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December 8, 2014

VIA ELECTRONIC FILING

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

Re: Preliminary Objections of Petitioner Sunoco Pipeline, L.P. to the Answer
and New Matter of West Goshen Township
Docket No. P-2014-2411966

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter is the Preliminary Objections of Petitioner Sunoco Pipeline, L.P. to the Answer and New Matter of West Goshen Township, along with a Certificate of Service evidencing service upon the parties of record in accordance with 52 Pa. Code § 1.54 (relating to service by a party).

Thank you for your attention to this matter.

Respectfully,



Melanie S. Carter

MSC/arc
Enclosure

cc: Certificate of Service List (*via U.S. Mail*)

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

Petition of Sunoco Pipeline, L.P., for a	:	
Finding that the Situation of Structures to	:	Docket No. P-2014-2411966
Shelter Pump Stations and Valve Control	:	
Stations is Reasonably Necessary for the	:	
Convenience or Welfare of the Public	:	
in West Goshen Township, Chester County	:	
	:	

NOTICE TO PLEAD

TO: West Goshen Township, Intervenor

The attached Preliminary Objections of Sunoco Pipeline, L.P. (“SPLP”) have been filed with the Pennsylvania Public Utility Commission in the above-captioned proceeding. If you wish to respond to the Preliminary Objections, you must, pursuant to the provisions of 52 Pa. Code § 5.101(f), take action within ten (10) days after these Preliminary Objections are served by filing a response with the Secretary of the Pennsylvania Public Utility Commission and serving a copy of that response upon all parties of record. You are warned that if you fail to do so, the case may proceed without you and an order or a judgment may be entered against you by the Commission without further notice.

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

Petition of Sunoco Pipeline, LP, for a	:	Docket No. P-2014-2411966
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	:	
	:	

**PRELIMINARY OBJECTIONS OF PETITIONER SUNOCO PIPELINE, L.P.
TO THE ANSWER AND NEW MATTER OF WEST GOSHEN TOWNSHIP**

Sunoco Pipeline, L.P. (“SPLP”), by and through the undersigned counsel, and pursuant to the provisions of 52 Pa. Code § 5.101, files these Preliminary Objections to the Answer and New Matter of West Goshen Township. In support of the Preliminary Objections, SPLP states as follows:

I. West Goshen Township’s Answer and New Matter Are Untimely

1. On May 8, 2014, SPLP filed an Amended Petition requesting a finding that structures (which may constitute buildings) to shelter a pump station in West Goshen Township are reasonably necessary for the convenience and welfare of the public and, therefore, are exempt from any local zoning, subdivision, and land development ordinances or regulation pursuant to 53 P.S. § 10619 of the Municipal Planning Code (“MPC”).

2. Under the Commission’s rules, an answer to a petition, or an amendment thereof, must be filed within 20 days after the date of service. 52 Pa. Code §§ 5.61(a), 5.65(a).

3. Parties may also file preliminary objections to an amended petition by raising one or more of the following objections under 52 Pa. Code § 5.101(a):

a. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

- b. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- c. Insufficient specificity of a pleading.
- d. Legal insufficiency of a pleading.
- e. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- f. Pendency of a prior proceeding or agreement for alternative dispute resolution.
- g. Standing of a party to participate in the proceeding.

4. Under the Commission's rules, "[i]f a preliminary objection regarding insufficient specificity in a pleading is filed, an answer is not required until further directed by the presiding officer or the Commission." 52 Pa. Code § 5.101(e)(1).

5. West Goshen Township was served a copy of SPLP's Amended Petition via First Class Mail on May 8, 2014.

6. Under the Commission's rules, "[u]nless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party and the document is served by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period." 52 Pa. Code § 1.56(b).

7. As a result, West Goshen Township had until no later than June 2, 2014 to file an answer or preliminary objections to the Amended Petition.

8. West Goshen Township failed to file an answer or preliminary objections by June 2, 2014.

9. Notice of SPLP's Amended Petition was published in the May 24, 2014 *Pennsylvania Bulletin*, 44 Pa. B. 3204-3215, which specified a deadline of June 9, 2014 for filing formal protests, comments, or petitions to intervene in the above-captioned proceeding.

10. Even if the May 24, 2014 *Pennsylvania Bulletin* Notice could be construed as tolling the deadline for filing answers and preliminary objections until June 9, 2014, West Goshen Township still failed to file an answer or preliminary objections by June 9, 2014.

11. On June 9, 2014, West Goshen Township filed a Protest to the Amended Petition on June 9, 2014. That Protest, however, did not allege that the Amended Petition was insufficiently specific.

12. The Administrative Law Judges' initial opinion recommending that certain preliminary objections be sustained, issued on July 30, 2014, did not toll West Goshen Township's deadline for filing an answer or preliminary objections to the Amended Petition because the deadline had already expired no later than June 2, 2014.

13. West Goshen Township failed to preserve its right to file an Answer to the Amended Petition under 52 Pa. Code § 5.101(e)(1) because it never filed any preliminary objections and, accordingly, failed to object to the Amended Petition on the basis of insufficient specificity.

14. On November 17, 2014, more than six months after the filing of the Amended Petition, West Goshen Township filed an Answer and New Matter to the Amended Petition.

15. West Goshen Township's Answer and New Matter is untimely because it fails to conform to Title 52 of the Pennsylvania Code, namely 52 Pa. Code §§ 5.61(a), 5.65(a), and SPLP respectfully requests that it be stricken from the record.

16. Further, under the Commission's rules, "[a] respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the *pleadings* may be deemed admitted." 52 Pa. Code § 5.61(c) (emphasis added).

17. The Commission has held that "a Respondent who or which fails to file an answer shall be deemed to be in default, and relevant facts stated in the complaint *or petition* may be deemed admitted." *Deresky v. Winona Lakes Utilities, Inc.*, 2000 Pa. PUC LEXIS 8 (Pa. PUC Jan. 25, 2000) (emphasis added).

18. West Goshen Township's Answer and New Matter is untimely because it fails to conform to Chapter 5 of Title 52 of the Pennsylvania Code, namely 52 Pa. Code §§ 5.61(a), 5.65(a), and, therefore, SPLP respectfully requests that the Commission deem West Goshen Township to be in default and find that relevant facts stated in the Amended Petition be deemed admitted by West Goshen Township.

II. West Goshen Township's Answer and New Matter Are Comprised of Impertinent Information and Are Legally Insufficient

19. The Commission has ruled that the *only* issue in this proceeding is whether the *siting* of the structures that will house the Boot pump station are reasonably necessary for the convenience and welfare of the public. *See Opinion and Order* (Oct. 29) at 41; Prehearing Order #1 Granting Interventions (Dec. 1, 2014); *see also Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n*, 513 A.2d 593, 596 (Pa. Commw. Ct. 1986).

20. In the Commission's October 29, 2014 Opinion and Order, the Commission declared that SPLP "is not seeking (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.” *See Opinion and Order* (Oct. 29) at 12.

21. In the Commission’s October 29, 2014 Opinion and Order, the Commission stated that “the inquiry on remand should not address whether it is appropriate to place the valve and pump stations in certain areas.” *See Opinion and Order* (Oct. 29) at 42.

22. In the Commission’s October 29, 2014 Opinion and Order, the Commission stated that West Goshen Township’s participation in this proceeding is “limited to issues arising from the shelter buildings.” *Id.*

23. Paragraphs 43 through 46 of West Goshen Township’s New Matter each address whether the pipeline complies with relevant public safety or environmental requirements, which is outside the scope of this proceeding.

24. Paragraphs 47 through 49 of West Goshen Township’s New Matter each address the siting or route of the pipeline and whether the pipeline complies with relevant public safety or environmental requirements, which are outside the scope of this proceeding.

25. Paragraph 50 of West Goshen Township’s New Matter addresses the siting of the pump station, which is outside the scope of this proceeding.

26. Paragraph 51 of West Goshen Township’s New Matter broadly addresses the entire site at which the Boot pump station is located, which is outside the scope of this proceeding.

27. Paragraph 52 of West Goshen Township’s New Matter addresses the siting of the pump station and “associated facilities,” which is outside the scope of this proceeding.

28. Paragraph 53 of West Goshen Township’s New Matter addresses the siting of the pump station and also addresses the siting or route of the pipeline and whether the pipeline

complies with relevant public safety or environmental requirements, which are outside the scope of this proceeding.

29. Paragraph 54 of West Goshen Township's New Matter addresses the siting of the pump station and valve station and also addresses the siting or route of the pipeline and whether the pipeline complies with relevant public safety or environmental requirements, which are outside the scope of this proceeding.

30. Paragraph 55 of West Goshen Township's New Matter addresses the need for a Certificate of Public Convenience and also addresses construction of the Mariner East project generally, which are outside the scope of this proceeding.

31. "Impertinent matter concerns those statements in a pleading that are legally irrelevant to the cause of action and these statements or matters are subject to being stricken." *Adamo Peters, LLC v. PUC*, 2011 Pa. PUC LEXIS 1526 (citing *Jefferies v. Hoffman*, 417 Pa. 1, 207 A.2d 774 (1965)); *Kadeeia McIver v. PUC*, 2011 Pa. PUC LEXIS 1641 (Pa. PUC June 24, 2011).

32. Paragraphs 43 through 55 of West Goshen Township's New Matter are comprised of impertinent matter which is irrelevant and outside the scope of this proceeding, 52 Pa. Code § 5.101(a)(2), and, therefore, SPLP respectfully requests that paragraphs 43 through 55 of West Goshen Township's New Matter be stricken from the record, and SPLP should be relieved of any duty to reply to these paragraphs, or else West Goshen Township be required to amend its New Matter to comply with Commission orders determining the scope of the above-captioned proceeding.

33. Where arguments raised in an answer fall outside the scope of the proceeding, those arguments are deemed legally insufficient. *See Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, 2014 Pa. PUC LEXIS 391 (August 20, 2014).

34. As a result of West Goshen Township's disregard of the Commissioners' directive in its October 29, 2014 Opinion and Order, which determined the scope of the above-captioned proceeding, West Goshen Township's Answer and New Matter is legally insufficient, 52 Pa. Code § 5.101(a)(4), and, therefore, SPLP respectfully requests that it be stricken from the record, or else that West Goshen Township be required to amend its Answer and New Matter to comply with the Commission's orders determining the scope of this proceeding.

III. West Goshen Township's Failure to Provide Grounds for Safety-Related Allegations Renders its Answer and New Matter Insufficiently Specific and Legally Insufficient

35. Paragraphs 43 through 55 of West Goshen Township's New Matter either directly assert, or are used to support direct assertions, that certain pipeline facilities operated by SPLP in West Goshen Township are unsafe.

36. SPLP's pipeline facilities are subject to extensive federal PHMSA safety regulations found generally at 49 C.F.R. Subchapter D.

37. While generally noting that federal PHMSA safety regulations apply to the pipeline, Paragraphs 43 through 55 of West Goshen Township's New Matter fail to identify any specific violation of the applicable regulations.

38. SPLP has complied, is complying, and will continue to comply with all applicable federal PHMSA safety regulations, and West Goshen Township's New Matter contains no averments to the contrary.

39. West Goshen Township's failure to raise nothing more than vague concerns about safety is insufficiently specific and legally insufficient to raise a genuine issue to be adjudicated

in this proceeding. Therefore, SPLP respectfully requests that paragraphs 43 through 55 of West Goshen Township's New Matter be stricken from the record or else amended within a reasonable period of time to cure these deficiencies. *See Lindsay v. PECO Energy Company*, 2009 Pa. PUC LEXIS 790 (Feb. 27, 2009); 52 Pa. Code § 5.101(e).

WHEREFORE, Sunoco Pipeline, L.P. respectfully requests that the Commission grant its Preliminary Objections to the Answer and New Matter filed by West Goshen Township and 1) find that West Goshen Township waived its right to file an Answer and New Matter, 2) strike West Goshen Township's Answer and New Matter as untimely, 3) deny West Goshen Township's requests for affirmative relief set forth in the Answer and New Matter, 4) deem West Goshen Township's failure to file a timely answer as an admission of all relevant facts stated in the Amended Petition, 5) strike paragraphs 43 through 55 of West Goshen Township's New Matter, 6) find that West Goshen Township's Answer and New Matter is insufficiently specific and legally insufficient, and 7) grant SPLP's Amended Petition filed in the above-captioned proceeding.

Respectfully submitted,

BLANK ROME LLP



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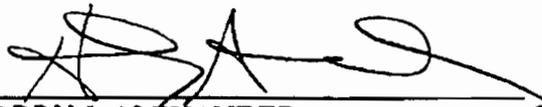
Fax: (215) 832-5793

Counsel for Sunoco Pipeline, L.P.

Dated: December 8, 2014

VERIFICATION

Harry J. Alexander deposes and says he is Vice President, Business Development of Sunoco Pipeline L.P.; that he is duly authorized to and does make this Verification on behalf of Sunoco Pipeline L.P.; that the facts set forth in the foregoing Preliminary Objections of petitioner Sunoco Pipeline, L.P. to the Answer and New Matter of West Goshen Township are true and correct to the best of his knowledge information and belief; and that this verification is made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


HARRY J. ALEXANDER

DATED: December 8, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December, 2014, I caused a true copy of the Preliminary Objections of Petitioner Sunoco Pipeline, L.P. to the Answer and New Matter of West Goshen Township to be served upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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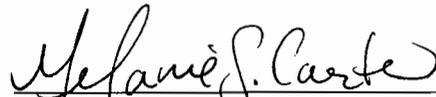
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