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December 1, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Sunoco Pipeline L.P.'s Response in Opposition to the Concerned Citizens of West Goshen Township's Motion to Consolidate, Docket Nos. P-2014-2411966 and C-2014-2451943

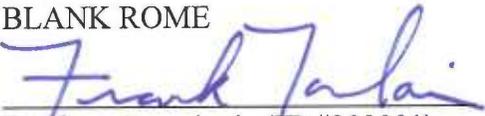
Dear Secretary Chiavetta,

Enclosed please find Sunoco Pipeline L.P.'s Response in Opposition to the Concerned Citizens of West Goshen Township's Motion to Consolidate the proceedings at Docket Numbers P-2014-2411966 and C-2014-2451943. A copy has been served in accordance with the enclosed certificate of service.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

BLANK ROME



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cc: Administrative Law Judge Elizabeth H. Barnes (via First-Class Mail and E-Mail)
Administrative Law Judge David A. Salapa (via First-Class Mail and E-Mail)
Certificate of Service

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

Concerned Citizens of West Goshen Township, Complainant	:	
	:	
v.	:	Docket No. C-2014-2451943
	:	
Sunoco Pipeline L.P., Respondent	:	
	:	
Petition of Sunoco Pipeline L.P., for a Finding That The Situation of Structures to Shelter Pump Stations and Valve Control Stations is Reasonably Necessary for the Convenience or Welfare of the Public in West Goshen Township, Chester County	:	Docket No. P-2014-2411966 ¹
	:	

RESPONSE OF SUNOCO PIPELINE L.P. IN OPPOSITION TO
THE CONCERNED CITIZENS OF WEST GOSHEN TOWNSHIP'S
MOTION TO CONSOLIDATE DOCKET NUMBERS
C-2014-2451943 AND P-2014-2411966

Pursuant to 52 Pa. Code §§ 5.61 and 5.81 of the rules and regulations of the Pennsylvania Public Utility Commission (the "Commission"), Sunoco Pipeline L.P., ("SPLP"), by its undersigned counsel, hereby responds in opposition to the Concerned Citizens of West Goshen Township ("CCWGT")'s Motion to Consolidate the above-captioned proceedings. In support thereof, SPLP submits that consolidation of these proceedings is inappropriate because (1) CCWGT's Complaint at Docket Number C-

¹ In addition to the Amended 619 Petition that Sunoco Pipeline, L.P. ("SPLP") has filed at Docket Number P-2014-2411966 pertaining to West Goshen Township, Chester County, SPLP has filed Amended 619 Petitions in thirty (30) additional townships at Docket Nos. P-2014-2411941, 2411942, 2411943, 2411944, 2411945, 2411946, 2411948, 2411950, 2411951, 2411952, 2411953, 2411954, 2411956, 2411957, 2411958, 2411960, 2411961, 2411963, 2411964, 2411965, 2411967, 2411968, 2411971, 2411972, 2411974, 2411975, 2411976, 2411977, 2411979, 2411980. None of these proceedings have been consolidated, and SPLP reiterates its express request that these dockets remain unconsolidated.

2014-2451943 (the “complaint proceeding”) raises issues of law and fact that are beyond the scope of SPLP’s Petition at Docket Number P-2014-2411966 (the “619 proceeding”) (2) consolidation would directly contravene the Commission’s October 29, 2014 Opinion and Order in the 619 proceeding which sets forth the limited scope of review applicable to 619 proceedings, and (3) consolidation will serve to unduly delay the 619 proceeding. In further support, SPLP submits as follows:

I. RELEVANT HISTORY OF THE PROCEEDING

1. On May 8, 2014, SPLP filed an Amended Petition Docket Number P-2014-2411966 and thirty (30) other dockets, collectively requesting a finding by the Commission that the structures to shelter 18 pump stations and 17 valve control stations for its Mariner East Project are reasonably necessary for the convenience or welfare of the public, and are therefore exempt from local zoning ordinances pursuant to Section 619 of the MPC. 53 P.S. § 10619

2. The Petition at Docket No. P-2014-2411966 requests a finding that the proposed situation of a building to house a pump station and related equipment near Boot Road in West Goshen Township, Chester County, Pennsylvania is reasonably necessary for the public welfare.

3. On July 30, 2014, Administrative Law Judges Salapa and Barnes issued an Initial Decision dated July 23, 2014, dismissing SPLP’s Amended Petitions, finding that the Commission lacked jurisdiction because SPLP is neither a “public utility” nor a “public utility corporation.”

4. By way of an Opinion and Order dated October 29, 2014, the Commission reversed the Initial Decision, and remanded the Amended Petitions for a determination of

whether the “buildings” at issue are reasonably necessary for the convenience or welfare of the public thereby entitling them to an exemption from local zoning ordinances.

5. In so doing, the Commission explicitly limited the scope of this, or any, 619 proceeding to the following two inquiries: (1) whether the Petitioner is a public utility corporation, and (2) whether the proposed buildings at issue are reasonably necessary for the convenience or welfare of the public. *Opinion and Order* (Oct. 29) at 12.

6. As to the first prong, the Commission instructed that the ALJ’s scope of review in the 619 proceeding should be limited to determining (1) whether the presumption has been rebutted that Sunoco is a “public utility” under the Code and, hence, a “public utility corporation” under the BCL, and (2) whether Sunoco’s proposed service is included within its existing authority, *i.e.*, whether Sunoco has provided credible evidence that it will be transporting propane and/or ethane, as proposed, through the territories for which it is certificated as a public utility.

7. More relevant to this motion, the Commission also clarified the scope of review regarding the second prong of the 619 inquiry by stating that that “the Section 619 analysis concerns only *proposed buildings* as described in each of Sunoco’s Amended Petitions and whether the ‘present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.’” *Opinion and Order* (Oct. 29) at 41 (emphasis in original).

8. Importantly, the October 29 Opinion and Order clarified that the following issues are outside the scope of this 619 proceeding:

- (1) a Certificate of Public Convenience;
- (2) authorization to build the Mariner East pipeline or any facilities attendant thereto (such as valve control or pump stations);
- (3) approval of the siting or route of the pipeline; or
- (4) *a finding that*

the proposed pipeline complies with relevant public safety or environmental requirements. Those issues are outside the scope of this proceeding.

Opinion and Order (Oct. 29) at 12 (emphasis added).

9. Moreover, the inquiry on remand should not address the siting of the valve and pump stations themselves, but rather should address whether the *proposed buildings* to shelter those facilities are reasonably necessary for the convenience and welfare of the public. *Opinion and Order* (Oct. 29) at 42. It is well-settled that a zoning exemption is not required for public utility facilities because municipalities do not have the power to zone with respect to utility structures other than buildings. See *Duquesne Light Co. v. Upper St. Clair Twp., et al.*, 377 Pa. 323, 105 A.2d 287 (1954).

10. On November 7, 2014, CCWGT filed a Complaint against SPLP, which was served on SPLP on November 20, 2014. The Complaint contains various allegations, notable for their lack of specificity, concerning public safety in connection with the construction and operation of the pump station at the Boot Road site in West Goshen Township.

11. Specifically, the Complaint makes the broad statement, without any support or explanation whatsoever, that “it would be unsafe and unreasonable to construct and operate a pump station on the Boot Road site” and requests that the Commission issue an order that prohibits SPLP from installing facilities near Boot Road in West Goshen Township, Chester County, that are unsafe and to order such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as are necessary to ensure the safety of the members of CCWGT. CCWGT Complaint, ¶ 8 and Requested Relief ¶¶ A & B.

12. CCWGT is now seeking to consolidate its Complaint with SPLP's Amended Petition in the 619 proceeding pertaining to Docket No. P-2014-2411966.

13. As discussed below, while the CCWGT's focus on safe operations is one shared by SPLP, consolidating these matters would be in direct contravention of the explicit Commission directive in the October 29 Opinion and Order, and would otherwise be inappropriate because, even if the CCWGT Complaint had intelligibly alleged any actual safety issues at all, which it did not, the ongoing Section 619 proceeding, and the CCWGT Complaint do not involve common questions of law or fact and would unduly delay the 619 proceeding by requiring the parties to incur costs and spend time litigating issues irrelevant to a 619 proceeding. Indeed, the issues CCWGT attempts to raise in the Complaint have specifically been ruled by the full Commission to be outside the issues to be dispatched in this Section 619 matter as they would be in any and all Section 619 cases.

II. OPPOSITION TO CCWGT'S MOTION TO CONSOLIDATE

14. Title 52 Pa. Code § 5.81(a) provides that "The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay."

15. In deciding this particular Motion, the analysis starts with the PUC Motion adopted on October 2, 2014 and its Opinion and Order of October 29th, which specifically state that the issues CCWGT is attempting to raise in its Complaint are not within the scope of the remaining issues in the Section 619 Petition pending here.

16. That should be dispositive for the purposes here. However, even if we were writing on a clean slate here, which we are not, we will discuss the other relevant factors for making a decision on a motion to consolidate to show also that none of those factors militate for consolidation here.

17. As a general matter, in deciding whether to consolidate in any case, the Commission or presiding officer must determine that the proceedings involve common questions of law or fact. *See, e.g., PA PUC v. Adamo Limousine, Inc., Order Consolidating Proceedings*, Docket Nos. C-2010-2180666 and C-2011-2262621 (Nov. 18, 2011).

18. Again, in this particular case, the PUC Motion adopted on October 2, 2014 and its Opinion and Order of October 29th specifically decide that the issues CCWGT is attempting to raise in its Complaint do not involve common questions of law or fact as do the brief list of remaining issues in this Section 619 matter.

19. Additionally, the Commission or the presiding officer must evaluate other considerations including, *inter alia*, whether the consolidation will unduly delay the resolution of one of the proceedings. *See Michler v. The Peoples Nat. Gas Co.*, 2008 Pa. PUC LEXIS 1094 (Dec. 1, 2008).²

20. In support of its motion, CCWGT states that the complaint proceeding and the 619 proceeding are “highly inter-related and involve common questions of law and/or fact” because (1) the two proceedings involve the same facilities, and (2) the Complaint

² Other considerations include: 1. Will the presence of additional issues cloud a determination of the common issues?; 2. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?; 3. Do issues in one proceeding go to the heart of an issue in the other proceeding?; 4. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?; 5. Will different statutory and legal issues be involved?; 6. Does the party with the burden of proof differ in the proceedings?; and 7. Will supporting data in both proceedings be repetitive?

is seeking a ruling concerning the reasonableness and safety of the construction and operation of the pump station on the Boot Road site, while the Amended Petition is seeking a ruling that it is in the public interest to enclose those facilities within a building.

21. In fact, and as the October 4 Motion and October 29 Opinion and Order make quite clear, the 619 proceeding and the complaint proceeding do not involve common questions of law and/or fact and consolidation should therefore be denied. *See, e.g., PA PUC v. UGI Corp.*, 1987 Pa. PUC LEXIS 42 (Nov. 23, 1987) (referencing the Commission's denial of a motion to consolidate for lack of common question of law in Docket Nos. C-21597, C-21598, C-21599, and C-21608); *see also Newtown Square East, L.P. v. Twp. of Newtown*, 38 A.3d 1008 (Pa. Cmwlth. Ct. 2011) (affirming denial of consolidation of two zoning related appeals due to lack of common questions of law or fact).

22. CCWGT misconstrues the scope of the ALJ's review on remand by equating a finding that the situation of the proposed buildings is "reasonably necessary for the convenience or welfare of the public" with a more general ruling concerning the reasonableness and safety of the construction and operation of a pump station.

23. As the Commission could not have made any clearer, the issue in the present matter is whether the situation of the proposed building in question is reasonably necessary for the public convenience. *Opinion and Order* (Oct. 29) at 41. A finding of whether the construction and operation of the pump station itself satisfies any relevant public safety requirements is clearly beyond the scope of the limited inquiry applicable to the 619 proceeding. *Opinion and Order* (Oct. 29) at 12, 42. Indeed, as explained above,

any finding with regard to the public utility facility (*i.e.* the pump station), whether it regards safety or siting, is beyond the scope of the 619 proceeding. *Id.*

24. While the scope of this Section 619 matter has been directed quite clearly by the Commission in its Motion of October 4 and Opinion and Order of October 29th, and should be dispositive here, it is useful to point out that the legal underpinning of both Commission decisions in this particular case is weighty and has been embedded in PUC law for ages. Indeed, the limited scope of review in a 619 proceeding set forth by the Commission is consistent with state and PUC precedent. In *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n*, 513 A.2d 593, 596 (Pa. Commw. Ct. 1986), the Commonwealth Court ruled that Section 619 only empowers the PUC to decide if there is reasonable necessity for the *site* of buildings. Furthermore, in determining whether a site is reasonably necessary, a public utility does not need to show absolute necessity or that the site chosen is the best site; instead, it need only show that the site chosen is “reasonably necessary...” for the convenience or welfare of the public. *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities in the Borough of West Wyoming, Luzerne County, To the Extent Considered To be Buildings under Local Zoning Rules, Are Reasonably Necessary for The Convenience or Welfare of the Public*, 2013 WL 6835113 (Pa. P.U.C. 2013); *see also O'Connor v. Pa. Pub. Util. Comm'n*, 582 A.2d 427, 433 (Pa. Commw. Ct. 1990).

25. Consolidation of these proceedings will not serve the interest of administrative efficiency because it will unduly delay the 619 proceeding by forcing the parties to devote considerable time and resources to litigating an issue – namely, the safety of the construction and operation of the pump station – which is outside the scope

of *any* 619 proceeding, and which the Commission has explicitly found to be outside the scope of *this* 619 proceeding.

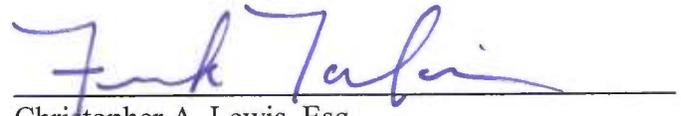
26. Consideration of the other factors applicable to a consolidation motion further demonstrates the inappropriateness of consolidation of these matters. First, as explained above, consolidation will not result in reduced costs of litigation and decision-making for the parties and the Commission. To the contrary, consolidation will enhance the costs of litigation by unduly delaying the 619 proceeding. Second, the issues raised in the complaint – namely, the safety of the construction and operation of the pump station – do not go to the heart of a 619 proceeding, in accordance with the Commission’s October 29 Opinion and Order and prior PUC and state court precedent limiting the scope of a 619 proceeding. Third, resolution of the issues of the complaint will produce a disorderly and unwieldy record by forcing the litigants, and the Commission, to address issues irrelevant to the 619 proceeding in addition to addressing the issues germane to a 619 proceeding. Fourth, different statutory and legal issues are involved because the safe operation of the pump station and the application of any safety requirements are not relevant to the limited scope of the 619 proceeding. Fifth, the proceedings will be unduly complicated because the party with burden of proof differs in each proceeding. In the 619 proceeding, SPLP has the burden of proving that the situation of the proposed buildings is reasonably necessary for the public welfare, whereas CCWGT has the burden in the complaint proceeding of proving that the construction and operation of pump station is unsafe or unreasonable. Finally, supporting data in each proceeding will not be duplicative because the issues germane to each proceeding are distinct and different evidence must be adduced to satisfy the respective burdens. Application of each of these factors, in

conjunction with the arguments above, demonstrates that consolidation is not appropriate in this instance.

WHEREFORE, in light of the above SPLP, respectfully requests that CCWGT's Motion to Consolidate be denied.

Respectfully submitted,

BLANK ROME LLP



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Dated: December 1, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2014, I caused a true copy of the foregoing document to be served upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via First Class Mail

Honorable Elizabeth H. Barnes P.O. Box 3265 Harrisburg, PA 17105-3265 <i>Also via email</i>	Honorable David A. Salapa P.O. Box 3265 Harrisburg, PA 17105-3265 <i>Also via email</i>
Hon. Dominic Pileggi Senate of Pennsylvania 350 Main Capitol Harrisburg, PA 17120	Hon. Dan Truitt House Of Representatives PO Box 202156 Harrisburg, PA 17120-2156
Tanya McCloskey, Esquire Aron J. Beatty, Esquire Office of Consumer Advocate 555 Walnut Street Forum Place – 5 th Floor Harrisburg, PA 17101-1921 <i>Also via email</i>	Johnnie Simms, Esquire Bureau of Investigation and Enforcement PA Public Utility Commission Commonwealth Keystone Building 400 North Street, 2nd Floor West Harrisburg, PA 17120 <i>Also via email</i>
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<p>Augusta Wilson, Esquire Joseph O. Minott, Esquire 135 S. 19th St Ste. 300 Philadelphia, PA 19103 Representing Clean Air Council <i>Also via email</i></p>	<p>Nick Kennedy, Esquire 1414-B Indian Creek Valley Road PO Box 408 Melcroft, PA 15462 Representing Mountain Watershed Association</p>
<p>Francis J. Catania, Esquire J. Michael Sheridan, Esquire 230 N. Monroe Street Media, PA 19063 Representing Upper Chichester Township</p>	<p>Adam Kron, Esquire 1000 Vermont Ave. NW Suite 1100 Washington DC 20005 Representing Environmental Integrity Project <i>Also via email</i></p>
<p>Scott J. Rubin, Esquire 333 Oak Lane Bloomsburg, PA 17815 Representing Concerned Citizens of West Goshen Township <i>Also via email</i></p>	<p>Thomas Whiteman, Esquire Solicitor, Chester County 313 W. Market Street, Suite 6702 P.O. Box 2748 West Chester, PA 19380-0991 <i>Also via email</i></p>
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<p>Mayor Gene Taylor / Brian Mercadante Borough of Marcus Hook 10th & Green Streets Marcus Hook, PA 19061</p>	<p>Mary Leitch 526 Reed St Philadelphia, PA 19147 artbymal@live.com <i>Also via email</i></p>
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