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February 26, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Ms. Chiavetta:

Enclosed is West Goshen Township's Reply to New Matter raised in Sunoco Pipeline L.P.'s Answer in Opposition to West Goshen Township's Petition for Reconsideration, or, in the Alternative, Amendment of the Commission's Order entered January 9, 2018, copies of which were served upon the individuals listed in the enclosed Certificate of Service in accordance with 52 Pa. Code § 1.54.

Thank you for your attention to this matter.

Please feel free to contact me with any questions.

Sincerely,

Richard C. Sokorai

RCS:jmg
Enclosure

cc: Hon. Elizabeth H. Barnes (via email & U.S. Mail)
Thomas J. Sniscak, Esquire (via email & U.S. Mail)
Kevin J. McKeon, Esquire (via email & U.S. Mail)
Whitney E. Snyder, Esquire (via email & U.S. Mail)
David J. Brooman, Esquire (via email)
Mark R. Fischer, Jr., Esquire (via email)

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 REPLY TO NEW MATTER RAISED IN SUNOCO PIPELINE, L.P.’S ANSWER IN OPPOSITION TO 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 52 Pa.Code § 5.63, hereby replies to the new matter raised by Sunoco Pipeline L.P. (“SPLP”) in its Answer in opposition (“Answer”) to West Goshen Township’s January 24, 2018 Petition for Reconsideration, or, in the alternative, Amendment of the Commission’s Order entered January 9, 2018.

The new matter facts raised by SPLP, along with the Township’s replies thereto, are set forth below.¹

¹ The Township incorporates herein by reference the other defined terms set forth in the Township’s January 24, 2018 Petition.

New Matter Allegation 1. On page 2 (including footnote 2), page 7, page 23, and page 27 paragraph 1 of the Answer, SPLP alleges that the Amended Complaint filed by the Township does not relate to locating the Valve at the proper location, but only preventing the Valve from being installed at the incorrect location.

Township Reply. Denied, as this is an unreasonably narrow interpretation of the Township's Amended Complaint, which seeks to enforce the Settlement Agreement, which designates a specific area for the Valve.

New Matter Allegation 2. On page 2, page 7-8, and page 19 of the Answer, SPLP alleges that the scope of the Injunction solely related to the actual placing of Valve 344 on Janiec 2.

Township Reply. Denied as incorrect. The Injunction was broader than alleged and stopped all work associated with putting a valve on Janiec 2. As the evidence at the July 18, 2017 Injunction hearing demonstrated, drilling at Janiec 2, rather than on the SPLP Use Area, is consistent with putting the Valve on Janiec 2, as that is where the pipes will be pulled to ground level. There is no evidence or allegation that Sunoco does not intend to drill on Janiec 2. If the Injunction was as narrow as SPLP alleges, then SPLP would not have needed to seek a discontinuance of the injunction in the first instance.

New Matter Allegation 3. On page 2 (including footnote 3) of the Answer, SPLP states that the facts cited in the Township's Petition were available to the Township at the time the Township responded to SPLP's Petition to Rescind or Discontinue the Injunction on December 1, 2017. On page 20, page 31 paragraph 11, and page 37 paragraph 28, SPLP states that the

Township received discovery responses, and/or that the Township does not state that it received discovery responses, from SPLP on November 21, 2017, 10 days prior to filing the Township's opposition to SPLP's Petition to Rescind or Discontinue the Injunction.

Township Reply. Admitted with qualification. While technically correct that SPLP's document production was in the Township's "possession" as of December 1, 2017, the documents cited in the Township's Petition for Reconsideration were buried in a roughly 15,000-page document production that was not produced until November 21, 2017, after SPLP was ordered to do so by ALJ Barnes. So the Township had not yet uncovered the relevant documents before deadline to respond to SPLP's Petition to Rescind or Discontinue the Injunction on December 1st.

New Matter Allegation 4. On page 3 and page 21 of the Answer, SPLP incredibly calls "untrue" the Township's allegation that the facts alleged in SPLP's Petition to Rescind or Discontinue the Injunction were not sworn.

Township Reply. Denied as false. The facts alleged in SPLP's Petition to Rescind or Discontinue the Injunction were not "sworn." The verification attached to said Petition contains language specifically stating that the allegations are "unsworn." There was no allegation by the Township that SPLP's Petition was not properly verified. If verified petitions were sufficient to be considered conclusive evidence before the Commission, hearings and trial would never be required.

New Matter Allegation 5. On page 4 subparagraph b and page 21 subparagraph b of the Answer, SPLP alleges that it has provided an exhaustive amount of discovery to the Township, establishing that the SPLP Use Area is unsuitable and imprudent to site the Valve.

Township Reply. Denied as false. Of the over 15,700 pages of documents produced by SPLP, none provide even an analysis of this issue, let alone establish SPLP's allegation. The Township's experts have even confirmed this by a review of the documents. Further, the standard in the Settlement Agreement is "unable," not "unsuitable." Further, on page 29 paragraph 4 of the Answer, SPLP admits that it is able to put the Valve on the SPLP Use Area after it starts construction.

New Matter Allegation 6. On page 4 subparagraphs b and c, page 14-15, page 21 subparagraph c, page 34 paragraph 18, pages 37-38 paragraph 28 and 32, and page 39 paragraphs 34 and 35 of the Answer, SPLP alleges that it has made a decision, based on "managerial discretion" and "recent modifications to a valve immediately up stream, that the relevant Valve is no longer necessary," that the apparent 15-mile gap between valves created by eliminating the subject Valve is based on "stale information," and that there will be no consequence or safety issues with these plan changes.

Township Reply. Denied, as SPLP has provided no information, no discovery, no document or other evidence to support such facts. In addition, the Settlement Agreement requires SPLP to provide engineering plans to the Township's pipeline safety expert for review and comment and this was not done. SPLP cannot unilaterally declare that there are no safety issues with the plan modifications, while at the same time depriving the Township of the safety review that it promised in the Settlement Agreement.

New Matter Allegation 7. On page 5 subparagraph d, page 12, page 22 subparagraph d, and page 29 of the Answer, SPLP alleges, as it has in other pleadings, that the Valve can be installed on the SPLP Use Area “later” or “separately.”

Township Reply. Denied as false. The un rebutted evidence at the Injunction hearing is that Valves are placed at the HDD locations. If the Valve could simply be added “later” or “separately” while drilling under tens of feet of bedrock below the SPLP Use Area, SPLP would have avoided all of this litigation, agreed to site the Valve at the SPLP Use Area, and would have provided plans as to how it could accomplish this. None of this has been done, but rather, SPLP just makes bald unsupported assertions.

New Matter Allegation 8. On page 5 subparagraph d, page 22 subparagraph e, and page 36 paragraph 26 of the Answer, SPLP alleges that the Township claimed that the January 3, 2018 DEP Administrative Order shutting down all ME2 drilling is somehow proof that the Injunction should be reinstated and made broader. On page 19, SPLP states that the Township is using the DEP order to “sling mud and undermine SPLP’s credibility.”

Township Reply. Denied as false. SPLP maintained in its Petition to Rescind or Discontinue the Injunction that HDD had resumed everywhere else and the Injunction was the only thing holding up ME2 from completion. The DEP Order, as the Township clearly explained in its Petition, was only submitted to demonstrate that the Commission should not be compelled to rush this litigation, because there are numerous issues delaying completion of ME2. The Township did not sling any “mud.” SPLP’s own misrepresentations to the Township and the Commission have undermined its own credibility far more than any “mudslinging” could.

New Matter Allegation 9. On page 5 subparagraph e of the Answer, SPLP alleges that SPLP accepted “a condition that it will not locate a valve on the Janiec 2 property nor do any construction activity related to locating the valve there.”

Township Reply. Denied as false. The alleged “condition” is not set forth in any agreement or order imposed upon SPLP. Rather, SPLP simply included it as an unsworn statement accompanying its allegations that SPLP made the decision that the Valve is no longer needed.

New Matter Allegation 10. On pages 5-6 of the Answer, SPLP alleges that it is “mindful of Vice Chairman Place’s admonition in his statement relative to the January 9, 2018 Order regarding settlement” that SPLP “would be willing to have a separate settlement judge appointed” and that SPLP has been repeatedly unsuccessful in its efforts to achieve bilateral settlement discussions.

Township Reply. Denied. SPLP has not made any settlement offer to the Township. Even its alleged overture about settlement discussions is qualified with the phrase, “After WGT’s Petition is denied due to deficiencies identified in this Answer in Opposition...” As SPLP acknowledges, it takes two parties to negotiate a settlement and it is apparent that SPLP is not ready to do so. To allege to the Commission that it has been attempting to negotiate by itself, without good faith participation by Township, is particularly offensive and is a shameless attempt to curry favor with Vice Chairman Place based on misleading statements.

New Matter Allegation 11. On page 13 of the Answer, SPLP states, “Given the misrepresentations, inaccuracies, and unsupported allegations WGT raises in its current Petition, the fact that the Settlement Agreement does not require SPLP to place a valve in WGT, and WGT’s unwillingness to engage in settlement discussions, it appears WGT’s actual intent is to prevent construction of ME2.”

Township Reply. Denied as false. First, the Township has never made a misrepresentation, inaccuracy or unsupported allegation. In contrast, SPLP has done so on multiple occasions, including, but not limited to:

- 1) Representing in the Settlement Agreement that it had no plans to put above ground facilities anywhere else in the Township except in the SPLP Use Area, when it had plans to put the Valve at Janiec 2;
- 2) Testifying that it had developed “parallel” plans to put the Valve on the SPLP Use Area and Janiec 2, when it never developed a plan for the SPLP Use Area;
- 3) Representing to the Commission that it had resumed all HDD throughout the Commonwealth except in Township, when it was halted by the DEP in a consent order;
- 4) Representing to the Commission that the Township is not willing to engage in settlement discussions, when it has made no settlement offer to date and its own Answer states that SPLP would be willing to do so only after the Township’s Petition is denied.

Second, the Settlement Agreement clearly states that SPLP will put a Valve on the SPLP Use Area. Finally, even if the Township obtains all relief it is seeking in its Complaint and in the instant Petition, it would still not prevent the construction of ME2.

New Matter Allegation 12. On page 27 paragraph 1 and page 30 paragraph 8 of the Answer, SPLP alleges that the only obligations SPLP has under the Settlement Agreement appear in Section IV entitled “The Parties Promises, Covenants and Agreements.”

Township Reply. Denied. This allegation is completely contradicted by the uncontroverted evidence at the Injunction hearing, including the emails from SPLP’s prior counsel stating that SPLP would be bound by all promises in the Agreement, but that certain promises had to be couched as representations of fact. *See* July 18, 2017 N.T. at 161:11-163:13 and Township Exhibit “15.”

New Matter Allegation 13. On page 28 of the Answer, SPLP alleges that it informed the Township in January 2016 that it intended to put the Valve on the Janiec 2 Tract.

Township Reply. Denied. As explained by the Township’s solicitor at the July 18, 2017 Injunction hearing, and as supported by her detailed notes of the meeting in January 2016, this information was not provided to the Township. *See* July 18, 2017 N.T. at 147:16-150:13 and Township Exhibit “18.”

New Matter Allegation 14. On page 40 paragraph 37 of the Answer, SPLP alleges that neither the Township nor its consultant have any right to information regarding SPLP’s decisions to change its plan and that the Township did not make such a discovery request.

Township Reply. Denied. These statements are characteristic of SPLP’s positions throughout this entire case. First, the Settlement Agreement that is the subject of this case clearly provides, at paragraph IV.A.2.e.:

With respect to Mariner East 2, SPLP agrees, upon the execution of a mutually agreeable confidentiality agreement, that it will provide to Accufacts, Inc., or a person or entity acting for WGT that is similarly a nationally recognized expert in the field of liquids pipeline safety (“Liquids Pipeline Safety Expert”) information relating to Mariner East 2 of a similar nature that was provided regarding Mariner East 1 for review by the Liquids Pipeline Safety Expert. WGT and its expert will meet and confer with SPLP with respect to any concerns the Liquid Pipeline Safety Expert related to safety and SPLP will be provided an opportunity to respond thereto, before WGT would file any formal protest or other action raising any safety issue related to Mariner 2 East.

Further, the Township served the following discovery requests on September 12, 2017, which clearly cover any such plans, and for which SPLP has a duty to supplement its responses under 52 Pa.Code §5.332:

7. Identify the results of all testing, surveys, studies or other investigation performed by or on behalf of SPLP related to the location of Valve 344 and/or the design, configuration and location of all equipment or facilities that would impact the location of Valve 344. Please attach copies of all documents relating to said testing, including but not limited to surveys, timelines, reports, draft reports, memoranda, comments, minutes, notes and other documents relating to the work referenced in Your response.

8. Identify all plans (draft, proposed, preliminary, final or otherwise), prepared by, for, or on behalf of SPLP, identifying, discussing or depicting the location or alternate locations considered for Valve 344 and produce copies of each.

10. Identify all reports, plans, memoranda, notes, correspondence and other documents submitted by or on behalf of SPLP to any other state or local governmental or regulatory agency for any portion of the Mariner East Project within the Township, and produce copies of each.

HIGH SWARTZ LLP

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

Date: February 26, 2018

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2018 a true and correct copy of West Goshen Township’s Reply to New Matter raised in Sunoco Pipeline L.P.’s Answer in Opposition to West Goshen Township’s Petition for Reconsideration, or, in the Alternative, Amendment of the Commission’s Order entered January 9, 2018, was served upon the parties listed below by email and U.S. Mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

The Honorable Elizabeth H. Barnes
Administrative Law Judge
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
EBARNES@pa.gov

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Date: February 26, 2018