led SPLP to decide, once we obtained additional geological data concerning the site, that the SPLP Use Area was unsuitable for Valve 344. I acknowledge that I misstated the underlying geologic materials as sandstone. However, the type of material was not the key issue as to the unsuitability of the geology that I was testifying to – instead as I testified, this material is fractured and weathered. To reach a depth that would be proper to avoid the risk of inadvertent returns or heaving of Route 202, we would have to go much deeper than what the curvature of the drill radius will allow. SPLP Witness Hess has confirmed the underlying geology and concludes that, in his opinion, it would be inappropriate to HDD with entry and exit points on the SPLP Use Area and the Janiec 2 parcel. I also testified as to minimum radius that we should not use a radius of less than 2,000 feet for the 20-inch pipeline. As SPLP Witness Antoni confirms, this is the industry standard. As Witness Antoni confirms and demonstrates, even using this radius would create a drill profile at an unacceptable depth because it would create serious risks of inadvertent return or heaving of Route 202, a very heavily trafficked state highway. He also explains, while it is possible to use a radius

of less than the industry standard, using the radius of 1,000 feet is in practice not feasibly possible because the drill itself cannot follow this minimum radius path, and even if it could, it would still not reach a depth that mitigates the risk of inadvertent return or heaving in this area. SPLP Experts Dr. Ariaratnam, Mr. Antoni, and Mr. Hess agree and discuss these issues in more detail in their testimonies. I also note that based on Mr. Hess and Mr. Antoni's review of the geological data and drill plans, we have revised our current drill profile that surfaces on the Janiec 2 parcel. This drill profile now travels deeper under Route 202 than we had originally planned to minimize the risks of the inadvertent return of drilling fluids onto Route 202 and heaving of Route 202. The profile now differs from what we had submitted to DEP for our Erosion and Sediment Control plans, but since changing the profile depth is not a procedural change, we will not be required to modify our Erosion and Sediment Control Plan application with DEP. The updated drill profiles are included as Exhibit MG-4.

SPLP St. No. 1 at 13:7-14:12.

As to geology, Professional Geologist Douglas Hess reviewed the geologic data SPLP had collected on which it based its decision and concluded Mr. Gordon was correct that the drill path alternatives necessary to place a valve on the SPLP Use Area all come at a great risk of inadvertent return and potential heaving of the highway. He included this geological data as SPLP Ex. DH-2. Mr. Hess explained that the key feature of the geology is not the specific type of material, but that it is highly weathered, intensely fractured, and decomposed:

Based on the soil boring information I reviewed (S3-0421 SB's 01 through 04; and S3-0460 SB's 01 through 03), and to a reasonable degree of scientific and geological certainty, the geologic conditions in the area just northwest of, southeast of and underneath Route 202 indicate that there is a considerable thickness of unconsolidated overburden material and highly weathered, intensely fractured, and decomposed bedrock (known as saprolite) ranging in depth from approximately 3 feet to greater than 75 feet below ground surface (bgs). The depth to bedrock (weathered) in this area is also highly variable ranging in depth from 14 to 63.5 feet bgs. Although SPLP Witness Mr. Matthew Gordon misidentified the type of bedrock underlying this HDD site in his July 14, 2017 hearing testimony as sandstone, his conclusion that it is highly weathered, extensively

fractured and thus unsuitable is correct. As to the area under Route 202, Mr. Gordon testified that there is "unconsolidated rock or fractured rock" in that area and that the presence of these materials creates the potential for the inadvertent return of drilling fluids. Tr. at 192. The key point is not the specific name of the bedrock formation, but the actual soil and rock properties themselves (highly weathered, intensely fractured and unconsolidated), as to which Mr. Gordon properly testified.

SPLP St. No. 4 at 2:22-3:14. Mr. Hess also reviewed additional soil borings that WGT Witness

Kessler reviewed and concluded:

WGT Witness Kessler specifically states he relied on sample results obtained from soil borings (series) S3-0421 and S3-0460. I have also reviewed these soil boring logs and conclude that the bedrock surface is highly variable ranging from a minimum of 14 feet bgs (S3-0421 SB-02) to depths greater than 75 feet bgs (S3-0460 SB-02) where no bedrock was encountered at the boring completion depth (see also previous statement above). The variability of the depth to bedrock is the result of differential bedrock weathering. According to the above-referenced soil boring logs, there are generally three discrete zones of weathered materials overlying the surface of the deeper and more competent bedrock: 1) unconsolidated surficial soils, 2) decomposed rock or saprolite materials, and 3) intensely fractured, weathered and partially decomposed bedrock. These boring logs also show that in addition to their thickness, the vertical and horizontal distribution of these discrete weathering zones varies greatly over relatively short distances in the vicinity of the proposed Route 202 HDD.

SPLP St. No. 4 at 3:17-4:5.

Relying on Mr. Antoni and Dr. Ariaratnam's evaluation of the necessary drill path and their conclusions that the drill path cannot be constructed to reach the industry preferred minimum 20 feet of competent bedrock cover, Mr. Hess concluded that it would be inappropriate to use HDD to install the valve based on the geology due to the risk of inadvertent return under Route 202.

Based on the geotechnical drilling results, and to a reasonable degree of scientific and geological certainty, it is my opinion that

the considerable thickness of highly weathered unconsolidated overburden, decomposed saprolitic rock, and intensely fractured bedrock in the area surrounding and underneath Route 202 would not provide the industry preferred minimum 20 feet of competent rock as protective cover above the HDD profile that would be needed to minimize the risk of inadvertent returns or heaving of the ground surface proximate to Route 202 for an HDD path between the SPLP Use Area and the Janiec 2 parcel. Due to the extensive thickness of unconsolidated residuum and fractured nature of the underlying rock in areas immediately northwest and southeast of the HDD intersection with Route 202, the HDD bore path should be installed at a minimum depth of at least 85 feet bgs where possible. On HDD entry and exit, it is not possible to immediately achieve this depth. However, an HDD between the SPLP Use Area and Janiec 2 would involve closely spaced entry and exit points, with the area between these points failing to achieve the preferred depth within bedrock in order to provide sufficient cover necessary to be more protective of the environment and avoid higher risk of an inadvertent return or heaving of the ground surface. This can be seen in Mr. Antoni's SPLP Exhibit CA-2. This is especially risky here given the geologic profile I discussed above. Accordingly, while it is unavoidable not to drill above the recommended depth of cover on HDD exit at this site, executing an HDD with entry and exit points as close together as would be required here to install Valve 344 on the SPLP Use Area, in effect doubling the number of near surface HDD entry and exit points, and given the variable nature of the geology, unnecessarily increases these risks. Instead, SPLP is able to enter much farther west in the Township and exit on the Janiec 2 parcel while reaching and maintaining an adequate, and more protective, depth of cover for a longer span, including under the SPLP Use Area. Therefore, I would not recommend an HDD be completed with entry and exit points located on the SPLP Use Area and the Janiec 2 tract.

SPLP St. No. 4 at 4:9-5:10.

Regarding the industry preferred minimum of 20 feet of cover into competent bedrock, Mr. Hess, Mr. Antoni, and Dr. Ariaratnam all agreed that this industry preference should apply here, as this preference is rooted in safety. Mr. Hess also, as is common for experts in the industry to do, consulted with other experts on his conclusions, who confirmed his analysis. Tr. at 383:6-384:8.

WGT presented no evidence to rebut Mr. Hess's conclusions regarding geology. Tr. at 384:9-16. WGT presented only the direct testimony of Mr. Kessler regarding geology, and he only made one irrelevant conclusion – that Mr. Gordon at the preliminary injunction hearing was incorrect that the type of rock was “sandstone.” Complainant St. No. 5 at 4:1-12. But SPLP and Mr. Gordon have admitted that misstatement and explained that WGT is not focusing on the relevant geological issue – that whatever the type of material, what is actually at issue here is the fact that it is highly weathered, intensely fractured, and decomposed. *E.g.*, SPLP St. No. 4 at 2:22-3:14. Mr. Kessler made absolutely no conclusions regarding the appropriateness of the use of HDD to place the valve on the SPLP Use Area. *See generally*, Complainant St. No. 5.

As to construction design, Mr. Antoni analyzed all the potential drill design paths to place a valve on the SPLP Use Area or even the SPLP Additional Acreage. Tr. at 542:22-544:24, 546:10-13. He concluded none are feasible. *Id.*; *see also* SPLP St. No. 5 at 5:9-8:20; Tr. at 536:11-541:17. He explained in detail how minimum curvature issues prevent any HDD path from reaching an adequate depth of cover for the drill path surfacing on the SPLP Use Area and the Janiec 2 tract.

Q. Could SPLP HDD from the SPLP Use Area to Janiec 2 with a 1,000 feet minimum radius or less?

A. No. The minimum radius for the 20-inch line is approximately 1,000 feet based on the calculations I have included as SPLP Exhibit CA-3. However, I absolutely would not recommend attempting to drill to the minimum radius here for two reasons. First, it would be practically impossible for the drill to follow the minimum radius without going below it. The path absolutely cannot go below the minimum radius or it creates the potential for the pipe to be damaged. Thus, the only way to correct the path is to extend the drill path horizontally to the east. Here, the exit point is only approximately 300 feet west of a fire station and its driveway. The exit point cannot move any further east towards

that fire station because at the exit point, there must be sufficient space for a pullback area, i.e., the area where the pipes are lifted via a crane to be strung down through the hole. As I discussed above, being able to steer the drill is more art than science, especially in rock that has fractured seams which can allow the drill to slide on the interfaces, which this schist has in the top 20 feet. Since the design already is at the minimum radius, the operator has no room to correct error without overstressing the pipeline or extending the drill. In this location, there is limited pullback space, so extension of the drill will impact the fire station and is not an option.

Second, even assuming we could hit the minimum radius (which as I explained above, is practically impossible), the drilling is still occurring at a depth with a risk of inadvertent return. SPLP Witness Hess discusses this geology in detail and I am relying on his conclusions. The geology in this area creates the possibility of the drilling mud migrating or shooting up through the seams of the rock and coming to the surface. This would create a highly dangerous situation if drilling mud were to be released onto the surface of Route 202, which is a heavily trafficked highway. Drilling mud is pumped into the drill hole at approximately 300 – 500 gallons per minute. Another associated risk is that instead of shooting up through fissures in the overburden area, the drilling mud pools beneath the ground in these fissured and fractured areas, and once it builds enough pressure, will actually heave up entire sections of the road surface of Route 202. Obviously to the travelling public this would be a disaster. I note that the industry standard for HDD in bedrock is to be 20 feet below the top of the solid bedrock to reduce the risk of inadvertent return and heaving. Even using the minimum radius here, we would just barely be going deep enough to go into the bedrock, and possibly not hitting the bedrock layer at all when we are directly beneath Route 202.

I have modeled several minimum radius scenarios in SPLP Exhibit CA-2 at Figures 101, 401, 201, and 301, including three alternative drill entry points on the SPLP Use Area, for the 20-inch which is the control line, because it is the biggest in diameter. The three horizontal entry point alternatives all present the same issues and concerns I discuss above. The three alternative entry points are: 1) within the Boot Road station adjacent to the existing pipeline Launchers; 2) in the road adjacent to the water tanks; or 3) behind the water tanks on the Janiec 1 tract. For the exit point, based on topography, there is only one location that is feasible, which is the current entry/exit point on the original HDD. I have also modeled the same scenarios, with industry standard radii in SPLP Exhibit CA-2 at Figures 103, 203, 303 and 402. These present the same issues I discussed above in terms of depth of cover.

Q. Have you ever encountered any drilling that was done at a minimum radius under a highway?

A. Yes. In the late 1990's, Ohio Department of Transportation prohibited HDDs across any highway because the HDD of a 24-inch water line under I-75 heaved the highway. The highway was in a cut situation, so the drill rig was set above the highway at approximately 50 feet and was designed to the minimum radius. Drilling mud leaked, built up pressure, and heaved a portion of the highway up approximately 18 inches. The heave was in the direction of traffic, so the vehicles slid off to the side of the road instead of driving up over or down over an 18-inch step (which would have been even worse). Luckily, no fatalities occurred in that scenario.

Q. Could SPLP HDD at the industry standard minimum radius from Janiec 2 to the SPLP Use Area in order to place Valve 344 on the SPLP Use Area?

A. No. Using the industry standard 2,000 feet minimum radii for the 20-inch line is not a viable option due to the geology under Route 202 which could lead to an even greater risk of inadvertent return or heaving. I have modeled this alignment in SPLP Exhibit CA-2 at Figure 103. This drill profile only has 25 feet of separation below Route 202. The drill profile will be near the rock/soil interface, which is a very bad location for a drill, because the drill can skip on top of the interface and not bite into the rock, creating a very serious risk of inadvertent return or heaving that I discuss above. I note that in both scenarios that I modeled we also utilized the most aggressive entry angle possible here (entry of 18 degrees and exit of 12 degrees).

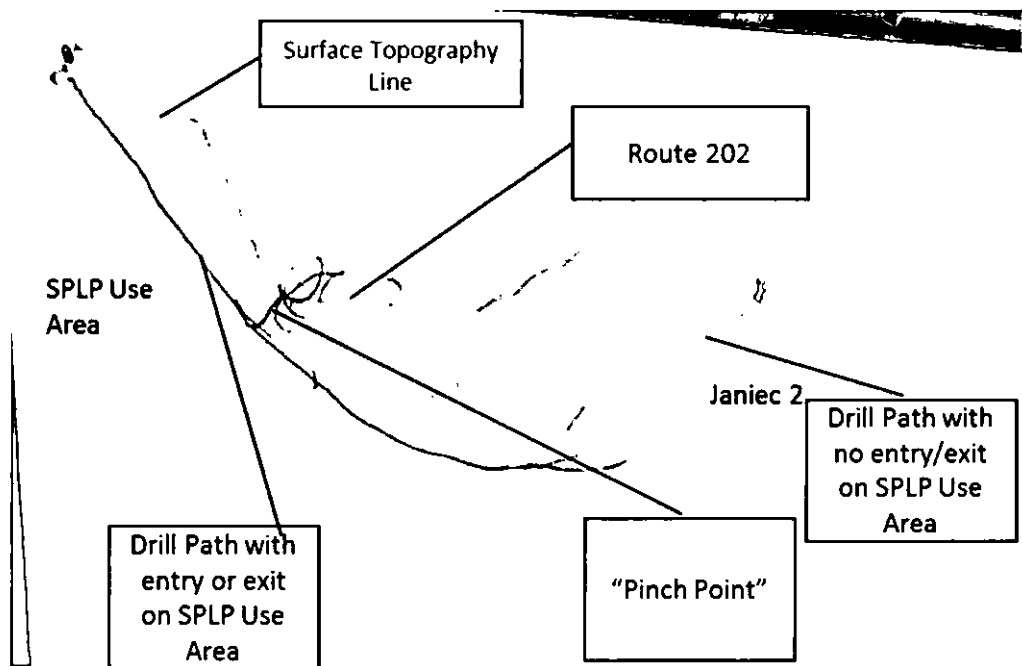
SPLP St. No. 5 at 5:9-8:2.

Again, WGT presented absolutely no evidence on this issue. They did not even present an engineer with any experience or responsibility regarding pipeline construction design. Instead, they presented their safety expert Mr. Kuprewicz's unsupported assertion that "there is no apparent reason to re-surface at the Janiec 2 Tract." Complainant St. No. 8 at 5:12-18. Both Mr. Antoni

and Dr. Ariaratnam rebutted this conclusion. First, Mr. Antoni explained that surfacing on the Janiec 2 tract is less risky than extending the drill because:

Extending the Green Hill road drill that is already 3,400 feet probably another 1,200 feet increases the risk of inadvertent returns and the risk of other complications, including inadvertent returns or heaving of Route 202 during the drilling and reaming and pullback of pipeline.

Tr. at 539:17-21. Moreover, extending the drill does not solve the geology and minimum curvature problems with having an entry point on the SPLP Use Area. The SPLP Use Area is higher in elevation than Route 202. So, any entry point on the SPLP Use Area (regardless of where it surfaces) presents an increased risk of inadvertent return and heaving of Route 202, because, as Mr. Antoni explained there is a pinch point created due to the topography, illustrating this problem in SPLP Hearing Ex. 3:



Tr. at 540:13-541:17. Mr. Antoni explained that the red line represents the topography, showing that the SPLP Use Area is higher than Route 202, so to meet either an entry or exit point on the SPLP Use Area, given minimum radius and entry/exit angle constraints of the pipeline, a pinch point is created under the left side of Route 202 where there is a significant risk of IR, regardless of whether the drill path resurfaces at Janiec 2 or continues on to the Green Hill drill. *Id.*

Mr. Antoni also explained that the current drill path, which is similar to the redline at the bottom of the picture, does not suffer from this same concern because the Janiec 2 parcel is not at such a great elevation as the SPLP Use Area. *Id.*

Mr. Antoni also discussed the possibility of auger boring, but explained that it is not viable at that location due to the topography and length of the drill. Tr. at 563:6-13.

Dr. Ariaratnam also analyzed SPLP's construction design decisions, focusing on "how that project should best be undertaken to minimize a public safety and disturbance to the general public and environmental impacts." Tr. at 430:21-23. He concluded that a valve cannot feasibly be installed on the SPLP Use Area. SPLP St. No. 6 at 4:19-6:13. He explained:

Q. Do you have any opinions as to the use of HDD to bring ME2 into the SPLP Use Area from the Phoenixville Pike area?

A. There are engineering, site, and soil constraints that would make HDD unsuitable and risky due to the likelihood of inadvertent returns (IRs), which would significantly disrupt surface traffic. WGT witnesses appear to concede that open cut construction, not HDD, would need to be used to bring the pipeline in an easterly direction from the Phoenixville Pike into the SPLP Use Area. I have reviewed the July 2017 hearing testimony of SPLP Witness Mr. Gordon on this issue. I have also reviewed the relevant engineering documents and agree, to a reasonable degree of engineering certainty, with Mr. Gordon's conclusions that HDD would be inappropriate under these circumstances to use HDD to bring the pipeline into the SPLP Use Area from the Phoenixville Pike to the east.

Q. Do you have any opinions as to the use of open cut trenching to locate Valve 344 on the SPLP Use Area?

A. Given the existing congestion of utility facilities that already occupy the subsurface of Boot Road, and the detour constraints that SPLP Witness Cotter presents, I agree that open cut trenching Boot Road is not a viable option. My opinions are based on a reasonable degree of engineering certainty.

Q. Do you have any opinions as to the use of HDD to tunnel under Route 202 to connect the SPLP Use Area to the Janiec 2 parcel?

A. There are engineering, site and soil constraints that would make HDD unsuitable and risky due to the likelihood of IRs, which would significantly impact surface traffic on a major heavily travelled state highway. More important than the type of rock formation is its make-up. Here, the make-up of the rock is highly weathered and fractured, which increases the risk for inadvertent returns. In addition, the boring results show inconsistency in where bedrock is encountered. HDD should occur 20 feet below competent bedrock to minimize the chance of IRs onto the highway or heaving of the highway. Given the minimum radius curvature constraints of HDD, as Mr. Antoni discusses in more depth, HDD under Route 202 between the SPLP Use Area and the Janiec 2 parcel will unacceptably risk IRs and heaving on a heavily travelled state highway. WGT witnesses are critical of Mr. Gordon's previous statements that the underlying geology is comprised of fractured sandstone, but that misses the larger point. While he may have been mistaken as to the exact type of rock, he correctly characterized the geology as weathered and fractured. I agree with SPLP Witnesses Mr. Gordon and Mr. Hess that such fracturing increases the likelihood of IRs and the resultant surface damage and attendant safety concerns to Route 202. I have reviewed the testimony and calculations of SPLP Witness Antoni and agree that the minimum radius here would be approximately 1000 feet; however, I would not recommend attempting to drill to the minimum radius. Given this minimum radius, the geology discussed above, and the location of the fire station to the east that prevents lengthening of the drill path, I agree that HDD could not be used to connect the SPLP Use Area and the Janiec 2 parcel to place Valve 344 on the SPLP Use Area. My opinions are based on a reasonable degree of engineering certainty.

Id. Dr. Ariaratnam also explained, based on his experience and visit to the site that any exit/entry point suffers from the same “pinch point” issue Mr. Antoni described. Tr. at 435:13-436:5; 448:1-17.

In sum, WGT bears the burden of proof, yet presented no evidence that SPLP could safely and prudently install the valve on the SPLP Use Area. In contrast, SPLP has conclusively proved that it cannot safely and feasibly install a valve on the SPLP Use Area because it is too risky to HDD out of or into the eastern portion of the SPLP Use Area. The risk of inadvertent return is significant and would occur in an extremely unsafe and risky area – Route 202, which is a heavily travelled four-lane highway.

ii. Open Cut construction cannot be used to construct the eastern portion of the pipeline such that the valve could be placed on the SPLP Use Area

As Mr. Gordon testified at the preliminary injunction hearing, open cut construction could not be used to install the pipeline to the east from the SPLP Use Area because it would have to cut through State Route 202, a major four-lane highway. PennDOT will not grant a permit to open cut a state highway. SPLP St. No. 1 at 10:11-12. WGT conceded this issue because it presented no evidence or contrary considerations on this issue.

iii. HDD cannot be used to construct the western portion of the pipeline such that the valve could be placed on the SPLP Use Area

Notably, WGT presented absolutely no evidence or contention that SPLP could engage in HDD to install the pipeline to the west of the SPLP Use Area of such that the pipeline could surface on the SPLP Use Area to enable placement of the valve. Thus, WGT has conceded this issue.

Nonetheless, Mr. Gordon explained, consistent with his testimony at the preliminary injunction hearing that:

Minimum radius curvature constraints, the length of the drill profile, the underlying geology and structures impeding the ability to pull the pipe through the HDD hole are major engineering constraints preventing HDD in this area. SPLP could not maintain a safe radius of curvature to reach the SPLP Use Area, and going beyond the minimum radius of curvature would have overstressed and threatened the integrity of the pipe. HDD installation here also would have resulted in SPLP having to condemn or purchase a residence on Mary Jane Lane. As to the ability to pull the pipe through the drill hole, there are tanks and a pump station that belong to the adjacent Aqua America Pennsylvania facility on the SPLP Use Area. These facilities would prevent SPLP from lining up the pipe with the drill rig and would block the area where the pipe would need to be strung out during the pullback process. I note that no WGT witness alleges that SPLP could HDD into the SPLP Use Area from the Phoenixville Pike area.

SPLP St. No. 1 at 12:16-13:3.

iv. Open Cut construction cannot be used to construct the western portion of the pipeline such that the valve could be placed on the SPLP Use Area

Mr. Gordon explained that due to the highly congested nature of the existing private and municipal utilities facilities underneath and along Boot Road to the West of the SPLP Use Area and the unlikelihood of obtaining a permit to open cut Boot Road, using open cut construction to install the pipeline to allow a valve to be placed on the SPLP Use area is impracticable:

Various obstacles and engineering constraints make open cutting Boot Road impracticable and likely unsafe. First, there are numerous other underground facilities of other utilities already located in and along Boot Road. These utilities often have interconnections, such as water lines running to various houses. Because of this congestion in the open cut path, it would be difficult to install the pipeline here and would result in installing the line at a

greater depth and down the middle of Boot Road. Notably, WGT's witnesses do not allege we could HDD as an option here.

Second, closing this segment of Boot Road means we would have to detour traffic, and the detour routes do not seem viable. Boot Road is very heavily trafficked, carrying approximately 16,441 vehicles per day on the segment of the road that would be shut down. As Mr. Cotter explains, the detour routes WGT Witness Carlin suggests are already heavily trafficked, would require redesigns of intersections, and present safety risks, including increased time for access to some residences for first responders.

Third, because of the lack of viable detour options, it is unlikely PennDOT would approve a permit to open cut Boot Road.

Fourth, if a permit were approved, PennDOT would likely require us to only work at night and this would likely conflict with WGT's noise ordinance. While SPLP does not admit that, as a public utility, it is bound by WGT's noise ordinance, it tries to obey such ordinances where possible to avoid conflicts over noise. Because of these concerns I disagree with Mr. Carlin that PennDOT would likely approve such a plan. SPLP Witness Mr. Cotter agrees with SPLP's conclusions, confirms SPLP's original analysis, and explains these issues in more detail. I also note that while Mr. Carlin alleges we could obtain a permit, he completely fails to consider the safety issues associated with emergency responders. I am also concerned with WGT's reasoning that they apparently want a large portion of a heavily trafficked route closed for any significant period of time. This does not seem to be in the best interests of WGT, its citizens, and other travelers in the area.

SPLP St. No. 1 at 11:11-12:12. Mr. Cotter confirmed Mr. Gordon's analysis, testifying that open cutting Boot Road is infeasible:

Aside from the complicated and problematic issue of detouring traffic, there is a significant concern with installing the pipeline via open cut trenching in a roadway that already contains numerous other underground utilities. In addition to the density of the existing installations, these utilities have interconnections, services and structures that would likely require that the pipeline be installed at a much greater depth than normal. While this may not prevent the installation, it would increase the cost and extend the time of construction and the detour. I come to this conclusion and my

statements that follow with a reasonable degree of engineering certainty based upon my years of experience.

SPLP St. No. 3 at 2:19-3:3. The only testimony WGT presented to rebut Mr. Cotter was Mr. Carlin's unsupported allegation that the presence of other utilities in the right-of-way is a problem in any open cut excavation in an urban area and that can be managed. Complainant St. No. 10 at 2:1-5. But, as Mr. Cotter explained:

Mr. Carlin ignores the length of the HDD here and that there were a significant number of utilities in the right-of-way and that these utilities create serious safety and logistical hazards. It also ignores the actual width of the excavation, which would be - - and the depth of the excavation, because we're working around other utilities and have to pass under them to install the pipe.

Tr. at 347:15-18.

Mr. Cotter also testified that PennDOT would not allow SPLP to open cut Boot Road:

In my opinion PennDOT would not approve a detour for the open cut installation on Boot Road. The assertion by WGT is that PennDOT would approve a detour. By comparison WGT offers a water line project for a non-public utility local water authority to support Mr. Carlin's belief that PennDOT would approve such permit. Mr. Carlin is comparing apples to oranges. This water line project differs materially from the ME2 pipeline project. The water line project, developed by a public agency that is a public water supplier, serves residents, businesses, and public entities in the area with safe drinking water and fire protection. The water line may have interconnections with other water mains, fire hydrants, and residential and commercial services. The water line must be open cut in order to meet the service needs of customers and to connect to those who are served laterally from the line presently or in the future. PennDOT tends to balance those direct public service requirements against other options relative to deciding whether a detour and the inconvenience and risks it might present are warranted to make the project happen. A detour for an open cut water line project will reduce the cost and the time for installation and should result in lower user fees. This is all taken into account by PennDOT when dealing with a public water supplier.

In contrast, the ME2 pipeline, while it is a public utility, is proposed by a company that, unlike a public water supplier authority, does not serve individual, commercial, and public water users in the township. The ME2 pipeline requires few structures or connections and the primary concern for PennDOT under such scenario is the convenience and safety of the traveling public. PennDOT would have little concern for the cost impacts on the project in refusing open cuts and in my opinion would want Horizontal Directional Drilling (HDD), if possible, to reduce traffic impacts on the major state highway and township roads that are involved. Accordingly, open cut is not an alternative nor are any cost savings a factor supporting open cuts. I am of the opinion, with a reasonable degree of engineering certainty based upon my years of experience, that SPLP is exercising prudent managerial discretion and construction and engineering judgment by rejecting open cut construction under the circumstances presented and as suggested by WGT, and that PennDOT would come to the same conclusion as SPLP once the issue was examined in detail.

Moreover, WGT's witnesses do not evaluate potential impacts upon these other important utility facilities located in the path of construction under open cut trenching, and the potential for interruptions of service. I am of the opinion that PennDOT would want to avoid these complications by having SPLP do HDD if possible.

SPLP St. No. 3 at 3:7-4:20. WGT Witness Carlin's unsupported allegations, which took Mr. Cotter's testimony out of context, are the only evidence WGT presented on this issue. But, as Mr. Cotter explained: "PennDOT has refused to grant detours on roads or routes where the level of service is severely impacted or where the nature of the road may present a hazard. That is the case here." Tr. at 346:12-15. Mr. Cotter explained that when SPLP met with PennDOT, they were "relieved" that SPLP would not be open cutting Boot Road. Tr. at 346:16-23.

Once again, even though WGT bears the burden of proof, it did nothing more than make unsupported allegations, which do not meet that burden. SPLP fully rebutted the assertions that Boot Road could be open cut to install the pipeline such that the valve could be installed on the SPLP Use Area.

C. SPLP Did Not Breach The Notice Or Information Provisions Of The Settlement Agreement

1. Notice

WGT falsely alleges that SPLP was required under the Settlement Agreement to give some particularized notice to WGT of the changes regarding the valve and did not do so. This is patently wrong. First, the Settlement Agreement requires no particular type of notice or information. Second, SPLP did provide WGT with notice in January 2016 at an in-person meeting, as four SPLP witnesses testified.

The Settlement Agreement states:

If, due to engineering constraints, SPLP is unable to construct the valve station in the SPLP Use Area, SPLP will notify WGT.

Settlement Agreement at II.A.2. Again, this was in the background section, and not a binding covenant. Moreover, unlike the binding promises elsewhere in the contract to provide specific types of notice to specific people, *see e.g. id.* at IV.A.1.b. (requiring “immediate” notice to Township manager of certain changes and a written report within 30 days), the notice provision in this section does not require anything more than SPLP to give some form of actual notice that it could not construct the valve on the SPLP Use Area. There is no provision or evidence that SPLP agreed to give some type of formal notice at any certain time advising of the particulars of the engineering constraints. Again, the Settlement Agreement is clear and terms that SPLP did not agree to cannot be read into the Agreement to find a violation.

SPLP in fact went above and beyond this notice provision. As Mr. Gordon, Mr. Zoladkiewicz, Ms. Gwin, and Ms. Wolfe testified, SPLP met with West Whiteland Township, including Mr. Lalonde, the Township Manager, and Ms. Camp, the Township Solicitor in January 2016, and explained that the valve would not be located on the SPLP Use Area and why it could

not be (*i.e.* the engineering constraints). SPLP St. No. 1 at 17:6-15; SPLP St. No. 7 at 1:18-3:4; SPLP St. No. 8 at 1:15-2:6; SPLP St. No. 9 at 1:14-2:20; SPLP DZ-1 (Highly Confidential). Mr. Zoladkiewicz had prepared a memo documenting this meeting, including documents that clearly showed the proposed location of the valve, which was presented to WGT. SPLP Ex. DZ-1 (Highly Confidential); Tr. 325:3-326:17. SPLP likewise provided notice to WGT of the change in location later in 2016 and again in 2017. SPLP St. No. 1 at 17:19-22.

Regarding removal of the valve, SPLP notified WGT of this change via its pleadings in this proceeding in November 2017 when it made its decision. SPLP notified WGT of the reasons for this decision via its testimony and exhibits in this proceeding.

WGT has provided no evidence that SPLP did not provide the notice required under the Settlement Agreement. In contrast, SPLP has proven that it provided notice multiple times and in multiple forms.

2. Information

WGT falsely alleges SPLP has not provided it with information. However, WGT has presented absolutely no evidence of what specific information SPLP supposedly has not provided or why that information is necessary to be provided. The Settlement Agreement states:

With respect to Mariner East 2, SPLP agrees, . . . that it will provide to Accufacts, Inc. or a person or entity acting for WGT that is similarly a nationally recognized expert in the field of liquids pipeline safety . . . information relating to Mariner East 2 of a similar nature that was provided regarding Mariner East 1 for review . . .

SPLP did provide this information, and Mr. Kuprewicz conducted a safety review. Township Exhibit 23, finding the pipeline construction safe. When SPLP decided not to locate a valve in the Township, SPLP provided the pertinent information regarding this change in its testimony:

- Mr. Gordon's Direct testimony, SPLP St. No. 1 at 7:5-10 clearly described the specs of the valve at East Lincoln Highway that would be automated.

Q. Could you please describe the valve that will be automated at East Lincoln Highway?

A. There will be a valve on both the 16" and 20" lin. These valves are Trunnion Mounted, Flanged, Carbon Steel Ball Valves, Full Port, API 6D. The speed of closure of the valves is approximately 100 seconds for the 20" valve, and 80 seconds for the 16" valve. The actuator type is Pneumatic, which means the actuator uses a spring to close the valve, and nitrogen pressure to open the valve. Most of the automated valve sites on ME2 use Pneumatic actuators.

- Mr. Vieth's testimony and the Stantec report clearly explained and analyzed how the elimination of the valve would have no effect on safety. In fact, Mr. Kuprewicz discussed the details of this report, showing he was in fact provided with the information he needed. There is no allegation in his Surrebuttal testimony that he was lacking in information.
- Moreover, as Mr. Vieth explained in his rejoinder testimony, SPLP St. No. 2-RJ at B.8, nothing else changed except what was explained in his and Mr. Gordon's testimonies.

Mr. Kuprewicz previously opined that that the ME2 design was safe. Now that he is presented with analysis that shows there is no substantive change by eliminating valve 344, due to enhancement to controls for the immediately upstream valve, he highlights a laundry list of concerns in an to attempt to discredit the analysis, but none of the items in the laundry list have changed since he last analyzed the pipeline's safety.

Again, the Settlement Agreement did not require SPLP to provide information in any specific form, an in fact did not require SPLP to update the information previously provided at all. But, SPLP did provide WGT and Mr. Kuprewicz with the information pertinent to his safety review in its testimony. WGT bears the burden of proof and has presented no evidence to the contrary after

SPLP submitted its direct testimony. SPLP has not violated the Settlement Agreement regarding the provision of information.

D. Even If SPLP Violated The Settlement Agreement (which it did not), Injunction Of Construction Or Ordering Placement Of The Valve On The SPLP Use Area Is Not The Proper Remedy: Reformation Is The Proper Remedy

Even if the overwhelming evidence that SPLP has not violated the Settlement Agreement were ignored, an injunction is not the proper remedy. The Commission has the power to reform settlement agreements involving utilities where it is in the public interest to do so. *See, e.g., ARIPPA v. Pennsylvania Pub. Util Comm'n*, 792 A.2d 636, 662 (Pa. Cmwlth. 2002). In the alternative, that can be done here to protect the public from the bad idea of placing Valve 344 where WGT insists. The Commission has already found that SPLP's utility service is in the public interest by granting it a certificate of public convenience and confirming that certificate of public convenience applies to the service to be provided on Mariner East 2. *See* 66 Pa. C.S. § 1103(a) ("A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public."); *See* Petitions of Sunoco Pipeline L.P. for findings that buildings to shelter utility facilities are reasonably necessary for the convenience or welfare of the public, Docket Nos. P-2014-2411941 et al. at 10, 33 (Order entered Oct. 2, 2014). Enjoining construction, where it has been proven there are no safety concerns and there is no irreparable harm to the Township is not in the public interest. Instead, if any violation of the Settlement Agreement is found, the Commission has the power to modify the Agreement consistent with the public interest – *i.e.* removing any alleged agreement to place a valve in the Township on the SPLP Use Area.

Moreover, even if it was found that a valve is necessary, it has been proven beyond a doubt that engineering constraints prevent SPLP from placing a valve on the SPLP Use Area. The last thing Your Honor or this Commission should do is require SPLP to engage in construction it deems unsafe and risky where there is a perfectly safe option – placing the valve on the Janiec 2 tract. The Commission should not do so particular based on the absence of HDD or pipeline construction testimony by WGT who only had a safety expert and two other experts in geology and traffic—neither of which had any pipeline experience with petroleum products or HDD. WGT's safety expert has already evaluated placement of the valve in that location and found it safe and prudent. Township Exhibit 23. Again, it is consistent with the public interest (if it is found a valve is necessary, which it is not) to modify the Settlement Agreement and allow SPLP to place the valve where it is safe and feasible to do so.

WGT's constantly shifting positions starting as no above ground facilities, to if SPLP wants a valve it has to be on the SPLP Use area, to not wanting a valve on Janiec 2 for aesthetic reasons, to now a valve must be installed 2.5 miles from the next upstream valve (WGT's expert cites 7.5 miles as the interval he believes applies) despite a major upgrade of the upstream valve, is little more than an agenda to oppose and delay ME2 and should be rejected.

V. **CONCLUSION**

WHEREFORE, SPLP respectfully requests that Your Honor conclude WGT has not met its burden of proof and dismiss the Second Amended Complaint with prejudice. Your Honor and the Commission should not direct anything that is impossible of performance or unsafe, such as locating the valve in the SPLP Use Area.

Respectfully submitted,



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Appendix A

Proposed Findings of Fact and Conclusions of Law

Findings of Fact

1. Sunoco Pipeline L.P. (SPLP) is a Pennsylvania public utility providing transportation of petroleum products. Second Amended Complaint at ¶ 2; Tr. at 180:2-181:16.

2. SPLP is currently constructing its Mariner East 2 pipeline, which traverses WGT. Tr. at 180:2-181:16.

3. In May 2015, SPLP and West Goshen Township (WGT or the Township) executed a Settlement Agreement related to Mariner East 1 and ME2 that was filed with the Commission pursuant to 66 Pa. C.S. § 507 (requiring agreements between public utilities and municipalities to be filed with the Commission). Township Ex. 4.

4. That Settlement Agreement allowed SPLP to locate a valve (Valve 344) on the SPLP Use Area “subject to engineering constraints.” Settlement Agreement (Township Ex. 4) at IV.A.1.a., II. After further study subsequent to the Settlement Agreement, and after the discovery of “engineering constraints” rendering the then proposed Valve 344 site unsuitable and unsafe, SPLP St. Nos. 1, 3-6, SPLP discovered that on the balance the same level of valve system performance for the proposed Valve 344 could be provided had it been constructed by instead eliminating the Valve 344 if the next upstream Valve just 2.5 miles upstream at East Lincoln Highway, instead of being manual was converted to automated, thereby essentially providing the **same level of performance as the valve configuration in the Settlement Agreement.** SPLP St. No. 1 at 3:10-4:11, 6:19-9:6; SPLP St. No. 2; SPLP Ex. PV-2 (Highly Confidential). SPLP then used its managerial discretion to do so under the circumstances. *Id.*

5. In fact, the response performance between upstream of the then proposed Valve 344 site and the immediately upstream East Lincoln Highway valve improved from the Settlement Agreement configuration. SPLP Ex. PV-2 at Table E-1(Highly Confidential). The downstream performance between the then proposed Valve 344 site and the next downstream valve is negligible and insignificant compared to the Settlement Agreement valve configuration and features, as described by a nationally renowned pipeline safety expert, is like the difference between travelling “50 miles per hour compared to 50.05 miles per hour.” SPLP St. No. 2 at 5:19-6:15, 10:5-13; SPLP Ex. PV-2; SPLP St. No. 2-RJ at B.; Tr. at 594:1-7, 612:1-23.

6. Eliminating the ME2 pipeline valve from West Goshen Township while automating the upstream valve does not create a safety reason for requiring Valve 344 on the SPLP Use Area as on the balance it essentially is the same performance-wise as the Settlement Agreement Valve 344 configuration and valve system features. SPLP St. No. 2 at 5:19-6:15, 10:5-13; SPLP Ex. PV-2; SPLP St. No. 2-RJ at B.; Tr. at 594:1-7, 612:1-23.

7. Engineering constraints prevent SPLP from placing a ME2 pipeline valve on the SPLP Use Area as it had originally intended. Settlement Agreement (Township Ex. 4) at II; SPLP St. No. 1; SPLP St. No. 3; SPLP St. No. 4; SPLP St. No.5 SPLP St. No. 6; Tr. at 346:12-15, 383:6-384:8, 435:13-436:5, 448:1-17, 536:6-13, 539:17-21, 540:13-541:17; SPLP Hearing Ex. 3. Regarding the western portion of the pipeline, those engineering constraints include the congestion of utilities in the right-of-way and inability to obtain a permit that prevent the use of open cut construction. SPLP St. No. 1 at 11:11-12:12; SPLP St. No. 3 at 2:19-3:3, 4:20; Tr. at 346:12-15. No witness has alleged that this western segment of the pipeline could be constructed using HDD to place a valve on the SPLP Use Area. Regarding the eastern portion of the pipeline, those engineering constraints include minimum curvature issues (the extent to which the pipe can be

bent without negatively impacting its strength) coupled with the geology beneath Route 202 (which SPLP's professional geologist and its HDD experts conclude presents safety risks of inadvertent return beneath Route 202 that would cause safety issues for traffic), which prevent installation of the valve on the SPLP Use Area using HDD. SPLP St. No. 1 at 13:7-14:12; SPLP St. No. 4 at 2:22-3:14; Tr. at 384:9-16; SPLP St. No. 5 at 5:9-8:20; Tr. at 536:11-541:17, 542:22-544:24, 546:10-13; SPLP Hearing Ex. 3; SPLP St. No. 6 at 4:19-6:13; Tr. at 435:13-436:5; 448:1-17. No witness has alleged that the eastern portion of the pipeline could be installed using open cut construction and could not be because PennDOT would not approve a permit to open cut Route 202. SPLP St. No. 1 at 10:11-12.

8. Engineering constraints also prevent SPLP from placing a valve on the SPLP Additional Acreage. Tr. at 542:22-544:24, 546:10-13; *see also* SPLP St. No. 5 at 5:9-8:20; Tr. at 536:11-541:17.

9. SPLP did not know whether placing a valve on the SPLP Use Area was feasible at the time of the Settlement Agreement because it did not yet have geotechnical data or utility locate data, which is why SPLP built into the Agreement that if engineering constraints were present, the valve would not be located on the SPLP Use Area. Tr. at 529:9-530:13. SPLP obtained that data later in 2015 and after analyzing this data and its options, concluded that engineering constraints prohibited placement of the valve on the SPLP Use Area in approximately November or December of 2015. SPLP St. No. 1 at 13:1-16:17.

10. In January 2016, SPLP representatives Matthew Gordon, Donald Zoladkiewicz, Ivana Wolfe, and Shannon Gwin met with, *inter alia*, WGT representatives Casey Lalonde and Kristin Camp. At that meeting SPLP informed WGT that it would not locate the valve on the SPLP Use Area, but instead would locate the valve on the Janiec 2 tract due to engineering

constraints, which it explained to them and showed in construction alignment sheets and diagrams of the site. SPLP St. No. 1 at 17:6-15; SPLP St. No. 7 at 1:18-3:4; SPLP St. No. 8 at 1:15-2:6; SPLP St. No. 9 at 1:14-2:20; SPLP DZ-1 (Highly Confidential). Ms. Camp demonstrated that she understood the move of the location of the valve at the meeting when she voiced her concerns that the fencing and/or landscaping for the new Janiec 2 valve location would be aesthetically pleasing, unlike the existing Boot Road pump station on the SPLP Use Area SPLP St. No. 7 at 3:2-12; SPLP St. No. 8 at 2:13-22; SPLP St. No 9 at 2:11-20.

11. SPLP again gave WGT notice of its decision later in 2016 and again in 2017. SPLP St. No. 1 at 17:19-22.

12. SPLP gave WGT notice of its November 2017 decision not to locate a valve in the Township via its pleadings and testimony in this proceeding. *See, e.g.*, SPLP St. No. 1 at 3:10-20; SPLP St. No. 2.

13. SPLP provided WGT and its safety expert, Mr. Kuprewicz, with the updated information pertinent to safety review in SPLP's testimony and exhibits. SPLP St. No. 1 at 7:5-10; SPLP St. No 2; SPLP Ex. PV-3; SPLP St. No. 2-RJ at B.8.

Conclusions of Law

14. WGT has the burden of proof and has not met it. 66 Pa. C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

15. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a).

16. To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, than that presented by the Respondent. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

17. The Commission's decision must be supported by substantial evidence in the record. It is axiomatic that a legal decision must be based on real and credible evidence that is found in the record of the proceeding. *Pocono Water Co. v. PUC*, 630 A.2d 971, 973-74 (Pa. Commw. Ct. 1993) (finding that the Commission violated the utility's due process rights "because it assessed liability after determining an issue which [the utility] had not been afforded a reasonable opportunity to defend at the hearing."); *Duquesne Light Co. v. PUC*, 507 A.2d 433, 437 (Pa. Commw. Ct. 1986) (holding that the Commission violated the utility's due process rights because the utility was "not given adequate notice of the specific conduct being investigated, and hence its defense was gravely prejudiced."). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

18. Upon the presentation by the Complainant of evidence sufficient to initially establish a *prima facie* case, the burden of going forward with the evidence, to rebut the evidence

of the Complainant, shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now must provide some additional evidence to rebut that of the Respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

19. While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

20. The Settlement Agreement is not ambiguous and must be interpreted by its plain terms regarding whether SPLP agreed to place a valve in the Township. *Metzger v. Clifford Realty Corp.*, 476 A.2d 1, 5 (Pa. Super. 1984) (“A contract is not ambiguous if the court can determine its meaning without any guide other than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends; and a contract is not rendered ambiguous by the mere fact that the parties do not agree upon the proper construction.”) “The parol evidence rule preserves the integrity of written agreements by precluding extrinsic evidence that contradicts the final written agreement.” *Rose v. Food Fair Stores, Inc.*, 262 A.2d 851 (Pa. 1970). “Put differently, the law views written agreements to not only be the best, but the only evidence of the agreement and therefore, absent ambiguity, fraud, or mistake, parol (extrinsic) evidence is excluded.” *LeDonne v. Kessler*, 389 A.2d 1123 (Pa. Super. 1978).

21. The Settlement Agreement does not require SPLP to place a valve in the Township. Settlement Agreement (Township Ex. 5) at Section IV.

22. Section II of the Settlement Agreement contains “Pertinent Information Provided by SPLP” not binding covenants, promises, or agreements. Compare Settlement Agreement

(Township Ex. 5) at Section II *with* Section IV; *Central Dauphin School Dist. v. American Cas. Co.*, 426 A.2d 94, 96 (Pa. 1981) (“It is axiomatic, however, that **‘(t)o determine an agreement, a writing must be interpreted as a whole, giving effect to all its provisions.’**”) (quoting *Atlantic Richfield Co. v. Razumic*, 390 A.2d 736, 739 (Pa. 1978)).

23. To the extent SPLP intended to place a valve in the Township, that intent was subject to engineering constraints. Settlement Agreement (Township Ex. 4) at Section II.

24. To the extent the Settlement Agreement could be read to require a valve in the Township, that requirement is subject to engineering constraints. Settlement Agreement (Township Ex. 4) at Section II.

25. The Settlement Agreement requires no particular type of notice or information regarding the valve. Settlement Agreement (Township Ex. 4) at Section II, IV.

26. SPLP did not violate or breach the Settlement Agreement.

27. SPLP did not misrepresent its intentions in the Settlement Agreement. SPLP St. No. 1 at 16:19-17:3.

28. The Commission has the power to reform settlement agreements involving utilities where it is in the public interest to do so. *See, e.g., ARIPPA v. Pennsylvania Pub. Util Comm’n*, 792 A.2d 636, 662 (Pa. Cmwlth. 2002).

29. Commission has already found that SPLP’s utility service is in the public interest by granting it a certificate of public convenience and confirming that certificate of public convenience applies to the service to be provided on Mariner East 2. *See* 66 Pa. C.S. § 1103(a) (“A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”); *See Petitions of Sunoco*

Pipeline L.P. for findings that buildings to shelter utility facilities are reasonably necessary for the convenience or welfare of the public, Docket Nos. P-2014-2411941 et al. at 10, 33 (Order entered Oct. 2, 2014).

30. Enjoining construction, where it has been proven there are no safety concerns and there is no irreparable harm to the Township is not in the public interest. Instead, if any violation of the Settlement Agreement is found, the Commission has the power to modify the Agreement consistent with the public interest – ie. removing any alleged agreement to place a valve in the Township on the SPLP Use Area. *See, e.g., ARIPPA v. Pennsylvania Pub. Util Comm'n, 792 A.2d 636, 662 (Pa. Cmwlt. 2002).*

CERTIFICATE OF SERVICE

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

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

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Dated: June 5, 2018

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