

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Petition of Sunoco Pipeline, L.P. for a finding that a building to shelter the Walnut Bank valve control station in Wallace Township, Chester County, Pennsylvania is reasonably necessary for the convenience or welfare of the public, *et al.*

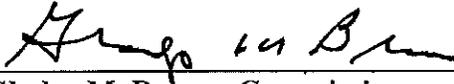
Public Meeting held October 2, 2014
2411941-OSA
Docket No. P-2014-2411941, *et al.*

STATEMENT OF COMMISSIONER GLADYS M. BROWN

I am voting to reverse the Administrative Law Judges' (ALJs) grant of the Preliminary Objection related to Commission jurisdiction in this case because a preliminary objection shall be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). For purposes of disposing of a preliminary objection, the Commission must accept as true all well-pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Douglas and Diane P. Evans v. PECO Energy Co.*, 2013 Pa. PUC LEXIS 785 *4, C-2013-2368477 (December 19, 2013); *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The non-moving party, Sunoco, in its Amended Petitions averred that it is a public utility entitled to an exemption under the Municipalities Planning Code because it holds Certificates issued by the Commission which authorize shipments of petroleum and petroleum products by pipeline in Pennsylvania. (Amended Petition at 4.) Because we must view Sunoco's averment that it is a public utility as true for the purposes of disposing of the Preliminary Objection, the Petitions should not have been dismissed on a preliminary objection, and are appropriately remanded to the Office of Administrative Law Judge for fact finding. I look forward to reviewing a fully developed evidentiary record regarding the Sunoco's Petitions for exemption under Section 619 of the Municipalities Planning Code, 53 P.S. § 10619.

In reference to the remaining Preliminary Objections filed in this matter,¹ as the ALJs have not yet ruled on their merits, the Commission's regulations require that these objections should also be remanded back to the ALJs for consideration. 52 Pa. Code § 5.101 (g). Dismissal of the remaining Preliminary Objections by the Commission without consideration by the ALJs is tantamount to a violation of the parties' due process rights.² For this reason, I will partially dissent on the handling of these other Preliminary Objections.

October 2, 2014
Date


Gladys M. Brown, Commissioner

¹ The Parties argue that Sunoco's Petitions should be dismissed on Preliminary Objections because they: (1) lack specificity; (2) are legally insufficient due to Sunoco's failure to show that the Mariner East project was reasonably necessary for the convenience and welfare of the public; and, (3) are legally insufficient because Sunoco failed to address the environmental impact of the proposed valve stations and pump stations and as such are a violation of Article 1, Section 27 of the Pennsylvania Constitution.

² Due process requires a meaningful opportunity for participation and addressing relevant and significant comments. *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455, 468 (D.C. Cir. 1998). *Conestoga National Bank v. Patterson*, 275 A.2d 6, 8 (Pa. 1971).