

**BEFORE THE  
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.

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**Notice to Plead**

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**To: Sunoco Pipeline L.P., through its attorneys:**

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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 Delaware Riverkeeper Network and the Delaware Riverkeeper (“DRN”) within ten (10) days from service of this Notice, the facts set forth by DRN in its 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 DRN, and the Administrative Law Judge presiding over the case.

**Dated: June 5, 2014**

*/s/ Aaron Stemplewicz*

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**Preliminary Objections of Delaware Riverkeeper Network  
Pursuant to Sunoco Pipeline L. P.’s Amended Petitions**

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1. Pursuant to 52 Pa. Code § 5.101 the Delaware Riverkeeper Network and the Delaware Riverkeeper, Maya van Rossum (“DRN”), submit the following Preliminary Objections with regard to Sunoco Pipeline L.P.’s (“Sunoco”) Amended Petitions for a Finding That the Situation of Structures to Shelter Pump Station and Valve Control Stations is Reasonably Necessary for the Convenience and Welfare of the Public (“Petition”). DRN requests that the Pennsylvania Public Utility Commission (“Commission”) deny Sunoco’s Amended Petitions.

2. DRN is a non-profit organization established in 1988 to protect and restore the Delaware River, its associated watershed, tributaries, and habitats. This area includes 13,539 square miles, draining parts of Pennsylvania, New Jersey, New York and Delaware, and it is within this region that a portion of the Project’s construction activity will take place. Maya van Rossum is the Delaware Riverkeeper, the head of the Delaware Riverkeeper Network and lead advocate for the protection and restoration of the Delaware River, its tributary streams and

watershed. In her role as the Delaware Riverkeeper van Rossum advocates for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its tributaries, ecosystems and habitats.

3. The Upper Delaware River is a federally designated “Scenic and Recreational River” administered by the National Park Service. The National Wild and Scenic Rivers System also includes parts of the Lower Delaware River as far down as Washington Crossing and the Middle Delaware which includes the Delaware Water Gap. The Delaware River watershed and River are home to a number of federal and state listed endangered or threatened species including the Dwarf wedgemussel, Indiana bat, Bog turtle, Shortnose sturgeon, Atlantic Sturgeon, Loggerhead and Kemp’s idle sea turtles, and Northeastern bulrush. Over 200 species of migratory birds have been identified within the drainage area of the Upper Delaware River within the Basin, including the largest wintering population of bald eagles within the Northeastern United States. Migratory birds breed in or migrate through the high quality riparian corridors of the Watershed. The Delaware River and Delaware Bay are also home to dozens of species of commercially and recreationally important fish and shellfish species.

4. In its efforts to protect and restore the Delaware River and its tributary streams, DRN organizes and implements stream-bank restorations, a volunteer monitoring program, educational programs, environmental advocacy initiatives, recreational activities, and environmental law enforcement efforts throughout the entire Delaware River Watershed. DRN is a membership organization headquartered in Bristol, Pennsylvania, with more than 14,000 members with interests in the health and welfare of the Delaware River, its tributary streams and its watershed. DRN is uniquely qualified to comment on and provide relevant information concerning associated impacts to human health and the environment as a result of Sunoco’s Amended

Petitions. DRN brings this action on its own behalf and on behalf of its members, board, and staff.

5. DRN, on behalf of its 14,000 members and the public interest, have a direct and concrete interest in the outcome of Sunoco's Amended Petitions. A substantial portion of the facilities, and the associated construction and operational impacts resulting therefrom, are proposed to be within the Delaware River watershed, and multiple subwatersheds of tributary streams.

6. These facilities include, but are not limited to, the pump stations in Spring Township, Brecknock Township, Upper Uwchlan Township, West Goshen Township, and Upper Chichester Township; as well as the valve control stations in Spring Township, and Wallace Township. DRN has members in the each of the aforementioned townships.

7. DRN is concerned that if these facilities are exempted from local zoning ordinances the construction and operation of the facilities will result in substantial and irreparable harm to the health and quality of impacted streams, to human health, the environment, and the aesthetic values of the community.

8. Sunoco has proposed developing a pipeline project called Mariner East ("Project"), which involves a combination of the construction of new pipeline facilities and the use of existing pipeline facilities that will transport ethane, propane, liquid petroleum gas, and other petroleum products. The origination point of the Project will be in Houston, Pennsylvania and the delivery point will be located in Claymont, Delaware, within the Marcus Hook Refinery Complex. *See* Amended Petitions at 8 – 10.

9. The purpose of the Project is to increase transportation infrastructure for the movement of Marcellus Shale resources, specifically the natural gas liquids ethane and propane ("NGLs"). Sunoco has averred that the pipeline "will transport the NGLs to a Sunoco, Inc. terminal in

eastern Pennsylvania and Delaware for storage, processing, and subsequent transportation to alternative markets by water or truck.” See Order Granting Petition for Declaratory Relief, 142 FERC ¶ 61,115 (Feb. 15, 2013) (Docket No. OR13-9-000).

10. While Sunoco has not specifically identified the market for the NGLs, Sunoco has stated before the Federal Energy Regulatory Commission (“FERC”) that there are “no major markets in the Northeast United States.”<sup>1</sup> *Id.* Sunoco has also stated before FERC that the Mariner East Project is anticipated to have an initial capacity to transport approximately 72,250 barrels per day of NGLs and can be “scaled to support higher volumes as needed.”<sup>2</sup> The Commission is aware of the facts contained within Sunoco’s filings before the FERC as it submitted a motion to intervene in the matter. See Motion to Intervene of Pennsylvania Public Utility Commission in OR13-9 (accession no. 20130104-5105).

11. Sunoco's Petitions describe that the Mariner East Project will require the construction of 17 valve stations in 15 different municipalities, and the construction of 18 pumping stations in 18 different municipalities. The purpose of Sunoco’s Petitions is to request an exemption from section 619 of the Pennsylvania Municipalities Planning Code (“MPC”) for the construction of these facilities, and thereby prevent local municipalities from applying their zoning ordinances to the proposed construction activities.

12. Sunoco does not meet the statutory or legal standard for classification as a public utility corporation and, therefore is not exempt from 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619). Furthermore, a grant of Sunoco’s Petitions is prohibited by Article I

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<sup>1</sup> *Ethane Disposition Poses Risk for Marcellus Production*, Oil & Gas Financial Journal, Sept. 10, 2010 (stating that an overabundance of “must-recover ethane” is leading to ethane oversupply and limitations on gas shipments).

<sup>2</sup> See <http://www.sunocologistics.com/Customers/Business-Lines/Natural-Gas-Liquids-NGLs/NGL-Projects/208/>.

Section 27 of the Pennsylvania Constitution. Lastly, even if Sunoco qualifies as a public utility corporation, and its Petitions were not constitutionally barred, Sunoco's Amended Petitions must still be denied because the situation of structures is not reasonably necessary for the convenience or welfare of the public.

**I. Sunoco's Improper Segmentation Of Its Project Does Not Qualify It For An Exemption Pursuant To The Municipalities Planning Code.**

13. Sunoco's Amended Petitions are a thinly veiled attempt to improperly segment its Mariner East Project into "phases" in order to manipulate the way in which the Project is classified and regulated by the Commission. Sunoco is unable to point to any source of authority that suggests that a pipeline project may be partitioned into pieces for the purposes of meeting the statutory or legal standards for receiving an exemption from the Commission. Indeed, such an authorization by the Commission would be as unprecedented as it would be ill-conceived.

14. On March, 21 2014, Sunoco filed 31 Petitions before the Commission describing its project as originating in Houston Pennsylvania and terminating in Claymont Delaware at the Marcus Hook Refinery complex. Sunoco's Petitions at 3. DRN and other interested parties submitted preliminary objections and other protest letters demonstrating that the proposed Project failed to meet the standards for an exemption from local zoning ordinances. In response to these objections on April 29, 2014, Sunoco notified the Commission that it would be filing Amended Petitions.

15. In the Amended Petitions Sunoco endeavors to shift the goalposts, and proposes a fundamental re-characterization of the Project itself and the legal justification for the exemptions. However, despite Sunoco's superficial changes to the description of the Project, the Amended Petitions prove to be just as deficient as Sunoco's original Petitions.

16. Sunoco's Amended Petitions attempt to extricate a small portion of the overall Mariner East Project, and use it as the basis for an exemption from local zoning ordinances. *See* Amended Petitions at 8 – 10. Sunoco explains that it:

had initially prioritized for the Mariner East pipeline system to provide interstate transportation of ethane and propane from west-to-east. Given the increased interest expressed by shippers in securing intrastate pipeline transportation facilities sooner than originally anticipated, and in recognition of the public interest in ensuring adequate pipeline capacity to meet peak demand for propane during the winter season, SPLP is able to answer shipper demand and the public interest and now has acted to offer intrastate service as well along the existing pipelines, and will further be able to offer more intrastate service pipeline capacity and more destinations within the Commonwealth upon full completion of the Mariner East pipeline system.

Amended Petitions at 9. Sunoco, then describes the way in which the fragmented portion of the Project will involve the transportation of 5,000 barrels per day of propane to Twin Oaks, and details how Sunoco will later apply to the Commission for approval of this method of transportation. *See* Amended Petitions at 9 – 10. Sunoco avers that this partitioned intrastate transportation of NGLs supports its request for exemptions pursuant to the MPC.

17. However, Sunoco conspicuously fails to provide in the Project description – or anywhere else in its Amended Petitions – a description of the full size and scope of the Mariner East Project. If a full description were provided, it would demonstrate that the Project's primary purpose is to deliver 72,500 barrels per day of NGLs from Houston, PA to Sunoco's Marcus Hook refinery, where it would then be processed and exported abroad to a market that has yet to be specifically identified. *See* Petition for Declaratory Order of Sunoco Pipeline L.P., Accession No. 20121207-5161 (Dec. 7, 2012) (Docket No. OR13-9-000) (Sunoco has not attempted to amend or modify the FERC Order).

18. As such, it is plainly obvious that the foundation of Sunoco's Amended Petitions relies solely on the segmenting of a very small portion of the overall Project to justify the requested

exemptions for its facilities. This is exemplified by the fact that the 5,000 barrels per day of propane throughput of the segmented portion of the Project that is proposed to be transported to Twin Oaks represents a mere 7% of the total Project capacity.

19. The facilities that Sunoco is proposing to exempt from local zoning ordinances are not sized to meet the needs of 5,000 barrels per day of pipeline transportation; rather, the facilities are sized, scoped, and designed to facilitate the movement of 72,500 barrels per day of pipeline transportation. While Sunoco attempts to justify the requested exemptions by segmenting a small portion of the overall project, the record before the Commission demonstrates that the facilities themselves were specifically designed to serve the Mariner East Project *as a whole*.

20. Sunoco's misplaced reliance on the partitioned portion of its Mariner East Project to support its request is further confirmed by Exhibit E provided in Sunoco's Amended Petitions. Sunoco states that Exhibit E "contains a graph demonstrating that the location of the pump stations are based on where the amount of fluid energy is dropping below sub-optimal levels." Indeed, Sunoco heavily relies on this graph to demonstrate that the location of the pumping stations is necessary. Amended Petitions at 13.

21. However, even a cursory review of Exhibit E reveals that Sunoco did not determine the optimal location of the pump stations based on a 5,000 barrel per day transportation profile; instead, Sunoco based all of its calculations, and therefore the siting of its facilities, on a 72,500 barrel per day transportation profile.

22. Therefore, Sunoco is requesting an exemption for pumping facilities based on a production profile that is specifically in contemplation of a 72,500 barrel per day transportation capacity. If Sunoco were basing the location of the pump stations on the production profile of its segmented intrastate 5,000 barrel per day transportation throughput, the physical location and

number of pump stations would be dramatically different from what is proposed in Exhibit E. Simply stated, the Project would not be able to physically operate, as designed, based on only a 5,000 barrel per day capacity. As such, it would be improper and an abuse of discretion for the Commission to base its decision on Sunoco's requested exemptions relying only upon the segmented phase of Sunoco's Mariner East Project.

23. Furthermore, Sunoco has failed to provide any economic data that suggests that the Mariner East Project could proceed absent the 67,500 barrels per day of NGLs that will be transported to the Marcus Hook Refinery. There is no independent economic justification for the Project solely based on the 5,000 barrel per day capacity.

24. Sunoco has stated that “[t]he Mariner East Project will require a large capital investment by [Sunoco] in new and converted pipeline infrastructure. Because of the investment required, *success of the Mariner East Project depends on the support of committed shippers.*” See Petition for Declaratory Order of Sunoco Pipeline L.P. (Docket No. OR13-09) (Dec. 7, 2013) (emphasis added). The shippers referenced by Sunoco are the shippers for the 72,500 barrels per day of throughput. *Id.* As such, the economic viability of the segmented portion of the Project directly relies on the implementation of the Mariner East Project as a whole.

25. The Commission cannot rely on the belated addition of the Twin Oaks takeoff point as the basis for Sunoco's Amended Petitions when the Project depends – both functionally and economically – on the transportation of NGLs to the Marcus Hook complex. Therefore, any review of Sunoco's Amended Petitions must be considered in the context of the Mariner East Project as a whole, and not superficially narrowed in scope and context to a review of only the segmented phase of the Project. As described below, such a review would show that Sunoco's Amended Petitions must be dismissed, as Sunoco does not meet the statutory or legal standard

for being classified as a public utility corporation. Furthermore, sanctioning Sunoco's request would encourage future project applicants to flood the Commission with partitioned applications for projects as an end-around the statutory and legal requirements they would otherwise be subject to following.

**II. Sunoco's Mariner East Project Does Not Meet the Standard To Be Classified As A "Public Utility Corporation."**

26. Sunoco is regulated by the FERC as a common carrier for the purposes of its Mariner East Project, and therefore, does not meet the standard of being a public utility corporation pursuant to the MPC. Sunoco points to no case law or administrative decisions supporting the proposition that a company regulated by FERC as a common carrier for the interstate transportation NGLs was also classified as public utility corporation pursuant to the MPC. As such, the Commission is compelled to deny Sunoco's Petitions.

27. The Commission's jurisdiction to review Sunoco's Petition arises out of the MPC, where the Commission may consider whether an exemption from zoning, subdivision, and land development ordinances is appropriate for any "public utility corporation." 53 P.S. § 10619. The term "public utility corporation" is not defined pursuant to the MPC; however, it is defined in Section 1103 of the Business Corporation Law ("BCL"), which states:

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. General rules of statutory construction require that the Commission interpret the term "public utility corporation" in the MPC consistently with the way in which it the term is defined in the BCL. 1 Pa. C.S. § 1932.

28. Sunoco is regulated by FERC as a *common carrier* in the context of its Mariner East Project, pursuant to the Interstate Commerce Act (“ICA”). *Id.*

29. The ICA regulates common carriers, not public utilities. 49 U.S.C. § 1(b). Indeed, the ICA explicitly and irrefutably articulates that liquids pipeline companies, such as Sunoco, are regulated as common carriers. For example, the ICA states that it applies to “common carriers engaged in . . . [t]he transportation of oil . . . by pipeline.” 49 USC § 1 (1988); 15 USC § 717. As a result of FERC’s regulation of Sunoco as a common carrier, Sunoco cannot meet the standard articulated in 15 Pa. C.S. § 1103.

30. Further, Sunoco itself has recognized and admitted that it is regulated as a common carrier. On December 7, 2012 Sunoco submitted a Petition for Declaratory Order to FERC pursuant to the ICA where it specifically characterized itself as a common carrier. *See* Petition for Declaratory Order of Sunoco Pipeline L.P., Accession No. 20121207-5161 (Dec. 7, 2012) (Docket No. OR13-9-000). In support of its December 7, 2012 FERC Petition, Sunoco cited three specific provisions of the ICA that identify Sunoco as being regulated as a common carrier:

ICA Section 1(1) states that the Act applies “to common carriers engaged in . . . [t]he transportation of oil . . . by pipe line . . . from one State . . . to any other State.” 49 U.S.C. app. § 1(1)(b) (1988). Section 1(3) of the Act defines the term “common carrier” to include “all pipeline companies . . . and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire.”

ICA Section 1(4), which embodies the common carrier obligation of the Act, provides that: “It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable requests thereof . . .”

ICA Section 3(1) prohibits undue preference for or prejudice against particular shippers or classes of shippers. It provides: “It shall be unlawful for any common carrier . . . to make, give, or cause any undue or unreasonable preference or advantage to any particular person . . . or any particular description of traffic, in any respect whatsoever; or to subject any particular person . . . or any particular description of traffic to any undue burden or unreasonable prejudice or disadvantage in any respect whatsoever . . .”

*Id.* at 8-9. Moreover, in the instant matter, Sunoco admits in its Petitions that it “is a federally regulated *common carrier* under the ICA.” Sunoco Petitions, at 6 (emphasis added). The law provides that only those entities subject to regulation specifically as a public utility can seek exemption from 616 of the MPC; here, FERC has clearly chosen to regulate Sunoco as a common carrier. As a result, Sunoco simply does not meet the express definition of a public utility pursuant to the BCL, and by reference the MPC. When the law is clear and explicit, the legislative language controls and the matter does not progress to the subjective consideration of legislative intent. 1 Pa. C.S.A. § 1921.

31. However, even if the Commission were to consider legislative intent, it weighs heavily in favor of a denial of the Amended Petitions. In the 1930s pipeline companies “successfully urged Congress to impose a different form of regulation” on the gas pipeline industry than the regulatory regime for liquids. Bosselman, et al., *Energy, Economics and the Environment* (2010, Third Edition), Foundation Press, at 491. As a result, in the Natural Gas Act of 1938 Congress made a policy decision and “instructed [FERC] to regulate interstate pipelines as if they were utilities.” *Id.* Congress had the clear opportunity in the 1930s to choose to regulate gas pipelines the same way it regulates liquids pipelines; however, Congress explicitly chose to deploy a completely different regulatory regime. This clear choice by Congress must be respected by the Commission.

32. Furthermore, the Court of Common Pleas in York County already thoroughly examined whether or not Sunoco is a public utility corporation and denied Sunoco’s request. *See Sunoco v. Loper, et al.*, York County Court of Common Pleas (Docket No. 2013-SU-4518-05) (February 26, 2014), *reconsideration denied* (March 25, 2014). In *Loper*, Sunoco argued it was a public utility corporation under the BCL because it was regulated as a public utility by FERC, and as a

result Sunoco had eminent domain rights pursuant to the BCL. *Id.* at 3-5. The Court disagreed, and found that because Sunoco was regulated as a common carrier by FERC, that it was not a public utility corporation and was not entitled eminent domain powers. *Id.* at 4. Sunoco's re-characterization of its Project does not change this analysis, and as such, Sunoco's Amended Petitions should be rejected.

33. Reeling from its defeat in *Loper*, it is clear that Sunoco is merely attempting here to take another bite of the apple hoping for a different result. However, neither the record before the Commission, nor the state of the supporting case law warrants such a result.

**III. Sunoco's Mariner East Project Does Not Qualify It As A Public Utility Pursuant to 66 Pa. C.S. §102.**

34. Additionally, Sunoco argues under the mistaken presumption that because it has previously held Certificates of Public Convenience, it therefore qualifies Sunoco as a public utility corporation under the Municipalities Planning Code for the Mariner East Project. Notwithstanding the fact that Sunoco has yet to receive a Certificate of Public Convenience for the transportation of NGLs to its Marcus Hook or Twin Oaks facilities, Sunoco has also failed to demonstrate it meets the standards under 66 Pa. C.S. §102 to be classified as a public utility for the purposes of the proposed Project.

35. Sunoco's Project does not qualify it as a public utility under any of the eight requisite categories defined in 66 Pa. C.S. §102. *See* 66 Pa. C.S. §102(1)(i-viii). The only category under §102 that Sunoco's Project could qualify under is if the proposed project "[t]ransport[s] or convey[s] 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(1)(v).

36. The Pennsylvania Supreme Court has examined the meaning of “to or for the public” found within §102, and concluded that “the public or private character of the enterprise does not depend...upon the numbers of persons by whom it is used, but upon whether or not it is open to the use and service of all members of the public who may require it.” *Drexelbrook Associates v. Pennsylvania Public Utility Commission*, 418 Pa. 430, 435 (1965) (citations omitted) (finding that an owner/management company of ninety buildings that furnished utilities, including water, was not a “public utility.”). The Court held that it is the indefinite and unrestricted quality of distribution that gives it the public character. *Id.* In other words, the public must be privileged to demand service. *Id.* at 436. The Court found in *Drexelbrook* that the utilities were being provided to a special class of persons, not a class open to the indefinite public. *Id.* at 436; *see also Aronimink Transportation Co. v. Public Service Commission*, 111 Pa.Super. 414, 170 A. 375 (1934).

37. Sunoco’s Amended Petitions fail to sufficiently identify what members of the public will be served by the Project. Indeed, Sunoco makes only vague reference to public consumption of the ethane and propane that is to be transported to Twin Oaks. *See* Amended Petitions at 9-10 (“significantly increasing delivery capacity to local customers” and “markets in Pennsylvania”). Sunoco also leaves open the possibility that the NGLs may only be temporary stored at Twin Oaks and eventually transported to the Marcus Hook facility for shipment abroad. Sunoco’s failure to demonstrate that the Project will provide indefinite and unrestricted access to the public at large renders its Amended Petitions legally deficient pursuant to §102.

38. Furthermore, even if Sunoco were able to adequately specify the public character of its small throughput of NGLs to Twin Oaks for the segmented portion of the Project, the

overwhelming private character of the Mariner East Project as a whole demonstrates that Sunoco cannot be considered a public utility.

39. The proposed Project will result in the Marcus Hook Refinery receiving over 93% of the Project's capacity (potentially more); however, the Amended Petitions do not specify where the NGLs transported to the Marcus Hook Refinery Complex will be sold. Therefore, it is impossible for the Commission to determine the public nature of the distribution of the NGLs. For this reason alone the Amended Petitions should be dismissed.

40. Furthermore, while Sunoco has not provided information in the record before the Commission identifying what markets the Marcus Hook Refinery will serve, it has been widely reported that the NGLs will be sold abroad. If the NGLs are in fact being sold abroad that would further cement the private character of the proposed Project.

#### **IV. Article 1 Section 27 Of The Pennsylvania Constitution Prohibits A Grant Of Sunoco's Amended Petitions**

41. Even if the Commission finds that Sunoco is a public utility corporation, which it is not, a grant of Sunoco's Amended Petitions exempting it from local zoning ordinances contradicts the Pennsylvania Supreme Court's ruling in *Robinson Township, Delaware Riverkeeper Network, et al v. Commonwealth of Pennsylvania, et al.*, and, more specifically, violates Article I Section 27 of the Pennsylvania Constitution. *Robinson*, 83 A.3d 901 (Pa. Dec. 19, 2013).

42. Article I of the Pennsylvania Constitution is the Commonwealth's Declaration of Rights, which delineates the terms of the social contract between government and the people that are of such "general, great and essential" quality as to be ensconced as "inviolable." Pa. Const. Art. I, Preamble & § 25. The Declaration of Rights ultimately limits the power of state government; additionally, "particular sections of the Declaration of Rights represent specific limits on governmental power." *Id.* at 1335 (citing *O'Neill v. White*, 22 A.2d 25 (Pa. 1941)). The first

section of Article I affirms that all Pennsylvania citizens “have certain inherent and inalienable rights.” Pa. Const. Art. I, § 1. Among those inherent rights are those articulated in Section 27, the Environmental Rights Amendment:

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.

Pa. Const. art. I, § 27 (the “Environmental Rights Amendment”). The right to “clean air” and “pure water” provides clear conditions by which the government must abide. Furthermore, by calling for the “preservation” of a broad array of environmental values, the Constitution protects the people from governmental action that unreasonably causes actual or likely deterioration of these features.

43. The Pennsylvania Supreme Court expressly recognized that the public has a discrete and cognizable constitutional interest in the design, preservation, and application of local zoning ordinances. *Robinson*, 83 A.3d at 920-921 (“a political subdivision has a substantial, direct, and immediate interest in protecting the environment and the quality of life within its borders”). The Court in *Robinson*, found this interest in local control particularly important in the context of regulating construction and development activity related to oil and gas operations. *Id.* at 974-986.

44. The Court held that a regulatory regime – or action of government – which permits incompatible “uses as a matter of right in every type of pre-existing zoning district is incapable of conserving or maintaining the constitutionally protected aspects of the public environment and of a certain quality of life.” *Id.* at 979. The incompatible uses cited by the Court included infrastructure expansion construction activity, such as the construction proposed here by Sunoco.

45. Specifically, the Court clarified that Act 13 was overturned because it compelled “the exposure of otherwise protected areas to environmental and habitability costs associated” with industrial development, which included, among other things, the “building of facilities incongruous with the surrounding landscape.” *Id.*

46. The local zoning ordinances that Sunoco is attempting to free itself of necessarily address human health, the environment, and the aesthetic values of the community, and therefore, create reasonable expectations in the resident citizenry in the protection and preservation of these values. In other words, the citizens in each of the petitioned townships have reasonable expectations in the existing regulatory structures and zoning districts in which they made significant financial and quality of life decisions.

47. Sunoco’s Petitions fundamentally disrupt these expectations and demands that local governments cede their regulatory and zoning powers irrespective of local concerns. Ultimately, Sunoco’s requests remove local government’s necessary and reasonable authority to carry out its trustee obligations pursuant to Article I Section 27 by prohibiting the enactment of ordinances tailored to local conditions. To the extent that a grant of Sunoco’s Petitions direct municipalities to disregard their constitutional mandate under Article I, Section 27, such an action by the Commission is unconstitutional.

**V. Sunoco’s Amended Petitions Must Be Denied Because The Situation Of Structures Is Not Reasonably Necessary For The Convenience Or Welfare Of The Public**

48. In order for the Commission to conclude that Sunoco is exempt from the local zoning ordinances the Commission must determine that the situation of the buildings for the Project are “reasonably necessary for the convenience or welfare of the public.” 53 P.S. § 10619. However, Sunoco has failed to satisfy this requirement.

49. Any exposition of the subject of the need for a building or structure at a particular location necessarily results in the review of the need of the underlying project itself. In other words, the review of the project and the site are inextricably intertwined, as it would be an illogical delusion for the Commission to find that although a project was not necessary for the convenience or welfare of the public, that the location of its structures was necessary.

50. With regard to the Mariner East Project, Sunoco has previously intimated that there are “no major markets in the Northeast United States.” *See* Order Granting Petition for Declaratory Relief, 142 FERC ¶ 61,115 (Feb. 15, 2013) (Docket No. OR13-9-000). Beyond excluding the Northeast as a potential market for the NGLs, Sunoco has failed to specify where the markets for the NGLs exist. The Amended Petitions are completely devoid of any specificity as to what markets the Project will serve. Without more detailed information identifying the markets for the proposed project the Commission is not able to make an informed decision on whether or not the project benefits the public.

51. Furthermore, Sunoco has provided conflicting statements about whether or not the partitioned portion of the Project will increase transportation of NGLs to the Twin Oaks facility or merely replace ongoing truck shipments. Sunoco claims that the pipeline transportation will result an “additional 5,000 barrels per day of propane” to Twin Oaks; however, in the next sentence Sunoco explains that the Project will “reduce the number of trucks that were previously utilized to deliver propane.” Sunoco Amended Petitions at 9. These facially contradictory statements raise substantial questions as to whether Sunoco is adding new capacity or merely swapping modes of transportation.

52. Sunoco has also failed to provide any data regarding what proportion of the liquids will be exported abroad as compared to how much will be shipped for domestic use for the Mariner

East Project as a whole. To the extent that a portion of the liquids will be sold to foreign markets, Sunoco has failed to provide any justification for how such a significant exportation of resources benefits the public. Also, the market for the propane delivered to Twin Oaks has yet to be specifically identified. As described above, Sunoco must demonstrate that the distribution of the propane is open to the indefinite public.

53. Without further information detailing where and how much of the NGLs will be shipped, the Commission simply cannot conduct an informed balancing of the potential public benefits or drawbacks of the proposed Project. Until such time that this information is provided to the Commission the proposed project application is substantively deficient.

54. Furthermore, a finding that the situation of the buildings is “reasonably necessary for the convenience or welfare of the public” is directly contradictory to the Supreme Court’s holding in *Robinson*.

55. In support of its Petitions, Sunoco argues that three primary factors, each implicating the overall need for the Project, demonstrate that the construction of the pump and valve control stations is necessary for the convenience or welfare of the public.

[1] the locations of both pump and valve control stations are reasonably necessary to ensure efficient and safe operation of the new pipeline facilities. [2] the pump stations ensure that the ethane and propane are flowing properly, which contribute to the overall safety and efficiency of the project. The valve control stations ensure that the pipeline facilities operate safely and prevent harm to the public and environment. Both types of stations are enclosed with metal housing to protect the equipment from the elements and to facilitate maintenance. [3] as a whole, the Mariner East project results in increased infrastructure to enable the continued development of Marcellus Shale resources, by providing for an efficient outlet for natural gas liquids that are extracted during the process of extracting natural gas from Marcellus Shale wells

Sunoco’s Amended Petitions at 14 – 15. Additionally, in the Commission’s August 29, 2013 Order granting a certificate of public convenience to Abandon a Portion of Its Petroleum

Products Pipeline Transportation Service in Pennsylvania, the Commission itself justified the Order by citing the public convenience of the project as a whole. *See* Pennsylvania Public Utility Commission Order, (Docket Nos. A-2013-2371789 and P-2013-2371775) (August 29, 2013), at 7. Specifically, the Commission found that “enhanced delivery options for the abundant supply of natural gas liquids and the moderation of commodity costs due to the injection of a new supply of ethane and propane into existing natural gas liquids markets” provided adequate justification. *Id.*

56. However, the public’s interests that justify the exercise of zoning powers and the public’s interests in the development of the oil and gas industry are simply not the same. This is undisputable, as the interest in oil and gas development is concentrated on efficient exploitation of fossil fuel resources, while the interest in zoning focuses on the orderly development and regulation of land use that is consistent with local concerns and environmental protection. As such, the Commission must balance these two interests against one another.

57. In December of 2013, three months after the Commission’s August 29, 2013 Order, the Pennsylvania Supreme Court issued its opinion in *Robinson* that clearly and concisely outlined many of the harms resulting from oil and gas development.

58. In *Robinson* the Court made it abundantly clear that the exploitation of natural gas resources absent local regulation can result in significant harms to human health and the environment. Chief Justice Castille prefaced the *Robinson* opinion by explaining that:

Pennsylvania has a notable history of what appears retrospectively to have been a shortsighted exploitation of its bounteous environment, affecting its minerals, its water, its air, its flora and fauna, and its people. The lessons learned from that history led directly to the Environmental Rights Amendment, a measure which received overwhelming support from legislators and the voters alike. When coal was “King,” there was no Environmental Rights Amendment to constrain exploitation of the resource, to protect the people and the environment, or to impose the sort of specific duty as trustee upon the Commonwealth as is found in

the Amendment. Pennsylvania's very real and mixed past is visible today to anyone travelling across Pennsylvania's spectacular, rolling, varied terrain. The forests may not be primordial, but they have returned and are beautiful nonetheless; the mountains and valleys remain; the riverways remain, too, not as pure as when William Penn first laid eyes upon his colonial charter, but cleaner and better than they were in a relatively recent past, when the citizenry was less attuned to the environmental effects of the exploitation of subsurface natural resources. But, the landscape bears visible scars, too, as reminders of the past efforts of man to exploit Pennsylvania's natural assets. Pennsylvania's past is the necessary prologue here: the reserved rights, and the concomitant duties and constraints, embraced by the Environmental Rights Amendment, are a product of our unique history.

*Robinson*, 83 A.3d at 976. More specifically, with regard to oil and gas operations themselves, the Court found that the "development of the natural gas industry in the Commonwealth unquestionably has and will have a *lasting, and undeniably detrimental, impact on the quality of these core aspects of Pennsylvania's environment.*" *Id.* at 975 (emphasis added). Furthermore the Court stated, "[b]y any responsible account, the exploitation of the Marcellus Shale Formation will produce a detrimental effect on the environment, on the people, their children, and future generations, and potentially on the public purse, perhaps rivaling the environmental effects of coal extraction." *Id.* at 976.

59. The Court continues, stating that while economic considerations – such as those proposed by Sunoco – are important, they must be considered in the context of local government's responsibility to act as a fiduciary and the potential impact on future generations. *Id.* at 954 ("economic development cannot take place at the expense of an unreasonable degradation of the environment"). These considerations powerfully indicate that when the benefits here are weighed against harms, the proposed Project cannot be "reasonably necessary for the convenience or welfare of the public."

60. Even if the Commission decides here to limit its review to determine only whether the *sites* of the valve control and pump stations were appropriate and in the public interest, the

Commission must still deny Sunoco's Petitions. Sunoco argues that to "ensure that otherwise applicable local ordinances will not bar [Sunoco]'s efforts to provide service for the welfare and convenience of the public, [Sunoco] is filing the instant Petition and contends that the proposed situation of the pump and valve control stations is reasonably necessary for the convenience or welfare of the public." Sunoco's Amended Petitions, at 12.

61. Sunoco plainly admits that its concern here is merely that local zoning processes will incur extra costs or delays in the start of construction. As discussed above, the public has a well-defined and concrete interest in the application and enforcement of its local zoning codes. By stripping this interest from local government and its constituents, the Commission risks undermining the fundamental reasonable expectations on which those interests are based. The Commission simply cannot approve such an indiscriminate and blunt approach for zoning oil and gas infrastructure development. What Sunoco requests here of the Commission is for local government to essentially be complicit in accommodating industrial activity irrespective of the character of the locale.

## **VI. Conclusion**

62. For the reasons stated forthwith the Delaware Riverkeeper Network and the Delaware Riverkeeper respectfully request that the Commission deny each of Sunoco's Amended Petitions for a finding that the situation of structures to Shelter Pump Stations and Valve Control Stations is Reasonably Necessary for the Convenience and Welfare of the Public.

Dated: 6-5-14

Respectfully Submitted by:

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**VERIFICATION**

I, Maya K. van Rossum, hereby state that the facts above set forth in the Preliminary Objections 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 made subject to the penalties of 18 Pa.C.S. 4904 (relating to unsworn falsification to authorities).

Dated: June 5, 2014

/s/ Maya K. van Rossum

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**CERTIFICATE OF SERVICE**

I, Aaron Stemplewicz, do hereby certify that a true and accurate copy of the foregoing PRELIMINARY OBJECTIONS were served upon the following on June 5, 2014, pursuant to the requirements of 52 Pa. Code § 1.54(b)(3) (relating to service by a participant):

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