**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held March 15, 2018

Commissioners Present:

Gladys M. Brown, Chairman, Statement

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 for Reconsideration or, in the Alternative, Amendment (Petition), filed by West Goshen Township on January 24, 2018, seeking the following: (1) reconsideration of the Order entered on January 9, 2018 (*January 2018 Order*) and (2) certification of the *January 2018 Order* to the Commonwealth Court, relative to the above-captioned proceeding. Sunoco Pipeline, L.P. (Sunoco) filed an Answer Opposing the Petition (Answer) on February 5, 2018. For the reasons detailed herein, we shall deny the Petition.

**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]](#footnote-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-2015-2486071, pursuant to Section 507 of the Public Utility Code (Code), 66 Pa. C.S. § 507.[[2]](#footnote-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]](#footnote-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 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]](#footnote-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 (OALJ). We specifically directed the following:

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.

On November 21, 2017, Sunoco filed a Petition to Rescind or Discontinue (Petition to Rescind) relative to the *October 2017 Order*. On December 1, 2017, the Township filed an Answer to the Petition to Rescind. By Order entered January 9, 2018 (*January 2018 Order*), the Commission: (1) denied Sunoco’s request for rescission of the *October 2017 Order*; (2) discontinued the injunction in the *October 2017 Order*, effective on the entry date of the *January 2018 Order*; and (3) provided that the OALJ return the matter to this Commission for final consideration and resolution no later than the September 20, 2018 Public Meeting.

As previously noted, the Township filed the instant Petition on January 24, 2018, and Sunoco filed an Answer on February 5, 2018. On February 26, 2018, the Township filed a Reply to New Matter Raised in Sunoco’s Answer (Reply to New Matter).[[5]](#footnote-5)

By Order entered February 8, 2018, we granted the Township’s request for reconsideration of the *January 2018 Order* within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of, and consideration on, the merits. By Secretarial Letter issued February 23, 2018, we waived the thirty-day period set forth in 52 Pa. Code § 5.633(a) for consideration of the Township’s request for certification of interlocutory order.

**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)*;*](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink) *also* see, generally, [University of Pennsylvania v. Pa. PUC*,* 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink)

**The Township’s** **Reconsideration Request**

**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);](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsyl­vania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

The Public Utility Code (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. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13:

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. 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. *Id*. at \*13.

***January 2018 Order***

In our *January 2018 Order*, we: (1) denied Sunoco’s request for rescission of our *October 2017 Order*; (2) discontinued the injunction in our *October 2017 Order*, effective on the entry date of that Opinion and Order; and (3) provided that the OALJ return the matter to this Commission for final consideration and resolution no later than the September 20, 2018 Public Meeting. Of relevance to the instant Petition, we granted Sunoco’s request for a discontinuance of the injunction ordered in the *October 2017 Order* on a going forward basis, finding that the *October 2017 Order* was predicated on Sunoco constructing Valve 344 in the Township. We stated the following:

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.

*January 2018 Order* at 20.

**Petition and Answer**

In its Petition, the Township requests that the Commission reconsider its *January 2018 Order* and “reinstate the injunction to preclude [Sunoco] 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.” Petition at 11. The Township avers that the Commission based its decision on Sunoco’s unilateral statement that it could eliminate Valve 344 without any consequences to the Township or its residents. The Township argues that the discontinuance of the injunction allows Sunoco to perform HDD and install the pipeline on the assumption that a valve will not be installed in the Township, although the final determination on the Township’s Complaint is dependent on a determination regarding whether Sunoco is required to install a valve on the SPLP Use Area under the Settlement Agreement. *Id*. at 5. The Township states that the record confirms that Sunoco will not be able to install a valve on the SPLP Use Area if it first performs HDD that does not account for the valve, and Sunoco would have to redo the HDD or reinstall the pipeline, exposing the Township to duplicative pipeline construction activities and accompanying safety concerns. *Id*. (citing Tr. at 127-128).

The Township contends that Sunoco failed to present any information in its Petition to Rescind that its post-injunction HDD and pipeline installation activities will comply with the Commission’s final decision on Sunoco’s obligations under the Settlement Agreement. Petition at 5-6. The Township is concerned that without the injunction in place to prevent any work inconsistent with the installation of a valve on the SPLP Use Area, the Commission will be forced to allow the improper installation to remain without Valve 344 or order new HDD to allow the installation of Valve 344 with the associated risks and detriments to the Township. *Id*. at 6.

Additionally, the Township notes that by Administrative Order dated January 3, 2018, the Pennsylvania Department of Environmental Protection (DEP) suspended various construction permits associated with the Mariner East 2 Pipeline until Sunoco meets the requirements in that Administrative Order. *Id*. The Township avers that to the extent the Commission discontinued the injunction based on concerns it was holding up completion of the Mariner East Pipeline, this is not the case as the DEP Administrative Order has large ramifications concerning completion of the pipeline. *Id*. at 7.[[6]](#footnote-6)

Further, the Township states that it has additional evidence supporting reinstatement of the prior injunction. The Township cites to a report Sunoco produced in discovery, entitled “Site Restoration and Post-Construction Stormwater Management Plan, Pennsylvania Pipeline Project Southeast Region.” The Township also cites to the standards manual published by the American Society of Mechanical Engineers (ASME) entitled “Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids.” The Township indicates that ASME B31.4, Section 434.15.2(e) provides a 7.5-mile valve spacing guideline. Petition at 7. The Township avers that Sunoco’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. The Township raises safety concerns regarding the distance between valves for pipelines such as Mariner East and relies on the affidavit of its expert Richard Kuprewicz (attached to the Petition as Exhibit F) in support of its safety claims. The Township contends that Sunoco has not submitted any safety, engineering, or technical data to the Township or its safety consultant for an evaluation of Sunoco’s unilateral decision to eliminate Valve 344 from the Township. *Id*. at 8-9.

In its Answer, Sunoco avers that the Commission should reject the Township’s reconsideration request on the basis that reconsideration is an improper vehicle, with different legal standards, to seek imposition of a new or different injunction based on new allegations when such injunction is governed by the strict standards set forth in 52 Pa. Code § 3.6(b). Sunoco Answer at 8-9. Sunoco states that the hearing conducted on the Township’s original injunction request does not provide an adequate record or an adequate opportunity for Sunoco to be heard on the Township’s current request which presents different allegations in support of relief. Sunoco continues that the hearing focused only on whether siting a valve on the Janiec 2 Tract presented safety issues and/or violated the Settlement Agreement. *Id*. at 10 n. 17. Sunoco argues that the Township is not simply seeking a reinstatement of the Commission’s injunction, as that injunction was limited and specifically tailored and is now moot because Sunoco no longer intends to engage in the specific activities that were enjoined. *Id*. at 15-16.

Additionally, Sunoco contends that the Township’s reconsideration arguments are not new or novel under the *Duick* standards and contain materiality and relevancy deficiencies regarding the *January 2018 Order*. *Id*. at 17. First, Sunoco disagrees with the Township’s assertion that the Commission overlooked that the *January 2018 Order* had the effect of deciding the Township’s Complaint before a hearing on the merits. Sunoco states that the Commission considered this argument and concluded 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.” *Id*. at 18 (citing *January 2018 Order* at 20). Second, Sunoco avers that the Township previously raised the argument, in opposition to the Petition for Rescission, that it would be subjected to unnecessary risks and harm related to re-drilling to allow for the installation of Valve 344 at the correct location. Sunoco indicates that the Commission never enjoined Sunoco from engaging in activities inconsistent with installation of the Valve on the SPLP Use Area, rather, the Commission enjoined Sunoco from specific activities related to actively installing a valve on Janiec 2. Sunoco continues that the *January 2018 Order* did nothing more than dissolve the prior Commission injunction. Answer at 19.

Further, Sunoco states that the Township attempts to present an irrelevant DEP order as evidence that Sunoco’s verified representations to the Commission are not credible and that such order cannot be properly considered in the context of a reconsideration request. *Id*. at 19. Sunoco argues that while the Commission may take administrative notice of another agency’s orders, it cannot use such orders as evidence of facts without the opportunity for a full evidentiary hearing on those facts. *Id*. at 19-20 (citing *Sanchez v. Pa. Bd. of Probation and Parole*, 616 A.2d 1097, 1101 (Pa. Cmwlth. 1992); *Peluso v. Pa. Power Co*., Docket No. F-2010-2152607 (Order entered October 28, 2011)).

In response to the Township’s reliance on Sunoco’s discovery response and the ASME standards manual, Sunoco avers that the Township is attempting a “second-bite at the apple.” Sunoco states that the Township is presenting an out-of-context discovery response that has been available to the Township since November 21, 2017, prior to the Township filing its Answer to the Petition to Rescind in relation to the *October 2017 Order*. Sunoco contends that the Township has not raised any new evidence and has not explained why it could not have raised its safety arguments on the valve location previously. Answer at 20. Sunoco argues that these arguments are not based on the record and, therefore, cannot support the Township’s request for reconsideration and reinstatement of an injunction. Sunoco continues that the Township’s arguments are meritless, as Sunoco will locate automated remote block valves both upstream and downstream of the SPLP Use Area for a total distance of 8.47 miles, which Sunoco states is compliant with industry safety guidance is within Sunoco’s managerial discretion. *Id*. at 21.

Moreover, Sunoco asserts that the Petition should be denied because it is not ripe or is time-barred, or both. Sunoco avers that the Township’s request is not ripe because the Township did not initiate this Complaint proceeding to require Sunoco to install a control valve in a specific area within the Township; rather, the Township requested in its Complaint that Sunoco be prevented from installing a valve in the Township unless the valve was installed on the SPLP Use Area. Sunoco states that the Township has not previously raised alleged safety issues concerning installing a valve in the Township but has instead focused on the Settlement Agreement and whether Sunoco’s proposal to locate a valve on the Janiec 2 Tract breached that Agreement. *Id*. at 23. Therefore, Sunoco contends that whether a valve is necessary in the Township is not a matter properly brought by a complaint pleading before the Commission and is not ripe for consideration at this time. *Id*. at 24.

**Disposition of the Township’s Reconsideration Request**

Based on our review of the record, the Petition, and the Answer thereto, we will deny the Township’s request for reconsideration of the *January 2018 Order*. The Township makes a specific request in its Petition: that we “reinstate the injunction to preclude [Sunoco] 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.” Petition at 11. The Township has inaccurately described the prior injunction that was imposed in the *October 2017 Order* and discontinued in the *January 2018 Order* and appears to be seeking a new injunction through its Petition. The Township’s arguments in support of its request also appear to be a reframing of the same arguments it has made throughout this proceeding – that Sunoco is obligated under the Settlement Agreement to locate the Valve on the SPLP Use Area. We have already considered these arguments in reaching in our determinations in this proceeding. *See January 2018 Order* at 15-17; *October 2017 Order* at 14-16.

The relief the Township is seeking is outside of the scope of our *January 2018 Order* and *October 2017 Order*. The injunction in the *October 2017 Order* was narrowly tailored to closely follow the interim emergency relief the Township requested in its Emergency Relief Petition. The injunction prohibited Sunoco from constructing Valve 344 or appurtenant facilities to Valve 344 on the Janiec 2 Tract; engaging in HDD activities related to Valve 344 on the Janiec 2 Tract; and constructing Valve 344 at a location that is in dispute under the Settlement Agreement.[[7]](#footnote-7) The injunction did not prohibit Sunoco from engaging in activities inconsistent with installation of the Valve on the SPLP Use Area. In our *October 2017 Order,* we evaluated in detail 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.[[8]](#footnote-8) Our evaluation was based on Sunoco’s proposal and actions toward constructing Valve 344 on the Janiec 2 Tract, and we determined 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 in the public interest. *October 2017 Order* at 32. In discontinuing the injunction in the *January 2018 Order*, we have maintained the status quo of no valve construction on the Janiec 2 Tract based on Sunoco’s statements on the record that it will not construct the Valve within the Township.

As our Orders were interlocutory in nature and focused on the injunction the Township requested, we did not make any determinations in either Order on the Parties’ obligations under the Settlement Agreement, nor did we direct or presume, based on the limited Emergency Relief Petition record, that Sunoco was permitted or required to site the Valve on the SPLP Use Area or any other area within the Township. Rather, we emphasized that our authority regarding the siting of public utility pipeline facilities is limited. *See October 2017 Order* at 23-24. Accordingly, we find that the Township’s request for an injunction prohibiting Sunoco from engaging in activities inconsistent with installation of the Valve on the SPLP Use Area is improperly raised in a Petition requesting reconsideration of our *January 2018 Order*.

The Township has also raised arguments pertaining to safety issues, including those relating to the location of valves along the pipeline, and has relied on a specific Sunoco discovery response and the ASME standards manual. The information the Township relies on was not part of the record before us when we reached our determination in the *January 2018 Order* and, accordingly, we will not base our determination herein on this information, as Sunoco has not had the opportunity to cross-examine the Township or present rebuttal evidence on these issues. *See Uber Technologies*; *Ruth Matieu-Alce, supra*.

Because the Orders we have issued so far are interlocutory in nature and the Parties are continuing to develop the factual issues in preparation for the evidentiary hearing scheduled at the end of April 2018, it is more appropriate for the Parties to raise safety-related issues and proposed evidence in support of those issues at that time. We have previously stated that issues concerning the safety, 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); *see also* *The Delaware Riverkeeper Network v. Sunoco Pipeline L.P*., 2018 WL 943041 (February 20, 2018) (“Sunoco’s decisions are subject to review by the PUC to determine whether Sunoco’s service and facilities ‘are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code’”). We will not prejudge any safety issues that may be raised by the Parties prior to the development of a full record during the hearing in this matter. For these reasons, we shall deny the Township’s request for reconsideration of our *January 2018 Order*.

**The Township’s Request for Certification of Interlocutory Order**

Within its Petition, the Township makes an alternative request for an interlocutory appeal by permission pursuant to 42 Pa. C.S. § 702.[[9]](#footnote-9) The Township avers that the *January 2018 Order* will place the Commission in the position of either allowing the improper installation to remain without the necessary 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. The Township states that if the Commission decides not to reconsider the *January 2018 Order* and reinstate the injunction, it should permit the Township to pursue an immediate interlocutory appeal of the Order. The Township argues that the *January 2018 Order* involves a controlling question of law because the Commission found that the factors for an injunction existed, yet discontinued the injunction based on Sunoco’s unilateral determination that a valve was not necessary. Petition at 10. The Township also argues that an immediate appeal may materially advance the ultimate termination of this matter because substantial resources will be expended by the Commission and the Parties regarding the new HDD operations that will be required if Sunoco is permitted to resume drilling now but is later directed to place Valve 344 as promised in the Settlement. *Id*. at 11.

In response, Sunoco avers that the Township’s request for certification of interlocutory order should be denied on three grounds. First, Sunoco argues that the Township’s request is untimely filed under 52 Pa. Code § 5.633. Answer at 25. Sunoco states that certification of an interlocutory appeal must be filed within ten days after service of the Commission Order, and the Township’s filed its request five days late. *Id*. at 25-26. Second, Sunoco argues that the Township’s request is procedurally improper, because it was not made by motion with a corresponding twenty-day reply time, consistent with 52 Pa. Code §§ 5.103 and 5.633. *Id*. at 26.

Third, Sunoco argues that the Township’s request does not satisfy the certification standard. *Id*. Sunoco states that there is no controlling question of law in this case as to which reasonable minds could differ – the Commission injunction is moot and even if it were reinstated through an appeal, the Township would not obtain the broader injunction it seeks. *Id*. at 26-27. Sunoco avers that the Township has likewise failed to show that an appeal would advance the ultimate termination of this matter, because any appeal would also be moot. Sunoco contends that the only Order the Commonwealth Court could consider on appeal is the *January 2018 Order* and that Order did nothing more than dissolve an injunction that enjoined activity Sunoco is not and will not engage in. Sunoco believes that the Township is actually seeking an untimely challenge to the *October 2017 Order* which rejected the overbroad injunction the Township now wants imposed. *Id*. at 27.

**Disposition of the Township’s Request for Certification of**

**Interlocutory Order**

Upon review, we shall deny the Township’s request for certification of our *January 2018 Order*. The Commission’s certification of interlocutory orders is governed by Section 5.633 of our Regulations, 52 Pa. Code § 5.633. Section 5.633(a) provides the following:

(a)  When the Commission has made an order which is not a final order, a party may by motion request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. The motion shall be filed within 10 days after service of the order, and is procedurally governed by § 5.103(a)-(c) (relating to hearing motions). Unless the Commission acts within 30 days after the filing of the motion, the motion will be deemed denied.

If the Commission grants a request to certify an interlocutory order, the second step to obtain appellate review is set forth in Rule 1311(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1311(b), which provides that permission to appeal from an amended interlocutory order may be sought by filing a petition for permission to appeal with the prothonotary of the appellate court within thirty days after the entry of such order. *See* *Commonwealth of Pennsylvania v. McMurren*, 945 A.2d 194 (Pa. Super. Ct. 2008) (for a detailed discussion of the appellate procedures that apply to appeals from interlocutory orders).

The Township’s request was not timely filed, as it was filed five days after the ten-day time frame set forth in Section 5.633(a). *See Consolidated Communications Enterprise Services, Inc. v. Omnipoint Communications, Inc*., Docket No. C-2010-2210014 (Order entered April 12, 2012) (denying a motion for certification of interlocutory order that was filed fifteen days late without considering the merits of the motion). The appellate courts have taken a strict view of the filing time frames for certification of interlocutory orders. The courts have determined that a lower tribunal cannot entertain a late certification request, because to do so would be at odds with the intent and purpose of permitting interlocutory review of an order - to materially advance the ultimate termination of the matter. *McMurren*, 945 A.2d at 197; *see also, Mente Chevrolet v. Swoyer*, 710 A.2d 632 (Pa. Super. Ct. 1998) (quashing a petition for review when a request for certification of an interlocutory order in the trial court was rendered untimely).

Even if the Township’s request had been timely filed, the Township has not demonstrated that the *January 2018 Order* involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to the Commonwealth Court from the *January 2018 Order* may materially advance the ultimate termination of the matter. The Township’s request for certification appears to be premature, as the Township is seeking Commonwealth Court review of determinations that the Commission has not made. In support of its request, the Township argues that substantial resources will be expended by the Commission and the Parties regarding new HDD operations that will be required if Sunoco is permitted to resume drilling now but is later directed to place Valve 344 on the SPLP Use Area as promised in the Settlement. As discussed previously herein, the Township is seeking an injunction that is different in nature from the injunction imposed in the *October 2017 Order* and discontinued in the *January 2018 Order*. The Township also makes arguments in support of the obligations it believes Sunoco has under the Settlement Agreement and seems to be seeking a resolution to some of the concerns raised in its Complaint before a hearing has been held in the Complaint proceeding. Accordingly, we shall deny the Township’s request.

**IV. Conclusion**

Based on our review of the record, the Parties’ positions, and the applicable law, we shall deny the Township’s Petition which seeks the following relief:

(1) reconsideration of the Order entered on January 9, 2018, and (2) certification of the Order entered on January 9, 2018, to the Commonwealth Court; **THEREFORE,**

**IT IS ORDERED:**

That the Petition for Reconsideration or, in the Alternative, Amendment, filed by West Goshen Township on January 24, 2018, is denied, consistent with the discussion in this Opinion and Order.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 15, 2018

ORDER ENTERED: March 15, 2018

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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. The Settlement Agreement is also Township Exhibit 4 in this proceeding. [↑](#footnote-ref-3)
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. [↑](#footnote-ref-4)
5. The Township states that it is replying to new material facts Sunoco raised in its Answer. We have reviewed the Township’s Reply to New Matter; however, we do not find it necessary to address it in detail herein. Many of the Township’s responses are not responses to new material facts, but are, instead, responses to Sunoco’s arguments that the Township disagrees with. Our Regulations do not provide the opportunity for a Party to file a response to arguments in an Answer to a Petition for Reconsideration. To the extent that the Parties have raised or are responding to new material facts, we will not rely on any new facts that are outside of the record that has been developed or arguments raised for the first time at this stage of the proceeding in reaching our determination on the Petition. *See Pa. PUC v. Uber Technologies, Inc*., Docket No. C-2014-2422723 (Order entered September 1, 2016) (*Uber Technologies*); *Ruth Matieu-Alce v. Philadelphia Gas Works*, Docket No. F-2015-2473661 (Order entered April 7, 2016) (*Ruth Matieu-Alce*)*.* [↑](#footnote-ref-5)
6. We do not find it necessary to address the Township’s arguments related to DEP’s actions or Administrative Orders in the context of this Opinion and Order. Our determination in the *January 2019 Order* was based on Sunoco’s statements that it will not locate a valve on the Janiec 2 Tract or within the Township and was not related to DEP’s actions, nor are such actions relevant in reaching our determination herein. [↑](#footnote-ref-6)
7. The SPLP Use Area was not mentioned in the injunction, and it is a valve location area that is contemplated by the Parties in the Settlement Agreement, whereas the Janiec 2 Tract was a disputed valve location area. [↑](#footnote-ref-7)
8. 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). [↑](#footnote-ref-8)
9. Section 702(b) provides as follows:

   **(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. [↑](#footnote-ref-9)