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June 25, 2018

**BY ELECTRONIC AND FIRST CLASS MAIL**

Honorable Elizabeth Barnes  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265

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

Dear ALJ Barnes:

Enclosed you will find Sunoco Pipeline L.P.'s ("SPLP") Reply Brief (Public Version) in the above-captioned proceeding. Copies of SPLP's Reply 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

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township,

Complainant,

v.

Sunoco Pipeline L.P.,

Respondent.

Docket No. C-2017-2589346

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**RESPONDENT SUNOCO PIPELINE L.P.'S REPLY BRIEF**

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## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

West Goshen Township's (WGT or the Township) Main Brief confirms that it failed to prove its complaint contentions with requisite evidence. It is beyond dispute that the Settlement Agreement conditioned locating Valve 344 on the SPLP Use Area only if engineering constraints do not exist. WGT has the burden of proof and failed to establish that no engineering constraints exist. Indeed, on the morning of the first hearing day WGT withdrew its only proposed expert witness' pre-submitted testimony (by a professional engineer) on most of these engineering constraints, thus leaving no evidence in support of its burden on the key issue in this case.

Perhaps recognizing this huge gap in its evidentiary presentation and failure to meet its burden, WGT's brief attempts to substitute for its lack of competent evidence: mischaracterizations of testimony; accusations of failure to provide or do things not required by the Settlement Agreement; and irrelevant and picayune criticisms of SPLP's testimony and exhibits that qualified and nationally renowned expert witnesses in the field of pipeline operations, engineering, geology, construction, HDD drilling, open-cut, and pipeline safety presented.

SPLP's testimony and exhibits conclude that unrebutted engineering constraints for construction make locating the valve infeasible and could cause significant problems to public safety and to first responders. These engineering constraints include:

- The congestion of municipal and other public utility facilities such as gas, water and sewer in the construction route required to implement Valve 344 under various scenarios and the inability to obtain a permit to use open-cut construction (regarding the western portion of the route)<sup>1</sup>;
- 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;
- Topography incompatibility between the Valve 344 site and ME2 and minimum radius curvature issues (the extent to which the pipe can be bent without negatively

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<sup>1</sup> 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

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 including heaving of the road), which prevent installation of the valve on the SPLP Use Area using HDD<sup>2</sup>;

- 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, a major and busy 4 lane highway.<sup>3</sup>

WGT's self-serving creation of requirements in its brief not required by the Settlement Agreement and then criticizing SPLP and its qualified expert witnesses for meeting such requirements must be rejected and cannot substitute for evidence sustaining its burden of proof. For one of many examples, WGT claims SPLP failed a requirement because SPLP did not consider other locations on Janiec 1 to located a valve when in fact: (1) the Settlement Agreement does not require that and provides for it to be on the SPLP Use Area only, as WGT states repeatedly in contradiction elsewhere in its brief; and, (2) WGT omits that SPLP's pipeline HDD witnesses testified they did consider the feasibility of the Additional Acreage, but that area suffers from the same minimum curvature, geological, and elevation change deficiencies preventing installation on the SPLP Use Area. Tr. at 542:22-547:21 (Antoni); Tr. at 490:5-22 (Gordon); Tr. at 430:9-431:6 (Ariaratnam).

It is clear that WGT attempts by its brief and advocacy to illegally shift the burden of proof and instead place it on SPLP. ***However, in Commission proceedings, 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).***

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<sup>2</sup> 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.

<sup>3</sup> SPLP St. No. 1 at 10:11-12.

Worse, WGT essentially asks Your Honor and this Commission to order a very risky and unfeasible construction to shoe-horn this valve to the site upon which WGT, who lacks expertise, is insistent. The fact is, WGT and its unqualified traffic and geology experts (WGT presented no pipeline construction expert as its purported PE expert's testimony was withdrawn) have no experience in pipeline construction or operation and consequently WGT has failed to show no engineering constraints exist necessary to prove a violation of the Settlement Agreement. Nor has WGT established by any evidence that SPLP's managerial discretion should be overridden—which is a longstanding concept of law specifically intended to prevent micro-managing of utilities by those who have no expertise.

As SPLP witness Gordon explained, and confirmed by SPLP expert witnesses based on their analysis and vast experience on this type of pipeline and construction methods, SPLP has exercised its managerial discretion reasonably and appropriately under the facts presented. Under longstanding Pennsylvania law, just because WGT and its novice witnesses may have a different opinion on the pertinent issues in this proceeding does not override SPLP's managerial expertise and discretion. *National Fuel Gas Distribution Corp. v. Pennsylvania Pub. Util. Comm'n*, 464 A.2d 546, 559 (Pa. Cmwlth. 1983) (“utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions . . . unless, on the basis of record evidence, it finds an abuse of the utility's managerial discretion”).

In any event, and even under a strict and proper interpretation of the Settlement Agreement, SPLP is not required to locate a valve in the Township. SPLP has essentially replicated the level of performance of the pipeline area at issue that the Settlement Agreement would have provided with its valve configuration and characteristics had that been possible (i.e. not subject to engineering constraints), by eliminating Valve 344 and upgrading significantly the valve



immediately upstream. That present plan actually improves valve reaction time upstream and the result downstream in negligible—which SPLP’s nationally renowned pipeline safety expert who was the past Vice-Chair of the ASME B.31.4 guidelines, and has been awarded the designation of ASME Fellow, described as the difference between driving “50 miles per hour compared to 50.05 miles per hour.” Tr. at 612:21-23. Notably, WGT’s safety consultant Kuprewicz concluded, in his safety review which is part of the record as Township Ex. 23, that **“the Mariner East 2 Expansion Project meets or exceeds the prudent technical approaches commensurate with the safe transportation of HVL.”** *Id.* at 9 (emphasis added). Accordingly, given Mr. Kuprewicz’s prior conclusion that the pipeline design was safe under the Settlement Agreement configuration of valves and that SPLP’s modified valving configuration and operation is essentially the same, the same conclusion that the pipeline design is safe should be reached, as SPLP pipeline safety expert Vieth explained in his rejoinder testimony:

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.

SPLP St. No. 2-RJ at B.8.

WGT's constantly shifting position (WGT's Kuprewicz now claims that the upgrades to other valves should be made and the installation of Valve 344 should occur,<sup>4</sup> which would exceed the performance in the Settlement Agreement configuration) is not and cannot support a conclusion that the Settlement Agreement has been breached. Instead, these shifting and increasing additional requests are just that, requests for relief in excess of the Settlement Agreement, show no breach, and are not substitutes for evidence.

There also is a fundamental lack of logic to WGT's accusations against SPLP. WGT concocts that at every turn SPLP did not want to locate the Valve on the SPLP Use Area. That is ludicrous as Mr. Gordon testified:

As I explained in my July 18, 2017 hearing testimony, the need for and the location of Valve 344, like many other elements of any major construction project, has been subjected to ongoing evaluation and reevaluation. Circumstances change and there is a need for flexibility and managerial discretion. The siting of Valve 344 on the SPLP Use Area was conditioned upon not having engineering constraints. There can be a need to develop a new solution when something that was hoped to be practical and prudent turns out not to be due to engineering constraints that come to light during the construction process. WGT has unfairly portrayed this normal and prudent engineering approach to problem solving as a conspiracy to renege on WGT's "understanding" of the Settlement Agreement which differs from the express language of the Settlement Agreement. To believe that theory, one must suspend both business and engineering reality.

First, SPLP wanted and intended to place Valve 344 on the SPLP Use Area and thus expressed that intent in the Settlement

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<sup>4</sup> WGT's safety consultant Kuprewicz offered his opinion on Valve 344 being constructed without providing any analysis (he's not a professional engineer, does not construct or operate pipelines, and offered no studies or calculations to support his sweeping generalized opinions).

Agreement. SPLP's initial preference, subject to engineering prudence and an absence of engineering constraints, is to locate all of its above ground facilities close together for efficiency and maintenance purposes, so placing Valve 344 on the SPLP Use Area, which contains the Pump Station for the ME1 line, made the most sense at that time and appeared to be practical. That initial belief or hope, however, did not prove out under subsequent and further evaluation and engineering review.

Second, we already owned the SPLP Use Area, meaning we would not have to acquire another parcel on which to place Valve 344. But we did not, relative to the drilling and construction that would have to be done to locate Valve 344 on the SPLP Use Area, have all the subsurface utility locate data for other utility facilities until the fall or winter of 2015, and did not have results of a geotechnical analysis prior to March of 2015. We never represented to WGT that our decision as to the Valve 344 site was final and inflexible or that we had all analyses completed that would allow us to make this determination. That is why the Settlement Agreement made that initial plan subject to "engineering constraints." Unfortunately, the SPLP Use Area did not pass the engineering constraints requirement. We decided Valve 344 could not be placed on the SPLP Use Area due to engineering constraints in November or December 2015 and first notified WGT in January of 2016, as Mr. Zoladkiwicz explains in his testimony.

Third, it makes no sense that SPLP would have some plan not to put Valve 344 on the SPLP Use Area if that location were suitable. We own that parcel, and using it for Valve 344 would have saved us the approximately \$2 million dollar cost to purchase the Janiec 2 property, which did not suffer from the engineering constraints, to relocate Valve 344.

Fourth, it makes no sense that we would choose not to locate Valve 344 on the SPLP Use Area if it were possible from an engineering perspective to do so, knowing that choice could expose the project to time-consuming litigation that could slow the progress of our overall project. So, WGT's conspiracy angle makes no sense to me. Instead, what continues and will continue is the reality that we cannot and will not locate a valve at a site that is unsuitable and presents significant safety concerns due to its location and construction. And, as it turns out, with reevaluation and modifications to ME2 elsewhere, there is no need for Valve 344; so, the debate on whether Valve 344 should go on the unsuitable SPLP Use Area has no practical point.

**Q. Did SPLP misrepresent its intentions to WGT prior to executing the Settlement Agreement concerning the site of Valve 344?**

A. No, as I explained above, it was an evolving process. We wanted to place Valve 344 on the SPLP Use Area, and our initial plan was to do so. We did not – and could not – guarantee that this would be the ultimate location of Valve 344 or that we had completed all of the analysis necessary to confirm we could locate Valve 344 on the SPLP Use Area. Again, the Settlement Agreement expressly provides for change of the location of Valve 344 due to engineering constraints. Settlement Agreement at Section II.A.2.

SPLP St. 1 at 15:1-17:3.

Given the above, and the un rebutted evidence of engineering constraints, there should be nothing left for WGT to fight over, yet WGT continues to misinterpret the Settlement Agreement, inventing promises that are clearly not part of the Agreement (such as SPLP allegedly needing the Township's permission to make changes to the previously intended location of the valve, WGT Br. at 6-7), just to continue this Complaint in an effort to delay or stop the pipeline which appears to be its true agenda.

That is not Your Honor or the Commission's task to entertain here. Instead, the task is to determine whether SPLP breached the Settlement Agreement. It did not. If SPLP did breach the Settlement Agreement, the remedy is already provided in the Settlement Agreement itself – WGT can file a complaint. WGT did just that, amending its First Amended Complaint to include a count that SPLP was required to place a valve in the Township and without the valve the pipeline would be unsafe. WGT then had the burden to prove its safety complaint. It did not, particularly given that its safety consultant spoke glowingly of the level of performance by the then Settlement Valve system performance which, with the present status quo modifying the upstream valve, provides the very same material performance.

The Complaint should be dismissed with prejudice. The remainder of this Reply Brief addresses the following topics.

- **Section II** is the required counterstatement of the case and addresses WGT's most egregious mischaracterizations of the record in its Statement of the Case that permeates throughout its entire brief. This section shows that any WGT argument or allegation must be thoroughly vetted by checking the record and/or cited law, as WGT's brief is rife with errors.
- **Section III Argument:**
  - In **Section A.**, SPLP shows that WGT's proposed contract interpretation violates the law of construction of contracts and therefore must be wrong and is unsupported by the record, even if parole evidence were considered. *Instead of interpreting the plain terms of the Settlement Agreement, WGT invents promises that the record shows SPLP never agreed to, including locating a valve on the SPLP Use Area, seeking permission from WGT for changes to the valve, and that engineering constraints are not a condition of SPLP's intent regarding the location of the valve.*
  - In **Section B.1.**, SPLP shows that under the law, it does not, as WGT alleges, have the burden of proof regarding the engineering constraints condition precedent of the Settlement Agreement. Commission law is clear and well-established that the party seeking relief from the Commission (here, WGT), always bears the burden of proof. Even under civil case law, WGT's arguments are incorrect because engineering constraints is not an affirmative defense or an exclusion in the contract; instead engineering constraints are a condition precedent for which the party seeking to have the contract enforced (here, WGT) bears the burden of proof.
  - In **Section B.2.**, SPLP shows that even if the burden of proof were incorrectly shifted to SPLP concerning engineering constraints, SPLP has presented competent and credible expert testimony and exhibits that establish engineering constraints make construction of the valve on the SPLP Use Area infeasible and unsafe. WGT's attempts at rebuttal do not suffice to undermine this evidence.
  - In **Section C.**, SPLP shows that elimination of the valve does not present any safety concerns or alleged "negative impacts."
  - In **Section D.**, SPLP explains that the specific performance WGT requests, is not available because there is an adequate remedy at law that WGT is

currently pursuing – litigating as part of this proceeding a safety complaint regarding elimination of the valve.

- In **Section E.**, SPLP explains that essentially the relief WGT requests has already been provided.
- In **Section F.**, SPLP explains that WGT’s requested injunctive relief, including affirmative injunction to perform additional geotechnical studies are illegal because WGT has not shown they are narrowly tailored to abate the harm it complains of, which is a requirement for injunctive relief, and that it is contrary to law to ask for such studies and relief for the first time in its Main Brief thereby denying SPLP to test it at hearing and produce evidence in opposition.
- In **Section G.**, SPLP maintains, despite WGT’s allegations to the contrary, that if necessary, the Commission can and should reform the Settlement Agreement to reflect the public interest, which dictates that SPLP be allowed to construct its facility expansion providing service to or for the public in the safe and prudent way it has determined.

## **II. COUNTERSTATEMENT OF THE CASE**

WGT failed to create a record to meet its burden of proof. Instead, its brief repeatedly misconstrues and confuses the record and demonstrates a lack of candor as the below five examples and table demonstrate. WGT also relies upon many irrelevancies in its attempt to satisfy or obfuscate its burden of proof, like SPLP allegedly not producing certain calculations or documents to support its case; however, even if true, that proves nothing. There is no expert testimony that SPLP’s analysis is lacking for failure to produce any of these things and no expert testimony that any of these things would make one iota of a difference to the case or undermine any witnesses’ credibility. WGT’s criticisms do not make a difference to the material facts.

First, WGT alleges in complete contradiction to the record that eliminating the valve will have a “negative impact” on the Township. WGT Br. at 16-20. At the outset, having a “negative impact” is not the standard for WGT’s safety complaint – WGT has the burden to prove SPLP’s actions are in fact unsafe. Moreover, WGT’s own witness did not and was not willing to conclude

that removing the valve from the Township would make the pipeline unsafe or have some alleged “negative impact.” *See generally* Complainant St. No. 8 (Kuprewicz Surrebuttal).

In fact, WGT witness Kuprewicz cannot come to this conclusion because his initial safety review of the pipeline concluded that it was safe, Township Ex. 23, and nothing has changed in any significant way from then in terms of valve performance with the elimination of Valve 344 and the upgrade to the immediately upstream valve. SPLP St. No. 2-RJ at B. Moreover, given Kuprewicz’s conclusion was that the level of performance was safe under the prior configuration, the present configuration eliminating valve 344 but upgrading the upstream valve is essentially identical and must likewise be safe. *Id.* WGT constantly changing its position to want additional valve modifications does not in any way establish that SPLP breached the Settlement Agreement where locating Valve 344 on the SPLP Use Area is not feasible and where, though not required by the Settlement, further valve upgrades result in the valving providing the same level of performance on the balance as the prior configuration that WGT’s safety expert found safe.

The allegation of counsel in WGT’s brief are not record evidence and under the law cannot suffice to meet WGT’s burden of proof. Further, *removing the valve actually improves response time upstream of the valve and has a negligible effect downstream of the valve, like the difference between driving “50 miles per hour compared to 50.05 miles per hour.”* Tr. at 612:21-23; SPLP Ex. PV-2. Given that there is no safety concern raised by eliminating the valve or negative impact on the Township, elimination of the valve in fact resolves WGT’s complaints because there is no aesthetic concern if no above ground facility is created by constructing a valve. Tr. at 279:4-9. There is no basis in the record on which to conclude that elimination of the valve negatively impacts the Township and creates safety concerns.

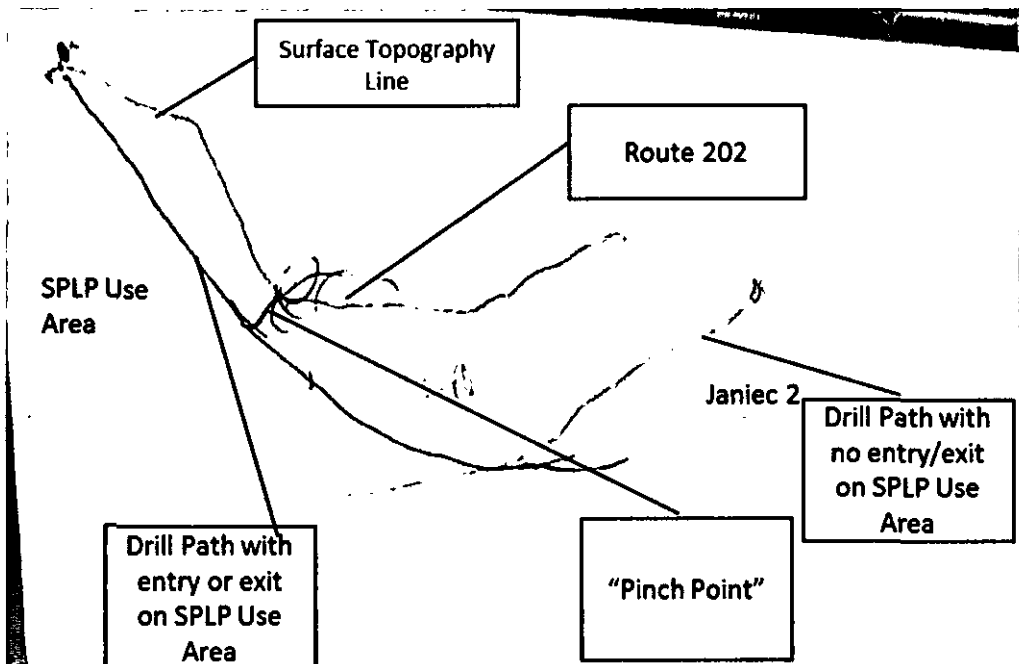
Second WGT, alleges there is no evidence that SPLP ever considered the engineering constraints associated with drilling from the SPLP Use Area to Janiec 2 in deciding that it was unable to place the valve on the SPLP Use Area. WGT Br. at 9-10. This is false; Mr. Gordon has consistently and repeatedly testified that this was considered. *See, e.g.*, Tr. at 191:16-194:11; SPLP St. 1 at 10:8-10, 13:5-14:20. Moreover, as Mr. Gordon explained, SPLP's decision was an ongoing evaluation. SPLP St. 1 at 3:2-8. SPLP's witness Antoni expressly testified that, as part of that ongoing analysis, he analyzed "if it was feasible to utilize the SPLP Use Area or Janiec 1 to produce a directional drill from that area south" either to Janiec 2 or connecting to the Green Hill Road drill. Tr. at 542:22-543:2. WGT also alleges in this portion of its brief (without citation) that "SPLP did not provide to the Township any computer data, written analysis, or other engineering report to demonstrate that it is unable to construct the Valve on the SPLP Use Area, only that it is preferable to use the Janiec 2 Tracts." This completely ignores and misconstrues SPLP Witnesses Gordon, Antoni, Hess, Cotter and Ariaratnam's testimony and exhibits, which provide in-depth analysis of these engineering constraints. Sunoco MB at 28-47. These are exactly the engineering reports WGT alleges SPLP did not present. WGT failed to rebut them, so it instead just ignores them. But record evidence cannot simply be ignored.

Third, WGT attempts to transform its own witness' ambiguous statements into a conclusion that "as explained by Kuprewicz, there is no need to arc from the surface of the SPLP Use Area back up to the Janiec 2 tract, other than SPLP's desire to make it appear that engineering constraints are dictating their actions." WGT Br. at 10. In fact, Witness Kuprewicz was unwilling to testify that this drill path was unnecessary, instead only opining that he "sees no reason" and that "there is no apparent reason." Complainant St. No. 8 at 5:11-18. However, he offered no study or empirical analysis for his conclusion, and he has no background or expertise in HDD, nor is he a



pipeline construction and design engineer, in contrast to SPLP's witnesses Gordon, Antoni, and Ariaratnam.

Moreover, as SPLP witnesses explained surfacing on Janiec 2 or not does not resolve the problem. The pinch point created by drilling on the SPLP Use Area exists regardless of where the next exit point occurs and prevents the valve from being located on the SPLP Use Area. 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 inadvertent return, regardless of whether the drill path resurfaces at Janiec 2 or continues on to the Green Hill drill. *Id.*

Fourth, WGT now alleges that the Settlement Agreement says: “SPLP needs to obtain permission to adjust the location” of the valve. WGT Br. at 5-6. The only record evidence WGT refers to in support of this assertion is the Settlement Agreement itself at Section II.A.2. However, the Settlement Agreement states absolutely no such thing. Moreover, the parole evidence WGT presented shows that SPLP being required to seek Township permission was not a term that was considered by the parties. Township Ex. 14-17. In fact, WGT’s own witness’ testimony rebuts this interpretation. Ms. Camp explained that her understanding of the Settlement Agreement (although it is admittedly not contained within the terms of the Agreement) is that:

if in fact there were engineering constraints that they could not do as we so carefully negotiated with where above-ground facilities were going to be located, that that would strike a conversation and notification to the township so the township themselves could evaluate and say “Okay, we as the township board understand that, we now have to go back to our public, who we relied upon us to enter this agreement, and explain to them why it couldn’t be where everybody thought it was going to be on the Janiec 1 tract.”

Tr. at 154:13-155:4. Ms. Camp never stated or implied SPLP would have to obtain WGT’s permission, but only testified that SPLP had to notify WGT, which it did, repeatedly. SPLP MB at 48-49.

Fifth, WGT alleges that SPLP has not provided information required by the Settlement Agreement. WGT Br. at 25. Notably, there is no record evidence that SPLP did not provide necessary information, only the allegations of counsel, which are not sufficient to meet WGT’s burden. Moreover, SPLP has provided the necessary information including in this very proceeding. SPLP MB at 49-51. The most egregious lie is that SPLP did not provide its updated

current drill path, WGT Br. at 25 (“SPLP continued to make changes to the system into 2018, such as lowering the drill profile, without explanation as to why it did not provide that information to Kuprewicz or the Township for a safety review.”). **But, SPLP provided the drill profile as SPLP Ex. No. MG-4 in this very proceeding!**

Instead of presenting competent evidence to show a breach of the Settlement Agreement or actual safety issue with eliminating the Valve, WGT attempts to paint SPLP’s actions as a fantasy conspiracy theory that SPLP never intended to place the valve on the SPLP Use Area and has created engineering constraints to avoid such placement. In doing so, WGT relies on implications unsupported by the record that in any event is irrelevant to this proceeding. For example, WGT repeatedly makes great weight of its witnesses allegedly not finding some sort of smoking gun emails or notes that show SPLP expressly stated geology or lack of a PennDOT permit make it unable to locate the valve on the SPLP Use Area. *See, e.g.*, WGT Br. at 9, 13. Nothing can be implied from this. There is no evidence or requirement that whenever SPLP makes a decision it has to document such decision in terms of what WGT wants the pipeline and facilities to be.

There is no evidence that in fact when SPLP made other similar decisions it had documents showing that decision-making process and conclusion. Instead, the only evidence of record is that Mr. Gordon relied on his team of engineers when he decided that the valve could not be installed on the SPLP Use Area and this decision was made on weekly conference calls. Tr. at 226:3-8; SPLP St. 1 at 15:1-16:17. Mr. Gordon explained those engineering constraints at the hearing in July 2017, again in his written testimony, and again at the April 2018 hearing. Tr. at 185:3-194:11, 488:23-492:6; SPLP St. No 1 at 9:11-14:20. SPLP’s team of experts then analyzed Mr. Gordon and SPLP’s decisions and confirmed that they are sound and that the valve cannot be placed on

the SPLP Use Area. SPLP MB at 28-47. Below is a table of additional mischaracterizations or outright falsehoods presented in WGT’s Brief.

WGT Allegation	WGT Br. Page and Cite	What Record Actually Shows
<p>“Gordon testified that SPLP’s design engineer never told him that drilling could not be done in the SPLP Use Area <i>and he had no report to that effect.</i>”</p>	<p>WGT Br. at 8; Tr. at 244-245.</p>	<p>Mr. Gordon emphasized that the question was not whether it could actually in fact be done, but whether it could be <i>done safely.</i></p> <p>“I don't know to say that an engineer said it can't be done. <b>It's that, can it be done safely is the question, and the safety is a concern in regard to inadvertent returns.</b>”</p>
<p>“SPLP did not provide to the Township any computer data, written analysis or other engineering report to demonstrate that it is unable to construct the Valve on the SPLP Use Area, only that it is preferable to use the Janiec 2 Tract.”</p>	<p>WGT Br. at 8; NO CITE.</p>	<p>This completely ignores and misconstrues SPLP Witnesses Gordon, Antoni, Hess, Cotter and Ariaratnam’s testimony and exhibits, which provide in-depth data, written analysis, calculations, drill profiles including location of underground utilities, and studies of these engineering constraints. Sunoco MB at 28-47 and testimony and exhibits cited therein.</p>
<p>“Gordon testified that SPLP attempted to site the Valve on the SPLP Use Area per the Agreement NT-7/18/17 at pp. 183-184) and even that SPLP was “running parallel paths” (NT-7/18/17 at p. 205), <b>but this assertion was belied by his subsequent testimony and the documentary evidence.</b>”</p>	<p>WGT Br. at 9; NO CITE.</p>	<p>Mr. Gordon’s later testimony did not “belie” but in fact explained SPLP’s continuing attempts to site the valve on the SPLP Use Area. Tr. at 490:5-22 (Gordon). Moreover, Witness Antoni also testified that he examined and analyzed whether it was “feasible to utilize the SPLP Use Area or Janiec 1 to produce a directional drill.” Tr. at 542:22-547:21.</p>
<p>“It should also be noted that no SPLP witness considered or discussed the potential of</p>	<p>WGT Br. at n.5; NO CITE</p>	<p>WGT never asked whether any SPLP witness had specifically considered flex-</p>

<p>using “Flex-bore” to minimize the risk of inadvertent returns under Route 202”</p>		<p>bore, and therefore has no basis to make this statement. The transcript of this proceeding does not contain the word “flex bore.” WGT is attempting to introduce new subjects or facts for the first time in its brief and that should be disregarded.</p>
<p>“Hess himself acknowledged that a geological baseline study could be helpful to reduce the risk of an inadvertent return in order to HDD to or from the SPLP Use Area.” WGT Br. at 14.</p>	<p>Tr. at 400:11-14.</p>	<p>Notably, WGT who had the burden, could have but did not do the baseline studies it now wants and should not be permitted a second attempt to adduce those alleged facts.</p> <p>Mr. Hess testified that the geology core information he reviewed from the site showed it was unsuitable for HDD and that results of further tests could be inconclusive. Tr. at 379:25-384:8, 400:8-13, 402:4-404:5.</p>

**III. ARGUMENT**

**A. WGT’s Proposed Contract Interpretation Violates Principles of Contract Interpretation and Cannot Be Correct**

A primary tenant of contract interpretation is that the intent of the parties must be gleaned from the writing itself; the court “must construe the contract only as written and *may not modify the plain meaning under the guise of interpretation.*” *Currid v. Meeting House Restaurant, Inc.*, 869 A.2d 516, 519 (Pa. Super. 2005), *appeal denied*, 882 A.2d 478 (2005) (emphasis added). Accepting WGT’s interpretation of the Settlement Agreement violates this tenant, requiring reading into the Settlement Agreement terms that simply do not exist. WGT Br. at 3-7; 30-34.

WGT’s interpretation is also flawed because it relies on parole evidence to interpret a contract that is not ambiguous. *Metzger v. Clifford Realty Corp.*, 476 A.2d 1, 5 (Pa. Super. 1984).

As outside counsel for the Township, Mr. Brooman, and township solicitor, Ms. Camp, admitted, both advised WGT during the negotiation and execution of the Settlement Agreement, and neither would advise a client 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).

WGT incorrectly alleges the Settlement Agreement mandates: (1) that SPLP agreed to site a valve in the Township; (2) that SPLP was required to seek permission regarding changes to the valve; and (3) that engineering constraints are not a condition to locating a valve in the Township. *Id.*

1. *SPLP Did Not Agree To Site A Valve In The Township*

WGT ignores the plain terms of Section II of the Settlement Agreement, where not only in the heading, but also in the text of these provisions SPLP states that it is only providing background information. 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).

Ignoring that SPLP and WGT agreed that one section of the Settlement Agreement was Background Information (Section II) while SPLP’s covenants were contained in Section IV fails to give meaning to all provisions of the contract, in violation of contract interpretation principles

that WGT itself cites. *See* WGT Br. at 30 (citing *Com. ex rel. Kane v. UPMC*, 129 A.3d 441 (Pa. 2015)). Moreover, WGT has to resort to statutory construction principles for its argument that headings should be ignored because that is not how contracts are to be interpreted. WGT Br. at 32-33. Instead, all the terms of the contract must be given meaning, including the headings. *Central Dauphin Sch. Dist. v. American Cas. Co.*, 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.’”). *See also* SPLP MB at 16-20.

2. *SPLP Was Not Required To Seek Permission From WGT Regarding Changes To The Valve*

There is absolutely no provision in the Settlement Agreement that requires SPLP to seek permission from WGT regarding changes to the intended valve. *See generally*, Settlement Agreement. None of the parol evidence WGT offered supports this proposition, and in fact in conjuring this alleged permission clause, WGT cites no record evidence. WGT Br. at 33-34. Moreover, WGT’s own witness’ testimony rebuts the idea that the contract should be interpreted this way. Ms. Camp explained that her understanding of the Settlement Agreement (although it is admittedly not contained within the terms of the Agreement) is that:

if in fact there were engineering constraints that they could not do as we so carefully negotiated with where above-ground facilities were going to be located, that that would strike a conversation and notification to the township so the township themselves could evaluate and say “Okay, we as the township board understand that, we now have to go back to our public, who relied upon us to enter this agreement, and explain to them why it couldn’t be where everybody thought it was going to be on the Janiec 1 tract.”

Tr. at 154:13-155:4. Ms. Camp never stated or implied SPLP would have to obtain WGT’s permission, but only testified that SPLP had to notify WGT, which it did, repeatedly. SPLP MB at 48-49. This testimony also rebuts WGT’s theory that the notice provision of the Settlement

Agreement would be “superfluous” without a permission requirement. WGT Br. at 34. Ms. Camp expressly explained the notice provision was there so the WGT Board would be able to explain to the public what was going on with the location of the valve, not to facilitate seeking permission that is not required under the plain terms of the Agreement.

3. *Lack Of Engineering Constraints Are A Condition Of Locating The Valve In WGT*

SPLP Witness Gordon explained why and how the engineering constraints language of the Settlement Agreement was present – because SPLP was unsure of whether it could in fact place a valve at the intended location, it did not promise to do so, and expressly built in a clause that explained to WGT that if engineering constraints were present, SPLP would not locate the valve on the Janiec 1 parcel. Tr. at 529:9-530:13. He testified:

The negotiation team came to me with questions, technical questions about the site. I was, at the time when we were building Mariner 1 and resolving the matter, I was still in design phase on Mariner 2, so my goal was to keep that valve, as I testified earlier, on the same site because it's more convenient for operations and maintenance to keep all your equipment in the same footprint.

So I had requested that they get me the option to have that property there if I could make it work. But at the same time, I didn't know if it was going to be feasible because we still didn't have our geotechnical reports. We still didn't have our subsurface utility locate data, so I wasn't even sure that I could get into that site.

...

So I told them, we need to have an out clause if for some reason I can't get in there. You need to put some language to protect that situation.

*Id.* WGT argues that the engineering constraints cannot be interpreted exactly the way it was intended to be interpreted because it would make other contract language “meaningless” or produce “an absurd result.” WGT Br. at 33-34. But that argument depends on first reading in



promises to the contract that do not exist. Under the Settlement Agreement, SPLP did not promise to place a valve in the Township, but instead gave the Township information regarding its intent, and made sure the Township knew by the plain and clear terms of the Settlement Agreement that such intent was subject to actually being able to feasibly and safely construct the valve in the intended location. Tr. at 529:9-530:13; SPLP St. 1 at 15:1-17:3. Mr. Gordon presented evidence of this as well:

As I explained in my July 18, 2017 hearing testimony, the need for and the location of Valve 344, like many other elements of any major construction project, has been subjected to ongoing evaluation and reevaluation. Circumstances change and there is a need for flexibility and managerial discretion. The siting of Valve 344 on the SPLP Use Area was conditioned upon not having engineering constraints. There can be a need to develop a new solution when something that was hoped to be practical and prudent turns out not to be due to engineering constraints that come to light during the construction process. WGT has unfairly portrayed this normal and prudent engineering approach to problem solving as a conspiracy to renege on WGT's "understanding" of the Settlement Agreement which differs from the express language of the Settlement Agreement. To believe that theory, one must suspend both business and engineering reality.

First, SPLP wanted and intended to place Valve 344 on the SPLP Use Area and thus expressed that intent in the Settlement Agreement. SPLP's initial preference, subject to engineering prudence and an absence of engineering constraints, is to locate all of its above ground facilities close together for efficiency and maintenance purposes, so placing Valve 344 on the SPLP Use Area, which contains the Pump Station for the ME1 line, made the most sense at that time and appeared to be practical. That initial belief or hope, however, did not prove out under subsequent and further evaluation and engineering review.

Second, we already owned the SPLP Use Area, meaning we would not have to acquire another parcel on which to place Valve 344. But we did not, relative to the drilling and construction that would have to be done to locate Valve 344 on the SPLP Use Area, have all the subsurface utility locate data for other utility facilities until the fall or winter of 2015, and did not have results of a geotechnical analysis prior to March of 2015. We never represented

to WGT that our decision as to the Valve 344 site was final and inflexible or that we had all analyses completed that would allow us to make this determination. That is why the Settlement Agreement made that initial plan subject to “engineering constraints.” Unfortunately, the SPLP Use Area did not pass the engineering constraints requirement. We decided Valve 344 could not be placed on the SPLP Use Area due to engineering constraints in November or December 2015 and first notified WGT in January of 2016, as Mr. Zoladkiwicz explains in his testimony.

Third, it makes no sense that SPLP would have some plan not to put Valve 344 on the SPLP Use Area if that location were suitable. We own that parcel, and using it for Valve 344 would have saved us the approximately \$2 million dollar cost to purchase the Janiec 2 property, which did not suffer from the engineering constraints, to relocate Valve 344.

Fourth, it makes no sense that we would choose not to locate Valve 344 on the SPLP Use Area if it were possible from an engineering perspective to do so, knowing that choice could expose the project to time-consuming litigation that could slow the progress of our overall project. So, WGT’s conspiracy angle makes no sense to me. Instead, what continues and will continue is the reality that we cannot and will not locate a valve at a site that is unsuitable and presents significant safety concerns due to its location and construction. And, as it turns out, with reevaluation and modifications to ME2 elsewhere, there is no need for Valve 344; so, the debate on whether Valve 344 should go on the unsuitable SPLP Use Area has no practical point.

**Q. Did SPLP misrepresent its intentions to WGT prior to executing the Settlement Agreement concerning the site of Valve 344?**

A. No, as I explained above, it was an evolving process. We wanted to place Valve 344 on the SPLP Use Area, and our initial plan was to do so. We did not – and could not – guarantee that this would be the ultimate location of Valve 344 or that we had completed all of the analysis necessary to confirm we could locate Valve 344 on the SPLP Use Area. Again, the Settlement Agreement expressly provides for change of the location of Valve 344 due to engineering constraints. Settlement Agreement at Section II.A.2.

SPLP St. 1 at 15:1-17:3.

Interpreting the engineering constraints as a pre-condition to construction of the valve does not negate any alleged promises of the Settlement Agreement. WGT's argument that interpreting the engineering constraints condition as what it is – a limitation on where and whether a valve can be placed - would negate the background information section (if it were incorrectly interpreted as a promise, which it is not) is obviously wrong when applied to the facts of this case. WGT states:

Further, any other reading of the language would make paragraph II.A.3. meaningless, i.e. if SPLP could locate the Valve anywhere in the Township, there would be no reason to represent that it has no plan or intention to construct any other above-ground facilities in the Township other than on the SPLP Use Area. Most importantly, SPLP's interpretation would completely negate the clear promise that all above ground facilities will be located at the existing pump station or the SPLP Additional Acreage.

WGT Br. at 34. However, here, those alleged promises are not broken – SPLP will not construct above-ground facilities anywhere other than the existing pump station or the SPLP Additional Acreage. These are not promises, but even if they were, interpreting the engineering constraints term as the condition it is does not negate these alleged promises here.

B. SPLP does not have the burden of proof to show engineering constraints exist that prevent placement of the valve on the SPLP Use Area, but even if it did, it has met that burden.

WGT now attempts to argue (for the first time) that it does not have the burden of proof to prove its allegation in its Complaint proceeding that SPLP breached the Settlement Agreement. WGT Br. at 35. This totally mischaracterizes the law as described below. Notably, WGT cites no Commission precedent in discussing the burden of proof. Moreover, even if SPLP did have the burden of proof to show that the condition of a lack of engineering constraints was not fulfilled preventing SPLP's placement of the valve in the intended location on Janiec 1, SPLP has met and exceeded that burden.

1. WGT Has The Burden of Proof

The Commission's burden of proof standards are well established and clear. 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 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).

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.

WGT attempts to worm its way out from having the burden of proof arguing that under inapplicable civil cases that the engineering constraints term is an affirmative defense or exclusion and therefore SPLP has the burden of proof to prove it. WGT Br. at 35. Even if such case-law was applicable, WGT has misconstrued it. First, “Engineering constraints” are not an affirmative defense listed in the PA Rules of Civil Procedure. Pa.R.C.P. 1030. Next, the engineering constraints term is not an exclusion clause like the insurance contract contexts that WGT cites. The engineering constraints term is a *condition precedent* for which WGT as the Complainant bears the burden of proof. *Peters v. World Mut. Health & Accident Ins. Co. of Pennsylvania*, 213 A.2d 116 (Pa.Super. 1965) (party seeking performance under the contract bears burden of proof for a condition precedent).

It is clear that engineering constraints are a condition precedent of the Settlement Agreement. *Beaver Dam Outdoors Club v. Hazleton City Authority*, 944 A.2d 97, 103 (Pa. Cmwlth. 2008) (“[A] condition precedent may be defined as a condition which must occur before a duty to perform arises.”). The valve was (“intended”) to be constructed if there were no engineering constraints (“subject to engineering constraints”) and “subject to...” constitutes an

express condition because what follows (an intention to construct the valve) will only occur if nothing precludes its construction. The “Exclusion clause” WGT discusses is a distinguishable term of art discussed in insurance contracts context, not applicable here. *Carsek Corp. v. Stephen Schifter, Inc.*, 246 A.2d 365, 369 (Pa. 1968). Assuming arguendo that the Settlement Agreement Section II.A.2 imposes a duty on SPLP to construct the valve absent engineering constraints, the duty qualified by the condition is SPLP’s intent to construct the valve in a specified area – the latter is predicated on the former; that is, if there are engineering constraints, then the valve won’t be constructed – thus, the existence of engineering constraints is a threshold condition to constructing the valve and therefore a condition precedent. WGT as the party seeking performance under the contract bears the burden of proof for this condition precedent, not SPLP.

2. *Even if SPLP Has the Burden of Proof, SPLP Met that Burden.*

As demonstrated at length in SPLP’s Main Brief, SPLP has presented unrebutted, competent, and credible evidence showing the existence of engineering constraints that prevent placement of the valve on the SPLP Use Area. SPLP MB at 28-47. SPLP will again summarize that evidence to make clear that it has shown by a preponderance of the evidence (even though it is not its burden to do so), that engineering constraints prevent placement of the valve on the SPLP Use Area. In contrast, WGT rescinded the testimony of its only proposed pipeline professional engineer at the hearing, leaving absolutely no expert testimony to rebut these expert engineering issues. In fact, the only other professional engineer WGT offered was a traffic engineer as opposed to a pipeline operation, construction, or design engineer.

(a) Summary of SPLP Engineering Constraints Evidence

SPLP presented Mr. Gordon, SPLP Project Director for the ME2 project, who explained the engineering constraints 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, PennDOT was "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 a 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.

(b) WGT's Allegations that SPLP Did Not Prove Engineering Constraints is Wrong

WGT argues, not based on any evidence of its own, but instead by mischaracterizing SPLP's evidence, that all SPLP's testimony and exhibits amount to is a finding that it would be "more difficult" to construct on the SPLP Use Area than the Janiec 2 parcel, would take SPLP more time, or would require revisions to its plans. WGT Br. at 35-36. There is absolutely no evidence of record that demonstrates SPLP is unwilling to spend the time necessary to safely construct its pipeline or that it is unwilling to revise its plans – tellingly *WGT's argument in its*

*brief on this topic does not contain a single cite to the record.* WGT Br. at 35-36. Moreover, SPLP has demonstrated its willingness to change plans for safety in this very proceeding. After reviewing SPLP's drill path for this area with experts Hess and Antoni, SPLP revised its current drill plan during the course of this proceeding and provided it to WGT. SPLP Ex. MG-4; Tr. at 391:4-8. More importantly, SPLP's experts concluded based on a reasonable degree of engineering and scientific certainty that it is not feasible to locate the valve on the SPLP Use Area. SPLP MB at 28-47.

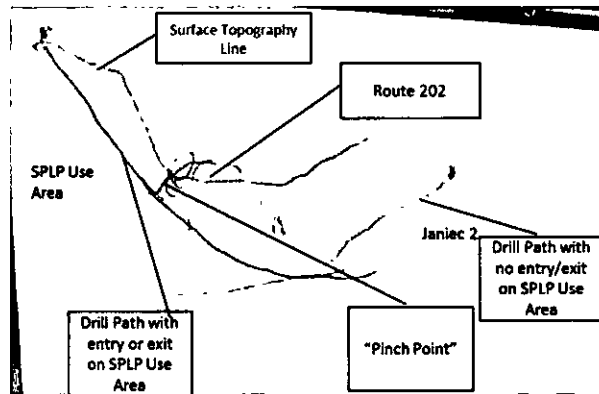
WGT alleges "the evidence establishes that SPLP simply did not do the requisite analysis to even reasonably attempt to locate the Valve on the SPLP Use Area." WGT Br. at 14. This alleged evidence is nothing more than mischaracterization or nit-picking of SPLP's expert witnesses with no actual expert witness testimony to support WGT's allegation that the analysis that was done is in any way insufficient, not credible, or lacking. The table below shows how WGT's allegations are wrong and do not support that engineering constraints do not prevent installation of the valve on the SPLP Use Area.

WGT Allegation	Rebuttal
<p>Dr. Ariaratnam's testimony is of little weight because he did no independent analysis. WGT Br. at 10 &amp; n.4.</p>	<p>Dr. Ariaratnam did what experts are expressly entitled to do under the rules of evidence; he reviewed and relied on the testimony of other experts when performing his own independent review and analysis. Pa. R.E. 703. That is not the same as not doing his own analysis. His testimony discusses in depth his conclusions reached to a reasonable degree of engineering certainty. <i>See generally</i> SPLP St. No. 6. Dr. Ariaratnam's testimony is akin to getting a second opinion from a doctor – just because the first doctor did an analysis and came to a similar conclusion doesn't negate the second opinion, but in fact makes it more conclusive.</p>
<p>SPLP and its witnesses did not consider whether SPLP could use different entry/exit points to modify the drill profile in order to locate a valve on the SPLP Use Area of SPLP Additional Acreage. WGT Br. at 10-13.</p>	<p>WGT's allegation is patently false if one actually reads the record.</p> <p>Dr. Ariaratnam testified that although his focus was on the SPLP Use Area, he looked at the entire project, and in fact went on site and walked the whole project area. Tr. at 430:9-23.</p> <p>Q. You limited your reviews to that little area that's marked on a diagram called the SPLP Use Area correct?</p> <p>A. No. I looked at the entire project. I mean, I didn't just look at the use area. I walked the whole project, so I've been on the site.</p> <p><i>Id.</i></p> <p>He did not limit his analysis to merely drilling from the Use Area to Janiec 2: "I looked at how the project should best be undertaken to minimize risk to public safety and disturbance to the general public and environmental impacts." Tr. at 430:21-23.</p> <p>Q. And the parameters that were given to you to look at Janiec 2 and the SPLP Use Area, you focused on those areas because SPLP told you to look at areas; right?</p> <p>A. No. I focused on the entire project. Earlier I said I looked at the plans. If we start at Point A and we need to go to Point B, what is the best way to do it in minimizing any disturbance to the general public and public safety and environmental impacts.</p> <p>Tr. at 430:24-431:6.</p>

	<p>Mr. Antoni likewise testified he examined and analyzed whether it was “feasible to utilize the SPLP Use Area or Janiec 1 to produce a directional drill.” Tr. at 542:22-547:21.</p> <p>WGT’s attempt to attack Mr. Antoni’s testimony because he did not bring with him to the hearing the additional calculations and drawings he created and considered is preposterous – if WGT actually wanted those documents, it could have made an on the record data request. But WGT does not actually want the documents, it wants to allege Mr. Antoni is not credible for not bringing with him something he was on absolutely no notice to bring to the hearing.</p> <p>Mr. Gordon also testified that SPLP examined various entry and exit points, but determined none were feasible.</p> <p>Q. What I’m asking you is, your determination, SPLP, not West Goshen Township, your determination that the drill path would cause too much of a bend was based on the drill path that SPLP chose, correct?</p> <p>A. The drill path into --from the western area into Janiec 1?</p> <p>Q. Yes. Yes, sir.</p> <p>A. Well, if you want, we can put up an exhibit and I can show you the options for that path, but you’re limited to the areas that are not occupied by a structure and you’re limited on pullback at the opposite end, so literally there are physical barriers to any additional path other than what we discussed ready.</p> <p>Q. I understand that, but what I’m suggesting is, there was no consideration of adjusting a more westerly HDD site to change the drill path as it approaches the SPLP Use Area?</p> <p>A. Actually, there was.</p> <p>Tr. at 490:5-22.</p>
<p>SPLP witnesses admit that the drill profile does not</p>	<p>WGT ignores that the entry/exit point east of the SPLP Use Area is only one factor of the engineering constraints, and the more relevant factor is the infeasibility of having an entry/exit point on the SPLP Use Area. As Witness Antoni explained, the pinch point created by drilling on</p>

need to surface on the Janiec 2 parcel, thereby annulling concerns regarding geology and inadvertent returns. WGT Br. at 9-13.

the SPLP Use Area exists regardless of where the next exit point occurs and prevents the valve from being located on the SPLP Use Area. 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 inadvertent return, regardless of whether the drill path resurfaces at Janiec 2 or continues on to the Green Hill drill. *Id.*

WGT dismisses minimum allowable radius of pipe curvature as an engineering constraint, completely misconstruing Mr. Antoni's testimony. WGT Br. at 11.

Mr. Antoni explained that the industry standard design guideline for minimum radius of curvature for a 20" pipeline is 2,000 feet, but that theoretically, for a 20" pipeline, a 1,000 minimum could be used. However, based on his vast practical experience, he explained that it is not possible for the drill to actually maintain the minimum radius and that practically speaking drill profiles are not designed to the minimum:

Q. Is the minimum radius of the drill path equal to the minimum radius at which the drill path can be designed (the design profile)?

A. In practice, no. Just because a pipe can bend to a certain radius does not mean drilling can, in practice, occur at that radius. In my experience, the design profile, which is the path the drill should follow, should not be designed at the minimum radius. It is important to understand how the drill works to see why. The drill cannot just follow exactly along the design profile path like a zipper. Instead, imagine the drill head is your fist, and your elbow is the mechanism by which the drill can turn right, left, up, or down. To drill straight, you spin your entire arm, to turn you point your fist in the direction you want to turn. Furthermore, although the drill may move in a straight line, it must be adjusted constantly to hold that line. The drill is constantly changing the position of the bit to drill along the intended path. This is a very complex mechanism and movement and must be constantly adjusted; the curvature of the drill is monitored using the three-joint average. The drill head contains instruments that communicate to the operator where the drill has gone (obviously we cannot see into the earth while we are drilling); there are redundant systems for tracking to ensure the location of drill. Thus, the operator must monitor the movement of the drill and constantly adjust to follow the design profile. When drilling to meet an absolute minimum curvature, the drill path cannot ever surpass that curvature or the pipe will be overstressed. If the drill path, like here (as I explain below) is very tight, (i.e. we have a short length between point A and point B and unstable materials above the path that we cannot drill into), then there is only one option to correct the situation, which is make the curvature of the drill larger, which lengthens the drill. In this situation the exit point is fixed, because of the location of the fire station, so that means there are no options for correcting the curvature below the radius (i.e. curving less). Thus, the design profile should never be laid

at the minimum radius because it will be nearly impossible for the actual path not to surpass the minimum radius.

Q. Have you ever approved or recommended using a design profile at a minimum radius?

A. No.

SPLP St. No. 5 at 5:4-4:7. Then, Mr. Antoni designed and presented various drill profiles at the minimum radius he believed could in fact be achieved, SPLP Ex. CA-2, and explained that even at this radius, the profile cannot go deep enough into the bedrock to decrease the risk of inadvertent return enough such that engaging in the construction would be prudent.

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

	<p>diameter. The three horizontal entry point alternatives all present the same issues and concerns I discuss above. The three alternatives 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.</p> <p>SPLP St. 5 at 6:3-7:4.</p>
<p>WGT alleges geology is not an issue because: there is no rule that drilling must occur 20 feet into competent bedrock; SPLP's current drill plan is not 20 feet into bedrock for the entire route, and SPLP did not take a core sample directly on the SPLP Use Area. WGT Br. at 12-14.</p>	<p>WGT has no record support that any of these contentions, even if true, make a difference to the expert conclusions WGT attempts to attack. First, WGT puts its counsel's allegation (not actual evidence) that drilling 20 feet into competent bedrock is not a general requirement against the testimony of experienced experts that have done a detailed analysis to conclude that in this specific site, being 20 feet into competent bedrock for as much of the drill as possible is necessary for a prudent construction that avoids unreasonable risk of inadvertent return beneath a major highway that could heave if that occurs. Tr. at 538:5-22. Second, WGT again ignores the pinch point issue discussed above when it discusses that the current drill path SPLP Ex. MG-4, is not 20 feet into competent bedrock for the entire drill profile. Obviously, the drill must exit and enter at surface level and for no drill will it be 20 feet into competent bedrock for the entire length of the drill. However, as Mr. Antoni explained, the most problematic and risky part of a drill profile that would locate the valve on the SPLP Use Area is the pinch point. Tr. at 541:3-541:17. The current drill path avoids such risk because it does not surface on the SPLP Use Area. See SPLP Ex. No. MG-4. Third, SPLP's expert geologist found the core samples SPLP performed sufficient to analyze the geology of this area; SPLP took a core samples on each side of Route 202. SPLP Ex. DH-2; Tr. at 402:4-404:5. There is no evidence that SPLP was required to take additional core samples or that additional core samples would change the outcome of the analysis.</p>

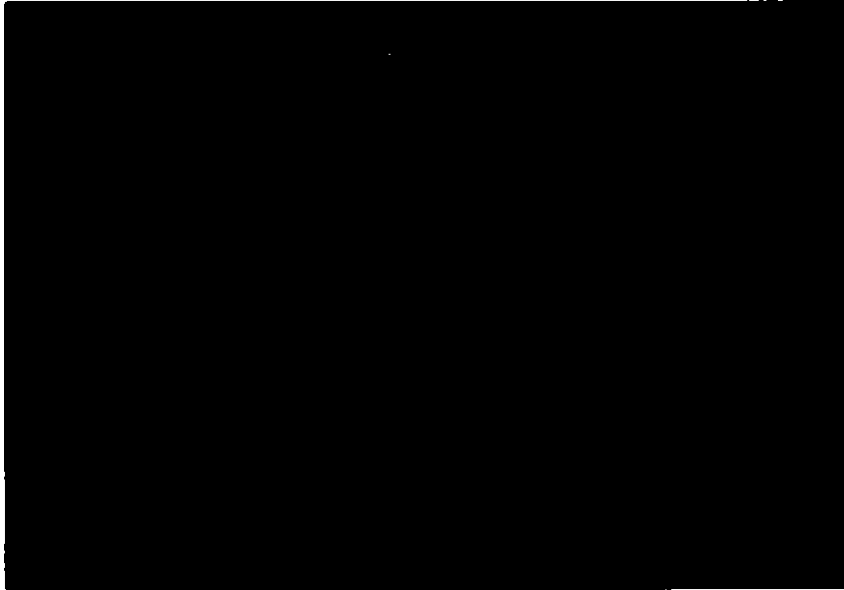


C. Eliminating the Valve Does Not Create Safety Issues

As SPLP explained at length in its Main Brief, eliminating the valve does not create safety issues and will not have a negative impact on the Township. SPLP MB at 21-27. SPLP presented the unrebutted, 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. SPLP St. No. 2 at 1:5-19; SPLP Ex. PV-1 (Curriculum Vitae of Patrick Vieth).

**[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.

SPLP showed that Witness Vieth has already rebutted Kuprewicz’s attempts, mere allegations lodged without any actual analysis, to rebut Mr. Vieth’s analysis and testimony. SPLP MB at 22-27. WGT’s Brief relies on these same unsubstantiated allegations in its brief that do nothing to disprove or discredit SPLP’s evidence.

First, WGT dismisses the Stantec Report because it is dated March 2018 and alleges contrary to SPLP’s testimony that SPLP did no analysis prior to deciding to eliminate the valve.

WGT Br. at 17. That the final report was dated March 1, 2018 is irrelevant; the data shows what it shows, which is that eliminating the valve improves response time upstream of the valve and has a negligible effect downstream of the valve. SPLP Ex. PV-2 at Table E-1.

**[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END HIGHLY CONFIDENTIAL]**

These facts also rebut Kuprewicz's allegation that a remotely-operated valve in the Township

would substantially reduce the risk from rupture. The only expert analysis in evidence shows this is not the case. *See generally* SPLP Ex. PV-2.

Moreover, as WGT Witness Kuprewicz has stated “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.” Township Ex. 22 at 7. This is likewise contrary to WGT’s allegation that there should be more automated valves. Kuprewicz’s 2017 safety analysis is also contrary to the argument that the upstream valve should be automated and Valve 344 should be placed and automated. There, Kuprewicz concluded that the configuration proposed then (of manual valve, automated valve, automated valve) was safe. The Stantec Report shows that eliminating Valve 344 while automating the upstream valve has a negligible effect on performance and that upstream performance actually improves. SPLP Ex. PV-2 at Table E-1.

WGT also continues to attempt to rely on ASME B31.4, but as Mr. Kuprewicz admits and Mr. Vieth explained, the valve spacing guidance is not a federal regulation or requirement. SPLP St. No. 2 at 2:15-3:9. SPLP’s engineering design basis memorandum provides clear guidance that valve spacing will be approximately 7.5 miles. *Id.* at 4:21-5:4. SPLP’s elimination of the valve is consistent with the engineering design basis memorandum.

WGT makes great weight of the farther valves are apart, the more product there is available for release. WGT Br. at 18-19. Likewise, WGT criticizes SPLP by alleging SPLP did not consider other locations for the valve. WGT Br. at 17. These arguments are irrelevant. The Stantec Report shows that location of the valve is not the major factor driving the initial mass release rate. SPLP Ex. PV-2 at 4.5 (“the initial mass release rate (over the first several minutes of the release) from the pipeline rupture is more dependent on the pipeline pressure and fluid properties than the valve

locations”). Moreover, the Stantec Report highlights the relative effect for each scenario and shows elimination of the valve (i.e. having valves further apart in this scenario) has a negligible effect.

Table E-1 <sup>DOV</sup> Maximum Predicted LFI Extents for the Boot Road Valve Design Alternatives

Rupture Location	Distance to LFI (feet)		
	1 - Initial Boot Road Valve Location	2 - Boot Road Valve Removed	3 - Boot Road Valve Removed and East Lincoln Highway Automated
Upstream	3615	3632	3612
Downstream	3196	3248	3222

SPLP Ex. PV-2 at Table E-1.

WGT’s argument that the LFL modeling is a measure used by the Environmental Protection Agency, which is not a safety agency is irrelevant on its face. That statement does nothing to undermine the value of the model. Moreover, as Mr. Vieth explained, if other metrics or parameters were considered it would not affect the conclusion that the elimination of the valve has a negligible effect. SPLP St. No. 2-RJ at B.3.

WGT’s arguments 20-21, these all rely on Kuprewicz’s allegations made with no analysis and Mr. Vieth has already fully rebutted them. 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]

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[REDACTED]

[REDACTED]

**[END HIGHLY CONFIDENTIAL]**

In conclusion, WGT completely failed to meet its burden of proof and its brief does nothing to discredit SPLP's evidence, which is conclusive expert testimony that eliminating the valve has a negligible effect and does not make the pipeline unsafe.

D. Specific Performance Is Not An Available Remedy

WGT argues that if SPLP breached the Settlement Agreement, then it is entitled to specific performance of the Agreement. WGT Br. at 37. WGT is wrong. First, SPLP did not breach the Settlement Agreement, WGT certainly has not proved SPLP breached the Settlement Agreement, and no remedy is available. Second, even if SPLP did breach the Settlement Agreement, the Agreement already provides for a remedy and that remedy is not specific performance, but instead the ability to file a safety complaint with the Commission. *See* Settlement Agreement at Section IV.A.2.d:

As long as SPLP . . . (iii) operates in a manner consistent with the safety, design and engineering fact and information heretofore provided to WGT's consultant, WGT agrees that it will not file or join in any complaint against the safety of SPLP's service of facilities with the Commission . . . with respect to the safety of Mariner East 1 or the valve station described in paragraph II.A.2 of this Agreement.

*Id.* WGT admits in its brief that when an adequate remedy is provided in law, specific performance is not an available remedy. WGT Br. at 37 (citing *Lackner v. Glosser*, 892 A.2d 21, 31 (Pa. Super. 2006)). The remedy provided for in the Settlement Agreement itself is an adequate remedy and WGT has already pursued it. WGT filed its Second Amended Complaint to add a count that SPLP must place a valve in the Township or it will have a "negative consequence to the Township and its residents." Second Amended Complaint at ¶ 32. WGT then, as part of this safety complaint,



had to prove SPLP has done or will do something that is unsafe. It has not. WGT consistently repeats the phrase “negative impact” or “negative consequence” but it has presented absolutely no evidence that construction of the pipeline without the valve is actually “unsafe.”

In contrast, SPLP (which does not and is not even alleged to have the burden of proof on this issue) has provided un rebutted evidence discussed above that the valve is not necessary. In fact, removing the valve and automating the upstream valve (as SPLP has committed to and will do) actually makes response time upstream of the valve better, and has a negligible effect downstream of the valve, like the difference between driving “50 miles per hour compared to 50.05 miles per hour.” Tr. at 612:21-23; SPLP Ex. PV-2.

E. SPLP Has Already Provided Much of the Requested Relief

WGT, ignoring essentially all of the evidence in this proceeding, now requests that the Commission require SPLP to do exactly what it has already done.

the Commission should require SPLP to make a full, reasonable engineering evaluation of the alleged ‘engineering constraints’ complicating the installation of the Valve on the SPLP Use Area and disclose those findings to the Township. To the extent that engineering constraints do in fact make SPLP unable to install the Valve on the SPLP Use Area, the Commission should require SPLP to evaluate new locations for the Valve on the SPLP Additional Acreage.

WGT Br. at 42 B. SPLP has already done such analysis, multiple times, and through the record of this proceedings has shown WGT the engineering constraints that prevent placement of the valve on the SPLP Use Area. SPLP MB at 28-47 and testimony and exhibits cited therein. There is no evidence or testimony by WGT to substantiate that SPLP has not done just this. Moreover, Witness Antoni explained that he had looked at the entire Janiec 1 parcel (which includes the SPLP Additional Acreage) for any drill path that would make locating the valve on Janiec 1 possible. Tr. at 542:22-547:21. Witness Gordon likewise testified that SPLP wanted to put the valve on the

Janiec 1 parcel, and in an ongoing analysis has looked at whether it was possible to do so, and concluded that it is unsafe and infeasible and therefore SPLP is unable to locate the valve there. Tr. at 490:5-22. WGT is clearly grasping at straws to try to deny substantial and un rebutted evidence SPLP has presented by making this argument.

F. WGT's Requested Relief of an Injunction or Additional Geotechnical Studies is Illegal and Not Supported By the Record

1. Geotechnical Studies

Contrary to fundamental due process, and contrary to precedent,<sup>5</sup> WGT now requests for the first time in its brief that if SPLP does not place a valve on the SPLP Use Area, it be required to “perform a full geotechnical analysis of the SPLP Use Area and the area under and around Route 202, evaluate all possible mitigation efforts to reduce inadvertent returns that could impact Route 202 and confer with the Township to seek permission, if necessary, to locate the Valve elsewhere on the SPLP Additional Acreage, which analysis, requests approval or disapproval shall be subject to Commission review.” WGT Br. at 42 ¶ B. The Settlement Agreement requires no such thing. WGT presented absolutely no evidence that SPLP should be required to do additional geotechnical studies or how such studies would benefit any party.

Moreover, this is a request for affirmative injunctive relief that is overly broad and vague and thus cannot be granted. Injunctive relief must be narrowly tailored to abate the harm complained of. *Pye v. Com. Ins. Dep't*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are

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<sup>5</sup> *Pocono Water Co. v. Pennsylvania Public Utility Com'n*, 630 A.2d 971, 973 (Pa. Cmwlth. 1993) (“the Commission violated due process rights when it assessed liability by determining an issue which the utility had not been afforded a reasonable opportunity to address at an evidentiary hearing”).

satisfied, the court must narrowly tailor its remedy to abate the injury”); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018). WGT fails to even specify what type of geotechnical study it is requesting or how that geotechnical study would or could show anything more than what SPLP already knows from its analysis and the record in this proceeding – the valve cannot be constructed on the SPLP Use Area.

Finally, WGT’s introduction of new relief or to claim as a fact that new or additional geological studies should be done ignores that it, as the party with the burden of proof, could have done so but did not and now should not be afforded a second bite at the apple. *See* 52 Pa. Code § 5.243(e)(2)-(3). And even more obvious, WGT’s doing so for the first time in its brief violates fundamental due process rights of SPLP because it was not afforded an opportunity to test through discovery or at hearing this new request and factual supposition, or to adduce evidence against the request. *Pocono Water Co. v. Pennsylvania Public Utility Com’n*, 630 A.2d 971, 973 (Pa. Cmwlth. 1993) (“the Commission violated due process rights when it assessed liability by determining an issue which the utility had not been afforded a reasonable opportunity to address at an evidentiary hearing”).

## 2. Construction Injunction

WGT also requests that “SPLP must cease and desist any construction or installation activity in the Township that is not consistent with installing a remote operated valve at the SPLP Use Area.” WGT Br. at 42 C. The Commission has already rejected this injunction as an overbroad remedy. *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018). Again, injunctive relief must be narrowly tailored to abate the harm complained of. *Id.*; *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010). Here, there is no evidence (only the allegations of counsel) that SPLP could not place (if it were

even feasibly/safe to do so, which it is not) the valve on the SPLP Use Area later if required in the future. To the contrary, Mr. Gordon explained and demonstrated how that could be done (assuming *arguendo* that the engineering constraints discussed herein related to the eastern portion of the pipeline do not exist and the valve is necessary, which it is not).

Mr. Gordon explained that SPLP could “add a valve later in between the points of the HDD.” Tr. at 514:17-18. Where the pipeline surfaces at Janiec 2, SPLP could loop back over to the SPLP Use Area to place the valve there, but just like the other construction methods to place a valve on the SPLP Use Area, SPLP does not believe it would be safe to do so. In fact, it would be risky and inadvisable as its very experienced expert witness team concluded. Tr. at 514:20-25.

Mr. Gordon illustrated this procedure at trial, SPLP Hearing Exhibit 2, explaining that the upper blue lines would be an additional HDD that could be done later to loop back to the SPLP Use Area to place a valve there. Tr. at 524:3-20.



Finally, the requested injunction is unreasonably broad because it could be read to enjoin SPLP from construction activities that have nothing to do with the valve at all. If an injunction were a proper remedy here, it must be narrowly tailored to abate the harm. WGT's requested injunction is not and therefore cannot be granted.

G. If Necessary, The Settlement Agreement Should Be Modified to Conform to the Public Interest

WGT is correct that the Commission can reform the Settlement Agreement where it is in the public interest to do so. WGT Br. at 38-39 *see also* *ARIPPA v. Pa. 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). However, WGT is wrong and has no evidence to support its contention that it would not be in the public interest to do so here. First, WGT argues that elimination of the valve makes the pipeline "less safe." WGT again cites nothing in support of this contention. WGT Br. at 39. To the contrary, SPLP presented un rebutted evidence that removing the valve and automating the upstream valve (as SPLP has committed to and will do) actually makes response time upstream of the valve better, and has a negligible effect downstream of the valve, like the difference between driving "50 miles per hour compared to 50.05 miles per hour." Tr. at 612:21-23; SPLP Ex. PV-2. Eliminating the valve does not create any safety issues. SPLP MB at 21-26.

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 particularly 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.

**IV. CONCLUSION**

WHEREFORE, SPLP requests the Complaint be dismissed in its entirety with prejudice.

Respectfully Submitted,



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Dated: June 25, 2018

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**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).


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Dated: June 25, 2018

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