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November 17, 2017

BY ELECTRONIC FILING

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

Re: West Goshen Township and Concerned Citizens of West Goshen Township v. Sunoco Pipeline L.P.; Docket No. C-2017-2589346; **SUNOCO PIPELINE L.P. REPLY TO NEW MATTER AND PETITION FOR INTERLOCUTORY REVIEW AND ANSWERS TO MATERIAL QUESTIONS.**

Dear Secretary Chiavetta:

Enclosed for filing¹ with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s ("SPLP"):

- (1) Reply to New Matter in West Goshen Township's ("Township") November 3, 2017 Answer; although not labeled as such by the Township, the new facts alleged in the Township's Answer and its supporting affidavit constituted "new matter" within the meaning of the Commission's rules at 52 Pa. Code § 5.62(b); and
- (2) Petition for Interlocutory Review and Answers to Material Questions.

With respect to the Petition for Interlocutory Review, the parties may file a brief within ten (10) days of the filing of the petition under 52 Pa. Code §5.302, which would be Monday November 27, 2017, shortly after Thanksgiving and its weekend. SPLP proposes, as an offered courtesy to the Township, that briefs be due Monday December 4, 2017.

Finally, please note that SPLP has reevaluated whether it is necessary to site a valve in the Township, the location of which (Janiec 2 tract) is the basis of the Township's First Amended Complaint in this matter. If SPLP decides to eliminate the valve at Janiec 2, or for that matter not locate a valve anywhere in the Township, it will apprise the Commission of its decision

¹ Copies of this letter and filing have been served in accordance with the attached Certificate of Service.

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expeditiously. In either event, both the October 26, 2017 injunction order in this matter and the Complaint proceeding will become moot and SPLP will request that the Commission rescind or vacate the injunction order on that basis.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Thomas J. Sniscak". The signature is written in a cursive style with a long horizontal line extending from the start of the name.

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder

Counsel for Sunoco Pipeline L.P.

TJS/WES/das

cc: Honorable Elizabeth H. Barnes (by email and first class mail)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

West Goshen Township

v.

Sunoco Pipeline, L.P.

C-2017-2589346

**PETITION OF SUNOCO PIPELINE, L.P. FOR INTERLOCUTORY
COMMISSION REVIEW AND ANSWER TO MATERIAL QUESTIONS**

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DATED: November 17, 2017

Attorneys for Sunoco Pipeline L.P.

Pursuant to 52 Pa. Code § 5.302, respondent Sunoco Pipeline, L.P. (SPLP) hereby requests that the Pennsylvania Public Utility Commission (Commission) grant interlocutory review of and answer material questions relating to the Order Denying Motion to Modify Procedural Schedule issued November 14, 2017 (November 14 Order), by Administrative Law Judge (ALJ) Elizabeth Barnes. In support of this Petition, SPLP avers as follows:

1. On October 19, 2017, SPLP filed a motion to modify the procedural schedule, which sought to shorten the time required to resolve this matter. SPLP's motion was premised on the fact that but for the current extended procedural schedule in this case and the attendant delay in pipeline construction in the Township because of the dispute over the siting of Valve 344, SPLP's Mariner East 2 Pipeline (ME2) would be capable of delivering product early in 2018, to the very substantial benefit of Pennsylvania's economy.

2. On November 3, 2017, complainant West Goshen Township (Township) filed and served its answer to SPLP's motion. In order to dispute SPLP's representations about the timeline for completion of ME2, the Township's answer misleadingly mischaracterized SPLP's statements about the remaining obstacles preventing flow on ME2 and then purported to refute them based on the affidavit of a non-party lawyer.¹ Although not labeled as such, the new facts alleged in the Township's answer and the supporting affidavit constituted "new matter" within the meaning of the Commission's rules.²

3. SPLP was required to file and serve its reply to this new matter within 20 days of service of the Township's answer, or by November 23, 2017.³ Upon receipt of the Township's answer SPLP immediately began to prepare a reply to set the record straight. Although not due until the following week, SPLP intended to file its reply to new matter on or about November 17, 2017, and in fact has done so.⁴

4. The November 14 Order denying the motion was issued just eleven days after the Township filed its answer with (unlabeled contrary to the Commission's regulations) new matter. In denying SPLP's

¹ See Township Answer filed November 3, 2017, ¶¶ 16, 17, 18, 32, and Affidavit of Alexander Bomstein, Esq.

² 52 Pa. Code § 5.62(b) provides that "a party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading."

³ 52 Pa. Code § 5.63(a).

⁴ See Sunoco Pipeline, L.P.'s Reply to New Matter Contained in West Goshen Township's Answer to Motion to Modify Procedural Schedule (filed Nov. 17, 2017).

motion, the ALJ relied upon the mischaracterizations and misleading assertions contained in the Township's new matter regarding SPLP's representations in support of its position.⁵ The ALJ thus deprived SPLP of its substantive and procedural rights to reply to the Township's new matter and to be heard on the Township's new factual allegations prior to disposition of the motion.⁶

5. SPLP therefore seeks interlocutory review of the November 14 Order and the answer to the following material questions, which SPLP suggests should be answered in the affirmative:

- A. Did the ALJ deprive SPLP of its procedural and substantive due process rights by denying SPLP's motion in reliance on the new facts alleged in the Township's answer without giving SPLP the opportunity afforded by 52 Pa. Code § 5.63 to reply to new such new matter?
- B. Should the Commission decide SPLP's motion to modify the procedural schedule in light of SPLP's reply to the new matter raised in the Township's answer rather than remanding it to an ALJ who has already ruled and reached conclusions upon the motion in reliance on such new matter?
- C. Should SPLP's motion to modify the procedural schedule be granted?

6. Interlocutory review will both prevent substantial prejudice to SPLP and expedite the conduct of this proceeding. Due process requires (i) review of the November 14 Order in light of SPLP's reply to the misleading new matter raised by the Township and relied upon by the ALJ and (ii) disposition of SPLP's motion by the Commission, rather than by the ALJ who has already decided the issue. Interlocutory review and reversal of the November 14 Order, thus granting SPLP's motion, will, by definition, expedite this proceeding.

7. The reasons for granting review, answering the above questions in the affirmative, and thus expediting this proceeding are compelling. The Commission has repeatedly recognized that the Mariner East project will confer substantial affirmative benefits on the public.⁷ As Commissioner Sweet correctly pointed out

⁵ See November 14 Order at 3 ("Township contends that Sunoco is asserting false facts to support its position..."); *id.* at 4 (Township "contends that delays in construction are within Sunoco's control and self-imposed"); *id.* at 5 ("I am not persuaded ... to shorten the time-frame because of Sunoco's assertion that it has resumed HDD at its remaining drilling locations in the Commonwealth and the entire pipeline, except for the West Goshen portion, will be complete and ready to deliver product by the fourth quarter of 2017 or early 2018. Sunoco has not yet completed the installation of the Mariner East 2 pipeline in all other areas of the Commonwealth and its assertion that West Goshen Township's segment will soon be the only segment of the pipeline that remains unfinished assumes facts not currently in evidence.").

⁶ As the proponent of the schedule modification, SPLP had the burden of proof, 66 Pa. C.S. § 332(a), and thus was entitled to close the record on the motion, 52 Pa. Code § 5.242(a).

⁷ See, e.g., Opinion and Order dated July 24, 2014, Docket No. P-2014-2422583; Order dated August 21, 2014, Docket No. A-2014-2425633 (granting CPC for Washington County); 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

at Public Meeting on October 26, 2017, the current procedural schedule is needlessly protracted given the straightforward issues presented, “will probably take our processes a year to conclude,” and should not be the “roadblock” that prevents ME2 from commencing service at an earlier time.⁸ Interlocutory review thus will remove a significant roadblock to realization of the substantial public benefits of the Mariner East project.

WHEREFORE, Sunoco Pipeline, L.P. respectfully requests that the Commission undertake interlocutory review of the November 14 Order, answer the above-described material questions in the affirmative, and grant such further relief as may be just.

Respectfully submitted



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DATED: November 17, 2017

Attorneys for Sunoco Pipeline L.P.

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.

⁸ Oral statement by Commissioner Sweet, Pa. P.U.C., “Public Meeting of October 26, 2017,” available at <https://www.youtube.com/watch?v=geacUKDuA3w&feature=youtu.be> beginning at 15:45.

VERIFICATION

I, Harry J. Alexander, on behalf of Sunoco Pipeline L.P., hereby state that the facts set forth in the foregoing documents are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Harry J. Alexander
Senior Vice President
Sunoco Pipeline, L.P.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

This document has been filed electronically on the Commission's electronic filing system.

VIA EMAIL AND FIRST CLASS MAIL

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Dated this 17th day of November, 2017.