

BEFORE THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION

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WEST GOSHEN TOWNSHIP and	:	
CONCERNED CITIZENS OF WEST	:	
GOSHEN TOWNSHIP	:	Docket No. C-2017-
<i>Complainant</i>	:	
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
<i>Respondent</i>	:	
	:	

**WEST GOSHEN TOWNSHIP’S FORMAL COMPLAINT
TO ENFORCE SETTLEMENT AGREEMENT**

Complainant, West Goshen Township (“Township”), by and through its attorneys, High Swartz, LLP., respectfully files this Formal Complaint pursuant to 52 Pa. Code §5.21, and in support thereof avers as follows:

1. Complainant, West Goshen Township, is a Township of the Second Class, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 1025 Paoli Pike, West Chester, Pennsylvania 19380 (hereinafter, the “Township”).

2. Respondent Sunoco Pipeline, L.P., (“SPLP”) is a public utility that owns and operates a repurposed eight inch (8”) pipeline known as Mariner East 1. The pipeline is presently used to transport highly volatile liquids as that term is defined at 49 CFR §195.2,

including propane, ethane, butane and other natural gas liquids. *See generally*, 49 CFR Part 195.

3. The Township is represented in this action by David J. Brooman and Douglas Wayne, High Swartz, LLP, 40 East Airy Street, Norristown, Pennsylvania 19404 ((610) 275-0700) (dbrooman@highswartz.com and dwayne@highswartz.com), and all documents should be served upon said counsel. Counsel for the Township consents to the service of documents by electronic mail at the addresses listed in this paragraph, as provided in 52 Pa. Code § 1.54(b)(3).

4. The Mariner East 1 pipeline passes through the Township.

5. On March 21, 2014, SPLP filed a Petition with the Pennsylvania Public Utilities Commission (“Commission”) requesting, inter alia, approval for the situation and construction of a building on property owned by SPLP near Boot Road in West Goshen Township to house facilities related to a pump station (“SPLP Petition”). The Commission docketed this proceeding at P-2014-24111966.

6. On April 18, 2014, Concerned Citizens of West Goshen Township (“CCWGT”) filed a Protest and Preliminary Objections to the SPLP Petition. On April 21, 2014, the Township intervened as of right in the Commission docket.

7. On November 7, 2014, CCWGT filed a Formal Complaint with the Commission against SPLP based on alleged safety concerns with the proposed SPLP facilities in the Township. This Formal Complaint was docketed at C-2014-2451943.

8. The SPLP Petition and Formal Complaint were resolved by a Settlement Agreement reached by the parties and dated June 15, 2015 (“Settlement Agreement”). The Settlement Agreement is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full.

FIRST COUNT:
VIOLATION AND BREACH OF PARAGRAPH II.A.7 OF THE SETTLEMENT
AGREEMENT

9. The Township incorporates by reference Paragraphs 1 to 8 herein as though same were set forth in full.

10. Paragraph II.A.7. of the Settlement Agreement provides that SPLP will use "commercially reasonable" efforts to apply for permits, rights of way, approvals and extensions of utility service within 60 days after the Effective Date to install remotely operated valves at pipeline markers 228 and 236.6, and install the valves within ninety (90) days of receipt of all permits, rights of way, approvals and extensions of utility service.

11. As of the date that this Formal Complaint was filed, SPLP has yet to install a remotely operated valve at pipeline marker 236.6.

12. SPLP has not installed a remotely operated valve at pipeline marker 236.6 despite numerous requests by the Township for SPLP to comply with Paragraph II.A.7. of the Settlement Agreement. (See, e.g., letter dated October 3, 2016 from David J. Brooman, special counsel to West Goshen Township to Christopher Lewis, counsel for SPLP, attached hereto as Exhibit "B" and incorporated herein by reference as if set forth in full).

13. The ongoing lack of a remotely operated valve at pipeline marker 236.6 constitutes a clear, present, and ongoing danger to the citizens of the Township.

14. Paragraph III.1. of the Settlement Agreement references a report written by Accufacts, Inc., and its President, Richard Kuprewicz, on the safety of the Mariner East pipeline ("Kuprewicz Report"). The Kuprewicz Report was attached to and incorporated into the Settlement Agreement as Appendix 5.

15. The Kuprewicz Report at Section 3b, entitled Pipeline Mainline Remote

Actuation, states in relevant part:

“Accufacts has recommended that two mainline valves that were installed as manually operated isolation valves beyond the Township be actuated to permit remote and automatic mainline valve closure, isolating segments of the pipeline in an emergency. Sunoco’s acceptance to remotely actuate two suggested exiting manual pipeline valves that span the Township, but are not within the Township boundaries, is a reasonable and necessary precaution and provides an additional level of protection to Township residents in the case of an emergency.”

SPLP is therefore on unmistakable notice of the importance of the remote and automatic mainline valve closure that is to be installed at pipeline marker 236.6.

16. Despite the commitment made in the Settlement Agreement to use “commercially reasonable” efforts to install the remotely actuated mainline valve closure at pipeline marker 236.6, within sixty (60) days of June 15, 2015, and despite the clear, present and ongoing danger to Township residents by the lack of a remotely actuated mainline valve closure at pipeline marker 236.6, SPLP has delayed, engaged in obfuscation, and provided outright false reasons for why the automated valve closure at pipeline marker 236.6 has not been installed despite the passage of more than two years and nine months since the Settlement Agreement was finalized.

17. SPLP actions and inactions are a violation and material breach of Paragraph II.A.7. of the Settlement Agreement.

18. SPLP continues to make money via sale of the highly volatile liquids that flow through the Mariner East 1 pipeline. While SPLP makes money via a pipeline that crosses the Township’s boundary line, the health and safety of Township residents are imperiled every day by SPLP’s inaction and violation of the terms of the Settlement Agreement. Unless the Commission takes timely action to enforce the Settlement Agreement, SPLP has no incentive to spend time and money in installing the remotely actuated mainline valve closure at pipeline marker 236.6.

WHEREFORE, the Township of West Goshen hereby petitions the Commission to issue an Order declaring Sunoco Pipeline, LP in material violation of Paragraph II.A.7. of the Settlement Agreement of June 15, 2015. The Township further requests that the Commission issue an Order directing SPLP to install and have fully operational a remotely actuated mainline valve closure at pipeline marker 236.6 within thirty (30) days of the Commission's ruling or face sanctions, including but not limited to: (1) a substantial daily fine for each day that there is not an installed and fully functional remotely actuated mainline valve at pipeline marker 236.6; (2) an injunction preventing SPLP from using the Mariner East 1 pipeline to transport highly volatile liquids through the Township until the remotely actuated mainline valve closure at pipeline marker 236.6 is installed and fully operational; (3) an assessment of counsel fees and other costs incurred by the Township in bringing this Formal Complaint to Enforce the Settlement Agreement; and, (4) 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 Paragraph II.A.7. of the Settlement Agreement.

**SECOND COUNT:
VIOLATIONS AND MATERIAL BREACHES OF PARAGRAPHS II.A., II.A.2. , II.A.3.
AND
IV.A. OF THE SETTLEMENT AGREEMENT**

19. The Township incorporates by reference Paragraphs 1 to 19 herein as though same were fully set forth.

20. Paragraph II.A. of the Settlement Agreement states:

“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.*” (Emphasis added).

21. Paragraph II.A.1. of the Settlement Agreement states:

“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.*” (Emphasis added)

22. Paragraph II.A.2. of the Settlement Agreement states:

“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.**” (Emphasis added).

23. Paragraph II.A.3. of the Settlement Agreement states:

“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.”

24. Paragraph IV.A. of the Settlement Agreement notes that the promises, covenants and agreements reached in the Agreement were “[b]ased on the SPLP Information recited in Section II of this Agreement . . .”

25. On or about January 12, 2017, the Township received engineered drawings from SPLP concerning the SPLP pipeline project commonly known as Mariner East 2 (“ME2”).

26. The two ME2 project consist of proposed parallel pipelines, 20 inch and 16 inch respectively, which if constructed will cross the Township, thus placing the proposed ME2 pipeline squarely within the purview of Paragraph II.A.1 of the Settlement Agreement.

27. According to the engineering plans submitted to the Township in January 2017, SPLP proposes to install and operate an above-ground remotely operated valve at ME2 pipeline mile marker 344 in the Township, on property owned by the Janiec Family (“Valve 344”).

28. While the Settlement Agreement, at Paragraph II.A.2. does contemplate a remotely operated valve on the SPLP Additional Acreage, this language is limited by further language in the same paragraph stating that “[n]othing in the 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.”

29. The proposed site of Valve 344 in the Township is outside the SPLP Use Area.

30. SPLP did not ask for the Township’s consent for the Valve 344 siting, in violation and material breach of Paragraph II.A.2 of the Settlement Agreement.

31. The plans submitted to the Township in January 2017, and reviewed by Richard Kuprewicz, Accufacts, Inc., indicate that the decision to Valve 344 on the Jandle property, and not the SPLP Use Area, was made on or about March 26, 2015.

32. The Settlement Agreement is dated June 15, 2015. Accordingly, the decision by SPLP to move the location of Valve 344 was made at least eighty-one (81)

days prior to the execution of the Settlement Agreement.

33. As SPLP had already decided to site Valve 344 on the Jandle property at least eighty-one (81) days prior to finalizing the Settlement Agreement, SPLP's action violates and is a material breach of Paragraph II.A.3. of the Settlement Agreement, in which SPLP asserted that, as of the date of execution of the Settlement Agreement, SPLP had no plan or intention to construct any additional above-ground permanent facilities in WGT except as otherwise expressly set forth in the Agreement.

34. SPLP's action of preparing engineering plans on or before March 26, 2015 to locate Valve 344 on the Jandle tract, rather than on the SPLP Use Area, also violates and is a material breach of Paragraph II.A. of the Settlement Agreement, in which WCT and CCWGT expressly state that they are relying on the accuracy of the information provided by SPLP in reaching the Settlement Agreement.

35. SPLP's action of preparing plans on or before March 26, 2015, to locate Valve 344 on the Jandle tract, rather than the SPLP Use Area, also violates and is a material breach of Paragraph IV.A. of the Settlement Agreement, in which the parties agree that the promises, covenants, and agreements therein set forth are "[b]ased on the SPLP Information recited in Section II. of this Agreement" As WCT and CCWGT expressly state that they are relying on the accuracy of the information provided by SPLP in reaching the Settlement Agreement, SPLP's action of falsely representing therein that Valve 344 would be located on the SPLP Use Area, and not on the Jandle tract, amounts to a material misrepresentation of fact by SPLP and a breach of the Agreement.

WHEREFORE, the Township of West Goshen hereby petitions the Commission to issue an Order declaring Sunoco Pipeline, LP in material violation and breach of Paragraphs II.A.,

II.A.2, II A. and IV.A. of the Settlement Agreement of June 15, 2015. The Township further requests that the Commission issue an Order directing SPLP to (a) cease and desist with any actions in support of constructing, installing or operating any valve or appurtenant facilities for the ME2 pipeline on any property located in West Goshen Township other than the SPLP Use Area without the express written consent of both the Township and CCWGT; (b) remove any valve or appurtenant facilities for the ME2 pipeline that have been installed on any property located in West Goshen Township other than on the SPLP Use Area within thirty (30) days of the Commission's ruling or face sanctions, including but not limited to: (1) a substantial daily fine for each day that a valve or appurtenant facilities for the ME2 pipeline exist in the Township other than on the SPLP Use Area; (2) an injunction preventing SPLP from siting a valve or appurtenant facilities for the ME2 pipeline anywhere in the Township other than on the SPLP Use Area; (3) an assessment of counsel fees and other costs incurred by the Township in bringing this Formal Complaint to Enforce the Settlement Agreement; and, (4) 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.

Dated: February , 2017

HIGH SWARTZ, LLP.
By: David Brooman, Esquire
Douglas Wayne, Esquire
Attorneys for Complainant,
Township of West Goshen