

Phone: (215) 569-5793
Fax: (215) 832-5793
Email: Lewis@BlankRome.com

October 19, 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 ("SPLP's") Motion to Modify the Procedural Schedule in the above referenced case. Copies of the Motion 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

Christopher A. Lewis

Enclosures

cc: As per Certificate of Service

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. 18th Street

Philadelphia, PA 19103

Phone: (215) 569-5500

Facsimile: (215) 832-5793

Email: Lewis@BlankRome.com

FTamulonis@BlankRome.com

MMontalbano@BlankRome.com

*Attorneys for Defendant
Sunoco Pipeline L.P.*

WEST GOSHEN TOWNSHIP AND :
CONCERNED CITIZENS OF WEST :
GOSHEN TOWNSHIP :
Complainant, :
v. :
SUNOCO PIPELINE L.P., :
Respondent. :

Docket No. C-2017-2589346

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.483, you are hereby notified that, if you do not file a written response to the enclosed Motion To Modify the Procedural Schedule of Sunoco Pipeline L.P. within 10 days from service of this notice, a decision may be rendered against you. Any Response to the Motion To Modify the Procedural Schedule, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Sunoco Pipeline L.P., and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:

Christopher A. Lewis, Esquire
Frank L. Tamulonis, Esquire
Michael Montalbano, Esquire
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103

Dated: October 19, 2017

Christopher A. Lewis

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

FTamulonis@BlankRome.com

MMontalbano@BlankRome.com

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. 18th Street

Philadelphia, PA 19103

Phone: (215) 569-5500

Facsimile: (215) 832-5793

Email: Lewis@BlankRome.com

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.	:	

**RESPONDENT SUNOCO PIPELINE L.P.’S MOTION
TO MODIFY THE PROCEDURAL SCHEDULE**

Sunoco Pipeline L.P. (“SPLP”) respectfully submits this Motion To Modify the Procedural Schedule, seeking to amend the current procedural schedule pursuant to 52 Pa. Code § 5.483. SPLP also requests an expedited briefing schedule, requiring West Goshen Township (“WGT” or the “Township”) to file its response to this Motion within 10 days of service.

The current procedural schedule issued by the Public Utility Commission (the “Commission”) on July 24, 2017 could significantly delay the completion of the Mariner East 2 Pipeline in West Goshen Township. As things now stand, SPLP has resumed its horizontal directional drilling (“HDD”) program at its remaining drilling locations in the Commonwealth, and the entire Pipeline—except for the West Goshen portion—will be completed and ready to deliver product by the fourth quarter of 2017 or early 2018. The HDD site in West Goshen Township is the only location where drilling will not resume for the foreseeable future, and will soon be the only segment of the Pipeline that remains unfinished.

SPLP anticipates that the drills through West Goshen Township (from west to east) will take approximately six (6) months to complete, once started. In other words, a ruling after July of 2018 in this proceeding, as well as the approximately two months it will take for the Parties to file Exceptions with and receive a final order from the Commission, means that the segment itself will be significantly delayed. Even if another site for the Valve were selected, the delay from commencement of work to completion would be substantial.

This case is not complex and should not require 10 months to resolve. The procedural schedule can be significantly shortened without compromising either party’s ability to obtain necessary discovery or fairly present its case.

In addition, there is a threshold issue that could lead to an early resolution of this dispute: are the engineering constraints and accompanying safety concerns cited by SPLP for not locating Valve 344 (the “Valve”) on the SPLP Use Area real, as SPLP contends, or merely illusory, as the Township seems to be arguing? At the July 18, 2017 hearing, SPLP adduced testimony that—regardless of the interpretation of the Settlement Agreement or the timing of the notice to the Township—it decided not to site the Valve on the SPLP Use Area because of safety and

permitting considerations, including but not limited to the risk of inadvertent returns on Route 202 and the prospect of having to “open cut” Boot Road for a distance of almost 4,000 feet, closing this high volume road to all traffic, including emergency vehicles.

In the past, the Township has used Richard Kuprewicz, a pipeline safety expert, to review SPLP’s Mariner East plans. In this instance, however, Mr. Kuprewicz testified that that he never discussed with SPLP whether the SPLP Use Area would be a prudent location (N.T. 133, l. 2), and his report concluded that the *current* siting of the Valve on the Janiec 2 Tract exceeds federal pipeline safety regulations and reflects the “level of respect that transporting HVL should require in a prudent pipeline operation.” (N.T.. 130, ll. 3-9, 22-25; 131, ll. 1-17.)

Inasmuch as the Township must prove that the engineering constraints cited by SPLP are misplaced or illusory in order to justify its request that the Commission *mandate* the siting of the Valve on the SPLP Use Area, and inasmuch as the Township represented to the Commission that its intent in bringing this proceeding was not to delay or block the Mariner East 2 project, the Commission should modify the procedural schedule to require the Township to address the threshold issue of the validity of SPLP’s concerns early in this litigation.

The Township has already served discovery requests on SPLP, and SPLP anticipates that it will complete the document production relating to the engineering constraints by November 8. At that point, the Township should have an expert review the material and opine whether the engineering constraints cited by SPLP are real or imaginary. Managing the sequence of the litigation in this manner is likely to lead to early resolution, avoiding potentially unnecessary burden and expense on the parties and the Commission, and expediting the completion of this important expansion of pipeline public utility service.

BACKGROUND

1. On February 17, 2017, the Township filed a Complaint to Enforce Settlement Agreement with the Commission. The settlement agreement (the “Settlement Agreement”) at issue was entered into by the Township, SPLP, and Concerned Citizens of West Goshen Township (“CCWGT”) and certified by the Commission on June 15, 2015. The certification is docketed at U-2015-2486071. The Complaint asserted two breach-of-settlement counts, and requested equitable and monetary relief, and an assessment of attorneys’ fees.

2. On March 30, 2017, the Township amended the Complaint, withdrawing one of the counts previously asserted in the original Complaint and eliminating its request for attorneys’ fees. The Amended Complaint requests that the Commission declare that SPLP is in material breach of Paragraphs II.A, II.A.2, and IV.A of the Settlement Agreement, and to order SPLP to cease and desist the construction of a the Valve on an area of land known as the Janiec 2 Tract.

3. Most importantly, the Township’s requested relief is an Order from the Commission directing SPLP to install the Valve on the “SPLP Use Area.”

4. On May 22, 2017, SPLP filed a Motion for Judgment on the Pleadings, requesting that the Township’s entire Complaint be dismissed for failure to state a claim upon which relief could be granted. On June 12, 2017, the Township filed its Response in Opposition to the Motion for Judgment on the Pleadings.

5. On July 7, 2017, the Township filed a Petition for an *Ex Parte* Emergency Order and an Interim Emergency Order requesting that the Commission enjoin SPLP from beginning any construction on the Janiec 2 Tract until the Commission issued a final order with respect to the Township’s underlying Amended Complaint.

6. On July 18, 2017, an evidentiary hearing was held concerning the Petition for Interim Emergency Relief.

7. During the Hearing, Matthew Gordon, Project Director for Sunoco Pipeline, testified that the Valve could not be placed on the SPLP Use Area because:

(1) SPLP could not maintain a safe radius of curvature on the SPLP Use Area. Attempting to install the pipe via HDD on the SPLP Use Area would have threatened the integrity of the pipe, or would have required SPLP to tear down a residential building on Mary Jane Lane.

(2) Tanks and a pump station from the adjacent Aqua PA American facility prevented SPLP from lining up the pipe with the drill rig.

Because HDD was infeasible, SPLP decided the only method for installing the Pipeline from Ship Road would be to open cut Boot Road. But this presents both safety and traffic concerns, including:

(1) The ground underneath Boot Road is congested with existing utility lines, which would require SPLP to install the pipe in the center of the road, causing closure of both lanes.

(2) PennDOT was unlikely to issue a permit to open cut Boot Road because of the tremendous impact and inconvenience to the community.

(3) The closure of Boot Road would cause severe traffic disruptions and would adversely affect response times of emergency services to local residences.

(4) Boot Road is the most direct route for the fire department that is located east of Route 202 to the homes near the SPLP Use Area. Closing the road entirely would have negatively affected emergency access.

Even if the HDD could have been staged for the west side of the pump station, SPLP still would have encountered problems in installing the pipeline on the east side of the pump station (from the SPLP Use Area across 202). These included:

(1) If the valve were located in the SPLP Use Area, the company would have to use a shored excavation deep vertical shaft that posed safety risks for welders;

(2) The drill profile for the HDD under Route 202 would have a maximum depth of approximately 20 feet, passing through highly fractured, unconsolidated sandstone, and posing a risk of inadvertent returns of drilling mud, creating hazardous driving conditions for the nearly 70,000 cars driving on Route 202 each day.

8. The Township's expert, Richard Kuprewicz conceded that he never discussed with SPLP whether the SPLP Use Area would be a prudent location, and his report concluded that the current siting of the Valve on the Janiec 2 Tract exceeds federal pipeline safety regulations and reflects the "level of respect that transporting HVL should require in a prudent pipeline operation." *Id.* at 130-31.

9. On July 18, 2017, SPLP began HDD activities on the Janiec 2 Tract.

10. On July 24, 2017, Administrative Law Judge ("ALJ") Elizabeth Barnes issued an order enjoining SPLP from constructing the Valve and appurtenant facilities to the Valve, and from conducting HDD on the Janiec 2 Tract until the entry of a final Commission Order ending the formal complaint proceeding at Docket No. C-2017-2589346. The interim emergency order was certified to the Commission as a material question requiring interlocutory review.

11. On July 31, 2017, SPLP filed its Brief in Opposition to the Order Granting Interim Emergency Relief. On that same day, the Township filed its Brief in Support of the Interim Emergency Order Entered on July 24, 2017.

12. On August 4, 2017, Secretary Rosemary Chiavetta issued a letter waiving the thirty-day period for consideration of ALJ Barnes’s certified material question.

13. The Commission has since held three public meetings: August 31, 2017, September 21, 2017, and October 5, 2017. The Commission did not issue a ruling regarding the certified material question during those meetings. The Commission’s next public meeting is scheduled for October 26, 2017.

14. On July 24, 2017, ALJ Barnes issued an order, which denied SPLP’s Motion for Judgment on the Pleadings, and established the following procedural schedule:

A. Direct testimony of West Goshen Twp.	February 1, 2018
B. Rebuttal testimony of Sunoco Pipeline L.P.	March 1, 2018
C. Surrebuttal testimony of West Goshen Twp.	April 2, 2018
D. Oral rejoinder outlines	April 19, 2018
E. Hearings	April 25 & 26, 2018
F. Main Briefs	May 28, 2018
G. Reply Briefs	June 18, 2018

15. On July 25, 2017, the Commonwealth’s Environmental Hearing Board (“EHB”) issued an order suspending SPLP’s HDD activities throughout the Commonwealth. The July 25, 2017 EHB Order is attached hereto as **Exhibit A**.

16. On August 10, 2017, the EHB approved a stipulated order (the “Stipulated Order”), which permitted SPLP to resume HDD activities, and put into place safeguards that are designed to minimize the risks associated with HDD. The Stipulated Order is attached hereto as **Exhibit B**.

17. As of the filing of this Motion, SPLP has resumed its HDD program at its remaining drill sites.

18. If HDD activities were permitted to resume in West Goshen Township, SPLP anticipates that the HDD could be completed in approximately six (6) months from the start.

II. REQUESTED RELIEF

19. SPLP specifically requests that the Commission modify the procedural schedule to shorten the timeframe for the final disposition of this case, and to require the Township to make an initial showing that the engineering concerns cited by SPLP for not locating the Valve on the SPLP Use Area are illusory and misplaced.

20. In modifying the current litigation schedule, SPLP requests that the Commission adopt the following schedule:

1. SPLP's Production of Engineering Data Regarding Siting of Valve on SPLP Use Area	November 8, 2017
2. Production of Expert Report Regarding Feasibility of Siting Valve on SPLP Use Area	November 28, 2017
3. Direct testimony of West Goshen Twp.	December 8, 2017
4. Rebuttal testimony of Sunoco Pipeline L.P.	December 29, 2017
5. Surrebuttal testimony of West Goshen Twp.	January 12, 2018
6. Oral rejoinder outlines	January 19, 2018
7. Hearings	January 22 & 23, 2018
8. Main Briefs	February 19, 2018
9. Reply Briefs	March 5, 2018

III ARGUMENT

21. The Commission has modified proceedings to facilitate their speedy resolution. *See Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Distribution Corp.*, R-00016789, 2002 WL 31958785 (Pa. P.U.C. July 23, 2002) (ordering bifurcation of contract issue and 1307(f) gas cost rate proceeding in order to "encourage a timely resolution to the . . . contract issue."); *Pa. Pub.*

Util. Comm'n v. Equitable Gas Co., 59 P.U.R. 4th 470, 474 (Nov. 22, 1983) (noting that Commission bifurcated the proceeding).

22. The Commission has also recognized the need for expedited proceedings when circumstances so require. *See A. Moses, Inc. v. Verizon Pa. Inc.*, Dkt. No. C-2010-2205259, 2011 WL 6008999, at *5 (Pa. P.U.C. Oct. 14, 2011) (ordering remand proceeding to be conducted on expedited basis); *In re PECO Energy Co.*, 87 Pa. P.U.C. 718, Dkt. No. R-00973953 (Oct. 9, 1997) (directing Office of Administrative Law Judge to issue expedited schedule).

23. Further, it is well established that Pennsylvania courts have the inherent authority to set the schedules of the cases on their dockets. *See Lockett v. Blaine*, 850 A.2d 811, 819 (Pa. Commw. Ct. 2004) (“Every court has the inherent power to schedule disposition of the cases on its docket to advance a fair and efficient adjudication.” (emphasis added)); *see also* 52 Pa. Code § 5.483 (“The presiding officer will have the authority specified in the act, subject to this title. This authority includes . . . the power . . . to otherwise regulate the course of the proceeding.”).

24. This case is a contract dispute relating to the siting of the Valve in West Goshen Township. The Amended Complaint contains only a single count.

25. While the parties may disagree over the proper interpretation of the Settlement Agreement, the contractual interpretation issues themselves are straightforward and simple.

26. Likewise, the engineering constraints cited by SPLP for not siting the Valve on the SPLP Use Area may readily be confirmed or refuted.

27. To date, to the best of SPLP’s knowledge, the Township has made no effort to examine the engineering constraints cited by SPLP for not siting the Valve on the SPLP Use Area. Instead, the Township has merely speculated that the engineering constraints are not real,

since, in the Township's view, SPLP did not notify the Township of the presence of the constraints until sometime in 2017.

28. Even if SPLP failed to "properly" notify the Township of the engineering constraints and the decision to relocate the Valve, this oversight would not justify siting the Valve on the SPLP Use Area if siting the Valve there raises legitimate safety and feasibility concerns.

29. In the absence of evidence (rather than speculation) from the Township that the engineering constraints cited by SPLP are not real, the Commission cannot grant the relief sought by the Township, which is to site the Valve on the SPLP Use Area.

30. The Commission has repeatedly recognized that the Mariner East project will confer substantial affirmative benefits on the public. *See, e.g.*, PUC Opinion and Order dated July 24, 2014, Docket No. P-2014-2422583; PUC Order dated August 21, 2014, Docket No. A-2014-2425633 (granting CPC for Washington County); PUC Order and Opinion dated October 29, 2014, Docket Nos. P-2014-2411941, *et seq.* These benefits include: (1) providing take away capacity for natural gas liquids produced from the Marcellus Shale in Pennsylvania, allowing these valuable resources to reach commercial markets and promoting the continued growth and development of Pennsylvania's oil and gas industry; (2) ensuring that the route to the commercial markets remains within the Commonwealth as opposed to the Gulf Coast, so that the Marcus Hook Industrial Complex can become a Northeast hub for the distribution of natural gas liquids to local, regional, national and international markets; (3) anchoring the revitalization of the Marcus Hook Industrial Complex, so that jobs and economic opportunities can be created in southeastern Pennsylvania; (4) providing intrastate transportation capacity for propane, so that shippers can arrange reliable, safe, and economical transportation of propane during the winter

season, when demand for propane peaks, and supplies of propane are available but existing transportation alternatives are inadequate; and (5) providing an increased supply of propane to the market which will allow consumers, including Pennsylvania residents, to benefit from lower cost propane during the winter season.

31. The Township has repeatedly represented to the Commission that its intent in bringing this proceeding is not to delay or block the Mainer East project.

32. SPLP has resumed its HDD program at its remaining drilling locations in the Commonwealth, and the entire Pipeline—except for the West Goshen portion—will be completed and ready to deliver product by the fourth quarter of 2017 or early 2018. The HDD site in West Goshen Township will not be resumed until after this matter is resolved which, if Exceptions are filed, is not expected until September 2018. Thus, West Goshen Township is the only location where drilling will not resume for the foreseeable future.

33. Moreover, if the engineering constraints cited by SPLP for not locating the Valve on the SPLP Use Area are real and not fictional, there is no reason that the Commission should continue to delay construction of the segment through West Goshen Township.

34. The proposed, modified schedule is both fair and appropriate in this matter because of the potential harm that an extended delay would inflict upon SPLP and the public.

35. Such a modification to the current schedule will also promote judicial economy because it may lead to an early resolution of the dispute, saving the Commission time and resources, should the Township's expert determine that the engineering constraints cited by SPLP for not locating the Valve on the SPLP Use Area are real and not imaginary.

36. Finally, no party will be prejudiced by the modified schedule because this is a relatively straightforward matter involving a single count alleging a breach of contract.

III. REQUEST FOR EXPEDITED BRIEFING SCHEDULE

37. Given the time sensitive nature of this request, SPLP respectfully requests that the Commission waive the standard 20-day response period under 52 Pa. Code § 5.103(c), and require the Township to file a response within 10 days of the filing and service of this Motion. *See Cavalier Tele. Mid-Atlantic, LLC v. Verizon Pa. Inc.*, A-20055343, 2007 WL 2325360 (Pa. Pub. Util. Comm'n Aug. 9, 2007) (ordering expedited briefing schedule).

IV. CONCLUSION

SPLP respectfully requests that the Commission exercises its discretion to mitigate any negative impact a delay on construction activities in West Goshen Township could have on SPLP and the public by granting SPLP's Motion To Modify the Procedural Schedule, and adopt the following schedule:

- | | |
|--|-----------------------|
| 1. SPLP's Production of Engineering Data
Regarding Siting of Valve on SPLP Use Area | November 8, 2017 |
| 2. Production of Expert Report Regarding
Feasibility of Siting Valve on SPLP Use Area | November 28, 2017 |
| 3. Direct testimony of West Goshen Twp. | December 8, 2017 |
| 4. Rebuttal testimony of Sunoco Pipeline L.P. | December 29, 2017 |
| 5. Surrebuttal testimony of West Goshen Twp. | January 12, 2018 |
| 6. Oral rejoinder outlines | January 19, 2018 |
| 7. Hearings | January 22 & 23, 2018 |
| 8. Main Briefs | February 19, 2018 |
| 9. Reply Briefs | March 5, 2018 |

Respectfully submitted,

BLANK ROME LLP

Christopher A. Lewis

Christopher A. Lewis (ID #29375)

Frank L. Tamulonis (ID #208001)

Michael Montalbano (ID # 320943)

One Logan Square

130 N. 18th Street

Philadelphia, Pennsylvania 19103

Phone: (215) 569-5793

Fax: (215) 832-5793

Counsel for Sunoco Pipeline L.P.

Dated: October 19, 2017

CERTIFICATE OF SERVICE

I, Michael J. Montalbano, certify that on October 19, 2017, pursuant to 52 Pa. Code § 1.54 (relating to service by a party), I caused a true and correct copy of the foregoing Motion To Modify the Procedural Schedule to be served upon the party listed below by electronic mail and U.S. Mail, first-class, postage prepaid, and by filing it electronically with the Commission:

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

David Brooman, Esq.
Richard C. Sokorai, Esq.
Mark R. Fischer, Jr., Esq.
Douglas Wayne, Esq.
High Swartz, LLP
40 East Airy Street
Norristown, PA 19404
dbrooman@highswartz.com
rsokorai@highswartz.com
mfischer@highswartz.com
dwayne@highswartz.com

Michael J. Montalbano

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

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. 18th Street

Philadelphia, PA 19103

Phone: (215) 569-5500

Facsimile: (215) 832-5793

Email: Lewis@BlankRome.com

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. :

Verification

I, Matthew L. Gordon, Project Director for the Mariner East 2 pipeline project for Sunoco Pipeline L.P., being fully authorized to make this Verification on behalf of Sunoco Pipeline L.P., states the facts set forth above in the attached Motion To Modify the Procedural Schedule are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 (relating to unsworn falsification to authorities).

Dated: October 4, 2017



Matthew L. Gordon

Exhibit A



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, THE DELAWARE :
RIVERKEEPER NETWORK, AND :
MOUNTAIN WATERSHED ASSOCIATION, :
INC. :

v. :

EHB Docket No. 2017-009-L

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and SUNOCO PIPELINE, L.P., :
Permittee :

ORDER

AND NOW, this 25th day of July, 2017, following two conference calls during which the parties presented extensive argument in support of their respective positions, it is hereby ordered that the Appellants' application for a temporary partial supersedeas is **granted**. The permits that are the subject of this appeal are hereby superseded effective immediately to the extent they authorize the Permittee to conduct horizontal directional drilling. However, this Order may be modified in part if the Permittee provides the Board with detailed affidavits explaining why it would cause equipment damage, a safety issue, or more environmental harm than good to stop drilling at the 55 locations where drilling is actively underway. This temporary partial supersedeas shall expire at 9:00 a.m. on August 7, 2017, unless further extended by the Board. The hearing on the Appellants' petition for a partial supersedeas shall commence in the Board's Harrisburg hearing room on the date requested by the parties; namely, **9:00 a.m. on August 7, 2017.**



ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: July 25, 2017

c: For the Commonwealth of PA, DEP:

William J. Gerlach, Esquire
Gail Guenther, Esquire
Margaret O. Murphy, Esquire
Curtis C. Sullivan, Esquire
Nels J. Taber, Esquire
(*via electronic filing system*)

For Appellant, Clean Air Council:

Alexander G. Bomstein, Esquire
Kathryn L. Urbanowicz, Esquire
Joseph O. Minott, Esquire
(*via electronic filing system*)

For Appellant, Delaware Riverkeeper Network:

Aaron J. Stemplewicz, Esquire
(*via electronic filing system*)

For Appellant, Mountain Watershed Association, Inc.:

Melissa Marshall, Esquire
(*via electronic filing system*)

For Permittee:

Robert D. Fox, Esquire
Neil S. Witkes, Esquire
Diana A. Silva, Esquire
Jonathan E. Rinde, Esquire
Terry R. Bossert, Esquire
(*via electronic filing system*)

Court Reporter:

Premier Reporting, LLC
(*via electronic mail*)

Exhibit B

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL; THE DELAWARE	:	
RIVERKEEPER NETWORK; and	:	
MOUNTAIN WATERSHED	:	
ASSOCIATION, INC.,	:	
	:	
Appellants,	:	EHB DOCKET NO. 2017-009-L
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
	:	
Appellee,	:	
	:	
and	:	
	:	
SUNOCO PIPELINE L.P.,	:	
	:	
Permittee.	:	

CORRECTED STIPULATED ORDER

AND NOW this 10th day of August, 2017, the Clean Air Council, the Delaware Riverkeeper Network, the Mountain Watershed Association, Inc. (collectively "Appellants"), Sunoco Pipeline L.P. ("Sunoco"), and the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), by and through their respective counsel, hereby agree to resolve the Appellants' Application for Temporary Partial Supersedeas and Petition for Partial Supersedeas, both of which were filed on July 19, 2017, through a negotiated agreement with regard to the following terms and conditions, which shall be entered by the Environmental Hearing Board ("Board") as a Stipulated Order, and which supersedes and replaces the Stipulated Order approved by the Board on August 9, 2017, as follows:

1. Appellants' Petition for Temporary Partial Supersedeas and Petition for Partial Supersedeas are hereby withdrawn without prejudice. The Board's Orders dated July 25, 2017, July 28, 2017, August 1, 2017, August 3, 2017, and August 4, 2017 (attached as Exhibit "1") are hereby vacated. Appellants reserve the right to seek a temporary or permanent supersedeas for conduct after the Board's entry of this Stipulated Order, including any activities related to horizontal directional drilling ("HDD").

2. Sunoco will perform a re-evaluation of the 41 HDDs listed on Exhibit "2" attached hereto. Exhibit "2" provides the rationale for selecting these HDDs for re-evaluation as well as the nature of the re-evaluation.

3. Sunoco will also perform a re-evaluation of the HDDs listed on Exhibit "3." These HDDs constitute drills for which an inadvertent return ("IR") occurred during the installation of one pipe (20" or 16" diameter) and where a second pipe will hereafter be installed in the same right-of-way ("ROW"). In addition, Sunoco will perform a re-evaluation of HDDs for which an IR occurs in the future during the installation of one pipe where a second pipe will thereafter be installed in the same ROW.

4. In re-evaluating the design of the HDD techniques for the sites referenced in Paragraphs 2 and 3 herein, Sunoco shall:

- i. Re-examine the geology at each site using information and data gathered during HDD operations at that and other sites during construction of the pipelines subject to the permits in the above-captioned Appeal;
- ii. Consider data that is specific to the needs of each HDD being reevaluated, including at a specific HDD: geologic strength at profile depth, overburden strength, HDD depth, entry angle, pipe stress radius, open cut alternatives, a

re-route analysis for all HDDs (including those on Exhibit “2”) and analysis of well production zones;

iii. Conduct, as appropriate, additional geotechnical evaluation at each site using techniques generally recognized within the scientific community which may include:

- Additional field drilling and sampling;
- Seismic surveys;
- Ground penetrating radar; and
- Electromagnetic surveys/electrical resistivity tomography.

iv. In karst areas, Sunoco shall consider the use of seismic surveys and electromagnetic surveys/electrical resistivity tomography for the re-evaluation undertaken pursuant to this Order, and if it does not use these evaluation methodologies, it will provide the Department with an explanation for why they were not used at that site.

5. Upon completion of Sunoco’s re-evaluation of each HDD site referenced in Paragraphs 2 and 3 herein, Sunoco shall provide for each such site a report signed and sealed by a Professional Geologist, describing and presenting the results of its study for that location (“Report”). The Professional Geologist shall be a person trained and experienced in geotechnical and hydrogeologic investigation. The Report shall specify all actions to be taken by Sunoco to eliminate, reduce, or control the release or IR of HDD drilling fluids to the surface of the ground or impact to water supplies at that location during HDD operations.

i. The Report shall document in detail the information considered for the re-evaluation of the design of the HDD at that site.

- ii. The Report shall contain an evaluation of the feasibility of constructing the proposed HDD crossing at that location and, as appropriate, propose modification of the design of the HDD or relocation of the pipeline based upon the results of its study for that location.
6. Sunoco will submit the Reports to the Department for review and approval.
- i. For any recommendation that requires a major permit modification, the Department's procedures for major permit modifications shall apply.
 - ii. For all recommendations for which a minor permit modification is required, including, but not limited to, certain changes from HDD to an open cut or certain changes to the Limit of Disturbance ("LOD"), the Department will have 21 days to review the submission and render a determination with respect to such minor permit modification, unless Sunoco agrees to extend the 21-day time period. Appellants and private water supply landowners, who have received notice pursuant to Paragraph 7 below, shall submit comments, if any, within 14 days of the Department's posting of Sunoco's Reports on the Department's Pennsylvania Pipeline Portal website. Comments on the Reports shall be submitted to the Department at: Karyn Yordy, Executive Assistant, Office of Programs, Department of Environmental Protection, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101; Email – kyordy@pa.gov; Phone – (717) 772-5906; Fax – (717) 705-4980. Appellants will provide copies of their comments by email to Sunoco to the email address provided to Appellants'

counsel. The Department shall consider comments received and document such consideration.

- iii. For all other recommendations, including, but not limited to, recommendations of no change or of changes that do not require a minor permit modification, the Department will have 21 days to review the submission and render a determination with respect thereto, unless Sunoco agrees to extend the 21-day time period. Appellants and private water supply landowners who have received notice pursuant to Paragraph 7 below, shall submit comments, if any, within 14 days of the Department's posting of Sunoco's Reports on the Department's Pennsylvania Pipeline Portal website. Comments on the Reports shall be submitted to the Department at: Karyn Yordy, Executive Assistant, Office of Programs, Department of Environmental Protection, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101; Email – kyordy@pa.gov; Phone – (717) 772-5906; Fax – (717) 705-4980. Appellants will provide copies of their comments by email to Sunoco to the email address provided to Appellants' counsel. The Department shall consider comments received and document such consideration.

7. At the same time that Sunoco provides the Report to the Department, Sunoco will also provide a copy of the Report to Appellants by email to the address provided to Sunoco's counsel. The Department shall post Sunoco's Report to the Pennsylvania Pipeline Portal website within one business day of receipt. Sunoco shall send a copy of the Report (by U.S. Postal

Service Certified Mail and First Class Mail) to all landowners who have a private water supply that is located within 450 feet of the HDD addressed by the Report.

8. Ten days before HDD operations start at an HDD location, or re-start at an HDD location at which there was an IR (as listed on Exhibit "4"), Sunoco will identify all landowners within 450 feet of HDD alignments, and notify all such landowners (by U.S. Postal Service Certified Mail and First Class Mail) and offer such landowners the opportunity to have their water supplies within 450 feet of the HDD alignment sampled before, during, and after start or re-start of such HDD in accordance with the parameters in the water supply testing plan (Appendix B of the Water Supply Assessment, Preparedness, Prevention and Contingency Plan). For any such water supplies, the drill path will be compared to the well depth and geology of the area. Those water supplies in geologies with potentially significant interconnected secondary porosity (solution openings and structural features) will be considered for monitoring during HDD installs depending on specific individual water supplier requirements.

9. At the 22 HDDs identified on Exhibit "5," water supplies within 150 feet shall receive 72 hours' notice (by U.S. Postal Service Certified Mail and First Class Mail) in advance of restarting these HDDs, and Sunoco will provide notice to landowners (by U.S. Postal Service Certified Mail and First Class Mail) between 150 feet and 450 feet of the HDD within 30 days of the HDD restarting. Such notice shall offer the landowner with the opportunity to have a water supply located within 450 feet of the HDD alignment sampled in accordance with the parameters in the water supply testing plan (Appendix B of the Water Supply Assessment, Preparedness, Prevention and Contingency Plan) within 10 days of the landowner's request.

10. Sunoco shall provide copies of the Certified Mail receipts and landowner responses to the Department, and copies of the Certified Mail receipts to Appellants.

11. Sunoco will immediately notify a landowner with a water supply within 450 feet of an HDD when Sunoco or the Department has determined that there is a substantial possibility that the operation of the HDD will impact his or her water supply.

12. Within 14 days of the Board's entry of this Stipulated Order, Sunoco will provide the Department with a complete list of drilling instructions and specifications provided to all drillers performing HDD operations associated with the permits that are subject to the above-captioned Appeal, which provide the general operational parameters and best management practices to be utilized by the drillers during the performance of HDD operations under said permits.

13. The Department may review the drilling instructions and specifications, and suggest modifications to be incorporated into the instructions and specifications. If appropriate, the Department and Sunoco will discuss the feasibility of incorporating the Department's suggested modifications into the drilling instructions and specifications.

14. Within 14 days of the Board's entry of this Stipulated Order, Sunoco will provide the Department with as-builts for six HDDs that have been completed and at which an IR occurred to assure that the HDDs are being built in accordance with approved plans. To the extent possible, the as-builts shall represent the work of at least three different drilling contractors for HDD work performed in at least three different spreads of the pipelines subject to the permits in the above-captioned Appeal.

15. The parties have agreed to revisions to: the HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan; the Water Supply Assessment, Preparedness, Prevention and Contingency Plan; and, the Void Mitigation Plan for Karst Terrain and

Underground Mining (collectively, the “Plans”), as revised, such revisions dated August 8, 2017.

Sunoco agrees to abide by these Plans, as revised.

16. Sunoco shall inform, as appropriate, its officers, agents, employees, and contractors of the August 8, 2017 revisions to the Plans and ensure that the Plans as revised are present onsite during drilling operations and are made available to the Department.

SUNOCO PIPELINE L.P.:

/s/ Robert D. Fox
Robert D. Fox, Esq.

THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:

/s/ Nels J. Taber
Nels J. Taber, Esq., Regional Counsel

CLEAN AIR COUNCIL:

/s/ Joseph O. Minott
Joseph O. Minott, Esquire

DELAWARE RIVERKEEPER
NETWORK:

/s/ Aaron J. Stemplewicz
Aaron J. Stemplewicz, Esquire

s/ Maya K. van Rossum
Maya K. van Rossum

MOUNTAIN WATERSHED
ASSOCIATION:

/s/ Melissa Marshall
Melissa Marshall, Esquire

APPROVED AND SO ORDERED

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Judge

DATED: August 10, 2017