

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG PENNSYLVANIA 17120**

**West Goshen Township  
v  
Sunoco Pipeline, LLC**

**Public Meeting Held September 20, 2018  
2589346-OSA  
C-2017-2589346**

**MOTION OF COMMISSIONER DAVID W. SWEET**

This case comes to us in a unique procedural stance, where Administrative Law Judge Elizabeth Barnes (ALJ) issued a Recommended Decision (RD) and both Parties agree with it but filed a Joint Petition for Settlement in Lieu of Exceptions anyway. The sole term of the Parties' Joint Petition is that the Commission adopt the RD without modification. In support of this unusual action, which is not supported by the Commission's procedural rules, the Joint Petition cites to a prior Commission order which approved a settlement filed in lieu of exceptions as precedent.<sup>1</sup> However, in that case, the parties agreed upon substantive terms which differed from those in the Initial Decision, meaning that there would have been exceptions if the parties had not reached the agreement. In that situation, Commission evaluation of the settlement was necessary.

Here, the Joint Petition for Settlement is essentially an agreement to refrain from: (1) filing Exceptions; (2) seeking reconsideration or other relief contained in 52 Pa. Code § 5.572; and/or (3) seeking review from a court of competent jurisdiction. Parties do not need Commission approval to refrain from taking these actions. The Joint Petition makes no substantive or procedural change to the RD or to the proceeding itself. If the Parties had entered into an agreement prior to the service of the RD which agreed to dispose of the substantive issues raised in the proceeding, then that agreement would have been evaluated by the ALJ, and the subsequent RD would have considered all of the substantive terms.

In this case, the Parties waited until the ALJ had finished her evaluation of the record and applicable law, and then agreed with it. That is not a settlement, it is a decision by both Parties to stop contesting the matter further in the subject docket. The Parties are free to enter into such an agreement, and they could have simply notified the Commission in a letter that there will be no exceptions or replies filed. In fact, they did not need to file anything at all. The Settlement Agreement before us does not raise any issues that require Commission action. Accordingly, the Joint Petition is simply moot.<sup>2</sup>

I note that there is no opposition to the RD in this case and move that the Commission adopt the RD in full without modification.

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<sup>1</sup> *Keebler v. Verizon Pennsylvania Inc.*, Docket No. F-2010-2212027, 2012 WL 641679 (Order entered January 27, 2012).

<sup>2</sup> Note, too, that the Joint Petition for Settlement lists allowing the RD to become final by operation of law as an option. Joint Petition at 4. However, only Initial Decisions can become final by operation of law, while Recommended Decisions require subsequent Commission action. 66 Pa. C.S.A. §335(a).

THEREFORE,

I MOVE:

1. That the Recommended Decision of Administrative Law Judge Elizabeth Barnes in the case captioned West Goshen Township v. Sunoco Pipeline, LLC, at Docket No. C-2017-2589346, served on July 19, 2018, is adopted without modification.
2. That the Parties shall comply with the directives in the Recommended Decision as adopted without modification.
3. That the Office of Special Assistants prepare an appropriate order consistent with this Motion.

September 20, 2018  
DATE



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DAVID W. SWEET  
COMMISSIONER