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June 5, 2018

Via Federal Express No: 772402993541

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

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

Dear Secretary Chiavetta:

This office represents West Goshen Township in the above referenced matter pending before the Commission.

Enclosed for filing is West Goshen Township's Post Hearing Brief, copies of which were served upon the individuals listed below and in the enclosed Certificate of Service in accordance with 52 Pa. Code § 1.54.

If you have any questions or concerns, please feel free to contact me.

Respectfully yours,

Richard C. Sokorai

RCS:jmg

Enclosure

cc: Honorable Elizabeth H. Barnes (via email & U.S. Mail)
Thomas J. Sniscak, Esquire (via email & U.S. Mail)
Kevin McKeon, Esquire (via email & U.S. Mail)
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David J. Brooman, Esquire (via email)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**WEST GOSHEN TOWNSHIP'S POST-HEARING BRIEF
IN SUPPORT OF ITS SECOND AMENDED COMPLAINT**

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- Com. ex rel. Kane v. UPMC*, 129 A.3d 441 (Pa. 2015)
- Dinniman v. Sunoco Pipeline, L.P.*, Pa.P.U.C., C-2018-3001451 (May 24, 2018)
- Doud v. Hines*, 112 A. 528 (Pa. 1921)
- Lackner v. Glosser*, 892 A.2d 21 (Pa. Super. Ct. 2006)
- LJL Transp. v. Pilot Air Freight*, 962 A.2d 639 (Pa. 2009)
- Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100 (Pa. 1999)
- Mastroni-Mucker v. Allstate Insurance Company*, 976 A.2d 510 (Pa. Super. Ct. 2009)
- Med. Shoppe, Ltd. v. Wayne Mem'l Hosp.*, 866 A.2d 455 (Pa. Commw. Ct. 2005)
- Murphy v. Duquesne Univ. Of The Holy Ghost*, 777 A.2d 418 (Pa. 2001)
- Pritchard v. Wick*, 178 A.2d 725 (Pa. 1962)
- Reott v. Asia Trend, Inc.*, 55 A.3d 1088 (Pa. 2012)
- Sabella v. Appalachian Dev. Corp.*, 103 A.3d 83 (Pa. Super. Ct. 2014)
- Schoble v. Schoble*, 37 A.2d 604 (Pa. 1944)
- Shenango Twp. Bd. of Sup'rs v. Pa. P.U.C.*, 686 A.2d 910 (Pa. Commw. Ct. 1996)

Statutes and Regulations

- 1 Pa.C.S.A. § 1924
66 Pa.C.S.A. § 507
66 Pa.C.S.A. § 508
52 Pa. Code § 5.231

Secondary Sources

- Bryan A. Garner, *See Shall We Abandon Shall?*, ABA Journal, Aug. 2012

Complainant, West Goshen Township, through its attorneys, High Swartz LLP, respectfully submits the following Brief in support of the claims set forth in its Second Amended Formal Complaint and the evidence presented before the Honorable Elizabeth Barnes at the hearing in the above captioned matter on April 25 and 26, 2018.

I. CONCISE STATEMENT OF CASE

A. Introductory Facts

On or about February 17, 2017, West Goshen Township (“Township” or “WGT”) filed a Formal Complaint commencing this action against Respondent, Sunoco Pipeline, L.P. (“Sunoco” or “SPLP”). The Township’s Complaint seeks enforcement of a Settlement Agreement between the parties that was certified by the Secretary of the Commission as effective on June 15, 2015 (“Settlement Agreement”).¹ The Settlement Agreement resolved two prior actions before the Public Utility Commission (“Commission” or “PUC”) pertaining to SPLP’s Mariner East Pipeline project (“ME1,” “ME2,” and “ME2X” all refer to pipelines that are part of the Mariner East Pipeline project). *See* Township Exhibit “4.” At the heart of this dispute is the contractual promise by SPLP not to locate any above ground facilities within the Township except (1) at its existing pump station site and (2) a promised block valve (“Valve” or “Valve 344”) for the ME2 pipeline on a defined area within the Township identified by the parties as the SPLP Additional Acreage, and unless unable to do so due to engineering constraints, in a specific area of the SPLP Additional Acreage known as the SPLP Use Area.

Originally, this dispute involved SPLP attempting to put the relevant Valve on a different area in the Township on the opposite side of Route 202 on parcel known as the Janiec 2 Tract.

¹ The Township has amended its Complaint twice in this matter. The Township’s submitted its First Amended Complaint in March 2017, which removed a count relating to the automation of a valve on the ME1 pipeline which SPLP automated after the filing of the Complaint. The Township submitted its Second Amended Complaint in April 2018 to clarify the remaining relief requested in this matter. Unless otherwise noted, references herein to the Township’s Complaint shall mean the Second Amended Complaint.

When the Township learned that SPLP began preparations to install the Valve on the Janiec 2 Tract, it filed a Petition for Interim Emergency Order (“Injunction”), to stop construction of the offending Valve, which was granted in July 2017 and affirmed by the Commission in October 2017. Then, in a November 2017 Petition to Rescind or Discontinue the Injunction, SPLP alleged that unilaterally and without notice or review by the Township, decided to entirely eliminate the Valve from the Township. On January 9, 2018, the Commission entered an Opinion and Order denying SPLP’s request to rescind the Injunction, but granting SPLP’s request to discontinue the Injunction, deciding that the elimination of the Valve from the Janiec 2 Tract rendered the Injunction moot. Thereafter, in response to the Township’s Petition for Reconsideration of the January 9, 2018 Order, SPLP for the first time advised that it intends to install an automated valve 2.5 miles upstream of the SPLP Use Area, with the next valve being 5.9 miles downstream of the SPLP Use Area at Middletown Road.

Despite SPLP’s representations, there remains no Order preventing SPLP from changing its plans again to locate the Valve on Janiec 2 or otherwise install above-ground facilities elsewhere in the Township. Therefore, the Township’s Complaint now seeks to enforce the terms of the Settlement Agreement and obtain a Commission order:

1. declaring that SPLP may not install a valve or other above ground facilities on the Janiec 2 Tract or elsewhere in the Township except for on the site of the existing pump station and the Valve on the SPLP Additional Acreage;
2. requiring SPLP to install the Valve on the SPLP Additional Acreage as promised in the Agreement; and
3. requiring SPLP to provide the Township’s pipeline safety expert with its updated plans and supporting documents for an updated safety evaluation per the Settlement Agreement.

See Township’s Second Amended Complaint.

C. Relevant Facts

1. Background of the Settlement Agreement

In 2014, the Township and SPLP were on opposite sides of certain disputes regarding a SPLP zoning application and a PUC petition related to SPLP's Mariner East project. *See* Notes of Testimony from 7/18/17 hearing ("NT-7/18/17") at 47-53, 57-58, 117-119.² After consultation with counsel and Richard Kuprewicz ("Kuprewicz") (the Township's pipeline safety expert), the Township decided to explore a settlement with SPLP in order to address its largest concerns with the Mariner East project: assuring safety and limiting any new SPLP facilities to an area on or contiguous to SPLP's existing pump station, on a piece of property referred to in this matter as the Janiec 1 Tract (on the east side of Rt 202). NT-7/18/17 at 137-138. The Township residents were focused on keeping the facilities contained to one area. NT-7/18/17 at 139.

Throughout the settlement negotiations, the Township conveyed its concerns regarding the safety of the ME1 pipeline and its desire to maintain all of SPLP's facilities in the Township on a single site. NT-7/18/17 at 55, 59; Township Exhibit 3. SPLP represented to the Township that all above-ground facilities for ME2, except for one valve station, would be located within the footprint of SPLP's existing pump station (NT-7/18/17 at 59), except for a temporary lay-down area adjacent to the existing pump station on the Janiec 1 Tract known as the "SPLP Additional Acreage" (NT-7/18/17 at 59-60), with the valve station on a small piece of the SPLP Additional Acreage known as the "SPLP Use Area" (NT-7/18/17 at 164-166).

During the settlement negotiations, SPLP's counsel explained several times that SPLP had to characterize its covenants in the Agreement as statements of "fact" for fear that other

² The Township incorporated the testimony from the July 18, 2017 hearing into its case at the hearing on the merits in this matter on April 25 and 26, 2018. A copy of NT-7/18/17 was included for reference as Township Exhibit 21.

townships would demand similar concessions. NT-7/18/17 at 162-163. This concept was reiterated in a February 4, 2015 email. NT-7/18/17 at 161-163; Township Exhibit 15.

SPLP made a PowerPoint presentation for the Township Board of Supervisors explaining the location of the valve at the SPLP Use Area. NT-7/18/17 at 55, 59; Township Exhibit 3. SPLP's project engineer, Matthew Gordon ("Gordon"), was the person at SPLP that actually selected the SPLP Use Area for use in the Agreement. NT-7/18/17 at 222. SPLP subsequently reduced the SPLP Use Area to a legal description. NT-7/18/17 at 167. SPLP represented that the location of the valve station might change, but within the confines of the SPLP Use Area as set forth in the term sheet identified as Township Exhibit 17. NT-7/18/17 at 172-173; Township Exhibit 17.

The Township subsequently learned that despite these settlement discussions, and representations that there were no plans for any above ground facilities elsewhere in the Township, SPLP actually had an existing plan to install Valve 344 the Janiec 2 Tract, rather than on the SPLP Use Area as promised in the Settlement Agreement. Throughout the settlement negotiations, there was never discussion about the Janiec 2 Tract, as the number one tenet of the Township was that there would be no more above ground facilities, but if there needed to be a new valve, it would be located on or contiguous to SPLP's existing pump station. NT-7/18/17 at 58, 173. Indeed, the Agreement specifically provided SPLP had no other plans to locate above ground facilities elsewhere in the Township. Township Exhibit 4, at Section II.A.3.

After months of negotiations, the Township and SPLP finalized the Settlement Agreement, which SPLP signed in April 2015, the Township Board of Supervisors approved in May 2015, and the Commission approved in June 2015. NT-7/18/17 at 54- 55, 222; Township Exhibit 4.

2. The Settlement Agreement

The pertinent provisions of the Settlement Agreement relied upon in the Township's Complaint provide as follows:

II. Pertinent Information Provided by SPLP

A. SPLP has provided WGT and WGT's consulting expert with the following information ("SPLP Information"). WGT and CCWGT expressly rely on 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 SPLP in WGT 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 SPLP'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, SPLP intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If due to engineering constraints, SPLP is unable to construct the valve station in the SPLP Use Area, SPLP will notify WGT. Nothing in this Settlement Agreement constitutes an authorization or agreement for SPLP 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, SPLP has no plan or intention to construct any additional above-ground permanent utility facilities in WGT except as otherwise expressly set forth in this Agreement.

* * *

IV. The Parties Promises, Covenants and Agreements

A. Based on the SPLP Information recited in Section II of this Agreement...

* * *

2. WGT covenants and agrees as follows:

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 may have 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.

See Township Exhibit 4.

From these provisions were the key promises in the Settlement Agreement that are relevant to this action:

- (a) All above-ground facilities will be maintained within the present active site, except the new valve station (Section II.A.2);
- (b) A remote operated valve station will be constructed and maintained on SPLP’s adjacent 4.42 acre property known as the “SPLP Additional Acreage” (Section II.A.2);
- (c) The proposed location of such valve station on the SPLP Additional Acreage is the SPLP Use Area (Section II.A.2);
- (d) If due to engineering constraints, SPLP is unable to construct the valve station in the SPLP Use Area, SPLP will notify WGT (Section II.A.2);
- (e) SPLP needs to obtain permission to adjust the location of the promised pump station onto other areas of the SPLP Additional Acreage beyond the SPLP Use Area (Section II.A.2);
- (f) As of the date of execution of this Agreement, SPLP has no plan or intention to construct any additional above-ground permanent utility

facilities in WGT except as otherwise expressly set forth in this Agreement (II.A.3);

- (g) SPLP will share its plans with respect to ME2 with the Township's safety expert for a safety review (IV.A.2.e).

These promises were central to the Township's understanding and acceptance of the Agreement. *See e.g.* NT-7/18/17 at 60-63, 139-141; Township Exhibit 2.

3. SPLP's Breaches of Contractual Obligations

- (a) *SPLP planned to locate the valve at Janiec 2 even at the time it entered into the Settlement Agreement.*

Notwithstanding the clear promise by SPLP that no other above ground facilities would go anywhere in the Township, SPLP clearly planned to put the Valve on Janiec 2, and began construction. SPLP's contention that it could put above-ground facilities wherever it wants in the Township as long as their were "engineering constraints" on the SPLP Use Area is not supported by a plain reading of the contract or the record. There is currently no order in place preventing SPLP from again unilaterally deciding to locate such facilities elsewhere in the Township.

Gordon provided oversight of the technical, design and construction aspects of the Mariner East project and was provided drafts and the final version of the Agreement and its associated exhibits. NT-7/18/17 at 221-222. Gordon was responsible for implementing parts of the Agreement. NT-7/18/17 at 221. By March of 2015, SPLP had done Google Earth views of the site and based on that alone decided not to do any further drawings, mapping, computer models or development of a draft plan for the Valve on the SPLP Use Area. NT-7/18/17 at 224-226, 230-231. Despite deciding to locate the Valve on Janiec 2 by March 2015, SPLP did not provide the Township notice of any alternate plans, and continued to promise the Township that

it would put the Valve on the SPLP Use Area in the settlement negotiations and ultimately in the Settlement Agreement. NT-7/18/17 at 225-229.

(b) *SPLP has not established that it is unable to put the Valve on the SPLP Use Area due to engineering constraints and has not even attempted a plan to locate it on the SPLP Additional Acreage.*

The clear promise by SPLP was that the Valve would be installed on the SPLP Additional Acreage, and unless unable to do so due to engineering constraints, it would be located specifically on the SPLP Use Area. In these proceedings, SPLP has chosen to focus its efforts solely on whether engineering constraints existed on the SPLP Use Area to support its managerial discretion to put the Valve wherever it chooses. While this is a fundamental misunderstanding by SPLP of the terms of the Settlement Agreement, and fatal to its defense, what is evident is that SPLP has not even established that it cannot install the Valve on the SPLP Use Area.

At the July 2017 hearing on the Injunction, SPLP failed to establish that it was unable to install the Valve on the SPLP Use Area due to engineering constraints. At that time, SPLP relied solely on Gordon and SPLP could not meet its burden. Gordon testified that SPLP's design engineer never told him that drilling could not be done in the SPLP Use Area and he had no report to that effect. NT-7/18/17 at 244-245. SPLP did not provide to the Township any computer data, written analysis, or other engineering report to demonstrate that it is unable to construct the Valve on the SPLP Use Area, only that it is preferable to use the Janiec 2 Tract. SPLP did not produce any plans, drawings or diagrams to depict the construction "challenges" in placing the Valve on the SPLP Use Area as it alleges. NT-7/18/17 at 223-224. SPLP, at best, established that given a choice of locations for the Valve, the Janiec 2 Tract is better for SPLP; however, this ignored the bargained-for promise to put the valve station on the SPLP Use Area unless unable to do so. Gordon did not testify that SPLP was unable to construct the Valve on

the SPLP Use Area, only that: (1) from an engineering standpoint it would not be “prudent” to site the Valve on the SPLP Use Area, because it’s extremely difficult and “potentially unsafe” (NT-7/18/17 at 194); (2) he noted challenges in constructability (NT-7/18/17 at 223); and, (3) he does not know whether “it’s practical” (NT-7/18/17 at 249). Gordon testified that SPLP attempted to site the Valve on the SPLP Use Area per the Agreement (NT-7/18/17 at pp. 183-184) and even that SPLP was “running parallel paths” (NT-7/18/17 at p. 205), but this assertion was belied by his subsequent testimony and the documentary evidence. There were no meeting minutes, emails or other documents to demonstrate any attempt to use the SPLP Use Area as promised. NT-7/18/17 at pp. 231-232. Now, after months of discovery and the testimony of multiple SPLP witnesses, SPLP has not come any closer to meeting its burden.

Despite the complete lack of evidence in any documents produced by SPLP to support its attempts to locate the Valve on the SPLP Use Area or the SPLP Additional Acreage, SPLP now cites a number of factors that it characterizes as engineering constraints, favoring its managerial discretion over its contractual promises, including: the geology in the area of the SPLP Use Area and under Route 202, the difficulties in open cutting along Boot Road, and the steep curve in the pipeline that would be required if it attempted to HDD³ from the SPLP Use Area, under Route 202, and back up at Janiec 2.

(c) *SPLP has not established that there is a need to HDD from the SPLP Additional Acreage to Janiec 2, or that drilling or pipeline limitations prevent an HDD from the SPLP Additional Acreage under and through Janiec 2.*

Although there is no evidence in the record that SPLP ever considered such issues in its planning, SPLP offered the testimony of Gordon, Samuel T. Ariaratnam, P.E. and Christopher D. Antoni, P.E., primarily to illuminate the pitfalls of drilling from the SPLP Use Area, under Route

³ Horizontal directional drill.

202, to the Janiec 2 Tract, in order to install the Valve. However, the entire premise of their testimony is flawed, because, as explained by Kuprewicz, there is no need to arc from the surface of the SPLP Use Area back up to the Janiec 2 Tract, other than SPLP's desire to make it appear that engineering constraints are dictating their actions. Township Statement No. 8 at 5:11-5:18. SPLP has not attempted to make reasonable adjustments to its overall plan to accommodate the placement of the Valve on the SPLP Use Area. Township Statement No. 8 at 5:11-5:18. The relevant testimony from SPLP's experts on this subject is addressed below.

SPLP called Samuel T. Ariaratnam, P.E. ("Ariaratnam"), a professor at Arizona State University, for the proposition that SPLP's decisions regarding the Valve (i.e. eliminating the Valve from the Township) and its use of HDD are "reasonable" and best left to SPLP's "managerial discretion." However, Ariaratnam offered other opinions about HDD in the area of Route 202. SPLP Statement No. 6 at 1:5-16. Ariaratnam testified that he did not just focus his analysis on the area around the SPLP Use Area, but instead looked at the entire project and the best way to accomplish it; however, he then admitted that he just looked to see if the HDD path "seemed reasonable," that he did not explore alternate HDD paths, did not do any calculations, did not have any notes, and did not even analyze the entire SPLP Additional Acreage, as opposed to just SPLP Use Area. Notes of Testimony from April 26, 2018 ("NT-4/26/18") at 430:6-438:18.⁴

SPLP called Christopher D. Antoni, P.E. ("Antoni"), for the proposition that SPLP cannot reasonably drill from the SPLP Use Area to the Janiec 2 Tract. SPLP Statement No. 5 at

⁴ Ariaratnam does not really offer independent analysis, but rather simply adopts the opinions of other SPLP witnesses. For example, with respect to using HDD from Phoenixville Pike to the SPLP Use Area, Ariaratnam does not offer independent opinion or analysis but incorrectly assumes that the Township concedes it cannot be done and relies on Gordon's Analysis (SPLP Statement No. 6 at 4:19-5:6); with respect to open cut trenching to locate the Valve on the SPLP Use Area, Ariaratnam relies on Cotter's analysis (SPLP Statement No. 6 at 5:8-13); with respect to arcing from the SPLP Use Area to Janiec 2, Ariaratnam relies on Antoni's analysis (SPLP Statement No. 6 at 5:15-6:13). Ariaratnam concedes that the minimum radius of the HDD is actually 1000 feet, but that he does recommend going to the minimum. SPLP Statement No. 6 at 6:7-10.

1:17-23. In his rejoinder testimony, Antoni opined that not surfacing at Janiec 2 would extend the “Green Hill Road drill segment length from 3,400 to 4,600 feet which would increase the risk of an inadvertent return under Rt. 202.” NT-4/26/18 at 538:23-539:21. However, Gordon has testified that drill lengths for 20” pipelines can exceed a mile and has even seen them approach two miles. NT-4/26/18 at 491:7-23. Even Antoni admitted that is that not a calculable risk, but just a factor to consider among many. NT-4/26/18 at 556:15-557:16.

While SPLP has focused on the standard design guideline for planning an HDD at a minimum curvature of 2,000 for a 20” pipe, Antoni acknowledged that this is for planning only and a curvature radius as low as a 1,000 may be used, but that he would not design the pipe to the “minimum radius” to attempt to drill from the SPLP Use Area to Janiec 2. SPLP Statement No. 5 at 2:5-7:4; NT-4/26/18 552:8-553-9.

Although not included in his prepared testimony outline, or in his rejoinder testimony outline, Antoni added at the hearing that he was concerned the higher elevation at the SPLP Use Area would cause the drill path to come closer to Route 202 if drilling from the SPLP Use Area side than it would drilling from the Janiec 2 side, which has a lower elevation. NT-4/26/18 at 539:22-541:17. However, in the “copious” amounts of documents he reviewed, and in his review of Gordon’s testimony, he saw no information that SPLP ever even considered such a topography change. NT-4/26/18 at 541:24-542:12. He could not quantify or estimate how much closer the path would be, nor produce any calculations that he did to support this concern. NT-4/26/18 at 545:1-25. Also, even though not addressed in his written testimony, he maintained that he also analyzed the remainder to the SPLP Additional Acreage for elevation and drill

alignments, but he could produce no drawings or calculations to show it was analyzed.⁵ NT-4/26/18 at 546:7-549:21.

In addition, while not included in his prepared testimony outline, or in his rejoinder testimony outline, Antoni added on cross examination that the additional length of the pipeline needed to reach the SPLP Use Area would require SPLP to fit more pipe into the staging area at Jaclyn Road to the east, potentially resulting in space limitations at the pullback area, “potentially” requiring SPLP to acquire more property rights; however, Antoni has no calculations for these assertions, which he did not analyze in his written testimony, and he could not even state whether the parking lot near the pullback area was part of the staging area or not. NT-4/26/18 at 543:19-544:24; 559:22-560-17; 562:13-563:3; 568:6-570:17; 571:18-572:1.

Further, SPLP never provided any documents showing an attempt to re-align the drill profile from Ship Road to make the SPLP Additional Acreage work for the Valve. NT-4/26/18 at 491:21-492:16.

(d) The geology at the SPLP Use Area and under Route 202 has not been established as a bar to locating the Valve as required by the Settlement Agreement.

SPLP maintained that because the geology under Route 202 was fractured sandstone, it could not drill under Route 202 from the SPLP Use Area. However, the record does not support this contention.

The Township called Toby Kessler (“Kessler”), a licensed professional geologist. Township Statement No. 5 at 1:1-8. Kessler reviewed the tests of the earth in the vicinity of Route 202, along with over 15,000 documents produced by SPLP. Township Statement No. 5 at

⁵ It should also be noted that no SPLP witness considered or discussed the potential of using “Flex-bore” to minimize the risk of inadvertent returns under Route 202, as SPLP intends to use in other areas of Chester County. See ALJ Barnes’ May 24, 2018 Interim Emergency Order and Certification of Material Question in *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Pennsylvania Public Utility Commission, C-2018-3001451, at pp. 9, 12.

2:16-3:9; Notes of Testimony from April 25, 2018 (“NT-4/25/18”) at 301:6-302:25. Kessler found that the geology under Route 202 is not fractured sandstone as maintained by Gordon, but in fact was silty sand, over fractured bedrock, over intact bedrock, with the bedrock encountered in 3 of 6 borings at depths of 14 feet to 65 feet. Township Statement No. 5 at 4:1-4:19. More importantly, he noted that there was absolutely no evidence in any of the SPLP documents that SPLP considered the geology under Route 202 in evaluating whether the Valve could be installed on the SPLP Use Area. *Id.* He also noted that there were no borings or studies of the geology in the SPLP Use Area. NT-4/25/18 at 298:3-11; 400:3-5.

SPLP called Douglas J. Hess, P.G. (“Hess”), a geologist, for the proposition that despite Gordon’s misidentification of the geology in the area of Route 202, the fractured nature of the bedrock would not provide cover at the “industry preferred minimum 20 feet of competent bedrock” to avoid a “higher risk” of an inadvertent return in drilling “between the SPLP Use Area and the Janiec 2 parcel,” and that the “two arcs” created by connecting these two sites would double the risk of an inadvertent return. SPLP Statement No. 4 at 4:7-23; NT-4/25/18 at 379:22-380:12. However, in cross examination Hess acknowledged that the current HDD plan under Route 202, which bypasses the SPLP Use Area, does not maintain a depth that is consistently 20 feet below bedrock under Route 202, and that there is no standard depth that will eliminate any risk of inadvertent returns. NT-4/25/18 at 398:15-22; 400:15-20. Hess also admitted that he did not do any studies of the geology beyond the borings originally performed by Tetra Tech (NT-4/25/18 at 385:20-386:8); did not direct or conduct any other studies such as ultrasonic studies to determine the specific contours of the relevant bedrock (NT-4/25/18 at 386:9-16); did not review any documents from SPLP about how geology would impact their

HDD process (NT-4/25/18 at 386:17-21); and saw no information about any mitigation efforts that were considered such as grouting (or flex-bore) (NT-4/25/18 at 386:22-387:10).

Despite his assertions about the importance of maintaining 20 feet of bedrock over the HDD path, Hess admitted that he has worked on other areas of ME2 line where the pipeline runs along the top of bedrock (NT-4/25/18 at 388:23-389:15) and that he has no independent knowledge, nor has he seen in writing, any guideline calling for “preferred depths” of 20 feet below the bedrock surface for performing HDD (NT-4/25/18 at 389:24-390:8). Hess also acknowledged that the risk of inadvertent returns impacting Route 202 is the same whether drilling from the SPLP Additional Acreage or Janiec 2 (rather than an arc connecting the two). NT-4/25/18 at 391:12-398:14.

The evidence establishes that SPLP simply did not do the requisite analysis to even reasonably attempt to locate the Valve on the SPLP Use Area. Hess himself acknowledged that a geological baseline study could be helpful to reduce the risk of an inadvertent return in order to HDD to or from the SPLP Use Area. NT-4/25/18 at 400:8-14. In fact, one of SPLP’s other experts, Ariaratnum, tried to deny that the geological sampling in the area of Route 202 was limited in any way, adding that it was “excellent,” but then admitted that he previously opined that it was in fact limited. NT-4/26/18 at 442:19-444:9. Ariaratnam also later admitted that a geophysical evaluation, which was not done by SPLP, could aid in determining the likelihood of an inadvertent return. NT-4/26/18 at 445:9-446:12.

(e) *SPLP failed to establish that an inability to obtain road detours prevent open-cut and the installation of the Valve on the SPLP Use Area.*

SPLP has maintained that even if it could drill beneath Route 202 from the SPLP Additional Acreage to the east, it cannot HDD into the SPLP Additional Acreage from the west, and could not open-cut boot road because of existing utilities and the inability to get a PennDOT

permit.⁶ However, the testimony and evidence adduced by SPLP simply do not establish these contentions.

The Township called Joseph F. Carlin, P.E. (“Carlin”), a licensed professional engineer and senior transportation engineer, who specializes in, among other things, traffic control plans related to construction and utility projects. Township Statement No. 7 at 1:1-2:4. Carlin reviewed over 15,000 documents produced by SPLP in discovery and found no evidence that the inability to detour traffic or get permits for open-cut roadwork impacted SPLP’s decisions regarding HDD or open-cut in any way. Township Statement No. 7 at 2:11-3:6, 5:3-6. Nor did Carlin see any evidence that SPLP even asked PennDOT for an informal meeting to discuss the idea. Township Statement No. 7 at 5:3-6; Township Statement No. 10 at 1:13-17. SPLP never provided a plan for an open cut design for Carlin or anyone to review. NT-4/25/18 at 308:19-24.

Carlin agrees with Sunoco that a detour would likely be required to perform open-cut in lieu of HDD along Boot Road. Township Statement No. 7 at 3:7-22. He also described several detour routes that are available to SPLP to open cut along Boot Road, and PennDOT has approved similar detours. Township Statement No. 7 at 3:23-5:2. Carlin compared the costs of open-cut versus the cost of HDD and in his professional opinion, agreed with the conclusion of SPLP’s project manager that open-cut would be significantly less than HDD. Township Statement No. 7 at 5:7-6:13. Carlin estimates that an open-cut from Boot Road to the SPLP Use Area is approximately 3800 linear feet, and that Boot Road would only be closed for approximately 20 to 25 days if the open-cut method of installation were used. NT-4/25/18 at 309:16-310:14; 307:17-308:5.

⁶ SPLP did not produce evidence that it cannot HDD from the west into the SPLP Additional Acreage, merely contending that the Township concedes this since it did not offer expert testimony on the subject. This is incorrect, the Township does not concede this and it is the burden of SPLP to establish that it is unable to do so, a burden it simply has not met.

SPLP called Richard J. Cotter, P.E. (“Cotter”), a senior engineer and consultant for SPLP, who was responsible for traffic control plans related to the ME2 project, for the proposition that the cost of open-cut along Boot Road would make open-cut “infeasible” (SPLP Statement No. 3 at 2:19-3:3); that PennDOT would not approve a detour as it would treat a fuel pipeline differently than other utilities (SPLP Statement No. 3 at 3:7-5:2); that he has issues with the possible detours identified by Carlin (SPLP Statement No. 3 at 5:3-7:4); and that PennDOT never indicated that it would approve a detour (SPLP Statement No. 3 at 2:8-10).

However, Cotter confirmed that the cost of open-cut in this project would actually be substantially lower than HDD, even with challenges of utility conflicts and detours that he cites. SPLP Statement No. 3 at 8:19-9:5; NT-4/25/18 at 328:25-329:12, 368:16-369:5. Cotter further admitted that open-cut is possible, just not the preferred method in his opinion (NT-4/25/18 at 356:18-358:3); that SPLP has not done an in-depth analysis to determine how existing utilities would impact an open-cut installation (NT-4/25/18 at 358:4-24); and that SPLP never applied for an highway occupancy permit HOP for a possible open-cut along Boot Road, nor ever even discussed the idea of open-cut with PennDOT (NT-4/25/18 at 356:5-11, 362:16-24).

With respect to any contention by Cotter that PennDOT would treat SPLP less favorably than other utilities, Carlin noted that under PennDOT regulations, such as 67 Pa. Code § 459.1, it treats all utilities equally. Township Statement No. 10 at 2:6-16.

(f) SPLP has unilaterally removed the promised Valve from the Township altogether and it will negatively impact the Township.

Notwithstanding SPLP’s clear promise to put a Valve on the SPLP Additional Acreage, SPLP has now simply completely removed any valve in the Township from its plans. There is no support for its position that its “managerial discretion” overrides its contractual promises.

Further, SPLP's "analysis" did not lead to the decision to remove the Valve, but merely attempts to justify it, all the while having negative impacts on the Township.

As explained by Gordon, the new location for the automated valve was selected simply because there was already a manual valve planned at the same location. NT-4/26/18 at 484:11-25. While SPLP maintains that a re-evaluation in 2017 led them to conclude that the Valve was not needed in the Township, neither Gordon nor SPLP were able to produce any documents related to its alleged late-2017 "re-evaluation," except a computer generated "release assessment" dated March 1, 2018, months after its decision. NT-4/26/18 at 470:20-474:18. There is no indication in any evidence submitted by SPLP that any analysis was done at all, let alone a "detailed review" as discussed by SPLP expert witness, Patrick Vieth ("Vieth"), in selecting the new valve site. Township Statement No. 8 at 5:4-7. Vieth confirmed that the Stantec Report analysis was not performed to locate the best spot to put the Valve, but rather, to justify a decision that was already made by SPLP to automate the Old Lincoln Highway valve instead, or to show that it was a "viable" option. NT-4/26/18 at 588:13-18; 589:20-590:16. Further, the benefits of having both a valve in the Township and automating the Old Lincoln Highway valve, as opposed to automating the Old Lincoln Highway valve in lieu of the Township Valve, was not analyzed by any SPLP witness.

The Township's safety expert, Richard Kuprewicz, explained that remotely-operated block valves are safety mechanisms for pipelines such as ME2, as they allow the pipeline operator to remotely close-off the pipeline, usually from a control room, in the event of a rupture or other catastrophic event, and that while there are no regulations requiring that block valves be remotely-operated, it is a prudent safety measure for pipelines transporting HVLs.⁷ Township Statement No. 1 at 4:4-9. Even Gordon testified that the purpose of the Valve is to isolate a

⁷ SPLP chose not to cross-examine Kuprewicz regarding his testimony.

segment of a pipeline quickly in the event of a release and minimize the amount of product that can escape. NT-7/18/17 at 194-195; NT-4/26/18 at 479:19-481:9.

Kuprewicz also explained that ASME B31.4 Section 434.15.2(e) is a standard published by The American Society of Mechanical Engineers entitled “Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids that provides: “In order to facilitate operational control, limit the duration of an outage, and to expedite repairs, mainline block valves shall be installed at 7.5 mile (12 km) maximum spacing on piping systems transporting LPG or liquid anhydrous ammonia in industrial, commercial, and residential areas.” Township Statement No. 2 at 3:7-17. ASME B31.4, section 434.15.2(e), is not a codified federal or state regulation, but is used as an industry guideline for the construction of pipelines, such as ME2, that will be used for the transportation of hazardous liquids, such as liquefied petroleum gases (“LPGs”), which are classified as a highly volatile liquid (“HVL”) under federal pipeline safety regulations. Township Statement No. 2 at 3:19-23. The ASME B31.4 standard provides guidance but is silent on other important safety issues to be considered in determining adequate pipeline valve spacing (such as pipeline diameter, pump station location and additional safety equipment such as flares, and terrain) that could significantly affect highly populated areas in the event of a catastrophic pipeline release. Township Statement No. 2 at 3:23-4:3.

The distance between valves is a safety concern for pipelines such as ME2, because in the event of a rupture or other catastrophic event, every additional mile between valves on the proposed 20-inch diameter ME2 pipeline can result in the release of approximately an additional 1,900 barrels of HVL (there being 42 gallons per barrel). Township Statement No. 2 at 4:12-15. It is generally accepted that closer valve spacing is appropriate in more densely populated areas and SPLP has not provided a valid reason to increase the recommended distance by almost a

mile by eliminating the Valve in the Township. Township Statement No. 8 at 4:20-5:3; *see also* Gordon's testimony, NT-7/18/17 at 194-195; NT-4/26/18 at 479:19-481:9. Vieth admitted that the farther the valves are apart, the more product there is available for release it can have a larger impact on the community. NT-4/26/18 at 601:3-602:18. Gordon explained that, other than the proposed valve spacing created by eliminating the Valve in the Township, which would create an 8.4 mile space between valves, the longest valve spacing in populated areas along the Mariner East lines is only 8 miles, and usually, right around the 7.5 mile standard. NT-4/26/18 at 519:2-522:4.

Kuprewicz also explained that the remotely-operated valve in the Township would substantially reduce the risk from rupture of the 20-inch MED pipeline segment spanning the Township (Township Statement No. 8 at 3:23-4:5) and the importance can be easily demonstrated if the proper information regarding hydraulic profiles is provided by SPLP. Township Statement No. 8 at 4:5-4:19. While valves are not the primary safety mechanisms, they are extremely important when other safety mechanisms are negated, such as in the instance of the sink-holes in nearby West Whiteland Township, which increase the risk of rupture. Township Statement No. 8 at 3:20-4:5. Kuprewicz explained that the closer spacing of remotely-operated valves in populated areas directly relates to the larger amount of HVL that can be released with longer valve spacing. Township Statement No. 8 at 3:5-3:23.

SPLP called Vieth for the proposition that the 7.5 mile maximum valve spacing in ASME B31.4 (434.15.2) is not incorporated in federal or state law or regulations, the spacing goes generally to operations instead of safety, and that the results from a computer "release assessment" performed by Stantec Engineering (Stantec was not called to testify) indicated that there would be minimal changes in the lower flammability limit ("LFL") with the Valve located

in the Township versus automating an upstream valve as now is planned by SPLP. SPLP Statement No. 2 at 2:18-6:15. However, the Stantec Report focused on only “dispersion modeling,” or stated another way, determining the LFL, and did not focus on other dynamics unique to HVLs, such as their ability to flow uphill in the event of a rupture. NT-4/26/18 at 590:17-591:14. Further, the LFL is a metric established by the U.S. Environmental Protection Agency, which is an environmental agency, not a safety organization. NT-4/26/18 at 591:11-25.

Kuprewicz reviewed the Stantec Report and the variables used in the report are inconsistent with previous confidential information provided by SPLP in connection with his prior safety analyses, including lower flow rates and different hydraulic profiles. Township Statement No. 8 at 2:8-15. In addition, the report incorrectly assumes that the system would immediately sense a pressure loss and start valve closure; however, the transient release dynamics of a rupture are such that operating pressures are not lowered immediately for reasons such as increased pump station efforts to accommodate for the loss. Township Statement No. 8 at 2:16-3:4. Kuprewicz also explained that in the event of vapor cloud ignition (i.e. an explosion) impact areas exceed LFL limits. Township Statement No. 8 at 3:14-19. Vieth admitted that the effect of HVLs expanding inside the pipe in the case of a rupture was not considered in the Stantec assessment. NT-4/26/18 at 587:4-588:12; 594:8-15. Vieth maintains that in his experience, HVL leaks are detected quickly (NT-4/26/18 at 596:8-19), but even then it takes another 100 seconds for a valve to gradually close from when the closure starts. NT-4/26/18 at 603:10-604:5.

(g) Simply deferring to SPLP’s managerial discretion is dangerous.

In addition to his testimony cited above, SPLP offered Ariaratnam as a witness with respect to its decision to not locate Valve 344 in the Township at all being reasonable and within its discretion. SPLP Statement No. 6 at 1:5-16. Ariaratnam does not offer opinions about

whether the Valve would be better for the Township if it were in the Township as promised; rather, he simply opines that the Township does not give a sufficient basis to undermine SPLP's decision, even though it is incumbent upon SPLP to establish that it is unable to meet its contractual promises. NT-4/26/18 at 429:19-25.⁸ Further, Ariaratnam offered opinions about the importance of regulatory policy to defer to the managerial discretion and decision making of utilities, but this testimony is not supported by any of Ariaratnam's identified training or education, ignores the function of the Public Utility Commission, and does not consider the contractual promises made by SPLP and relied upon by the Township. SPLP Statement No. 6 at 7:9-8:7, NT-4/26/18 at 429:3-430:5.

Simply deferring to SPLP's discretion, in lieu of considering its contractual promises, would be detrimental to the Township for the reasons outlined above. Even worse, is the impact that such deference could have on the Township in the future, should SPLP use its discretion to simply change the plan again. SPLP witnesses have maintained that there is no government regulation preventing SPLP from using any valve spacing that it wants, or from removing the planned valve at Old Lincoln Highway that is supposedly replacing the Valve that was planned in the Township. NT-4/26/18 at 482:2-3; 485:1-22. There is not even an application process to make such changes. NT-4/26/18 at 486:2-14, 486:23-487:4. Nor do the witnesses point to any permits that would be required to again move the location of the automated valve in relation to the Township. NT-4/26/18 at 428:2-429:8.

⁸ A closer review of his testimony reveals that he is not offering his own opinion on the safety of removing the Valve, as he concedes he is not an expert in that area, but rather he relies on Vieth's analysis, which in turn relies on Stantec's analysis, and in fact, upon cross-examination completely backed off from offering any opinion on the subject at all. SPLP Statement No. 6 at 6:15-7:7; NT-4/26/18 at 415:21-418:3, 428:18-429:2).

(h) *SPLP did not seek the permission of the Township to move the Valve as required by the Settlement Agreement.*

SPLP offered significant evidence to suggest that it notified the Township in a meeting on January 20, 2016 that it intended to breach the Settlement Agreement by putting the Valve on Janiec 2. Not only does the evidence fail to establish that the purported information was ever conveyed to the Township, even if SPLP did provide the information, such notice did not comply with the Settlement Agreement because SPLP did not seek permission from the Township to relocate the Valve to another location in the Township.

Gordon admitted that SPLP never approached the Township regarding an alternate arrangement to locate the Valve anywhere on the SPLP Additional Acreage, but instead, after deciding not to locate the Valve on the SPLP Use Area, unilaterally decided to put the Valve on Janiec 2. NT-4/26/18 at 499:1-501:11; Township Exhibit 4 at Paragraph II. The first time that the Township learned that SPLP had *any* plans for the Janiec 2 Tract occurred at a Board of Supervisors meeting in January 2016, when considering final approval of a long-pending land development project for an independent living facility on the Janiec 2 Tract (“Traditions Project”). NT-7/18/17 at 66, 108, 141-143. Upon finding out, the Township asked SPLP to meet.

On January 20, 2016, Township officials, including the Township Manager (Casey Lalonde or “LaLonde”) and the Township Solicitor (Kristin Camp or “Camp”), met with SPLP officials, including Gordon, to discuss SPLP’s plans for the Janiec 2 Tract and how it would impact the Traditions Project. NT-7/18/17 at 67, 143-144. At the meeting, SPLP provided the Township with a map (Township Exhibit 5) of the general layout of the ME2 pipeline and advised that it was going to use the Janiec 2 Tract for a lay-down yard and to perform HDD to reach East Goshen Township to the east and West Whiteland Township to the west. NT-7/18/17

at 67-69, 144-145. The map provided at that meeting does not depict a valve station on the Janiec 2 Tract. NT-7/18/17 at 67-68, 147. In fact, SPLP never mentioned anything at the January 2016 meeting, or before, that a valve station was planned for the Janiec 2 Tract. NT-7/18/17 at 67-68; 145-146. Camp took contemporaneous notes (Township Exhibit 18) at the meeting to make sure she understood everything that would be happening at the Janiec 2 Tract, which did not include any reference to a valve station on the Janiec 2 Tract. NT-7/18/17 at 145-150.

While Kuprewicz' assignment expanded to the ME2 project in March of 2016, for which SPLP provided confidential documents that he could not share with the Township, Kuprewicz was not aware of the relevant provisions of the Settlement Agreement (which were not within the purview of his role), did not discuss the location of the valve station with the Township, did not discuss SPLP's contractual obligations, and did not receive any explanation from SPLP that it could not put the valve station on the SPLP Use Area. NT-7/18/17 at 119, 121-127, 151-152.

In January 2017, the Township received from SPLP's engineering firm a box of plans and specifications for an erosion and sediment ("E&S") control plan, which detailed a valve on the Janiec 2 Tract. NT-7/18/17 at 69-70; Township Exhibit 6. This was the first time the Township learned of SPLP's true plan to put the valve station on the Janiec 2 Tract. NT-7/18/17 at 69-71, 173. Despite the Township's request, SPLP did not provide any explanation for siting the valve station on the Janiec 2 Tract. NT-7/18/17 at 71.

In February 2017, SPLP's engineer submitted to the Township revised E&S control plans, which included plans dated March 26, 2015, prior to the Settlement Agreement, showing a valve station on the Janiec 2 Tract. NT-7/18/17 at 72-73; Township Exhibit 13. SPLP never advised the Township that engineering constraints made it unable to put the valve station on the

SPLP Use Area. NT-7/18/17 at 65, 210-211. Gordon's testimony makes clear that SPLP's intent was to use the Janiec 2 Tract for a valve station despite its promise to the contrary in the Settlement Agreement.

At the hearing on April 25, 2018, SPLP called Donald Zoladkewicz ("Zoladkewicz"), a now retired Community Relations Representative at SPLP, for the proposition that he advised the Township of the change in location of Valve 344 to Janiec 2 in the meeting on January 20, 2016, and points to a March 21, 2016 memo that he wrote to other SPLP employees stating the same and the fact that Camp asked about screening at the pump station as supportive evidence. SPLP Statement No 7. at 1:18-3:12. However, unlike Camp, Zoladkewicz did not have any notes of the meeting to support his memo dated over two months after the meeting, nor did he send a copy of the memo, nor any other communication, to the Township confirming the substance of the meeting. NT-4/25/18 at 319:1-24, 320:10-14). Zoladkewicz also testified, contrary to Camp's clear recollection of the purpose of the meeting (i.e. the Township called the meeting to discuss the impact on a proposed land development plan), that SPLP called the meeting as a "pre-construction meeting" and discussed many details about the proposed construction. NT-4/25/18 at 325:15-327:14.

SPLP further called Ivana Wolfe ("Wolfe"), a senior account executive for an SPLP consultant, and Shannon B. Gwin ("Gwin"), a former SPLP field project manager, to state that they somehow remember the specifics of the January 20, 2016 meeting and that among all of the details discussed, SPLP advised the Township that the Valve would be on Janiec 2. SPLP Statement No. 8 at 2:1-22; SPLP Statement No. 9 at 1:22-2:20. However, Wolfe and Gwin admitted that they did not take notes at the meeting, did not prepare a memo, and did send any confirmation of what was discussed to the Township. NT-4/25/18 at 334:1-13, 338:6-11. While

Zoladkewicz, Wolfe and Gwin all try to relate their memory of a discussion of the Valve location to the discussion of “screening” at the pump station, Gwin explained that no pictures or plans of any such screening were even present at the meeting (NT-4/25/18 at 337:24-338:5), nor did Zoladkewicz reference any such materials in his testimony (SPLP Statement No. 7 at 2:13-18, NT-4/25/18 at 322:10-325:14).

(i) *SPLP has not complied with the safety review process with respect to the recent Valve changes.*

Kuprewicz’s reports of March 6, 2015 and January 6, 2017 regarding the safety of the Mariner East pipelines were based on plans that provided for the remotely operated Valve within the Township. Township Statement No. 2, p. 2:2-2:12. It was not until SPLP filed a petition to dissolve or discontinue the injunction with the PUC that Kuprewicz learned that the Valve was not going to be installed in the Township. Township Statement No. 2 at 2:13-2:20. SPLP did not provide to Kuprewicz information for his safety review related to its new plans to eliminate the automated valve in the Township, which valve has a very important safety function. Township Statement No. 8 at 1:1-2:7. SPLP continued to make changes to the system into 2018, such as lowering the drill profile, without explanation as to why it did not provide that information to Kuprewicz or the Township for a safety review. NT-4/26/18 at 478:23-479:18.

While Gordon tried to maintain that all of the necessary materials were provided to Kuprewicz for the safety review (NT-4/26/18 at 530:15-531:11), he admitted that the only materials that were provided came before SPLP re-designed the system to remove the Valve in the Township. NT-4/26/18 at 531:17-532.

II. STATEMENT OF QUESTIONS INVOLVED

- A. Does the Settlement Agreement prohibit SPLP from installing any above-ground facilities for any phase of the Mariner East Pipeline project at any location in the Township except on the SPLP Use Area without the written consent of the Township?

Suggested answer: Yes.

- B. Does the Settlement Agreement require SPLP to install a valve for the ME2 pipeline on the SPLP Additional Acreage and unless it can prove that engineering constraints make it unable to do so, specifically in the SPLP Use Area?

Suggested answer: Yes.

- C. If SPLP proves that engineering constraints make it unable to install the ME2 valve on the SPLP Use Area, does the Settlement Agreement require SPLP to confer with the Township and seek permission for an alternative location for the valve on the SPLP Additional Acreage?

Suggested answer: Yes.

- D. Did SPLP prove that engineering constraints make it unable to install the Valve on the SPLP Use Area or the SPLP Additional Acreage?

Suggested answer: No.

- E. Does the Settlement Agreement require SPLP to provide its revised plans and related engineering documents to the Township's pipeline safety expert, Richard Kuprewicz of Accufacts, Inc., for a safety review related to ME2 and ME2X?

Suggested answer: Yes.

III. SUMMARY OF ARGUMENT

The Township's Second Amended Complaint seeks to enforce the bargained-for terms of the Settlement Agreement. Pennsylvania law provides that the enforceability of settlement agreements is determined according to the principles of contract law, which requires that the judge ascertain the intent of the contracting parties. Further, the contract must be read as a whole to give effect to its true purpose and all of its provisions, rather than interpreting one provision in a manner that annuls another provision.

As set forth below, the Township's correct interpretation of the Settlement Agreement considers the language of the contract as a whole and gives effect to all of its provisions, whereas SPLP touts a reading of the contract that narrowly focuses on headings and isolated terms taken out of context from the rest of the provisions.

The Settlement Agreement contains very clear language stating that SPLP will maintain its above-ground facilities in one area of the Township and will install a Valve for the ME2 Pipeline in the Township. SPLP wants the Commission to overlook this language in favor having its meaning dictated by the heading "Pertinent Information Provided by SPLP," which precedes the section in which the language appears. However, this argument ignores the aforementioned principles of contract interpretation and the analogous principles of statutory interpretation, which states that headings are not conclusive of the meaning of the underlying language. Further, the Township offered unrefuted evidence that SPLP requested that these promises be included in the "Pertinent Information" section to avoid similar requests by other municipalities. Therefore, the law and evidence presented dictate that the above referenced language were solemn promises that SPLP cannot now disregard as factual banter.

In an attempt to escape these promises, particularly the installation of the Valve on the SPLP Additional Acreage, SPLP argues that any promise to install the Valve is conditioned upon

a lack of “engineering constraints,” as that language is used in Paragraph II.A.2. However, SPLP touts this language without reference to the other contractual language surrounding it and informing its meaning. Paragraph II.A.2. states that the engineering constraints must make SPLP unable to install the Valve on the particular spot of the SPLP Additional Acreage known as the SPLP Use Area, as opposed to the constraints making it difficult or costly or requiring a change of existing plans. Further, the subsequent provisions in the Agreement require SPLP to notify the Township of such prohibitive engineering constraints and confer with the Township on a new location for the Valve on the larger SPLP Additional Acreage. SPLP’s reading of the constraints language would make these subsequent provisions in the Agreement meaningless, a result that precluded by longstanding contract principles.

Much of the testimony presented at the hearing on this matter focused on SPLP’s defense that “engineering constraints” made it difficult to install the Valve on the SPLP Use Area as required by the Settlement Agreement. SPLP bore the burden of proof on this issue and it failed to submit sufficient evidence that engineering constraints make it unable to locate the Valve on the SPLP Use Area or the SPLP Additional Acreage. Instead, SPLP offered a host of experts to show that installing the Valve on the SPLP Use Area would be more difficult than eliminating the Valve and would require revisions to its current plans that it is not willing to investigate and make. SPLP produced no evidence showing that it made a reasonable investigation with respect to locating the Valve as required by the Settlement Agreement, nor any evidence that it attempted to confer with the Township to relocate the Valve as required by the Settlement Agreement.

The evidence presented confirmed that SPLP breached its obligations under Paragraph II.A.2. of the Settlement Agreement by (1) attempting to install the Valve on the Janiec 2 Tract,

(2) then by eliminating the Valve altogether, and (3) by never notifying the Township of the alleged “engineering constraints” or attempting to obtain permission for a new location for the Valve within the areas defined in the Settlement Agreement. SPLP must be required by the Commission to comply with its promises in the Settlement Agreement.

While Section 508 of the Public Utility Code gives the Commission authority to reform contractual agreements falling within its jurisdiction, the Commission should not exercise that authority in this case. Section 508 must be considered in the context the particular factual scenario before the Commission and with the focus on whether the disputed contractual provisions are “adverse to the public interest and the general well-being of this Commonwealth.” Reformation of the Settlement Agreement under Section 508 to allow SPLP to eliminate the Valve would be “adverse to the public interest,” by making the ME2 pipeline less safe to the Township residents than what it bargained for. Therefore, Section 508 reformation should not be exercised in this instance.

In addition to the promises in Paragraph II.A.2., the Settlement Agreement at Paragraph IV.A.2.e. contains a promise by SPLP to provide information regarding ME2 to the Township’s pipeline safety expert, Accufacts, Inc., for a safety review. While SPLP did provide its pre-2017 ME2 plans and information to Accufacts for review, SPLP then changed those plans on multiple occasions during these proceedings, ultimately eliminating the Valve in November 2017, and rendering Accufacts prior review outdated. SPLP has not provided Accufacts with updated ME2 plans and backup information in light of the changes to the Valve and valve spacing impacting the Township, thereby violating Paragraph IV.A.2.e. of the Settlement Agreement. Therefore, the Commission should order SPLP to provide this updated information to Accufacts in

accordance with the Settlement Agreement, so that the Township may get the benefit of the safety review for which it bargained.

For the reasons discussed herein, the Township seeks a Commission Order enforcing the terms of the Settlement Agreement and containing the ordering provisions set forth in the conclusion below.

IV. ARGUMENT

In this matter, the Township requests that the Commission apply the principles of contract law and the public interest and require SPLP to comply with the promises SPLP made to the Township in the Settlement Agreement. The Commission, like the Pennsylvania Courts, has a strong policy of encouraging settlements. *See* 52 Pa.Code § 5.231(a); *Mastroni-Mucker v. Allstate Insurance Company*, 976 A.2d 510, 518 (Pa. Super. Ct. 2009). Pennsylvania law is clear that enforceability of settlement agreements is determined according to principles of contract law. *Mastroni-Mucker*, 976 A.2 at 518.

“In interpreting the terms of a contract, the cardinal rule followed by courts is to ascertain the intent of the contracting parties.” *Com. ex rel. Kane v. UPMC*, 129 A.3d 441, 463 (Pa. 2015). A contract must be read as a whole to give effect to its true purpose and all of its provisions; one provision cannot be interpreted in a manner that annuls another provision. *Com. ex rel. Kane v. UPMC*, 129 A.3d at 463–64 (citing *Pritchard v. Wick*, 178 A.2d 725, 727 (Pa. 1962) and *Murphy*, 777 A.2d at 429 and *LJL Transp. v. Pilot Air Freight*, 962 A.2d 639, 648 (Pa. 2009)). “A contract’s terms are considered ambiguous ‘if they are subject to more than one reasonable interpretation when applied to a particular set of facts.’” *Com. ex rel. Kane v. UPMC*, 129 A.3d at 463 (emphasis added).

As discussed below, a review of the contract and basic principles of contract interpretation, indicates that SPLP agreed to install a Valve in the Township, on a specific tract

of land, and if it could not do so, to confer with the Township to determine a new location on a larger designated area of property within the Township. SPLP ignored these promises, attempted to install the Valve in an entirely different property in the Township, without any notice to or input from the Township. Essentially, SPLP argues that the negotiated Settlement Agreement provides that SPLP might try to install a Valve on the SPLP Use Area, but if not, they can put it where they want or nowhere at all. Such a reading of the Settlement Agreement is absurd and contrary to long-established principles of contract interpretation and the weight of the evidence.

- A. The Settlement Agreement requires SPLP to maintain its above-ground facilities in one area of the Township and to install a Valve for the ME2 Pipeline in the Township.

The Settlement Agreement at paragraph II.A.2. provides, in pertinent part:

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 SPLP’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, SPLP intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1.

Township Exhibit “4” at ¶ II.A.2. (emphasis added).

Reading the language of this provision as a whole, it clearly contains two promises: (1) that SPLP will maintain all of its above-ground facilities for all phases of the Mariner East Project at its existing site in the Township, and (2) that SPLP will construct a remote operated valve station on the SPLP Additional Acreage, within a designated location therein called the SPLP Use Area. The use of the word “will” within these provisions indicate that SPLP made a

promise to the Township regarding their subject matter. *See* Bryan A. Garner, *See Shall We Abandon Shall?*, ABA Journal, Aug. 2012 (“The advantage of will is that nobody—nobody—misuses this word in any of the myriad ways in which lawyers misuse shall. Nobody writes will instead of may or should or is entitled to. In American English, will is the ordinary verb of promise.” (emphasis added)).

- B. The principles of contract interpretation and the evidence presented by the Township establish that the aforementioned provisions were promises, not factual representations as argued by SPLP.

In order to avoid the aforementioned promises in the Agreement, SPLP argues that the heading, “Pertinent Information Provided by SPLP,” preceding Paragraphs II.A., makes the language therein mere factual representations rather than promises. However, the properly admitted, unrefuted parol evidence introduced by the Township at the hearing on this matter clearly explained that SPLP requested that these promises be set forth under the “Pertinent Information” heading in the Settlement Agreement, because the document must be filed with the Commission under 66 Pa.C.S.A. § 507, and SPLP did not want to embolden any other municipalities to make demands regarding the installation and location of its pipeline facilities. SPLP cannot be permitted on one hand to use the heading as a cloak against further requests by other municipalities, then also as a dagger against the Township to avoid its promises regarding the location of the Valve and any other facilities in the Township.

Moreover, looking to the rules of statutory construction for guidance, the headings in the Settlement Agreement should not control the meaning of the ambiguous language. *See* 1 Pa.C.S.A. § 1924; *Med. Shoppe, Ltd. v. Wayne Mem’l Hosp.*, 866 A.2d 455, 463 (Pa. Commw. Ct. 2005) (“[A] heading is to be given consideration in the limited situation where ‘the plain words of the statute are ambiguous, and, even in those cases, is not conclusive.’”). Here, it is the language of the provisions themselves, read as a whole and in conjunction with the rest of the

Agreement, that informs the meaning of the language in Paragraph II.A.2. as promises, not the headings preceding the language.⁹ Focusing narrowly on the heading to Paragraph II.A.2. as a basis for interpreting its meaning would be contrary to the aforementioned principles of contract law.

- C. The “engineering constraints” provisions in Paragraph II.A.2. cannot be read in a way that makes the other terms of the Settlement Agreement meaningless.

In an effort to find another “escape clause,” SPLP argues that the existence of “engineering constraints,” as referenced in Paragraph II.A.2., alleviates it from any further obligation to the Township with respect to the Valve. However, SPLP’s proposed interpretation fails to consider the rest of the subsequent language in the Agreement, as well as the other provisions of the Agreement as a whole. SPLP’s interpretation, that it can do what it wishes, without restraint, if it determines if engineering constraints exist, would make certain contract language meaningless. As discussed above, a contract cannot be interpreted to create such an absurd result. Instead, the meaning and intent of the “engineering constraints” language can be determined by reading the provisions surrounding that language. First, the sentence containing the “engineering constraints” language states in full:

If due to engineering constraints, SPLP is unable to construct a valve station in the SPLP Use Area, SPLP will notify WGT.

See Township Exhibit 4 at Paragraph II.A.2. So “engineering constraints” do not give SPLP an escape from any obligation relating to the Valve, but rather gives rise to SPLP’s next obligation, notifying the Township. The sentences that immediately follow this language then inform the reader why SPLP must notify the Township, stating:

⁹ For example, Paragraph IV of the Settlement Agreement is entitled “The Parties’ Promises, Covenants and Agreements,” but the language therein relies upon the language in Paragraph II.A.2.: “Based on the SPLP Information recited in Section II of this Agreement the Parties agree...” (para. IV.A.); “As long as SPLP (i) constructs and operates facilities in WGT as described in Section II above...” (para. IV.A.2.d.).

Nothing in this Settlement Agreement constitutes an authorization or agreement for SPLP to construct the valve station in any location on the SPLP Additional Acreage other than in the SPLP Use Area.

As of the date of execution of this Agreement, SPLP has no plan or intention to construct any additional above-ground permanent utility facilities in WGT except as otherwise expressly set forth in this Agreement.

Id. at Paragraph II.A.2. and 3.

When read together, these provisions provide a reasonable explanation for what happens if SPLP unable to locate the Valve on the SPLP Use Area due to engineering constraints. Specifically, SPLP must notify the Township, the parties would confer, then the Township would provide authorization to locate the Valve at a different location on the SPLP Additional Acreage. If not interpreted in this way, the notice language in Paragraph II.A.2. becomes superfluous, i.e. as there would no reason for SPLP have to notify the Township if SPLP could just relocate the Valve anywhere it wants. Further, any other reading of the language would make paragraph II.A.3. meaningless, i.e. if SPLP could locate the Valve anywhere in the Township, there would be no reason to represent that it has no plan or intention to construct any other above-ground facilities in the Township other than on the SPLP Use Area. Most importantly, SPLP's interpretation would completely negate the clear promise that all above ground facilities will be located at the existing pump station or the SPLP Additional Acreage. As set forth above, the principles of contract interpretation prevent reading one provision in the Settlement Agreement in any way that annuls any other provision. Therefore, the interpretation of the Settlement Agreement offered by the Township is the correct interpretation.

- D. SPLP failed to meet its burden to prove that engineering constraints make it unable to locate the Valve on the SPLP Use Area or the SPLP Additional Acreage.

At various times during the proceedings, SPLP has argued that the Township did not prove that engineering constraints do not exist and the Valve can be installed on the SPLP Use Area. However, SPLP overlooks the burden of proof regarding the “engineering constraints” issue. While the Township bears the burden to prove that the Settlement Agreement requires SPLP to install the Valve on the SPLP Use Area, SPLP bears the burden to prove that engineering constraints make it unable to install the Valve as required by the Settlement Agreement. *See Sabella v. Appalachian Dev. Corp.*, 103 A.3d 83, 93 (Pa. Super. Ct. 2014) (“A defendant asserting an affirmative defense has the burden of proof as to that affirmative defense.”) (citing *Reott v. Asia Trend, Inc.* 55 A.3d 1088, 1092 (Pa. 2012)); *Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999) (an exclusion in an insurance contract is an affirmative defense and insurer bears the burden of proving such defense); *Doud v. Hines*, 112 A. 528, 529 (Pa. 1921) (the burden of proof shifts to the defendant when he sets up an affirmative defense).

SPLP has not carried its burden of proving that “engineering constraints” make it “unable” to construct the Valve in the SPLP Use Area. SPLP has certainly not met its obligation to provide the clear and precise evidence necessarily needed for it to avoid its contractual obligation to install the Valve in the Township. *See Schoble v. Schoble*, 37 A.2d 604, 605 (Pa. 1944) (“A party who seeks to strike down his solemn written obligation must present evidence which is clear, precise, and indubitable.”). What SPLP has offered is a host of experts to show that installing the Valve on the SPLP Use Area would be more difficult than eliminating the Valve, would require revision of its current plans, may require seeking approvals from PennDOT, and may require more time than it cares to spend on installing the ME2 pipeline.

However, SPLP produced no evidence in the case to establish that it made a reasonable investigation into whether the Valve could be installed on the SPLP Use Area before attempting to move the Valve to the Janiec 2 Tract. Further, SPLP offered no evidence at the hearing to show that it made any investigation whatsoever into whether the Valve could be installed at another location on the SPLP Additional Acreage. In fact, SPLP's expert witnesses even confirmed in their testimony that they were not asked to make any such evaluation in the context of their involvement in the case.¹⁰ While SPLP did offer some evidence claiming that it notified the Township that it intended to move the Valve to the Janiec 2 Tract (which the Township's evidence clearly and credibly contradicts), SPLP offered absolutely no evidence that it attempted to confer with the Township regarding permission for a new location for the Valve on the SPLP Additional Acreage as required by the Settlement Agreement.

Therefore, the Commission should reject SPLP's arguments that engineering constraints make it unable to install the Valve as required by the language of the Settlement Agreement.

E. SPLP breached its obligations under Paragraph II.A.2. of the Settlement Agreement.

As discussed above, SPLP has breached its obligations under Paragraph II.A.2. of the Settlement Agreement in several ways.

First, SPLP began work to install the Valve on the Janiec 2 Tract, until being stopped by the Interim Emergency Order issued by ALJ Barnes and affirmed by the Commission. SPLP's actions violated its promise not to install any above-ground facilities for the Mariner East Project anywhere in the Township except its existing facility in the Township and the SPLP Use Area.

See Township Exhibit 4 at ¶ II.A.2.

¹⁰ When Antoni claimed on cross-examination that he considered all possible scenarios, this assertion was not credible, particularly given the limits of the scope of his services provided in his prepared testimony.

Second, SPLP has purportedly eliminated the Valve from its Mariner East Project plans. Again, SPLP's unilateral decision to eliminate the Valve violates its promise to install the Valve on the SPLP Additional Acreage, specifically on the SPLP Use Area, under Paragraph II.A.2.

Id.

Third, SPLP failed to notify the Township of its alleged engineering constraints regarding the Valve and confer with the Township to seek its permission for a new location for the Valve on the SPLP Additional Acreage, in violation of Paragraph II.A.2. of the Settlement Agreement.

Id.

Based upon these clear breaches of the Settlement Agreement, the Township is entitled to an Order specifically requiring SPLP to perform its obligations under in the Settlement Agreement, as the facts clearly establish the Township's right to relief, no adequate remedy at law exists, and justice (along with public policy) requires it. *Lackner v. Glosser*, 892 A.2d 21, 31 (Pa. Super. Ct. 2006) (citing *Clark v. Pennsylvania State Police*, 436 A.2d 1383, 1385 (Pa. 1981) (discussing the equitable remedy of specific performance)). Specifically, the Commission should issue an order confirming that the Settlement Agreement precludes SPLP from installing any above-ground facilities anywhere in the Township other than the SPLP Use Area, without prior Township approval. Further, the Commission should require SPLP to make a full, reasonable engineering evaluation of the alleged "engineering constraints" complicating the installation of the Valve on the SPLP Use Area and disclose those findings to the Township. To the extent that engineering constraints do in fact make SPLP unable to install the Valve on the SPLP Use Area, the Commission should require SPLP to evaluate new locations for the Valve on the SPLP Additional Acreage. Such directives would result in SPLP complying with the bargained-for promises set forth in the Settlement Agreement.

F. The Commission should not exercise its contract reformation authority under Section 508 of the Public Utility Code.

At various times during these proceedings, the dispute over the terms of the Settlement Agreement has given rise to questions regarding the Commission's power to reform contractual agreements under the Public Utility Code. Section 508 of the Public Utility Code provides:

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

66 Pa.C.S.A. § 508.

Section 508 does not set forth precise guidelines for when and how the Commission may exercise its contract reformation authority. *Shenango Twp. Bd. of Sup'rs v. Pennsylvania Pub. Util. Comm'n*, 686 A.2d 910, 913–14 (Pa. Commw. Ct. 1996). “Section 508 must be read *in pari materia* with other sections of the Public Utility Code that may be relevant to determining if a particular factual scenario is a proper subject for the exercise of the PUC's contract reform power.” *Id.* (quoting *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 535 A.2d 1246, 1248 (Pa. Commw. Ct. 1988) (internal citations omitted)). Based on the language of Section 508, the clear focus of the inquiry is whether reformation is required

because a contractual provision is “adverse to the public interest and the general well-being of this Commonwealth.” *See* 66 Pa.C.S.A. § 508.

The evidence presented in this case makes clear that the Valve is a safety mechanism intended to reduce the impacts of a release from the ME2 pipeline, thereby service the important interest of protecting the public in and around the area of the potential release. The Township, in accordance with its duties under the Second Class Township Code, negotiated the Settlement Agreement in order to serve the best interest of its residents. Reformation of the Settlement Agreement under Section 508 in order to allow SPLP to eliminate the Valve, as it has proposed, would contradict the very purpose of Section 508 by making the Settlement Agreement “adverse to the public interest,” by making the portion of the ME2 pipeline running through the Township less safe to the Township residents.

While the SPLP offered witness testimony to explain why the Valve should not be installed on the SPLP Use Area, it offered no credible evidence that it is unable to install the Valve anywhere on the SPLP Additional Acreage, or that it made any reasonable investigation and attempts to make it work as required by the Settlement Agreement. Rather, after SPLP ignored its obligations to obtain the Township’s permission to relocate the Valve, it now summarily calls for the unnecessary and asks the Commission to reform the Settlement Agreement to eliminate any requirement that it be installed. As ALJ Barnes recently stated in another matter brought against SPLP regarding the ME2 pipeline construction:

“Sunoco has made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices available in our time that might best ensure public safety.”

See ALJ Barnes' May 24, 2018 Interim Emergency Order and Certification of Material Question in *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Pennsylvania Public Utility Commission, C-2018-3001451, at p. 21.

For the reasons set forth above, SPLP cannot be rewarded for its profit-over-safety approach with a reformation of the Settlement Agreement and the Commission should refuse to exercise its authority under 66 Pa.C.S.A. § 508 in this matter.

- G. SPLP also breached its obligation to provide information to the Township's pipeline safety expert for a safety review in violation of Paragraph IV.A.2.e. of the Settlement Agreement.

The Settlement Agreement at Paragraph IV.A.2.e. provides:

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 may have 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.

Township Exhibit 4 at Paragraph IV.A.2.e.

The Township acknowledges that SPLP provided to Accufacts, Inc. information relating to Mariner East 2, leading to the preparation of Richard Kuprewicz's January 6, 2017 report. See Township Exhibit 23. However, after that report was issued, in November 2017 SPLP unilaterally changed its plans for ME2 and purportedly eliminated the Valve from the Township. See SPLP's November 21, 2017 Petition to Rescind or Discontinue the October 26 Order. Prior to that filing, SPLP did not provide any new information to Kuprewicz/Accufacts for a safety review of ME2 with the Valve eliminated from the Township, constituting a breach of Paragraph

IV.A.2.e. of the Settlement Agreement.¹¹ Township Statement No. 8 at 1:13-16. Not until March 2018 did SPLP provide any documentation relating to its “release assessment” relating to the elimination of the Valve, in the form of the Stantec Report (SPLP Exhibit PV-2). *Id.* However, Kuprewicz indicated in his testimony the limitations of the Stantec Report and additional information needed to properly assess the safety of the revised ME2 plan.¹² *Id.* at 2:10 to 4:19. While SPLP cited a detailed review in connection with its elimination of the Valve, SPLP has provided no other detailed information to Kuprewicz/Accufacts for a safety review of SPLP’s revised ME2 plans impacting the Township. Township Statement No. 8 at 5:3-7.

SPLP’s failure to provide this information to Accufacts for review constitutes a continuing breach of Paragraph IV.A.2.e. The Township negotiated for a review by Accufacts of the safety of the ME2 pipeline. SPLP’s changes to the plan for the ME2 pipeline clearly impact Accufacts’ prior safety review, requiring further review as contemplated by the Settlement Agreement. Therefore, SPLP should be ordered to comply with said provision and produce to Accufacts for review its revised ME2 plans and any other documents and information on which it based its elimination of the Valve.

¹¹ Meanwhile SPLP continued to cite Kuprewicz’s January 6, 2017 report in the press in support of the safety of its ME2 pipeline, despite the report relying upon prior ME2 plans. Township Statement No. 8 at 1:19-22.

¹² Kuprewicz’s testimony also highlighted the nonsensical contention that the safety of ME2 is not impacted by eliminating the Valve. *Id.* at ALJ Barnes seemed to similarly acknowledge SPLP’s preference for hastily installing ME2 over confirming the safety of its plans and processes, and protecting the public from danger. *See* ALJ Barnes’ May 24, 2018 Interim Emergency Order and Certification of Material Question in *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Pennsylvania Public Utility Commission, C-2018-3001451, at pp. 14-15 (“All of these facts support a finding that Sunoco has failed to take reasonable efforts to warn and protect the public from danger.”) and p. 21, *supra*.

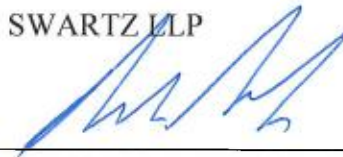
V. CONCLUSION

For the reasons set forth above, the Township respectfully requests that the Commission issue an Order containing ordering paragraphs in substantially the following form:

- A. SPLP is directed to cease and desist any actions in support of constructing, installing or operating any valve or appurtenant above-ground facilities for any phase of the Mariner East Pipeline Project on any property located in the Township other than the SPLP Use Area, unless it obtains the express written consent of both the Township and CCWGT;
- B. SPLP is required by paragraph II.A.2. of the Settlement Agreement to install a remote operated valve on the SPLP Use Area in connection with the construction or installation of the ME2 and ME2X facilities in the Township. In lieu of installing the Valve on the SPLP Use Area pursuant to this Order, SPLP shall perform a full geotechnical analysis of the SPLP Use Area and the area under and around Route 202, evaluate all possible mitigation efforts to reduce inadvertent returns that could impact Route 202 and confer with the Township to seek permission, if necessary, to locate the Valve elsewhere on the SPLP Additional Acreage, which analysis, requests, approval or disapproval shall be subject to Commission review;
- C. SPLP must cease and desist any construction or installation activity in the Township that is not consistent with installing a remote operated valve at the SPLP Use Area;
- D. Within thirty (30) days of the date of the Commission's Order, SPLP must provide all plans and engineering documents to the Township's pipeline safety expert, Richard Kuprewicz of Accufacts, Inc., for a safety review related to ME2 and ME2X between the planned valve at Eagle (approximately mile marker 334) and the planned valve at Middletown (approximately mile marker 35), and in particular any plans to eliminate a valve in the Township and instead automate a valve approximately 2.5 miles away, that have not already been produced to Mr. Kuprewicz;
- E. To the extent any valve or appurtenant facilities for the ME2 pipelines that have been installed on any property located in the Township other than on the SPLP Use Area, within thirty (30) days of the Commission's ruling, same must be removed or SPLP shall face sanctions, including but not limited to: (1) a substantial daily fine for each day that a valve or appurtenant facilities for the ME2 pipelines exist in the Township other than on the SPLP Use Area; and (2) such other relief that the Commission deems appropriate and in accordance with Pennsylvania law to mitigate the danger to Township residents resulting from SPLP's lack of compliance with the aforementioned paragraphs of the Settlement Agreement.

HIGH SWARTZ LLP

By: _____



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6/5/18

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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WEST GOSHEN TOWNSHIP,

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Docket No. C-2017-2589346

v.

SUNOCO PIPELINE, L.P.,

CERTIFICATE OF SERVICE

I Richard C. Sokorai, Esquire, hereby certify that on June 5, 2018, I served a true and correct copy of West Goshen Township’s Post Hearing Brief, 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).

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PA. Public Utility Commission
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