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June 30, 2017

VIA ELECTRONIC FILING

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

Re: *West Goshen Township v. Sunoco Pipeline L.P.*
Docket No. C-2017-2589346

Dear Secretary Chiavetta,

Enclosed please find Sunoco Pipeline L.P.'s Pre-Hearing Conference Memorandum in the above referenced case. Copies have been served on all parties of record in accordance with the Certificate of Service.

Thank you for your attention to this matter, and please do not hesitate to contact me with any questions or concerns.

Very truly yours,


Christopher A. Lewis

Enclosures

cc: As per Certificate of Service
Honorable Elizabeth Barnes (*via email and first class mail*)

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*Attorneys for Defendant
Sunoco Pipeline L.P.*

WEST GOSHEN TOWNSHIP AND	:	
CONCERNED CITIZENS OF WEST	:	
GOSHEN TOWNSHIP	:	
Complainant,	:	Docket No. C-2017-2589346
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	
	:	

**PREHEARING CONFERENCE MEMORANDUM
OF SUNOCO PIPELINE L.P.**

Pursuant to 52 Pa. Code § 5.222, Sunoco Pipeline L.P. (“SPLP”) respectfully submits the following Prehearing Conference Memorandum:

I. INTRODUCTION

This is a simple case that requires the Pennsylvania Public Utility Commission (the “Commission”) to construe a contract that is plain and unambiguous. Simply stated, the contract does not say what the Complainant says it does.

In May of 2015, after months-long negotiations involving sophisticated counsel, West Goshen Township (the “Township”), Concerned Citizens of West Goshen Township (the “CCWGT”), and SPLP entered into a Settlement Agreement, which resolved two proceedings pending before the Public Utility Commission (the “Commission”). On June 15, 2015, the Secretary of the Commission certified in accordance with Section 507 of the Public Utility Code (the “Code”), 66 Pa.C.S. § 507, that the agreement had been on file with the Commission for the 30 days required by the Code for the agreement to become effective.

The Settlement Agreement is divided into five sections.

- Section I contains general background information related to the underlying litigation, which consisted of SPLP’s Petition for an exemption under Section 619 of the Municipal Planning Code (P-2014-2411966), and a Formal Complaint alleging safety concerns with SPLP’s proposed facilities (C-2014-2451943). The Settlement Agreement was intended to resolve this litigation and related matters.
- Section II contains “Pertinent Information Provided by SPLP”. In that section, SPLP stated its intent at the time of the Settlement Agreement to locate a valve (“Valve 344”) on a tract of land defined as the “SPLP Use Area”. The “SPLP Use Area” is located on a larger tract of land defined as the “SPLP Additional Acreage” (which is the land immediately adjacent to the homes of the members of the CCWGT). Section II expressly permits SPLP to relocate Valve 344 to a site other than the “SPLP Use Area” if the Township is *notified* of the change of location and the new location is not on the “SPLP Additional Acreage”.
- Section III states that WGT has engaged an expert to prepare a written report as to the safety of the Mariner East 1 pipeline. The report was attached to the Settlement Agreement.
- Section IV contains the operative promises, covenants, and agreements of the parties. More specifically, Section IV states that SPLP agrees not to construct any pump stations or above-ground permanent public utility facilities, *i.e.*, Valve 344, on the “SPLP Additional Acreage”, unless it is located on the “SPLP Use Area”. In exchange, the Township agreed, *inter alia*, to refrain from filing or joining a safety complaint regarding SPLP’s services or facilities, so long as SPLP constructed and operated the facilities as described in Section II.
- Section V contains further promises and agreements, but in the nature of general provisions, including the date the Agreement would go into effect, the date SPLP

would file the Agreement with the Commission, and an acknowledgement that the Parties must bring any action to enforce the Agreement before the Commission.

In January 2017, SPLP submitted plans to the Township regarding the installation of Valve 344. The January 2017 plans proposed locating Valve 344 on a nearby 6.646-acre tract of land on the north side of Boot Road near its intersection with the U.S. Route 202 northbound on-ramp and Greenhill Road. While there appears to be some earlier confusion as to the correct Tax Parcel number for this tract, there is no dispute that this land is outside of the SPLP Additional Acreage.

Despite the facts that Valve 344 is located outside of the SPLP Additional Acreage area, and the Township had actual notice of the relocation, the Township still pushed forward, and initiated this litigation before the Commission.

II. PROCEDURAL HISTORY

On February 17, 2017, the Township filed a Complaint to Enforce Settlement Agreement with the Commission.

On February 21, 2017, SPLP received a formal notice letter from Secretary Rosemary Chiavetta notifying SPLP of the Complaint. SPLP responded on March 10, 2017 by filing an Answer and New Matter, and a Motion to Strike the Township's Request for Attorney's Fees.

On March 30, 2017, the Township amended the Complaint, abandoning one of the counts previously asserted in the original Complaint and eliminating its request for attorney's fees. SPLP received a formal notice letter from Secretary Rosemary Chiavetta notifying SPLP of the Amended Complaint on March 30, 2017. The First Amended Complaint that is now before the Commission asserts a single breach-of-settlement-agreement count.

On April 17, 2017, SPLP filed an Answer to the First Amended Complaint and New Matter asserting that the Township's Amended Complaint failed to state a claim upon which relief can be granted.

On May 4, 2017, the Township filed its Answer to SPLP's New Matter.

On April 18, 2017, Administrative Law Judge ("ALJ") Barnes scheduled an initial prehearing conference for May 23, 2017. Shortly after the initial prehearing conference was scheduled, the Parties began to conduct settlement negotiations. On May 15, 2017, the Parties requested, via electronic mail, that ALJ Barnes postpone the May 23, 2017 prehearing conference while the Parties continued with settlement negotiations.

On May 17, 2017, ALJ Barnes issued an Order canceling the May 23, 2017 prehearing conference, and rescheduling it for July 6, 2017.

On May 22, 2017, SPLP filed a Motion for Judgment on the Pleadings. In the Motion, SPLP submits that the Township has failed to state a claim for which relief can be granted because 1) there is no prohibition against locating Valve 344 outside of the SPLP Additional Acreage; 2) Section II of the Settlement Agreement contains no binding promises; and 3) the relief requested by the Township violates long established public policy that vests exclusive jurisdiction in the regulation of public utilities with the Commission.

On June 12, 2017, the Township filed its Response in Opposition to the Motion for Judgment on the Pleadings.

III. SERVICE ON SPLP

SPLP consents to accept electronic delivery of documents on the deadline for their filing, if followed by hard copy delivery by first class mail to its counsel of record.

SPLP respectfully requests that the following counsel of record appear on the service list:

Christopher A. Lewis (ID #29375)
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
Telephone: (215) 569-5793
Facsimile: (215) 832-5793
lewis@blankrome.com

SPLP also requests that parties serve electronic (and not paper) copies of all documents and communications in this proceeding on the following counsel, also of Blank Rome LLP:

Frank L. Tamulonis (ID #208001)
ftamulonis@blankrome.com

Michael J. Montalbano (ID #320943)
mmontalbano@blankrome.com

IV. SETTLEMENT

SPLP is willing to engage in good faith efforts to resolve this matter amicably, short of hearings, briefs and exceptions, and subject to the approval of the Commission. SPLP has discussed settlement with the Township and is willing to continue those discussions in an effort to reach a mutually agreeable resolution without litigation. In the event that discussions fail to result in a resolution, SPLP is prepared to litigate the case as may be required.

V. PROPOSED DISCOVERY PLAN

The Parties have not begun discovery due to their earlier efforts to reach a settlement. Additionally, SPLP submits that discovery should be stayed pending the resolution of its Motion for Judgment on the Pleadings.

In the event that the Motion for Judgment on the Pleadings is denied, and it is therefore necessary for the parties to proceed to the discovery phase of this matter, SPLP submits the following modifications be made to the deadlines set forth in the Commission's Rules of Practice and Procedure:

- A. Answers to interrogatories to be served within twenty (20) days of service of interrogatories if service is made by electronic mail, or within twenty-five (25) days of service of interrogatories if service is made by U.S. mail;
- B. Objections to interrogatories to be served within ten (10) days of service of interrogatories if service is made by electronic mail, or within fifteen (15) days of service of interrogatories if service is made by U.S. mail;
- C. Motions to compel answers to interrogatories to be served within ten (10) days of service of objections if service is made by electronic mail, or within (15) days of service of objections if service is made by U.S. mail;
- D. Answers to any motion to compel to be served within five (5) days of service of any motion, if service of the motion is made by electronic mail, or within ten (10) days of service if made by U.S. mail, or orally at any hearing on the motion to compel, should a hearing be held before the date when the answer would otherwise be due.

VI. OTHER PROPOSED ORDERS

Due to the highly confidential nature of some of the information that could be requested of SPLP in this proceeding, SPLP has circulated among counsel for the Township a proposed protective order. SPLP awaits agreement from the Township concerning this protective order. A copy of SPLP's proposed protective order is attached hereto as **Exhibit A**.

VII. THE NEED FOR PUBLIC INPUT HEARINGS

SPLP submits that a public input hearing is unnecessary because the issue raised by the Township concerns the interpretation of a settlement agreement between the Parties, and not the public at large. Accordingly, SPLP requests that the Commission not schedule a public input meeting.

VIII. ISSUES AND PRELIMINARY POSITIONS

SPLP takes the position that it has fully complied with the express terms of the Settlement Agreement, and that the Township's Complaint should be dismissed with prejudice. Specifically, SPLP takes the following positions:

- (1) The Amended Complaint in this proceeding is a thinly-veiled effort by the Township to obtain rights that it did not obtain when the parties negotiated the Settlement Agreement.
- (2) Sections IV and V of the Settlement Agreement contain the only promises, covenants, and agreements that are binding on the parties and relevant to the instant dispute.
- (3) The only promise made by SPLP in Section IV of the Settlement Agreement concerning the location of the valve is that it would not be sited on the SPLP Additional Acreage unless it was placed within the SPLP Use Area. This promise was further reinforced and implemented through a Deed Restriction that was duly recorded.
- (4) SPLP has complied with Section IV of the Settlement Agreement because is it not

siting the valve on the SPLP Additional Acreage.

- (5) Section II of the Settlement Agreement contains only information provided to the Township. As regards the siting of the valve, this information was important, because it was the *condition* for the Township's *promise* in Section IV of the Settlement Agreement not to file a safety complaint against SPLP. In other words, if SPLP did *not* comply with Section II and failed to site the valve within the SPLP Use Area, the Township reserved the right to review the new location for its effect on public safety and file a safety complaint if appropriate.
- (6) In Section II of the Settlement Agreement, the information provided to the Township explicitly disclosed that the siting of the valve would depend on engineering constraints. Thus, Section II.A.2 stated: "If due to engineering constraints, SPLP is unable to construct the valve station in the SPLP Use Area, SPLP will notify WGT."
- (7) The Township is construing Section II.A.2: (1) as a binding promise that the valve can be located only within the SPLP Use Area (despite the fact that Section II does not contain promises at all); and (2) to mean that the valve could be relocated outside of the SPLP Use Area only if it is *impossible* to site it in the SPLP Use Area.
- (8) SPLP's position is that even if Section II.A.2 were construed to be a binding promise (which it was not), the determination of whether an engineering constraint exists, and whether that constraint is of sufficient magnitude or financial cost to justify relocating the valve, are judgments that were left to the

sole discretion of SPLP management. The Settlement Agreement contains no provision giving the Township a right to review, scrutinize, or second-guess SPLP's engineering decisions. This right was not bargained for or given.

- (9) Similarly, the Settlement Agreement contains no provision requiring SPLP to disclose, explain, or justify the engineering constraints. Consequently, even if Section II of the Settlement Agreement were construed to be promises rather than conditions, SPLP did not breach the Settlement Agreement by the asserted failure to provide written documentation of the engineering constraints to the Township. This right was not bargained for or given.
- (10) The Settlement Agreement contains no requirement of "formal" notice to the Township. Although the Settlement Agreement was negotiated by sophisticated counsel, there is no "notice" clause specifying that notice be in writing, be delivered to a specific recipient, or be delivered in any particular manner. Section II.A.2 merely provided that SPLP would "notify" the Township if it decided to relocate the valve. Again, the right asserted by the Township was neither bargained for nor given. In addition, it is undisputed that the Township now has notice of the relocation of the valve.
- (11) Finally, and perhaps most importantly, the purported *personal* understanding of Township officials that any valve station which might be located within the Township would be built only within the SPLP Use Area—even if true—is simply irrelevant, because that understanding differs from the plain and unambiguous language of the Settlement Agreement itself. The Settlement

Agreement permits the valve to be relocated within the Township so long as it is not placed on the SPLP Additional Acreage.

- (12) SPLP submits that the rights sought by the Township in this proceeding are in flagrant violation of public policy and longstanding public utility law. It is well-settled in Pennsylvania that local municipalities have no authority to regulate the siting of public utility facilities. *Duquesne Light Co. v. Upper St. Clair Township*, 105 A.2d 287, 292 (Pa. 1954) (holding “the policy of the Commonwealth in entrusting to the Commission the regulation and supervision of public utilities *has excluded townships from the same field*”). Further, local municipalities have no authority to review and scrutinize engineering determinations of public utilities. *County of Chester v. Philadelphia Electric Co.*, 218 A.2d 331, 333 (Pa. 1966) (noting that “...if each county were to pronounce its own regulation and control over electric wires, pipelines and oil lines, the conveyors of power and fuel could be so twisted and knotted as to affect adversely the welfare of the entire state.”)

This authority lies solely within the province of the Commission.¹

¹ See also *Commonwealth v. Delaware and Hudson Railway Co.*, 339 A.2d 155 (Pa. Commw. Ct. 1975) (The MPC does not authorize local governments to regulate public utilities in any manner which infringes on the power of the Commission to so regulate); *City of Philadelphia v. Phila. Elec. Co.*, *supra*, (“the legislature sought to establish a statewide standardization of all facets of the operation of public utilities under the governance of the Commission”); *South Coventry Township v. Phila. Elec. Co.*, 504 A.2d 368 (Pa. Commw. 1986) (noting that subjecting PECO to a miscellaneous collection of local regulations would unduly burden and indeed disable it from successfully functioning as a utility); *Newtown Twp. v. Phila. Elec. Co.*, 594 A.2d 834 (Pa. Commw. Ct. 1991) (The Public Utility Code is intended to be the supreme law of the Commonwealth in the regulation and supervision of public utilities); *PPL Elec. Utils. v. City of Lancaster*, 125 A.3d 837, 847 (Pa. Commw. Ct. 2015) (“Most importantly, we conclude that the legislature intended the Public Utility Code to preempt the field of public utility regulation”) (internal quotations omitted).

- (13) SPLP submits that the Commission should not construe the Settlement Agreement in a manner that would result in such a violation of public policy, and if the Settlement Agreement does require such a construction, then the Settlement Agreement should be declared void as against public policy.

IX. LITIGATION SCHEDULE

SPLP respectfully requests that ALJ Barnes grant the pending Motion for Judgment on the Pleadings. In the event the Motion is denied, SPLP proposes the following litigation schedule:

Prehearing Conference	July 6, 2017
Direct testimony of Township	November 6, 2017
Rebuttal testimony of SPLP	December 4, 2017
Surrebuttal testimony of Township	January 5, 2018
Oral rejoinder outlines	January 22, 2018
Hearings – Harrisburg	January 29-30, 2018
Close of the Record	January 31, 2018
Main Briefs	February 26, 2018
Reply Briefs	March 19, 2018

X. WITNESSES

SPLP reserves the right to present direct, rebuttal, and surrebuttal fact and expert testimony, to the extent that it deems necessary, in this proceeding.

SPLP intends to present the testimony of the following officers or employees of SPLP:

Harry (Hank) J. Alexander, Vice President of Business Development
Sunoco Pipeline L.P.

3807 West Chester Pike
Newtown Square, PA 19073
(215) 365-6501

Matthew L. Gordon, Project Manager
Sunoco Pipeline L.P.
525 Fritztown Road
Sinking Spring, PA 19608

In addition, SPLP may present testimony from Donald Zoladkiewicz, formerly the Community Liaison of SPLP.)

Mr. Alexander will describe SPLP's integrated pipeline system, and provide an overview of the development of the Mariner East project. Mr. Gordon will describe Valve 344, the engineering constraints SPLP encountered while trying to site the valve on the SPLP Use Area, and why installing Valve 344 on the Janiec Tract is necessary. Mr. Gordon and Mr. Zoladkiewicz will also testify concerning their communications with the Township regarding the relocation of the valve. SPLP reserves the right to identify other witnesses to respond to testimony proffered by the Township.

Because the Township has no right under the Settlement Agreement to review or scrutinize SPLP's engineering determinations, SPLP submits that expert testimony concerning the engineering is irrelevant to this proceeding. Consequently, SPLP has not identified expert witness(es) at this time. SPLP reserves the right to present expert testimony as may be necessary.

XI. EVIDENCE

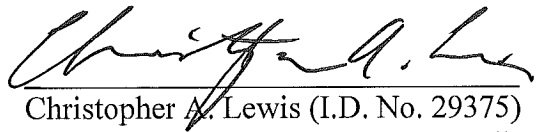
If the Motion for Judgment on the Pleadings is denied, SPLP anticipates that it will present evidence on any or all of the issues enumerated above and as listed in the topics to be presented through the testimony of Messrs. Alexander, Gordon, and Zoladkiewicz. SPLP additionally

anticipates presenting documentation and other information received from the parties in response to SPLP's discovery requests. SPLP continues to investigate facts and review discovery, and therefore reserves the right to supplement this list with additional evidence as it becomes available.

Respectfully submitted,

BLANK ROME LLP

Dated: June 30, 2017

A handwritten signature in black ink, appearing to read "Christopher A. Lewis", is written over a horizontal line.

Christopher A. Lewis (I.D. No. 29375)

Frank L. Tamulonis (I.D. No. 208001)

Michael Montalbano III (I.D. No. 320943)

One Logan Square

130 N. 18th Street

Philadelphia, PA 19103

(215) 569-5500

Lewis@BlankRome.com

MMontalbano@BlankRome

CERTIFICATE OF SERVICE

I, Frank L. Tamulonis, certify that on June 30, 2017, I caused a true and correct copy of the foregoing Pre-Hearing Conference Memorandum of Sunoco Pipeline LP to be served upon the parties listed below by electronic mail and U.S. Mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Honorable Elizabeth H. Barnes
PO Box 3265
Harrisburg, PA 17105-3265
ebarnes@pa.gov

David Brooman, Esquire
Douglas Wayne, Esquire
High Swartz, LLP
40 East Airy Street
Norristown, PA 19404
dbrooman@highswartz.com
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Frank L. Tamulonis
Attorney for Sunoco Pipeline L.P.

EXHIBIT A

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

WEST GOSHEN TOWNSHIP,

Complainant

v.

SUNOCO PIPELINE L.P.

Respondent

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Docket No. C-2017-2589346

PROTECTIVE ORDER

IT IS ORDERED THAT:

1. This Protective Order is hereby GRANTED and shall establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped "CONFIDENTIAL" or

“HIGHLY CONFIDENTIAL” protected material. Such materials are referred to in this Order as “Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. For purposes of this Protective Order there are two categories of proprietary Information: “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” protected material. A producing party may designate as “CONFIDENTIAL” those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party or its clients to the risk of competitive disadvantage or other business injury. A producing party may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature, relative to the business interests of parties to this proceeding, or of such a private or personal nature, that the producing party determined that a heightened level of confidential protection with respect to those materials is appropriate. For purposes of avoiding ambiguity, “HIGHLY CONFIDENTIAL” information shall include documents, drawings, or plans, the disclosure of which would pose a security risk to public utility property or public safety. The parties shall endeavor to limit the information designated as “HIGHLY CONFIDENTIAL” protected material.

4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a party who meets the criteria of a “Reviewing Representative” as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have

access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

5. Information deemed “CONFIDENTIAL” shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

i. A statutory advocate, or an attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;

ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;

iii. An expert or an employee of an expert retained by a party for the purpose of advising that party or testifying in this proceeding on behalf of that party; or

iv. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party’s positions in this docket.

6. Information deemed "HIGHLY CONFIDENTIAL" protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for

purposes of “HIGHLY CONFIDENTIAL” protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate, pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
- iii. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party; or
- iv. A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL protected material pursuant to paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of the party producing the Proprietary Information pursuant to Paragraph 11. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor’s products or services or

advising another person who has such duties; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee's duties involve marketing or pricing of the competitor's products or services or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent (excluding any person under Paragraph 6.i or 6.ii), or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violating the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establish a significant motive for violation.

8. If an expert for a party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, that expert must: (1) identify for the parties each Restricted Person and all personnel in or associated with the expert's firm that work on behalf of the Restricted Person; (2) take all reasonable steps to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way adversely affect the interests of the parties or their customers. The

parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be adversely affected. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. Reviewing Representatives qualified to receive "HIGHLY CONFIDENTIAL" protected material may discuss HIGHLY CONFIDENTIAL protected material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material.

10. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 12(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

11. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in paragraph 6 (i) through (iii) above, the party must first seek agreement to do so from the party providing the Proprietary Information. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 6 (iv) above with respect to those materials. If no agreement is reached, the party seeking to have a

person designated a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

12. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Commission and all parties, including the statutory advocates and any other agency or department of state government will consider and treat the Proprietary Information as

within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 et seq.) until such time as the information is found to be non-proprietary.

14. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

15. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in paragraph 14 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

16. Any federal agency that has access to and/or receives copies of the Proprietary Information will consider and treat the Proprietary Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C. § 552(b)(4) until such time as the information is found to be non-proprietary.

17. Any state agency, local agency, or municipality which has access to and/or receives copies of the Proprietary Information will consider and treat the Proprietary Information as "Confidential Proprietary Information" that is exempt from disclosure under Section

708(b)(11) of the Pennsylvania Right-to-Know Know (65. P.S. § 67.708(b)(11) until such time as the information is found to be non-proprietary.

18. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

19. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, and to refuse to produce Proprietary Information pending the adjudication of the objection.

20. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, a providing party may specify whether such materials should be destroyed or returned. In the event that the materials are destroyed instead of returned, the receiving party shall certify in writing to the providing party that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the receiving party shall certify in writing to the providing party that no copies of materials containing the Proprietary Information have been retained.

Date: _____

Administrative Law Judge