

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

Public Meeting held October 26, 2017

Commissioners Present:

Gladys M. Brown, Chairman  
Andrew G. Place, Vice Chairman  
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 *Interim Emergency Order and Certification of Material Question (July 24 Order)* issued by Administrative Law Judge (ALJ) Elizabeth Barnes on July 24, 2017, in the above-captioned proceeding. As authorized by the Commission's Regulations, 52 Pa. Code §§ 3.10 and 5.305, on July 31, 2017, West Goshen Township (the Township) filed a Brief in Support of the Interim Emergency Order (Township Brief) and Sunoco Pipeline, L.P. (Sunoco) filed a Brief in Opposition to the Order Granting Interim Emergency Relief (Sunoco Brief).

The material question before the Commission is the following:

Did the ALJ properly grant the Township's request for an interim emergency order enjoining Sunoco from beginning and to cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346?<sup>1</sup>

For the reasons stated herein, we determine that the Township has met the requirements for obtaining interim emergency relief. Therefore, we answer the material question in the affirmative.

### **I. History of the Proceeding**

On March 21, 2014, at Docket No. P-2014-2411966, Sunoco filed a Petition (Sunoco Petition) requesting a finding that a building to shelter the Boot Road Pump Station in the Township was reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning ordinances. The Boot Road Pump Station and an associated Vapor Combustion Unit would serve a natural gas liquids pipeline owned by Sunoco that is part of the Mariner East Project to transport propane, ethane, and other natural gas liquids from points west and north of the Township to points in Delaware County, Pennsylvania, and the State of Delaware. On April 18, 2014, the

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<sup>1</sup> The material question reflects a minor modification of the language in Ordering Paragraph 2 of the *July 24 Order* in order to more closely follow the interim emergency relief the Township requested in its Petition and the ALJ's discussion in the *July 24 Order*.

Concerned Citizens of West Goshen Township (CCWGT)<sup>2</sup> filed a Protest and Preliminary Objections to the Sunoco Petition. On April 21, 2014, the Township filed a Petition to Intervene.

On November 7, 2014, CCWGT filed a Formal Complaint (CCWGT Complaint) against Sunoco, at Docket No. C-2014-2451943, alleging safety concerns about the proposed Sunoco facilities in the Township. The Sunoco Petition and the CCWGT Complaint were resolved by a Settlement Agreement between Sunoco, the Township, and the CCWGT. By Order entered May 28, 2015, the Commission granted Sunoco's request to withdraw the Sunoco Petition. The Settlement Agreement was certified by the Commission's Secretary on June 15, 2015, at Docket No. U-2015-2486071, pursuant to Section 507 of the Public Utility Code (Code), 66 Pa. C.S. § 507.<sup>3</sup> On June 16, 2015, the CCWGT filed a Certificate of Satisfaction and Withdrawal of Formal Complaint regarding the CCWGT Complaint.

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<sup>2</sup> 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.

<sup>3</sup> 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.

On March 30, 2017, the Township filed an Amended Complaint (Township Complaint) against Sunoco, at the instant Docket No. C-2017-2589346, seeking enforcement of the Settlement Agreement filed at Docket No. U-2015-2486071,<sup>4</sup> specifically pertaining to Sunoco's proposal to site Valve 344 on the Janiec 2 Tract. On April 17, 2017, Sunoco filed an Answer to the Complaint and New Matter. Sunoco denied the material allegations in the Complaint and averred that siting Valve 344 on the Janiec 2 Tract would not constitute a violation of the Settlement Agreement. On May 5, 2017, the Township filed an Answer to the New Matter.

On May 22, 2017, Sunoco filed a Motion for Judgment on the Pleadings. On June 12, 2017, the Township filed a Response in Opposition to the Motion for Judgment on the Pleadings. On July 5, 2017, Sunoco filed a Motion to Stay Discovery Pending Disposition of the Motion for Judgment on the Pleadings. By Order dated July 24, 2017, ALJ Barnes denied both of Sunoco's Motions.

On July 10, 2017, the Township filed a Petition seeking, *inter alia*, an Interim Emergency Order (Petition) pursuant to 52 Pa. Code § 3.6, to enjoin Sunoco from beginning or continuing construction of a valve and any other facilities appurtenant to Sunoco's Mariner East 2 pipeline on the Janiec 2 Tract, or at any location not specifically agreed to in the Settlement Agreement, until after the Commission issues a final order on the Township Complaint.<sup>5</sup> On July 17, 2017, Sunoco filed an Opposition to the Township's Petition.

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<sup>4</sup> The Settlement Agreement is also Township Exhibit 4 in this proceeding.

<sup>5</sup> The Township originally filed its 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.

On July 18, 2017, ALJ Barnes conducted a hearing on the Petition. The hearing record includes twenty Township exhibits, fifteen Sunoco exhibits, and a 254-page transcript. Both Parties filed Briefs regarding the Petition on July 24, 2017.

In the *July 24 Order*, the ALJ granted the Township's 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 26, 2017, the Office of Administrative Law Judge (OALJ) issued a Hearing Notice scheduling evidentiary hearings on April 25, 2018, and April 26, 2018.

As previously noted, on July 31, 2017, the Township and Sunoco each filed a Brief pertaining to the *July 24 Order*.

By Secretarial Letter issued August 4, 2017, the Commission waived the thirty-day period for consideration of these matters, as set forth in 52 Pa. Code § 5.305(e), and extended the consideration period to thoroughly consider the *July 24 Order* and the Parties' Briefs. *See* 52 Pa. Code § 1.2(c); *C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, Docket No. C-00924416 (Order entered June 4, 1993).

## **II. Background Regarding the Settlement Agreement**

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

## **II. Pertinent Information Provided by [Sunoco]**

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

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

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

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

**III. [The Township’s] Safety Review**

1. [The Township] has engaged Accufacts, Inc., and its President, Richard Kuprewicz, a nationally recognized expert in the field of liquids pipeline safety, to prepare a written report as to the safety of Mariner East 1 (the “Kuprewicz Report”) based on the design and engineering facts and information heretofore provided by [Sunoco]. The Kuprewicz Report is attached as Appendix 5 hereto and is made a part of this Agreement.

**IV. The Parties’ Promises, Covenants and Agreements**

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

1. [Sunoco] covenants and agrees as follows:  
a. Because of its existing Pump Station Facility at Boot Road, except with respect to the SPLP Use Area, [Sunoco] covenants and agrees that it shall not construct or install any pump stations, VCUs or above-ground permanent public utility facilities on the SPLP Additional Acreage for any phase of the Mariner East Project. [Sunoco] also agrees that, except for the SPLP Use Area, any use of the SPLP Additional Acreage for staging construction, laydown or other operational activity will be temporary, and [Sunoco] will restore the surface to its former condition following the completion of such activity.

...

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

...

d. As long as [Sunoco] (i) constructs and operates facilities in [the Township] as described in Section II above; (ii) abides by the covenants and agreements in Section III.A.1 above; and (iii) operates in a manner consistent with the safety, design and engineering facts and information heretofore provided to [the Township’s] consultant, [the Township] agrees that it will not file or join

in any complaint against the safety of [Sunoco's] service or facilities with the Commission or any other federal, state, or local government agency or endorse or promote any protest or action filed by the CCWGT or any other individual or group against [Sunoco] with respect to the safety of Mariner East 1 or the valve station described in paragraph II.A.2 of this Agreement.

Settlement Agreement at 2-3, 5-6, 7.

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

### **III. Discussion**

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Additionally, we note that we will address the Parties' positions as they pertain to the four elements necessary for interim emergency relief. While the Township's Brief discusses all four elements, Sunoco's Brief focuses more on the elements it argues the Township has not be established and does not address each element

separately. Sunoco requests that the Commission vacate the ALJ's *July 24 Order*. In the alternative, Sunoco requests that, if the Commission upholds the Order, then the Commission require the following: (1) that the *July 24 Order* will be effective only if the Township posts a bond in an amount that the Commission deems appropriate to pay the costs and damages sustained by Sunoco if Sunoco prevails on the merits; and (2) the OALJ be directed to hold a hearing to determine the amount of such security. Sunoco Brief at 3.

#### **A. Legal Standards Governing Emergency Relief**

The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1.<sup>6</sup> The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts to support the following:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

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<sup>6</sup> "Emergency" is defined in the Commission's Regulations as "[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting." 52 Pa. Code § 3.1. *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205 (Order entered April 20, 2006) (large rate increases did not constitute a clear and present danger to life or property); *Petition of National Fuel Gas Distribution Corp. for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service*, Docket Nos. P-961022 and P-961021 (Order entered March 19, 1996) (threat of depletion of gas stores in unusually cold conditions constituted a clear and present danger to life or property).

52 Pa. Code § 3.6(b). The Commission may grant interim emergency relief only when all of the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993).

As to the first element, the Commission has determined that it is not necessary to determine the merits of a controversy in order to find that a petitioner's right to relief is clear; rather, the basis for determining whether this standard has been met is whether a petitioner has raised "substantial legal questions." *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011) (*Core*); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002) (*Level 3*); cf. *T.W. Phillips Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*T.W. Phillips*).<sup>7</sup>

For example, in *Core*, the Commission held that the ALJ's conclusion that this prong requires a finding that a petitioner will prevail on the underlying complaint is an "unreasonably strict" interpretation of Section 3.6(b). The Commission stated:

The basis for determining whether a petitioner has met this standard [a clear right to emergency relief] is whether the petitioner has raised "substantial legal questions." *T.W. Phillips Gas and Oil v. Peoples Natural Gas, supra*. The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy.

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<sup>7</sup> In reviewing the issuance of an injunction, the Commonwealth Court held that the moving party was not required to demonstrate its absolute right to relief on the underlying claim where the other elements for injunctive relief were satisfied. The Court held that ". . . if the other elements of a preliminary injunction are present, and the underlying claim raises important legal questions, the plaintiff's right to relief is clear." *T.W. Phillips* at 781 (emphasis supplied).

As stated above, the ALJ based her conclusion on a finding that it is “wholly uncertain” whether Core will prevail in the underlying Complaint. In our view, this interpretation of the “right to relief” standard is unreasonably strict. The outcome of litigation by its nature is nearly always uncertain. Requiring a petitioner seeking emergency relief to demonstrate, with certainty, that litigation will be resolved in its favor would be an impossible burden to meet.

*Core* at 12 (record citation omitted).

The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6(b). 66 Pa. C.S. § 332(a). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission’s decision must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

An order granting or denying interim emergency relief is effective immediately upon issuance by the presiding officer. A presiding officer is required to certify the grant or denial of relief to the Commission as a material question. 52 Pa. Code

§ 3.10(b). No stay of an order granting or denying interim emergency relief is permitted while the matter is being reviewed by the Commission. 52 Pa. Code § 3.10(a).

Upon review of the certified question, the Commission is required to do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

52 Pa. Code § 5.305(e).

## **B. The Township's Petition for Emergency Relief**

### **1. 52 Pa. Code § 3.6(b)(1)**

#### **a. ALJ's Recommendation**

The first requirement to receive interim emergency relief requires the petitioner to demonstrate that its right to relief is clear. 52 Pa. Code § 3.6(b)(1). As noted above, the Commission has interpreted this provision as requiring only a determination that a petition raises a substantial legal question, rather than a determination of the merits of a controversy in order to find that a petitioner's right to relief is clear. *Core* at 8, 12; *Level 3* at 8.

The ALJ found that the Township's right to relief was clear because the underlying claim raises substantial legal questions, including, but not limited to the following:

(1) whether the Settlement Agreement requires Sunoco to construct any above-ground valve station facilities in the Township within the “SPLP Use Area” unless Sunoco is unable to do so due to engineering constraints; (2) whether Sunoco gave the Township proper notice of an intent to relocate valve 344 from the SPLP Use Area to the Janiec Tract 2; (3) whether at the time of execution of the Settlement Agreement, Sunoco had plans and withheld material information about its plans for the ME2 phase pipeline; (4) whether Sunoco always intended to site Valve 344 on the Janiec 2 Tract and misrepresented this intention at the time of the Settlement Agreement; (5) whether there are engineering constraints that prevent Sunoco from constructing Valve 344 on the SPLP Use Area; (6) whether the township has the right to review the alleged engineering constraints that might be identified as preventing the installation of valve facilities outside the SPLP Use Area; and (7) whether the Settlement Agreement grants Sunoco the right to locate valve facilities anywhere it wishes in the township other than on the SPLP Additional Acreage.

*July 24 Order* at 3-4. The ALJ delineated the testimony and evidence she relied on in reaching her decision.

The ALJ stated that the Township’s expert witness in pipeline safety, Richard Kuprewicz, testified that Sunoco did not provide him with a reason why it could not do horizontal directional drilling (HDD) at the SPLP Use Area. *Id.* at 4 (citing Tr. at 126-127). The ALJ noted that, during the hearing on July 18, 2017, when asked whether a plan existed for the SPLP Use Area like the one developed for the Janiec 2 Tract, Sunoco’s witness Richard Gordon admitted, “there’s not a plan like this one,” referring to Township Exhibit 13. *July 24 Order* at 5 (citing Tr. at 225-226, 230-231). The ALJ also noted that the evidence demonstrated that Mr. Gordon was aware of plans and recommendations from his engineering consultants to move forward with the Janiec 2 Tract, while leading the Township to believe Sunoco would place the valve station on the Janiec 1 Tract. *July 24 Order* at 5 (citing Tr. at 225-229). The ALJ observed that the

map Sunoco provided to the Township at the January 2016 meeting, dated September 28, 2015, and identified as Township Exhibit 5, does not show a valve station on the Janiec 2 Tract. *July 24 Order* at 6 (citing Tr. at 67-68). The ALJ was further persuaded by the testimony of Kristin Camp, the Township solicitor, who took notes at the meeting, because the Township wanted to see how Sunoco’s plans would impact the Traditions Project on the Janiec 2 Tract.<sup>8</sup> The ALJ stated that Ms. Camp’s notes do not contain any information about a valve on the Janiec 2 Tract. *July 24 Order* at 6 (citing Tr. at 145-147; Township Exh. 18). Moreover, the ALJ found that there was an issue whether Sunoco can feasibly and safely locate the valve on the SPLP Use Area, or whether that location is restrained by reasonable engineering concerns. The ALJ noted that Mr. Gordon did not testify that the valve station cannot be constructed on the SPLP Use Area, only that from an engineering standpoint, it would not be “prudent” to site the valve on the SPLP Use Area, because it is “potentially unsafe” and may not be practical. *July 24 Order* at 6 (citing Tr. at 194, 223, and 249).

**b. Positions of the Parties**

The Township avers that, as determined by ALJ Barnes, its underlying claim in this proceeding raises substantial legal questions, including the following: (1) whether the Settlement Agreement requires Sunoco to construct the valve in the SPLP Use Area; (2) whether Sunoco gave the Township proper notice of an inability to locate the valve station in the SPLP Use Area; (3) whether, at the time the Settlement Agreement was executed, Sunoco had different plans and withheld material information from the Township; and (4) whether engineering constraints prevent Sunoco from constructing the valve station on the SPLP Use Area. Township Brief at 13. First, according to the Township, the Settlement Agreement negotiations resulted in the SPLP

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<sup>8</sup> As will be discussed in more detail herein, the Traditions Project was a planned independent living facility that the Township approved for location on the Janiec 2 Tract.

Use Area, and Sunoco represented that the location of the valve station might change, but only within the confines of the SPLP Use Area. *Id.* at 5 (citing Township Exh. 17; Tr. at 172-173). The Township contends that the Parties did not discuss the Janiec 2 Tract during the negotiations, and the Settlement Agreement specifically provides that Sunoco did not have plans to locate above-ground facilities elsewhere in the Township. Township Brief at 5 (citing Township Exh. 4).

Second, the Township states that the location of the valve was central to the Settlement Agreement, and it would not have entered into the Settlement Agreement absent Sunoco's representations regarding the valve location. The Township explains that it understood Sunoco promised to locate the pump station, vapor combustion unit, and all accessory and appurtenant facilities for the Mariner East project on Sunoco's existing pump station site, except for a remotely operated valve station that would be constructed on the SPLP Use Area, as shown on Township Exhibit 2. Township Brief at 6 (citing Tr. at 60-62, 139-141). The Township also understood Section II of the Settlement Agreement to mean that, if Sunoco was unable to construct the valve station in the SPLP Use Area due to engineering constraints, Sunoco would notify the Township and the Parties would reach a resolution. The Township further understood Section II of the Settlement Agreement to mean that the Township was not providing permission for any other above ground facilities elsewhere in the Township, including the Janiec 2 Tract. Township Brief at 6 (citing Tr. at 62-63).

Third, the Township avers that the record indicates that Sunoco was secretly planning to locate the valve on the Janiec 2 Tract. The Township states that Sunoco's project engineer, Matthew Gordon, decided to locate the valve on the Janiec 2 Tract by March of 2015, but Sunoco continued to promise the Township that Sunoco would construct the valve station on the SPLP Use Area during the negotiations and in the Settlement Agreement and failed to provide notice of any alternate plans. Township Brief at 7 (citing Tr. at 225-229). The Township also states that Sunoco refused to

provide copies of engineering plans or drawings relating to Mariner East 2, citing proprietary and security reasons, and that there are no meeting minutes, emails, or other documents showing that Sunoco attempted to use the SPLP Use Area. Brief at 7 (citing Tr. at 231-232).

Fourth, the Township argues that Sunoco did not notify the Township that it was unable to locate the valve on the SPLP Use Area. The Township avers that it initially learned of Sunoco's plans to site the valve on the Janiec 2 Tract during a Board of Supervisors meeting in January 2016 when the Township was considering final approval of the Traditions Project. The Township then scheduled a meeting with Sunoco on January 20, 2016, during which Sunoco advised the Township that it planned to use the Janiec 2 Tract for a lay-down yard and to perform HDD. Township Brief at 7 (citing Tr. at 67-69, 144-147). According to the Township, Sunoco did not inform the Township of its plans to construct a valve station on the Janiec 2 Tract at that time. Township Brief at 7 (citing Tr. at 67-68, 145-146). The Township contends that it learned of Sunoco's "true intentions" to site the valve station on the Janiec 2 Tract in January 2017 when Sunoco's engineering firm provided the Township with plans and specifications for an erosion and sediment control plan that depicted a valve on the Janiec 2 Tract. Township Brief at 8 (citing Tr. at 69-71, 73). The Township states that Sunoco did not provide any explanation for siting the valve on the Janiec 2 Tract and never advised the Township of engineering constraints that would make it unable to locate the valve station on the SPLP Use Area. Township Brief at 8 (citing Tr. at 65, 71, 210-211).

Fifth, the Township asserts that Sunoco has not established that it is unable to locate the valve on the SPLP Use Area. The Township states Sunoco's engineer has not informed Mr. Gordon that drilling cannot be done in the SPLP Use Area, and Sunoco has not provided any computer data, written analysis, or other engineering report to prove it is unable to construct the valve station on the SPLP Use Area. The Township also states that Sunoco has not presented any plans, drawings, or diagrams to show the

construction challenges it alleges in putting a valve on the SPLP Use Area. Township Brief at 9 (citing Tr. at 223-224, 244-245).

In its Brief, Sunoco argues that the absence of an emergency is fatal to the ALJ's issuance of an Interim Emergency Order. Sunoco avers that the ALJ's decision does not mention any clear or present danger to life or property, and the Township did not produce evidence that an emergency exists. Sunoco states that, because it has built a construction entrance on Boot Road, it does not need to use the fire department's driveway any longer. Sunoco Brief at 4 (citing Tr. at 102, 217).

Additionally, Sunoco argues that the ALJ incorrectly determined that the Township's right to relief is clear in this case and offers several reasons in support of its position. First, Sunoco avers that the ALJ misconstrued the clear and unambiguous Settlement Agreement between the Parties. Sunoco Brief at 4. Sunoco states that the Settlement Agreement describes the site where Sunoco said it intended to locate the valve station, the SPLP Use Area. Sunoco also states that, contrary to the ALJ's misunderstanding, the SPLP Additional Acreage is not within the SPLP Use Area, rather, the SPLP Use Area is a small area located within the larger SPLP Additional Acreage. *Id.* at 5 (citing Township Exhs. 2, 4; Sunoco Exh. 4). Sunoco indicates that under Paragraph II.A.2 of the Settlement Agreement, it represented that it intended to confine all above-ground Mariner East Project facilities within the Township to the existing Boot Road Pump Station, except for the valve, and that, subject to engineering constraints, it intended to construct the valve in the SPLP Use Area. Sunoco Brief at 5-6. Sunoco also indicates that it represented that it would notify the Township if engineering constraints required the valve to be relocated and, therefore, the express language of the Settlement Agreement acknowledges engineering constraints may prevent the valve placement in the SPLP Use Area. Sunoco further indicates that Paragraph IV.A.1.a of the Settlement Agreement provides that, except in the SPLP Use Area, Sunoco would not construct or install any above-ground facilities on the SPLP Additional Acreage for any phase of the Mariner East

Project. *Id.* at 6. Sunoco avers that, consistent with the Settlement Agreement, Mr. Gordon testified that Sunoco considered multiple paths for siting the valve and determined that it must site the valve on the Janiec 2 Tract because Sunoco's engineers concluded that constructing the valve on the SPLP Use Area was not safe or feasible, while constructing it on the Janiec 2 Tract was safe and feasible. *Id.* at 7 (citing Tr. at 189, 190).

Sunoco states that there are definitive answers to the substantial legal questions the ALJ delineated in finding that the Township's right to relief was clear. Sunoco contends that the plain and unambiguous language of Paragraph IV.A.1.a of the Settlement Agreement conveys that Sunoco is forbidden from siting the valve on the SPLP Additional Acreage unless the valve is sited in the SPLP Use Area. Accordingly, Sunoco avers that if it cannot site the valve in the SPLP Use Area, then the only possible alternative is to site the valve somewhere other than the SPLP Additional Acreage. Sunoco Brief at 8. Sunoco argues that the Settlement Agreement is silent regarding Sunoco's right to site the valve elsewhere in the Township and that the Settlement Agreement therefore does not prohibit it from siting the valve elsewhere. Sunoco asserts that, if the prohibition applied to the entire Township, then the valve could not be sited at all, and the Parties could not have intended such an absurd and unreasonable result. *Id.* at 9. Sunoco also contends that the ALJ improperly relied on the representations in Paragraphs II.A.2 and A.3 of the Settlement Agreement as if they contain enforceable promises when that section of the Settlement Agreement contains only information provided by Sunoco which, Sunoco avers, is unenforceable. *Id.* at 9-10.

Moreover, Sunoco avers that the ALJ's conclusion that the Settlement Agreement is ambiguous ignores the express language in the Settlement Agreement regarding what would happen if Sunoco changed its construction plans and deviated from the information it provided in Paragraph II. Sunoco states that the Settlement Agreement answers the ALJ's substantial legal questions about whether, at the time of the execution of the Settlement Agreement, Sunoco withheld material information about its plans for

Mariner East 2 and whether Sunoco misrepresented its intention to site Valve 344 on the Janiec 2 Tract. Sunoco indicates that Paragraph IV.A.2.e of the Settlement Agreement provides that Sunoco would share its plans for Mariner East 2 with Mr. Kuprewicz upon the execution of a confidentiality agreement so that Mr. Kuprewicz could perform a safety review. According to Sunoco, it was not legally obligated to share these plans with the Township before it entered into the Settlement Agreement. *Id.* at 11. Sunoco also indicates that, if it failed to construct the valve station as described in Paragraph II of the Settlement Agreement, then Paragraph IV.A.2.d expressly provides that the Township could file a safety complaint against Sunoco if Mr. Kuprewicz's review of the Mariner East 2 plans revealed a safety issue. *Id.* at 11-12.

Sunoco continues that, by misconstruing the unambiguous terms of the Settlement Agreement, the ALJ disregarded long-standing public policy and law. *Id.* at 14-15. Sunoco states that local municipalities do not have authority to regulate the siting of public utility facilities or to review engineering determinations of public utilities. *Id.* at 15 (citing *Duquesne Light Co. v. Upper St. Clair Township*, 105 A.2d 287, 292 (Pa. 1954); *County of Chester v. Philadelphia Electric Co.*, 218 A.2d 331, 333 (Pa. 1966)). Sunoco avers that, while it settled its dispute with the Township in the Settlement Agreement, it did not agree to allow the Township to be involved in siting its public utility facilities outside of the SPLP Additional Acreage or in its engineering decisions. Sunoco Brief at 15.

Second, Sunoco contends that the ALJ ignored unrebutted evidence of engineering constraints that led Sunoco to relocate the valve. *Id.* at 12. Sunoco states that it presented evidence during the hearing that it would have preferred to locate the valve on the SPLP Use Area, but it could not site the valve there for the following three reasons: (1) there was insufficient room along Mary Jane Lane required for HDD into the Boot Road pump station because of the adjacent Aqua America facility; (2) because HDD was infeasible, Sunoco would have had to open cut Boot Road to get the pipeline

into the Boot Road pump station or the SPLP Use Area, and the road would have been closed to traffic for an extended period of time; and (3) if the valve were located in the SPLP Use Area, Sunoco would have to use a shored excavation vertical shaft that posed safety risks for welders, and the drill profile for HDD under Route 202 would have a maximum depth of about twenty feet, passing through highly fractured, unconsolidated sandstone, and posing a high risk of inadvertent returns that would threaten motorists' safety. *Id.* at 12-13 (citing Tr. at 187, 188, 189, 190, 191, 193).

Third, Sunoco avers that the Township did not present any evidence that the valve could be safely located in the SPLP Use Area. Sunoco states that Mr. Kuprewicz conceded that he never discussed with Sunoco whether the SPLP Use Area would be a prudent location, and his report concluded that the current siting of the valve on the Janiec 2 Tract exceeded federal pipeline safety regulations. *Id.* at 14 (citing Tr. at 130, 131, 132-133).

**c. Disposition**

Based on our review of the record, we find that the Township has established, by a preponderance of the evidence, substantial legal questions. The record is well-developed and contains various testimony and exhibits that support the existence of substantial legal questions, many of which have been aptly cited above by the ALJ and the Township.<sup>9</sup>

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<sup>9</sup> Contrary to Sunoco's argument, the substantial legal questions the ALJ enumerates in the *July 24 Order* do not reflect a misunderstanding of the Settlement Agreement terms or the locations of or distinctions between the SPLP Additional Acreage and the SPLP Use Area. In footnote 1 of the *July 24 Order*, the ALJ appears to have inadvertently stated that the SPLP Additional Acreage is located within the SPLP Use Area; however, the remainder of the *July 24 Order* and the ALJ's analysis and conclusions are consistent with our reading of the record and the Settlement Agreement terms and do not reflect a misunderstanding of the fact that the SPLP Use Area is located within the SPLP Additional Acreage.

We find compelling the legal issues developed by the Township on the record pertaining to whether, at the time of the execution of the Settlement Agreement, Sunoco misrepresented its intention to site Valve 344 on the Janiec 2 Tract and whether Sunoco withheld material information about its plans for Mariner East 2. These legal issues implicate our authority under Section 508 of the Code to vary, reform, and revise contracts. 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). In this case, the

Settlement between the Township and Sunoco concerns the public interest and the well-being of the Commonwealth and, accordingly, presents substantial legal questions for litigation and a ruling on the Settlement. Both Parties have identified separate public interest concerns regarding Sunoco's operations: the Township's concerns relating to the health and safety of its residents, and Sunoco's concerns relating to propane supply and the shippers and producers that intend to use the Mariner East 2 pipeline to ship their products. Tr. at 219.

Along these lines, the Township has also identified substantial legal issues concerning the safety and reasonableness of locating Valve 344 on the Janiec 2 Tract.<sup>10</sup> The Township has presented issues that implicate "service" as broadly defined in the Code and involve the reasonableness, adequacy, and sufficiency of Sunoco's public utility service, especially regarding the circumstances surrounding the Parties' decision to enter into the Settlement Agreement and regarding the safety of the valve. Issues concerning the 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 Township presented testimony regarding the public safety risks associated with HDD at the valve site. Mr. Kuprewicz testified that HDD presents risks to the public, including breakouts and frac-outs. He explained that HDD involves boring in a cylinder using a drilling mixture of bentonite and water, and that a breakout or

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<sup>10</sup> In response to Sunoco's averment that the ALJ's decision does not mention any clear or present danger to life or property, we note that Commission determinations under Section 3.6 of our Regulations focus on the four elements required for interim emergency relief and do not always address or require the presence of a clear or present danger. See *Application of Fink Gas Company*, Docket No. A-2015-2466653 (Order entered August 20, 2015). Unlike Section 3.2 of our Regulations, Section 3.6 does not require a petitioner to establish the existence of an emergency. In any event under the factual circumstances in this case, we believe that there is sufficient evidence in the record to support a finding of a danger to life and/or property based on the dangers associated with HDD at the valve location.

frac-out occurs when the pressure involved causes a breakout of the drilling cylinder and allows the drilling mixture to migrate into underground water supplies. Tr. at 128, 129. Mr. Lalonde additionally testified that the Settlement Agreement purposefully confined Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area in order to protect the safety, health, and welfare of the Township residents. Tr. at 63. Mr. Lalonde stated that confining construction activities to certain limited areas would negate heavy traffic concerns, as about 25,000 to 36,000 vehicles use Boot Road daily and about 70,000 cars use Route 202 daily, and minimize the residents' exposure to safety issues and dust and noise. Tr. at 63, 64. Accordingly, we conclude that the Township has satisfied the first prong to obtain emergency relief.

Moreover, based on the framing of some of the issues by the ALJ, the Township, and Sunoco at this stage of the proceeding, one of the decisions we are being asked to reach is whether Sunoco has the authority to construct a valve on the Janiec 2 Tract, specifically, whether the Settlement Agreement provides Sunoco the right to construct the valve on the tract of land in question. We find it important to note 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.<sup>11</sup> It is not clear that the Commission has the authority to provide such an exemption in the context of the instant proceeding.

**2. 52 Pa. Code § 3.6(b)(2)**

**a. ALJ's Recommendation**

The second requirement for obtaining interim emergency relief is a demonstration by the petitioner that its need for relief is immediate. 52 Pa. Code § 3.6(b)(2). The ALJ determined that the need for injunctive relief was immediate. The ALJ stated that she was persuaded by the credible testimony of Casey LaLonde, Township Manager for West Goshen Township, that, on or about July 3, 2017, Sunoco notified the Township that it was going to start construction on the Janiec 2 Tract within several weeks. *July 24 Order* at 6 (citing Tr. at 74). The ALJ noted that on July 6, 2017, the date of the pre-hearing conference on the Township's Complaint, Sunoco would not promise a stay of construction, and it began clearing work on the Janiec 2 Tract. *July 24 Order* at 6-7 (citing Tr. at 30, 74-75; Township Exh. 9). The ALJ also noted that the Township requested that Sunoco cease operations on the Janiec 2 Tract until the Commission reached a determination in this case, but Sunoco refused. *July 24 Order* at 7 (citing Tr. at 30, 76). The ALJ found that the clearing and grading of the Janiec 2 Tract

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<sup>11</sup> As discussed *supra*, we note that Sunoco originally filed a MPC Section 619 petition, at Docket No. P-2014-2411966, that requested the Commission to determine that the public utility facilities it planned to construct in West Goshen Township are reasonably necessary for the convenience or welfare of the public. Sunoco subsequently withdrew its MPC Section 619 Petition after reaching the Settlement Agreement. Because the Commission granted Sunoco's petition to withdraw its Section 619 MPC Petition, the Commission did not reach a determination under 53 P.S. 10619 that Sunoco's proposed facilities in West Goshen Township are reasonably necessary for the convenience or welfare of the public.

and the preparation of the construction entrance thereon indicated that Sunoco intended to immediately begin construction of the valve station on the Janiec 2 Tract. *July 24 Order* at 7 (citing Tr. at 76). The ALJ further observed that the Township received notice from the Pennsylvania Department of Transportation (PennDOT) that Sunoco was beginning work on the Janiec 2 Tract, and Sunoco's witness, Matthew Gordon, Project Manager of Mariner East Project, testified that work had commenced on the Janiec 2 tract. *July 24 Order* at 7 (citing Tr. at 76, 213-214).

**b. Positions of the Parties**

The Township avers that it established that the need for relief is immediate. The Township states that the testimony of Casey LaLonde showed that on or about July 3, 2017, Sunoco notified the Township that it was starting construction on the Janiec 2 Tract within several weeks. Township Brief at 9, 14 (citing Tr. at 74). The Township also states that only three days later on July 6, 2017, the same date as the prehearing conference on the Township Complaint, Sunoco refused to agree to a stay of construction and began clearing work on the Janiec 2 Tract. Township Brief at 9, 14 (citing Tr. at 74-76, 213-214; Township Exh. 9). The Township argues that Sunoco's clearing work, preparation of a construction entrance, and the testimony of Mr. Gordon indicate that Sunoco intended to immediately begin construction of the valve station on the Janiec 2 Tract. Township Brief at 14.

**c. Disposition**

Based on our review of the record, we concur with the ALJ's determination that the Township has established, by a preponderance of the evidence, that the need for relief is immediate. It is undisputed that Sunoco intended to immediately proceed with the work for constructing Valve 344 on the Janiec 2 Tract. The Township presented the credible testimony of Mr. LaLonde that on or around July 3, 2017, Sunoco communicated

to the Township that it would be starting construction on the Janiec 2 Tract within several weeks. Tr. at 74. Mr. LaLonde also testified that, on July 6, 2017, the date of the prehearing conference on the Township Complaint, Sunoco graded and cleared the site. Tr. at 74, 75, and 76. Mr. LaLonde further testified that PennDOT notified the Township that work was beginning on the Janiec 2 Tract. Tr. at 76. The transcript from the prehearing conference reflects that Sunoco would not agree to the Township's request to stop the valve construction until after an evidentiary hearing was held and the Commission reached a final determination on the Township Complaint. Sunoco's witness, Mr. Gordon, agreed with Mr. LaLonde that Sunoco had started work on Janiec 2 Tract. Tr. at 213. Mr. Gordon stated that Sunoco had cleared the site for construction and built a construction entrance off Boot Road to enable equipment to access the site without using the fire department's driveway. Tr. at 214. For these reasons, we conclude that the second prong to obtain emergency relief has been met in this case.

**3. 52 Pa. Code § 3.6(b)(3)**

**a. ALJ's Recommendation**

The third requirement for obtaining interim emergency relief is a demonstration by a petitioner that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3). The ALJ noted initially that monetary losses can satisfy the irreparable injury requirement. The ALJ stated that, if there is a great deal of uncertainty regarding whether the Township could recover possible losses, then the Township has satisfied the irreparable injury requirement. *July 24 Order* at 7 (citing *West Penn Power Co. v. Pa. PUC*, 615 A.2d 951 (Pa. Cmwlth. 1992)). The ALJ determined that the injury in this case would be irreparable if injunctive relief is not granted.

First, the ALJ discussed the impact the proposed valve location would have on the Traditions Project. The ALJ stated that before Sunoco's use of the Janiec 2 Tract,

the Township approved a \$35 million land development project known as the Traditions Project in December 2015. *July 24 Order* at 7 (citing Tr. at 82; Township Exh. 11). The ALJ noted that the Traditions Project would have been the first facility of its kind in the Township, would have generated significant real estate tax and earned income tax revenue for the Township, and would have provided approximately \$200,000 of road improvements in the Township. *July 24 Order* at 7 (citing Tr. at 82-83). The ALJ also noted that the developer abandoned the Traditions Project when Sunoco condemned the Janiec 2 Tract for its use on May 12, 2016, but that, if Sunoco moved from the Janiec 2 Tract, the Traditions Project could then happen. *July 24 Order* at 7 (citing Tr. at 83-84, 114).

Second, the ALJ observed that construction will have a negative impact on the Township, including safety concerns, transportation delays, dust, and noise. *July 24 Order* at 7 (citing Tr. at 63-64). Specifically, the ALJ stated that excessive HDD drilling increases the risk of frac-outs of bentonite drilling mixtures. *July 24 Order* at 7 (citing Tr. at 128-129). Moreover, the ALJ noted that traffic would be impacted because approximately 25,000 to 36,000 vehicles use Boot Road daily and approximately 70,000 vehicles use Route 202 daily. *July 24 Order* at 7-8 (citing Tr. at 63). The ALJ further noted that the Settlement Agreement confined Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area to minimize the impact to the Township residents and to minimize impeding access for firefighters entering and departing from the Goshen Fire Company located adjacent to the Janiec 2 Tract. *July 24 Order* at 8 (Tr. at 63-64).

Third, the ALJ found the evidence demonstrated that, if Sunoco installs a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area, because the pipe might be too deep at the location of the SPLP Use Area, and Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, creating a second round of risks to the public, including breakouts and frac-outs.

*July 24 Order* at 8 (citing Tr. at 127-128). Additionally, the ALJ stated that, if Sunoco continues construction on the Janiec 2 Tract, but later relocates the valve station to the SPLP Use Area, the Township will endure the noise, vibration, obstructions, and other negative consequences of the construction activities twice. *July 24 Order* at 8 (citing Tr. at 81).

**b. Positions of the Parties**

The Township argues that it has established it will suffer irreparable injury if interim relief is not granted. The Township avers that construction has a significant impact on the community, including traffic, air, dust, noise, vibrations, potential water contamination, and that HDD is not without significant costs. Township Brief at 14. The Township explains that approximately 25,000 to 36,000 vehicles use Boot Road daily, and approximately 70,000 vehicles use Route 202 daily. *Id.* at 10 (citing Tr. at 63). The Township further explains that the Settlement Agreement limited Sunoco's construction activities to Sunoco's existing pump station site and the SPLP Use Area to minimize the impact to the Township residents, and that frac-outs during drilling, allowing bentonite and water to migrate into underground water supplies, add an additional level of concern. Brief at 10 (citing Tr. at 128-129). The Township states that, if Sunoco constructs a valve station on the Janiec 2 Tract, it could not later simply move the valve station, because re-drilling and re-running of pipes would be required. Brief at 10 (citing Tr. at 81, 127-128). The Township also points out that it previously approved a \$35 million land development project for the Janiec 2 Tract, known as the Traditions Project, that would provide a service to the elderly, significant real estate taxes, and hundreds of thousands of dollars in road and stormwater improvements that is not moving forward due to Sunoco's condemnation of the site. Brief at 10 (citing Tr. at 82-84; Township Exh. 11).

**c. Disposition**

Upon review, we concur with the ALJ's finding and analysis that the Township met its burden of demonstrating that there would be irreparable harm unless emergency relief was granted. When evaluating if an injury is irreparable, we examine "whether the harm can be reversed if the request for emergency relief is not granted." *Core* at 15. We note that it is possible to satisfy the irreparable injury requirement when losses are monetary. *Id.* (citing *West Penn Power Co. v. Pa. PUC*, 615 A.2d 951 (Pa. Cmwlth. 1992)). In this case, the Township presented evidence that demonstrates both non-monetary and monetary harms. We find it significant that, if Sunoco installs a valve station on the Janiec 2 Tract, it could not later simply move the valve station to the SPLP Use Area. As the ALJ noted, the pipe might be too deep at the location of the SPLP Use Area, and Sunoco would be required to re-drill and re-run the pipeline to the SPLP Use Area, which would create a second round of risks to the public, including breakouts and frac-outs during drilling. Tr. at 127-128. Additionally, the same expenses, issues, and permits associated with a new HDD bore would have to be duplicated. Tr. at 128. Under the circumstances, it does not seem to be a feasible or practical option to relocate the valve once it has been constructed on the Janiec 2 Tract.

Moreover, Sunoco's construction plans have had a direct impact on the \$35 million Traditions Project the Township approved to be located on the Janiec 2 Tract. Tr. at 82; Township Exh. 11. Mr. Lalonde testified that the Traditions Project would have been the first independent living facility in the Township, would have generated significant real estate tax and earned income tax revenue for the Township, and the developer would have provided about \$200,000 of direct road improvements in the Township. Tr. at 82-83. Sunoco has not provided sufficient evidence to refute the Township's evidence on this issue. For the above reasons, the Township has satisfied the third prong to obtain emergency relief in this case.

**4. 52 Pa. Code § 3.6(b)(4)**

**a. ALJ's Recommendation**

The fourth requirement for obtaining interim emergency relief is a demonstration by a petitioner that the relief requested would not be injurious to the public interest. 52 Pa. Code § 3.6(b)(4). The ALJ found that that the Township's requested relief was not injurious to the public interest. *July 24 Order* at 9. The ALJ stated that, while Mr. Gordon testified that an interim emergency order would delay the targeted completion date for the Mariner East Project and cause producers of propane, ethane, and butane natural gas liquids a delay in transporting and shipping their products, drilling operations were suspended in other parts of Chester County due to water contamination from frac-outs. *Id.* at 8 (citing Tr. at 246).<sup>12</sup>

The ALJ additionally reasoned that the Township is not seeking to permanently stop construction of the Mariner East Pipeline or to stop a pipeline through

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<sup>12</sup> The ALJ is referring to a Consent Order and Agreement (COA), signed by the Pennsylvania Department of Environmental Protection (DEP) and Sunoco on July 24, 2017, which prohibited Sunoco from further activities in West Whiteland and Uwchland Townships, Chester County, until authorized by the DEP. By Order dated July 25, 2017, at Environmental Hearing Board (EHB) Docket No. 2017-009-L, the EHB suspended all DEP permits and stopped Sunoco's HDD activities at fifty-five sites in Pennsylvania, pending a further Order of the EHB. On August 9, 2017, DEP reached an agreement with the Clean Air Council, Delaware Riverkeeper Network, and the Mountain Watershed Association, Inc. and Sunoco to resolve the temporary suspension of HDD activity associated with construction of the Mariner East 2 pipeline. By Order dated August 10, 2017, the EHB vacated several of its prior Orders, including the July 25th Order, and required Sunoco to notify all landowners and water supply owners within 450 feet of future HDDs and provide additional opportunities for water testing for those owners. Sunoco is also required to perform a re-evaluation of about sixty-three areas where HDD activity will occur, including those in Chester County. As of this date, Sunoco has submitted a re-evaluation report relating to Uwchlan Township and seven other areas, and public comments were received. Such reports are subject to DEP's review and approval.

the Township altogether, but is, instead, seeking enforcement of the Settlement Agreement in the interest of its residents. *Id.* (citing Tr. at 81-82). The ALJ stated that Sunoco appeared to have agreed to restrictions on its activities within the Township at one time in May 2015. Accordingly, the ALJ determined that an injunction on construction on the Janiec 2 Tract until the Commission reached a final decision in this Complaint proceeding would not be injurious to the public, particularly since the *status quo* whereby there is no construction on the Janiec 2 Tract would be maintained throughout the litigation of the Township Complaint. *July 24 Order* at 9.

**b. Positions of the Parties**

The Township avers it established that interim emergency relief will not be injurious to the public. The Township states that Mr. Gordon testified there has not been a propane shortage since Mariner East 1 was completed, and there is no evidence of a potential fuel shortage if the project is delayed. Township Brief at 11, 15 (citing Tr. at 219). The Township continues that there are other parts in Chester County where drilling has been stopped due to problems it is causing to the water. Township Brief at 11 (citing Tr. at 246-247). The Township indicates that it is not trying to stop Sunoco from running a pipeline through the Township, but, rather, it is seeking Sunoco's compliance with the Settlement Agreement. Township Brief at 11, 15 (citing Tr. at 81-82).

In its Brief, Sunoco argues that the ALJ erroneously concluded that interim emergency relief would not be injurious to the public. Sunoco avers that the ALJ ignored un rebutted testimony that the delay would impact third parties, including shippers, producers, and consumers that are depending on the completion of the Mariner East 2 pipeline project. Sunoco Brief at 14 (citing Tr. at 219). Sunoco states the ALJ's reliance on the belief that there would not be a delay since HDD was shut down in other parts of Chester County due to water contamination, ignored the fact that HDD would resume at some point. Sunoco also states that the determination in the *July 24 Order* would cause

delays beyond June 2018 regardless of a construction suspension for other reasons. Sunoco Brief at 14.

**c. Disposition**

In weighing the evidence presented by both Parties on this issue, we find that the Township has met its burden under Section 3.6(b)(4) of our Regulations by demonstrating that emergency relief will not be injurious to the public interest. We agree with the ALJ's rationale that the Township is not seeking to permanently stop construction of the Mariner East Pipeline or to prevent a pipeline through the Township altogether, but, is, instead, seeking enforcement of the Settlement Agreement in the interest of its residents. Because the Settlement Agreement was executed to resolve the safety concerns of the Township and the CCWGT regarding Sunoco's facilities in the Township, ensuring that the Parties comply with the Settlement Agreement is consistent with the public interest and the interest of the Township residents. We also acknowledge that a delay in construction would delay shippers and producers from using the Mariner East 2 pipeline to ship their products; however, Sunoco has indicated that there has not been a propane shortage since Mariner East 1 was completed. Tr. at 219. Further, based on the status of the DEP proceeding discussed herein, it appears that Sunoco will not be able to immediately resume HDD drilling in various Pennsylvania areas, including those in Chester County. We find that maintaining the current *status quo* without valve construction on the Janiec 2 Tract until we hold an evidentiary hearing and issue a decision addressing the instant Settlement Agreement dispute, is the most appropriate way to satisfy the public interest under the circumstances in this case. Accordingly, we conclude that the fourth prong to obtain emergency relief has been met in this case. For all of these reasons, we shall answer the material question in the affirmative.

### C. Sunoco's Bond Request and Disposition

In its Brief, Sunoco requests that, if the Commission upholds the ALJ's determination, then the *July 24 Order* should be effective only if the Township posts a bond, consistent with Section 3.8 of our Regulations, 52 Pa. Code § 3.8. Sunoco avers that the bond should be in an amount that the Commission deems appropriate to pay the costs and damages sustained by Sunoco if Sunoco prevails on the merits and that the Office of Administrative Law Judge should be directed to hold a hearing to determine the amount of such security. Sunoco Brief at 3. Section 3.8(b) provides that "[a]n order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and will specify the amount of the bond." We find that it would not be appropriate to require a bond from the Township under the circumstances in this case. A bond or an escrow account is normally contemplated and required when a party may owe a specific amount of money based on a statutory or contract obligation or payment of an outstanding bill to a utility, and the money is secured pending the outcome of a proceeding. *See, e.g., Pa. PUC v. Snyder Brothers, Inc.*, Docket No. C-2014-2402746 (Order entered July 30, 2015); *Palmerton Telephone Company v. Global NAPs South, Inc.*, Docket No. C-2009-2093336 (Order entered August 3, 2010); *Buffalo-Lake Erie Wireless Systems Co., LLC Petition for Emergency Order*, Docket No. P-2009-2150008 (Order entered January 14, 2010). The record here does not reflect any specific amount of money that the Township would owe to Sunoco and Sunoco has not alleged a specific amount. Sunoco appears to be asking for litigation costs and damages if it ultimately prevails on the merits, and the Commission does not have jurisdiction to award such costs or monetary damages. *Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371 (Pa. 1980); *Application of Guidance Telecom LLC*, Docket No. A-2012-2305457 (Order entered August 31, 2012). Accordingly, we shall deny Sunoco's request.

#### IV. Conclusion

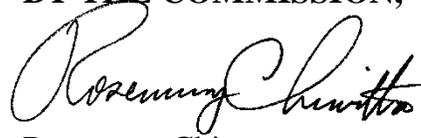
Consistent with the foregoing discussion, we conclude that the ALJ correctly determined that the Township met the requirements set forth in 52 Pa. Code § 3.6(b) and carried its burden of demonstrating its right to interim emergency relief. We also deny Sunoco's request that we direct the Township to post a bond under Section 3.8 of our Regulations, 52 Pa. Code § 3.8; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Material Question certified to the Commission on July 24, 2017, by Administrative Law Judge Elizabeth Barnes, is answered in the affirmative.
2. That the Petition for Interim Emergency Relief filed by West Goshen Township on July 10, 2017, is granted, consistent with this Opinion and Order.
3. That Sunoco is enjoined from beginning and shall cease and desist from the following: (1) constructing Valve 344 on the Janiec 2 Tract; (2) constructing appurtenant facilities to Valve 344 on the Janiec 2 Tract; (3) horizontal directional drilling activities related to Valve 344 on the Janiec 2 Tract; and (4) constructing Valve 344 at a location that is in dispute under the Settlement Agreement until the entry of a final Commission Order ending the formal amended complaint proceeding at Docket No. C-2017-2589346.
4. That Sunoco Pipeline L.P.'s request that the Commission direct West Goshen Township to post a bond under 52 Pa. Code § 3.8 is denied.

5. That this matter is referred back to the Office of Administrative Law Judge for further proceedings consistent with this Opinion and Order.

**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: October 26, 2017

ORDER ENTERED: October 26, 2017