

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held September 20, 2018

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
Norman J. Kennard
David W. Sweet
John F. Coleman, Jr.

West Goshen Township

C-2017-2589346

v.

Sunoco Pipeline, L.P.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Settlement in Lieu of Exceptions (Joint Petition), filed by Sunoco Pipeline L.P. (Sunoco or SPLP) and West Goshen Township (Township) (collectively, the Parties) on August 10, 2018, relative to the above-captioned proceeding. The Parties request the Commission do the following: (1) grant the Joint Petition and approve it under Section 507 of the Code, 66 Pa. C.S. § 507; (2) adopt the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, issued on July 19, 2018, without modification; and (3) stay the

Exceptions period until twenty days after the entry of a Commission Order regarding the Joint Petition pursuant to the terms described therein. For the reasons detailed herein, we find that the Joint Petition is moot. Additionally, noting that the Parties do not oppose the Recommended Decision, we shall adopt the Recommended Decision without modification based on our review of the decision and the record in this case.

History of the Proceeding

This case involves the Township's allegations regarding a prior Settlement Agreement (2015 Settlement Agreement) between Sunoco, the Concerned Citizens of West Goshen Township (CCWGT),¹ and the Township. The 2015 Settlement Agreement was filed on May 15, 2015, and certified by the Commission's Secretary on June 15, 2015, at Docket No. U-2015-2486071, pursuant to Section 507 of the Public Utility Code (Code), 66 Pa. C.S. § 507.² The 2015 Settlement Agreement resolved challenges the

¹ The CCWGT is an *ad hoc* association of individuals who own and reside on property adjacent to or within approximately 1,000 feet of the properties Sunoco owns near Boot Road in the Township.

² Section 507 provides the following:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the commission grants its approval thereof.

Township and CCWGT raised at Docket Nos. P-2014-2411966³ and C-2014-2451943.⁴ By Order entered May 28, 2015, the Commission granted Sunoco's request to withdraw its Petition at Docket No. P-2014-2411966014. On June 16, 2015, the CCWGT filed a Certificate of Satisfaction and Withdrawal of Formal Complaint regarding CCWGT's Complaint.

On March 30, 2017, the Township filed an Amended Complaint (Complaint)⁵ against Sunoco, at the instant Docket No. C-2017-2589346, seeking enforcement of the 2015 Settlement Agreement filed at Docket No. U-2015-2486071, pertaining to, *inter alia*, Sunoco's proposal to site Valve 344 on the Janiec 2 Tract. On April 17, 2017, Sunoco filed an Answer to the Complaint and New Matter. Sunoco denied the material allegations in the Complaint and averred that siting Valve 344 on the Janiec 2 Tract would not constitute a violation of the 2015 Settlement Agreement. On May 5, 2017, the Township filed an Answer to the New Matter.

On July 10, 2017, the Township filed a Petition seeking, *inter alia*, an Interim Emergency Order (Emergency Petition) pursuant to 52 Pa. Code § 3.6, to enjoin Sunoco from beginning or continuing construction of a valve and any other facilities appurtenant to Sunoco's Mariner East 2 pipeline on the Janiec 2 Tract, or at any location

³ *Petition of Sunoco Pipeline, L.P. for a finding that a building to shelter the Boot pump station in West Goshen Township, Chester County, Pennsylvania is reasonably necessary for the convenience or welfare of the public*, Docket No. P-2014-2411966.

⁴ *Concerned Citizens of West Goshen Township v. Sunoco Pipeline, L.P.*, Docket No. C-2014-2451943. CCWGT's Complaint alleged the proposed pump station was an unsafe or unreasonable public utility facility in a residential area in violation of Section 1501 of the Code, 66 Pa. C.S. § 1501.

⁵ The Complaint amended the Township's initial Complaint in this proceeding, filed on February 17, 2017, by removing a count relating to the automation of a valve on the Mariner East 1 pipeline that Sunoco automated after the Township filed the Complaint.

not specifically agreed to in the 2015 Settlement Agreement, until after the Commission issued a final order on the Complaint.⁶ On July 17, 2017, Sunoco filed an Opposition to the Township's Emergency Petition.

On July 18, 2017, ALJ Barnes conducted a hearing on the Emergency Petition. In the *Interim Emergency Order and Certification of Material Question* issued by ALJ Barnes on July 24, 2017 (*July 24 Order*), the ALJ granted the Township's Emergency Petition and certified the decision to grant interim emergency relief to the Commission as a material question to be processed in accordance with Section 5.305 of the Commission's Regulations, 52 Pa. Code § 5.305. On July 31, 2017, the Township and Sunoco each filed a Brief pertaining to the *July 24 Order*.

By Order entered October 26, 2017 (*October 2017 Order*), we answered the Material Question in the affirmative, granted the Township's Emergency Petition, and referred this matter back to the Office of Administrative Law Judge (OALJ). We specifically directed the following:

That Sunoco is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final

⁶ The Township originally filed its Emergency Petition as a petition seeking both *ex parte* emergency relief under 52 Pa. Code § 3.2 and interim emergency relief under 52 Pa. Code § 3.6. By Secretarial Letter issued July 11, 2017, the Commission declined to issue an *ex parte* emergency order under Section 3.2. The Commission directed that the Petition proceed solely at Docket Number C-2017-2589346 as a petition for interim emergency relief pursuant to Sections 3.6 to 3.12 of the Commission's Regulations, 52 Pa. Code §§ 3.6-3.12.

Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.

October 2017 Order at 34, Ordering Paragraph No. 3.

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

On January 24, 2018, the Township filed a Petition for Reconsideration or, in the Alternative, Amendment of the *January 2018 Order* (Petition for Reconsideration). Sunoco filed an Answer to the Petition for Reconsideration on February 5, 2018. The Commission denied the Petition for Reconsideration by Order entered on March 15, 2018.

On April 17, 2018, the Township filed a Motion to Amend the First Amended Complaint and a Second Amended Formal Complaint to Enforce Settlement which included some new allegations in addition to the allegations set forth in the Complaint filed on March 30, 2017. We will refer to the Second Amended Formal Complaint as the Complaint going forward herein for ease of reference. In the Complaint, the Township averred that while Sunoco represented in a pleading that it no longer intended to construct a valve on the Janiec 2 property, there was not a Commission Order precluding Sunoco from doing so in the future. The Township continued to request that the Commission find Sunoco breached an agreement to construct a valve on

the SPLP Use Area. The Township requested enforcement of the 2015 Settlement Agreement and a directive that Sunoco build the valve on the SPLP Use Area and not on the Janiec 2 Tract. On April 23, 2018, Sunoco filed an Answer to Motion to Amend First Amended Complaint and did not oppose the motion or the Complaint.

Evidentiary hearings were held on April 25 and 26, 2018. The Parties filed Main and Reply Briefs on June 5, 2018, and June 25, 2018, respectively. By Recommended Decision issued July 19, 2018, ALJ Barnes granted the Complaint, in part, and denied the Complaint, in part.⁷

By letter dated August 2, 2018, the Township confirmed that the Commission permitted the Parties an extension of time, until August 10, 2018, to file Exceptions to the Recommended Decision. On August 10, 2018, the Parties filed the instant Joint Petition.

Background

1. The 2015 Settlement Agreement

The 2015 Settlement Agreement resolved the concerns of the Township and the CCWGT regarding, among other things, Sunoco's proposed construction and operation of the Boot Road Pump Station and associated Vapor Combustion Unit in connection with Sunoco's Mariner East Project. The 2015 Settlement Agreement provisions at issue in this case are set forth below, in relevant part:

⁷ The ALJ issued both a Proprietary and Non-Proprietary Recommended Decision. All citations herein will be to the Non-Proprietary Recommended Decision.

II. Pertinent Information Provided by [Sunoco]

A. [Sunoco] has provided [the Township and the Township's] consulting expert with the following information ("SPLP Information"). [The Township] and CCWGT expressly rely upon the accuracy of the SPLP Information in reaching this Agreement.

1. As used herein, the phrase "Mariner East Project" refers to the existing Mariner East 1 pipeline and appurtenant facilities, and all additional pipelines and appurtenant facilities to be owned and/or operated by [Sunoco] in [the Township] for the transportation of propane, ethane, butane, and/or other natural gas liquids.

2. The pump station, the VCU and all accessory and appurtenant above-ground facilities associated with all phases of the Mariner East Project will be maintained within the present active site, Parcel No. 52-1-8-U, on which the existing Boot Road Pump Station currently operates (the "SPLP Existing Site"), except that a remote operated valve station will be constructed and maintained on [Sunoco's] adjacent 4.42 acre property, Parcel No. 52-0-10-10.1, also known as the former Janiec Tract, (the "SPLP Additional Acreage"). The proposed location of such valve station on the SPLP Additional Acreage is depicted on the map attached hereto as Appendix 1 and incorporated by reference (the "SPLP Use Area"). Subject to any engineering constraints, [Sunoco] intends to construct the valve station in the general area depicted on the map attached hereto as Appendix 1. If, due to engineering constraints, [Sunoco] is unable to construct the valve station in the SPLP Use Area, [Sunoco] will notify [the Township]. Nothing in this Settlement Agreement constitutes an authorization or agreement for [Sunoco] to construct the valve station in any location on the SPLP Additional Acreage other than in the SPLP Use Area.

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

* * *

IV. The Parties' Promises, Covenants and Agreements

A. Based on the SPLP Information recited in Section II of this Agreement, the Parties agree to make the following promises, covenants and agreements:

2. [The Township] covenants and agrees as follows:

* * *

e. With respect to Mariner East 2, [Sunoco] agrees, upon the execution of a mutually agreeable confidentiality agreement, that it will provide to Accufacts, Inc., or a person or entity acting for [the Township] 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. [The Township] and its expert will meet and confer with [Sunoco] with respect to any concerns the Liquid Pipeline Safety Expert may have related to safety and [Sunoco] will be provided an opportunity to respond thereto, before [the Township] would file any formal protest or other action raising any safety issue related to Mariner East 2.

Township Exh. 4.

The Boot Road Pump Station is located near the intersection of Boot Road and Route 202, to the north of East Boot Road and to the west of the Route 202 Southbound off-ramp. Tr. at 47-48; Township Exhs. 1 and 2. The SPLP Use Area referenced in the Settlement Agreement is located west of Route 202 on Boot Road. The Janiec 2 Tract at issue in this proceeding is a wooded property that is located on the east side of Route 202 and north of Boot Road and is owned by the Janiec family. Tr. at 57-58; Township Exh. 2; Sunoco Exh. 4.

2. Commission Jurisdiction

The issues before us are within our jurisdiction over pipeline safety matters as well as our jurisdiction over agreements between public utilities and municipal corporations. As we stated in our prior Orders in this proceeding, the Township has raised issues in its Complaint concerning the safety and reasonableness of a valve location that implicate “service” as broadly defined in the Code and involve the safety, reasonableness, adequacy, and efficiency of Sunoco’s public utility service, particularly regarding the circumstances surrounding the Parties’ decision to enter into the Settlement Agreement and regarding the safety of the valve. Issues concerning the safety, reasonableness, adequacy, and sufficiency of public utility service, be they contractual or otherwise, are squarely within the Commission’s jurisdiction. 66 Pa. C.S. §§ 1501 and 1505; *Disanto v. Dauphin Consolidated Water Supply Co.*, 291 Pa. Super. 440, 436 A.2d 197 (1981). The ALJ also aptly addressed in the Recommended Decision our safety jurisdiction regarding pipeline facilities. The ALJ observed that the Commission has a formal agreement with the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) to enforce the federal pipeline safety laws and, therefore, may consider whether Sunoco is complying with the Code of Federal Regulations, Parts 191-195, in determining whether it is operating in a safe and reasonable manner in compliance with Section 1501 of the Code, 66 Pa. C.S. § 1501, and Section 59.33 of the Commission’s Regulations, 52 Pa. Code § 59.33. *See* R.D. at 36.

Additionally, because the Township instituted its Complaint based on issues relating to the 2015 Settlement Agreement between the Parties, our authority under Section 508 of the Code to vary, reform, and revise contracts is implicated. Section 508 provides the following:

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. § 508. *See AT&T v. Pa. PUC*, 709 A.2d 980, 989 (Pa. Cmwlth. 1998) (“the General Assembly has specifically told the Commission that when any terms or conditions of an agreement are ‘unjust, unreasonable or inequitable, or otherwise contrary or adverse to the public interest and general well-being of the Commonwealth,’ it shall determine the terms and conditions that will rectify that situation”); *Octoraro Railway, Inc. v. Pa. PUC*, 482 A.2d 278 (Pa. Cmwlth. 1984) (since the Commission has power to modify contracts under Section 508 of the Code, the ALJ has the authority to rule on the validity of agreements between public utilities and municipal corporations).

Further, based on the Parties’ framing of some of the issues and their requests for relief, it appears the Parties asked the ALJ to reach a determination regarding whether Sunoco should be directed to construct a valve on the Janiec 2 Tract as part of a modification of the 2015 Settlement Agreement, or whether Sunoco was required to construct the valve on the SPLP Use Area under the 2015 Settlement Agreement. As such, we find it important to note, as we did in our prior Orders in this proceeding, that with the exception of high voltage electric transmission lines, the Commission’s authority regarding the siting of public utility facilities is limited. The Commission’s authority

stems from Section 10619 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. § 10619, which provides that the Commission is authorized to determine, *upon petition by such public utility and after notice and opportunity for a hearing*, whether a building proposed by a public utility is “reasonably necessary for the convenience or welfare of the public.” *See* 53 P.S. § 10619 (emphasis added). The effect of such a determination would be to exempt the proposed public utility building from the local township or municipality’s zoning authority under the MPC. It is not clear that the Commission has the authority to provide such an exemption in the context of the instant proceeding or to otherwise direct a valve location on a specific tract of land.

Discussion

1. Terms of the Joint Petition

The Parties indicate that they filed the Joint Petition pursuant to 52 Pa. Code § 5.232 and 66 Pa. C.S. § 507. In the Joint Petition, the Parties request that the Commission do the following: (1) approve the Joint Petition and under Section 507; (2) adopt the Recommended Decision without modification or allow it to become final as a matter of law pursuant to 66 Pa. C.S. § 332(h);⁸ and (3) stay the Exceptions period until twenty days after the entry of a Commission Order regarding the Joint Petition pursuant to the terms described therein. Joint Petition at 1, 4. The Parties state that if the Commission approves the Joint Petition, then the Parties waive their right to file Exceptions, which also would be moot. *Id.* at 1. The Parties aver that they have reached the following settlement terms:

⁸ Even if Exceptions are not filed, Recommended Decisions, under the Commission’s procedures, must be acted on at Public Meeting and cannot become final by operation of law.

- a. The Parties request that the Commission adopt the R.D. in full without modification.
- b. If the Commission adopts the R.D. in full without modification, either by operation of law pursuant to 66 Pa. C.S. §332(h) or by entering an order adopting the R.D. in full and without modification, the Parties will not:
 - i. file Exceptions to the R.D.
 - ii. seek reconsideration or other relief contained in 52 Pa. Code § 5.572(c) of a Commission Order adopting the R.D. in full without modification; or
 - iii. seek review from a court of competent jurisdiction of a Commission Order adopting the R.D. in full without modification.
- c. If the Commission does not adopt the R.D. in full without modification, the Parties reserve their respective rights to withdraw from this Settlement and proceed with litigation in the Proceeding, and in such event, this Settlement shall be void and of no effect. Such election to withdraw will be made by filing Exceptions to the R.D. within 20 days of entry of a Commission order that does not adopt the R.D. in full without modification.
- d. The Final Decision, accepted by this Settlement resolves or satisfies all claims presented in the [Complaint]. The Parties release each other from all claims that were or could have been presented in the [Complaint] and any Answer or Answers or responsive or affirmative pleading thereto before the Commission or any court of competent jurisdiction, but have a continuing obligation to comply with the Final Decision.

e. The Settlement is being presented only in the context of these proceedings to resolve this proceeding. The Settlement is the product of compromise between the Parties and has been drafted by both Parties.

Joint Petition at 2-3.

The Parties state that approval of the Joint Petition is in the public interest as it allows the Parties and the Commission to obtain finality without the need for further litigation in a heavily contested proceeding, thus saving all involved time and resources. The Parties aver that the Commission has previously approved a Joint Petition for Settlement in Lieu of Exceptions in *Keebler v. Verizon Pennsylvania Inc. (Keebler)*, Docket No. F-2010-2212027 (Order entered January 27, 2012). Joint Petition at 3.

2. Recommended Decision

The ALJ recommended that the Commission grant, in part, and deny, in part, the Township's Complaint. The ALJ examined five issues the Township raised in its Complaint. First, the ALJ analyzed whether "engineering constraints" existed that made Sunoco "unable" to construct a valve station on the SPLP Use Area and/or the SPLP Additional Acreage Area within the meaning of the 2015 Settlement Agreement. Based on evidence the ALJ described in detail (*see* R.D. at 21-26), the ALJ determined that "engineering constraints" existed that made Sunoco unable to construct Valve 344 on the SPLP Use and/or the SPLP Additional Acreage Areas. R.D. at 26.

Among other evidence, the ALJ observed the testimony of Sunoco witness, Mr. Gordon⁹ who testified that using open cut construction to install the pipeline to allow a valve to be placed on the SPLP Use Area was impracticable based on the highly congested nature of the existing private and municipal utility facilities, including Aqua Pennsylvania, Inc., which has facilities underneath and along Boot Road; the geography of the land and proximity to Route 202; the homes on Mary Jane Lane that may be impacted by horizontal directional drilling (HDD); and the unlikelihood of obtaining a permit to open cut Boot Road. R.D. at 18-19. The ALJ stated that she found credible the testimony and accompanying drawing of Sunoco's witness, Mr. Antoni,¹⁰ who used a board to draw a rough profile starting at the SPLP Use Area of the grade showing a "pinch point" created by topography as the drilling approached Route 202 on the west side, creating a significant risk of inadvertent return regardless if the drill path resurfaced at Janiec 2 or continued to the Green Hill drill. *Id.* (citing Tr. at 540-542; SPLP Exh. 3). The ALJ was also persuaded by the testimony of Sunoco witnesses Mr. Gordon, Mr. Hess, Mr. Antoni, and Dr. Ariaratnam¹¹ regarding valve placement, as they testified that surfacing on the Janiec 2 Tract to meet Mariner East 2 was less risky than extending the drill because extending the drill would not solve the geology issues and minimum curvature problems with an entry point located on the SPLP Use Area. R.D. at 26 (citing Tr. at 539, 540-541; Sunoco Exh. 3). The ALJ noted Dr. Ariaratnam's testimony that "[t]here are engineering, site and soil constraints that would make HDD unsuitable and risky due to the likelihood of inadvertent returns, which would significantly disrupt surface traffic." R.D. at 27 (citing Tr. at 430, 435-436, 448; Sunoco St. 6 at 4-6).

⁹ Matthew Gordon is the project director for Mariner East 2.

¹⁰ Christopher Antoni, a Chief Pipeline Engineer, Energy Operations Manager, and Senior Vice President, testified for Sunoco as an HDD expert.

¹¹ Douglas Hess, P.G, a Director of Groundwater and Site Characterization Services, testified for Sunoco as an HDD expert. Dr. Samuel Ariaratnam, a Professor and Construction Engineering Program Chair, also testified for Sunoco as an HDD expert.

The ALJ concluded that under the 2015 Settlement Agreement, Sunoco's duty to construct the valve on the SPLP Use Area was discharged due to engineering constraints, as described by the geotechnical reports and testimony of Sunoco's witnesses. The ALJ continued, however, that Sunoco's duty was not discharged if the constraints were a result of Sunoco's breach of a good faith duty and fair dealing. The ALJ found persuasive Mr. Gordon's testimony that he intended on May 15, 2015, to install Valve 344 at the SPLP Use Area but was waiting for geotechnical studies and was not yet committed to that design. Accordingly, the ALJ found that the engineering constraints were not attributable to Sunoco's bad faith and that Sunoco's duty to construct a valve on the SPLP Use Area had ended. R.D. at 21, 27, 28 (Sunoco St. 1 at 15-17).

Second, the ALJ analyzed whether Sunoco properly notified the Township of the engineering constraints. Based on her review of the 2015 Settlement Agreement, the ALJ determined that the Agreement terms did not unconditionally require Sunoco to build a valve station on the SPLP Use Area. R.D. at 29. The ALJ also found that there was no specific language in the Agreement to support the Township's contention that "notify" also meant that Sunoco agreed to conduct further geophysical or geotechnical studies within the Additional Acreage, to consult with Township employees, and to seek approval to relocate a valve outside the SPLP Use Area but still within the Township; nor did the Agreement terms require Sunoco to notify the Township of plans to repurpose, automate, or build valve stations in close proximity to the Township. *Id.* at 29-30. The ALJ concluded that there was insufficient evidence to find that the Parties had agreed to further geophysical or geotechnical studies within the Additional Acreage. *Id.* at 30.

Among other evidence, the ALJ noted that the Township's witness, solicitor Kristin Camp, Esquire, admitted that the 2015 Settlement Agreement did not contain a requirement that Sunoco provide the Township with engineering documents in connection with engineering constraints. *Id.* (citing Tr. at 154). Additionally, the

Township's witness, Township Manager Casey LaLonde, conceded that there was no deadline for notification, no requirement that the notice be in writing, or that the Township had the right to review or consent to Sunoco's engineering determination. R.D. at 31 (citing Tr. at 96). Further, the ALJ found credible the testimony of Sunoco's witness Mr. Gordon that Sunoco provided notice as early as January 20, 2016, at a meeting that the Township's witnesses Ms. Camp, Mr. LaLonde, and Richard Kuprewicz¹² attended with Sunoco witnesses regarding the relocation of the valve from the SPLP Use Area to Janiec 2. R.D. at 32-33 (citing Sunoco St. 1 at 17, Sunoco St. 8 at 1-2, and Tr. at 336-338). The ALJ determined that Sunoco satisfied the notice requirement in the Agreement by providing oral notice to the Township of engineering constraints on January 20, 2016, and that such notice was reasonably timely because it was close to the time that Sunoco realized it had engineering constraints that made it unable to place the valve at the SPLP Use Area. R.D. at 33.

Third, the ALJ analyzed whether eliminating the valve in the Township was unsafe and whether Sunoco should be directed to construct a remote operated valve on the SPLP Use Area or SPLP Additional Acreage Area in connection with the construction or installation of the ME2 and ME2X facilities in the Township.¹³ *Id.* at 34. Initially, the ALJ stated that the Commission's siting authority over Sunoco's pipeline is limited. The ALJ observed that the Commission has a formal agreement with PHMSA to enforce the federal pipeline safety laws and, therefore, may consider whether Sunoco is complying with the Code of Federal Regulations, Parts 191-195, in determining whether it is operating in a safe and reasonable manner in compliance with Section 1501 of the Code, 66 Pa. C.S. § 1501, and Section 59.33 of the Commission's Regulations, 52 Pa.

¹² Richard Kuprewicz testified for the Township as a pipeline safety expert.

¹³ Mariner East 2 (ME2) and Mariner East 2X (ME2X) are part of the second phase of Sunoco's Mariner East Project during which Sunoco is constructing sixteen and twenty-inch pipelines to transport ethane, methane, and butane.

Code § 59.33. R.D. at 36. The ALJ analyzed 49 C.F.R. § 195.260(c)¹⁴ and ASME B31.4, Section 434.15.2(e)¹⁵ in reaching her determination. R.D. at 36-37. The ALJ was unpersuaded to find a violation of Section 59.33 or a federal regulation based on an 8.4-mile distance between the upstream and downstream valves outside of the Township, a distance of .9 miles over the American Society of Mechanical Engineers (ASME) B31.4 limit of 7.5 miles between valves. R.D. at 37. Among other evidence, the ALJ relied on the testimony of Sunoco witness Mr. Vieth, Executive Vice President for Dynamic Risk, that he considered:

¹⁴ As the ALJ noted, 49 C.F.R. § 195.260(c) provides the following:

A valve must be installed at each of the following locations:

* * *

(c) On each mainline at locations along the pipeline system that will minimize damage or pollution from accidental hazardous liquid discharge, as appropriate for the terrain in open country, for offshore areas or for populated areas.

¹⁵ The ALJ observed that ASME B31.4, Section 434.15.2(e) provides the following:

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.

R.D. at 37 (citing ASME B31.4, Section 434.15.2(e); Sunoco St. 2 at 3). The ALJ stated that ASME B31.4 is neither a law nor a regulation but is an engineering standard based on the best engineering practices of the industry.

(1) the Stantec Report dated March 1, 2018; (2) a detailed analysis of the volumes of product expected to be released in the event of a pipeline rupture in or near the Township in the section of pipe between valves; (3) the containment ability via block valves; and (4) the emergency flow restricting devices, and his opinion that elimination of the valve presents no safety concerns and has a negligible effect.

Id. (citing Sunoco Sts. 2 and 2-RJ; Sunoco Exh. PV-2).

Fourth, the ALJ analyzed whether Sunoco breached the 2015 Settlement Agreement with the Township, specifically Paragraphs II.A, II.A.2, II.A.3, II.A.3, and IV.A. R.D. at 40. The ALJ found that Sunoco did not breach the Agreement because Sunoco abandoned its plans to build Valve 344 on the Janiec 2 Tract and is, instead, placing remote control valves or automatic shut-off valves¹⁶ outside the Township. *Id.* at 42 (citing Sunoco St. 2-RJ). The ALJ recommended that the Commission grant a narrowly tailored injunction similar to that which Sunoco did not oppose in its Petition to Rescind relative to the *October 2017 Order*.¹⁷ R.D. at 42. The ALJ indicated that an ordering paragraph prohibiting Sunoco from engaging in activities inconsistent with the installation of a valve on the SPLP Use Area without the Township's written consent

¹⁶ A remote control valve is a valve equipped with electric or gas-powered actuators to operate (open or close) the valve based on an order (signal) from a remote location, such as a gas control room. The valve can be closed remotely. There is human intervention with a remote-control valve, as opposed to an automatic shut-off valve that does not allow or require human evaluation or interpretation of information surrounding an event to determine if the event is a legitimate incident and will close automatically. R.D. at 1 (citing AGA White Paper, *Automatic Shut-off Valves and Remote-Control Valves on Natural Gas Transmission Pipelines*, AGA Distribution & Transmission Engineering Committee (March 25, 2011)).

¹⁷ In its Petition to Rescind, Sunoco voluntarily agreed that it would: “(a) not locate for the ME2 line Valve 344 on the Janiec 2 Tract and conduct the activities relative to Valve 344 which were the subject of the injunction as specified in the October 26, 2017 Order Ordering paragraph 3; and, (b) not locate such a valve for the ME2 line anywhere in West Goshen Township.” Petition to Rescind at 4.

would prevent Sunoco from changing its plans and deciding to construct a valve on the Janiec 2 Tract, which could interfere with the Township's development and emergency operations on that Tract. *Id.* at 42-43. The ALJ recommended that this injunction be directed because Sunoco was willing to accept as a condition of approval of its Petition to Rescind that it would not locate Valve 344 on the Janiec 2 Tract or elsewhere in the Township, and the Township has been seeking assurance that the valve will not be built on the Janiec 2 Tract.

The ALJ also recommended that the Commission require Sunoco to file affidavits when it has implemented its plans and completed installation of remotely operated valves at the Eagle Pump Station, East Lincoln Highway, and Middletown Road in proximity to the Township. The ALJ further recommended that Sunoco be directed to provide Mr. Kuprewicz with plans for safety review purposes until Mariner East 2 and 2X are completed in the vicinity of the Township. The ALJ reasoned that Sunoco has an on-going duty under the 2015 Settlement Agreement to provide Mr. Kuprewicz with such plans. R.D. at 43.

Fifth, the ALJ analyzed whether the Commission should modify or revise the Parties' 2015 Settlement Agreement pursuant to Section 508 of the Code, 66 Pa. C.S. § 508. The ALJ recommended that the Agreement not be modified. Rather, the ALJ recommended that the Commission issue the following Ordering Paragraphs that she included at the end of the Recommended Decision:

1. That West Goshen Township's Amended Complaint is granted in part and denied in part consistent with the body of this decision.
2. That Sunoco Pipeline, L.P. is enjoined from constructing or locating a valve or its appurtenances on the Janiec 2 Tract or anywhere else in West Goshen Township except for the SPLP Use Area without first

consulting with and obtaining the express written consent of West Goshen Township.

3. That Sunoco Pipeline, L.P. shall provide all engineering documents and plans to Richard Kuprewicz of Accufacts, Inc. for safety reviews related to Mariner East 2 and Mariner East 2X between the valve at Eagle and the valve at Middletown and regarding Sunoco Pipeline, L.P.'s plans to eliminate a valve in West Goshen Township and automate a valve approximately 2.5 miles from the Township within thirty (30) days of the date of entry of a final Order at C-2017-2589346 and shall file an affidavit attesting service has been made within forty-five (45) days.

4. That Sunoco Pipeline, L.P. shall file an affidavit at Docket No. C-2017-2589346 attesting to the fact that it has installed remotely operated or automatic valves at MP 335-Eagle Pump Station, MP 341.1-East Lincoln Highway and MP 350.5-Middletown Road, all in proximity to West Goshen Township, within thirty (30) days of said installation, which shall occur no later than 120 days after the date of entry of a final Order in this proceeding.¹⁸

5. That in all other respects, West Goshen Township's Complaint is denied and dismissed.

6. That upon the filing of affidavits per Ordering Paragraphs No. 3 and 4, Docket No. C-2017-2589346 shall be closed.

R.D. at 53-54.

¹⁸ Sunoco has voluntarily decided to locate the valve outside of the Township and to install remotely operated or automatic valves at specific locations. As such, the ALJ's directives herein shall not be construed as including a directive that Sunoco site a valve in a particular location.

Disposition

This case comes to us in a unique procedural stance. While both Parties agree with the ALJ's Recommended Decision, they decided to file the instant Joint Petition regardless. The sole term of the Parties' Joint Petition is that the Commission adopt the Recommended Decision without modification. In support of this unusual request, which is not permitted in our procedural rules, the Joint Petition cites to *Keebler* in which we approved a settlement filed in lieu of exceptions. However, in *Keebler* the parties agreed upon substantive terms which differed from those in the Initial Decision, meaning that the parties would have filed exceptions if they had not reached an agreement. In that situation, Commission evaluation of the settlement was necessary.

Here, the Joint Petition is essentially an agreement that the Parties refrain from: (1) filing Exceptions; (2) seeking reconsideration or other relief contained in 52 Pa. Code § 5.572; and/or (3) seeking review from a court of competent jurisdiction. Parties do not need Commission approval to refrain from taking these actions. The Joint Petition makes no substantive or procedural change to the Recommended Decision or to the proceeding itself. If the Parties had filed an agreement to dispose of the substantive issues in this proceeding prior to the service of the Recommended Decision, then that agreement would have been evaluated by the ALJ, and the subsequent Recommended Decision would have considered all of the substantive terms.

In this case, the Parties waited until the ALJ finished her evaluation of the record and the applicable law, and then agreed with it. This is not a settlement but, rather, a decision by both Parties to stop contesting the matter further in the subject docket. The Parties are free to enter into such an agreement, and they could have simply notified the Commission in a letter that they would not be filing Exceptions or Replies to Exceptions. In fact, the Parties did not need to file anything, because the settlement before us does not raise any issues that require Commission action. Accordingly, we find

that the Joint Petition is moot. Additionally, noting that there is no opposition to the Recommended Decision in this case, we shall adopt the Recommended Decision in full without modification based on our review of the decision and the record in this proceeding. As such, the Parties are required to comply with all the directives set forth in the Recommended Decision.

Conclusion

Based on our review of the Joint Petition, the Recommended Decision, and the record in this proceeding, we determine that: (1) the Joint Petition is moot; (2) the Recommended Decision is adopted without modification; and (3) the Parties shall comply with the directives in the Recommended Decision; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Settlement in Lieu of Exceptions filed by Sunoco Pipeline L.P. and West Goshen Township on August 10, 2018, is moot.

2. That the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes, issued on July 19, 2018, is adopted without modification.

3. That Sunoco Pipeline, L.P. is enjoined from constructing or locating a valve or its appurtenances on the Janiec 2 Tract or anywhere else in West Goshen Township, except for the SPLP Use Area, without first consulting with and obtaining the express written consent of West Goshen Township.

4. That Sunoco Pipeline, L.P. shall provide all engineering documents and plans to Richard Kuprewicz of Accufacts, Inc. for safety reviews related to Mariner East 2 and Mariner East 2X between the valve at Eagle and the valve at Middletown, and

regarding Sunoco Pipeline L.P.'s plans to eliminate a valve in West Goshen Township and automate a valve approximately 2.5 miles from West Goshen Township, within thirty (30) days of the entry date of this Opinion and Order, and shall file an affidavit with this Commission attesting that service has been made to Richard Kuprewicz of Accufacts, Inc. within forty-five (45) days of the entry date of this Opinion and Order.

5. That Sunoco Pipeline, L.P. shall file an affidavit with this Commission attesting that it has installed remotely operated or automatic valves at MP 335-Eagle Pump Station, MP 341.1-East Lincoln Highway, and MP 350.5-Middletown Road within thirty (30) days of such installation, which shall occur no later than 120 days after the entry date of this Opinion and Order.

6. That upon compliance with the directives in Ordering Paragraphs 4 and 5, above, this proceeding at Docket No. C-2017-2589346 shall be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 20, 2018

ORDER ENTERED: October 1, 2018