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June 4, 2014

TO: SEC

Robert F. Powelson
Chairman
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Keystone Building
Harrisburg, PA 17120

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CHAIRMAN'S OFFICE

Re:

P-2014-2411941	P-2014-2411951	P-2014-2411961	P-2014-2411972
P-2014-2411942	P-2014-2411952	P-2014-2411963	P-2014-2411974
P-2014-2411943	P-2014-2411953	P-2014-2411964	P-2014-2411975
P-2014-2411944	P-2014-2411954	P-2014-2411965	P-2014-2411976
P-2014-2411945	P-2014-2411956	P-2014-2411966	P-2014-2411977
P-2014-2411946	P-2014-2411957	P-2014-2411967	P-2014-2411979
P-2014-2411948	P-2014-2411958	P-2014-2411968	P-2014-2411980
P-2014-2411950	P-2014-2411960	P-2014-2411971	

Dear Chairman Powelson:

I. Statement of Interest

The undersigned and this office are privileged to represent The Pennsylvania State Association of Township Supervisors (hereinafter "PSATS"). PSATS is a statutorily authorized unincorporated association, having offices at 4855 Woodland Avenue, Enola, Cumberland County, Pennsylvania. PSATS represents the interests of townships of the second class throughout the Commonwealth of Pennsylvania. Its membership is composed of approximately 1,450 such Pennsylvania townships. PSATS has an interest in the 31 Amended Petitions filed by Sunoco Pipeline, L.P. ("SPLP") on May 8, 2014 (each an "Amended Petition") because their adjudication bears directly and substantially upon the powers of PSATS's member municipal governments to effectively fulfill their governmental functions and responsibilities. The adjudication of the issues by the Pennsylvania Public Utility Commission ("PUC"), in addition to determining the Amended Petition filed by SPLP, may affect the powers, rights, and duties of townships of the second class, as well as those of other municipal

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governments. In particular, the adjudication by the PUC will directly impact 27 members of PSATS, as all but four of the 31 municipalities named in SPLP's Amended Petition are dues-paying members of PSATS.

At the outset, let us state again that PSATS is not opposed to SPLP's Mariner East Pipeline project. However, PSATS is opposed to SPLP's effort to classify its new pipeline venture as a public utility corporation and thereby circumvent normal municipal review of its plans. It is PSATS's position that SPLP's Amended Petition should be denied and that SPLP should be required to submit land development plans to the 31 municipalities where SPLP proposes to construct buildings to shelter pump stations and valve control stations.

II. SPLP is not a Public Utility Corporation

PSATS submitted a detailed letter dated April 21, 2014 in response to SPLP's initial Petition. A copy of PSATS's letter is attached to this letter as Exhibit "A". Rather than restating all of the points in its April 21, 2014 letter, PSATS simply incorporates that letter by reference.

It is critical to reiterate the Pennsylvania Supreme Court's recent decision in *Robinson Township v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013). The Court affirmed the significance of the Environmental Rights Amendment of the Pennsylvania Constitution, Article I, Section 27, in relation to local government's ability to assure the public health, safety, and welfare of its citizens. The Court wrote that "this Court has held that a political subdivision has a substantial, direct, and immediate interest in protecting the environment and the quality of life within its borders, which interest confers upon the political subdivision standing in a legal action to enforce environmental standards." *Id.* at 919-20 (citations omitted). Further, the Court affirmed the important role of local government in considering the development of natural gas resources. "Protection of environmental values, in this respect, is a quintessential local issue that must be tailored to local conditions." *Id.* at 979.

The PUC should not circumvent the clear directive from our Supreme Court by allowing SPLP to avoid the local review and approval process. It is clear that the Court believes that local government has an important role in the development of the Commonwealth's natural gas resources. The production history also makes it equally clear that local government has been a partner and not an obstruction in this venture.

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Additionally, in considering whether to grant a Certificate of Public Convenience to SPLP, the PUC should seek clarifications from SPLP related to its own filings. In its recent Application to abandon portions of its existing pipeline in order to pursue the Mariner East project, Docket No. A-2013-2371789, SPLP asserted that the delivery point of the Mariner East Pipeline would be in Claymont, Delaware (Petition, at p. 2). SPLP further asserted in the same paragraph that "The transportation of shale gas resources from points in Pennsylvania to a terminal in Delaware constitutes interstate commerce; SPLP does not currently anticipate providing any intermediate service within Pennsylvania on the Mariner East Pipeline." Paragraph 16 of the current Amended Petition cites that Application.

However, SPLP now asserts that the pipeline will terminate in Pennsylvania. SPLP also states in Paragraph 20 of its Amended Petition that it will offer intrastate service within Pennsylvania as well as interstate service. While PSATS is well aware that Claymont, Delaware is on the Pennsylvania border, there must be a reason that SPLP alleges in one filing that the pipeline will terminate in Delaware and there will be no intrastate service within Pennsylvania; only to allege in the instant Amended Petition that the pipeline will terminate in Pennsylvania and there will be intrastate service. Although intrastate service was a possibility according to the PUC's prior decision, SPLP should explain the timing. The PUC should seek clarification of these conflicting positions during the public hearing process.

III. If the PUC determines that SPLP is a public utility corporation, it must follow the due process procedures contained in the MPC

Even if the PUC determines that SPLP is a public utility corporation, § 619 of the *Pennsylvania Municipalities Planning Code* ("MPC"), 53 P.S. § 10619, requires that the PUC hold a hearing and allow the municipality to appear and present testimony. Section 619 provides as follows:

This article shall not apply to 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. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

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(emphasis added).

Commonwealth agencies such as the PUC "*shall consider* and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities." MPC § 619.2 (emphasis added). This mandate of state law is restated in the PUC's own regulations, which provide that the PUC is required to "consider the impact of its decisions upon local comprehensive plans and zoning ordinances" when reviewing applications for, among other things, siting a public utility building. 52 Pa. Code § 69.1101. SPLP acknowledges this requirement in its Amended Petitions, and then concludes that its proposed locations are "reasonably necessary for the convenience and welfare of the public."

It is premature for the PUC to agree with this blanket statement. Initially, PSATS would note that SPLP's application omits the relevant local ordinances and comprehensive plans. It is inconceivable that the PUC could make a finding that the proposed buildings are "reasonably necessary" without examining all of the zoning ordinances and comprehensive plans as required by the PUC's own regulations.

SPLP alleges in Paragraph 31 of its Amended Petitions that it has determined what it considers to be the ideal location for pump stations considering only site availability and an adequate power source. It alleges in Paragraph 32 that it has determined locations of valve control stations based on, among other items, available sites, and electrical infrastructure. It does not allege that it considered compatibility with neighboring properties, local zoning, or local comprehensive plans. It may be that SPLP's self-proclaimed best location is not the best location for the municipality and the public. *Only by examining each comprehensive plan and each zoning ordinance and holding public hearings* can the PUC make this determination. SPLP seemingly acknowledges this, as it offers to submit the ordinances as part of its Direct Testimony supporting the Petition.

In footnote 1 of its Amended Petitions, SPLP has expressly requested that the numerous dockets not be consolidated. It appears that SPLP anticipates 31 separate hearings on its 31 Petitions. Each impacted municipality in which a building or buildings are to be located is entitled to receive notice of the hearing and an opportunity to appear and participate as a party to the proceedings. MPC § 619. PSATS would respectfully submit that the PUC should hold public hearings in each affected municipality in order to fulfill its obligations under §§ 619 and 619.2 of the MPC and 52 Pa. Code § 69.1101, and so that the municipality and the public are afforded convenient access to the hearings. At the very least, the PUC should schedule the public hearings in the vicinity

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of each affected municipality so as to minimize the inconvenience to the municipality, its solicitor, witnesses, and the general public. This is especially important given that the majority of the affected municipalities are located hours away from Harrisburg in the southeastern and southwestern corners of the Commonwealth.

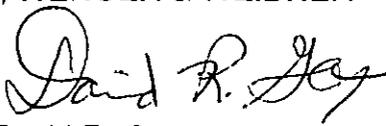
IV. Conclusion

Recent precedent from the Pennsylvania Supreme Court makes it clear that local government has an important role in the development of our natural resources. Thus, the PUC should conclude that SPLP is not a public utility corporation, and SPLP's Amended Petition should be denied.

Alternatively, if the PUC determines that SPLP is a public utility corporation, the PUC is required by the MPC to hold public hearings on SPLP's building plans. Those hearings should be held in the municipalities where the buildings that are proposed to house the pump stations, valve stations, and other buildings that are to be constructed. Local municipalities can work in partnership, through the MPC, with the energy industry to take full advantage of reducing our dependence on foreign energy supplies.

Respectfully submitted,

WIX, WENGER & WEIDNER

By: 
David R. Getz

Attachment – Exhibit "A"

cc: Pennsylvania State Association of Township Supervisors
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April 21, 2014

Robert F. Powelson
Chairman
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
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Harrisburg, PA 17120

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2014 APR 21 PM 2:37
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SECRETARY'S BUREAU

Re: P-2014-2411966; P-20140-2411968; P-2014-2411941; and P-2014-2411980 *et al.*

Dear Chairman Powelson:

I. Statement of Interest

The undersigned and this office are privileged to represent The Pennsylvania State Association of Township Supervisors (hereinafter "PSATS"). PSATS is a statutorily authorized unincorporated association, having offices at 4855 Woodland Avenue, Enola, Cumberland County, Pennsylvania. PSATS represents the interests of townships of the second class throughout the Commonwealth of Pennsylvania. Its membership is composed of approximately 1,450 such Pennsylvania townships. PSATS has an interest in the Petition filed by Sunoco Pipeline, L.P. ("SPLP") on March 21, 2014 because its adjudication bears directly and substantially upon the powers of PSATS's member municipal governments to effectively fulfill their governmental functions and responsibilities. The adjudication of the issues by the Pennsylvania Public Utility Commission ("PUC"), in addition to determining the Petition filed by SPLP, may affect the powers, rights, and duties of townships of the second class, as well as those of other municipal governments. In particular, the adjudication by the PUC will directly impact 27 members of PSATS, as all but four of the 31 municipalities named in SPLP's Petition are dues-paying members of PSATS.

At the outset, let us state that PSATS is not opposed to SPLP's Mariner East Pipeline project. However, PSATS is opposed to SPLP's effort to turn itself into a public utility corporation and thereby circumvent normal municipal review of its plans. It is

EXHIBIT "A"

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PSATS's position that SPLP's petition should be denied and that SPLP should be required to submit land development plans to the 31 municipalities where SPLP proposes to construct buildings to shelter pump stations and valve control stations.

II. SPLP is not a Public Utility Corporation under the MPC

SPLP states in Paragraph 15 of its Petition that it has submitted approval processes in each of the 31 municipalities where it proposes to construct buildings. Nowhere does SPLP state that one or more of the municipalities is creating roadblocks to SPLP's plans. Rather, it is clear that SPLP would simply rather not comply with the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. § 10101, *et seq.* SPLP contends that it alone should determine the location of pump stations and valve control stations, and the buildings attendant to such stations, and should thus exclude local government from the review process. However, SPLP's argument does not occur in a vacuum. Its proposal is little different from a tower company that seeks to locate a telecommunications tower at a certain location. The company might desire to place a tower at a specific location in order to attract companies to put antennas on the tower, but it must comply with local zoning ordinances.

It does not appear from the Petition that there is any urgency that would require suspension of normal land development processes under the MPC. The MPC provides that a land development plan must be reviewed and acted upon within 90 to 120 days after a plan is submitted to a township. MPC § 508, 53 P.S. § 10508. In fact, it may be that some of SPLP's building plans require only a building permit, which is a much shorter process. SPLP filed its Petition on March 24 and is asking for a decision from the PUC by June 19, 2014. That is almost the same amount of time within which a municipality would have to act on a land development application, and it appears from the Petition that the clock has already started on the municipal review process.

Pennsylvania's courts have been clear that even the Commonwealth must follow local ordinances under many circumstances. SPLP should not be exempted from the requirements imposed on instrumentalities of government.

For example, in *Kee v. Pennsylvania Turnpike Commission*, 743 A.2d 546 (Pa. Cmwlth. 1999), the Turnpike Commission sought to expand a rest stop in West Pennsboro Township, Cumberland County without seeking approval of the township. Commonwealth Court held that the Turnpike Commission's enabling statute did not expressly confer upon it the power to disregard local land use regulation. The court held that the Turnpike Commission's determination that there was a problem with a rest

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stop did not "imply that the Commission requires complete freedom from the operation of the Township's zoning and land use ordinances in order to address it." *Id.* at 552. Parenthetically, we would note that the court, citing prior case law, also stated that "even the power of eminent domain does not necessarily exempt an agency from compliance with land use regulations." *Id.* at 551.

Similarly, in *Department of General Services, Appellant v. Board of Supervisors of Cumberland Township*, 795 A.2d 440 Pa. Cmwlth. 2002), appeal denied, 574 Pa. 776, 833 A.2d 144 (2003), Commonwealth Court held that DGS had to comply with a township zoning ordinance before constructing a welcome center along Route 15 in Adams County. Citing the Pennsylvania Supreme Court's decision in *Department of General Services v. Ogontz Area Neighbors Association*, 505 Pa. 614, 483 A.2d 448 (1984), Commonwealth Court held that "absent a clear statute to the contrary, agencies of the Commonwealth are not exempt from zoning and land use regulations." *Id.* at 443.

What is good for the Commonwealth should be good for the pipeline industry. There is no sound reason to give SPLP the ability to bypass municipal regulations when the Commonwealth itself is bound to follow those same rules.

Most recently, our Supreme Court issued a major decision related to zoning and oil and gas interests. In *Robinson Township v. Commonwealth of Pennsylvania*, 83 A.3d 901 (Pa. 2013), the Court ruled that portions of Act 13 of 2012 are unconstitutional. Importantly, this decision affirmed the significance of the Environmental Rights Amendment of the Pennsylvania Constitution, Article I, Section 27, in relation to local governments' ability to assure the public health, safety, and welfare of their citizens. That Section provides that:

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 natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

In addressing claims by the Commonwealth that the municipal petitioners did not have standing, the Court wrote:

This Court has held that a political subdivision has a substantial, direct, and immediate interest in protecting the environment and the quality of life within its borders, which interest confers upon the political subdivision standing in a legal action to enforce environmental standards. Political subdivisions, the Court has

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recognized, are legal persons, which have the right and indeed the duty to seek judicial relief, and, more importantly, they are "place[s] populated by people." The protection of environmental and esthetic interests is an essential aspect of Pennsylvanians' quality of life and a key part of local government's role. Local government, therefore, has a substantial and direct interest in the outcome of litigation premised upon changes, or serious and imminent risk of changes, which would alter the physical nature of the political subdivision and of various components of the environment.

Id. at 919-20 (citations omitted).

Further, the Court affirmed the important role of local government in considering the development of natural gas resources:

In Pennsylvania, terrain and natural conditions frequently differ throughout a municipality, and from municipality to municipality. As a result, the impact on the quality, quantity, and well-being of our natural resources cannot reasonably be assessed on the basis of a statewide average. Protection of environmental values, in this respect, is a quintessential local issue that must be tailored to local conditions.

Id. at 979.

Thus it is clear that the courts of this Commonwealth have confirmed that municipalities have an important role in the review of development proposed by Commonwealth entities and by the oil and gas interests. For these reasons, SPLP's Petition should be denied.

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III. If the PUC determines that SPLP is a public utility corporation, it must not waive the due process procedures contained in the MPC

Even if the PUC determines that SPLP is a public utility corporation, § 619 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10619, requires that the PUC must holding a hearing and allow the municipality to appear and present testimony. Section 619 provides as follows:

This article shall not apply to 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. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

(emphasis added).

In Paragraph 22 of its Petition, SPLP asks the PUC to bypass this public hearing requirement. Thus, not only does SPLP want the PUC to deprive local government of its decision-making authority under zoning ordinances, but it also wants the PUC to deprive local government of a voice in the PUC process. Nothing in § 619 allows the PUC to skip the due process requirements set forth in that section.

The PUC has already denied SPLP's request in Paragraph 21 of the Petition to waive public notice of the Petition; it should similarly deny SPLP's request to deprive local government and its citizens of a voice before this Commission issues a decision. PSATS would respectfully contend that the PUC should hold numerous public hearings across the Commonwealth in order to fulfill its obligations under § 619 and to afford the public convenient access to the hearings.

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Robert F. Powelson, Chairman
April 21, 2014
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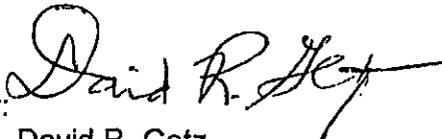
IV. Conclusion

Recent precedent from Pennsylvania's appellate courts make it clear that local government has an important role in the development of our natural resources. Thus, the PUC should conclude that SPLP is not a public utility corporation, and SPLP's Petition should be denied.

If the PUC determines that SPLP is a public utility corporation, the PUC is then required by the MPC to hold public hearings on SPLP's building plans. Those hearings should be held in the municipalities where the buildings that are proposed to house the pump stations and valve stations are to be constructed. Local municipalities can work in partnership, through the MPC, with the energy industry to take full advantage of reducing our dependence on foreign energy supplies.

Respectfully submitted,

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By: 
David R. Getz

cc: Pennsylvania State Association of Township Supervisors
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