



ESTABLISHED 1914

Gilbert P. High, Jr.
Thomas D. Rees
Mary Cushing Doherty
Joel D. Rosen
Eric B. Smith
Richard C. Sokorai
James B. Shrimp
Melissa M. Boyd
William F. Kerr, Jr.
F. Arnold Heller
Stephanie E. Murphy
Mark R. Fischer, Jr.
Joo Y. Park
Keri A. Schantz
Kevin Cornish
Sireen I. Tucker

SPECIAL COUNSEL
David J. Brooman

OF COUNSEL
Marlyn F. Smith
John P. Gregg
Kenneth R. Myers

Sireen I. Tucker
DIRECT EMAIL
stucker@highswartz.com

August 29, 2014

Via Electronic Filing

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

**Re: Petition of Sunoco Pipeline L.P. for a Finding that the
Situation of Structures to Shelter Pump Stations and Valve
Control Stations Is Reasonably Necessary for the
Convenience or Welfare of the Public
Docket No. P-2014-2411966**


Dear Secretary Chiavetta:

Enclosed for electronic filing with the Pennsylvania Public Utility Commission is West Goshen Township's Reply Exceptions in the above-referenced matter, with Certificate of Service attached.

If you have any questions regarding the above, please contact me.

Thank you.

Respectfully,


David J. Brooman

DJB:tlb

Enclosures

cc: Certificate of Service (via email and/or U.S. Mail)
Office of Special Assistants (w/enc)(via email)
Kristen Camp, Esquire (w/enc)
Kenneth R. Myers, Esquire
Sireen I. Tucker, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Sunoco Pipeline L.P. for a :
Finding that the Situation of Structures to :
Shelter Pump Stations and Value Control :
Stations is Reasonably Necessary for the : **DOCKET NO. P-2014-2411966**
Convenience or Welfare of the Public in :
West Goshen Township, Chester County :

WEST GOSHEN TOWNSHIP’S REPLY EXCEPTIONS

STATEMENT OF THE CASE

Sunoco Pipeline L.P. (“SPLP”), one of the largest fully integrated oil companies in the country, is the owner of a very old oil pipeline from Marcus Hook, Delaware County to Pittsburgh, Pennsylvania and beyond, which it acquired from Sun Oil Company. The pipeline was originally installed in 1931 to carry Marcus Hook refinery products to the west, marketing the output of the refinery. This pipeline crosses a portion of West Goshen Township (hereinafter “WGT”) in southeastern Chester County, Pennsylvania.

With the decline of refinery activity in southeastern Pennsylvania, the transportation of oil products from east to west has declined. SPLP ceased using portions of the pipeline and in 2012 SPLP applied for and received authority to abandon pipeline service in segments west of Mechanicsburg. (*See* Application Docket No. A-2013-2371789, Order dated August 29, 2013). SPLP also withdrew the rates on file with the Commission providing for service in those segments of its line.

At the time, SPLP indicated its intention to establish a new service at a future date to transport liquids from west to east, *but did not apply for or receive any service rights to do so.*

The 83 year old pipeline that traverses WGT is an 8-inch line designed and operated for the transportation of oil products at a pressure of approximately 300 pounds per square inch. As the line has gotten older, SPLP has found it necessary to remove and replace individual lengths of the old pipe. Still, the major portion of the pipe today is the very elderly original installation.

In 2012, SPLP announced “Mariner East,” a project to convert the old pipeline and add new pipe and pump stations for the transportation of propane and ethane from west to east, from sources in Ohio (and under its Amended Petition from western Pennsylvania) to the Marcus Hook terminal. There SPLP expects to load the liquids on ships for transportation and sale to northern Europe.¹

SPLP proposes to transport ethane and propane not as gases, but as liquids. To do this, WGT has been informed that SPLP designed its pipeline to operate at 1,300 to 1,400 pounds per square inch pressure.²

Ethane and propane are classified as “Highly Volatile Liquids” under the minimum pipeline safety regulations of the U.S. Department of Transportation.³ If these liquids are released from the pipeline in any volume, large or small, they will rapidly vaporize into a gas. Their volume will increase several hundred-fold. Propane gas and ethane gas are both heavier than air, and will tend to travel along the ground in a manner similar to a stream of water. When this gas stream finds a spark, it will ignite and usually explode.

¹ Petition of Sunoco Pipeline L.P. for a Finding that the Situation of Structures to Shelter Pumping Stations and Valve Control Stations is Reasonably Necessary for the Convenience or Welfare of the Public (“SPLP Petition”), paragraphs 3 and 4 dated March 21, 2014. See also http://articles.philly.com/2014-08-10/business/52624575_1_mariner-east-ethane-ineos-europe.

² See limited information in Amended Petition of Sunoco Pipeline L.P. for a Finding that the Situation of Structures to Shelter Pumping Stations and Valve Control Stations is Reasonably Necessary for the Convenience or Welfare of the Public (“SPLP Amended Petition”), Docket No. P-2014-2411966 (May 8, 2014), FN 3 and Exhibit E.

³ 49 C.F.R. §195.2. Highly volatile liquids becomes gaseous when exposed to the atmosphere. A spillage could create a vapor cloud that could settle into the lower elevation of the ground profile. 49 C.F.R. Part 195 Appendix C.

The risk to health and safety from the transportation of Highly Volatile Liquids by pipeline far exceeds the threat from lighter than air natural gas pipeline operation. The energy stored in these liquids is much greater than the energy in an equal volume of natural gas, and that remains true even after vaporization of the liquids.

SPLP proposes to repurpose its very old pipeline across WGT and to raise the operating pressure to handle the Highly Volatile Liquids. SPLP proposes to establish a new pump station for these liquids at a site it has chosen in WGT.

Although SPLP applied for zoning approval of its proposed pump station building in WGT and initiated hearings before the Township Zoning Hearing Board, it withdrew its application and chose a different legal path. On March 21, 2014, SPLP filed a Petition under the Municipalities Planning Code, 53 P.S. § 10619 (“M.P.C. §619”) and this Commission’s regulations, seeking a ruling exempting it from the need for zoning approval in thirty-one (31) Townships across Pennsylvania, including WGT.

SPLP’s proposed pump station and the aged oil pipeline it seeks to repurpose lie squarely between a quiet residential neighborhood of homes on the west, and U.S. Route 202, a large and vital transportation corridor, on the east. If any material release of propane or ethane were to occur, it could result in the loss of life, personal injury and major property damage in the adjoining neighborhood, and could shut down the transportation corridor.

WGT filed a Petition to Intervene on April 21, 2014. Concerned Citizens of West Goshen Township (“CCWGT”), residents of the area traversed by the aged pipeline, filed an intervention and protest to the SPLP Petition and SPLP Amended Petition. East Goshen Township and others filed in opposition to the SPLP Petition and SPLP Amended Petition. CCWGT submitted

Preliminary Objections and further Preliminary Objections to the SPLP Petition and SPLP Amended Petition.

CCWGT and other parties have raised the issue that the Mariner East project does not qualify as a “public utility” and therefore is not eligible for relief under M.P.C. §619. By ruling dated July 23, 2014 (issued July 30, 2014), Administrative Law Judges David A. Salapa and Elizabeth H. Barnes issued their Initial Decision dismissing the SPLP Petition (“Initial Decision”) holding that SPLP was not a “Public Utility Corporation” pursuant to M.P.C. § 619, and therefore the Commission lacked jurisdiction.

Because the Initial Decision is based primarily on pleadings, prior to hearing, this Brief accepts the facts presented by SPLP as true. This is done without prejudice to any future matter or hearing in which the project or the factual claims might be at issue.

WGT had initiated discovery addressed to SPLP. Its first set of Interrogatories addressed SPLP’s claim that its project is a public utility, a necessary element of any petition under M.P.C. §619. SPLP responded and reference is made in this Brief to public documents in materials there provided.⁴ The information provided by SPLP in discovery regarding its existing certificate authority under the Public Utility Code provides further support for the holding of the Initial Decision that SPLP’s Petition and Amended Petition was properly dismissed.

SUMMARY OF ARGUMENT

WGT is very concerned that the condition of the aged pipeline is unsafe to operate at the pressure needed to carry the volume of Highly Volatile Liquids that SPLP has planned. Because of the proposed location of SPLP’s facilities, the Township submits that the project as designed raises

⁴ The Answers to Interrogatories submitted by SPLP are identified as “WGT-1 at SPLP” in this Brief. The numbers following “SPLP” are the bates numbers used on the exhibits included with SPLP Answers to Interrogatories . For the convenience of the P.U.C. and all parties, where a portion of an Order is cited, the entire Order is provided in the enclosed Appendix. All documents referenced are public records filed with the P.U.C..

serious risks to public safety. SPLP's shortcut in filing under M.P.C. §619, instead of seeking proper certificate authority for its project, deprives the public and this Commission of the opportunity to properly examine Mariner East and all its ramifications.

SPLP's project is currently not a public utility project. SPLP cannot begin to offer its proposed pipeline intrastate transportation for the public unless and until it secures a Certificate of Public Convenience from this Commission. Although it intends Mariner East to be operational by the 2014-15 winter, SPLP has filed no Application and has expressed no intent to file such an Application with the Commission.⁵

SPLP argues that its existing certificate authority to transport petroleum and refined products from Philadelphia area refineries westward to Pittsburgh and Ohio and other points can be "repurposed" to authorize the Mariner East project to transport propane and ethane from western Pennsylvania eastward to Philadelphia area facilities. This "repurposing" violates the Public Utility Code and judicial precedent.

The Mariner East project is therefore not eligible for relief from Township zoning requirements under M.P.C. §619. West Goshen and the other Townships named in SPLP's Amended Petition should not be called upon to justify their zoning and land use plans before this Honorable Commission when there is no public utility project yet presented.

Most recently in the case of *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013), the Pennsylvania Supreme Court restated the importance of municipal zoning for the protection of the welfare of the public, and specifically to achieve the goals of the Environmental Rights Amendment, Article I, Section 27, to the Constitution of Pennsylvania. M.P.C. §619, like the statutory

⁵ See SPLP Request for Expedited Consideration dated March 21, 2014.

provisions found unconstitutional in that case, displaces municipal zoning authority, and should be utilized only in those instances that clearly qualify for Commission action.

ARGUMENT

A. As the Initial Decision notes, SPLP does not fit any apparent category under the Public Utility Code.

Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, establishes each class of enterprise that may lawfully become a public utility under Pennsylvania law. The Initial Decision explains:

In addition, it is not clear that SPLP's proposed Mariner East pipeline service constitutes public utility service as defined in the Public Utility Code. The Public Utility Code defines a public utility in relevant part as follows:

(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distribution or furnishing natural or artificial gas, electricity or steam for the production of light, heat, or power to or for the public for compensation[or] ...

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

...

Sunoco's amended petitions do not state that Sunoco will be engaged in the transportation of natural gas or that it is a producer of natural gas distributing directly to the public for compensation. Therefore, pursuant to 66 Pa.C.S. §102(2), Sunoco's proposed service does not qualify as public utility service within the meaning of Section 102.

(Initial Decision at 20-21).

SPLP's lack of a Certificate of Public Convenience for the Mariner East project is not just a matter of missing paperwork. Until SPLP applies for a Certificate for Mariner East and sets

forth the legal basis for its plan to render intrastate public utility service, its Petition under M.P.C. §619 is not supported or timely.

B. SPLP's Mariner East project does not constitute service to a qualifying public.

SPLP must show that its Mariner East project will serve a public in order to qualify as a public utility.

'The distinctions between a public utility and a business entity which is not a public utility are well known. For example, a public utility holds itself out to the public generally and may not refuse any legitimate demand for service, while a private business independently determines whom it will serve. 43 Am.Jur. Public Utilities and Services, § 2 (1942); 73 C.J.S. Public Utilities § 1 (1951).' *Commonwealth v. Lafferty*, 426 Pa. 541, 550, 233 A.2d 256, 260 (1967).

Commonwealth v. WYCH Communications, 23 Pa. Commw. Ct. 292, 296, 351 A.2d 328 (Pa. Commw. Ct. 1976).

As the Administrative Law Judges note, 90% of the project is dedicated to interstate service to shippers under long term contracts (Initial Decision at 19) that effectively underwrite the project. SPLP does not provide the details of these contracts. But if these large contract undertakings were intrastate shipments they might be classified as contract carriage, not common carriage. And as SPLP concedes, the interstate pipeline service proposed by SPLP is not a public utility.⁶

The remaining 10% of Mariner East is presumably not committed for contract service, but SPLP has informed the Federal Energy Regulatory Commission that it will be available to receive interstate shipments.⁷

⁶ Initial Decision at 19-20.

⁷ See Order of F.E.R.C. at Docket OR13-9-000, Sunoco Pipeline L.P., ¶ 11, noting: "Sunoco points out that the Commission previously has recognized that there is no single method of allocating capacity in times of excess demand and that pipelines should have some latitude in establishing allocation methods to meet circumstances specific to their operations.(FN 8) For example, states Sunoco, the Commission repeatedly has approved requests to offer priority service at a premium rate to shippers agreeing to long-term volume commitments in support of projects that create new pipeline capacity, while also preserving access for uncommitted shippers."
www.ferc.gov/EventCalendar/Files/20130215124649-OR13-9-000.pdf.

What capacity would be available for intrastate shippers is, on the present record, an open question. As the Initial Decision notes, the contract commitments relate to a projected volume of 72,000 barrels per day, whereas the plans for the initial Mariner East operation involves only 5,000 barrels per day.⁸

This and similar questions would be pertinent in a proceeding for a Certificate of Public Convenience. They cannot be answered properly from the limited proofs and data provided in a zoning petition under M.P.C. §619.

C. SPLP's other Certificates authorizing different services are irrelevant.

Only upon an “application...and the approval of such application by the Commission evidenced by its Certificate of Public Convenience first had and obtained” is it lawful for SPLP to begin to offer a public utility service. 66 Pa.C.S. § 1101. Moreover, a Certificate of Public Convenience “shall include a description of the nature of the service and of the territory in which it may be offered, rendered, furnished or supplied.” *Id.* To make the point clearer, Section 1102(a) provides: “Upon the application...and the approval of such application by the Commission, evidenced by its certificate of public convenience first had and obtained, it shall be lawful: (1) for any public utility to begin to offer...service of a different nature or to a different territory...” 66 Pa. C.S. § 1102(a)(1).

Moreover, a certificate may be issued only if the Commission finds “that the granting of such certificate is necessary or proper for the service, accommodation, convenience or *safety of the public.*” 66 Pa.C.S. § 1103(a) (emphasis added). None of the Applications in SPLP’s response to WGT’s discovery deal with west to east transportation of propane or ethane, or the pressure and other conditions contemplated for the Mariner East project. Safety concerns of the Township, its residents

⁸ SPLP Amended Petition at 9.

and other parties to this proceeding have not been addressed in any prior proceeding before this Commission.

SPLP argues that prior Certificates issued to it for other services qualify it to carry out Mariner East without more.⁹ But this claim does not pass inspection. Certificates of Public Convenience are what they are, they cannot be “repurposed.” A service of a different nature requires an amendment or a new Certificate authorization. Examination of the actual grants of authority claimed by SPLP show that the transportation contemplated does not have the necessary authorization.

In its Amended Petition, SPLP claims specifically that east of Mechanicsburg it “presently holds a Certificate of Public Convenience to provide petroleum products and refined petroleum products pipeline transportation service.” (SPLP Amended Petition at 2). Furthermore, “propane can be shipped by truck from the Marcellus shale region to Mechanicsburg, where it can then be transferred to the pipeline for further transportation to SPLP’s Twin Oaks facilities and thereby allowing further distribution to multiple third party storage facilities or distribution terminals located within Pennsylvania.” *Id.* In response to WGT’s discovery, SPLP has submitted documents from the various Application folders on which it relies. None substantiate its position.

What is apparent from the history of certificates to the present day is that the pipelines comprising SPLP were established for the sole purpose of moving products westward from the refineries to find markets. Care was taken to avoid any circumstances in which a common carrier obligation might divert valuable pipeline capacity to bringing product east. In more or less numerical order, the authorizations follow.

⁹ See SPLP Amended Petition at 4; See also SPLP Reply to New Matter of Upper Chichester Township , ¶ 43.

SPLP's earliest predecessor, Susquehanna Pipe Line Company, was incorporated "for the purpose of transporting...petroleum and refined petroleum products...and to construct, maintain and operate such pipelines, tanks and facilities as are necessary and proper...said pipeline or pipelines to run within the Commonwealth of Pennsylvania, including a *pipeline or pipelines beginning at or near the vicinity of the Village of Linwood in the County of Delaware, extending in a Westerly and Northwesterly direction to the Pennsylvania-Ohio state line...*" (WGT-1 at SPLP 1, emphasis added). The Secretary of State confirmed the application on February 19, 1930.

Susquehanna applied to the Commission at Application Docket No. A-21736-1929 for authorization for the conduct of its transportation business "as more particularly set forth in the statement of corporate purpose as contained in the Articles of Incorporation..." (WGT-1 at SPLP 10). The certificate issued by the Commission dated March 25, 1930 followed the same language, authorizing the service described in the filing with the Secretary of the Commonwealth certified on February 19, 1930.

Docket No. 21736, Folder 2, excluded an additional product, manufactured gas, and at the same time specified the route.

...the route or routes of pipeline or lines for which the Commission's approval is sought...will begin with main line or lines at or near the vicinity of the Village of Linwood in the County of Delaware and extend northwestwardly to, at or near Malvern, in the County of Chester, then westwardly to, at or near the City of Lancaster...to, at or near Beaver, in the County of Beaver, and thence northwestwardly to the Pennsylvania-Ohio state line...

(WGT-1 at SPLP 16).

Thus, the Certificate under which the eight-inch pipeline crossing WGT was placed in service in 1931 explicitly authorizes transportation only from east to west. There is no provision (indeed it would be a violation of this Certificate) for transportation toward the east into Delaware County.

Soon after the Susquehanna Pipe Line Company went into business, Keystone Pipe Line Company filed for a Certificate from the Public Service Commission for approval of a comparable facility:

Lines will begin at or near the facility of Point Breeze, Philadelphia, in the County of Philadelphia, extending in a northerly direction to or near the vicinity of Reading...thence to the Pennsylvania-New York state boundary line...with connecting lines therefrom, including...lines from or near the vicinity of said Point Breeze, or...near the vicinity of the City of Reading, Berks County, thence extending in a westerly direction to...the Pennsylvania-Ohio state boundary line...

(WGT-1 at SPLP 92).

The need for the services also was described:

The oil industry generally is handicapped by not having sufficient...means of transporting petroleum and refined petroleum products for distribution to dealers and customers. The proposed pipeline will begin in the City and County of Philadelphia, at or in the vicinity of the district locally known as Point Breeze, where nearby are located refineries and plants of petroleum company or companies dealing in refined petroleum products, who will be enabled to have transported their products to other refiners and/or distributors, to distribution centers contiguous to applicant's pipeline.

(WGT-1 at SPLP 94).

The same application goes on to project "additional pipelines or connecting pipelines" to move products "from or to refineries and important distributing points for said products throughout the state." (WGT-1 at SPLP 94). Nonetheless, the document filed in 1931 and approved by the Commission only authorized one-way transportation and that way was westbound.

Keystone Pipeline Company recites that the Public Service Commission approved a certificate dated May 11, 1931, at Application Docket No. A-23566, in an application for a further certificate dated August 3, 1936 at the same docket to transport petroleum and refined petroleum products. Again, the service described is transportation from the Philadelphia area "in a northerly direction...[to] Lehigh County, Pennsylvania." (WGT-1 at SPLP 48).

The authority Keystone Pipe Line added to its system under an Application at Docket No. A-23566, Folder 3 in 1936 was an extension from Lebanon County to the New York State boundary line in Bradford County. The transportation is described directionally:

commencing at the origin pump station at Point Breeze, in the City of Philadelphia, and running thence westerly...to Mechanicsburg in Cumberland County; thence westerly...to a point in Allegheny County...[b]eginning at Montello in Berks County there is a main branch of the pipe line running northerly to...the County of Berks..." (WGT-1 at SPLP 109). The new line is described as "taking off from the company's main line or lines at or near the vicinity of Quentin in the County of Lebanon and extending generally in a north-northwesterly direction to or near the vicinity of Sunbury in the County of Northumberland; thence to or near the vicinity of Williamsport...thence to the Pennsylvania-New York state boundary line..."

(WGT-1 at SPLP 110). A certificate was granted by Order dated August 3, 1936.

Susquehanna Pipe Line Company morphed into Sun Pipe Line Company and in 1951 received a Certificate at Application Docket Nos. 78241, 78242, 78243, 78244, 78245, 78246 and Securities Certificate 1298. In a single Order dated December 17, 1951, it was authorized to acquire Sun Oil Company properties and other affiliated properties, to issue capital stock, and to have the right to carry on business "inside and outside of the United States of America." (WGT-1 at SPLP 19-20). No change was made in the pipeline route or description previously established in 1930.

In 1964, Sun Pipe Line applied for additional rights in eastern Pennsylvania, describing its service in similar westward bound terms. (Application Docket No. A-91313).

The next amendment, at Application Docket No. A-93613, was approved by the Commission by Order dated April 10, 1967. (WGT-1 at SPLP 23). This Order gave Sun Pipe Line Company approval to lay a second line parallel to the first from Allegheny County to the Pennsylvania-Ohio boundary line, paralleling the existing pipeline along that route. This Certificate authority did not alter any rights east of Mechanicsburg. It is pertinent to note that the proposed pipeline was not to render service "between" two points. Rather, the authority sought was "approval to

begin to offer, render, furnish or supply service by pipeline...*from* the Allegheny pump station at or near the Borough of Blauhnox, Allegheny County, thence in a northwestwardly direction through Beaver and Lawrence Counties *to* the Pennsylvania-Ohio boundary line..." (WGT-1 at SPLP 23, emphasis added).

The Commission approved further looping of the western portion of the Sun Pipe Line system in 1967 at Docket No. A-93613. (WGT-1 at SPLP 23). The westbound direction is likewise specified.

The Commission Order at Application Docket No. A-81279 issued on August 9, 1954, describes the service approved for Keystone Pipe Line Company to be transportation "from its pumping station in East Goshen Township, Chester County, to a point near Fullerton, in Whitehall Township, Lehigh County..." (WGT-1 at SPLP 52). The heading of the Order specifically recites the same directional transportation.

The next significant event is the application of Atlantic Pipe Line at Docket No. A-86348 (A-140050, Folder 4) (April 2, 1959) (WGT-1 at SPLP 54-59). This Docket pertains solely to Atlantic Pipe Line facilities from Tinicum Township in Delaware County to the Point Breeze refinery in Philadelphia. Its significance is that this filing also describes the rights sought as proceeding "from...to" specific locations, e.g. service in a single direction, not service "between" any two points.

In the Application at Docket No. A-91313 (A-140050, Folder 5), filed May 26, 1964, Atlantic Pipe Line Company sought authority for the addition of a "pipeline or lines from applicant's Montello pumping station in Spring Township, Berks County, Pennsylvania, and extending in a northwesterly direction through Berks...to a point...[in] Northumberland County, Pennsylvania." (WGT-1 at SPLP 81). As in all other applications, the goal is to ship West and North.

By Order dated December 21, 1970 at Application Docket No. A-96281, the Commission defined the rights of Sinclair Pipeline Company (predecessor of ARCO Pipe Line Company) as follows:

On April 30, 1951 Sinclair was certificated at A.76767, folder 1, to do business within Pennsylvania as a foreign public utility and, at A.76767, folder 2, to transport refined petroleum products by a pipeline over a route extending westwardly from the City of Philadelphia to a point in Washington County on the Pennsylvania-Ohio line, with a connecting route extending from Lebanon County to the Pennsylvania-Maryland line.

(WGT-1 at SPLP 132).

As in the Keystone and Susquehanna line of authorizations, the company sought and was granted directional authorization, not two-way transportation rights. The merger of ARCO and Atlantic was approved in the 1970 case.

ARCO transferred assets to Atlantic Pipeline Corporation pursuant to approval at Application Docket No. A-140075 by Order dated August 28, 1985. No additional service rights were granted. (WGT-1 at SPLP 141).

SPLP was born when Atlantic Pipeline Corporation and Sun Pipe Line Company were merged into Sunoco Pipeline LP, the present Petitioner, at Application Docket Nos. A-140001, A-140400, and A-140075, by Order dated January 10, 2002. The transmittal letter (“Dec. 2011 Transmittal Letter”) accompanying their application, dated December 11, 2001, states: “No change in rates, rules or services is being proposed as part of the transaction.” The service rights claimed at that time were as follows:

Atlantic...is a Pennsylvania public utility that transports refined petroleum products, principally gasoline and fuel oils, in intrastate and interstate service. Atlantic’s intrastate pipeline system originates in southeastern Pennsylvania and extends northward to the State of New York and westward to the vicinity of Pittsburgh...

Sun...is a Pennsylvania public utility that transports refined petroleum products, principally gasoline and fuel oils, in intrastate and interstate service. Sun's intrastate pipeline system originates in southeastern Pennsylvania and extends northward to the State of New York and northeastward to the State of New Jersey. It also has an intrastate pipeline system which originates in the vicinity of Pittsburgh and extends westward to the State of Ohio...

Application Docket Nos. A-140001, A-140400F2000 and A-140075F2000 at 3 ("Docket No. A-140001, et al.").

The Dec. 2011 Transmittal Letter goes on to state: "Sunoco pipeline will adopt the currently effective tariffs of Sun and Atlantic and is not proposing any change in the rates, rules or services contained therein. By Order dated January 10, 2002, and correction dated February 26, 2002, the Commission granted the certificate. No additional service rights were granted. (WGT-1 at SPLP 169-74; 177-81).

Since its inception in 2002, a change in the service rights is reported in 2003. SPLP filed to abandon its Montello to Kingston line. The reason it gave is that "the United States Department of Transportation recently revised its regulations at 49 C.F.R. Part 195. These new regulations require Sunoco to initiate enhanced pipeline integrity management and leak detection programs along its pipelines, including its Montello to Kingston line. Sunoco avers that the time and resources required for it to comply with these new regulations are not justified for the Montello to Kingston line." (Docket No. A-140001, et al., Order dated May 22, 2003 at 1-3). Over the objection of two businesses purchasing product shipped through the SPLP line, the Commission granted the abandonment. (*See* Order dated May 22, 2003).

Of note, however, is SPLP's argument that the two businesses do not constitute and are not representative of any "group of customers" or "public at large". (*See* Order dated May 22, 2003 at 3, assigning the matter for adjudication by the office of Administrative Law Judge). In its exceptions, SPLP also reiterated the argument that the two businesses "are neither customers of Sunoco nor users

of the pipeline service. ...” The Commission again disagreed (although ordering no relief to the two end users).

Although pipe may presumably be repurposed in proper circumstances, a certificate to transport from east to west cannot be unilaterally “repurposed” to authorize transportation from west to east.

D. Specific shortfalls in the authority claimed by SPLP for Mariner East.

A Certificate of Public Convenience grants only the rights explicitly described. Any effort to add services or territory not originally listed has to go through an additional application and certificate proceeding. In the leading decision on this point, *Ferry v. Pennsylvania Public Utility Comm'n*, 192 Pa. Super. 331, 162 A.2d 266 (Pa. Super. Ct. 1960), a carrier authorized by certificate to transport “property” sought to transport bulk liquids, specifically gasoline or fuel oil. The original intent of the certificate proceeding in 1947, and the evidence presented of public need, did not encompass the enlarged service. On appeal, the Superior Court affirmed, stating:

Appellant contends here that the word ‘property’ as contained in his Certificate of Authority gave him the right to transport any type of property...such construction, of course, would lead to chaos in the transportation industry. Certificated carriers of one commodity would discover that, regarding of the service offered to the public, its field of certificate would be invaded by another carrier and that he, in turn, could invade a field of transportation never contemplated by him. The public, on the other hand, would be left to the whim of the carrier, and if the carrier did not see fit to haul a certain type of commodity, he could refrain from such hauling...

Id. at 268-269. (See also *Rosemont Taxi Cab Co., Inc. v. Philadelphia Parking Authority*, 68 A.3d 29 (Pa. Commw. Ct. 2013), appeal denied, 84 A.3d 1066 (Pa. 2014) (discussing directionality in the context of partial rights carriers).

As applied in the present case, if SPLP can repurpose its certificate for westbound carriage to allow eastbound carriage, every other pipeline within the Commonwealth of Pennsylvania

could freely reverse the direction of service without Commission approval. Motor carriers, taxi cab companies and others who may have limited authority for transportation of persons or property to terminal points outside their immediate territory, would automatically have the authority to pick up passengers and property outside their service territory. Nothing but chaos would ensue.

The Commonwealth Court has relied on *Ferry* to reverse Commission action. In *Purolator Security, Inc. v. Pennsylvania Public Utility Comm'n*, 32 Pa. Commw. Ct. 175, 378 A.2d 1020 (Pa. Commw. Ct. 1977), a carrier with certificate authority to carry property sought to add armored car service for the transportation of monies and securities. He argued that money and securities are both “property.” But the circumstances surrounding the granting of its carrier certificate showed no plan at that time to carry money or securities, and no armored car or other equipment needed to do so.

The Commission dismissed complaints by competitive armored car carriers. On appeal, the Commonwealth Court reversed the Commission, finding that the PUC interpretation allowing the transportation of monies and securities was outside the intention of the parties when the certificate was granted, and the effort to read the certificate broadly was clearly erroneous.

As is now apparent from the discovery provided by SPLP, there is no substance to its claim of authorization to carry out the Mariner East project.

E. The abandonment proceeding cannot enlarge SPLP’s service rights.

SPLP’s exceptions place great emphasis on the action of the Commission in an unopposed Order under Public Utility Code Section 703(g) at Docket No. A-2014-2422583, dated July 24, 2014 (Amending Order for Docket No. A-2013-2371789, dated August 29, 2013). What does not appear in either the Commission’s Order or SPLP’s repeated reference to it is the obvious point that in filing for abandonment in 2013, and then abandoning the abandonment in 2014, SPLP cannot claim any service rights greater than it had at the inception of that proceeding in 2013.

The Order of July 24, 2014 does not state the obvious problem that SPLP intends to offer a different service than the one that was abandoned. SPLP chose not to raise the point and neither the OSA nor the Commission Order discuss it, thus leaving the issue of the meaning of the Order for resolution in a different time and place; in particular, in the ruling of the ALJs in this proceeding.

Section 703(g) of the Public Utility Code follows a pattern of many rules that permit a court or agency to revisit a decision after the time for rehearing or appeal has passed. But the Commission's range of action allowable under Section 703 does not include granting relief that was never officially sought. See *Scott Paper Company v. Pennsylvania Public Utility Comm'n*, 126 Pa. Commw. Ct. 111, 558 A.2d 914 (Pa. Commw. Ct. 1989) (holding that the Commission cannot grant new and different authorization in a Section 703(g) order).

A further problem with any effort to expand a right in a Section 703(g) petition is the question of notice and hearing. See *Armstrong Telecommunications, Inc. v. Pennsylvania Public Utility Comm'n*, 835 A.2d 409 (Pa. Commw. Ct. 2003) (stating "...the notice and common procedure used in this case does not satisfy Section 703(g)'s hearing requirement"). In *Popowski v. Pennsylvania Public Utility Comm'n*, 805 A.2d 637 (Pa. Commw. Ct. 2002), it was made clear that the Commission must conduct an evidentiary hearing before rescinding or amending a prior order under this section of the Code..." *Id.* at 420. In the present case, the only parties notified appear to have been the parties who responded to the *abandonment* filing over one year ago.

The 703(g) abandonment proceeding did not enlarge SPLP's service rights.

F. SPLP's pending rate filing does not help its situation.

Just as a person or corporation must have a Certificate of Public Convenience before commencing to render public utility service, there must also be a Tariff for that service filed and effective before the Commission. Under letter dated June 11, 2014, SPLP filed its Tariff Pipeline – Pa.

P.U.C. No. 16 (“Pa. P.U.C. No. 16”) which it requested to become effective on October 1, 2014. Tariff No. 16 adds a new rate for service from Mechanicsburg, Cumberland County, to Twin Oaks in Delaware County for the transportation of propane. But at present that rate is not in effect and does not authorize any service to the public.

When a new rate for public utility service is placed on file with the Commission, the regulations at 52 Pa. Code §53.52 specify the supporting data that is required. However, the information provided in SPLP’s rate filing does not explain the source of the rate, or how many customers will pay it, or whether those customers are affiliates of SPLP. It does not provide any data as to effects on competitors. Instead, SPLP’s rate counsel states in their cover letter accompanying the filing: “As a reinstatement of service, it is not clear to what extent the information requested by Section 53.52...is required in support of Tariff No. 16. Presently, the company does not have propane shipping customers who will see a rate increase...” (Pa. P.U.C. No. 16 Cover Letter, dated June 11, 2014).

The difficulty, of course, is that SPLP is not reinstating any service it previously offered. Mariner East is a reversal of the transportation service SPLP previously provided, e.g. it involves moving Highly Volatile Liquids propane or ethane from west to east, rather than moving conventional petroleum products from east to west as previously carried out by SPLP and its predecessors. Whether SPLP’s incomplete rate filing will be accepted by the Commission is therefore an unknown at this time, and the filing itself cannot add to its Petition under M.P.C. §619 in any way.

G. M.P.C. §619 authorizes the Commission to substitute its judgment for municipal zoning *only* when there is a broad public interest to protect.

The centrality of zoning and land use regulation to the proper functioning of local government has most recently been reaffirmed by a plurality of the Pennsylvania Supreme Court in the case of *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013). *Robinson Twp.* reemphasizes

the importance of local zoning and its relationship to proper implementation of the Environmental Rights Amendment, Article I, Section 27, to Pennsylvania's Constitution. The plurality opinion quotes from the Commonwealth Court decision below:

In enjoining Section 3304, the Commonwealth Court held that the provision violated the citizens' due process rights by requiring local governments to amend their existing zoning ordinances without regard for basic zoning principles and, thereby, failing to protect interests of property owners from harm and altering the character of neighborhoods. *Robinson Twp.*, 52 A.3d at 484–85. The court explained that zoning laws protect landowners' enjoyment of their property by categorizing uses, designating compatible uses to the same district, and generally excluding incompatible uses from districts, with limited exceptions that do not affect the comprehensive land use scheme of the community. Local government, according to the court, relies on public input to produce a rational plan of development, under which “each piece of property pays, in the form of reasonable regulation of its use, for the protection that the plan gives to all property lying within the boundaries of the plan.” *Id.* at 482. The court stated that the goal of zoning is to preserve the rights of property owners within the constraints of the maxim “use [your] own property as not to injure your neighbors.” *Id.* (quoting *In re Realen Valley Forge Greenes Assocs.*, 576 Pa. 115, 838 A.2d 718, 728 (2003)).

Id. at 931.

As the Court noted in *Robinson Twp.*, “[T]o achieve recognition of the environmental rights enumerated in the first clause of Section 27 as ‘inviolable’ necessarily implies that economic development cannot take place at the expense of an unreasonable degradation of the environment.” 83 A.3d at 954. Exempting a significant project from the municipal zoning power is an extraordinary and rare occurrence under our state Constitution and laws.

M.P.C. §619 authorizes this Commission to override local zoning only where it is necessary to achieve a broader public good through the provision of public utility service. Many other kinds of enterprises are regulated by the state, for example: hospitals, clinics, funeral homes, enterprises that handle radioactive materials, and others. The many state boards and agencies engaged in these regulatory activities have no comparable power to this Commission's authority to override