

BEFORE THE
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Sunoco Pipeline, LP, for a Finding	:	
That The Situation of Structures to Shelter	:	
Pump Stations and Valve Control Stations is	:	Docket No. P-2014-2411966
Reasonably Necessary for the Convenience or	:	(consolidated with
Welfare of the Public in West Goshen	:	Docket No. P-2014-2411941, <i>et al.</i>)
Township, Chester County	:	

NOTICE TO PLEAD

To: Sunoco Pipeline, LP, through its attorneys:

Robert A. Weishaar, Jr.	Adeolu A. Barare and Teresa K. Schmittberger
McNees Wallace & Nurick	McNees Wallace & Nurick
777 North Capitol St., NE, Suite 401	P.O. Box 1166
Washington, DC 20002	Harrisburg, PA 17108-1166

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of Concerned Citizens of West Goshen Township ("CCWGT") within **ten (10) days** from service of this Notice, the facts set forth by CCWGT in the Preliminary Objections may be deemed to be true, thereby requiring no further proof. All pleadings, such as an Answer to Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel for CCWGT, and where applicable, the Administrative Law Judge presiding over the case.

File with:

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com

Dated: April 18, 2014



Scott J. Rubin, Esq.

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Township, Chester County	:	

PRELIMINARY OBJECTIONS OF
CONCERNED CITIZENS OF WEST GOSHEN TOWNSHIP

Pursuant to 52 Pa. Code § 5.101, Concerned Citizens of West Goshen Township ("CCWGT") files these Preliminary Objections to the Petition filed by Sunoco Pipeline, LP ("SPLP") on March 21, 2014. As explained below, SPLP is not a "public utility corporation" as the term is used in Section 619 of the Municipalities Planning Code ("MPC"), 53 P.S. § 10619. Consequently, the Commission does not have jurisdiction over this matter, and the Petition must be dismissed with prejudice.

In the alternative, if the Commission has jurisdiction, then SPLP's Petition is legally insufficient and lacks sufficient specificity. If the Commission has jurisdiction, therefore, the Petition must be amended before the case can move forward.

In support of these Preliminary Objections, CCWGT states as follows:

Preliminary Objection 1: Lack of Jurisdiction

1. SPLP is a regulated pipeline company under the Interstate Commerce Act ("ICA"). 49 U.S.C. app. § 1, *et seq.*
2. The rates of pipeline companies are regulated by the Federal Energy Regulatory Commission ("FERC"). 49 U.S.C. § 60502.

3. The law requires FERC to regulate such pipeline companies under the law that was in effect on October 1, 1977, the date when such regulation was transferred from the Interstate Commerce Commission ("ICC") to FERC. *Id.*

4. In the first judicial decision after FERC's receipt of jurisdiction over pipeline companies (indeed, a case that started as an appeal from an ICC decision, but ended with FERC as the appellee), the U.S. Court of Appeals explained as follows that pipeline companies were not public utilities and were subject to different standards: "[W]e may infer a congressional intent to allow a freer play of competitive forces among oil pipeline companies than in other common carrier industries and, as such, we should be especially loath uncritically to import public utilities notions into this area without taking note of the degree of regulation and of the nature of the regulated business." *Farmers Union Central Exchange v. FERC*, 584 F.2d 408, 413 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 955, 99 S.Ct. 596, 58 L.Ed.2d 669 (1978).

5. Later decisions by FERC confirm that pipelines regulated under the ICA are not public utilities. For example, in *Williams Pipe Line Co.*, 21 FERC ¶ 61,260 (1982) (emphasis added), FERC explained the regulatory status of pipeline companies as follows:

Oil pipelines are a horse of another color. The Federal Power Commission had nothing to do with them. They were regulated by the Interstate Commerce Commission. That agency approached its oil pipeline tasks in a spirit quite different from the one that animated our predecessor, the Federal Power Commission. When it came to oil pipelines, the ICC gave little, if any, heed to the claims of the consumer, the apple of the Federal Power Commission's eye. The ICC developed a body of oil pipeline lore that gave oil pipeline companies a far broader measure of entrepreneurial freedom than public utilities enjoy at either the State or the Federal level. Of course, it can be said that the "public utility" label doesn't fit here.⁸⁹ Suppose that is so. Let us then put the "public utility" tag to one side.

⁸⁹ The industry is quite vehement about that. It maintains that its properties are "plant facilities," not "public utilities."

6. That footnote in the *Williams Pipe Line* case is extremely important. The pipeline industry argued for decades before the ICC and FERC that it was not engaged in the public utility business and should not be regulated as such. Rather, its pipelines were "plant facilities" meaning that their primary purpose was to move oil (or natural gas liquids) from one company facility (such as a refinery) to another company facility (such as a tank farm).

7. Indeed, FERC later explained that, unlike public utilities, pipelines did not serve consumers, and pipeline regulation was not designed to protect consumers. Rather, "oil pipeline rate regulation is not a consumer-protection measure. It probably was never intended to be. It is and was a producer-protection measure." *Lakehead Pipe Line Co.*, 65 FERC ¶ 63,021 (Init. Dec. 1993), citing *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992*, Docket No. RM93-11-000 (1993) and the *Williams Pipe Line* case.

8. As a consequence, regulation of pipeline companies is subject to very different standards. For example, FERC explained: " Many constraints commonly associated with utility-type regulation, such as review and approval of construction or acquisition, and abandonment or sale of facilities, were not imposed on oil pipelines. This has been interpreted as reflecting a Congressional intent to allow market forces freer play within the oil pipeline industry than was allowed for other common carrier industries." *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, 65 FERC ¶ 61,109 (1993), citing *Farmers Union*.

9. FERC and the federal courts, therefore, do not consider pipeline companies to be public utilities. They are not engaged in service to the public. Indeed, the general public (consumers) are not designed to be protected through the limited form of regulation that is in place on such companies.

10. The MPC does not define the term "public utility corporation," but as SPLP notes in paragraph 10 of its Petition, because Section 619 of the MPC and certain provisions of the Business Corporation Law ("BCL") all relate to the rights and responsibilities of "public utility corporations," they can be read *in pari materia*. See 1 Pa. C.S. § 1932 ("Statutes or parts of statutes are *in pari materia* when they relate to the same persons or things or to the same class of persons or things. ... Statutes *in pari materia* shall be construed together, if possible, as one statute.").

11. The BCL defines "public utility corporation" as follows: "Any domestic or foreign corporation for profit that (1) is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States; or (2) was subject to such regulation on December 31, 1980, or would have been so subject if it had been then existing." 15 Pa. C.S. § 1103 (emphasis added).

12. The critical phrase in the BCL's definition is "subject to regulation as a public utility." This phrase does not encompass all regulated industries, but only those that are regulated by the federal government "as a public utility."

13. As a pipeline company, SPLP is not now a public utility, and as the decisions cited above establish, it would not have been treated as a public utility on or before December 31, 1980. Indeed, the *Farmers Union* case dates from 1978 -- just a few months after FERC received jurisdiction over such companies. While pipeline companies are subject to a limited type of federal regulation, it is not "regulation as a public utility." Indeed, the pipeline industry, courts, and FERC all agree: pipelines are not public utilities and are not providing service to the public in the same manner as a public utility.

14. Recently, the York County Court of Common Pleas decided precisely this question under the BCL, in a case involving SPLP. SPLP brought an action in eminent domain, alleging that it was a "public utility corporation" under the BCL and, therefore, had the power of eminent domain. The court disagreed, holding: "As Plaintiff repeatedly argues, it is regulated by FERC pursuant to the Interstate Commerce Act, not the Natural Gas Act, as a common carrier, and not as a public utility. It therefore does not fall within the definition of a public utility corporation entitled to condemn property." *Sunoco Pipeline L.P. v. Loper*, No. 2013-SU-4518-05 (York Co. Feb. 24, 2014), slip op. at 4 (emphasis added), a copy of which is attached hereto as Appendix A.

15. Just a few weeks ago, the York County court reconsidered its order and affirmed its initial ruling. The court again held: "Plaintiff has argued that while it is defined as a 'common carrier' under the ICA, that it is regulated like it is a public utility by FERC and should therefore be considered a public utility for the purposes of the Pennsylvania Business Corporation Law. The Court does not agree." *Sunoco Pipeline L.P. v. Loper*, No. 2013-SU-4518-05 (York Co. Mar. 25, 2014), slip op. at 2, a copy of which is attached hereto as Appendix B.

16. Further, SPLP's citation to FERC's decision describing the "open season" process SPLP will use to commit capacity on the pipeline is irrelevant. SPLP Petition at 10, n. 28, citing *Sunoco Pipeline L.P.*, 142 FERC ¶ 61,115 (2013). That order makes it clear that, as is the case with all other pipeline companies, FERC issued that order to SPLP as a common carrier under the ICA; not as a public utility. *Id.*, ¶¶ 9-10.

17. Finally, SPLP's reliance on *Pa. PUC v. WVCH Communications, Inc.*, 23 Pa. Commw. 292, 351 A.2d 328 (1976), is misplaced. Contrary to SPLP's assertion on page 6 of its Petition, the Court did not find "that an entity is a 'public utility corporation' under the MPC, even if it is a federally regulated common carrier." Indeed, there is no support for that proposition.

18. Specifically, Commonwealth Court held: " Federal law recognizes that a radio broadcasting station is not a common carrier, and it is clear that such a station is 'not a public utility in the sense that it must permit broadcasting by whoever comes to its microphones.'" *Id.*, 23 Pa. Commw. at 296-97, 351 A.2d at 330. Further, the court noted that a particular township's zoning ordinance had found that MCI (a telecommunications common carrier regulated by the Federal Communications Commission) was properly interpreted to meet the township's definition of a "public utility." *Id.*, 23 Pa. Commw. at 297, 351 A.2d at 330. But there is absolutely nothing in the court's decision to lead to the conclusion that all common carriers are, by definition, public utilities. There also is nothing in that decision that discusses the specific method of regulation in effect for pipeline common carriers under the ICA.

19. The importance of the *WVCH* case is that the court held that in order to be a "public utility corporation" under the MPC, an entity must show that it meets four criteria. Specifically, the court held:

The fact that WVCH serves the public interest and is regulated to some extent by the FCC does not make it a "public utility corporation." In order to qualify as a public utility corporation WVCH would have to prove that it is required by law to (1) serve all members of the public upon reasonable request; (2) charge just and reasonable rates subject to review by a regulatory body; (3) file tariffs specifying all of its charges; and (4) modify or discontinue its service only with the approval of the regulatory agency.

Id. (emphasis added).

20. Interestingly, the Pennsylvania Supreme Court has adopted the *WVCH* standards for purposes of interpreting zoning ordinances that do not define "public utilities" -- again emphasizing that all four criteria must be met. *Crown Communications v. Zoning Hearing Board of Glenfield Borough*, 550 Pa. 266, 274-75, 705 A.2d 427, 431-32 (1997).

21. There is no question that SPLP does not meet the fourth criterion in *WVCH*. Neither the FERC nor the ICC before it has any authority to direct SPLP to serve or not serve any customer.

SPLP may add service areas, abandon service to a customer, or completely exit the business, without receiving regulatory approval. FERC made this abundantly clear in 1982 when it first issued regulations for oil pipeline companies. In so doing, it emphasized that lack of such authority was a vitally important distinction between oil pipelines like SPLP and regulated public utilities, stating as follows:

Control over abandonment is an important subject. It deserves some comment. To begin with, it is fairly obvious that a regulatory scheme that permits the regulatees to abandon service whenever they find the regulators' decisions about prices unpalatable isn't worth very much. That kind of regulation gives the regulatees a veto power over the actions of the regulators. It is as full of holes as a Swiss cheese and is arguably tantamount to no regulation at all. South Carolina Generating Co., 16 FPC 52, 58 (1956). See also the report of that same case in 16 FPC 1365 (rehearing denied). With respect to this phase of the matter, the Federal Power Commission's decision was affirmed by the Court of Appeals for the Fourth Circuit in South Carolina Generating Co. v. Federal Power Commission, 249 F.2d 755, 762 (1957), cert. denied, 356 U.S. 912 (1958).

Because control over abandonments is so central a cornerstone of effective regulation (see 1 Priest, Principles of Public Utility Regulation 380-403 [1969]), we are loath to confess that we lack it here. Yet it seems clear that we do lack it. That the statute contains no express restraints on the carriers' freedom to abandon is not necessarily controlling. A look at the Federal Power Act shows that this is so. That statute does not use the words "abandonment," "termination," "cessation," or "halt." Nevertheless, wholesale electric service that falls within the Federal Power Act's ambit cannot be halted without our consent. Pennsylvania Water & Power Co. v. Federal Power Commission, 343 U.S. 414 (1952).

We are strongly tempted to hold the reasoning of that case as applicable to oil pipelines as it is to wholesale electric power. Such a holding would, of course, give us the control over pipeline abandonments that we think essential to meaningful regulation. However, formidable obstacles stand in the way.

To begin with, the Interstate Commerce Commission never claimed that power. Now that agency may not have done a great deal in the concrete with its regulatory powers over oil pipelines. But it was seldom bashful about asserting those powers in the abstract. Yet it never claimed regulatory jurisdiction over pipeline abandonments. Nor did any of the vociferous critics of the Interstate Commerce Commission's oil pipeline performance censure the agency for its laissez-faire tack on abandonments.

We conclude that the ICC was right. We find that the Power Act analogy suggested earlier in this footnote fails.

Unlike the Power Act, the Interstate Commerce Act confers express regulatory control over abandonments. But that control added to the statute by the Transportation Act of 1920 (see 1 SHARFMAN 239-240, 283) applies only to "carriers by railroad." 49 U.S.C. § 1(18), now § 10903 of the recodified 49 U.S.C. We can conceive of no tenable basis on which Congress could be deemed to have created two kinds of control over abandonments, an explicit control over "carriers by railroad" and an implicit control that came to the same thing over carriers by pipe.

Williams Pipe Line Company, 21 FERC ¶ 61,260 (1982), n. 217 (emphasis added). See also the text at notes 519-20 of the same order, where FERC stated: "Here, however, the carriers are free to abandon whenever they please. They need no permission from us. That raises a problem that we do not encounter in electricity and gas."

22. This remains the law today. Just last year, FERC held: "The Commission lacks jurisdiction over the abandonment of service by oil pipelines. As such, the Commission has no jurisdiction to require an oil pipeline to continue to provide a service that it wishes to cancel in its entirety." *Enterprise TE Products Pipeline Co., LLC*, 143 FERC ¶ 61,191 (2013), at ¶ 20 (citations omitted).

23. In summary, CCWGT does not dispute that SPLP is a common carrier under the ICA. As the York County court recently held, however, that is the not the same as being regulated as a public utility. SPLP's common carrier status under federal law does not meet the definition of a "public utility corporation" under the BCL (as the court held), under Section 619 of the MPC, or under the standards established by Pennsylvania's appellate courts. Consequently, the Commission lacks jurisdiction to hear this matter.

Preliminary Objection 2: Legal Insufficiency of the Petition

24. SPLP's Petition is legally insufficient because it fails to include all buildings that SPLP proposes to construct at a location it identifies only as the "Boot Station" site in West Goshen Township, Chester County. See SPLP Petition, Exhibit A.

25. SPLP states that, in addition to the control buildings it plans to construct, it also will construct a "vapor combustion unit" (commonly known as a flare stack and associated facilities) at the Boot Station site. SPLP Petition, p. 13, n. 35.

26. The Petition does not provide any information on the vapor combustion unit, other than to allege -- with no supporting information -- that there is no "building" involved under Section 619 of the MPC.

27. Section 619 of the MPC does not define the term "building." The term also is not defined in the Rules of Statutory Construction. 1 Pa. C.S. § 1991.

28. Absent a statutory definition, the Commission will generally look to standard definitions in dictionaries of common usage (or if it is a legal term of art, to a law dictionary or related reference). See, e.g., *Pa. PUC v. Glacial Energy of Pennsylvania, Inc.*, C-2012-2297092 (Init. Dec. of ALJ Salapa), 2013 Pa. PUC LEXIS 243 ("In the absence of any statutory definition, I will use the definition found in Black's Law Dictionary.")

29. Black's Law Dictionary defines "building" as follows:

A fabric or edifice designed to stand more or less permanently. A fabric, structure, or edifice, designed for the habitation of men or animals or for the shelter of property. A structure or edifice erected by man, composed of stone, wood, brick, marble or other proper substance, and intended for use or convenience. A structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof.

Black's Law Dictionary (4th Ed. Rev.1968), p. 244 (citations omitted).

30. In other words, the critical aspect of a building, as opposed to other structures, is that it encloses a space. Apparently for that reason, the courts have held that electric transmission towers and railroad tracks are not "buildings," because they do not have walls that enclose a space. See *Commonwealth v. Delaware and Hudson Railway Co.*, 19 Pa. Commw. 59, 62, 339 A.2d 155, 157 (1975) ("We hold that the word "building" in Section 619 of the Pennsylvania Municipalities Planning Code does not include railroad tracks as it does not include transmission lines of power companies.").

31. The vapor combustion unit is not described in the Petition and CCWGT does not know precisely what structures will be built. It is apparent, however, that such a unit must include a large chimney (or "flare stack"), as well as housing for combustion equipment. The chimney itself would meet the definition of a building because it encloses a space. Recall specifically the definition in Black's Law Dictionary that says a building has walls and is "usually, but not necessarily, covered with a roof." A chimney certainly has walls and encloses a space. Moreover, the actual combustion equipment may be housed in a structure that also contains walls.

32. In other words, the Petition filed by SPLP does not describe all of the buildings that it is seeking permission to construct. The Petition, therefore, is legally insufficient. If the Commission finds that it has jurisdiction over this matter, then the Petition must be amended prior to further proceedings.

Preliminary Objection 3: Insufficient Specificity of the Petition

33. SPLP's Petition contains insufficient specificity because it lacks three fundamental elements: (1) a complete description of the Boot Station property on which it proposes to

construct the buildings; (2) any discussion of the environmental impact of its proposed buildings on the Boot Station site, or (3) any discussion of the impact of the proposed buildings on West Goshen Township zoning and comprehensive plans.

34. According to Chester County property records (relevant portions of which are attached hereto as Appendix C), SPLP owns two separate parcels of land on Boot Road in West Goshen Township. Parcel 52-1-8 is located at 1141 Boot Road, consists of 2 acres and carries a Land Use Code of U-03 Public Utilities. Parcel 52-1-10.1 is located at 1261 Boot Road, consists of 4.5 acres and carries a Land Use Code of V-10 Vacant Land (Residential).

35. It is critically important to understand which facilities SPLP proposes to construct on which parcels of land. One parcel is vacant and is zoned for residential use. The other parcel currently has buildings located on it and is zoned for commercial use. Yet there is no such information in the Petition. Thus, if the Commission has jurisdiction, the Petition contains insufficient specificity and must be amended prior to further proceedings.

36. The Commission requires petitions under Section 619 of the MPC to include an evaluation of the environmental impact of the proposal. *Pennsylvania American Water Company*, Docket No. P-00062226 (Init. Dec. of ALJ Smolen), 2006 Pa. PUC LEXIS 91 (Oct. 25, 2006), finalized by operation of law, 2006 Pa. PUC LEXIS 105 (Nov. 17, 2006).

37. There is no such discussion in the Petition. If the Commission has jurisdiction, the Petition, therefore, contains insufficient specificity and must be amended prior to further proceedings.

38. In addition a Commission Policy Statement requires the Commission to consider the effect of a petition under Section 619 of the MPC on local comprehensive plans and zoning ordinances. 52 Pa. Code § 69.1101.

39. There is no such discussion in the Petition. If the Commission has jurisdiction, the Petition, therefore, contains insufficient specificity and must be amended prior to further proceedings.

WHEREFORE, CCWGT respectfully requests the Pennsylvania Public Utility Commission to determine that SPLP is not a "public utility corporation" for purposes of Section 619 of the MPC. Consequently, the Commission lacks any further jurisdiction over this matter, and the proceeding should be dismissed with prejudice.

In the alternative, if the Commission finds that it has jurisdiction over this matter, then it should find that the Petition must be amended to include a full description of the Boot Station site, a full description of all buildings to be constructed on the Boot Station site (including all enclosed structures associated with the vapor combustion unit), a full description of the environmental impact associated with developing the Boot Station site as SPLP proposes, and a full discussion of the effect of the effect of granting SPLP's Petition on local zoning and land use requirements in West Goshen Township.

Respectfully submitted,



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(Pa. Supreme Court ID: 34536)

Counsel for CCWGT

Dated: April 18, 2014

VERIFICATION

I, Kimberly McCorkell, a member of Concerned Citizens of West Goshen Township, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date:

4/18/14

Kimberly McCorkell

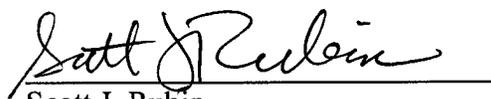
CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served this day a true copy of the foregoing document upon the parties listed below by electronic mail and U.S. mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: April 18, 2014



Scott J. Rubin
Counsel for CCWGT

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

SUNOCO PIPELINE L.P.,
Plaintiff

No. 2013-SU-4518-05

vs.

CIVIL ACTION - LAW

WILLIAM C. LOPER and JODI LOPER
f/k/a JODI WOLFE,
Defendants

APPEARANCES:

CURTIS N. STAMBUAGH, Esquire
KANDICE KERWIN HULL, Esquire
DANA W. CHILSON, Esquire
For the Plaintiff

MICHAEL F. FAHERTY, Esquire
For the Defendants

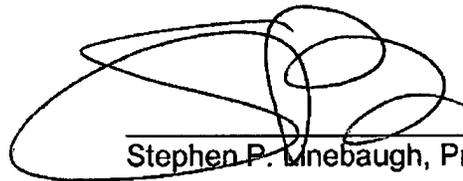
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YORK PA

ORDER DENYING MOTION FOR IMMEDIATE RIGHT OF ENTRY

AND NOW, this 24th day of February 2014, in accordance
with the attached Opinion, the Motion for Immediate Right of Entry filed by
Plaintiff on January 29, 2014 is **DENIED**.

Copies of this Order and Opinion shall be forwarded to counsel of record.

BY THE COURT,



Stephen P. Linebaugh, President Judge

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

SUNOCO PIPELINE L.P.,
Plaintiff

No. 2013-SU-4518-05

vs.

CIVIL ACTION - LAW

WILLIAM C. LOPER and JODI LOPER
f/k/a JODI WOLFE,
Defendants

APPEARANCES:

CURTIS N. STAMBUAGH, Esquire
KANDICE KERWIN HULL, Esquire
DANA W. CHILSON, Esquire
For the Plaintiff

MICHAEL F. FAHERTY, Esquire
For the Defendants

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OPINION DENYING MOTION FOR IMMEDIATE RIGHT OF ENTRY

Upon consideration of Plaintiff's Verified Motion for Immediate Right of Entry Pursuant to 26 Pa. CSA §309 filed January 29, 2014, Defendants' Response filed February 4, 2014, Plaintiff's Brief in Support filed February 12, 2014, and Defendants' Brief in Opposition filed February 20, 2014, the Court has concluded that Plaintiff is not a public utility corporation and is therefore not a condemnor pursuant to the Pennsylvania Business Corporation Law. Plaintiff is

therefore not entitled to enter the property of Defendants and Plaintiff's Motion for Immediate Right of Entry will be DENIED.

Facts and Procedural History

Plaintiff Sunoco Pipeline L.P. filed a Motion for Immediate Right of Entry Pursuant to 26 Pa. CSA §309 on January 29, 2014. Plaintiff has proposed to construct an interstate pipeline, known as the Mariner East II Pipeline, that will travel through York County and that will transport ethane, propane, liquid petroleum gas, and other petroleum products. Plaintiff alleges that, pursuant to Pennsylvania's Business Corporation Law, that it enjoys the right of eminent domain for the purposes of constructing the pipeline. The potential route of the pipeline will extend through the property of Defendants William C. Loper and Jodi Loper located in Fairview Township, York County, Pennsylvania, with tax identification # 27-000-RG-0046.00-0000. Defendants filed a Response to Plaintiff's Motion on February 4, 2014. The Motion and Response were heard at the February 6, 2014 session of Current Business, at which time the Court took the matter under advisement and provided both Parties an opportunity to supply the Court with Briefs. The time period for the filing of Briefs has now passed and the Court is prepared, having closely reviewed the Briefs submitted, to rule on Plaintiff's Motion.

Discussion

At issue in this case is whether Plaintiff is a "condemnor" entitled to enter the Defendants' property located in Fairview Township. 26 Pa. CSA §309(a) provides that "[p]rior to the filing of the declaration of taking, the condemnor or its employees or agents shall have the right to enter upon any land or improvement in order to make studies, surveys, tests, soundings and appraisals." In this case, no declaration of taking has yet been filed and, should Plaintiff be determined to be a condemnor, it would have the right to enter the property in question. In order to be a condemnor pursuant to the eminent domain statute, Plaintiff must enjoy the right of eminent domain. Plaintiff argues that it is a condemnor pursuant to the eminent domain statute because it qualifies as a public utility corporation that enjoys eminent domain powers as provided in the Pennsylvania Business Corporation Law.

Section 1511(a) of the Pennsylvania Business Corporation Law provides that a public utility corporation shall "have the right to take, occupy and condemn property" for certain purposes including "[t]he production, generation, manufacture, transmission, storage, distribution or furnishing of natural or artificial gas, electricity, steam, air conditioning or refrigerating service or any combination thereof to or for the public." 15 Pa. CSA §1511(a)(2). Section 1103 of the BCL defines a "public utility corporation" as "[a]ny domestic or foreign corporation for profit that: (1) is subject to regulation as a public utility by the

Pennsylvania Public Utility Commission or an officer or agency of the United States.” 15 Pa. CSA §1103(a). In this case, Sunoco Pipeline is regulated by FERC, an agency of the United States, pursuant to the Interstate Commerce Act, which applies “to common carriers engaged in...[t]he transportation of oil...by pipeline.” 49 USC §1 (1988); 15 USC §717. Plaintiff admits several times in its Brief that they are regulated by FERC as a *common carrier*. In addition, Plaintiff is seeking to transport ethane, propane, liquid petroleum gas, and other petroleum products to its customers through the interstate pipeline, and Plaintiff argues that the Pipeline will provide a service to the public; specifically, that Plaintiff will be required to provide a service to the public because its regulation by FERC requires it to provide equal and non-discriminatory opportunities for all prospective shippers.

Defendant argues that Plaintiff is not in fact a “public utility corporation” under the Business Corporation Law. Defendant first argues that Plaintiff is *not* a public utility regulated by FERC and is therefore *not* a public utility corporation under the Pennsylvania Business Corporation Law. The Court agrees. As Plaintiff repeatedly argues, it is regulated by FERC pursuant to the Interstate Commerce Act, and not the Natural Gas Act, as a common carrier, and not as a public utility. It therefore does not fall within the definition of a public utility corporation entitled to condemn property. Courts in this Commonwealth have permitted public utility corporations to condemn property for the purposes of

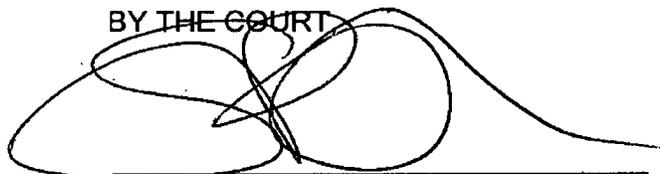
building natural gas pipelines; for example, in the persuasive case of *National Fuel Gas Supply Corporation v. Kovalchick Corporation*, 2005 WL 3675408, 74 Pa. D. & C.4th 22 (Pa.Com.Pl.2005), President Judge Foradora of the Jefferson County Court of Common Pleas considered whether National Fuel, an entity regulated under the Natural Gas Act by FERC as a public utility, could condemn property pursuant to the Business Corporation Law. In that case, that National Fuel was regulated by FERC under the Natural Gas Act as a *public utility* was necessary for the conclusion that National Fuel had condemnation powers. In the current case, Plaintiff is regulated under the Interstate Commerce Act, and not the Natural Gas Act, and it regulated as a common carrier, and not as a public utility. It is therefore not entitled to condemn property pursuant to the Pennsylvania Business Corporation Law.

Since the Court has concluded that Plaintiff does not have eminent domain powers under the Business Corporation Law, the only identified legislation under which Plaintiff claims to have eminent domain powers, it is unnecessary for the Court to consider Defendant's other arguments at this time. Plaintiff does not have the right of eminent domain under the Business Corporation Law, it is not a condemnor, and it is therefore not entitled to enter onto Defendants' property.

Conclusion

In conclusion, the Court will **DENY** the Motion for Immediate Right of Entry filed on January 29, 2014. An Order consistent with this Opinion will be entered.

BY THE COURT

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

Stephen P. Linebaugh, President Judge
19th Judicial District of Pennsylvania

Dated: 2/24/14

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

SUNOCO PIPELINE L.P.,
Plaintiff

No. 2013-SU-4518-05

vs.

CIVIL ACTION - LAW

WILLIAM C. LOPER and JODI LOPER
f/k/a JODI WOLFE,
Defendants

APPEARANCES:

CURTIS N. STAMBUAGH, Esquire
KANDICE KERWIN HULL, Esquire
DANA W. CHILSON, Esquire
For the Plaintiff

MICHAEL F. FAHERTY, Esquire
For the Defendants

OFFICE OF PROTHONOTARY
2014 MAR 25 PM 3:13
JUDICIAL CENTER
YORK PA

**ORDER REAFFIRMING PREVIOUS OPINION AND ORDER DENYING
MOTION FOR IMMEDIATE RIGHT OF ENTRY**

AND NOW, this 25th day of March 2014, Plaintiff's Verified
Motion for Immediate Right of Entry Pursuant to 26 Pa. CSA §309 filed January
29, 2014 is **DENIED**.

The Court previously denied Plaintiff's Motion by Opinion and Order filed
February 25, 2014. Plaintiff filed a Motion for Reconsideration on March 11,
2014. The Court granted the Motion for Reconsideration. On March 18, 2014,
Defendant filed their Answer to the Motion for Reconsideration. The Court has

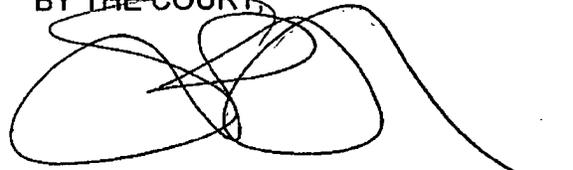
reconsidered its previous decision and closely reviewed Plaintiff's Motion, the affidavit submitted as an exhibit to the Motion, the applicable United States Code sections, and Defendants' Answer to the Motion and the Court has determined that its previous decision was not in error and hereby adopts the reasoning from its earlier opinion.

In addition, the Court reiterates that the clear language of the Pennsylvania Business Corporation Law awards eminent domain powers only to a "public utility corporation," with "public utility corporation" being defined as "[a]ny domestic or foreign corporation for profit that: (1) is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States." 15 Pa. CSA §1511(a); 15 Pa. CSA §1103(a). Plaintiff is regulated by the Federal Energy Regulatory Commission as a common carrier pursuant to the Interstate Commerce Act ("ICA"). Plaintiff has argued that while it is defined as a "common carrier" under the ICA, that it is regulated like it is a public utility by FERC and should therefore be considered a public utility for the purposes of the Pennsylvania Business Corporation Law. The Court does not agree. The Business Corporation Law is clear that the power of eminent domain is awarded only to public utilities; and while public utilities may also be common carriers, the Law provides only that those entities subject to regulation as a public utility can seek the power of eminent domain. FERC has chosen to regulate Plaintiff as a common carrier pursuant to the ICA. It is

therefore not a public utility for the purposes of the Business Corporation Law
and Plaintiff is not entitled to eminent domain powers under the Business
Corporation Law.

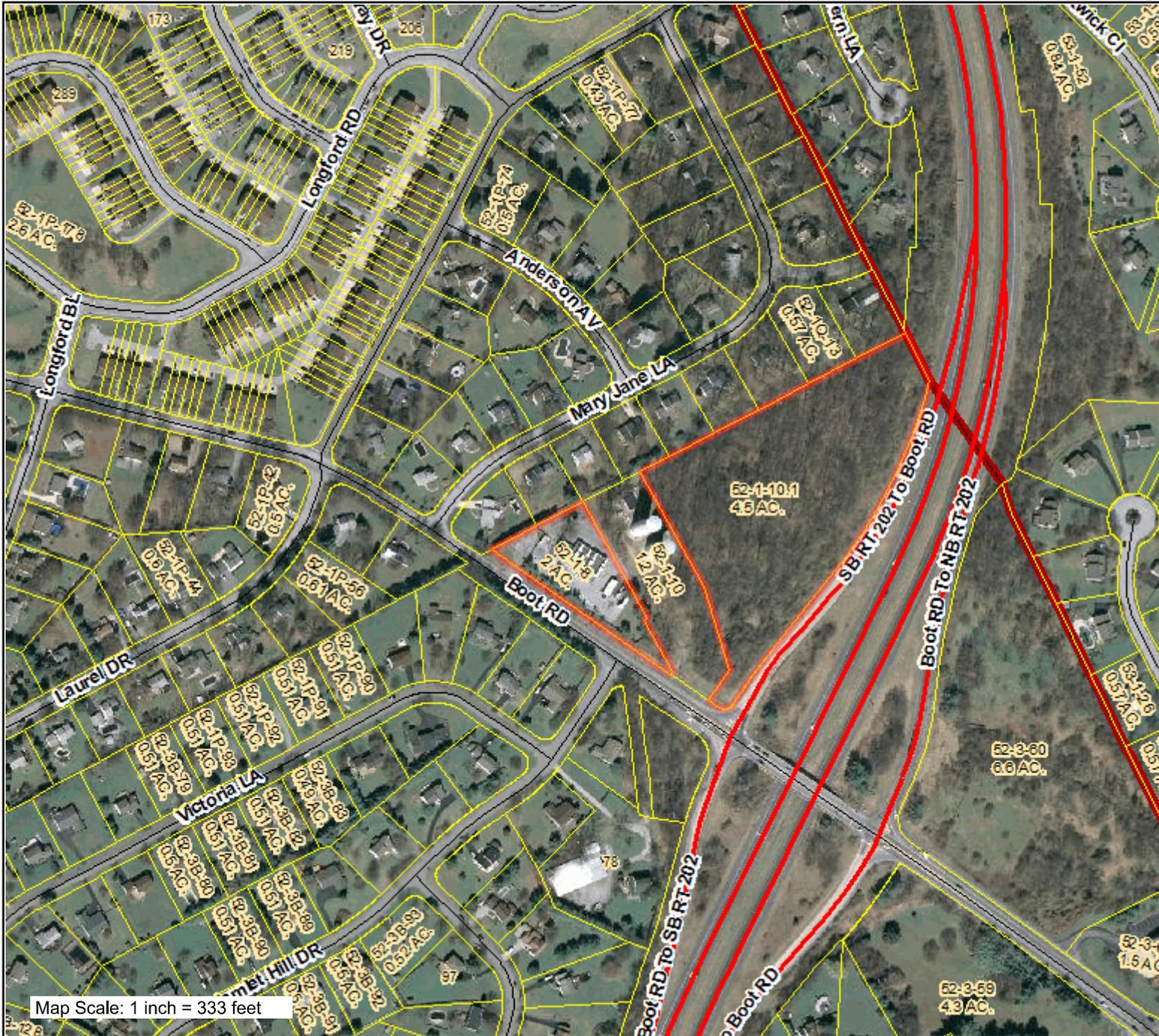
Copies of this Order shall be forwarded to counsel of record.

BY THE COURT,

A handwritten signature in black ink, consisting of several overlapping loops and a long tail that extends to the right, crossing the horizontal line below the name.

Stephen P. Linebaugh, Judge

Map



Map Scale: 1 inch = 333 feet

COUNTY OF CHESTER

PENNSYLVANIA



PARID	5201 00100100
UPI	52-1-10.1
Owner 1	SUNOCO PIPELINE LP
Owner 2	
Mailing Address 1	1818 MARKET ST
Mailing Address 2	SUITE 1500
Mailing Address 3	PHILADELPHIA PA
ZIP Code	19103
Deed Book	8840
Deed Page	962
Deed Recorded Date	11/4/2013
Legal Desc 1	N & REAR OF BOOT RD
Legal Desc 2	4.5 AC
Acres	4.5000
LUC	V-10
Lot Assessment	\$39,500
Property Assessment	\$0
Total Assessment	\$39,500
Assessment Date	12/20/2013
Property Address	1261 BOOT RD
Municipality	WEST GOSHEN
School District	WEST CHESTER AREA

Map Created:
Thursday, April 17, 2014



County of Chester

Limitations of Liability and Use:
County of Chester, Pennsylvania makes no claims to the completeness, accuracy, or content of any data contained herein, and makes no representation of any kind, including, but not limited to, the warranties of merchantability or fitness for a particular use, nor are any such warranties to be implied or inferred with respect to the information or data furnished herein. For information on data sources visit the GIS Services page listed at www.chesco.org/gis.

Current Parcel Details

UPI:	52-1-8-U	PLAN NUMBER:	
PIN:	5201 0008000U	LUC:	U-03 PUBLIC UTILITIES
Street Number:	1141	Street Direction:	
Street Name:	BOOT	Street Type:	RD
Situs Address:	1141 BOOT RD	MAILING ADDRESS:	1818 MARKET ST
OWNER(S):	SUNOCO PIPELINE LP		SUITE 1500
			PHILADELPHIA PA
LOT LOCATION:	NS BOOT RD	ZIP:	19103
PROPERTY DESCRIPTION:	2 AC & PUMPING STA	BOOK:	8387
ACRES:		PAGE:	1476
SQUARE FEET:	87120	DATE OF RECORDATION:	03-27-2012
LAST SALE PRICE:	1	TOTAL ASSESSMENT:	167620
ASSESSMENT DATE:	12-20-2013	Lot Assessment:	87560
Municipality Number:	52	Property Assessment:	80060

Parcel History

Owner Name	Deed Volume	Book	Page	Sale Date	Sale Price	Lot Location	Prop Description	Total Assessment
SUNOCO PIPELINE LP		8387	1476	03-27-2012	1	NS BOOT RD - SE OF MARY JA	2 AC & PUMPING STA	167620

Record 1 of 1

Land Use Codes	
LUC	Description
R-40	A - Apartments (4-19 Units)
R-90	A - Apt Complex (20 or more units)
C-10	C - Banks, Savings & Loans
C-20	C - Gas Station
C-30	C - Restaurants, Stores (Retail)
C-35	C - Condominium Stores
C-40	C - Motels, Hotels
C-41	C - Nursing Homes
C-50	C - Shopping Centers
C-60	C - Office Bldgs/Laboratory/Library
C-65	C - Office Condo
C-67	C - Office Condo Common Law
C-70	C - Commercial Garage/Shop/Car Dealers
C-80	C - Warehouse
C-81	C - Storage Tanks
C-90	C - Entertainment, Recreation
C-91	C - Recreation (Private)
C-92	C - Mobile Home Parks (4+)
C-93	C - Burial Grounds/Mausoleum
C-94	C - Airports
C-95	C - Private Schools
C-96	C - Commercial OBY only
F-40	C - Mushroom, Horticultural, etc
R-61	C - Dwelling W/Comm Use Primary Comm
V-11	C - Vacant Land Commercial
V-35	C - Condo Store/Vac Common Element
V-65	C - Condo Office/Vac Common Element
V-67	C - Condo Common Law Office/Common Area
E-10	E - Churches
E-11	E - Cemeteries
E-12	E - Service Connected
E-13	E - Chester County Property
E-20	E - Schools
E-30	E - Public Utilities

E-40	E - Railroads
E-50	E - Hospitals, etc.
E-60	E - State
E-61	E - State Parks
E-62	E - Federal
E-63	E - Federal Government Parks
E-70	E - Local Gov't (Townships & Boroughs)
E-71	E - Local Gov't Parks
E-80	E - Non Profit Organizations
E-90	E - Fire Companies
F-10	F - Farm 10 -19.99 Acres
F-20	F - Farm 20 TO 79.99 Acres
F-80	F - Farm 80 acres and over
M-10	I - Heavy Industrial
M-20	I - Light Industrial
M-25	I - Light Industrial Condominium
M-30	I - Quarry/Landfill
N-01	N - NOT ASSESSED IN CHESTER CO
R-10	R - Single Family/Cabin
R-20	R - Two Family
R-30	R - Multi Family/Dorms/Single
R-50	R - Condominium
R-55	R - Town House (Common Law Condo)
R-60	R - Dwelling W/Comm Use Primary Res
R-70	R - Mobile Home
R-80	R - Barns,Stables,Pools,Misc Bldgs
R-95	R - Common Elements - NOT OPEN SPACE
T-10	R - Trailers and Mobile Homes
V-10	R - Vacant Land Residential
V-12	R - OPEN SPACE
V-13	R - Road Beds,R/W,Access Way
V-14	R - Basins, Drainage Controls
V-50	R - Condo/Vacant Common Element
V-55	R - Condo Common Law/Common Area
U-03	U - Public Utilities
U-04	U - Railroads