PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

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 October 2, 2014 24119412-OSA, *et al.* Docket No. P-2014-2411941, *et al.*

DISSENTING STATEMENT
OF COMMISSIONER JAMES H. CAWLEY

I must respectfully dissent from the majority's summary dismissal of the several preliminary objections that were not addressed by the Administrative Law Judges because they found that the Commission lacked jurisdiction over Sunoco's petitions.[1]

Based on principles of fairness and efficiency, the correct procedure when an administrative agency presiding officer sustains a preliminary objection to the agency's jurisdiction (and therefore does not address other preliminary objections made) and is reversed by the heads of the agency, is to remand the case to the presiding officer to address the remaining, unaddressed preliminary objections.[2] The same is true with Pennsylvania's civil trial

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[1] The unaddressed preliminary objections, with acronyms for the parties that made them, were listed by Sunoco ("SPLP") on page 33 of its exceptions to the Initial Decision:

"1. The Amended Petitions are legally insufficient because SPLP has not adequately shown that Mariner East Project is reasonably necessary for the convenience and welfare of the public; (CAC, DRN)

2. The Amended Petitions are legally insufficient because the Amended Petitions are an inappropriate circumvention of law; (CAC)

3. SPLP's improper segmentation of its project does not qualify it for an exemption pursuant to the MPC; (DRN)

4. The Commission lacks jurisdiction because SPLP will not provide intrastate pipeline service; (CCWGT)

5. The Commission lacks jurisdiction because SPLP does not have PUC approval or authority to use a pipeline segment near Boot Road in West Goshen Township; (CCWGT)

6. The Amended Petitions are legally insufficient because Article I, Section 27 of the Pennsylvania Constitution prohibits granting SPLP's Amended Petition; (CAC, DRN)

7. The Amended Petition lacks sufficient specificity because it fails to address environmental impacts and any impacts related to West Goshen Township's zoning and comprehensive plans; (CCWTG)

8. The Amended Petition is legally insufficient because it fails to address the construction of a vapor combustion unit. (CCWGT)"

[2] *See, e.g.*, *Phillip N. Robinson v. Shrewsbury Borough Municipal Authority*, Dkt. No. C-2011-2238127, 2011 WL 5034639 (Oct. 14, 2011) (finding ALJ incorrectly sustained preliminary objection questioning the Commission's

courts whose procedures regarding the disposition of preliminary objections have been mirrored by this Commission.[3] Thus, this Commission's rules of practice and procedure provide at 52 Pa. Code § 5.101(g) that "[a] preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer."

Here, however, instead of remanding the unaddressed preliminary objections to the Administrative Law Judges for disposition, the majority summarily dismisses them as either beyond the scope of this proceeding or invalid because Sunoco pled sufficient facts in its petitions to avoid a claim of lack of specificity.

Given the lack of any factual record and the paucity of relevant facts produced in Sunoco's various petitions, the Commission itself is in no position to make summary rulings on the objecting parties' claims of legal or factual insufficiency.

This is especially true of the claims that Sunoco's Amended Petitions are legally insufficient under Article I, Section 27 of Pennsylvania's Constitution (the "Environmental Amendment") and lack sufficient specificity because they fail to address environmental impacts. These claims raise a case of first impression for this Commission in the wake of the Pennsylvania Supreme Court's decision in *Robinson Township v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013), and yet such claims are to be summarily dismissed.

Likewise the preliminary objection alleging a lack of specificity relating to any impacts on West Goshen Township's zoning and comprehensive plans, despite the Commission's policy statement at 52 Pa. Code § 69.1101 "[t]o further the State's goal of making State agency actions consistent with sound land-use planning." The Commission stated as a matter of policy that it "will consider the impact of its decision upon local comprehensive plans and zoning ordinances [including] [s]iting a public utility 'building' under section 619 of the MPC [Municipalities Planning Code] (53 P.S. § 10619)."

The majority may be correct that an MPC § 619 proceeding is properly confined to three narrow issues,[4] but, given the importance of the issues raised in the objections and the number of

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jurisdiction and remanding to the ALJ for disposition of remaining preliminary objections claiming lack of standing, legal insufficiency, lack of factual specificity, and failure to conform to the Public Utility Code).

[3] *See, e.g., Bd. of Directors of the Palmyra Areas Sch. Dist. v. Palmyra Area Ed. Assn.*, Dkt. No. 1416 C.D. 1993, 1994 WL 16840967 (Pa. Cmwlth. 1994) (reversing trial court's sustaining of preliminary objection based on lack of jurisdiction and remanding for consideration of remaining preliminary objections); *Mahanoy Twp. Auth. v. Pa. Game Comm'n*, 838 A.2d 839 (Pa. Cmwlth. 2003)(reversing Board of Claims grant of preliminary objection based on lack of jurisdiction and remanding for consideration of remaining preliminary objections); *Scavo v. Old Forge Borough*, 978 A.2d 1076 (Pa. Cmwlth. 2009)(remand for consideration of remaining preliminary objections after reversing trial court's grant of preliminary objections based on lack of jurisdiction).

[4] As stated by the majority: "(1) whether the presumption has been rebutted that Sunoco is a 'public utility' under the Public Utility Code and hence a 'public utility corporation' under the Business Corporation Law; (2) whether Sunoco's proposed service is included within their existing certificated authority; and (3) whether the structures

people possibly adversely affected and local zoning ordinances and comprehensive plans preempted, it is prudent to give a full airing to the objections raised using accepted and longstanding administrative procedures. I fully understand that doing so will require additional time, but I think we owe it to the people affected to take that time.

James H. Cawley
Commissioner

Dated: October 2, 2014

Sunoco proposes to build are 'buildings' within the meaning of the MPC, and, if so, whether such 'buildings' are reasonably necessary for the convenience or welfare of the public."