**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township :

 :

 v. : C-2017-2589346

 :

Sunoco Pipeline, L.P. :

**ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION TO STAY DISCOVERY**

**Procedural History**

Respondent Sunoco Pipeline, L.P. (Sunoco) filed a Motion for Judgment on the Pleadings on May 22, 2017. The Motion seeks that the underlying Complaint be dismissed and judgment be entered in favor of the Respondent. Complainant West Goshen Township (West Goshen or Township) filed a Response in Opposition to the Motion for Judgment on the Pleadings on June 12, 2017. On July 5, 2017, Sunoco filed a Motion to Stay Discovery Pending Disposition of the Motion for Summary Judgment on the Pleadings. On July 6, 2017, a prehearing conference was held and oral argument on the motions occurred. The motions are ripe for a decision.

**Issues**

 The issue is whether the pleadings, together with affidavits, show that there is no genuine issue as to whether Respondent breached a 2015 Settlement Agreement in its business dealings with Complainant, thus entitling Respondent to judgment as a matter of law.

**Discussion**

In interpreting an administrative regulation, as in interpreting a statute, the plain language of the regulation is paramount. *Schappel v. Motorists Mutual Insurance Company*, 934 A.2d 1184, 1187 (Pa. 2007). The principles of statutory construction apply to regulatory

 provisions as well as statutory provisions. *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Benny Enterprises, Inc.* 669 A.2d 1018, 1021 (Pa.Cmwlth. 1996), appeal denied 681 A.2d 1344 (Pa. 1996).

The Commission’s regulations at 52 Pa. Code §5.102(d)(1) set forth the standard of review for summary judgment motions:

(1) *Standard for grant or denial on all counts*. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answer to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa.Code § 5.102(d)(1).

When deciding on a motion for summary judgment, all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thompson Coal Co. v. Pike Coal Co.,* 488 Pa. 198, 412 A.2d 466 (1979). However, once a motion for summary judgment is properly made and supported, it is generally accepted that the nonmoving party may not simply rest upon the mere allegations or denials of its pleading, but must set forth facts showing that there is a genuine issue for trial. *Fiffick v. GAF Corporation,* 603 A.2d 208 (Pa. Super. 1991) (Discussing the Pennsylvania Rules of Civil Procedure); *Anderson v. Liberty Lobby, Inc., Inc.,* 477 U.S. 242 (1986) (Discussing the Federal Rules of Civil Procedure)*.*

When disposing of a Motion for Summary Judgment, the record must be examined in the light most favorable to the nonmoving party giving the nonmoving party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 313 Pa. Superior Ct. 54, 56, 459 A.2d 406, 408 (1983). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979).

Sunoco Pipeline L.P.’s Position

 Respondent claims no genuine issue of material fact exists and that when the undisputed facts alleged by West Goshen Township are accepted as true, no breach of a Settlement Agreement certified by the Commission at U-2015-2486071 on June 15, 2015 occurred. Respondent contends the undisputed facts establish that Sunoco complied with clear and unambiguous terms of a Settlement Agreement when it proposed locating Valve 344 outside the “SPLP Additional Acreage” and it provided West Goshen with notice of that proposal. Further, nothing in the Settlement Agreement prohibits SPLP from locating Valve 344 outside the “SPLP Additional Acreage”, or requires West Goshen’s consent, and the Commission cannot rewrite the Agreement to include such terms. Sunoco contends an injunction against Mariner East 2 development in West Goshen absent Sunoco’s written consent violates public utility law.

Specifically, Respondent contends that the only binding and enforceable promises, covenants and agreements are contained in Sections IV and V of the Settlement Agreement. Therefore, no breach occurred regarding Section IV.A because there is no prohibition against locating Valve 344 outside the “SPLP Additional Acreage” land area and Sunoco has otherwise complied with Section IV.A. Sunoco contends Section II of the Agreement contained no binding promises. Sunoco contends that the Commission may not interpret the Settlement Agreement in a manner that violates public policy and the relief requested by West Goshen violates the Public Utility Code and is contrary to public interest.

At oral argument, Sunoco argued the Settlement Agreement says, “[t]hat it was Sunoco’s plan to situate the valve in that area, but in the event there were engineering constraints, Sunoco Pipeline is permitted to construct the valve anywhere in West Goshen Township, so long as it is not in the SPLP additional acreage.” N.T. 8.

West Goshen Township’s Position

 Complainant replies that West Goshen entered into the Settlement Agreement in order to protect the health, safety, welfare, and property rights of its residents. The Township contends Sunoco knew at the time it entered the Settlement Agreement that Sunoco was already planning to site Valve 344 on the Janiec Tract as opposed to the SPLP Use Area, contrary to which it had agreed and in breach of the Settlement Agreement. West Goshen alleges Sunoco withheld information concerning the actual proposed siting of Valve 344 to induce the Township and Concerned Citizens of West Goshen Township (CCWGT) to enter into the Settlement Agreement that limits the Township’s legal rights and remedies while creating a loophole of engineering constraints that Sunoco now seeks to exploit. The Township claims it is entitled to enforcement of the term of settlement that Valve 344 be constructed and confined to the agreed upon SPLP Use Area unless Sunoco can show it is unable due to reasonable engineering constraints to construct Valve 344 on the SPLP Use Area.

West Goshen argues the Settlement Agreement should be interpreted to limit Sunoco’s freedom of action in siting a valve station in the Township. The Township claims it never agreed that Sunoco could build Valve 344 and its appurtenant facilities anywhere other than inside the SPLP Additional Acreage area. West Goshen’s Response at 6, N.T. 11-14. Further, West Goshen claims Sunoco never provided either official notice of an intent to relocate Valve 344 to the Janiec Tract or identification of any engineering constraints that might warrant the relocation. These omissions prior to taking actions towards the relocation constitute a breach of the Settlement Agreement. Not only did Sunoco not seek permission or consent from the township, but it did not even notify the township prior to spreading its imprint outside the SPLP area.

Disposition

The Settlement Agreement provides under Paragraph V.A.4 as follows:

The Parties acknowledge and agree that any action to enforce any provision of this Agreement (other than the deed restriction on the use of the SPLP Additional Acreage) shall be brought before the Pennsylvania Public Utility Commission or any such successor agency or commission.

The Settlement Agreement at Paragraphs II.A.2 and A.3 state as follows:

2. The pump station, the VCU and all accessory and appurtenant above-ground facilities associated with all phases of the Mariner East Project will be maintained within the present active site, Parcel No. 52-1-8-U, on which the existing Boot Road Pump Station currently operates (the “SPLP Existing Site”), except that a remote operated valve station will be constructed and maintained on SPLP’s adjacent 4.42 acre property, Parcel No. 52-0-10-10.1, also known as the former Janiec Tract, (the “SPLP Additional Acreage”). The proposed location of such valve station on the SPLP Additional Acreage is depicted on the map attached hereto as Appendix 1 and incorporated by reference (the “SPLP Use Area”). Subject to any engineering constraints, SPLP intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If due to engineering constraints, SPLP is unable to construct the valve station in the SPLP Use Area, SPLP will notify WGT. Nothing in this Settlement Agreement constitutes an authorization or agreement for SPLP to construct the valve station in any location on the SPLP Additional Acreage other than in the SPLP Use Area.

3. As of the date of execution of this Agreement, SPLP has no plan or intention to construct any additional above-ground permanent utility facilities in WGT except as otherwise expressly set forth in this Agreement.

 The Amended Formal Complaint seeks to enforce a commitment made by Sunoco in a Settlement Agreement to site above-ground valve appurtenant facilities on the SPLP Use Area, unless prohibited due to engineering constraints. Complainant has not yet had an opportunity to conduct discovery. We are at the preliminary stage of this proceeding. At a minimum, there remains a genuine issue as to whether Sunoco breached the Settlement Agreement by failing to provide proper notice of an intent to relocate Valve 344 from the agreed upon SPLP Additional Acreage area to the Janiec Tract, located on the opposite side of Route 202 near the intersection of Boot Road, without reasonably sufficient engineering constraints provided to the Township in advance of movement towards construction.

There is an issue regarding whether as of the date of execution of the Agreement, SPLP had a plan or intention to construct any additional above-ground permanent utility facilities in the township beyond what had been expressly set forth in the Agreement. If so, this raises questions as to what those reasons are and an examination and comparison regarding the feasibility and any engineering constraints regarding both sites ought to be permitted. There is an issue regarding whether the Settlement Agreement requires Sunoco to locate Valve 344 and its appurtenant facilities within the SPLP Use Area unless engineering constraints make the this infeasible or unsafe. There is an issue as to whether location of the Valve 344 on the Janiec Tract instead of the SPLP Use Area is significantly safer or more feasible. There is an issue as to whether there are no reasonable engineering constraints; rather, there is an intent to enlarge an imprint along Boot Road, to block the construction of a planned retirement development on Janiec 2 Tract, and to save land space on Janiec 1 Tract and Janiec 2 Tract for the current phases and potentially future phases of the Mariner East project.

It appears at this point in litigation that both parties believe that the plain language of the Settlement Agreement is clear in supporting their respective positions. However, while Sunoco advocates that all promises are contained in only two sections of the document, West Goshen Township contends that all five sections of the document must be read in their entirety in order to interpret the meaning.

A settlement agreement is a type of contract, and is generally governed by contract law. *Gorman v. Workers’ Compensation Appeal Board,* 954 A.2d 748, 752 (Pa. Cmwlth. 2008)(citing *Kidd-Parker v. Workers’ Compensation Appeal Board* *(Philadelphia School District)),* 907 A.2d 33 (Pa. Cmwlth. 2006). One of the fundamental tenants of contract interpretation is to effectuate the intention of the parties. *Crawford v. Workers’ Compensation Appeal Board (Centerville Clinics),* 958 A.2d 1075, 1083 (Pa. Cmwlth. 2008). Thus, a court may not interpret a settlement agreement unless it first determines that the agreement is ambiguous or capable of more than one interpretation. *Id.* (quoting *Krizovensky v. Krizovensky,* 624 A.2d 638, 642 (Pa. Super. 1993).When contract terms are ambiguous and susceptible of more than one reasonable interpretation . . . the court is free to receive extrinsic evidence, i.e. parole evidence to resolve the ambiguity. *Id.* at 642.Absent ambiguity, the parties’ intentions must be discerned from the four corners of the document, and extrinsic evidence may not be considered. *Baker v. Coombs*, 219 S.W.3d 204, 207 (Ky. App. 2007).

In the instant case, the parties have differing views on the interpretation of the same language regarding what is meant by “Mariner East Project” and what is meant by “notify” and “engineering constraints.” The parties disagree as to intent citing the same paragraphs of the Settlement Agreement. Thus, I find the Settlement Agreement to be ambiguous as more than one reasonable interpretation is plausible. Ambiguity dictates that at least the entire document ought to be considered if not also extrinsic evidence in order to interpret the agreement.

Although Sunoco believes West Goshen was properly notified within the meaning of the settlement when it announced plans to relocate Valve 344, the township disagrees that this notice was proper in that in the event Sunoco ran into engineering constraints that it believed rendered it unable to construct a necessary valve on the SPLP Use Area, Sunoco should have notified the township and presented the engineering data supporting its position to the township. Sunoco’s engineering data could then have been analyzed by Mr. Kuprewicz and other township experts and the township’s response to a proposed relocation would have been guided by independent expertise. Township offers affidavits of Richard Kuprewicz to show he has not seen any documentation from SPLP demonstrating engineering constraints prevent siting Valve 344 on the SPLP Use Area. Thus, I agree there is an issue regarding whether there are “engineering constraints” within the meaning of the Settlement Agreement.

Thus far, there has been no discovery allowing the parties opportunity to seek clarification and potentially resolve this complaint. It appears on the surface of the complaint that if there are legitimate engineering constraints involving cost, time, safety, feasibility, and/or geological reasons to constructing the Valve 344 and its appurtenant facilities on the SPLP Additional Acreage and there are sound engineering reasons for relocating the Valve 344 to the Janiec Property that take into consideration the health, safety and property rights of the residents of West Goshen Township, the parties may be able to work out an agreement and settle this matter prior to a hearing.

Conclusion

In conclusion, I am not persuaded at this point to find there are no genuine issues as to material facts regarding whether the Settlement Agreement was breached. There further remains in dispute multiple issues including but not limited to: (1) whether the Settlement Agreement requires Sunoco to construct any above-ground valve station facilities in the Township within the SPLP Use Area unless SPLP is unable to do so due to engineering constraints; (2) whether Sunoco gave the Township proper notice of an intent to relocate valve 344 from the SPLP Use Area to the Janiec Tract; (3) whether at the time of execution of the Settlement Agreement, Sunoco had plans and withheld material information about is plans for the Mariner 2 phase pipeline; (4) whether Sunoco always intended to site Valve 344 on the Janiec Tract and misrepresented this intention at the time of the Settlement Agreement; (5) whether there are reasonable engineering constraints that prevent Sunoco from constructing Valve 344 on the SPLP Use Area; (6) whether does the township has a right to review the alleged engineering constraints that might be identified as preventing the installation of valve facilities outside the SPLP Use Area; and (7) whether the Settlement Agreement grants Sunoco the right to locate valve facilities anywhere it wishes in the township other than on the SPLP Additional Acreage. For these reasons, the Motion for Judgment on the Pleadings shall be denied. Additionally, Sunoco’s Motion to Stay Discovery Pending Disposition of the Motion for Judgment on the Pleadings shall be denied as moot.

**THEREFORE,**

 **IT IS ORDERED,**

1. That the Motion of Sunoco Pipeline LP For Judgment on the Pleadings is denied.
2. That Sunoco Pipeline LP’s Motion for Stay of Discovery is denied as moot.
3. That the following modifications to the Commission’s Rules of Practice and Procedure are effective as of the date of entry of this Order:
4. 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;
5. 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;
6. 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;
7. 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.
8. That this case at Docket No. C-2017-2589346 shall be scheduled for hearings in Harrisburg and the transcript turnaround for the hearings will be five (5) days.
9. That the procedural schedule is as follows.
10. Direct testimony of West Goshen Twp. February 1, 2018
11. Rebuttal testimony of Sunoco Pipeline L.P. March 1, 2018
12. Surrebuttal testimony of West Goshen Twp. April 2, 2018
13. Oral rejoinder outlines April 19, 2018
14. Hearings April 25 & 26, 2018
15. Main Briefs May 28, 2018
16. Reply Briefs June 18, 2018

Date: July 24, 2017

 Elizabeth Barnes

 Administrative Law Judge

**C-2017-2589346 - WEST GOSHEN TOWNSHIP v. SUNOCO PIPELINE L.P.**

***(Revised 7/10/2017)***

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