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July 10, 2017

**VIA ELECTRONIC MAIL AND FEDERAL EXPRESS**

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 Opposition To West Goshen Township's Request for Ex Parte Relief 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 Federal Express*)  
Honorable Charles Rainey (*via email and Federal Express*)  
Robert F. Young, Esquire (*via email and Federal Express*)

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July 10, 2017

Gladys M. Brown, Chairman  
Andrew G. Place, Vice Chairman  
Robert F. Powelson, Commissioner  
John F. Coleman, Jr., Commissioner  
David W. Sweet, Commissioner  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
3<sup>rd</sup> Floor  
Harrisburg, PA 17120

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

Dear Chairman Brown and Commissioners of the Pennsylvania Public Utility Commission:

On behalf of Sunoco Pipeline L.P. (“SPLP”), I am writing this letter to oppose the *ex parte* relief requested by West Goshen Township (“WGT” or the “Township”) in the Petition of West Goshen Township For An Ex Parte Emergency Order And An Interim Emergency Order (the “Petition”).

As regards the Township’s request for an interim emergency order, Administrative Law Judge (“ALJ”) Elizabeth Barnes has scheduled a hearing for Tuesday, July 18, 2018. SPLP will be contesting the Township’s request at the hearing, as well as filing an Answer in opposition to the Petition as permitted by § 3.6(c) of the Commission’s regulations, 52 Pa. Code § 3.6(c).

In the meantime, SPLP respectfully requests that the Commission summarily deny the request for an *ex parte* emergency order because *none* of the prerequisites for issuance of such an order, as required by § 3.2(b) of the Commission’s regulations, is met.

1. Summary of SPLP’s Position

This proceeding involves a valve station for Mariner East 2—Valve 344--that will be sited in the Township. The Township claims that the Settlement Agreement previously entered into by the parties requires the valve to be constructed on the “SPLP Use Area”, a plot of land that is located on the west side of Route 202, on SPLP-owned land near Boot Road. SPLP has

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notified the Township that it intends to construct the valve at a different site (the “Janiec 2 Tract”), which is also located on SPLP-owned land, but across Route 202, on the east side of the highway.<sup>1</sup> As set forth in ¶ 8 of SPLP’s New Matter to the Township’s First Amended Complaint, the site was relocated because SPLP’s project team and engineers concluded that doing so would be more prudent and safe. In addition, the Settlement Agreement expressly contemplates that the site of the valve could be relocated in these circumstances.

Regardless of where the valve is located, SPLP will need to engage in the work on the Janiec 2 Tract in order to install the Mariner East 2 pipeline. As set forth in Earth Disturbance Permit 2017-202-1, which was issued by the Township to SPLP on June 6, 2017 and is attached to the Township’s Petition, the work is not merely for the valve, but also for the installation of the pipe via horizontal directional drilling (“HDD”).

SPLP respectfully requests that the Commission deny the request for an *ex parte* emergency order, *inter alia*, because: (1) the Township granted SPLP the right to commence work on the project via Earth Disturbance Permit 2017-202-1 (which was certified by the Township Engineer as being in compliance with law and is attached to the Township’s Petition);<sup>2</sup> (2) the “property” that is allegedly in danger are trees and brush on SPLP’s own land; (3) the vegetation/tree clearing and earth disturbance work will need to be performed to install the pipe, regardless of the siting of the valve; and (4) a Motion for Judgment on the Pleadings is already pending in the underlying proceeding, and the Township has not shown that its right to relief is clear; and (5) the Township’s request for an *ex parte* order to halt construction that the Township itself has already approved is injurious to the public interest, because it will cause unnecessary delay to the completion of the Mariner East 2 project.

## 2. There is No Emergency

Section 3.2 of the Commission’s regulations mandates that a petition for emergency order must be supported by five elements, including facts which establish the existence of an emergency:

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<sup>1</sup> The facts contained in this letter are verified by the Affidavit of Matthew Gordon, Project Director for the Mariner East 2 pipeline, which is attached hereto as Exhibit “A”.

<sup>2</sup> SPLP’s Erosion and Sediment Control Report and Plans dated February, 2017 were approved by the Commonwealth’s Department of Environmental Protection (the “DEP”) when it issued SPLP the Chapter 102 permit for the work and by the Township when the Township issued the earth disturbance permit. *See Affidavit of Matthew Gordon*, attached hereto as Exhibit “A.”

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(b) A petition for emergency order must be supported by a verified statement of facts which establishes the existence of an emergency, including facts to support the following:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.2(b). Section 3.1 defines an "emergency" as a "situation which presents a **clear and present danger to life or property** or which is uncontested and requires action prior to the next scheduled public meeting. (Emphasis supplied.) 52 Pa. Code § 3.1.

To establish an emergency, the Petition and the supporting Affidavit of Casey LaLonde, the Township Manager cite "immediate harm to property and Chester County natural resources", (e.g., Petition, ¶ 92), arising from SPLP's vegetation /tree clearing and other earth disturbance activities on the Janiec 2 Tract. But the Township can hardly claim that this is a "clear and present danger" since the Township itself authorized the work when it approved Earth Disturbance Permit 2017-202-1. There is no allegation here that the Janiec 2 Tract has been designated scenic or historically significant. To the contrary, the Township openly concedes, as it must, that it saw no issue with Article I, Section 27 of the Pennsylvania Constitution and no concern with development of the site and loss of natural resources when the proposed use for the site was a "needed housing development for the elderly." Petition, ¶ 66. There is no emergency where, as here, SPLP is merely performing legally authorized work on its own property. *Cf. Robert Beisel v. Pennsylvania Power and Light Company*, 78 Pa. P.U.C. 569, 1993 WL 383053 (Docket No. C-00924683, Order entered March 12, 1993) (denying interim emergency relief and holding that PPL's timbering along its legal Right of Way would not result in irreparable or significant injury when road had not been designated scenic or historically significant); *see also PECO Energy Company v. Township of Upper Dublin*, 922 A. 2d 996 (Pa. Commw. Ct. 2007) (holding that townships cannot regulate vegetation management of public utilities even in public rights-of-way).

### 3. The Township's Right to Relief is Not Clear

SPLP strongly disputes the Township's interpretation of the Settlement Agreement. Indeed, SPLP has filed a Motion for Judgment on the Pleadings which is presently pending

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before ALJ Barnes. Rather than repeat all of the arguments in that Motion, SPLP respectfully refers the Commission to the Motion itself. In sum, the Agreement says the opposite of what the Township contends. For the convenience of the Commission, SPLP attaches hereto as Exhibit “B” its Prehearing Conference Memorandum which succinctly summarizes SPLP’s legal position regarding the issues.

4. **The Need for Relief is Not Immediate**

SPLP intends to install Valve 344 only after it completes the HDD, work that SPLP cannot begin until it clears the relevant portion of the site. The installation of Valve 344 will not occur before ALJ Barnes has an opportunity to consider the Township’s request for an interim emergency order.<sup>3</sup>

5. **There is No Irreparable Injury to the Township**

SPLP’s use of its own property for work that has been authorized by the Township and previously approved by the Commonwealth’s DEP is not irreparable injury. *See Robert Beisel, supra.* Nor is the Commission the proper venue for resolving the Township’s claim that SPLP has violated the Earth Disturbance Permit.<sup>4</sup>

6. **The Relief Requested is Injurious to the Public Interest**

Public interest considerations firmly militate against the relief requested by the Township. Contrary to the Petition’s assertion that “...the Township is not trying to stop the

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<sup>3</sup> SPLP wishes to emphasize to the Commission that, even if work on the valve were imminent, no emergency relief should be granted. The Settlement Agreement does not prohibit SPLP from installing Valve 344 on the Janiec 2 Tract, does not give the Township a right to review and scrutinize SPLP’s engineering determinations, and does not require the Township’s consultation or consent in connection with the siting of the valve. As a matter of law, the General Assembly has vested local municipalities with no authority respecting the siting of public utility facilities or the engineering of public utility facilities, and the Township’s efforts to circumvent the law and immerse itself in these determinations is contrary to the public interest, as repeatedly and consistently articulated in 60 years of judicial precedent.

<sup>4</sup> The Township has issued a Notice of Violation to SPLP on the ground that SPLP allegedly failed to give 48 hours notice of its intent to commence the work. Yet the Affidavit of Casey LaLonde admits that the Township received notice from PennDOT on June 15, 2017 that SPLP planned to begin its work as early as June 19, 2017 and from Ivana Wolfe, SPLP’s Community Liaison, via a telephone call on July 5, 2017 that SPLP intended to start mobilizing the Janiec 2 Tract within the ensuing one to two weeks. *See Affidavit of Casey LaLonde*, ¶¶ 18 and 19. While SPLP also disputes that its activities have had any meaningful impact on the nearby fire department, SPLP has notified the Township that it will accelerate its plans to install a driveway from Boot Road onto the Janiec 2 Tract to eliminate any impact on the fire department’s ingress and egress.

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ME2 pipeline from going through its Township...”, Petition, ¶ 84.a, that is precisely the relief sought. As the Earth Disturbance Permit itself confirms, the purpose of the work on the Janiec 2 Tract is to stage the pullback area for the HDD to install the pipe. While Valve 344 will eventually be installed once the HDD is completed, stopping all work now or until the underlying proceeding is resolved means that the ME2 project will be delayed, with consequent harm to producers, shippers, and consumers. In this regard, the Commission should note that in its Initial Prehearing Conference Memorandum, the Township has proposed that ALJ Barnes adopt a lengthy and protracted litigation schedule, with the Township’s Direct Testimony to be submitted in August of 2018 and hearings to occur in 2019.

Finally, and perhaps most importantly, the relief sought by the Township in this proceeding is 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.”)<sup>5</sup>

The Mariner East 2 pipeline traverses 17 counties and hundreds of municipalities. Only West Goshen Township claims a right to scrutinize and review the engineering and siting of this critical public utility facility. Granting the relief requested by the Township would encourage

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<sup>5</sup> 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.*, 473 A. 2d 997, 1003 (Pa. 1984) (“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).

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local municipalities to encroach on the Commission's exclusive authority to oversee the construction and operation of public utility facilities, and would create the patchwork quilt of conflicting regulation that the General Assembly intended to avoid.

SPLP did not cede this authority to the Township in the Settlement Agreement, nor should the Commission. For all the foregoing reasons, SPLP respectfully requests the Commission to deny the Township's request for an *ex parte* emergency order.

Respectfully submitted,



Christopher A. Lewis

cc: Hon. Charles Rainey, Chief Administrative Law Judge  
Hon. Elizabeth H. Barnes, Administrative Law Judge  
David J. Brooman, Esquire  
Richard Sokorai, Esquire  
Douglas Wayne, Esquire  
Kristin Camp, Esquire  
Office of Trial Staff – Pennsylvania Public Utility Commission  
Office of Consumer Advocate  
Office of Small Business Advocate

**CERTIFICATE OF SERVICE**

I, Michael J. Montalbano, certify that on July 10, 2017, I caused a true and correct copy of Sunoco Pipeline L.P.'s Opposition To West Goshen Township's Request for Ex Parte Relief to be served upon the party listed below by electronic mail and Federal Express or First Class Mail, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

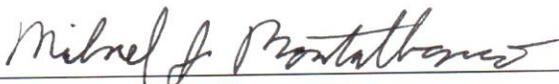
Honorable Elizabeth H. Barnes  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[ebarnes@pa.gov](mailto:ebarnes@pa.gov)

David Brooman, Esquire  
Douglas Wayne, Esquire  
High Swartz, LLP  
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Harrisburg, PA 17101  
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555 Walnut Street  
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[consumer@paoca.org](mailto:consumer@paoca.org)

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17101

  
\_\_\_\_\_  
Michael J. Montalbano  
Attorney for Sunoco Pipeline L.P.

# **EXHIBIT “A”**

**BLANK ROME LLP**  
 Christopher A. Lewis (I.D. No. 29375)  
 Frank L. Tamulonis (I.D. No. 208001)  
 Michael Montalbano (I.D. No 320943)  
 One Logan Square  
 130 N. 18<sup>th</sup> Street  
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 FTamulonis@BlankRome.com  
 MMontalbano@BlankRome.com

*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.	:	
	:	

**AFFIDAVIT OF MATTHEW GORDON**

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 : SS.  
 COUNTY OF BERKS :

I, Matthew Gordon, being duly sworn according to law, do hereby depose and state the following to be true and correct to the best of my knowledge and/or based upon my information and belief:

1. I am employed by Sunoco Pipeline L.P. ("SPLP") as the Project Director for the Mariner East 2 pipeline project. I am authorized to make this Affidavit on behalf of SPLP.
2. SPLP's project team and engineering group has determined that siting Valve 344 on the SPLP Use Area is not prudent or feasible due to numerous engineering constraints. The

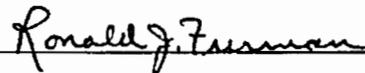
engineering constraints include, among other things: insufficient room to site the equipment needed to install the valve given the demands of the horizontal directional drilling; the need to open-cut Boot Road, which would severely disrupt traffic in West Goshen Township and create noise and inconvenience; and the creation of possible adverse impacts to Route 202 which would be avoided by siting the valve elsewhere.

3. In 2017 SPLP purchased the property that is referred to as the "Janiec 2 Tract" in the Petition of West Goshen Township For An Ex Parte Emergency Order And An Interim Emergency Order. This property is situated at Boot Road and Route 202, on the east side of the highway, across from the property that was the subject of the Settlement Agreement.
4. The Janiec 2 Tract is the site for the pullback area for the horizontal directional drilling ("HDD") that will be used to install the pipe through West Goshen Township. Regardless of where the valve station is located, SPLP will need to engage in the work on the Janiec 2 Tract in order to install the Mariner East 2 pipeline.
5. The Commonwealth Department of Environmental Protection ("DEP") has issued a Chapter 102, Erosion and Sediment Control Permit for the work that will be performed on the Janiec 2 Tract.
6. West Goshen Township issued Earth Disturbance Permit 2017-202-1 for the work that will be performed on the Janiec 2 Tract.
7. SPLP has notified West Goshen Township on several occasions that it needs to site Valve 344 on the Janiec 2 Tract.
8. Work on Valve 344 will not commence until after the HDD is completed; accordingly, the installation of the valve will not occur before July 18, 2018.
9. An order from the Pennsylvania Public Utility Commission directing SPLP to cease work at the Janiec 2 Tract would substantially disrupt and delay the completion of the Mariner East 2 pipeline, causing consequent harm to producers, shippers, and consumers.

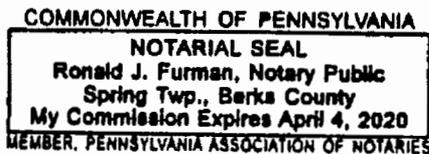
  
MATTHEW GORDON

Sworn to and Subscribed

Before me this 10<sup>th</sup> day of July, 2017



Notary Public  
RONALD J. FURMAN



# **EXHIBIT “B”**

**BLANK ROME LLP**  
 Christopher A. Lewis (I.D. No. 29375)  
 Frank L. Tamulonis (I.D. No. 208001)  
 Michael Montalbano (I.D. No 320943)  
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 MMontalbano@BlankRome.com

*Attorneys for Defendant  
 Sunoco Pipeline L.P.*

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

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**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 18<sup>th</sup> 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.<sup>1</sup>

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<sup>1</sup> 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**

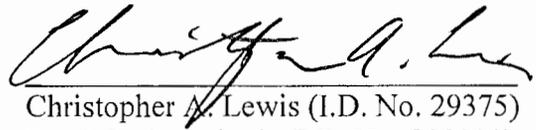
If the Motion for Judgment on the Pleadings is denied, SPLP anticipates that it will present evidence on any or all of the issues enumerated above and as listed in the topics to be presented through the testimony of Messrs. Alexander, Gordon, and Zoladkiewicz. SPLP additionally

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



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

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

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

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Lewis@BlankRome.com

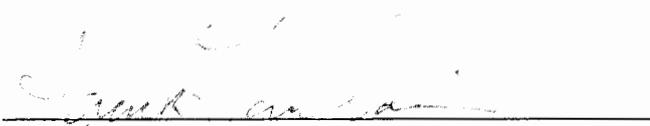
MMontalbano@BlankRome

**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](mailto:ebarnes@pa.gov)

David Brooman, Esquire  
Douglas Wayne, Esquire  
High Swartz, LLP  
40 East Airy Street  
Norristown, PA 19404  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)  
[dwayne@highswartz.com](mailto:dwayne@highswartz.com)

  
\_\_\_\_\_  
Frank L. Tamulonis  
Attorney for Sunoco Pipeline L.P.

# EXHIBIT A



“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(c) 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 Law (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