

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**WEST GOSHEN TOWNSHIP’S PETITION FOR RECONSIDERATION OR, IN THE
ALTERNATIVE, AMENDMENT OF THE COMMISSION’S ORDER ENTERED
JANUARY 9, 2018**

West Goshen Township (“Township”), through its attorneys, High Swartz LLP, pursuant to 66 Pa.C.S.A. § 703(g) and 52 Pa. Code § 5.572, respectfully submits this petition for reconsideration or amendment of the Commission’s Order entered on January 9, 2018, dissolving the injunction imposed by the Commission’s October 26, 2017 Order.

I. BACKGROUND

1. The Township initiated this matter by Formal Complaint to enforce SPLP’s contractual obligations under a 2015 Settlement Agreement, specifically to require SPLP to install a control valve (“Valve” or “Valve 344”) for the ME2 pipeline in the Township in a specific area within the Township identified by the parties as the SPLP Use Area, on a tract of land West of Route 202 referred to in this case as the Janiec 1 Tract.

2. The Township learned shortly before filing the Formal Complaint that SPLP intended to install Valve 344 on a different property in the Township, East of Route 202, referred to in this case as the Janiec 2 Tract.

3. When Sunoco began site work on the Janiec 2 Tract to prepare for horizontal directional drilling (“HDD”) and construction of Valve 344 on the Janiec 2 Tract, the Township filed its petition for an interim emergency order to stop the offending activity until the merits of the underlying case were decided.

4. The evidence at the resulting hearing confirmed that the location and path of the HDD and subsequent pipeline installation determines the location of the valve. Stated another way, if the HDD proceeds in a manner not consistent with siting the Valve on the SPLP Use Area, it cannot simply be added at the correct location later, without re-drilling and all of the corresponding risks.

5. On July 24, 2017, Administrative Law Judge Elizabeth Barnes (“ALJ”) entered an Interim Emergency Order (“Injunction”), certified as a material question to the Commission, providing:

“[SPLP] is enjoined from beginning and shall cease and desist all current construction including: 1) constructing Valve 344; 2) constructing appurtenant facilities to Valve 344; and 3) horizontal directional drilling activities on the Janiec 2 Tract in West Goshen Township until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.”

6. On October 26, 2017, the Commission entered an Opinion and Order answering the material question in the affirmative and granting the Injunction (“October 26 Order”), with the following language slightly modified from the ALJ’s Order:

“[SPLP] is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) construction Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.”

A copy of the October 26 Order is attached hereto as Exhibit “A.”

7. On November 21, 2017, SPLP filed its Petition to Rescind or Discontinue the October 26 Order, alleging that it made a *unilateral* decision not to install the Valve anywhere in the Township, thereby, in SPLP’s opinion, making the Injunction moot.

8. On December 1, 2017, the Township filed its opposition to SPLP’s Petition arguing that the Injunction remained necessary because (a) the Settlement Agreement requires SPLP to install the Valve on the SPLP Use Area¹ and (b) SPLP presented no evidence or information regarding its ability, or the safety, of eliminating the Valve altogether.

9. At its public meeting on December 21, 2017, the Commission determined that its October 26, 2017 Order affirming the Injunction should not be rescinded, but should be discontinued as of the date that the Commission enters its written Order on SPLP’s petition, based on SPLP’s decision not to install the Valve on Janiec 2 or anywhere in the Township.

¹ The Settlement Agreement at Section II.A.2. states, in pertinent part, “a remote operated valve station will be constructed and maintained on SPLP’s adjacent 4.42 acre property... 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”).”

10. On January 9, 2018, the Commission entered its written Opinion and Order formally discontinuing the Injunction as of that date (“January 9 Order”). A copy of the Discontinuance Order is attached hereto as Exhibit “B.”

11. The Township seeks reconsideration of the January 9 Order based on the Commission’s apparent oversight of the consequences of completely dissolving the Injunction before the final determination in this matter and certain new evidence that has arisen since the Commission’s decision on SPLP’s Petition.

12. In the alternative, the Township seeks an amendment of the January 9 Order to allow the Township to pursue an interlocutory appeal of said Order.

II. PETITION FOR RECONSIDERATION

13. 66 Pa.C.S.A. § 703(g) and 52 Pa.Code § 5.572 allow a party to file a petition for, *inter alia*, reconsideration or amendment of a prior Commission Order.

14. A petitioner under Section 703(g) may raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend its order. *Philip Duick v. Pennsylvania Gas & Water Company*, 56 Pa. PUC 553, 51 P.U.R.4th 284 (1982) (citing *Pennsylvania Railroad Company v. Pennsylvania Public Service Commission*, 118 Pa. Superior Ct. 380, 179 A. 850 (1935)).

15. 66 Pa.C.S. § 703(g) does not require that new evidence be presented for Commission to rescind or amend a prior order. *W. Penn Power Co. v. Pennsylvania Pub. Util. Comm’n*, 659 A.2d 1055, 1065 (Pa. Commw. Ct. 1995); *Pittsburgh & Lake Erie R. Co. v. Pennsylvania Pub. Util. Comm’n*, 66 Pa. Cmwlt. 609, 613, 445 A.2d 851, 853 (1982).

16. Petitions for reconsideration should contain new and novel arguments or considerations which appear to have been overlooked or not addressed by the Commission in its prior Order. *Duick, supra*.

Considerations Overlooked by the Commission's January 9 Order

17. The Commission's January 9 Order has the effect of either deciding the Township's Complaint before a full hearing on the merits, or subjecting the Township to unnecessary risks and harm related to re-drilling to allow for the promised installation of the Valve at the correct location.

18. In issuing the January 9 Order the Commission based its decision on SPLP's unilateral, unsupported determination that it could eliminate Valve 344 without any consequence to the Township or its residents.

19. The discontinuance of the Injunction effectively allows SPLP to perform HDD and install the pipeline on the assumption that no Valve will be installed in the Township, while the final adjudication of the Township's Complaint remains dependent upon a determination by the Commission on whether SPLP is in fact required to install a Valve on the SPLP Use Area under the parties' Settlement Agreement.

20. The evidence of record at the time of the October 26 Order confirmed that SPLP will not be able to install a Valve on the SPLP Use Area if it first performs HDD that does not account for said Valve; rather SPLP would have to redo the HDD or otherwise reinstall the pipeline, exposing the Township to duplicative pipeline construction activities and the disruptions and safety concerns that come with it, as set forth in the Injunction hearing. *See* the transcript from the testimony of Richard B. Kuprewicz at the July 18, 2017 hearing in this matter at pp. 127:10-128:8, a copy of which is attached hereto as Exhibit "C."

21. While SPLP cleverly agreed to the condition of not installing a Valve anywhere in the Township in order to dispose of the Injunction, SPLP failed to present any evidence in its Petition that its post-Injunction HDD and pipeline installation activities will allow it to comply

with the Commission's final decision on SPLP's contractual obligations under the Settlement Agreement.

22. In fact, the dissenting statements filed by Commission Chairman Gladys M. Brown and Vice Chairman Andrew G. Place in regard to the January 9 Order acknowledge the impact that SPLP's unilateral decision to eliminate Valve 344 has on the disposition of the Township's underlying Complaint.

23. Unless the Commission reconsiders its January 9 Order and reactivates the Injunction to preclude any work inconsistent with a Valve being installed on the SPLP Use Area, WGT will be forced to file a new petition for interim emergency relief, forcing the parties to expend further time and expense, in addition to preparing this matter for hearing and disposition. Further at the conclusion of the offending HDD activity, the PUC will be forced to either allow the improper installation to remain without the important, and promised Valve, or order new HDD to allow the installation of the Valve with all of the corresponding risks and detriments to the Township.

DEP's January 3, 2018 Administrative Order

24. Between the Commission's December 21, 2017 decision and the entry of the January 9 Order, the Pennsylvania Department of Environmental Protection ("DEP") issued a January 3, 2018 Administrative Order ("DEP Order") directing SPLP to immediately cease work under the DEP permits issued for ME2 across the Commonwealth, due to "egregious and willful violations" by SPLP. A true and correct copy of the DEP Order is attached hereto as Exhibit "D."

25. The violations outlined in the DEP Order include, but are not limited to, SPLP performing HDD in certain locations without a DEP permit and failing to properly report additional drilling fluid spills. *See* Exhibit "D."

26. The DEP Order is further evidence that SPLP's unilateral determination to eliminate Valve 344, without any evidentiary support to the Commission or the Township, cannot be relied upon as fully compliant with applicable regulatory and engineering standards and should not be the basis to allow SPLP unfettered HDD and pipeline construction activity in the Township.

27. In addition, to the extent that the Commission discontinued the Injunction because of concerns that it was the only thing holding up the completion of the pipeline, as has been alleged by SPLP in its Petition, it is simply not the case as the DEP Order has large ramifications regarding the completion of the pipeline.

Additional Evidence Supporting Reinstatement of Injunction

28. A report produced by SPLP in discovery, entitled "Site Restoration and Post-Construction Stormwater Management Plan, Pennsylvania Pipeline Project-Southeast Region: Spread 6, Attachments are West Goshen Township Specific, November 2016," (Bates number SPLP012274-012639) states at Bates number 012311, in pertinent part:



Pursuant to the Protective Order entered in this matter on September 1, 2017, a copy of the pertinent portion of the aforementioned report is being submitted separately under seal as Exhibit "E."

29. ASME B31.4 is a standards manual published by The American Society of Mechanical Engineers entitled "Pipeline Transportation Systems for Liquid Hydrocarbons and

Other Liquids.” See Affidavit of Richard Kuprewicz,² a true and correct copy of which is attached hereto as Exhibit “F,” at ¶ 7.

30. ASME B31.4, Section 434.15.2, Valve Spacing, is not a codified federal or state regulation, but is used as an industry guideline for the construction of pipelines, such as ME2, that will be used for the transportation of hazardous liquids, such as liquid petroleum gases (“LPGs”), which are classified as a highly volatile liquid (“HVL”) under federal pipeline safety regulations. See *id.* at ¶ 8.

31. ASME B31.4, Section 434.15.2(e), Valve Spacing, states:

“In order to facilitate operational control, limit the duration of an outage, and to expedite repairs, mainline block valves shall be installed at 7.5 mile (12 km) maximum spacing on piping systems transporting LPG or liquid anhydrous ammonia in industrial, commercial, and residential areas.”

See *id.* at ¶ 9.³

32. Remotely operated block valves are a safety mechanism for pipelines such as ME2, as they allow the pipeline operator to remotely close-off the pipeline, usually from a control room, in the event of a rupture or other catastrophic event. There are no regulations requiring that block valves be remotely operated. See *id.* at ¶ 10.

33. The distance between valves is a safety concern for pipelines such as ME2, because, in the event of a rupture or other catastrophic event, every additional mile between valves on the proposed 20-inch diameter ME2 pipeline can result in the release of approximately an additional 1,900 barrels of HVL (there being 42 gallons per barrel). See *id.* at ¶ 12.

² Township expert, Richard Kuprewicz (“Kuprewicz”) of Accufacts Inc., is an expert in pipeline safety, with over 40 years’ experience in the energy industry, including evaluating pipeline safety and reviewing HDD plans for reasonableness. See Affidavit of Richard Kuprewicz (Exhibit “F”) at ¶ 1.

³ ASME B31.4 is copyrighted publication of the American Society of Mechanical Engineers. Richard Kuprewicz maintains a copy of the manual and attested to its pertinent language as set forth in his attached affidavit. To avoid any copyright infringement issues pertaining to the re-publication of the manual with this filing, no copy of the manual is attached hereto.

34. Assuming SPLP adhered to the aforementioned 7.5 mile valve spacing guideline, SPLP's decision to eliminate Valve 344 results in the Township sitting in an apparent fifteen mile stretch of pipeline between remotely operated valves upstream and downstream of the Township. *See id.* at ¶ 14.

35. If Valve 344 is simply eliminated, hundreds of thousands of gallons of additional HVL will be available for release into the Township in the event of a pipeline release emergency, due to the increased distance between the remotely operated valves upstream and downstream of the Township. This can significantly and adversely impact the community. *See id.* at ¶ 15.

36. According to an article published after the Commission's December 21, 2017 meeting, SPLP representative, Jeffrey Shields, "said that an engineering analysis had determined that a valve was not needed in West Goshen, and that the company did not anticipate adding another valve site." *See* "Sunoco resolves pipeline dispute by making a contentious valve station disappear," The Philadelphia Inquirer, December 21, 2017, a copy of which is attached hereto as Exhibit "G."

37. SPLP has not submitted any safety, engineering, or technical data to the Township or its safety consultant for evaluation of this unilateral decision to eliminate the Valve.⁴

38. For the multiple reasons set forth above, this Commission must reconsider its January 9 Order and reinstate the Injunction to preclude SPLP from performing any HDD or pipeline construction activities that are inconsistent with installing the Valve on the SPLP Use Area, until the Commission makes a final determination on the Township's Formal Complaint.

⁴ SPLP's elimination of the Valve substantially impacts Richard Kuprewicz safety review of ME2 on behalf of the Township, which was an integral factor in Township's execution of the parties' Settlement Agreement.

III. ALTERNATIVE PETITION FOR AMENDMENT-INTERLOCUTORY APPEAL

39. 42 Pa.C.S.A. § 702 provides:

(b) Interlocutory appeals by permission.--When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.

40. As discussed above, the January 9 Order will put the Commission in the unacceptable position of either allowing the improper installation to remain without the important, and promised valve, or order new HDD to allow the installation of the Valve with all of the corresponding risks and detriments to the Township.

41. In the event that the Commission decides not to reconsider the January 9 Order and reinstitute the Injunction, it should allow the Township to pursue an immediate interlocutory appeal of the Order given its potential impact on the ultimate resolution of the dispute in this case.

42. The January 9 Order involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal from the Order may material advance the ultimate termination of the matter.

43. There is a controlling question of law because the PUC found that all of the factors for an injunction existed, yet, based on an unsworn statement in a petition that SPLP has unilaterally determined that a Valve was not needed, without any supporting evidence or information, simply discontinued the Injunction.

44. The immediate appeal may materially advance the ultimate termination of the matter, because substantial resources will ultimately be expended by the Commission and the parties regarding the new HDD operations that will be required if SPLP is permitted to resume drilling now, but is later found to have the obligation to place the Valve as promised.

45. For these reasons, the Township respectfully requests that the Commission amend its January 9 Order to so state the foregoing and allow the Township to appeal the Order to the Commonwealth Court.

WHEREFORE, West Goshen Township respectfully requests that the Commission reconsider its January 9 Order and reinstate the Injunction to preclude SPLP from performing any HDD or pipeline construction activities that are inconsistent with installing the Valve on the SPLP Use Area, until the Commission makes a final determination on the Township's Formal Complaint.

In the alternative, the Township respectfully requests that the Commission amend its January 9 Order to state that the Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, in order to allow the Township to appeal the Order to the Commonwealth Court.

HIGH SWARTZ LLP

By: _____


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Mark R. Fischer, Jr., Esquire
Attorneys for Complainant
West Goshen Township

Date: _____

1/24/18

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VERIFICATION

I, Casey LaLonde, Township Manager of West Goshen Township, hereby state that the facts set forth in the attached Petition for Reconsideration, or in the alternative, Amendment of the Commission’s Order of January 9, 2018, 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 held in this matter.

I understand that the statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



 Casey LaLonde, Township Manger
 West Goshen Township

Date: 11/23/18

EXHIBIT “A”

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held October 26, 2017

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
David W. Sweet
John F. Coleman, Jr.

West Goshen Township

C-2017-2589346

v.

Sunoco Pipeline, L.P.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the *Interim Emergency Order and Certification of Material Question (July 24 Order)* issued by Administrative Law Judge (ALJ) Elizabeth Barnes on July 24, 2017, in the above-captioned proceeding. As authorized by the Commission's Regulations, 52 Pa. Code §§ 3.10 and 5.305, on July 31, 2017, West Goshen Township (the Township) filed a Brief in Support of the Interim Emergency Order (Township Brief) and Sunoco Pipeline, L.P. (Sunoco) filed a Brief in Opposition to the Order Granting Interim Emergency Relief (Sunoco Brief).

The material question before the Commission is the following:

Did the ALJ properly grant the Township's request for an interim emergency order enjoining Sunoco from beginning and to cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346?¹

For the reasons stated herein, we determine that the Township has met the requirements for obtaining interim emergency relief. Therefore, we answer the material question in the affirmative.

I. History of the Proceeding

On March 21, 2014, at Docket No. P-2014-2411966, Sunoco filed a Petition (Sunoco Petition) requesting a finding that a building to shelter the Boot Road Pump Station in the Township was reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning ordinances. The Boot Road Pump Station and an associated Vapor Combustion Unit would serve a natural gas liquids pipeline owned by Sunoco that is part of the Mariner East Project to transport propane, ethane, and other natural gas liquids from points west and north of the Township to points in Delaware County, Pennsylvania, and the State of Delaware. On April 18, 2014, the

¹ The material question reflects a minor modification of the language in Ordering Paragraph 2 of the *July 24 Order* in order to more closely follow the interim emergency relief the Township requested in its Petition and the ALJ's discussion in the *July 24 Order*.

Concerned Citizens of West Goshen Township (CCWGT)² filed a Protest and Preliminary Objections to the Sunoco Petition. On April 21, 2014, the Township filed a Petition to Intervene.

On November 7, 2014, CCWGT filed a Formal Complaint (CCWGT Complaint) against Sunoco, at Docket No. C-2014-2451943, alleging safety concerns about the proposed Sunoco facilities in the Township. The Sunoco Petition and the CCWGT Complaint were resolved by a Settlement Agreement between Sunoco, the Township, and the CCWGT. By Order entered May 28, 2015, the Commission granted Sunoco's request to withdraw the Sunoco Petition. The Settlement Agreement was certified by the Commission's Secretary on June 15, 2015, at Docket No. U-2015-2486071, pursuant to Section 507 of the Public Utility Code (Code), 66 Pa. C.S. § 507.³ On June 16, 2015, the CCWGT filed a Certificate of Satisfaction and Withdrawal of Formal Complaint regarding the CCWGT Complaint.

² The CCWGT is an *ad hoc* association of individuals who own and reside on property adjacent to or within approximately 1,000 feet of the properties Sunoco owns near Boot Road in the Township.

³ Section 507 provides the following:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the commission grants its approval thereof.

On March 30, 2017, the Township filed an Amended Complaint (Township Complaint) against Sunoco, at the instant Docket No. C-2017-2589346, seeking enforcement of the Settlement Agreement filed at Docket No. U-2015-2486071,⁴ specifically pertaining to Sunoco's proposal to site Valve 344 on the Janiec 2 Tract. On April 17, 2017, Sunoco filed an Answer to the Complaint and New Matter. Sunoco denied the material allegations in the Complaint and averred that siting Valve 344 on the Janiec 2 Tract would not constitute a violation of the Settlement Agreement. On May 5, 2017, the Township filed an Answer to the New Matter.

On May 22, 2017, Sunoco filed a Motion for Judgment on the Pleadings. On June 12, 2017, the Township filed a Response in Opposition to the Motion for Judgment on the Pleadings. On July 5, 2017, Sunoco filed a Motion to Stay Discovery Pending Disposition of the Motion for Judgment on the Pleadings. By Order dated July 24, 2017, ALJ Barnes denied both of Sunoco's Motions.

On July 10, 2017, the Township filed a Petition seeking, *inter alia*, an Interim Emergency Order (Petition) pursuant to 52 Pa. Code § 3.6, to enjoin Sunoco from beginning or continuing construction of a valve and any other facilities appurtenant to Sunoco's Mariner East 2 pipeline on the Janiec 2 Tract, or at any location not specifically agreed to in the Settlement Agreement, until after the Commission issues a final order on the Township Complaint.⁵ On July 17, 2017, Sunoco filed an Opposition to the Township's Petition.

⁴ The Settlement Agreement is also Township Exhibit 4 in this proceeding.

⁵ The Township originally filed its Petition as a petition seeking both *ex parte* emergency relief under 52 Pa. Code § 3.2 and interim emergency relief under 52 Pa. Code § 3.6. By Secretarial Letter issued July 11, 2017, the Commission declined to issue an *ex parte* emergency order under Section 3.2. The Commission directed that the Petition proceed solely at Docket Number C-2017-2589346 as a petition for interim emergency relief pursuant to Sections 3.6 to 3.12 of the Commission's Regulations, 52 Pa. Code §§ 3.6-3.12.

On July 18, 2017, ALJ Barnes conducted a hearing on the Petition. The hearing record includes twenty Township exhibits, fifteen Sunoco exhibits, and a 254-page transcript. Both Parties filed Briefs regarding the Petition on July 24, 2017.

In the *July 24 Order*, the ALJ granted the Township's Petition and certified the decision to grant interim emergency relief to the Commission as a material question to be processed in accordance with Section 5.305 of the Commission's Regulations, 52 Pa. Code § 5.305.

On July 26, 2017, the Office of Administrative Law Judge (OALJ) issued a Hearing Notice scheduling evidentiary hearings on April 25, 2018, and April 26, 2018.

As previously noted, on July 31, 2017, the Township and Sunoco each filed a Brief pertaining to the *July 24 Order*.

By Secretarial Letter issued August 4, 2017, the Commission waived the thirty-day period for consideration of these matters, as set forth in 52 Pa. Code § 5.305(e), and extended the consideration period to thoroughly consider the *July 24 Order* and the Parties' Briefs. See 52 Pa. Code § 1.2(c); *C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, Docket No. C-00924416 (Order entered June 4, 1993).

II. Background Regarding the Settlement Agreement

The Settlement Agreement resolved the concerns of the Township and the CCWGT regarding, among other things, Sunoco's proposed construction and operation of the Boot Road Pump Station and associated Vapor Combustion Unit in connection with Sunoco's Mariner East Project. The Settlement Agreement provisions at issue in this case include Sections II, III, and IV, as set forth below, in relevant part:

II. Pertinent Information Provided by [Sunoco]

A. [Sunoco] has provided [the Township and the Township's] consulting expert with the following information ("SPLP Information"). [The Township] and CCWGT expressly rely upon the accuracy of the SPLP Information in reaching this Agreement.

1. As used herein, the phrase "Mariner East Project" refers to the existing Mariner East 1 pipeline and appurtenant facilities, and all additional pipelines and appurtenant facilities to be owned and/or operated by [Sunoco] in [the Township] for the transportation of propane, ethane, butane, and/or other natural gas liquids.

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 [Sunoco'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, [Sunoco] intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If, due to engineering constraints, [Sunoco] is unable to construct the valve station in the SPLP Use Area, SPLP will notify [the Township]. Nothing in this Settlement Agreement constitutes an authorization or agreement for [Sunoco] 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, [Sunoco] has no plan or intention to construct any additional above-ground permanent utility facilities in [the Township] except as otherwise expressly set forth in this Agreement.

III. [The Township's] Safety Review

1. [The Township] has engaged Accufacts, Inc., and its President, Richard Kuprewicz, a nationally recognized expert in the field of liquids pipeline safety, to prepare a written report as to the safety of Mariner East 1 (the "Kuprewicz Report") based on the design and engineering facts and information heretofore provided by [Sunoco]. The Kuprewicz Report is attached as Appendix 5 hereto and is made a part of this Agreement.

IV. The Parties' Promises, Covenants and Agreements

A. Based on the SPLP Information recited in Section II of this Agreement, the Parties agree to make the following promises, covenants and agreements:

1. [Sunoco] covenants and agrees as follows:

a. Because of its existing Pump Station Facility at Boot Road, except with respect to the SPLP Use Area, [Sunoco] covenants and agrees that it shall not construct or install any pump stations, VCUs or above-ground permanent public utility facilities on the SPLP Additional Acreage for any phase of the Mariner East Project. [Sunoco] also agrees that, except for the SPLP Use Area, any use of the SPLP Additional Acreage for staging construction, laydown or other operational activity will be temporary, and [Sunoco] will restore the surface to its former condition following the completion of such activity.

...

2. [The Township] covenants and agrees as follows:

...

d. As long as [Sunoco] (i) constructs and operates facilities in [the Township] as described in Section II above; (ii) abides by the covenants and agreements in Section III.A.1 above; and (iii) operates in a manner consistent with the safety, design and engineering facts and information heretofore provided to [the Township's] consultant, [the Township] agrees that it will not file or join

in any complaint against the safety of [Sunoco's] service or facilities with the Commission or any other federal, state, or local government agency or endorse or promote any protest or action filed by the CCWGT or any other individual or group against [Sunoco] with respect to the safety of Mariner East 1 or the valve station described in paragraph II.A.2 of this Agreement.

Settlement Agreement at 2-3, 5-6, 7.

The Boot Road Pump Station is located near the intersection of Boot Road and Route 202, to the north of East Boot Road and to the west of the Route 202 Southbound off-ramp. Tr. at 47-48; Township Exhs. 1 and 2. The SPLP Use Area referenced in the Settlement Agreement is located west of Route 202 on Boot Road. The Janiec 2 Tract at issue in this proceeding is a wooded property that is located on the east side of Route 202 and north of Boot Road and is owned by the Janiec family. Tr. at 57-58; Township Exh. 2; Sunoco Exh. 4.

III. Discussion

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Additionally, we note that we will address the Parties' positions as they pertain to the four elements necessary for interim emergency relief. While the Township's Brief discusses all four elements, Sunoco's Brief focuses more on the elements it argues the Township has not be established and does not address each element

separately. Sunoco requests that the Commission vacate the ALJ's *July 24 Order*. In the alternative, Sunoco requests that, if the Commission upholds the Order, then the Commission require the following: (1) that the *July 24 Order* will be effective only if the Township posts a bond in an amount that the Commission deems appropriate to pay the costs and damages sustained by Sunoco if Sunoco prevails on the merits; and (2) the OALJ be directed to hold a hearing to determine the amount of such security. Sunoco Brief at 3.

A. Legal Standards Governing Emergency Relief

The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1.⁶ The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, 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.

⁶ "Emergency" is defined in the Commission's Regulations 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." 52 Pa. Code § 3.1. *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205 (Order entered April 20, 2006) (large rate increases did not constitute a clear and present danger to life or property); *Petition of National Fuel Gas Distribution Corp. for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service*, Docket Nos. P-961022 and P-961021 (Order entered March 19, 1996) (threat of depletion of gas stores in unusually cold conditions constituted a clear and present danger to life or property).

52 Pa. Code § 3.6(b). The Commission may grant interim emergency relief only when all of the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993).

As to the first element, the Commission has determined that it is not necessary to determine the merits of a controversy in order to find that a petitioner's right to relief is clear; rather, the basis for determining whether this standard has been met is whether a petitioner has raised "substantial legal questions." *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011) (*Core*); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002) (*Level 3*); cf. *T.W. Phillips Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*T.W. Phillips*).⁷

For example, in *Core*, the Commission held that the ALJ's conclusion that this prong requires a finding that a petitioner will prevail on the underlying complaint is an "unreasonably strict" interpretation of Section 3.6(b). The Commission stated:

The basis for determining whether a petitioner has met this standard [a clear right to emergency relief] is whether the petitioner has raised "substantial legal questions." *T.W. Phillips Gas and Oil v. Peoples Natural Gas, supra*. The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy.

⁷ In reviewing the issuance of an injunction, the Commonwealth Court held that the moving party was not required to demonstrate its absolute right to relief on the underlying claim where the other elements for injunctive relief were satisfied. The Court held that ". . . if the other elements of a preliminary injunction are present, and the underlying claim raises important legal questions, the plaintiff's right to relief is clear." *T.W. Phillips* at 781 (emphasis supplied).

As stated above, the ALJ based her conclusion on a finding that it is “wholly uncertain” whether Core will prevail in the underlying Complaint. In our view, this interpretation of the “right to relief” standard is unreasonably strict. The outcome of litigation by its nature is nearly always uncertain. Requiring a petitioner seeking emergency relief to demonstrate, with certainty, that litigation will be resolved in its favor would be an impossible burden to meet.

Core at 12 (record citation omitted).

The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6(b). 66 Pa. C.S. § 332(a). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission’s decision must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

An order granting or denying interim emergency relief is effective immediately upon issuance by the presiding officer. A presiding officer is required to certify the grant or denial of relief to the Commission as a material question. 52 Pa. Code

§ 3.10(b). No stay of an order granting or denying interim emergency relief is permitted while the matter is being reviewed by the Commission. 52 Pa. Code § 3.10(a).

Upon review of the certified question, the Commission is required to do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

52 Pa. Code § 5.305(e).

B. The Township's Petition for Emergency Relief

1. 52 Pa. Code § 3.6(b)(1)

a. ALJ's Recommendation

The first requirement to receive interim emergency relief requires the petitioner to demonstrate that its right to relief is clear. 52 Pa. Code § 3.6(b)(1). As noted above, the Commission has interpreted this provision as requiring only a determination that a petition raises a substantial legal question, rather than a determination of the merits of a controversy in order to find that a petitioner's right to relief is clear. *Core* at 8, 12; *Level 3* at 8.

The ALJ found that the Township's right to relief was clear because the underlying claim raises substantial legal questions, including, but not limited to the following:

(1) whether the Settlement Agreement requires Sunoco to construct any above-ground valve station facilities in the Township within the “SPLP Use Area” unless Sunoco 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 2; (3) whether at the time of execution of the Settlement Agreement, Sunoco had plans and withheld material information about its plans for the ME2 phase pipeline; (4) whether Sunoco always intended to site Valve 344 on the Janiec 2 Tract and misrepresented this intention at the time of the Settlement Agreement; (5) whether there are engineering constraints that prevent Sunoco from constructing Valve 344 on the SPLP Use Area; (6) whether the township has the 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.

July 24 Order at 3-4. The ALJ delineated the testimony and evidence she relied on in reaching her decision.

The ALJ stated that the Township’s expert witness in pipeline safety, Richard Kuprewicz, testified that Sunoco did not provide him with a reason why it could not do horizontal directional drilling (HDD) at the SPLP Use Area. *Id.* at 4 (citing Tr. at 126-127). The ALJ noted that, during the hearing on July 18, 2017, when asked whether a plan existed for the SPLP Use Area like the one developed for the Janiec 2 Tract, Sunoco’s witness Richard Gordon admitted, “there’s not a plan like this one,” referring to Township Exhibit 13. *July 24 Order* at 5 (citing Tr. at 225-226, 230-231). The ALJ also noted that the evidence demonstrated that Mr. Gordon was aware of plans and recommendations from his engineering consultants to move forward with the Janiec 2 Tract, while leading the Township to believe Sunoco would place the valve station on the Janiec 1 Tract. *July 24 Order* at 5 (citing Tr. at 225-229). The ALJ observed that the

map Sunoco provided to the Township at the January 2016 meeting, dated September 28, 2015, and identified as Township Exhibit 5, does not show a valve station on the Janiec 2 Tract. *July 24 Order* at 6 (citing Tr. at 67-68). The ALJ was further persuaded by the testimony of Kristin Camp, the Township solicitor, who took notes at the meeting, because the Township wanted to see how Sunoco's plans would impact the Traditions Project on the Janiec 2 Tract.⁸ The ALJ stated that Ms. Camp's notes do not contain any information about a valve on the Janiec 2 Tract. *July 24 Order* at 6 (citing Tr. at 145-147; Township Exh. 18). Moreover, the ALJ found that there was an issue whether Sunoco can feasibly and safely locate the valve on the SPLP Use Area, or whether that location is restrained by reasonable engineering concerns. The ALJ noted that Mr. Gordon did not testify that the valve station cannot be constructed on the SPLP Use Area, only that from an engineering standpoint, it would not be "prudent" to site the valve on the SPLP Use Area, because it is "potentially unsafe" and may not be practical. *July 24 Order* at 6 (citing Tr. at 194, 223, and 249).

b. Positions of the Parties

The Township avers that, as determined by ALJ Barnes, its underlying claim in this proceeding raises substantial legal questions, including the following: (1) whether the Settlement Agreement requires Sunoco to construct the valve in the SPLP Use Area; (2) whether Sunoco gave the Township proper notice of an inability to locate the valve station in the SPLP Use Area; (3) whether, at the time the Settlement Agreement was executed, Sunoco had different plans and withheld material information from the Township; and (4) whether engineering constraints prevent Sunoco from constructing the valve station on the SPLP Use Area. Township Brief at 13. First, according to the Township, the Settlement Agreement negotiations resulted in the SPLP

⁸ As will be discussed in more detail herein, the Traditions Project was a planned independent living facility that the Township approved for location on the Janiec 2 Tract.

Use Area, and Sunoco represented that the location of the valve station might change, but only within the confines of the SPLP Use Area. *Id.* at 5 (citing Township Exh. 17; Tr. at 172-173). The Township contends that the Parties did not discuss the Janiec 2 Tract during the negotiations, and the Settlement Agreement specifically provides that Sunoco did not have plans to locate above-ground facilities elsewhere in the Township. Township Brief at 5 (citing Township Exh. 4).

Second, the Township states that the location of the valve was central to the Settlement Agreement, and it would not have entered into the Settlement Agreement absent Sunoco's representations regarding the valve location. The Township explains that it understood Sunoco promised to locate the pump station, vapor combustion unit, and all accessory and appurtenant facilities for the Mariner East project on Sunoco's existing pump station site, except for a remotely operated valve station that would be constructed on the SPLP Use Area, as shown on Township Exhibit 2. Township Brief at 6 (citing Tr. at 60-62, 139-141). The Township also understood Section II of the Settlement Agreement to mean that, if Sunoco was unable to construct the valve station in the SPLP Use Area due to engineering constraints, Sunoco would notify the Township and the Parties would reach a resolution. The Township further understood Section II of the Settlement Agreement to mean that the Township was not providing permission for any other above ground facilities elsewhere in the Township, including the Janiec 2 Tract. Township Brief at 6 (citing Tr. at 62-63).

Third, the Township avers that the record indicates that Sunoco was secretly planning to locate the valve on the Janiec 2 Tract. The Township states that Sunoco's project engineer, Matthew Gordon, decided to locate the valve on the Janiec 2 Tract by March of 2015, but Sunoco continued to promise the Township that Sunoco would construct the valve station on the SPLP Use Area during the negotiations and in the Settlement Agreement and failed to provide notice of any alternate plans. Township Brief at 7 (citing Tr. at 225-229). The Township also states that Sunoco refused to

provide copies of engineering plans or drawings relating to Mariner East 2, citing proprietary and security reasons, and that there are no meeting minutes, emails, or other documents showing that Sunoco attempted to use the SPLP Use Area. Brief at 7 (citing Tr. at 231-232).

Fourth, the Township argues that Sunoco did not notify the Township that it was unable to locate the valve on the SPLP Use Area. The Township avers that it initially learned of Sunoco's plans to site the valve on the Janiec 2 Tract during a Board of Supervisors meeting in January 2016 when the Township was considering final approval of the Traditions Project. The Township then scheduled a meeting with Sunoco on January 20, 2016, during which Sunoco advised the Township that it planned to use the Janiec 2 Tract for a lay-down yard and to perform HDD. Township Brief at 7 (citing Tr. at 67-69, 144-147). According to the Township, Sunoco did not inform the Township of its plans to construct a valve station on the Janiec 2 Tract at that time. Township Brief at 7 (citing Tr. at 67-68, 145-146). The Township contends that it learned of Sunoco's "true intentions" to site the valve station on the Janiec 2 Tract in January 2017 when Sunoco's engineering firm provided the Township with plans and specifications for an erosion and sediment control plan that depicted a valve on the Janiec 2 Tract. Township Brief at 8 (citing Tr. at 69-71, 73). The Township states that Sunoco did not provide any explanation for siting the valve on the Janiec 2 Tract and never advised the Township of engineering constraints that would make it unable to locate the valve station on the SPLP Use Area. Township Brief at 8 (citing Tr. at 65, 71, 210-211).

Fifth, the Township asserts that Sunoco has not established that it is unable to locate the valve on the SPLP Use Area. The Township states Sunoco's engineer has not informed Mr. Gordon that drilling cannot be done in the SPLP Use Area, and Sunoco has not provided any computer data, written analysis, or other engineering report to prove it is unable to construct the valve station on the SPLP Use Area. The Township also states that Sunoco has not presented any plans, drawings, or diagrams to show the

construction challenges it alleges in putting a valve on the SPLP Use Area. Township Brief at 9 (citing Tr. at 223-224, 244-245).

In its Brief, Sunoco argues that the absence of an emergency is fatal to the ALJ's issuance of an Interim Emergency Order. Sunoco avers that the ALJ's decision does not mention any clear or present danger to life or property, and the Township did not produce evidence that an emergency exists. Sunoco states that, because it has built a construction entrance on Boot Road, it does not need to use the fire department's driveway any longer. Sunoco Brief at 4 (citing Tr. at 102, 217).

Additionally, Sunoco argues that the ALJ incorrectly determined that the Township's right to relief is clear in this case and offers several reasons in support of its position. First, Sunoco avers that the ALJ misconstrued the clear and unambiguous Settlement Agreement between the Parties. Sunoco Brief at 4. Sunoco states that the Settlement Agreement describes the site where Sunoco said it intended to locate the valve station, the SPLP Use Area. Sunoco also states that, contrary to the ALJ's misunderstanding, the SPLP Additional Acreage is not within the SPLP Use Area, rather, the SPLP Use Area is a small area located within the larger SPLP Additional Acreage. *Id.* at 5 (citing Township Exhs. 2, 4; Sunoco Exh. 4). Sunoco indicates that under Paragraph II.A.2 of the Settlement Agreement, it represented that it intended to confine all above-ground Mariner East Project facilities within the Township to the existing Boot Road Pump Station, except for the valve, and that, subject to engineering constraints, it intended to construct the valve in the SPLP Use Area. Sunoco Brief at 5-6. Sunoco also indicates that it represented that it would notify the Township if engineering constraints required the valve to be relocated and, therefore, the express language of the Settlement Agreement acknowledges engineering constraints may prevent the valve placement in the SPLP Use Area. Sunoco further indicates that Paragraph IV.A.1.a of the Settlement Agreement provides that, except in the SPLP Use Area, Sunoco would not construct or install any above-ground facilities on the SPLP Additional Acreage for any phase of the Mariner East

Project. *Id.* at 6. Sunoco avers that, consistent with the Settlement Agreement, Mr. Gordon testified that Sunoco considered multiple paths for siting the valve and determined that it must site the valve on the Janiec 2 Tract because Sunoco's engineers concluded that constructing the valve on the SPLP Use Area was not safe or feasible, while constructing it on the Janiec 2 Tract was safe and feasible. *Id.* at 7 (citing Tr. at 189, 190).

Sunoco states that there are definitive answers to the substantial legal questions the ALJ delineated in finding that the Township's right to relief was clear. Sunoco contends that the plain and unambiguous language of Paragraph IV.A.1.a of the Settlement Agreement conveys that Sunoco is forbidden from siting the valve on the SPLP Additional Acreage unless the valve is sited in the SPLP Use Area. Accordingly, Sunoco avers that if it cannot site the valve in the SPLP Use Area, then the only possible alternative is to site the valve somewhere other than the SPLP Additional Acreage. Sunoco Brief at 8. Sunoco argues that the Settlement Agreement is silent regarding Sunoco's right to site the valve elsewhere in the Township and that the Settlement Agreement therefore does not prohibit it from siting the valve elsewhere. Sunoco asserts that, if the prohibition applied to the entire Township, then the valve could not be sited at all, and the Parties could not have intended such an absurd and unreasonable result. *Id.* at 9. Sunoco also contends that the ALJ improperly relied on the representations in Paragraphs II.A.2 and A.3 of the Settlement Agreement as if they contain enforceable promises when that section of the Settlement Agreement contains only information provided by Sunoco which, Sunoco avers, is unenforceable. *Id.* at 9-10.

Moreover, Sunoco avers that the ALJ's conclusion that the Settlement Agreement is ambiguous ignores the express language in the Settlement Agreement regarding what would happen if Sunoco changed its construction plans and deviated from the information it provided in Paragraph II. Sunoco states that the Settlement Agreement answers the ALJ's substantial legal questions about whether, at the time of the execution of the Settlement Agreement, Sunoco withheld material information about its plans for

Mariner East 2 and whether Sunoco misrepresented its intention to site Valve 344 on the Janiec 2 Tract. Sunoco indicates that Paragraph IV.A.2.e of the Settlement Agreement provides that Sunoco would share its plans for Mariner East 2 with Mr. Kuprewicz upon the execution of a confidentiality agreement so that Mr. Kuprewicz could perform a safety review. According to Sunoco, it was not legally obligated to share these plans with the Township before it entered into the Settlement Agreement. *Id.* at 11. Sunoco also indicates that, if it failed to construct the valve station as described in Paragraph II of the Settlement Agreement, then Paragraph IV.A.2.d expressly provides that the Township could file a safety complaint against Sunoco if Mr. Kuprewicz's review of the Mariner East 2 plans revealed a safety issue. *Id.* at 11-12.

Sunoco continues that, by misconstruing the unambiguous terms of the Settlement Agreement, the ALJ disregarded long-standing public policy and law. *Id.* at 14-15. Sunoco states that local municipalities do not have authority to regulate the siting of public utility facilities or to review engineering determinations of public utilities. *Id.* at 15 (citing *Duquesne Light Co. v. Upper St. Clair Township*, 105 A.2d 287, 292 (Pa. 1954); *County of Chester v. Philadelphia Electric Co.*, 218 A.2d 331, 333 (Pa. 1966)). Sunoco avers that, while it settled its dispute with the Township in the Settlement Agreement, it did not agree to allow the Township to be involved in siting its public utility facilities outside of the SPLP Additional Acreage or in its engineering decisions. Sunoco Brief at 15.

Second, Sunoco contends that the ALJ ignored unrebutted evidence of engineering constraints that led Sunoco to relocate the valve. *Id.* at 12. Sunoco states that it presented evidence during the hearing that it would have preferred to locate the valve on the SPLP Use Area, but it could not site the valve there for the following three reasons: (1) there was insufficient room along Mary Jane Lane required for HDD into the Boot Road pump station because of the adjacent Aqua America facility; (2) because HDD was infeasible, Sunoco would have had to open cut Boot Road to get the pipeline

into the Boot Road pump station or the SPLP Use Area, and the road would have been closed to traffic for an extended period of time; and (3) if the valve were located in the SPLP Use Area, Sunoco would have to use a shored excavation vertical shaft that posed safety risks for welders, and the drill profile for HDD under Route 202 would have a maximum depth of about twenty feet, passing through highly fractured, unconsolidated sandstone, and posing a high risk of inadvertent returns that would threaten motorists' safety. *Id.* at 12-13 (citing Tr. at 187, 188, 189, 190, 191, 193).

Third, Sunoco avers that the Township did not present any evidence that the valve could be safely located in the SPLP Use Area. Sunoco states that Mr. Kuprewicz conceded that he never discussed with Sunoco 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 exceeded federal pipeline safety regulations. *Id.* at 14 (citing Tr. at 130, 131, 132-133).

c. Disposition

Based on our review of the record, we find that the Township has established, by a preponderance of the evidence, substantial legal questions. The record is well-developed and contains various testimony and exhibits that support the existence of substantial legal questions, many of which have been aptly cited above by the ALJ and the Township.⁹

⁹ Contrary to Sunoco's argument, the substantial legal questions the ALJ enumerates in the *July 24 Order* do not reflect a misunderstanding of the Settlement Agreement terms or the locations of or distinctions between the SPLP Additional Acreage and the SPLP Use Area. In footnote 1 of the *July 24 Order*, the ALJ appears to have inadvertently stated that the SPLP Additional Acreage is located within the SPLP Use Area; however, the remainder of the *July 24 Order* and the ALJ's analysis and conclusions are consistent with our reading of the record and the Settlement Agreement terms and do not reflect a misunderstanding of the fact that the SPLP Use Area is located within the SPLP Additional Acreage.

We find compelling the legal issues developed by the Township on the record pertaining to whether, at the time of the execution of the Settlement Agreement, Sunoco misrepresented its intention to site Valve 344 on the Janiec 2 Tract and whether Sunoco withheld material information about its plans for Mariner East 2. These legal issues implicate our authority under Section 508 of the Code to vary, reform, and revise contracts. Section 508 provides the following:

The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract.

66 Pa. C.S. § 508. *See AT&T v. Pa. PUC*, 709 A.2d 980, 989 (Pa. Cmwlth. 1998) (“the General Assembly has specifically told the Commission that when any terms or conditions of an agreement are ‘unjust, unreasonable or inequitable, or otherwise contrary or adverse to the public interest and general well-being of the Commonwealth,’ it shall determine the terms and conditions that will rectify that situation”); *Octoraro Railway, Inc. v. Pa. PUC*, 482 A.2d 278 (Pa. Cmwlth. 1984) (since the Commission has power to modify contracts under Section 508 of the Code, the ALJ has the authority to rule on the validity of agreements between public utilities and municipal corporations). In this case, the

Settlement between the Township and Sunoco concerns the public interest and the well-being of the Commonwealth and, accordingly, presents substantial legal questions for litigation and a ruling on the Settlement. Both Parties have identified separate public interest concerns regarding Sunoco's operations: the Township's concerns relating to the health and safety of its residents, and Sunoco's concerns relating to propane supply and the shippers and producers that intend to use the Mariner East 2 pipeline to ship their products. Tr. at 219.

Along these lines, the Township has also identified substantial legal issues concerning the safety and reasonableness of locating Valve 344 on the Janiec 2 Tract.¹⁰ The Township has presented issues that implicate "service" as broadly defined in the Code and involve the reasonableness, adequacy, and sufficiency of Sunoco's public utility service, especially regarding the circumstances surrounding the Parties' decision to enter into the Settlement Agreement and regarding the safety of the valve. Issues concerning the reasonableness, adequacy, and sufficiency of public utility service, be they contractual or otherwise, are squarely within the Commission's jurisdiction. 66 Pa. C.S. §§ 1501 and 1505; *Disanto v. Dauphin Consolidated Water Supply Co.*, 291 Pa. Super. 440, 436 A.2d 197 (1981). The Township presented testimony regarding the public safety risks associated with HDD at the valve site. Mr. Kuprewicz testified that HDD presents risks to the public, including breakouts and frac-outs. He explained that HDD involves boring in a cylinder using a drilling mixture of bentonite and water, and that a breakout or

¹⁰ In response to Sunoco's averment that the ALJ's decision does not mention any clear or present danger to life or property, we note that Commission determinations under Section 3.6 of our Regulations focus on the four elements required for interim emergency relief and do not always address or require the presence of a clear or present danger. See *Application of Fink Gas Company*, Docket No. A-2015-2466653 (Order entered August 20, 2015). Unlike Section 3.2 of our Regulations, Section 3.6 does not require a petitioner to establish the existence of an emergency. In any event under the factual circumstances in this case, we believe that there is sufficient evidence in the record to support a finding of a danger to life and/or property based on the dangers associated with HDD at the valve location.

frac-out occurs when the pressure involved causes a breakout of the drilling cylinder and allows the drilling mixture to migrate into underground water supplies. Tr. at 128, 129. Mr. Lalonde additionally testified that the Settlement Agreement purposefully confined Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area in order to protect the safety, health, and welfare of the Township residents. Tr. at 63. Mr. Lalonde stated that confining construction activities to certain limited areas would negate heavy traffic concerns, as about 25,000 to 36,000 vehicles use Boot Road daily and about 70,000 cars use Route 202 daily, and minimize the residents' exposure to safety issues and dust and noise. Tr. at 63, 64. Accordingly, we conclude that the Township has satisfied the first prong to obtain emergency relief.

Moreover, based on the framing of some of the issues by the ALJ, the Township, and Sunoco at this stage of the proceeding, one of the decisions we are being asked to reach is whether Sunoco has the authority to construct a valve on the Janiec 2 Tract, specifically, whether the Settlement Agreement provides Sunoco the right to construct the valve on the tract of land in question. We find it important to note that, with the exception of high voltage electric transmission lines, the Commission's authority regarding the siting of public utility facilities is limited. The Commission's authority stems from Section 10619 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10619, which provides that the Commission is authorized to determine, *upon petition by such public utility and after notice and opportunity for a hearing*, whether a building proposed by a public utility is "reasonably necessary for the convenience or welfare of the public." See 53 P.S. § 10619 (emphasis added). The effect of such a determination would be to exempt the proposed public utility building from the local

township or municipality's zoning authority under the MPC.¹¹ It is not clear that the Commission has the authority to provide such an exemption in the context of the instant proceeding.

2. 52 Pa. Code § 3.6(b)(2)

a. ALJ's Recommendation

The second requirement for obtaining interim emergency relief is a demonstration by the petitioner that its need for relief is immediate. 52 Pa. Code § 3.6(b)(2). The ALJ determined that the need for injunctive relief was immediate. The ALJ stated that she was persuaded by the credible testimony of Casey LaLonde, Township Manager for West Goshen Township, that, on or about July 3, 2017, Sunoco notified the Township that it was going to start construction on the Janiec 2 Tract within several weeks. *July 24 Order* at 6 (citing Tr. at 74). The ALJ noted that on July 6, 2017, the date of the pre-hearing conference on the Township's Complaint, Sunoco would not promise a stay of construction, and it began clearing work on the Janiec 2 Tract. *July 24 Order* at 6-7 (citing Tr. at 30, 74-75; Township Exh. 9). The ALJ also noted that the Township requested that Sunoco cease operations on the Janiec 2 Tract until the Commission reached a determination in this case, but Sunoco refused. *July 24 Order* at 7 (citing Tr. at 30, 76). The ALJ found that the clearing and grading of the Janiec 2 Tract

¹¹ As discussed *supra*, we note that Sunoco originally filed a MPC Section 619 petition, at Docket No. P-2014-2411966, that requested the Commission to determine that the public utility facilities it planned to construct in West Goshen Township are reasonably necessary for the convenience or welfare of the public. Sunoco subsequently withdrew its MPC Section 619 Petition after reaching the Settlement Agreement. Because the Commission granted Sunoco's petition to withdraw its Section 619 MPC Petition, the Commission did not reach a determination under 53 P.S. 10619 that Sunoco's proposed facilities in West Goshen Township are reasonably necessary for the convenience or welfare of the public.

and the preparation of the construction entrance thereon indicated that Sunoco intended to immediately begin construction of the valve station on the Janiec 2 Tract. *July 24 Order* at 7 (citing Tr. at 76). The ALJ further observed that the Township received notice from the Pennsylvania Department of Transportation (PennDOT) that Sunoco was beginning work on the Janiec 2 Tract, and Sunoco's witness, Matthew Gordon, Project Manager of Mariner East Project, testified that work had commenced on the Janiec 2 tract. *July 24 Order* at 7 (citing Tr. at 76, 213-214).

b. Positions of the Parties

The Township avers that it established that the need for relief is immediate. The Township states that the testimony of Casey LaLonde showed that on or about July 3, 2017, Sunoco notified the Township that it was starting construction on the Janiec 2 Tract within several weeks. Township Brief at 9, 14 (citing Tr. at 74). The Township also states that only three days later on July 6, 2017, the same date as the prehearing conference on the Township Complaint, Sunoco refused to agree to a stay of construction and began clearing work on the Janiec 2 Tract. Township Brief at 9, 14 (citing Tr. at 74-76, 213-214; Township Exh. 9). The Township argues that Sunoco's clearing work, preparation of a construction entrance, and the testimony of Mr. Gordon indicate that Sunoco intended to immediately begin construction of the valve station on the Janiec 2 Tract. Township Brief at 14.

c. Disposition

Based on our review of the record, we concur with the ALJ's determination that the Township has established, by a preponderance of the evidence, that the need for relief is immediate. It is undisputed that Sunoco intended to immediately proceed with the work for constructing Valve 344 on the Janiec 2 Tract. The Township presented the credible testimony of Mr. LaLonde that on or around July 3, 2017, Sunoco communicated

to the Township that it would be starting construction on the Janiec 2 Tract within several weeks. Tr. at 74. Mr. LaLonde also testified that, on July 6, 2017, the date of the prehearing conference on the Township Complaint, Sunoco graded and cleared the site. Tr. at 74, 75, and 76. Mr. LaLonde further testified that PennDOT notified the Township that work was beginning on the Janiec 2 Tract. Tr. at 76. The transcript from the prehearing conference reflects that Sunoco would not agree to the Township's request to stop the valve construction until after an evidentiary hearing was held and the Commission reached a final determination on the Township Complaint. Sunoco's witness, Mr. Gordon, agreed with Mr. LaLonde that Sunoco had started work on Janiec 2 Tract. Tr. at 213. Mr. Gordon stated that Sunoco had cleared the site for construction and built a construction entrance off Boot Road to enable equipment to access the site without using the fire department's driveway. Tr. at 214. For these reasons, we conclude that the second prong to obtain emergency relief has been met in this case.

3. 52 Pa. Code § 3.6(b)(3)

a. ALJ's Recommendation

The third requirement for obtaining interim emergency relief is a demonstration by a petitioner that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3). The ALJ noted initially that monetary losses can satisfy the irreparable injury requirement. The ALJ stated that, if there is a great deal of uncertainty regarding whether the Township could recover possible losses, then the Township has satisfied the irreparable injury requirement. *July 24 Order* at 7 (citing *West Penn Power Co. v. Pa. PUC*, 615 A.2d 951 (Pa. Cmwlth. 1992)). The ALJ determined that the injury in this case would be irreparable if injunctive relief is not granted.

First, the ALJ discussed the impact the proposed valve location would have on the Traditions Project. The ALJ stated that before Sunoco's use of the Janiec 2 Tract,

the Township approved a \$35 million land development project known as the Traditions Project in December 2015. *July 24 Order* at 7 (citing Tr. at 82; Township Exh. 11). The ALJ noted that the Traditions Project would have been the first facility of its kind in the Township, would have generated significant real estate tax and earned income tax revenue for the Township, and would have provided approximately \$200,000 of road improvements in the Township. *July 24 Order* at 7 (citing Tr. at 82-83). The ALJ also noted that the developer abandoned the Traditions Project when Sunoco condemned the Janiec 2 Tract for its use on May 12, 2016, but that, if Sunoco moved from the Janiec 2 Tract, the Traditions Project could then happen. *July 24 Order* at 7 (citing Tr. at 83-84, 114).

Second, the ALJ observed that construction will have a negative impact on the Township, including safety concerns, transportation delays, dust, and noise. *July 24 Order* at 7 (citing Tr. at 63-64). Specifically, the ALJ stated that excessive HDD drilling increases the risk of frac-outs of bentonite drilling mixtures. *July 24 Order* at 7 (citing Tr. at 128-129). Moreover, the ALJ noted that traffic would be impacted because approximately 25,000 to 36,000 vehicles use Boot Road daily and approximately 70,000 vehicles use Route 202 daily. *July 24 Order* at 7-8 (citing Tr. at 63). The ALJ further noted that the Settlement Agreement confined Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area to minimize the impact to the Township residents and to minimize impeding access for firefighters entering and departing from the Goshen Fire Company located adjacent to the Janiec 2 Tract. *July 24 Order* at 8 (Tr. at 63-64).

Third, the ALJ found the evidence demonstrated that, if Sunoco installs a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area, because the pipe might be too deep at the location of the SPLP Use Area, and Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, creating a second round of risks to the public, including breakouts and frac-outs.

July 24 Order at 8 (citing Tr. at 127-128). Additionally, the ALJ stated that, if Sunoco continues construction on the Janiec 2 Tract, but later relocates the valve station to the SPLP Use Area, the Township will endure the noise, vibration, obstructions, and other negative consequences of the construction activities twice. *July 24 Order* at 8 (citing Tr. at 81).

b. Positions of the Parties

The Township argues that it has established it will suffer irreparable injury if interim relief is not granted. The Township avers that construction has a significant impact on the community, including traffic, air, dust, noise, vibrations, potential water contamination, and that HDD is not without significant costs. Township Brief at 14. The Township explains that approximately 25,000 to 36,000 vehicles use Boot Road daily, and approximately 70,000 vehicles use Route 202 daily. *Id.* at 10 (citing Tr. at 63). The Township further explains that the Settlement Agreement limited Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area to minimize the impact to the Township residents, and that frac-outs during drilling, allowing bentonite and water to migrate into underground water supplies, add an additional level of concern. Brief at 10 (citing Tr. at 128-129). The Township states that, if Sunoco constructs a valve station on the Janiec 2 Tract, it could not later simply move the valve station, because re-drilling and re-running of pipes would be required. Brief at 10 (citing Tr. at 81, 127-128). The Township also points out that it previously approved a \$35 million land development project for the Janiec 2 Tract, known as the Traditions Project, that would provide a service to the elderly, significant real estate taxes, and hundreds of thousands of dollars in road and stormwater improvements that is not moving forward due to Sunoco's condemnation of the site. Brief at 10 (citing Tr. at 82-84; Township Exh. 11).

c. Disposition

Upon review, we concur with the ALJ's finding and analysis that the Township met its burden of demonstrating that there would be irreparable harm unless emergency relief was granted. When evaluating if an injury is irreparable, we examine "whether the harm can be reversed if the request for emergency relief is not granted." *Core* at 15. We note that it is possible to satisfy the irreparable injury requirement when losses are monetary. *Id.* (citing *West Penn Power Co. v. Pa. PUC*, 615 A.2d 951 (Pa. Cmwlth. 1992)). In this case, the Township presented evidence that demonstrates both non-monetary and monetary harms. We find it significant that, if Sunoco installs a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area. As the ALJ noted, the pipe might be too deep at the location of the SPLP Use Area, and Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, which would create a second round of risks to the public, including breakouts and frac-outs during drilling. Tr. at 127-128. Additionally, the same expenses, issues, and permits associated with a new HDD bore would have to be duplicated. Tr. at 128. Under the circumstances, it does not seem to be a feasible or practical option to relocate the valve once it has been constructed on the Janiec 2 Tract.

Moreover, Sunoco's construction plans have had a direct impact on the \$35 million Traditions Project the Township approved to be located on the Janiec 2 Tract. Tr. at 82; Township Exh. 11. Mr. Lalonde testified that the Traditions Project would have been the first independent living facility in the Township, would have generated significant real estate tax and earned income tax revenue for the Township, and the developer would have provided about \$200,000 of direct road improvements in the Township. Tr. at 82-83. Sunoco has not provided sufficient evidence to refute the Township's evidence on this issue. For the above reasons, the Township has satisfied the third prong to obtain emergency relief in this case.

4. 52 Pa. Code § 3.6(b)(4)

a. ALJ's Recommendation

The fourth requirement for obtaining interim emergency relief is a demonstration by a petitioner that the relief requested would not be injurious to the public interest. 52 Pa. Code § 3.6(b)(4). The ALJ found that that the Township's requested relief was not injurious to the public interest. *July 24 Order* at 9. The ALJ stated that, while Mr. Gordon testified that an interim emergency order would delay the targeted completion date for the Mariner East Project and cause producers of propane, ethane, and butane natural gas liquids a delay in transporting and shipping their products, drilling operations were suspended in other parts of Chester County due to water contamination from frac-outs. *Id.* at 8 (citing Tr. at 246).¹²

The ALJ additionally reasoned that the Township is not seeking to permanently stop construction of the Mariner East Pipeline or to stop a pipeline through

¹² The ALJ is referring to a Consent Order and Agreement (COA), signed by the Pennsylvania Department of Environmental Protection (DEP) and Sunoco on July 24, 2017, which prohibited Sunoco from further activities in West Whiteland and Uwchland Townships, Chester County, until authorized by the DEP. By Order dated July 25, 2017, at Environmental Hearing Board (EHB) Docket No. 2017-009-L, the EHB suspended all DEP permits and stopped Sunoco's HDD activities at fifty-five sites in Pennsylvania, pending a further Order of the EHB. On August 9, 2017, DEP reached an agreement with the Clean Air Council, Delaware Riverkeeper Network, and the Mountain Watershed Association, Inc. and Sunoco to resolve the temporary suspension of HDD activity associated with construction of the Mariner East 2 pipeline. By Order dated August 10, 2017, the EHB vacated several of its prior Orders, including the July 25th Order, and required Sunoco to notify all landowners and water supply owners within 450 feet of future HDDs and provide additional opportunities for water testing for those owners. Sunoco is also required to perform a re-evaluation of about sixty-three areas where HDD activity will occur, including those in Chester County. As of this date, Sunoco has submitted a re-evaluation report relating to Uwchlan Township and seven other areas, and public comments were received. Such reports are subject to DEP's review and approval.

the Township altogether, but is, instead, seeking enforcement of the Settlement Agreement in the interest of its residents. *Id.* (citing Tr. at 81-82). The ALJ stated that Sunoco appeared to have agreed to restrictions on its activities within the Township at one time in May 2015. Accordingly, the ALJ determined that an injunction on construction on the Janiec 2 Tract until the Commission reached a final decision in this Complaint proceeding would not be injurious to the public, particularly since the *status quo* whereby there is no construction on the Janiec 2 Tract would be maintained throughout the litigation of the Township Complaint. *July 24 Order* at 9.

b. Positions of the Parties

The Township avers it established that interim emergency relief will not be injurious to the public. The Township states that Mr. Gordon testified there has not been a propane shortage since Mariner East 1 was completed, and there is no evidence of a potential fuel shortage if the project is delayed. Township Brief at 11, 15 (citing Tr. at 219). The Township continues that there are other parts in Chester County where drilling has been stopped due to problems it is causing to the water. Township Brief at 11 (citing Tr. at 246-247). The Township indicates that it is not trying to stop Sunoco from running a pipeline through the Township, but, rather, it is seeking Sunoco's compliance with the Settlement Agreement. Township Brief at 11, 15 (citing Tr. at 81-82).

In its Brief, Sunoco argues that the ALJ erroneously concluded that interim emergency relief would not be injurious to the public. Sunoco avers that the ALJ ignored un rebutted testimony that the delay would impact third parties, including shippers, producers, and consumers that are depending on the completion of the Mariner East 2 pipeline project. Sunoco Brief at 14 (citing Tr. at 219). Sunoco states the ALJ's reliance on the belief that there would not be a delay since HDD was shut down in other parts of Chester County due to water contamination, ignored the fact that HDD would resume at some point. Sunoco also states that the determination in the *July 24 Order* would cause

delays beyond June 2018 regardless of a construction suspension for other reasons.
Sunoco Brief at 14.

c. Disposition

In weighing the evidence presented by both Parties on this issue, we find that the Township has met its burden under Section 3.6(b)(4) of our Regulations by demonstrating that emergency relief will not be injurious to the public interest. We agree with the ALJ's rationale that the Township is not seeking to permanently stop construction of the Mariner East Pipeline or to prevent a pipeline through the Township altogether, but, is, instead, seeking enforcement of the Settlement Agreement in the interest of its residents. Because the Settlement Agreement was executed to resolve the safety concerns of the Township and the CCWGT regarding Sunoco's facilities in the Township, ensuring that the Parties comply with the Settlement Agreement is consistent with the public interest and the interest of the Township residents. We also acknowledge that a delay in construction would delay shippers and producers from using the Mariner East 2 pipeline to ship their products; however, Sunoco has indicated that there has not been a propane shortage since Mariner East 1 was completed. Tr. at 219. Further, based on the status of the DEP proceeding discussed herein, it appears that Sunoco will not be able to immediately resume HDD drilling in various Pennsylvania areas, including those in Chester County. We find that maintaining the current *status quo* without valve construction on the Janiec 2 Tract until we hold an evidentiary hearing and issue a decision addressing the instant Settlement Agreement dispute, is the most appropriate way to satisfy the public interest under the circumstances in this case. Accordingly, we conclude that the fourth prong to obtain emergency relief has been met in this case. For all of these reasons, we shall answer the material question in the affirmative.

C. Sunoco's Bond Request and Disposition

In its Brief, Sunoco requests that, if the Commission upholds the ALJ's determination, then the *July 24 Order* should be effective only if the Township posts a bond, consistent with Section 3.8 of our Regulations, 52 Pa. Code § 3.8. Sunoco avers that the bond should be in an amount that the Commission deems appropriate to pay the costs and damages sustained by Sunoco if Sunoco prevails on the merits and that the Office of Administrative Law Judge should be directed to hold a hearing to determine the amount of such security. Sunoco Brief at 3. Section 3.8(b) provides that "[a]n order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and will specify the amount of the bond." We find that it would not be appropriate to require a bond from the Township under the circumstances in this case. A bond or an escrow account is normally contemplated and required when a party may owe a specific amount of money based on a statutory or contract obligation or payment of an outstanding bill to a utility, and the money is secured pending the outcome of a proceeding. *See, e.g., Pa. PUC v. Snyder Brothers, Inc.*, Docket No. C-2014-2402746 (Order entered July 30, 2015); *Palmerton Telephone Company v. Global NAPs South, Inc.*, Docket No. C-2009-2093336 (Order entered August 3, 2010); *Buffalo-Lake Erie Wireless Systems Co., LLC Petition for Emergency Order*, Docket No. P-2009-2150008 (Order entered January 14, 2010). The record here does not reflect any specific amount of money that the Township would owe to Sunoco and Sunoco has not alleged a specific amount. Sunoco appears to be asking for litigation costs and damages if it ultimately prevails on the merits, and the Commission does not have jurisdiction to award such costs or monetary damages. *Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371 (Pa. 1980); *Application of Guidance Telecom LLC*, Docket No. A-2012-2305457 (Order entered August 31, 2012). Accordingly, we shall deny Sunoco's request.

IV. Conclusion

Consistent with the foregoing discussion, we conclude that the ALJ correctly determined that the Township met the requirements set forth in 52 Pa. Code § 3.6(b) and carried its burden of demonstrating its right to interim emergency relief. We also deny Sunoco's request that we direct the Township to post a bond under Section 3.8 of our Regulations, 52 Pa. Code § 3.8; **THEREFORE,**

IT IS ORDERED:

1. That the Material Question certified to the Commission on July 24, 2017, by Administrative Law Judge Elizabeth Barnes, is answered in the affirmative.
2. That the Petition for Interim Emergency Relief filed by West Goshen Township on July 10, 2017, is granted, consistent with this Opinion and Order.
3. That Sunoco is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.
4. That Sunoco Pipeline L.P.'s request that the Commission direct West Goshen Township to post a bond under 52 Pa. Code § 3.8 is denied.

5. That this matter is referred back to the Office of Administrative Law Judge for further proceedings consistent with this Opinion and Order.



(SEAL)

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

ORDER ADOPTED: October 26, 2017

ORDER ENTERED: October 26, 2017

EXHIBIT “B”

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 21, 2017

Commissioners Present:

Gladys M. Brown, Chairman, Statement, dissenting
Andrew G. Place, Vice Chairman, Statement, dissenting
Norman J. Kennard
David W. Sweet
John F. Coleman, Jr.

West Goshen Township

C-2017-2589346

v.

Sunoco Pipeline, L.P.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition to Rescind or Discontinue (Petition), filed by Sunoco Pipeline, L.P. (Sunoco) on November 21, 2017, relative to the Opinion and Order entered on October 26, 2017 (*October 2017 Order*) in the above-captioned proceeding. On December 1, 2017, West Goshen Township (the Township) filed an Answer to the Petition (Answer). For the reasons detailed herein, we shall: (1) deny Sunoco's request

for rescission of our *October 2017 Order*; (2) discontinue the injunction in our *October 2017 Order*, effective on the entry date of this Opinion and Order; and (3) provide that the Office of Administrative Law Judge (OALJ) return the matter to this Commission for final consideration and resolution no later than the September 20, 2018 Public Meeting.

I. History of the Proceeding

On March 21, 2014, at Docket No. P-2014-2411966, Sunoco filed a Petition (Sunoco Petition) requesting a finding that a building to shelter the Boot Road Pump Station in the Township was reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning ordinances. The Boot Road Pump Station and an associated Vapor Combustion Unit would serve a natural gas liquids pipeline owned by Sunoco that is part of the Mariner East Project to transport propane, ethane, and other natural gas liquids from points west and north of the Township to points in Delaware County, Pennsylvania, and the State of Delaware. On April 18, 2014, the Concerned Citizens of West Goshen Township (CCWGT)¹ filed a Protest and Preliminary Objections to the Sunoco Petition. On April 21, 2014, the Township filed a Petition to Intervene.

On November 7, 2014, CCWGT filed a Formal Complaint (CCWGT Complaint) against Sunoco, at Docket No. C-2014-2451943, alleging safety concerns about the proposed Sunoco facilities in the Township. The Sunoco Petition and the CCWGT Complaint were resolved by a Settlement Agreement between Sunoco, the Township, and the CCWGT. By Order entered May 28, 2015, the Commission granted Sunoco's request to withdraw the Sunoco Petition. The Settlement Agreement was certified by the Commission's Secretary on June 15, 2015, at Docket No. U-2015-

¹ The CCWGT is an *ad hoc* association of individuals who own and reside on property adjacent to or within approximately 1,000 feet of the properties Sunoco owns near Boot Road in the Township.

2486071, pursuant to Section 507 of the Public Utility Code (Code), 66 Pa. C.S. § 507.² On June 16, 2015, the CCWGT filed a Certificate of Satisfaction and Withdrawal of Formal Complaint regarding the CCWGT Complaint.

On March 30, 2017, the Township filed an Amended Complaint (Complaint) against Sunoco, at the instant Docket No. C-2017-2589346, seeking enforcement of the Settlement Agreement filed at Docket No. U-2015-2486071,³ pertaining to, *inter alia*, Sunoco's proposal to site Valve 344 on the Janiec 2 Tract. On April 17, 2017, Sunoco filed an Answer to the Complaint and New Matter. Sunoco denied the material allegations in the Complaint and averred that siting Valve 344 on the Janiec 2 Tract would not constitute a violation of the Settlement Agreement. On May 5, 2017, the Township filed an Answer to the New Matter.

On July 10, 2017, the Township filed a Petition seeking, *inter alia*, an Interim Emergency Order (Emergency Petition) pursuant to 52 Pa. Code § 3.6, to enjoin Sunoco from beginning or continuing construction of a valve and any other facilities

² Section 507 provides the following:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the commission grants its approval thereof.

³ The Settlement Agreement is also Township Exhibit 4 in this proceeding.

appurtenant to Sunoco's Mariner East 2 pipeline on the Janiec 2 Tract, or at any location not specifically agreed to in the Settlement Agreement, until after the Commission issues a final order on the Complaint.⁴ On July 17, 2017, Sunoco filed an Opposition to the Township's Emergency Petition.

On July 18, 2017, ALJ Barnes conducted a hearing on the Emergency Petition. The hearing record includes twenty Township exhibits, fifteen Sunoco exhibits, and a 254-page transcript. Both Parties filed Briefs regarding the Emergency Petition on July 24, 2017.

In the *Interim Emergency Order and Certification of Material Question* issued by ALJ Barnes on July 24, 2017 (*July 24 Order*), the ALJ granted the Township's Emergency Petition and certified the decision to grant interim emergency relief to the Commission as a material question to be processed in accordance with Section 5.305 of the Commission's Regulations, 52 Pa. Code § 5.305. On July 31, 2017, the Township and Sunoco each filed a Brief pertaining to the *July 24 Order*.

By Order entered October 26, 2017 (*October 2017 Order*), we answered the Material Question in the affirmative, granted the Township's Emergency Petition, and referred this matter back to the Office of Administrative Law Judge. We specifically directed the following:

⁴ The Township originally filed its Emergency Petition as a petition seeking both *ex parte* emergency relief under 52 Pa. Code § 3.2 and interim emergency relief under 52 Pa. Code § 3.6. By Secretarial Letter issued July 11, 2017, the Commission declined to issue an *ex parte* emergency order under Section 3.2. The Commission directed that the Petition proceed solely at Docket Number C-2017-2589346 as a petition for interim emergency relief pursuant to Sections 3.6 to 3.12 of the Commission's Regulations, 52 Pa. Code §§ 3.6-3.12.

That Sunoco is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

October 2017 Order at 34, Ordering Paragraph No. 3.

On October 19, 2017, Sunoco filed a Motion to Modify the Procedural Schedule (Motion to Modify) at Docket No. C-2017-2589346. On November 3, 2017, West Goshen filed an Answer. By Order dated November 14, 2017 (*November 14 Order*), ALJ Barnes denied the Motion to Modify.

On November 17, 2017, Sunoco filed a Petition for Interlocutory Review and Answer to Material Questions (Interlocutory Review Petition) relating to the ALJ's *November 14 Order*. Both Sunoco and the Township thereafter requested an extension on the deadline for filing briefs. By Secretarial Letter issued November 21, 2017, the Commission established December 4, 2017, as the due date for filing briefs and waived the thirty-day period for consideration set forth in 52 Pa. Code § 5.303 to afford adequate time to address the questions raised. On December 4, 2017, Sunoco filed a Brief in Support of the Interlocutory Review Petition, and the Township filed a Brief in Opposition to the Interlocutory Review Petition.

As previously noted, Sunoco filed the instant Petition on November 21, 2017. On December 1, 2017, the Township filed an Answer.

II. Background Regarding the Settlement Agreement

The Settlement Agreement resolved the concerns of the Township and the CCWGT regarding, among other things, Sunoco's proposed construction and operation of the Boot Road Pump Station and associated Vapor Combustion Unit in connection with Sunoco's Mariner East Project. The Settlement Agreement provisions at issue in this case include Sections II, III, and IV, as set forth below, in relevant part:

II. Pertinent Information Provided by [Sunoco]

A. [Sunoco] has provided [the Township and the Township's] consulting expert with the following information ("SPLP Information"). [The Township] and CCWGT expressly rely upon the accuracy of the SPLP Information in reaching this Agreement.

1. As used herein, the phrase "Mariner East Project" refers to the existing Mariner East 1 pipeline and appurtenant facilities, and all additional pipelines and appurtenant facilities to be owned and/or operated by [Sunoco] in [the Township] for the transportation of propane, ethane, butane, and/or other natural gas liquids.

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 [Sunoco'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, [Sunoco] intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If, due to engineering constraints, [Sunoco] is unable to

construct the valve station in the SPLP Use Area, SPLP will notify [the Township]. Nothing in this Settlement Agreement constitutes an authorization or agreement for [Sunoco] 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, [Sunoco] has no plan or intention to construct any additional above-ground permanent utility facilities in [the Township] except as otherwise expressly set forth in this Agreement.

III. [The Township's] Safety Review

1. [The Township] has engaged Accufacts, Inc., and its President, Richard Kuprewicz, a nationally recognized expert in the field of liquids pipeline safety, to prepare a written report as to the safety of Mariner East 1 (the "Kuprewicz Report") based on the design and engineering facts and information heretofore provided by [Sunoco]. The Kuprewicz Report is attached as Appendix 5 hereto and is made a part of this Agreement.

IV. The Parties' Promises, Covenants and Agreements

A. Based on the SPLP Information recited in Section II of this Agreement, the Parties agree to make the following promises, covenants and agreements:

1. [Sunoco] covenants and agrees as follows:

a. Because of its existing Pump Station Facility at Boot Road, except with respect to the SPLP Use Area, [Sunoco] covenants and agrees that it shall not construct or install any pump stations, VCUs or above-ground permanent public utility facilities on the SPLP Additional Acreage for any phase of the Mariner East Project. [Sunoco] also agrees that, except for the SPLP Use Area, any use of the SPLP Additional Acreage for staging construction, laydown or other operational activity will be temporary, and [Sunoco]

will restore the surface to its former condition following the completion of such activity.

* * *

2. [The Township] covenants and agrees as follows:

* * *

d. As long as [Sunoco] (i) constructs and operates facilities in [the Township] as described in Section II above; (ii) abides by the covenants and agreements in Section III.A.1 above; and (iii) operates in a manner consistent with the safety, design and engineering facts and information heretofore provided to [the Township's] consultant, [the Township] agrees that it will not file or join in any complaint against the safety of [Sunoco's] service or facilities with the Commission or any other federal, state, or local government agency or endorse or promote any protest or action filed by the CCWGT or any other individual or group against [Sunoco] with respect to the safety of Mariner East 1 or the valve station described in paragraph II.A.2 of this Agreement.

Settlement Agreement at 2-3, 5-6, 7.

The Boot Road Pump Station is located near the intersection of Boot Road and Route 202, to the north of East Boot Road and to the west of the Route 202 Southbound off-ramp. Tr. at 47-48; Township Exhs. 1 and 2. The SPLP Use Area referenced in the Settlement Agreement is located west of Route 202 on Boot Road. The Janiec 2 Tract at issue in this proceeding is a wooded property that is located on the east side of Route 202 and north of Boot Road and is owned by the Janiec family. Tr. at 57-58; Township Exh. 2; Sunoco Exh. 4.

III. Discussion

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Legal Standards

Initially, we note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that

while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

October 2017 Order

In our *October 2017 Order*, we determined, *inter alia*, to grant the Township’s Emergency Petition. We evaluated the Emergency Petition and the Parties’ positions under the standards that govern the issuance of interim emergency orders set forth at 52 Pa. Code § 3.6.⁵ First, we concluded that the Township established, by a preponderance of the evidence, substantial legal questions. *October 2017 Order* at 20. We found compelling the legal issues developed by the Township on the record pertaining to whether, at the time of the execution of the Settlement Agreement, Sunoco

⁵ Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, 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 § 3.6(b).

misrepresented its intention to site Valve 344 on the Janiec 2 Tract and whether Sunoco withheld material information about its plans for Mariner East 2. We stated that these legal issues implicate our authority under Section 508 of the Code to vary, reform, and revise contracts.⁶ *October 2017 Order* at 21. We also stated that the Settlement Agreement between the Township and Sunoco concerns the public interest and the well-being of the Commonwealth and, accordingly, presents substantial legal questions for litigation and a ruling on the Settlement Agreement. We noted that both Parties identified separate public interest concerns regarding Sunoco's operations: the Township's concerns relating to the health and safety of its residents, and Sunoco's concerns relating to propane supply and the shippers and producers that intend to use the Mariner East 2 pipeline to ship their products. *Id.* at 22 (citing *Tr.* at 219).

⁶ Section 508 provides the following:

The commission shall have power and authority to vary, reform, or revise, upon a fair, reasonable, and equitable basis, any obligations, terms, or conditions of any contract heretofore or hereafter entered into between any public utility and any person, corporation, or municipal corporation, which embrace or concern a public right, benefit, privilege, duty, or franchise, or the grant thereof, or are otherwise affected or concerned with the public interest and the general well-being of this Commonwealth. Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract. Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract.

Additionally, we stated that the Township identified substantial legal issues concerning the safety and reasonableness of locating Valve 344 on the Janiec 2 Tract. We found that the Township presented issues that implicate “service” as broadly defined in the Code and involve the reasonableness, adequacy, and sufficiency of Sunoco’s public utility service, especially regarding the circumstances surrounding the Parties’ decision to enter into the Settlement Agreement and regarding the safety of the valve. *October 2017 Order* at 22. We explained that issues concerning the reasonableness, adequacy, and sufficiency of public utility service, be they contractual or otherwise, are squarely within the Commission’s jurisdiction. *Id.* (citing 66 Pa. C.S. §§ 1501 and 1505; *Disanto v. Dauphin Consolidated Water Supply Co.*, 291 Pa. Super. 440, 436 A.2d 197 (1981)). We indicated that since the Commission has the power to modify contracts under Section 508 of the Code, the ALJ has the authority to rule on the validity of agreements between public utilities and municipal corporations. We noted in detail the testimony the Township presented regarding the public safety risks associated with HDD at the valve site. *October 2017 Order* at 22-23 (citing Tr. at 128, 129). We also noted the Township’s testimony that the Settlement Agreement purposefully confined Sunoco’s construction activities to Sunoco’s existing pump station site and the SPLP Use Area in order to protect the safety, health, and welfare of the Township’s residents. *October 2017 Order* at 23 (citing Tr. at 63).

Furthermore, we addressed our jurisdiction concerning the issues in this proceeding. We stated that based on the framing of some of the issues by the ALJ, the Township, and Sunoco at this stage of the proceeding, one of the decisions we are being asked to reach is whether Sunoco has the authority to construct a valve on the Janiec 2 Tract, specifically, whether the Settlement Agreement provides Sunoco the right to construct the valve on the tract of land in question. We noted that with the exception of high voltage electric transmission lines, our authority regarding the siting of public utility facilities is limited. *October 2017 Order* at 23. We explained that our authority stems from Section 10619 of the Pennsylvania Municipalities Planning Code (MPC),

53 P.S. § 10619, which provides that the Commission is authorized to determine, *upon petition by such public utility and after notice and opportunity for a hearing*, whether a building proposed by a public utility is “reasonably necessary for the convenience or welfare of the public.” *Id.* (citing 53 P.S. § 10619). We continued that the effect of such a determination would be to exempt the proposed public utility building from the local township or municipality’s zoning authority under the MPC.⁷ We concluded that it is not clear that we have the authority to provide such an exemption in the context of the instant proceeding. *October 2017 Order* at 23-24.

Second, we determined that the Township established, by a preponderance of the evidence, that the need for relief was immediate. Based on the testimony from both Parties as detailed in our *October 2017 Order*, we concluded that it was undisputed that Sunoco intended to immediately proceed with the work for constructing Valve 344 on the Janiec 2 Tract. *See October 2017 Order* at 25-26. Third, we determined that the Township met its burden of demonstrating that there would be irreparable harm, both non-monetary and monetary, unless emergency relief was granted. Based on the evidence presented, we found it significant that if Sunoco installed a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area, as Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, which would create a second round of risks to the public, including breakouts and frac-outs during drilling. Further, we addressed the direct impact that Sunoco’s construction plans had on the \$35 million Traditions Project the Township approved to be located on the Janiec 2 Tract. *Id.* at 29.

⁷ Sunoco originally filed a MPC Section 619 petition, at Docket No. P-2014-2411966, that requested the Commission to determine that the public utility facilities it planned to construct in West Goshen Township are reasonably necessary for the convenience or welfare of the public. Sunoco subsequently withdrew its MPC Section 619 Petition after reaching the Settlement Agreement. Because the Commission granted Sunoco’s petition to withdraw its Section 619 MPC Petition, the Commission did not reach a determination under 53 P.S. 10619 that Sunoco’s proposed facilities in West Goshen Township are reasonably necessary for the convenience or welfare of the public.

Fourth, we concluded that the Township met its burden of demonstrating that emergency relief would not be injurious to the public interest. We agreed with the ALJ's rationale that the Township is not seeking to permanently stop construction of the Mariner East Pipeline or to prevent a pipeline through the Township altogether, but is instead, seeking enforcement of the Settlement Agreement in the interest of its residents. We stated that because the Settlement Agreement was executed to resolve the safety concerns of the Township and the CCWGT regarding Sunoco's facilities in the Township, ensuring that the Parties comply with the Settlement Agreement is consistent with the public interest and the interest of the Township residents. We also acknowledged that a delay in construction would delay shippers and producers from using the Mariner East 2 pipeline to ship their products; however, we noted that Sunoco indicated that there has not been a propane shortage since Mariner East 1 was completed. We found that maintaining the current *status quo* without valve construction on the Janiec 2 Tract until we held an evidentiary hearing and issued a decision addressing the Settlement Agreement disputes, was the most appropriate way to satisfy the public interest under the circumstances in this case. *Id.* at 32.

Petition and Answer

In its Petition, Sunoco requests that the Commission enter an Order as follows:

1. The [*October 2017 Order*,] specifically Ordering Paragraph No. 3[,] is rescinded or discontinued.

2. [Sunoco] will: (a) not locate for the Mariner East 2 line Valve 344 on the Janiec 2 Tract and conduct the activities relative to Valve 344 which were the subject of the injunction as specified in [Ordering Paragraph No. 3 of the *October 2017 Order*]; and, (b) not locate such a valve for the Mariner East 2 line anywhere in West Goshen Township.

Petition at 3-4. In support of its Petition, Sunoco states that since the entry of the *October 2017 Order*, Sunoco has reevaluated Valve 344 based on the Township's representations about its residents' concerns regarding the proposed installation. Sunoco submits that it has decided that such a valve is not needed operationally nor required by any applicable code or regulation. Sunoco avers that as a matter of managerial and construction judgment and discretion, it no longer plans to locate and construct a valve on the Janiec 2 Tract or anywhere else in the municipal limits of the Township. Petition at 2.

Accordingly, Sunoco claims there is no longer any construction or activity to enjoin in relation to Valve 344 and, thus, no need for the continuation of enjoining such construction or activities that were the subject of the *October 2017 Order*. Sunoco avers that granting its request to rescind or discontinue the injunction will conserve the time and resources of the Commission and the Parties on the now moot issue of locating Valve 344 on the Janiec 2 Tract. Sunoco submits that it is willing to accept, as a condition of approval of its Petition, that Sunoco will not locate Valve 344 or any such valve for the Mariner East 2 Pipeline on the Janiec 2 Tract or elsewhere in the Township. Sunoco asks that we address its Petition immediately or as soon as possible to avoid delaying Sunoco's work on the Mariner East 2 Pipeline due to a dispute that no longer exists. Petition at 3.

In its Answer, the Township requests that the Commission deny Sunoco's Petition. The Township states that Sunoco is attempting to avoid its obligations under the

Settlement Agreement by reframing the Township's case in a manner that suggests that the only relief the Township sought was to stop Sunoco from constructing Valve 344 on the Janiec 2 Tract and that because Sunoco has unilaterally decided not to locate the valve in the Township, the injunction is no longer necessary. The Township avers that Sunoco's characterization of the case is incorrect because the Township's intent has always been to enforce Sunoco's promise to locate the valve on the SPLP Use Area consistent with the Settlement Agreement terms. Answer at 2. The Township cites to Section II.A.2 of the Settlement Agreement, which provides the following, in pertinent part:

. . . a remote operated valve station will be constructed and maintained on [Sunoco'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").

Id. (citing Settlement Agreement at 3). The Township explains that because Sunoco intended to install Valve 344 at the wrong location, a significant amount of evidence and argument was devoted to stopping Sunoco from installing the valve on the Janiec 2 Tract; however, that does not mean that Sunoco should be relieved from installing the valve at the location it promised. Answer at 2-3. The Township believes that the injunction remains necessary because there is no evidence or assertion that the HDD and pipelines Sunoco plans to run in the Township are consistent with Sunoco's promise to construct the valve in the SPLP Use Area. The Township continues that there is also no evidence or assertion regarding the impact that Sunoco's unilateral decision will have on the Township and Sunoco has not presented alternative plans for the Township's safety expert to review. *Id.* at 3. The Township emphasizes that it filed and continues to pursue this action to enforce Sunoco's obligations under the Settlement Agreement in the best interests of its residents. *Id.* at 4.

The Township avers that the elimination of Valve 344 does not end the disputes in its Complaint. The Township argues that Sunoco agreed in the Settlement Agreement that it would install a valve for the Mariner East 2 pipeline on the SPLP Use Area and until the Commission issues a final Order determining Sunoco's obligations under the Settlement Agreement, the injunction must remain, and the litigation must continue. *Id.* at 5. The Township contends that Sunoco is attempting to present important new evidence about its unilateral determination that Valve 344 is not necessary and can be eliminated from the Township under the guise of Section 703(g) without the benefit of cross-examination or review by the Township's consultants. *Id.* at 5-6. The Township asserts that eliminating the injunction will allow Sunoco to perform the HDD and run the pipelines in a manner inconsistent with installing the valve on the SPLP Use Area. *Id.* at 6-7. The Township believes that this will result in the same dilemma that existed before the injunction and subject the Township to the possibility of duplication of the HDD as well as the associated risks and costs to the public. *Id.* at 7.

Disposition

Based on our review of the record, the Parties' positions, and the applicable law, we deny Sunoco's request for rescission of our *October 2017 Order* under the present circumstances. Our Order granting the Township's Emergency Relief Petition is soundly based on the record that has been developed, the law that applies to petitions for emergency relief, and the factual circumstances that existed when the Order was entered. Our directive in the *October 2017 Order* was specifically tailored, as follows:

That Sunoco is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

October 2017 Order at 34, Ordering Paragraph No. 3.

The purpose of a Commission Order granting interim emergency relief is to enjoin a party from specific action for a certain time period. The *October 2017 Order* should not be rescinded in the event that the Township wishes to challenge Sunoco's compliance with the injunction for the time period beginning when the injunction was issued and ending when Sunoco indicated it abandoned the specific enjoined action.

We have previously declined to rescind our Orders under similar circumstances. See, e.g., *Application of Laser Northeast Gathering Company, LLC (Laser)*, Docket No. A-2010-2153371 (Order entered December 5, 2011); *Pa. PUC v. T.W. Phillips Gas and Oil Company (T.W. Phillips)*, Docket No. R-2008-2013026 (Order entered April 16, 2010). In the *Laser* proceeding, we granted Laser Northeast Gathering Company, LLC's (Laser's) Petition to Withdraw its application to provide natural gas gathering and transporting service by pipeline to the public on the basis that Laser no longer intended to hold itself out as offering service "for the public" and therefore was no longer providing "public utility" service as we had concluded in our prior Orders in that proceeding. *Laser* at 15-16. While we granted the Petition to Withdraw in that proceeding, we did not rescind our prior Orders that found Laser's proposed service constituted "public utility service." We noted that while the determinations in those prior Orders were specific to the interlocutory issues presented to us, other statements in those Orders were of generally applicable legal principles, and the Orders also addressed prior

Commission and Commonwealth Court decisions that were relevant. *Id.* at 17-18. We stated, “The Commission has the full authority and the obligation to affirm its prior Orders, correct the misapplication of Commonwealth Court precedent, and provide guidance to the public regarding issues within its jurisdiction for future adjudications.” *Id.* at 18.

In the instant case, our *October 2017 Order* addresses prior relevant Commission and appellate decisions relating to our determination to grant the Township’s request for emergency relief and to deny Sunoco’s request that the Township be required to post a bond. Most significantly, as detailed herein, our Order provides a jurisdictional road map for this proceeding and explains our authority over the issues presented in this case. The Parties have not settled this case, the Township has clearly expressed its intent to continue to pursue this action, and it appears that contested issues remain before us.⁸ Based on our review of the record, the Township has raised legal issues that implicate our authority under Section 508 of the Code to vary, reform, and revise contracts, as well as legal issues that implicate “service” as broadly defined in the Code and involve the reasonableness, adequacy, and sufficiency of Sunoco’s public utility service under Sections 1501 and 1505 of the Code.

Sunoco avers that granting its Petition will conserve the time and resources of this Commission and the Parties regarding the issue of locating Valve 344 on the Janiec 2 Tract. Through its Petition, it appears that Sunoco is requesting that we dismiss certain issues in this proceeding. For the reasons that have been addressed herein, we

⁸ The fact that the Parties have not reached a settlement and/or the Township has not filed a Petition to Withdraw its Complaint makes this case distinguishable from both the *Laser* and *T.W. Phillips* proceedings in which the Parties resolved the contested matters. Even in those proceedings where the cases were resolved to the Parties’ satisfaction, we did not rescind our prior Orders on the matters that were previously before us. Because the instant proceeding has not been resolved and contested issues appear to remain for litigation, there are even more compelling reasons in this case not to rescind the *October 2017 Order*.

find that a petition for rescission is not the appropriate procedural mechanism for such a request. The Parties and the ALJ have other procedural avenues at their disposal at this stage in the proceeding to focus or narrow the issues in this case, if necessary, including settlement, motions made by the Parties, and the ALJ's authority to exclude irrelevant or immaterial evidence and otherwise regulate the course of the proceeding pursuant to 52 Pa. Code § 5.483(a).

While we are denying Sunoco's request for rescission, we shall grant Sunoco's request for a discontinuance of the injunction ordered in the *October 2017 Order* on a going forward basis. The *October 2017 Order* was predicated on Sunoco constructing Valve 344 in the Township. Because Sunoco has stated on the record that it will not construct the valve within the Township, the specific action from which Sunoco was enjoined is moot. Sunoco specifically indicated in its Petition that it will not locate Valve 344 on the Janiec 2 Tract and conduct the activities related to Valve 344 that were the subject of the injunction specified in Ordering Paragraph No. 3 of the *October 2017 Order* and that it would not locate such a valve anywhere in the Township. As such, we find it reasonable to discontinue the injunction in our *October 2017 Order*, effective on the entry date of this Opinion and Order. We emphasize that discontinuing the injunction regarding construction of Valve 344 on a going forward basis will not impact the Township's ability to prosecute the issues raised in its Complaint in any way.

Additionally, we find it appropriate to address some procedural issues. We note that under the existing procedural schedule, hearings are scheduled for the end of April 2018, which is more than one year after the Township filed its Complaint against Sunoco, with briefing scheduled to conclude in June 2018. We recognize that the procedural schedule is an issue currently before the Commission as part of our interlocutory review process. However, given that outstanding issues appear to remain for litigation and in the interest of administrative efficiency, we direct the OALJ to return

this matter to us for final consideration and resolution no later than the September 20, 2018 Public Meeting.

IV. Conclusion

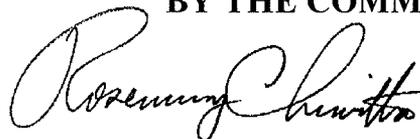
Based on our review of the record, the Parties' positions, and the applicable law, we shall: (1) deny Sunoco's request for rescission of our *October 2017 Order*; (2) discontinue the injunction in our *October 2017 Order*, effective on the entry date of this Opinion and Order; and (3) provide that the OALJ return the matter to this Commission for final consideration and resolution no later than the September 20, 2018 Public Meeting, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition to Rescind or Discontinue, filed by Sunoco Pipeline, L.P. on November 21, 2017, relative to the Opinion and Order entered on October 26, 2017, is granted, in part, consistent with this Opinion and Order.
2. That Sunoco Pipeline, L.P.'s request for rescission of the Opinion and Order entered on October 26, 2017, is denied.
3. That the injunction ordered in Ordering Paragraph No. 3 of the Opinion and Order entered on October 26, 2017, is discontinued, effective on the entry date of this Opinion and Order.

4. That the Office of Administrative Law Judge return this matter to us for final consideration and resolution no later than the September 20, 2018 Public Meeting.

BY THE COMMISSION,

A handwritten signature in cursive script, appearing to read "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2017

ORDER ENTERED: January 9, 2018

EXHIBIT “C”

REDACTED

EXHIBIT “D”

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

Sunoco Pipeline, L.P.	:	Violations of The Clean Streams Law
535 Fritztown Road	:	and DEP Chapter 93, 102, and 105 of
Sinking Springs, PA 19608	:	Title 25 of the Pennsylvania Code.
	:	
	:	PA Pipeline Project—Mariner East II
	:	E&S Permit Nos. ESG0300015002;
	:	ESG0500015001; ESG0100015001
	:	
	:	WO&E Permit Nos.; E02-1718; E06-
	:	701; E07-459; E11-352; E15-862; E21-
	:	449; E22-619; E23-524; E31-234; E32-
	:	508; E34-136; E36-945; E38-194; E50-
	:	258; E63-674; E65-973; E67-920
	:	

ADMINISTRATIVE ORDER

Now this 3rd day of January, 2018, the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), has found and determined the following facts and findings and by this Administrative Order imposes the specified performance obligations upon Sunoco Pipeline, L.P. (“Sunoco”).

Findings

Parties

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); the Dam Safety and Encroachment Act, the Act of November 26, 1978 P.L. 1375, as amended, 32 P.S. §§ 693.1 et seq. (“Dam Safety and Encroachment Act”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S.

§ 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder (“rules and regulations”).

B. Sunoco Pipeline, L.P. (“Sunoco”) is a foreign limited partnership doing business in Pennsylvania and maintains a mailing address of 535 Fritztown Road, Sinking Springs, PA 19608. Sunoco Logistics Partners Operations GP LLC is the general partner of Sunoco Pipeline, L.P. Joseph Colella is Executive Vice President for Sunoco Logistics Partners Operations GP LLC. Mr. Colella has been granted authority by Sunoco Logistics Partners Operations GP LLC to sign documents for Sunoco on behalf of the General Partner.

C. Sunoco owns and operates numerous pipelines in Pennsylvania used to transport petroleum and natural gas products. Sunoco has undertaken an effort to expand existing transportation systems for natural gas liquids in Pennsylvania, which is collectively referred to as the Pennsylvania Pipeline Project – Mariner East II (“PPP-ME2”). As part of PPP-ME2, Sunoco is conducting pipeline installation activities in seventeen counties in Pennsylvania, including Berks, Blair, Cumberland, Dauphin, Huntingdon, Perry, and Washington Counties.

Permits

D. To construct PPP-ME2 through Pennsylvania, Sunoco obtained the following permits from the Department:

- a. Three (3) Erosion and Sediment Control Permits under 25 Pa. Code Chapter 102, Permit Numbers ESG0300015002, ESG0500015001, and ESG0100015001 (Chapter 102 Permits) and;
- b. Seventeen (17) Water Obstructions and Encroachment (“WOE”) Permits under 25 Pa. Code Chapter 105, Permit Numbers E02-1718, E06-701, E07-459, E11-352, E15-862, E21-449, E22-619, E23-524, E31-234, E32-508, E34-136, E36-

945, E38-194, E50-258, E63-674, E65-973, and E67-920 (Chapter 105 Permits). Sunoco obtained one Chapter 105 Permit for each of the seventeen (17) counties where the Department permitted PPP-ME2 activities to occur.

E. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0300015002, and Water Obstructions and Encroachment Permit, Permit Number E06-701 to construct PPP-ME2 through Berks County.

F. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0300015002, and Water Obstruction and Encroachment Permit, Permit Number E07-459 to construct PPP-ME2 through Blair County.

G. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0300015002, and Water Obstruction and Encroachment Permit, Permit Number E21-449 to construct PPP-ME2 through Cumberland County.

H. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0300015002, and Water Obstruction and Encroachment Permit, Permit Number E22-619 to construct PPP-ME2 through Dauphin County.

I. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0300015002, and Water Obstruction and Encroachment Permit, Permit Number E31-234 to construct PPP-ME2 through Huntingdon County.

J. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0300015002, and Water Obstruction and Encroachment Permit, Permit Number E50-258 to construct PPP-ME2 through Perry County.

K. Sunoco obtained Erosion and Sediment Control Permit, Permit Number ESG0500015001, and Water Obstruction and Encroachment Permit, Permit Number E63-674 to construct PPP-ME2 through Washington County.

L. Horizontal Directional Drilling (“HDD”) shall be defined within, as any steerable trenchless technology that controls the direction and deviation to a predetermined underground target or location.

Sites

M. The work area for PPP-ME2 in Berks County, Pennsylvania includes the crossing of an unnamed tributary (“UNT”) to Hay Creek (S-Q90) in New Morgan Borough, Berks County (“Berks HDD Site 1”), the crossing of an unnamed tributary (“UNT”) to Cacoosing Creek (S-C33) in Spring Township, Berks County (“Berks HDD Site 2”), the crossing of an UNT to Allegheny Creek (S-B30) in Brecknock Township, Berks County (“Berks HDD Site 3”), and a crossing of Wetland W35 in New Morgan Borough and Caernarvon Township, Berks County (“Berks HDD Site 4”). Berks HDD Site 1, Berks HDD Site 2, Berks HDD Site 3, and Berks HDD Site 4 are collectively referred to herein as (“Berks HDD Sites 1-4”).

N. The work area for PPP-ME2 in Blair County, Pennsylvania includes the crossing of Clover Creek (S-L58) and Wetland M23 in Woodbury Township, Blair County (“Blair HDD Site”).

O. The work area for PPP-ME2 in Cumberland County, Pennsylvania includes an upland area east of North Locust Point Road in Silver Spring Township, Cumberland County (“Cumberland HDD Site”).

P. The work area for PPP-ME2 in Dauphin County, Pennsylvania includes the crossing of Wetland C28 in Lower Swatara Township, Dauphin County (“Dauphin HDD Site”).

Q. The work area for PPP-ME2 in Huntingdon County, Pennsylvania includes HDD No. PA-HU-0110.0000-SR-16, located east of Shade Valley Road (State Route 35) in Tell Township, Huntingdon County (“Huntingdon HDD Site”).

R. The work area for PPP-ME2 in Perry County, Pennsylvania includes the crossing of Shaeffer Run in Toboyne Township, Perry County (“Perry Bridge Site”).

S. The work area for PPP-ME2 in Washington County, Pennsylvania includes the crossing of an UNT to Mingo Creek (S140) in Nottingham Township, Washington County (“Washington HDD Site”).

T. On November 11, 2017, the Department received notice of a release of sediment to the UNT to Hay Creek (S-Q90) at Berks HDD Site 1.

U. On November 13 and 14, 2017, the Berks County Conservation District (“BCCD”) conducted inspections of the Berks HDD Site 1 and documented that an inadvertent return (“IR”) of drilling fluids had occurred within an UNT to Hay Creek (S-Q90), a water of the Commonwealth, as a result of HDD activities at this location. Neither Erosion and Sediment Control Permit, Permit Number ESG0300015002, nor Water Obstructions and Encroachment Permit, Permit Number E06-701 authorized Sunoco to conduct HDD activities at this site.

V. The designated use for the segment of Hay Creek referenced in this Order is listed in 25 Pa. Code § 93.9f as Exceptional Value Waters (“EV”), Migratory Fishes (“MF”).

W. Hay Creek is classified as a Class A wild trout water by the Fish and Boat Commission. 25 Pa. Code § 93.1. *See*

<http://www.fishandboat.com/Fish/PennsylvaniaFishes/Trout/Documents/classa.pdf>

X. On November 15 and 16, 2017, the Department issued Sunoco a notice of violation (“NOV”), DEP file number NOV 06 17 102, for Berks HDD Site 1.

Y. On November 22, 2017, Sunoco submitted a response to the NOV referenced in Paragraph X., above, containing the following information associated with Berks HDD Site 1:

- a. Pipeline installation activities were in operation between November 4 and November 11, 2017;
- b. The pipeline installation activities experienced losses of circulation of drilling fluid on November 8, 9, and 10, 2017;
- c. A pollution event to an UNT Hay Creek, referenced in Paragraph R., above, had occurred on November 10, 2017;
- d. The cleanup of the pollution event within the UNT to Hay Creek was completed on November 18, 2017; and
- e. Sunoco provided landowner notification (titled Mariner East 2- Pennsylvania Pipeline Project Horizontal Directional Drilling Construction Notification and Private Water Supply/Well Sampling Offer) via certified mail dated August 24, 2017 to five (5) landowners within 450' of the HDD alignment.

Z. On November 17, 2017, the BCCD conducted an inspection of pipeline construction activities in the location of a UNT to Cacoosing Creek (S-C33) at Berks HDD Site 2.

AA. During the inspection referenced in Paragraph Z., BCCD documented that pipeline installation activities were underway at the Berks HDD Site 2 utilizing HDD construction methods. Neither Erosion and Sediment Control Permit, Permit Number ESG0300015002, nor Water Obstructions and Encroachment Permit, Permit Number E06-701 authorized Sunoco to conduct HDD activities at this site.

BB. The receiving waters for discharges from the Berks HDD Site 2 is a UNT to Cacoosing Creek (S-C33). The designated use for the segment of Cacoosing Creek referenced in this Order is listed in 25 Pa. Code § 93.9f as Cold Water Fishes (“CWF”), Migratory Fishes (“MF”).

CC. Cacoosing Creek is classified as a Class A wild trout water by the Fish and Boat Commission. 25 Pa. Code § 93.1. *See* <http://www.fishandboat.com/Fish/PennsylvaniaFishes/Trout/Documents/classa.pdf>

DD. The Department subsequently learned that pipeline installation activities at the Berks HDD Site 2 were in operation between September 25, 2017 and November 14, 2017. Prior to initiating construction, Sunoco provided landowner notification (titled Mariner East 2- Pennsylvania Pipeline Project Horizontal Directional Drilling Construction Notification and Private Water Supply/Well Sampling Offer) via certified mail dated August 23, 2017, to ten (10) landowners within 450’ of the unauthorized HDD alignment.

EE. On November 21, 2017, the Department issued Sunoco a NOV, DEP file number NOV 06 17 103, for Berks HDD Site 2.

FF. On November 28, 2017, Sunoco submitted a written response to the DEP File No. NOV 06 17 103. Within this response, Sunoco identified seven locations where pipeline crossings of waters of the Commonwealth were permitted to be open cuts but were field changed to a trenchless construction method without first obtaining a permit modification or any other authorization from the Department. The seven locations Sunoco described in its response included the Berks HDD Sites 1-4, the Blair HDD Site, the Dauphin HDD Site, and the Washington HDD Site.

GG. The receiving waters for discharges from the Berks HDD Site 3 is an UNT to Allegheny Creek (S-B30). The designated use for the segment of Allegheny Creek referenced in this Order is listed in 25 Pa. Code § 93.9f as CWF. Neither Erosion and Sediment Control Permit, Permit Number ESG0300015002, nor Water Obstructions and Encroachment Permit, Permit Number E06-701 authorized Sunoco to conduct HDD activities at this site.

HH. Allegheny Creek is classified as a wild trout (natural reproduction) water by the Fish and Boat Commission. See

http://www.fishandboat.com/Fish/PennsylvaniaFishes/Trout/Documents/trout_repro.pdf

II. Sunoco conducted its unauthorized pipeline installation activities at Berks HDD Site 3 between September 20, 2017 and November 11, 2017.

JJ. The receiving water for discharges from the Berks HDD Site 4 is wetland W35 in New Morgan Borough and Caernarvon Township, Berks County. Neither Erosion and Sediment Control Permit, Permit Number ESG0300015002, nor Water Obstructions and Encroachment Permit, Permit Number E06-701 authorized Sunoco to conduct HDD activities at this site.

KK. Sunoco conducted its unauthorized pipeline installation activities at Berks HDD Site 4 between June 28, 2017 and July 8, 2017.

LL. The receiving waters for discharges from the Blair HDD Site is Clover Creek (S-L58). The designated use for the segment of Clover Creek referenced in this Order is listed in 25 Pa. Code § 93.9n as High-Quality Waters (“HQ”), MF. Neither Erosion and Sediment Control Permit, Permit Number ESG0300015002, nor Water Obstruction and Encroachment Permit, Permit Number E07-459 authorized Sunoco to conduct HDD activities at this site.

MM. Clover Creek is classified as a Class A wild trout water by the Fish and Boat Commission. See

<http://www.fishandboat.com/Fish/PennsylvaniaFishes/Trout/Documents/classa.pdf>.

NN. Sunoco conducted its unauthorized pipeline installation activities at the Blair HDD Site between June 4, 2017 and October 3, 2017.

OO. The receiving waters for discharges from the Washington HDD Site is an UNT to Mingo Creek. The designated use for the segment of Mingo Creek referenced in this Order is listed in 25 Pa. Code § 93.9v as HQ, Trout Stocking (“TSF”). Neither Erosion and Sediment Control Permit, Permit Number ESG0500015001, nor Water Obstruction and Encroachment Permit, Permit Number E63-674 authorized Sunoco to conduct HDD activities at this site.

PP. Sunoco conducted its unauthorized pipeline installation activities at the Washington HDD Site between July 7, 2017 and July 15, 2017.

QQ. The receiving water for discharges from the Dauphin HDD Site is wetland C28 in Lower Swatara Township, Dauphin County. Neither Erosion and Sediment Control Permit, Permit Number ESG0300015002, nor Water Obstruction and Encroachment Permit, Permit Number E22-619 authorized Sunoco to conduct HDD activities at this site.

RR. Sunoco conducted its unauthorized pipeline installation activities at the Dauphin HDD Site between November 8, 2017 and November 20, 2017.

SS. On December 5, 2017, the Department responded to a complaint that a stream crossing was installed at Perry Bridge Site in Toboyne Township, Perry County without a permit. During the inspection, the Department found that an “air bridge” was installed over an existing bridge that had previously been deemed unsafe by county inspectors. The Department later

identified that Sunoco's contractor (Michels Corporation) had installed the bridge on October 28, 2017 without first obtaining a Chapter 105 permit from the Department.

TT. The receiving waters for discharges from the Perry Bridge Site is Shaeffer Creek. The designated use for the segment of Shaeffer Creek referenced in this Order is listed in 25 Pa. Code § 93.9n as HQ, CWF.

UU. Shaeffer Creek is classified as a Class A wild trout water by the Fish and Boat Commission. See <http://www.fishandboat.com/Fish/PennsylvaniaFishes/Trout/Documents/classa.pdf>.

VV. On December 6, 2017, Sunoco and the Department met to further discuss Sunoco's November 28, 2017 written response to the DEP File No. NOV 06 17 103. During this meeting Sunoco stated that they were unaware of any other pipeline crossings of a water of the Commonwealth along the entire Mariner East II Project where construction had been completed and/or initiated using a crossing methodology other than what was authorized by the initial permit approval or amendment thereto, outside of those described in their November 28, 2017 written response.

WW. On December 18, 2017, the Cumberland County Conservation District ("CCCD") conducted an inspection of pipeline construction activities in the location of an upland area east of North Locust Point Road at the Cumberland HDD Site. Pipeline installation activities at Cumberland HDD Site were permitted to occur using open-cut methodology. Neither Erosion and Sediment Control Permit, Permit Number ESG0300015002, nor Water Obstruction and Encroachment Permit, Permit Number E21-449 authorized Sunoco to conduct HDD activities at this site.

XX. On December 18, 2017, Sunoco notified the Department that it had received complaints from two separate private water supply owners in the vicinity of the Cumberland HDD Site that they were experiencing cloudy water—the first complaint was filed on December 15, 2017, and the second complaint was filed on December 18, 2017.

YY. During the inspection referenced in Paragraph WW., CCCD documented that pipeline installation activities were underway at the Cumberland HDD Site utilizing HDD construction methods. The Department later determined that Sunoco field changed pipeline installation activities at the Cumberland HDD Site from open-cut to a trenchless construction method without first obtaining a permit modification or any other authorization from the Department.

ZZ. On December 7, 2017, the Huntingdon County Conservation District (“HCCD”) conducted an inspection of pipeline construction activities at the Huntingdon HDD Site. During the inspection, HCCD documented an IR in an upland area near the exit pit of the 20-inch pipe. This IR was never reported to the Department, nor was an initial written report submitted to the Department as noted within Section 6.5 of the revised August 8, 2017 HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan (“HDD IR PPC Plan”).

AAA. On December 29, 2017, Sunoco submitted their December 2017 Monthly HDD Report to the Department. Within this report, it noted that the 20-inch pipe reference in Paragraph ZZ., above, had been completed and that the pilot hole for the 16-inch pipe was underway. Sunoco did not perform a re-evaluation of the 16-inch pipe HDD as a result of the IR that occurred during the installation of the 20-inch pipe, as required by Paragraph 3 of the August 10, 2017 Corrected Stipulated Order (“Stipulated Order”) entered into by Sunoco, the Department, and the Appellants at EHB Docket No. 2017-009-L.

BBB. Pursuant to Special Condition 20.xx., of Permit E06-701 (Berks County), no work shall be done in the stream channel of a Class A wild trout fishery, between October 1 and April 1 without the prior written approval of the Pennsylvania Fish & Boat Commission's Division of Environmental Services, 450 Robinson Lane, Bellefonte, PA 16823-9620; telephone 814.359.5147.

CCC. Pursuant to Special Condition 20.ww., of Permit E50-258 (Perry County), no work shall be done in the stream channel of a Class A wild trout fishery, between October 1 and April 1 without the prior written approval of the Pennsylvania Fish & Boat Commission's Division of Environmental Services, 450 Robinson Lane, Bellefonte, PA 16823-9620; telephone 814.359.5147.

DDD. Pursuant to Special Condition 20.yy., of Permit E06-701 (Berks County), no work shall be done in the stream channel of a wild trout fishery, between October 1 and December 31 without the prior written approval of the Pennsylvania Fish & Boat Commission's Division of Environmental Services, 450 Robinson Lane, Bellefonte, PA 16823-9620; telephone 814.359.5147.

EEE. Sunoco did not obtain prior written approval from the Pennsylvania Fish & Boat Commission's Division of Environmental Services to conduct any work in the stream channel of either the UNT to Hay Creek (S-Q90) or the UNT to Cacoosing Creek (S-C33) between October 1 and April 1.

FFF. Sunoco did not obtain prior written approval from the Pennsylvania Fish & Boat Commission's Division of Environmental Services to conduct any work in the stream channel of the UNT to Allegheny Creek (S-B30) between October 1 and December 31.

Violations

GGG. The drilling fluids that comprised the IR at Berks HDD Site 1 constitute Industrial Waste. Sunoco's discharge of Industrial Waste to waters of the Commonwealth without a permit is a violation of 25 Pa. Code § 92a.1(b) and Section 301 of the Clean Streams Law, 35 P.S. § 691.301, a nuisance under Section 401 of the Clean Streams Law, 35 P.S. § 691.401, and unlawful conduct under Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

HHH. The Department did not authorize any HDDs, other trenchless technologies, or IRs at either Berks HDD Sites 1-4, Blair HDD Site, Cumberland HDD Site, Dauphin HDD Site and Washington HDD Site by permit or other authorization.

III. Sunoco's failure to obtain permit authorization prior to conducting HDD activities at Berks HDD Sites 1-4, Blair HDD Site, Dauphin HDD Site and Washington HDD Site violates Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a) and 25 Pa. Code § 105.11(a), and constitutes unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18 and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

JJJ. Sunoco's failure to obtain permit authorization prior to conducting HDD activities at the Cumberland HDD Site violates Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

KKK. The Chapter 105 Permits, Chapter 102 Permits, and Paragraph 15 of the Stipulated Order entered by the Environmental Hearing Board on August 10, 2017 in the matter of *Clean Air Council, Mountain Watershed Association, and Delaware Riverkeeper Network, Inc. v. Department of Environmental Protection and Sunoco Pipeline, L.P.*, (Docket No. 2017-009-L),

require permittee(s) to follow their HDD IR PPC Plan that is part of the approved plans in the aforementioned permits to reduce, minimize, or eliminate a pollution event.

LLL. The HDD IR PPC Plan in the Chapter 102 Permits and the Chapter 105 Permits, and referenced in the Stipulated Order, contains the following requirements:

- a. Immediately notify the pertinent Department Regional Office 24-hour Emergency Response Line of an IR. For the Southcentral Office, the number is 866.825.0208.
- b. Notify the Department at least 24 hours prior to the beginning of each HDD, including conventional boring under waters of the Commonwealth.
- c. Submit an initial report of the IR to the Department using Attachment B of the HDD IR PPC Plan.
- d. Obtain an amendment to the applicable Chapter 105 and/or Chapter 102 Permit prior to deviating from the construction methodology or project design that is shown on the approved drawings.

MMM. The approved method of pipeline installation at Berks HDD Sites 1-4, Blair HDD Site, Cumberland HDD Site, Dauphin HDD Site, and Washington HDD Site was open cut. Sunoco did not obtain a permit amendment or any other authorization prior to altering the construction methodology to an HDD.

NNN. Sunoco did not immediately notify the Department to report the IR that occurred at the Huntingdon HDD Site.

OOO. Sunoco did not notify the Department at least 24 hours prior to beginning the HDD for Berks HDD Sites 1-4, Blair HDD Site, Cumberland HDD Site, Dauphin HDD Site, the Huntingdon HDD Site (16 inch line) and Washington HDD Site.

PPP. Sunoco did not submit an initial report of the IR at Berks HDD Site 1 and Huntingdon HDD Site to the Department using Attachment B of the HDD IR PPC Plan.

QQQ. Sunoco's failure to obtain permit authorization prior to installing an air bridge over Shaeffer Run at the Perry Bridge Site violates Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a) and 25 Pa. Code § 105.11(a), and constitutes unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18 and Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

RRR. With respect to Berks HDD Sites, 1-4, the Blair HDD Site, the Dauphin HDD Site, the Huntingdon HDD Site, and the Washington HDD Site, Sunoco's failure to comply with permit requirements listed in Paragraph NNN., OOO., and PPP., above, constitutes a violation of Section 6(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.6(a), and 25 Pa. Code § 105.11(a), and constitutes unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18 and Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

SSS. With respect to the Cumberland HDD Site, Sunoco's failure to comply with the requirements of Erosion and Sediment Control Permit, Permit Number ESG0300015002 constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

TTT. Sunoco's conduct allowing the unauthorized discharge of Industrial Waste to waters of the Commonwealth, failing to obtain a Chapter 105 permit, failing to acknowledge permit conditions, and failing to perform work according to permit specifications, constitutes a violation of Section 301 of the Clean Streams Law, 35 P.S. § 691.301 and constitutes unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611 and Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18.

UUU. Throughout the installation of the ME II pipeline, Sunoco has produced IRs in uplands which have created a potential for pollution to waters of the Commonwealth pursuant to Section 402 of the Clean Streams Law, 35 P.S. § 691.402.

VVV. The violations described in Paragraphs GGG. through UUU., above, constitute unlawful conduct under Sections 401, 402, and 611 of the Clean Streams Law, 35 P.S. §§ 691.401, 691.402, and 691.611; a statutory nuisance under Sections 401 and 601 of the Clean Streams Law, 35 P.S. §§ 691.401 and 691.601; and subject Sunoco to civil penalty liability under Section 605 of the Clean Streams Law, § 691.605. The violations in Paragraphs III., KKK., LLL., MMM., QQQ., RRR., and TTT. constitute unlawful conduct under Section 18 of the Dam Safety and Encroachments Act, 32 P.S. § 693.18, subject Sunoco to an order under Section 20 of the Dam Safety and Encroachments Act, 32 P.S. § 693.20, and subject Sunoco to a claim of civil penalty under Section 21 of the Dam Safety and Encroachments Act, 32 P.S. § 693.21.

WWW. Sunoco's unlawful conduct set forth in Paragraphs T. through FFF., above, demonstrates a lack of ability or intention on the part of Sunoco to comply with the Clean Streams Law, the Dam Safety and Encroachments Act, and the permits issued thereunder. Suspension of the permits described in Paragraph D, above, is necessary to correct the egregious and willful violations described herein. Other enforcement procedures, penalties and remedies available to the Department under the Clean Streams Law and the Dam Safety and Encroachments Act would not be adequate to effect prompt or effective correction of the conditions or violations demonstrated by Sunoco's lack of ability or intention to comply.

NOW, THEREFORE, pursuant to Section 20 of the Dam Safety and Encroachments Act, 32 P.S. § 693.20; Sections 5, 402, and 610 of The Clean Streams Law, 35 P.S. § 691.5, 691.402,

and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17, the Department hereby ORDERS the following:

1. Except as specified herein, Sunoco shall immediately suspend all work authorized by the permits described in Paragraph D, above, until the Department provides written authorization to resume work. In no event shall Sunoco undertake any pipeline installation activities unless expressly authorized by the Department in writing.

2. Within 30 days of the effective date of this Order, Sunoco shall submit a detailed description of any method of trenchless pipeline construction techniques that have been used or will be proposed for use in the completion of PPP-ME2, other than (dry) conventional auger bore and HDD, as those methods are defined in the *'Trenchless Construction Feasibility Analysis'*, dated December 2016, that was approved as part of the Chapter 105 Permits.

3. Within 30 days of the effective date of this Order, Sunoco shall submit to the Department full documentation of each crossing of a wild trout stream, stocked and wild trout fishery, stocked trout fishery and Class A trout fishery. The documentation shall include the date(s) of the installation of the pipeline, which pipeline was installed (20 inch, 16 inch, or both), the municipality and county, the stream number, latitude and longitude, and photographic documentation of the crossing including all before, during and after photographs of the installation. Sunoco shall submit this documentation to the Department on the forms attached hereto as Exhibit 1.

4. Within 30 days of the effective date of this Order, Sunoco shall submit a report to the Department documenting any other unpermitted changes made to the method for installation of the pipeline. Permitted methods of pipeline construction are limited to open trench/open cut, and two trenchless installation methods, (dry) conventional auger bore and HDD, as those methods

are defined in the *'Trenchless Construction Feasibility Analysis'* dated December 2016 and approved as part of the Chapter 105 Permits. Such changes include, but are not limited to, a change from conventional auger bore to HDD (including, but not limited to, "flex bore"), a change from open cut to conventional auger bore or HDD (including, but not limited to, "flex bore"), and a change from HDD (including, but not limited to, "flex bore") or conventional auger bore to an open cut. The report shall document all steps taken by Sunoco to determine if unpermitted changes have occurred. The information regarding the altered crossing methodology shall be provided on the forms attached hereto as Exhibit 2.

5. Within 30 days of the effective date of this Order, Sunoco shall submit a list to the Department that documents the legal name of all drilling contractors and subcontractors who have worked, or will be working, on the PPP-ME2. The list shall include the contact information for each contractor and subcontractor including the name of the business contact person, contact telephone numbers and email addresses, the HDD number for each HDD that the contractor or subcontractor has worked on, or will be working on, the municipality and county for each HDD, and the latitudes and longitudes for each location.

6. Within 30 days of the effective date of this Order, Sunoco shall submit a report to the Department that fully explains the failures that led to the violations described in this Order and the steps Sunoco proposes to implement to ensure that those violations will not re-occur.

7. The permittee shall address all alleged impacts to private water wells in Silver Spring Township, Cumberland County, as described in Paragraph XX. to the satisfaction of the private well owners, to include replacement or restoration of the water supply and reimbursement of any costs of displacement during the period when the water supply is adversely impacted.

8. In order to demonstrate the ability and intention to comply with the Chapter 102 Permits and Chapter 105 Permits, within 30 days of the date of this Order, the permittee shall submit a comprehensive list of all pending earth disturbance and water obstruction and encroachment related activities currently authorized by the Chapter 102 Permits and Chapter 105 Permits that have yet to be completed or commenced. This list shall include for each project activity identified:

- a. the specific Chapter 105 Permit and/or Chapter 102 Permit under which each of these activities are authorized;
- b. the location (county, municipality, latitude and longitude) where each activity will occur;
- c. the pipe installation methodology authorized by the Chapter 105 Permit and/or Chapter 102 Permit (i.e., HDD, open cut, conventional auger bore) at each location;
- d. if the activity is an HDD, the associated drill identification number;
- e. the specific name and contact information for the on-site contractor representative who is responsible for permit and regulatory compliance at each location;
- f. the specific name and contact information for the corporate representative from Sunoco who is responsible for permit and regulatory compliance at each location;
- g. the specific name and contact information for the corporate representative from Sunoco who is responsible for supervision and direction of contractors at each location;

h. the specific name and contact information for the corporate Executive Officer from Sunoco who is responsible for environmental compliance in the Commonwealth of Pennsylvania and for the installation of the Mariner II project, if such Executive Officers are different.

9. Within 30 days of the date of this Order, the permittee shall submit a detailed Operations Plan setting forth the additional measures and controls which the permittee and its contractors shall implement to ensure that all permit conditions will be followed at all times. The Department shall review the Operations Plan and will approve it only when it deems it to be sufficient and satisfactory. The Operations Plan shall also include the additional measures and controls which the permittee and its contractors shall implement to minimize inadvertent return incidents and water supply impacts to the maximum extent possible.

10. Within 10 days of the effective date of this Order, Sunoco shall backfill all areas of trench excavation, unless sufficient justification for an extension of time is provided to and approved by the Department in writing.

11. Within 10 days of the effective date of this Order, Sunoco shall remove the drill bits, reamers, and/or strings for any unpermitted HDD activities, unless Sunoco provides the Department with justification and receives Department approval in writing to leave the bit, reamer, and/or string in place for a specific PPP-ME2 HDD site.

12. Within 10 days of the effective date of this Order, Sunoco shall properly abandon all pilot holes created by the activities in Paragraph 11, unless Sunoco provides the Department with justification and receives Department approval in writing to leave a pilot hole open.

13. Within 10 days of the effective date of the Order, Sunoco shall pull the drill bit and string from the 16-inch line at the Huntingdon HDD Site and properly abandon the pilot hole.

14. Prior to conducting any further HDD activity at the Huntingdon HDD Site, Sunoco shall submit a reevaluation of the 16-inch line as required by Paragraph 3 Stipulated Order and receive Department approval of that reevaluation.

15. Within 30 days of the effective date of this Order, Sunoco shall submit as-built drawings, sealed by a Professional Engineer, and a Hydrologic and Hydraulic (“H&H”) analysis using the Hydrologic Engineering Center’s River Analysis System (“HEC-RAS”), sealed by the licensed Professional Engineer who prepared the analysis, for the air bridge at the Perry Bridge Site. The H&H analysis shall show the calculations performed to determine the design and 100-year frequency flood discharges at the Perry Bridge Site. The H&H analysis must clearly demonstrate the difference in hydraulic capacity, stability and flood water surface elevations prior to the placement of the air bridge and with the air bridge in place and include a backwater analysis of both conditions.

a. If the H&H analysis demonstrates that the air bridge fails to adequately protect the health, safety, welfare and property of the people, natural resources and the environment, then within ten (10) days of receipt of such a determination by the Department in writing, Sunoco shall either remove the air bridge, or submit an application to the Department for issuance of an Emergency Permit for modification of the obstruction/air bridge to immediately address the inadequacies determined through the Department’s review of the H&H analysis.

b. If Sunoco elects to submit an application for issuance of an Emergency Permit, within 15 days of the Department’s issuance of the Emergency Permit, Sunoco shall complete all modifications to the air bridge in a manner consistent with the proposal contained in its application for the Emergency Permit.

16. Within 60 days of the effective date of this Order, Sunoco shall submit a complete Water Obstruction and Encroachment Permit application that complies with the requirements of the Dam Safety and Encroachment Act, the Clean Streams Law, 25 Pa. Code, Chapter 105 and all other applicable statutory and regulatory requirements for the air bridge at the Perry Bridge Site.

a. Sunoco shall submit the complete Water Obstruction and Encroachment Permit application in the name of and on behalf of Toboyne Township, Perry County, who is the owner of the bridge

b. Sunoco shall provide the necessary information, including any bridge design changes determined to be necessary by the Department to meet the applicable requirements, on behalf of Toboyne Township.

c. If any design changes to the air bridge occur during the permitting process that result in required field work or other modifications including but not limited to the air bridge, approaches, or scour protection, Sunoco shall implement any work or other modifications required by the Water Obstruction and Encroachment Permit within thirty (30) days of the Department approving or acknowledging the use of a Water Obstruction and Encroachment permit for the air bridge at Perry Bridge Site.

17. In the event the Department determines that additional information, revisions, modifications or amendments are necessary to any permit, plan, any other submission, or restoration work required by this Order, then within ten (10) days after receipt of written notice from the Department, Sunoco shall submit to the Department such information, revisions, amendments or modifications, and/or complete the modified work, unless an alternative timeframe is approved by the Department in writing.

18. Upon the Department's written approval of all submissions required by Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, and 15a above, the suspension imposed by this Order shall be terminated and Sunoco may resume the work authorized by the permits described in Paragraph D, above, unless otherwise restricted due to other Department enforcement actions or the Stipulated Order.

19. Effective immediately, Sunoco shall temporarily stabilize all disturbed areas in accordance with the approved E&S Plans and in compliance with 25 Pa. Code § 102.22(b). During the period of the permit suspension, Sunoco shall continue to complete installation of permitted best management practices (BMPs) for PPP-ME2, including perimeter BMPs, in accordance with approved plans and the permit in areas where Sunoco or its contractors have commenced earth disturbance activities. Sunoco shall continue routine monitoring of the installed BMPs and shall perform all necessary ongoing operation and maintenance activities to ensure the BMPs continue to perform as designed, in accordance with the approved E&S Plans and permits.

20. With regard to any in-process and permitted HDD operation (as the HDD installation method is defined in the *'Trenchless Construction Feasibility Analysis'* dated December 2016 and approved as part of the Chapter 105 Permits), the permittee shall be permitted to periodically rotate the downhole drill bits or reamers and move them back and forth within the drill holes without advancing the drill hole or conducting additional drilling, to safeguard the integrity of the downhole equipment.

21. Sunoco shall immediately begin implementing the December 15, 2017 revisions to the *'HDD Inadvertent Return Assessment, Preparedness, Prevention and Contingency Plan'*, attached to this Order as Exhibit 3.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Ramez Ziadeh, P.E.
Acting Executive Deputy Secretary

EXHIBIT “E”

REDACTED

REDACTED

REDACTED

REDACTED

EXHIBIT “F”

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

I, RICHARD B. KUPREWICZ, depose and say as follows:

1. I am the president of Accufacts Inc. and have over 40 years' experience in the energy industry, including evaluating pipeline safety and reviewing horizontal directional drilling ("HDD") plans for reasonableness.

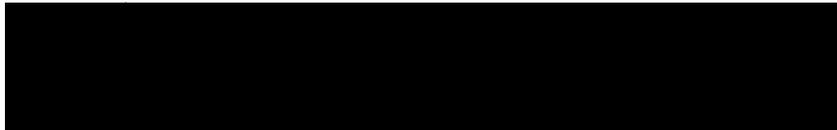
2. I make this affidavit in connection with West Goshen Township's ("Township") Petition for Reconsideration or, in the Alternative, Amendment of the Commission's January 9, 2018 Order in the above matter.

3. The Township retained Accufacts Inc. in 2014 to evaluate the safety of Sunoco Pipeline L.P.'s ("SPLP") HDD plans and proposed pipeline facilities for the Mariner East pipeline project running through the Township that is intended to transport liquid petroleum gases ("LPGs").

4. On behalf of Accufacts Inc., I issued reports to the Township dated March 6, 2015 and January 6, 2017 summarizing my review of the plans and documentation provided to me for review by SPLP in regard to the Mariner East pipeline projects.

5. It is my understanding that SPLP recently indicated in filings submitted to the Commission that it has chosen to eliminate from its plans for the Mariner East 2 (“ME2”) pipeline proposed Valve 344, which it previously planned to locate along Boot Road within the Township, and not install any block valve for ME2 within the Township.

6. It is also my understanding that SPLP produced in discovery in this matter a report entitled “Site Restoration and Post-Construction Stormwater Management Plan, Pennsylvania Pipeline Project-Southeast Region: Spread 6, Attachments are West Goshen Township Specific, November 2016,” which states, in pertinent part:



7. ASME B31.4 is a standards manual published by The American Society of Mechanical Engineers entitled “Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids.”

8. ASME B31.4, Section 434.15.2, Valve Spacing, is not a codified federal or state regulation, but is used as an industry guideline for the construction of pipelines, such as ME2, that will be used for the transportation of hazardous liquids, such as LPGs, which are classified as a highly volatile liquid (“HVL”) under federal pipeline safety regulations.

9. ASME B31.4, Section 434.15.2(e), Valve Spacing, states:

“In order to facilitate operational control, limit the duration of an outage, and to expedite repairs, mainline block valves shall be installed at 7.5 mile (12 km) maximum spacing on piping systems transporting LPG or liquid anhydrous ammonia in industrial, commercial, and residential areas.”

10. Remotely operated block valves are a safety mechanism for pipelines such as ME2, as they allow the pipeline operator to remotely close-off the pipeline, usually from a control room, in the event of a rupture or other catastrophic event. There are no regulations requiring that block valves be remotely operated.

11. The ASME B31.4 standard is silent on other important safety issues to be considered in determining adequate pipeline valve spacing (such as pipeline diameter, pump station location and additional safety equipment such as flares, and terrain) that could significantly affect highly populated areas in the event of a catastrophic pipeline release.

12. The distance between valves is a safety concern for pipelines such as ME2, because, in the event of a rupture or other catastrophic event, every additional mile between valves on the proposed 20-inch diameter ME2 pipeline can result in the release of approximately an additional 1,900 barrels of HVL (there being 42 gallons per barrel).

13. I have not received or reviewed any information from SPLP regarding its reasoning or basis for the elimination of Valve 344.

14. Assuming SPLP adhered to the aforementioned 7.5 mile valve spacing guideline, SPLP's decision to eliminate Valve 344 results in the Township sitting in an apparent fifteen mile stretch of pipeline between remotely operated valves upstream and downstream of the Township.

15. If Valve 344 is simply eliminated, hundreds of thousands of gallons of additional HVL will be available for release into the Township in the event of a pipeline release emergency, due to the increased distance between the remotely operated valves upstream and downstream of the Township. This can significantly and adversely impact the community.

Further your affiant sayeth not.

By: Richard B. Kuprewicz
Richard B. Kuprewicz

Date: January 24, 2018

Sworn and subscribed before me this

_____ day of _____, 2018.

**SEE ATTACHED FORM
FOR NOTARY CERTIFICATE**

Notary

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer(s), not Notary)

[Signature]

Signature of Document Signer No. 1

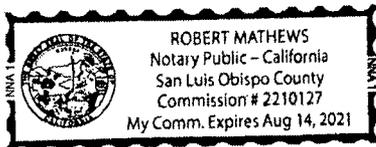
[Signature]

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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 on this 24 day of January, 2018
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 (1) Richard B. Kuprewicz
 (and (2) _____),
 Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

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Sunoco resolves pipeline dispute by making a contentious valve station disappear

Updated: DECEMBER 21, 2017 — 6:16 PM EST



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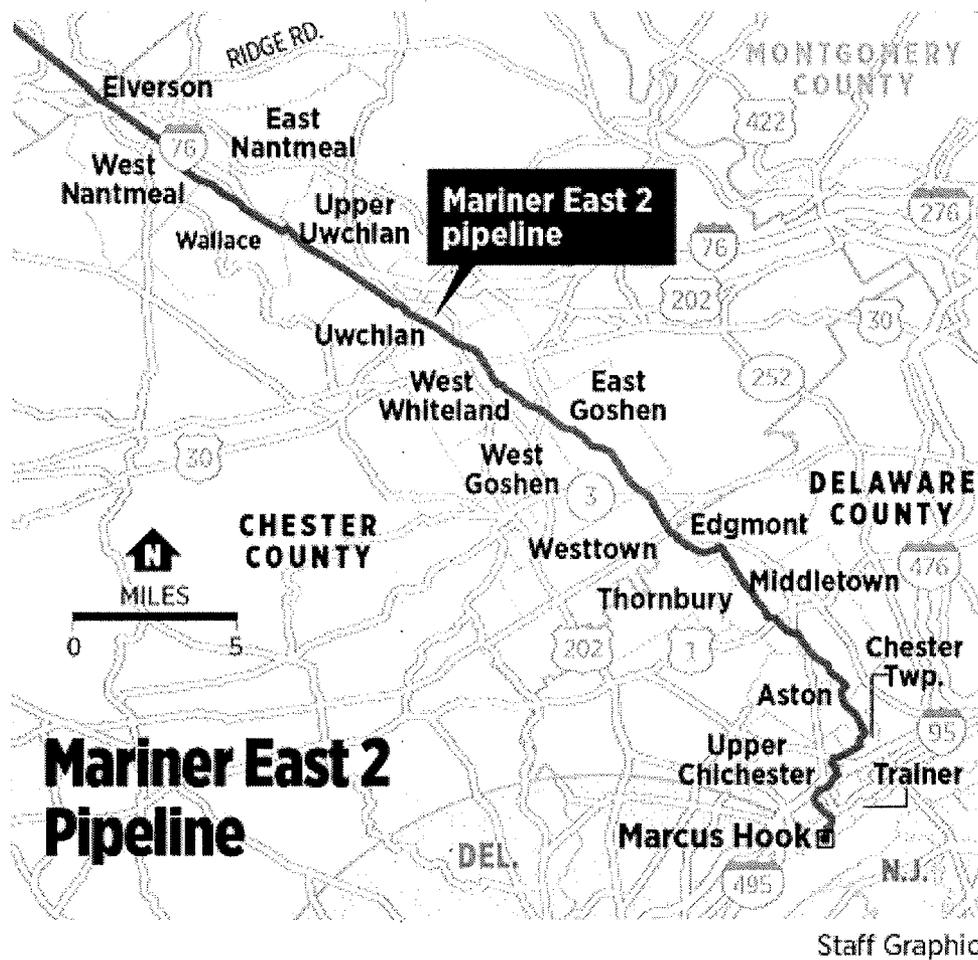
Sunoco's Mariner East pipeline under construction on North Chester Road in East Goshen Township.

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Pennsylvania regulators lifted a block on construction of Sunoco Pipeline's controversial Mariner East project in West Goshen Township on Thursday after Sunoco said it no longer needs to build a valve station that has been a bone of contention.

The state Public Utility Commission voted, 3-2, to discontinue an injunction (http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=C-2017-2589346) that prohibited the company from building the pipeline in West Goshen, one of the remaining obstacles to Sunoco Pipeline's completion of its much-delayed Mariner East 2 project, which will transport Marcellus Shale gas liquids to a terminal in Marcus Hook.

After several years of squabbling with West Goshen over the location of the valve station near the intersection of Boot Road and Route 202, Sunoco told the PUC that it had decided it no longer needs to build the facility anywhere in the township.



“This is a substantial win for the township,” said commission member Norman J. Kennard (<http://www.puc.pa.gov/pdocs/1547680.pdf>). “Sunoco has unilaterally resolved the main dispute that spawned the injunction. There’s no longer any threatened activity to enjoin, and the issue of valve construction is moot.”

Rather than rescind the injunction, however, the PUC voted to “discontinue” it because several issues raised by West Goshen (<http://www.philly.com/philly/business/energy/puc-declines-to-intervene-in-west-goshen-pipeline-dispute-20170712.html>) remain unresolved. Gladys Brown, the PUC’s chair, and Andrew Place (<http://www.puc.pa.gov/pdocs/1547616.pdf>), the vice chairman, dissented.

“The parties have not settled this case, the township has clearly expressed its intent to continue to pursue this action, and contested issues remain before the commission,” Brown said (<http://www.puc.pa.gov/pdocs/1547569.pdf>).

Sunoco’s move to short-circuit the legal blockade came after the PUC in October kept in place an injunction (<http://www.puc.state.pa.us/pdocs/1541365.docx>) that West Goshen had obtained from a hearing examiner after it said that Sunoco had secretly plotted to move the valve station to a location the township had not agreed to under a 2015 settlement.

Sunoco now says that the valve station (<http://www.puc.pa.gov/pdocs/1544383.pdf>) in West Goshen “is neither needed operationally nor required by any applicable code or regulation,” and that it has decided to scrap plans to build the facility as a matter of “managerial and construction judgment and discretion.”

“We are pleased with the Public Utility Commission decision today, which will allow us to resume construction on the Mariner East 2 pipeline in West Goshen Township,” said Jeffrey Shields, the company’s spokesman. “With mainline pipeline construction approximately 91 percent complete and horizontal directional drilling more than 62 percent complete on Mariner East 2 across the state, we look forward to finishing this critical infrastructure project safely and responsibly.”

Valve stations are safety features that allow the company to shut off flow on the pipeline in case of an emergency. Sunoco plans to install several valves along the pipeline’s 350-mile route.

“They haven’t said what their alternative plan is,” said Richard Sokorai, the township’s lawyer, who had argued with the PUC to keep the injunction in place.

Thursday evening, Shields said that an engineering analysis had determined that a valve was not needed in West Goshen, and that the company did not anticipate adding another valve site.



STAFF/FILE (RON TARVER)

West Goshen Township had said a valve-control station for Sunoco’s Mariner East 2 pipeline should be located at this existing company facility at Boot Road and Route 202.

The \$2.5 billion Mariner East project

(<http://www.philly.com/philly/business/energy/Sunoco-Marcellus-fracking-pipeline-leaves-some-hard-feelings.html>), including upgrades to the Marcus Hook terminal, is aimed at creating an eastern outlet for the production of gas liquids such as propane and ethane from the Marcellus and Utica Shale formations. Much of the material will be exported to petrochemical plants in Europe.

The project has aroused the objections of residents (<http://www.philly.com/philly/business/energy/mariner-east-marcellus-pipeline-activists-victorious-20171108.html>) along the route and environmentalists. Representatives of a coalition of pipeline opponents called Del-Chesco United for Pipeline Safety met with Gov. Wolf on Wednesday and demanded that he halt construction.

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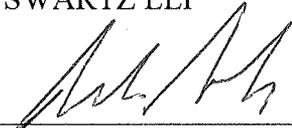
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