

**BEFORE THE
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Sunoco Pipeline L.P. for a	:	
Finding That the Situation of Structures to	:	Docket Nos. P-2014-2411941,
Shelter Pump Stations and Valve Control	:	2411942, 2411943, 2411944,
Stations is Reasonably Necessary for the	:	2411945, 2411946, 2411948,
Convenience and Welfare of the Public	:	2411950, 2411951, 2411952,
		2411953, 2411954, 2411956,
		2411957, 2411958, 2411960,
		2411961, 2411963, 2411964,
		2411965, 2411966, 2411967,
		2411968, 2411971, 2411972,
		2411974, 2411975, 2411976,
		2411977, 2411979, 2411980.

NOTICE TO PLEAD

To: Sunoco Pipeline, LP, through its attorneys:

Christopher A. Lewis, Esq.
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Michael L. Krancer, Esq.
Blank Rome, LLP
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Philadelphia, PA 19103

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 the Clean Air Council within ten (10) days from service of this Notice, the facts set forth by the Clean Air Council 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 Clean Air Council, and where applicable, the Administrative Law Judges 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:

Augusta C. Wilson, Esq.
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Dated May 28, 2014



Augusta C. Wilson, Esq.

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PRELIMINARY OBJECTIONS OF THE CLEAN AIR COUNCIL

Pursuant to 52 Pa. Code § 5.101, the Clean Air Council files these Preliminary Objections to the Amended Petitions filed by Sunoco Pipeline, LP (“SPLP”) on May 8, 2014. As explained below, SPLP is not a “public utility” as defined in the Pennsylvania Public Utility Code, nor is it otherwise a “public utility corporation” as that term is used in Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619. As a result, the Commission does not have jurisdiction over this matter and the Amended Petitions must be dismissed with prejudice.

In the alternative, if the Commission finds that it does have jurisdiction, then SPLP’s Amended Petitions are legally insufficient for reasons detailed below and must be denied or at a minimum further amended before the case can move forward.

In support of these objections, the Clean Air Council states as follows:

I. Background

1. SPLP has proposed a pipeline project referred to as the Mariner East Pipeline (“Project”). If constructed, the Project would transport natural gas liquids – propane and ethane – from Houston, Pennsylvania to Sunoco’s Marcus Hook Industrial Complex (“MHIC”), located on the Delaware River, from which facility they could be shipped to foreign markets.
2. In order to transport these liquids from Marcellus Shale region, SPLP seeks, among other things, to reconfigure an existing pipeline so that it can transport propane and ethane from West to East. To accomplish this, SPLP seeks to build 18 pump stations and 17 valve control stations, as well as structures to shelter them.
3. In order to complete the proposed construction, SPLP is seeking a finding from the Commission pursuant to Section 619 of the Municipalities Planning Code exempting SPLP from local zoning ordinances in 31 municipalities across Pennsylvania. SPLP filed an initial petition with the Commission on March 21, 2014 (“Original Petition”). On May 8, 2014, after obtaining new legal representation, SPLP filed 31 amended petitions with the Commission requesting this exemption (“Amended Petitions”).
4. The Amended Petitions contained a new proposal to deliver propane not only to Marcus Hook, but also to deliver some propane intrastate, to SPLP’s Twin Oaks facilities in Aston, Pennsylvania (*See Amended Petitions at 9*).
5. Section 619 of the MPC allows the Commission to grant an exemption for “any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of

the building in question is reasonably necessary for the convenience or welfare of the public.” 53 P.S. § 10619.

II. Preliminary Objection #1: SPLP Does Not Meet the Definition of Public Utility Under Pennsylvania’s Public Utility Code, or of a Public Utility Corporation as that Term is Used in the Municipalities Planning Code, and the Commission therefore Lacks Jurisdiction

6. In order for the Commission to make the finding SPLP is seeking under § 619 of the MPC, SPLP must be a “public utility corporation” as that term appears in § 619. *Id.*

7. The term “public utility corporation” is not defined in the MPC. However, the term is defined in Pennsylvania’s Business Corporation Law (“BCL”), as:

“Any domestic or foreign corporation for profit that (1) is subject to regulation as a public utility by the 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 had it been then existing.”

15 Pa. C.S. § 1103.

8. General rules of statutory construction require that the term “public utility corporation” in the MPC be interpreted consistently with its definition in the BCL. *See* 1 Pa. C.S. § 1932.

Therefore, in order for the Commission to grant SPLP an exemption pursuant to § 619, SPLP must either be a public utility subject to regulation by the Commission, or by a federal agency.

9. In its Amended Petitions, SPLP argues that it qualifies as both – in other words, that it is a public utility regulated by the Commission as defined in Section 102 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 102, and that it is otherwise a public utility corporation as that term is used in the Municipal Planning Code, 53 P.S. § 10619 (*See* Amended Petitions at 4). SPLP’s arguments fail on both points.

a. SPLP Does Not Meet the Definition of Public Utility Under the Pennsylvania Public Utility Code

10. SPLP's basis for its contention that it is a public utility under the Public Utility Code is that it currently holds multiple Certificates of Public Convenience (CPC) from the Commission pursuant to Sections 1101 and 1102 of the Public Utility Code, 66 Pa. C.S. §§ 1101 and 1102. (Amended Petitions at 4).

11. The Pennsylvania Public Utility Code defines a public utility, in relevant part, as:

- (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
 - (i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation [or]
 - ...
 - (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa. C.S. § 102.

12. The Public Utility Code explicitly excludes certain operations from the definition of public utility. Subparagraph (iii) of Part (2) of the definition of "public utility" states that the term does *not* include, "[a]ny producer of natural gas not engaged in distributing such gas directly to the public for compensation."

13. SPLP cannot meet the definition of public utility set out in subparagraph (i) of the definition. The proposed Mariner East pipeline would not, according to SPLP's Amended Petitions, be transporting natural gas. Instead, it will be transporting natural gas liquids. Therefore, SPLP will not be engaged in distributing natural gas directly to the public as required to meet subparagraph (i) of the definition of public utility.

14. SPLP also cannot meet the definition of public utility set out in subparagraph (v) because SPLP's petition does not establish that it would be transporting these products for the public as required to meet the definition of public utility under subparagraph (v).
15. In its original petition, SPLP did not propose any intrastate delivery of petroleum products at all. As referenced in the Background section above, in its Amended Petitions, SPLP proposes for the first time that, in addition to transporting propane and ethane to the MHIC on the Delaware River, the Mariner East pipeline would transport propane to SPLP's Twin Oaks facilities in Aston, Pennsylvania (*see* Amended Petitions at 9).
16. Importantly, SPLP states that, once delivered to Twin Oaks, the product could be sent to third-party storage facilities *or* distribution terminals. (*Id.* at 2) (emphasis added). Further, as SPLP acknowledges, the Marcus Hook facility and the Twin Oaks facilities are connected by pipeline, and the Twin Oaks Terminal is operated "in conjunction with the MHIC." (*Id.*).
17. SPLP's careful use of disjunctive and alternative language means that all 5,000 barrels of propane per day SPLP proposes to transport to its Twin Oaks facilities could be stored for later export, or sent to Marcus Hook for export. At best, SPLP's proposal leaves open the possibility that some of the propane might be set to third-party distribution terminals. (Amended Petitions at 2).
18. SPLP therefore does not qualify as a public utility under subparagraph (v) of the definition of "public utility" because it would not be transporting propane and ethanol *for the public* as required under that subsection.
19. SPLP's argument that it should be considered a public utility because the Commission has or does regulate it as a public utility in other contexts (*see* Amended Petitions at 4) is

unavailing. SPLP acknowledges in its Amended Petitions that the services on the segments of its proposed Mariner East pipeline for which it previously had CPCs granted by the Commission were previously used to transport gasoline and gasoline distillate from the eastern part of the state for use in the western part of the state (*see* Amended Petitions at 6-7). With its proposed Mariner East project, SPLP seeks to convert those portions of the pipeline to allow transport of propane and ethane from West to East, to a location that allows for shipment by water to foreign markets.

20. This is a different business plan involving a different use of a different product, which – based on the language of the Amended Petitions – is not guaranteed to benefit the public of Pennsylvania in the way that supply of gasoline to the Pittsburgh markets clearly did. The fact SPLP has been regulated by the Commission as a public utility in the course of past endeavors does not mean that SPLP would be acting as a public utility in its currently proposed project.
21. Indeed, of the various provisions in § 102 of the Public Utility Code setting out the definition of “public utility,” the one that applies best to SPLP is the one that specifically excludes from the definition of “public utility” “[a]ny producer of natural gas not engaged in distributing such gas directly to the public for compensation.”
22. While the proposed project involves natural gas liquids and not natural gas, the language of this provision, combined with § 102’s earlier requirement that a corporation must transport its product *for the public* in order to qualify as a public utility, clearly indicates that the legislature intended that a corporation not be given public utility status if it was not providing a service directly to the public.

23. As detailed above, SPLP has not adequately shown that it would directly distribute any product to the Pennsylvania public. At best, some of the propane transported might be given to third-party distributors. Therefore SPLP does not qualify as a public utility under the Public Utility Code.
- b. SPLP is Not Otherwise a Public Utility Corporation as that Term is Used in the Municipalities Planning Code*
24. In addition to not being a “public utility” as defined in the Public Utility Code and/or regulated by the Commission, SPLP does not otherwise qualify as a “public utility corporation” as that term is used in § 619 of the MPC.
25. As discussed above, the term “public utility corporation” is not defined in the MPC, but general rules of statutory construction require that the term be interpreted consistently with its definition in Pennsylvania’s BCL.
26. The alternative definition of a “public utility corporation” in the BCL is a corporation that is subject to regulation as a public utility “by an officer or agency of the United States.” 15 Pa. C.S. § 1103.
27. SPLP is regulated by a federal agency – the Federal Energy Regulatory Commission (“FERC”). However, as SPLP itself acknowledged in its original petition, SPLP is regulated by FERC pursuant to the Interstate Commerce Act (“ICA”) as a *common carrier* and not as a public utility. (Original Petition at 5-8).
28. The ICA explicitly regulates common carriers, and not public utilities. 49 U.S.C. § 1(b). Thus, SPLP does not meet the definition of public utility corporation articulated in § 1103 of the BCL.
29. The Court of Common Pleas in York County, Pennsylvania, has recently directly considered this issue and held that SPLP is not a public utility corporation. *Sunoco v.*

Loper et al., York County Court of Common Pleas (Docket No. 2013-SU-4518-05) (Feb. 25, 2014), *Reaffirmed on Reconsideration* (March 25, 2014). In *Loper*, the court rejected SPLP's argument that it met the definition of "public utility corporation" in the BCL because it was regulated as a public utility by FERC. The court found that Sunoco was regulated as a *common carrier* by FERC, and that it therefore was not regulated as a public utility, and was not entitled to eminent domain powers. *Id.* at 4.

30. Because SPLP does not meet the definition of a public utility under the Public Utility Code, and does not otherwise qualify as a "public utility corporation" as that term is used in the MPC, the Commission does not have jurisdiction and the Amended Petitions should be dismissed with prejudice.

III. Preliminary Objections #2: The Amended Petitions are Legally Insufficient

a. SPLP has Not Adequately Shown that the Proposed Project is Reasonably Necessary for the Convenience and Welfare of the Public

31. Even if the Commission does find that it has jurisdiction, SPLP's Amended Petitions are legally insufficient because they do not contain facts sufficient to show that SPLP's proposed project is reasonably necessary for the convenience and welfare of the public as required in order for the Commission to grant an exemption under MPC § 619.

32. SPLP's Amended Petitions do not establish with sufficient specificity that there is any actual need or even demand for the natural gas liquids they propose to transport. SPLP has stated only in vague and broad terms that there is "increased interest expressed by shippers in securing intrastate pipeline transportation [of ethane and propane]." (Amended Petitions at 9). SPLP has not established which shippers have expressed such interest, what additional amounts of natural gas liquids they have expressed interest in receiving, whether they have expressed such interest to SPLP specifically, or whether

there are in fact any commitments by shippers to receive additional natural gas liquids from SPLP and distribute them in Pennsylvania.

33. Similarly, SPLP's vague allusions to peak demand for propane during the winter season are insufficient to establish that there have in fact been any shortages of propane or ethane in Pennsylvania, or that the proposed project is reasonably necessary in order to meet any shortfalls. SPLP has not pled adequate facts to establish that demand could not be met using the currently existing infrastructure.
34. Moreover, SPLP has not affirmatively stated that the estimated additional 5,000 barrels per day of propane that would be delivered to its Twin Oaks Terminal will in fact be distributed to customers in Pennsylvania rather than stored and eventually sent to Marcus Hook for export.
35. In contrast, SPLP has not addressed the environmental health effects of the proposed project on the communities in which construction and operation would take place. For example, both the construction and operation of the proposed valve stations and pumping stations will result in significant emissions of various air pollutants, including oxides of nitrogen (NO_x), volatile organic compounds (VOCs), hazardous air pollutants (HAPs) carbon monoxide, particulate matter (PM), sulfur dioxide, and greenhouse gases (GHGs).
36. These pollutants affect air quality—and therefore human health—in a variety of ways. NO_x is a precursor of both ozone and fine particulate matter (PM_{2.5}).¹ VOCs are also an ozone precursor.² Fine particulate matter is linked to increased heart attacks, aggravated asthma and decreased lung function, and premature death for people with heart or lung

¹ U.S. EPA, *Nitrogen Dioxide*, available at <http://www.epa.gov/air/nitrogenoxides/> (last visited May 28, 2014).

² U.S. EPA, *Ozone – Good Up High Bad Nearby*, available at <http://www.epa.gov/oar/oaqps/gooduphigh/bad.html> (last visited May 28, 2014).

diseases.³ Ozone exposure can lead to coughing, chest pain, and throat irritation.⁴ It also worsens bronchitis, emphysema, and asthma, and can reduce lung function.⁵ Common HAPs are n-hexane and the “BTEX compounds,” benzene, toluene, ethylbenzene, and xylenes.⁶ Benzene is a known human carcinogen, and formaldehyde is a probable human carcinogen.⁷

37. To the extent that the proposed project would involve the building of new pipeline from the MarkWest Houston facility to Delmont, Pennsylvania, the proposed project gives rise to a host of other potential environmental and health risks, including forest fragmentation, harm to wildlife and wildlife habitat, and damage to stream beds and wetlands.
38. SPLP points to the Pennsylvania Commonwealth Court’s decision in *DEL-AWARE Unlimited, Inc. v. Pennsylvania Public Utility Commission*, 99 Pa. Cmwlth. 634, 513 A.2d 593 (1986) to argue that the Commission is empowered only to decide whether the proposed site of the buildings at issue is reasonably necessary for the public convenience or welfare, rather than “requiring the PUC to reevaluate the entire project.” *Id.* at 638, 595. In that case, however, the Department of Environmental Resources (DER)⁸ had already done its own review of the environmental impacts of the project at issue, and the Environmental Hearing Board had upheld DER’s review. In that context, the Commonwealth Court was unwilling to find that the language of § 619 required the PUC to do another full review of the environmental impacts of the project.

³ U.S. EPA, *Particulate Matter (PM)*, available at <http://www.epa.gov/pm/health.html> (last visited Sept. 20, 2012).

⁴ U.S. EPA, *Ozone – Good Up High Bad Nearby*.

⁵ *Id.*

⁶ Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 76 Fed. Reg. 52,738, 52,745 (Aug. 23, 2011).

⁷ *Id.* at 52,791.

⁸ The DER was split into two agencies – the Department of Environmental Protection (DEP) and the Department of Conservation of Natural Resources (DCNR) – by Act 18 in 1995.

39. In this case, by contrast, no other environmental reviews or assessments have been conducted. Therefore the Commission must take into account the detrimental environmental and health impacts of the proposed project and weigh them against any benefits of the proposed Mariner East pipeline in determining whether SPLP's proposal is in fact reasonably necessary for the public convenience. This is particularly true since SPLP is seeking to carry out its proposed project outside the bounds of local zoning regulations, which are intended to carry out this balancing and ensure the orderly development and use of land.

b. SPLP's Amended Petitions Represent an Inappropriate Circumvention of the Law

40. SPLP first filed an petition with the Commission requesting an exemption pursuant to MPC § 619 with respect to each of the 31 municipalities in which SPLP seeks to locate a pump or valve control station on March 21, 2014. That original petition contained no mention of any intention to transport natural gas liquids to SPLP's Twin Oaks facilities, or of any other intrastate delivery of natural gas liquids.

41. Various environmental and citizens' groups subsequently filed comments and objections arguing that SPLP should not be granted that exemption, in significant part because the fact that SPLP planned no in-state distribution of the natural gas liquids meant that it did not meet the definition of a public utility corporation as used in the MPC.

42. SPLP subsequently obtained new legal representation, and its new attorneys filed an amended petition that – as described above – altered SPLP's proposed project to include delivery of natural gas liquids to SPLP's Twin Oaks Terminal that could potentially go to third-party distributors and eventually to the Pennsylvania public.

43. This potential intrastate delivery has clearly not been part of SPLP's plan for its proposed Mariner East pipeline until after it had an opportunity to receive objections to its initial proposal. Indeed, the description of the proposed Mariner East project on Sunoco's website still makes no mention of Twin Oaks or any intrastate delivery.⁹
44. Further, as discussed above, SPLP has not made a sufficient showing that there is a genuine need or demand for intrastate delivery. SPLP's Amended Petition states only in the most general terms that there is "shipper demand" in the availability of propane and that SPLP "will further be able to offer more intrastate service pipeline capacity" (Amended Petition at p. 9). Moreover, SPLP's Amended Petition makes no specific statements or commitments that any amount of propane or ethane will in fact be delivered to the Pennsylvania public rather than stored for later delivery to Marcus Hook and shipment to foreign markets.
45. This sudden change in tactics is a transparent attempt to avoid the fact that the proposed Mariner East project simply is not the type of project for which public utility status should or was meant to apply.
- c. Article I, Section 27 of the Pennsylvania Constitution Prohibits Granting SPLP's Amended Petitions*
46. Granting SPLP's Amended Petitions would contradict the Pennsylvania Supreme Court's recent decision in *Robinson Township, et al. v. Commonwealth of Pennsylvania, et al.*, and would violate Article I Section 27 of the Pennsylvania Constitution. *Robinson*, 83 A.3d 901 (Pa. Dec. 19, 2013).
47. The Supreme Court in *Robinson* explicitly recognized that the public has a concrete interest in the development and application of local zoning ordinances. *Id.* at 920-921.

⁹ <http://www.sunocologistics.com/Customers/Business-Lines/Natural-Gas-Liquids-NGLs/NGL-Projects/208/> (last visited May 27, 2014).

The plurality based its decision in part on the Environmental Rights Amendment of Art.

I, § 27, which states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public and natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall preserve and maintain them for the benefit of all the people.

Id. at 949-950 (citing Pa. Const. Art. I, § 27).

48. The local zoning ordinances from which SPLP seeks to be exempted are necessarily intended to protect human health, and the environmental integrity and esthetic value of the communities to which they apply. To the extent that granting Sunoco's petition would require local municipalities to disregard their constitutional mandate pursuant to Article I, Section 27, such an action on the part of the Commission would be unconstitutional.

d. SPLP's Request that the Dockets Not Be Consolidated Lacks Specificity and has no Legal Basis

49. In its Amended Petitions, SPLP refers to the fact that it is filing amended petitions relating to each of the 31 townships for which dockets were initially opened, and "explicitly requests that these dockets remain unconsolidated." (Amended Petitions at 1, n.1).

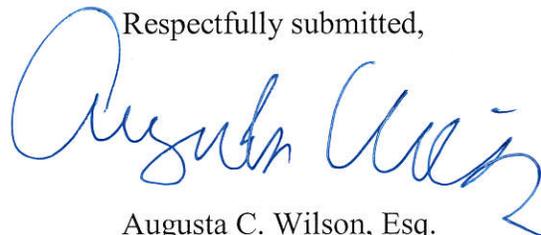
50. It is unclear, based on the way SPLP's request is drafted, whether SPLP is requesting only that the dockets pertaining to pipeline segments on which service has been temporarily suspended not be consolidated with the dockets pertaining to pipeline segments in which service has been abandoned, or whether SPLP is requesting that all of the dockets remain unconsolidated.

51. In either case, SPLP has provided no support or justification whatsoever for its request that the dockets not be consolidated. These dockets all involve common issues of fact and of law – they all relate to one common pipeline project, they involve the construction and operation of pieces of equipment that would all operate together to transport natural gas liquids across the Commonwealth, they all involve similar environmental impacts, and they all require the Commission to resolve the same legal issues.
52. These dockets should be consolidated, and SPLP's Amended Petition provides no adequate legal basis for using the Commission's time or the litigants' time in treating them as separate dockets.

WHEREFORE, the Clean Air Council respectfully requests the Pennsylvania Public Utility Commission to determine that SPLP is not a "public utility" as defined in § 102 the Pennsylvania Public Utility Code, and is not otherwise a "public utility corporation" as that term is used in § 619 the Pennsylvania Municipalities Planning Code, and that therefore the Commission lacks any further jurisdiction over this matter.

In the alternative, if the Commission finds that it does have jurisdiction, the Clean Air Council respectfully requests that the Commission determine that the Amended Petitions are legally insufficient, should not be granted for the reasons set forth above, and must at a minimum be amended to include a full analysis of the environmental impacts associated with the construction and operation of the proposed project.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Augusta C. Wilson".

Augusta C. Wilson, Esq.

Dated May 28, 2014

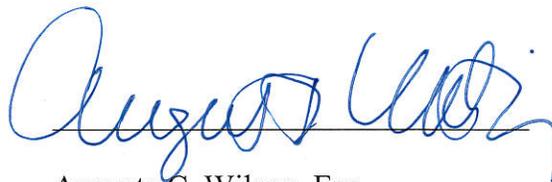
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CERTIFICATE OF SERVICE

I, Augusta Wilson, do hereby certify that a true and accurate copy of the foregoing Preliminary Objections of the Clean Air Council was served upon the parties listed below by electronic mail and U.S. mail, and on other participants via electronic filing, pursuant to the requirements of 52 Pa. Code § 1.54(b)(3) (relating to service by a participant).

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Philadelphia, PA 19103

Dated: May 28, 2014

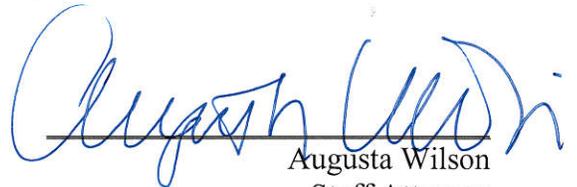


Augusta C. Wilson, Esq.
Staff Attorney, Clean Air Council

VERIFICATION

I, Augusta Wilson, hereby state that the facts set forth above in the Preliminary Objections of the Clean Air Council are true and correct (or 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 subject to the penalties of 18 Pa.C.S. § 4909 (relating to unsworn falsification to authorities).

Dated May 28, 2014



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