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CLEAN AIR COUNCIL 135 South 19 <sup>th</sup> Street, Suite 300 Philadelphia, PA 19103	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
MARGARET M. deMARTELEIRE and MICHAEL S. BOMSTEIN, w/h 225 South Pennell Road Media, PA 19063,	:	CIVIL ACTION - EQUITY
	:	AUGUST TERM, 2015
Plaintiffs	:	NO.
	:	
	:	
v.	:	
	:	
SUNOCO PIPELINE L.P. 1818 Market Street, Suite 1500 Philadelphia, PA 19103,	:	
Defendant	:	

(Continued on next page)

## NOTICE TO PLEAD

### NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION  
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### AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a la demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar las demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## Introduction

Sunoco Pipeline L.P. (“SPLP”) is an interstate carrier of crude oil, gasoline, and natural gas liquids such as propane, butane, and ethane. In 2012, SPLP received approval from the Federal Energy Regulatory Commission for a new pipeline project, referred to as the Mariner East 1 pipeline (“Mariner 1”), which would transport natural gas liquids (“NGL’s”) from the shale fields of Ohio and West Virginia, across Pennsylvania and to a terminal situated both in Pennsylvania and Delaware for the purpose of shipping to markets outside the Commonwealth. In 2014, its new Mariner East 2 pipeline project (“Mariner 2”) also received federal approval, to do the same.

In seeking federal approval, SPLP represented that the projects were designed to relieve an oversupply of NGL’s in the Commonwealth. After obtaining federal approval for Mariner 2, SPLP was unable to obtain the permission of property owners throughout the state to run pipelines through their yards, so it began to take properties under Pennsylvania’s eminent domain laws. Dozens of eminent domain proceedings have already begun.

In this action, plaintiffs allege that because Mariner 1 and Mariner 2 are in interstate commerce, the state Public Utility Code does not apply and SPLP lacks any authority to exercise the right of eminent domain for the project’s construction. In the alternative, even if it were determined that the project is engaged in intrastate commerce, SPLP is not entitled to eminent domain rights because it has neither applied for nor obtained an appropriate certificate of public convenience—the needed authorizing document—from the Public Utility Commission. Federal law provides no right to eminent domain, either. The proposed pipelines will carry NGL’s, not natural gas, and therefore federal jurisdiction comes under the Interstate Commerce Act, which confers no eminent domain rights, as opposed to the Natural Gas Act.

Finally, in the event it is held that existing certificates of public convenience cover transportation of petroleum products in given Pennsylvania counties, those certificates must nonetheless be construed narrowly in the light of (a) the applications submitted at the time; (b) the purpose for which the pipelines were arguably approved; and (c) the constitutional rights of property owners in the affected counties under state and federal constitutions, including both the 5<sup>th</sup> Amendment to the U.S. Constitution and the Environmental Rights Amendment of the Pennsylvania Constitution. In that light, it is clear that SPLP has no right to use eminent domain to take individuals' private property for the Mariner 2 project.

### The Parties

1. Plaintiff, Clean Air Council (the "Council") is a nonprofit corporation doing business in the Commonwealth at 135 South 19<sup>th</sup> Street, Suite 300, Philadelphia, Pennsylvania 19103. The Council is a member-supported environmental organization dedicated to protecting everyone's right to breathe clean air. The Council works through public education, community advocacy, and government oversight to ensure enforcement of environmental laws.

2. Plaintiffs Margaret M. deMarteleire and Michael S. Bomstein, wife and husband, are citizens of Pennsylvania residing at 225 South Pennell Road, Media, Pennsylvania 19063 ("the premises"). Plaintiffs are the owners of the premises as tenants by the entirety. They also are members of the Council.

3. Defendant is Sunoco Pipeline, L.P., ("SPLP") a limited partnership organized and existing under the law of the State of Texas and registered to do business in the Commonwealth. SPLP has its principal offices at 1818 Market Street, Suite 1500, Philadelphia, PA 19103.

4. SPLP is a wholly owned subsidiary of Sunoco Logistics Partners L.P. ("SXL"), a Delaware limited partnership doing business in the Commonwealth and elsewhere.

## FACTUAL AVERMENTS

### FERC Approves Mariner 1 as an Interstate Pipeline

5. At all pertinent times, SPLP has been the operator of pipelines in the Commonwealth owned by SXL. Until 2011, SPLP during various periods had used these pipelines for the transportation of petroleum products from its Marcus Hook facility at Marcus Hook, Pennsylvania and Claymont, Delaware to various terminals in Pennsylvania, terminating in the west at a facility in Delmont, Pennsylvania.

6. Upon information and belief, at some time prior to December 2012, SPLP conceived the so-called Mariner East Project for the purpose of entering the business of transporting NGL's. NGL's are compounds, including ethane, propane, and butane, that are byproducts of recovering natural gas or oil through a process known as hydraulic fracturing ("fracking"). The Mariner East Project would carry NGL's from Ohio, West Virginia, and western Pennsylvania eastward toward the Philadelphia area. SPLP's system as it had previously existed carried products in the opposite direction, from the Philadelphia area west toward the Pittsburgh area.

7. In order to effectuate its plan, SPLP needed to (a) build a new connector pipeline from Delmont, Pennsylvania to Houston, Pennsylvania; (b) re-purpose an existing 8-inch pipeline in the Philadelphia to Pittsburgh Pipeline System; (c) construct some new 12-inch pipeline sections; and (d) cease the flow of any petroleum products previously transported from east to west.

8. The Project also entails the construction of twelve new pumping stations and modifications to three existing pumping stations. With these additions and modifications, the system would allow NGL's to be transported west to east and delivered to SPLP's Marcus Hook

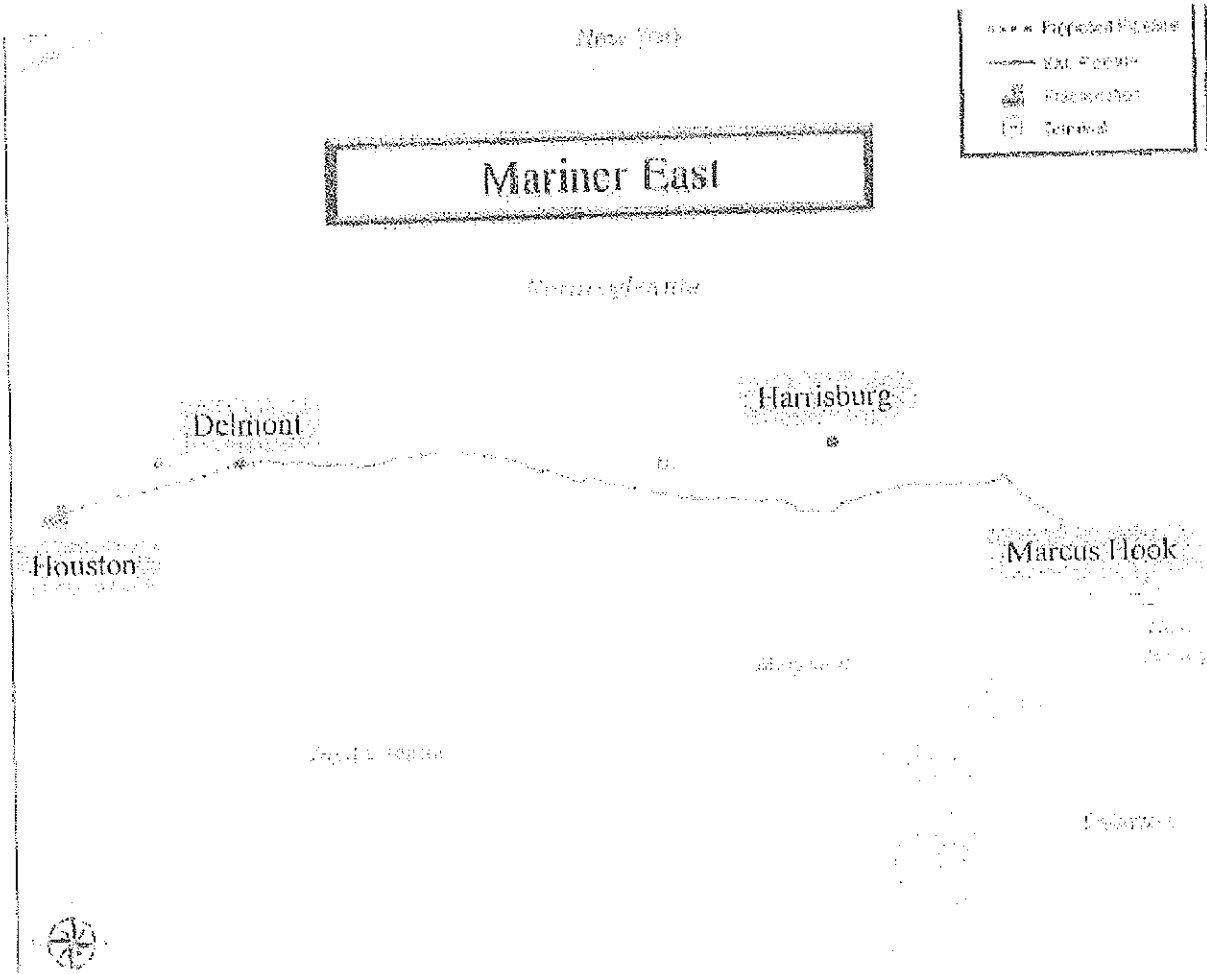
facility, where the NGL's would "be stored, processed, and transported to alternative markets by water or truck."

9. Shipping NGL's by pipeline between states subjects common carriers of the liquids to rate regulation by the Federal Energy Regulatory Commission ("FERC") under the Interstate Commerce Act ("ICA").

10. Federal law does not give FERC authority to grant the right of eminent domain to a NGL pipeline builder or operator.

11. By petition filed with FERC on or about December 7, 2012 ("Mariner 1 FERC Petition," attached as Exhibit "A"), SPLP represented that the Mariner East Project was "designed to provide a pipeline outlet for ethane and propane from the rich natural gas fields of the Marcellus Shale in Pennsylvania and Utica Shale in Ohio to a terminal situated within both Marcus Hook, Pennsylvania and Claymont, Delaware." (Mariner 1 FERC Petition, p. 1).

12. SPLP inserted into its Mariner 1 FERC Petition a map showing the new segment from Delmont to Houston and the existing 8-inch diameter Philadelphia to Pittsburgh pipe system. That map is reproduced below:



13. Propane service was projected for the second half of 2014 and ethane service for the first half of 2015.

14. The project was expected to create approximately 72,250 barrels per day of new capacity for transportation of ethane and propane.

15. In its Mariner 1 FERC Petition, SPLP stated, “no major market exists in the Northeastern United States for producers to sell the ethane produced during the extraction of natural gas, causing an oversupply problem that potentially could lead to curtailment of natural gas production.” (Mariner 1 FERC Petition, p. 5).



16. The purpose of the project was “to relieve this oversupply problem by creating an additional outlet to move excess ethane and propane from the natural gas wells in southwestern Pennsylvania and eastern Ohio.” (Mariner 1 FERC Petition, p. 5).

17. To secure funds needed to complete the project, SPLP conducted an open season, seeking commitments from NGL shippers that they would use its pipeline system to ship certain volumes of liquids for certain terms.

18. According to SPLP, three shippers already had executed two Transportation Service Agreements (“TSA’s”) for ethane and two TSA’s for propane.

19. SPLP sought an order from FERC approving the project under the ICA and FERC regulations.

20. SPLP’s Mariner 1 FERC Petition asserted that the ICA was implicated as the ICA “applies to common carriers engaged in the transportation of oil... by pipe line from one state... to any other state.” (Mariner 1 FERC Petition, p. 8). Pipeline companies engaged in such transportation are deemed common carriers for hire.

21. SPLP asserted also that the project was effectively a new pipeline project for purposes of FERC regulation.

22. SPLP’s Mariner 1 FERC petition was unopposed, and on February 15, 2013 FERC granted the petition and adopted SPLP’s factual allegations as its own findings. Significantly, the Order noted that SPLP was expected to “construct the Project to transport the excess NGL’s from the Marcellus Shale region in southwestern Pennsylvania *and Ohio’s Utica Shale regions* to an existing pipeline that will then transport the NGL’s to a Sunoco, Inc. terminal in Eastern Pennsylvania and Delaware for storage, processing, and subsequent transportation to alternative markets by water or truck” (emphasis added).

23. Plaintiffs believe and aver that SPLP is a common carrier subject to FERC regulation under the ICA with respect to the transportation of NGL's by pipeline from Ohio, through West Virginia, and into Pennsylvania and Delaware.

24. Plaintiffs believe and aver that the anticipated transportation from the Marcus Hook facility to alternative markets by water or truck clearly meant that the NGL's would not be delivered via pipeline to consumers anywhere within the Commonwealth.

25. While SPLP's Mariner 1 FERC Petition identifies the project as the "Mariner East Project," information furnished by SPLP on its website at <http://www.sunocologistics.com/Customers/Business-Lines/Natural-Gas-Liquids-NGLs/NGL-Projects/208/> identifies the FERC-approved project as Project Mariner East Phase I ("Mariner 1").

26. The website states, in pertinent part, that Mariner 1:

.....is [a] pipeline project to deliver propane and ethane from the liquid-rich Marcellus Shale areas in Western Pennsylvania to the Marcus Hook facility, where it will be processed, stored, and distributed to various domestic and waterborne markets. The project is anticipated to have an initial capacity to transport approximately 70,000 barrels per day of natural gas liquids and can be scaled to support higher volumes as needed. Mariner East commenced initial operations of Propane in the fourth quarter 2014. Mariner East is scheduled to be fully operational to deliver propane and ethane in Mid-2015.

27. Plaintiffs believe and aver, therefore, that Mariner 1 was and is an interstate pipeline under applicable federal law and that SPLP's submission of its application to FERC in December 2012 was an acknowledgement of the pipeline's interstate character.

**SPLP Represents Mariner 1 to the Pennsylvania  
Public Utility Commission as an Interstate Pipeline**

28. On or about July 2, 2013, SPLP filed an application with the Pennsylvania Public Utility Commission ("PUC") to abandon the use of certain segments of its gasoline pipeline ("Application to Abandon," attached hereto as Exhibit "B"), and concurrently filed a

petition with the PUC to suspend temporarily the use of other segments (“Petition to Suspend,” attached hereto as Exhibit “C”). In its Application to Abandon, defendant alleged that “this interstate transportation of ethane and propene [sic] from west-to-east will make it physically impossible for SPLP to continue providing east-to-west intrastate petroleum products transportation on certain segments of its pipeline system. Moreover, the expected impact from the proposed abandonment is virtually nil.” (Application to Abandon, p. 2).

29. Those filings were made before the Pennsylvania Public Utility Commission (“PUC”) rather than before FERC. Both of the July filings were verified by Hank Alexander, Vice President for Business Development of SXL.

30. Consistent with its 2012 FERC petition, SPLP made the following factual representations in its Application to Abandon:

a. Mariner 1 would use SPLP’s existing pipeline infrastructure, supplemented by additional facilities, to transport ethane and propane from wells in Ohio and Pennsylvania; and

b. NGL’s would be transported from Houston, PA to Claymont, in the state of Delaware, to be delivered to a throughput, storage, and terminal facility (the Marcus Hook facility).

31. The Application to Abandon further states that “[t]he transportation of shale gas resources from points in Pennsylvania to a terminal in Delaware *constitutes interstate commerce*; SPLP does not currently anticipate providing any intermediate service within Pennsylvania on the Mariner East Pipeline. This interstate transportation of ethane and propene [sic] from west-to-east will make it physically impossible for SPLP to continue providing east-

to-west intrastate petroleum products transportation on certain segments of its pipeline system.” (Application to Abandon, p. 2; *see also*, p. 5, for similar statements) (emphasis added).

32. Repeating language from its Mariner 1 FERC Petition, the Application to Abandon goes on to assert that “[c]urrently, no major market exists in the Northeastern United States for producers to sell the natural gas liquids produced during the extraction of natural gas.” (Application to Abandon, p. 5).

33. SPLP further alleges that, “although SPLP will continue to operate the existing pipeline facilities as part of the Mariner East Pipeline, the Company will no longer require Commission authority to transport shipments along the pipeline route due to the interstate nature of the proposed service.” (Application to Abandon, p. 6). It goes on to assert again that there would be no intermediate deliveries within Pennsylvania. (Application to Abandon, p. 6). “The interstate shipments will remain subject to FERC’s *exclusive jurisdiction over the interstate transportation of petroleum products*, but SPLP will not require PUC tariff authority for any volumes shipped through the Mariner East Pipeline.” (*Id.*, emphasis added).

34. SPLP contended that the granting of its petition still left Pennsylvania with ample access to petroleum products and that there were multiple economic benefits associated with the development of the new pipeline project.

35. The PUC approved both SPLP’s application and its petition in an Order issued August 29, 2013. The August 29 Order, at page 3, reiterates SPLP’s statements that the proposed pipeline project will constitute interstate transportation. Subsequently, on November 19, 2013, the PUC approved a tariff supplement requested by SPLP that would effectuate the August 29 Order.

36. Plaintiffs believe and aver that SPLP's averments both in its Mariner 1 FERC Petition and its subsequent PUC filings constitute a clear acknowledgment and admission that Mariner 1, crossing three states without any planned intermediate deliveries in Pennsylvania, is interstate for purposes of the ICA, and that the project lacks any intrastate character. As such, SPLP was correct in asserting that FERC, and not the PUC, had jurisdiction over its operations, including its tariffs.

**SPLP Changes Its Tune and Tells the PUC Mariner 1 Is an Intrastate Pipeline**

37. Only a few months after the PUC approved SPLP's Application to Abandon and Petition to Suspend, in which SPLP had represented Mariner 1 as a purely interstate project, SPLP filed another petition with the PUC regarding Mariner 1 in which it did an about-face and represented the project as intrastate. On March 21, 2014, SPLP filed a petition seeking PUC exemption from local zoning requirements in 31 Pennsylvania Municipalities as it built pumping stations and other pieces of infrastructure it would need to operate Mariner 1 ("Original Zoning Exemption Petition," attached hereto as Exhibit "D").

38. While ultimately withdrawn from consideration,<sup>1</sup> the Original Zoning Exemption Petition plainly alleged that the project would operate "facilities within the Commonwealth for the interstate transportation of petroleum products, including ethane and propane, for the public." (Original Zoning Exemption Petition, p. 3). SPLP further stated that the "origination point of Mariner East will be in Houston, Pennsylvania; the delivery point will be located in Claymont Delaware, within the Marcus Hook Refinery Complex." (*Id.* ¶ 3). The Original Zoning Exemption Petition did not assert that there would be any intermediate delivery

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<sup>1</sup> SPLP decided to simply ignore the local zoning requirements and began building pumping stations in various municipalities illegally rather than seeking exemption from the zoning requirements. Plaintiffs are aware of at least two ongoing legal challenges to SPLP's unlawfully built pumping stations.

points within Pennsylvania between Houston and Marcus Hook in Claymont, Delaware. The Petition also failed to mention that it would be transporting petroleum products originating in Ohio and crossing West Virginia before reaching Houston, Pennsylvania.

39. Interestingly, the Original Zoning Exemption Petition nonetheless acknowledged that Mariner 1 would be providing interstate service (“SPLP is subject to regulation by the Federal Energy Regulatory Commission (‘FERC’) under the Interstate Commerce Act (‘ICA’) with respect to the interstate services it will be providing on Mariner East...”). SPLP’s argument that it qualified for the exemption it sought actually hinged on the fact that it was a *federally* regulated common carrier. (Id. ¶ 9) (“Because SPLP is a federally regulated common carrier under the ICA, SPLP is a public utility corporation under the [Municipalities Planning Code].” (Id. ¶ 7).

40. Following a virtual torrent of objections to its Original Zoning Exemption Petition, SPLP retained new counsel and, on May 8, 2014, defendant submitted 31 separate Amended Zoning Exemption Petitions (sample attached hereto as Exhibit “E”) seeking the same exemption from zoning requirements the Original Zoning Exemption Petition had sought. The amended petitions focused on the intrastate aspect of the project and again failed to mention that it would be transporting petroleum products originating in Ohio and crossing West Virginia before reaching Houston, Pennsylvania.

41. Instead, SPLP claimed in its Amended Zoning Exemption Petitions that it would “resume intrastate transportation ... so that propane can be shipped by pipeline from the Marcellus Shale region to the Twin Oaks facilities ... . This service will allow SPLP to meet the heightened demand for intrastate transportation of propane in the Commonwealth that arose from severe supply shortages of propane that Pennsylvania experienced this past winter... .” Plaintiffs

believe and aver that this was the first time SPLP represented that it had any plans for intermediate intrastate delivery points for the Mariner 1 project.

42. SPLP similarly represented Mariner 1 as an intrastate project when, on May 21, 2014, it filed another petition with the PUC, this time seeking permission to restore certain intrastate service on the Mariner 1 pipeline (“Petition for Restoration,” attached hereto as Exhibit “F”). In this petition, too, SPLP argued that the pipeline service at issue was *intrastate* rather than *interstate*. SPLP now described Mariner 1 as a pipeline that would “ship valuable natural energy resources from the Marcellus Shale in Pennsylvania to the Marcus Hook Industrial Complex (‘MHIC’) on the Delaware River and SPLP’s Twin Oaks facilities operated in conjunction with the MHIC.” (Petition for Restoration, pp. 2-3). Defendant entirely omitted any reference to NGL’s that the same pipeline would deliver from Ohio or West Virginia, or that the delivery point would be in Delaware. A map attached to the Restoration Petition failed to depict Ohio, West Virginia, or Delaware.

43. By Order dated July 24, 2014, the PUC granted the Petition for Restoration. The Order made no mention of the fact that, as SPLP had recently represented both to FERC and PUC, NGL’s in the system would originate in the state of Ohio and travel through West Virginia before reaching Pennsylvania and Delaware.

44. Plaintiffs believe and aver that no intrastate shipments of propane have occurred along the Mariner 1 pipeline.

45. To plaintiffs’ knowledge, SPLP has never demonstrated or asserted that it even has the current capability to offload NGL’s from intrastate shipments.

46. In fact, only three months later, SPLP represented to FERC that Mariner 1 would not be transporting propane *at all*, let alone by intrastate shipments.

47. Plaintiffs believe and aver that SPLP has no plans to ship NGL's intrastate for use by the public, and did not have any such plans when it filed its Amended Zoning Exemption Petition and Petition for Restoration. Rather, SPLP designed and intended the Mariner East pipeline projects to transport NGL's—primarily ethane, which is a plastics feedstock rather than a fuel—from the lower-priced markets of Ohio, West Virginia, and Pennsylvania to higher-priced markets accessible from the international port at Marcus Hook and Claymont.

48. By Order dated October 2, 2014, PUC ruled on the objections to SPLP's Amended Zoning Exemption Petition relative to Mariner 1. In doing so, the Commission expressly found that its ruling was limited to the narrow question whether walls and roofs built around and over a valve control or pump station should be exempt from municipal zoning regulation. (October 2014 PUC Order, p. 6). PUC went on to rule that certain other issues were outside the scope of the proceeding. Those issues: (1) obtaining a certificate of public convenience; (2) authorization to build the Mariner East pipeline or any other facilities attendant thereto; (3) approval of siting or route of the pipeline; and (4) a finding that the proposed pipeline complies with relevant public safety or environmental requirements. (October 2014 PUC Order, pp. 5-6).

**SPLP Plans Mariner 2 but Seeks no PUC Permission for It,  
and Therefore Is Never Authorized to Build Mariner 2**

49. On June 6, 2014, SPLP applied to the PUC for permission to extend Mariner 1 service into Washington County, Pennsylvania ("Washington County Petition," attached hereto as Exhibit "G"). For the first time, in that application, SPLP stated that, "[s]ubject to continued shipper interest, SPLP intends to undertake a second phase of the Mariner East project..." (*Id.*, p. 9). PUC granted the application but made no ruling on Mariner 2 at that time.



50. SXL has described an additional Mariner East Project, Mariner East Phase 2 (“Mariner 2”), on its website. See <http://www.sunocologistics.com/Customers/Business-Lines/Natural-Gas-Liquids-NGLs/NGL-Projects/208/>. There, the company wrote about Phase 2, as follows:

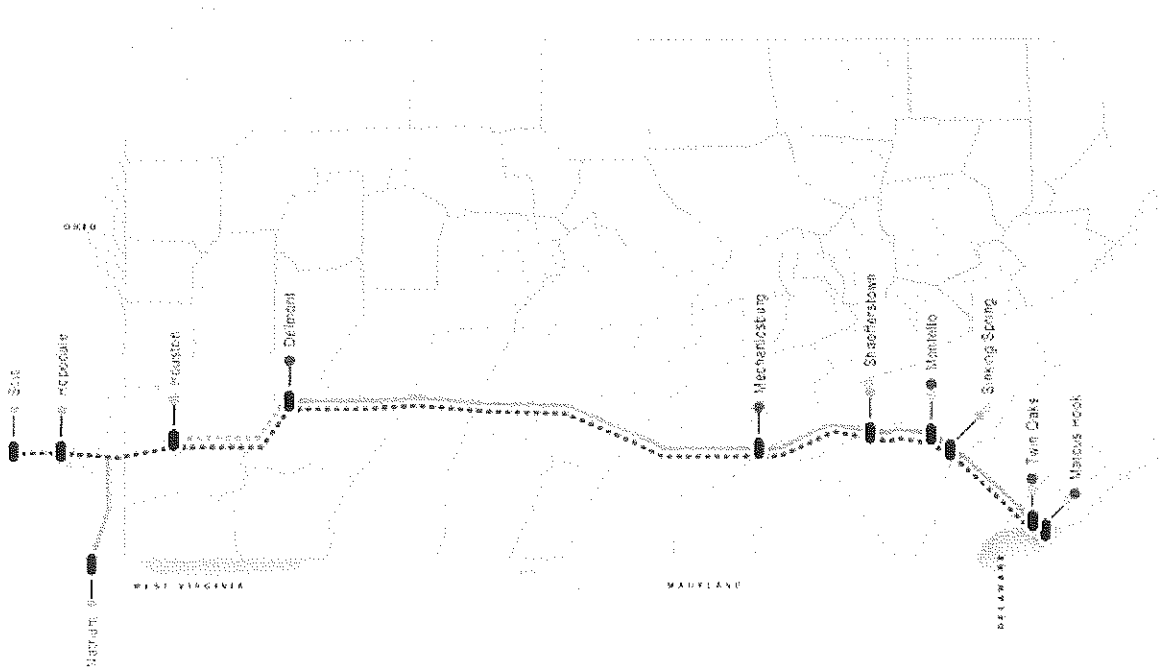
Sunoco Logistics announced a successful Open Season for Mariner East 2 project in November 2014. For Mariner East 2, Sunoco Logistics plans to construct a pipeline from processing and fractionation complexes in Western Pennsylvania, West Virginia and Eastern Ohio for transport to the Marcus Hook Industrial Complex. Sunoco Logistics plans to construct new facilities at Marcus Hook Industrial Complex to store, chill, process and distribute propane, butane and ethane for distribution to local, domestic and international markets. Sunoco Logistics plans to offer intrastate and interstate movements to meet the demands of various markets. Mariner East 2 will expand the total takeaway capacity to 345,000 barrels per day. The Mariner East 2 pipeline is expected to be operational in Q4 2016, subject to regulatory and permit approvals.

51. At a separate website, <http://sxlpipelineprojects.com/projects/mariner-east/>,

SLX has published a map of the proposed Mariner 2 pipeline, shown below:



- Proposed NE2 Facilities
- NE1 Pipeline (Under Construction)
- Existing Third Party Pipelines
- Oil Pipelines
- NE2 Terminal Facilities
- Existing Terminal Facilities
- Existing Delivery Points
- Mariner East Delivery Points



52. As proposed, Mariner 2 would be an entirely new pipeline constructed alongside, but not following the exact route of, the Mariner 1 pipeline. The map and the project description clearly show that the new pipeline would run from Ohio through West Virginia and Pennsylvania and on to Delaware, crossing four states.

53. SPLP would therefore still be an ICA common carrier with respect to Mariner 2, providing transportation in interstate commerce.

54. Although SPLP did file a petition with FERC seeking approval for its proposed tariffs for Mariner 2 on August 29, 2014 (“Mariner 2 FERC Petition,” attached hereto as Exhibit “H”), SPLP has not sought authorization either from FERC or from the PUC for the construction of the Mariner 2 project as a whole.

55. Moreover, in its Mariner 2 FERC Petition, SPLP once again reversed course and emphasized the *interstate* nature of Mariner 2. It stated that the pipeline would allow “propane and butane to move from Scio, Ohio, Hopedale, Ohio, Follansbee Jct., West Virginia and Houston, Pennsylvania to the SPMT Terminal” in Pennsylvania and Delaware, where “the Product will be stored, processed, and transported to alternative markets by water, rail or truck.” (Mariner 2 FERC Petition, p. 8).

56. Despite not having sought or obtained any approval to build Mariner 2, SPLP has nonetheless sought to acquire easements for construction of the project. SPLP has had limited success reaching agreements with landowners, however, and has now filed numerous pleadings and declarations of takings in the Courts of Common Pleas of Washington County, Huntingdon County, Cumberland County, and elsewhere along the Mariner East 1 and 2 routes.

57. In its so-called “Verified Petition for Approval and Order Filing Bond,” filed in several of the said cases, SPLP alleges in ¶39 that the PUC in an August 21, 2014 Order, “expressly recognized that the Mariner East Project might include this second phase.”

58. Insofar as SPLP is alleging that it has obtained PUC approval for Mariner 2, that assertion is palpably false.

59. Plaintiffs believe and aver that the PUC has never had an application for approval of the proposed Mariner 2 pipeline or tariffs to be imposed in connection with Mariner 2.

60. Plaintiffs believe and aver that the PUC has not entered any Order approving of the proposed Mariner 2 pipeline or tariffs to be imposed in connection with Mariner 2.

61. Up until the commencement of the Mariner East Project, SPLP and its predecessors in interest sought authorization from the PUC before building new transmission

pipelines. This is in fact a requirement. Only in the last few years has SPLP begun claiming a right to build a new transmission pipeline without seeking new PUC authorization.

62. Lacking any PUC order approving the Mariner 2 pipeline, or FERC order authorizing the use of eminent domain, SPLP has no basis to claim that it has the right to exercise the power of eminent domain.

63. SPLP is in the early stages of planning additional pipeline(s) with similar purpose(s) as Mariner 1 and Mariner 2, along similar routes. SPLP would, perforce, have no basis to claim the right to use eminent domain for these additional pipelines.

**SPLP's Mariner East Projects Do Not Serve Any Public Purpose**

64. Plaintiffs believe and aver that SPLP's Mariner East pipeline projects do not serve any public purpose, as is required for the use of eminent domain to be constitutional.

65. In its May 2014 Amended Zoning Exemption Petitions, SPLP had represented to the PUC that its purported intrastate service for Mariner 1 would "allow SPLP to meet the heightened demand for intrastate transportation of propane in the Commonwealth that arose from severe shortages of propane that Pennsylvania experienced this past winter, when temperatures plummeted and demand for propane shipments overwhelmed inadequate shipment capacity."

66. In contrast, in its August 2014 Mariner 2 FERC Petition, SPLP asserted that the need for these pipelines arose, not from a shortage of propane for residential use in Pennsylvania, but indeed from the glut of NGL's in Pennsylvania and a need to move them to other markets in order to meet industry demands. SPLP stated in its petition, "A byproduct of the increase in natural gas production from development of the Marcellus and Utica Shale is an abundance of propane and butane. The ever increasing supply is quickly outpacing demand in the Northeast, potentially causing an oversupply that could lead to curtailment of natural gas production."

67. SPLP's position on the purpose of the project has vacillated in this way for some time. This is an argument SPLP had also made in July 2013, but contradicted in May 2014, before returning to it in August 2014.

68. SPLP's argument that its Mariner East projects serve the public because it will allow delivery of much-needed propane to Pennsylvania residents is also belied by the fact that SPLP has represented to FERC that, as part of its second phase of the Mariner East project, it would convert the Mariner 1 pipeline "from mixed propane and ethane service to ethane service exclusively." (Mariner 2 FERC Petition, p. 8).

69. If Mariner 1 is not delivering propane, it certainly *cannot*, as SPLP had represented three months earlier to the PUC, help SPLP "meet the heightened demand for intrastate transportation of propane in the Commonwealth."

70. Moreover, the North American market is currently experiencing a glut of propane. As the *Wall Street Journal* recently reported, "Producers 'have reached the limits of demand ... in the North American market,'" and "The nation's propane stockpiles are rising so fast that some traders said there is a chance that available storage could run out before winter, when inventories usually decline." ("Propane Prices Feel Heat of Supply Glut," August 12, 2015, [www.wsj.com/articles/propane-prices-feel-heat-of-supply-glut-1435186536](http://www.wsj.com/articles/propane-prices-feel-heat-of-supply-glut-1435186536)).

71. Furthermore, there is no public purpose in the interstate or intrastate transmission of ethane, which is a plastics feedstock used only by industry, and not a fuel used by the public.

**The PUC Lacks Jurisdiction over the Interstate Pipelines and therefore Cannot Confer on SPLP the Power of Eminent Domain with Respect to Mariner 1 and Mariner 2**

72. Even if the PUC had authorized construction on Mariner 2, such authorization would be ineffective to confer eminent domain power because, as SPLP has repeatedly asserted

before FERC and the PUC, Mariner 2 would cross multiple state boundaries and operate in interstate commerce, therefore making it subject to the provisions of the ICA and removing it from the PUC's jurisdiction.

73. The Pennsylvania Public Utility Code explicitly provides that it "shall not apply, or be construed to apply, to commerce ... among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress." 66 Pa.C.S. §104.

74. Both Mariner 1 and Mariner 2 as proposed are NGL pipelines that would receive shipments of NGL's from Ohio and West Virginia, cross Pennsylvania, and enter Delaware. As such, the Public Utility Code cannot apply to either project.

75. Petitioner believes and avers that, because the Public Utility Code does not apply to Mariner 1 or Mariner 2, the PUC simply never had jurisdiction or authority to approve the Mariner 1 project and does not have jurisdiction or authority to approve the Mariner 2 project.

**Even if the PUC Did Have Jurisdiction to Confer Eminent Domain Power, SPLP Does Not Meet the Definition of a Public Utility**

76. Even if the PUC did have jurisdiction to confer eminent domain power with respect to the Mariner East interstate pipelines, SPLP does not meet the definition of a public utility necessary in order for it to have eminent domain power.

77. The only "public utilities" that may be a condemnor and exercise the right of eminent domain under the Eminent Domain Code are those that are public utilities as defined in the Public Utility Code at 66 Pa.C.S.A. §102. 26 Pa.C.S. §§103, 203 and 204(b)(2).

78. The Pennsylvania Public Utility Code defines a public utility, in relevant part, as:

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

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

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

26 Pa.C.S. §102.

79. The Public Utility Code explicitly excludes certain operations from the definition of public utility. Subparagraph (iii) of Part (2) of the definition of “public utility” states that the term does *not* include, “[a]ny producer of natural gas not engaged in distributing such gas directly to the public for compensation.”

80. SPLP cannot meet the definition of public utility set out in subparagraph (i) of the definition. The proposed Mariner East pipeline would not, according to SPLP’s petition, be transporting natural gas. Instead, it will be transporting NGL’s. Therefore, SPLP will not be engaged in distributing natural gas directly to the public as required to meet subparagraph (i) of the definition of public utility.

81. SPLP also cannot meet the definition of public utility set out in subparagraph (v), because SPLP’s petition does not establish that it would be transporting these products *for the public* as required to meet the definition of public utility under subparagraph (v).

82. As explained above, Mariner 1 will soon only carry ethane for which there is no public use, only use by certain specialized industries.

83. Nor, upon information and belief, does SPLP even have the current capability to provide intermediate intrastate deliveries of NGL’s to the Pennsylvania public.

84. The Pennsylvania public only has a small market demand for NGL's, which is why SPLP has designed the Mariner East pipelines for shipments of NGL's to a facility serving international customers.

85. SPLP has also asserted that it has eminent domain power because it qualifies as a "public utility corporation" under Pennsylvania's Municipalities Planning Code ("MPC"), as that term is defined in Pennsylvania's Business Corporation Law ("BCL").

86. The BCL confers the power of eminent domain on "public utility corporations" that transport petroleum products. 15 Pa.C.S.A. §1511(a).

87. The term "public utility corporation" is defined in the BCL as:

Any domestic or foreign corporation for profit that (1) is subject to regulation as a public utility by the Public Utility Commission or an officer or agency of the United States; or (2) was subject to such regulation on December 31, 1980, or would have been so subject had it been then existing.

15 Pa. C.S.A. §1103.

88. SPLP does not meet the BCL's definition of "public utility corporation." SPLP is regulated by a federal agency—FERC—but not as a public utility. As SPLP itself acknowledged in its Original Zoning Exemption Petition to the PUC, SPLP is regulated by FERC pursuant to the ICA as a *common carrier* and not as a public utility. (Original Zoning Exemption Petition, pp. 5-8).

89. The ICA explicitly regulates common carriers, and not public utilities. 49 U.S.C. §1(b). Thus, SPLP does not meet that portion of the definition of public utility corporation articulated in §1103 of the BCL.

90. Moreover, for all the reasons that plaintiffs have alleged above, SPLP also does not meet the definition of a public utility under Pennsylvania's Public Utility Code and thus cannot meet the second possible definition of "public utility corporation" under the BCL.



91. Therefore, even if, *arguendo*, the PUC did have jurisdiction over Mariner 1 and Mariner 2, SPLP does not meet the definition of a “public utility corporation” and it therefore does not have any eminent domain authority with respect to the Mariner East projects.

**There Is No Right to Eminent Domain for NGL Pipelines Arising from Federal Law Either**

92. Nor may SPLP make claim to a right of eminent domain under federal law. While Congress has expressly conferred that right upon utilities that transport natural gas in the Natural Gas Act, 15 U.S. Code §717f(h), Congress elected to treat oil and petroleum products differently from natural gas. The transportation of those products is governed by the ICA, which law covers common carriers that transport goods by truck, rail, and pipelines. SPLP is a common carrier with respect to Mariner 1 and Mariner 2 insofar as it is transporting petroleum products in interstate commerce.<sup>2</sup>

93. The ICA contains no provision for eminent domain. Hence, SPLP can make no claim of eminent domain power for Mariner 1 and Mariner 2 due to its federal regulation under the ICA.

94. Plaintiffs believe and aver that because Mariner 1 and Mariner 2 are interstate pipelines, federal jurisdiction pre-empts PUC authority. SPLP has stated in legal pleadings, however, that “[b]ecause SPLP is a federally regulated common carrier under the ICA, SPLP is a public utility corporation under the MPC [Municipalities Planning Code, 53 P.S. §10619].” (Original Zoning Exemption Petition, p. 6).

95. Section 619 of the MPC refers to certain exemptions granted to entities that are public utilities under the Public Utility Code. As already noted above with respect to other

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<sup>2</sup> A legal question exists as to whether the natural gas byproducts which SPLP will be transporting are properly classified as “petroleum products,” as SPLP asserts. Plaintiffs set aside that question for the moment, assuming without averring that these NGL’s are properly classified as “petroleum products.”

Pennsylvania statutes, §104 of that code makes it clear that where interstate commerce is involved, the Public Utility Code is inapplicable.

96. SPLP also suggests that Pennsylvania decisional authority supports its position that SPLP is a public utility *because* it is a federally regulated common carrier. Mis-citing the case of Pa. PUC v. WVCH Communications, 23 Pa. Cmwlth. 292, 351 A. 2d 328, 330 (1976), SPLP states that Commonwealth Court held that “an entity is a ‘public utility corporation,’ under the MPC, even if it is a federally regulated common carrier.” (Original Zoning Exemption Petition, p. 6).

97. Contrary to SPLP’s statements, in WVCH the Commonwealth Court wrote, *inter alia*, that the radio station was *not* a public utility and it was *not* a common carrier either:

The sole issue before us is whether WVCH, as a radio broadcasting company, is a ‘public utility corporation’ under the provisions of Section 619 of the MPC and Section 1200 of the Township's Zoning Ordinance.... We cannot agree, however, that a radio broadcasting station is a ‘public utility corporation.’ The mere fact that an industry serves a public interest does not mean that it becomes a public utility.... Federal law recognizes that a radio broadcasting station is not a common carrier....

351 A.2d at 330.

**The Hidden, True Purpose of the Mariner East Project Is to Transport NGLs from Ohio, West Virginia, and Western Pennsylvania to Outside the Commonwealth**

98. SPLP’s recent petitions before the PUC deliberately misstate the interstate origins and destinations of the Mariner East pipelines.

99. In December 2012, SPLP informed FERC that “[t]he Mariner East Project is designed to provide a pipeline outlet for ethane and *propane from the rich natural gas fields of the Marcellus Shale in Pennsylvania and Utica Shale in Ohio* to a terminal situated within both Marcus Hook, Pennsylvania and Claymont, Delaware.... The purpose of the Mariner East Project is to relieve this oversupply problem by creating an additional outlet to move excess

ethane and propane *from the natural gas wells in southwestern Pennsylvania and eastern Ohio.*” (Mariner 1 FERC Petition, pp. 1 and 5).

100. Four states are crossed by the Mariner 1 project. Two of the four, West Virginia and Ohio, managed to disappear only three months later, when SPLP filed its March 21, 2014 petition to abandon certain segments of its Pennsylvania pipeline system.

101. SPLP has never in any submission to FERC or PUC provided any evidence or even made any claim that it has entered into any intrastate shipment agreements, despite the two open seasons that it has conducted for its Mariner East 1 and 2 projects. SPLP has never identified any probable buyers of intrastate shipments. Thus, there is no evidence that either project contains any intrastate characteristics.

102. Plaintiffs believe and aver that SPLP’s representations regarding the character of the Mariner East Project changed when SPLP realized that under the ICA it did not have the power of eminent domain. In the alternative, plaintiffs aver that SPLP has simply made changes to its contentions based on whatever will get it the approval that it’s seeking at any given time.

103. In between its assertions in the Mariner 1 FERC Petition and the Mariner 2 FERC Petition that there was no market for NGL’s in the Northeast, SPLP obtained approval for restoring abandoned and suspended service on the ground that there was a substantial market for NGL’s in Pennsylvania. The factual basis for all of defendant’s assertions has never been documented in PUC proceedings and plaintiffs believe and aver that SPLP’s assertions have been fabricated.

104. FERC's December 1, 2014 approval made clear that it believed that the Mariner East 2 project was designed like the Mariner East 1 project solely to ship NGL's to the Marcus Hook/Claymont terminal, with no intermediate transport in the Commonwealth.

105. The sudden inability of alternative suppliers to provide needed NGL's, when only months earlier they were ready, willing and able has never been substantiated by SPLP.

106. Mike Hennigan, CEO and President of SXL, has stated publicly that the purpose of Mariner East is to send NGL's overseas: "The reason we have picked the name Mariner was to try and signal to the market that there is going to be a sufficient and pretty growing need for U.S. NGLs to leave the U.S."

107. Plaintiffs believe that the primary and overwhelming purpose of the proposed Mariner East pipelines is to build new infrastructure to transport NGL's from Ohio, West Virginia, and Pennsylvania across state lines to Delaware and sell the petroleum products outside the Commonwealth.

**Plaintiffs Are Entitled to Declaratory Judgment Establishing Their Rights in Advance of Impending Mariner 2 Declarations of Taking**

108. Plaintiffs deMarteleire and Bomstein reside in Delaware County, Pennsylvania. Their property is located on the route that SPLP proposes to use to construct Mariner 2. A copy of the map sent to plaintiffs by SPLP's agent, depicting their property as lot 42 on the pipeline route, is attached hereto as Exhibit "I." In early 2015, without notice or consent, SPLP through its agents or employees pounded a survey stake into the ground in plaintiffs' backyard.

109. Through public statements, SPLP has announced its intention to construct the Mariner 2 pipeline.

110. Through public statements, SPLP has announced that it is a public utility and has the right of eminent domain to take private property for purposes of constructing the Mariner 2 pipeline.

111. SPLP has announced its intention to build the Mariner 2 pipeline through Bomstein and deMarteleire's property.

112. Upon information and belief, SPLP through its Mariner 1 pipeline project is also currently using an existing pipeline in deMarteleire and Bomstein's property in violation of the existing easement rights.

113. As Mariner 1 involves reversing the flow of liquids through the pipeline, and running different liquids at different pressures through that pipeline, it significantly increases the likelihood of a spill or explosion along Mariner 1, as the federal Pipeline and Hazardous Materials Safety Administration has warned.

114. DeMarteleire and Bomstein value their property rights and their use and enjoyment of the tranquility and natural environment in their backyard. SPLP building Mariner 2 through their property would impair their property and injure plaintiffs deMarteleire and Bomstein.

115. SPLP use of deMarteleire and Bomstein's property for Mariner 1 without possessing the required easement rights also injures plaintiffs deMarteleire and Bomstein, both through the trespass and also through the increased danger to their health and safety from the change in use of the pipeline.

116. Plaintiff Clean Air Council has members throughout Pennsylvania, including along the route of the Mariner 1 and Mariner 2 pipelines.

117. Plaintiffs deMarteleire and Bomstein are Council members.

118. Eric Friedman is a member of the Council. (*See* Declaration of Eric Friedman, attached hereto as Exhibit “J”).

119. Mr. Friedman lives in the Andover subdivision in Thornbury Township, Delaware County, and is the current president of the Andover Homeowners’ Association.

120. SPLP has announced its intent to run its Mariner 2 pipeline through the vegetated Andover open space that serves as a buffer between private lots in Andover and Pennsylvania State Route 352, and that is held for all Homeowners’ Association Members in common.

121. The Mariner 2 pipeline right of way will possibly also run through land belonging to the Members of the Homeowners’ Association individually.

122. The Andover HOA has declined to grant SPLP permission to survey for its pipeline projects.

123. The Andover HOA does not intend to grant SPLP an easement to build its pipeline(s) across its land.

124. Mr. Friedman also does not intend to grant SPLP such an easement.

125. Mr. Friedman would be injured by SPLP taking the open common space of the Andover Homeowners’ Association, where he enjoys the right to recreate, and which shields his neighborhood from a heavily trafficked road, making it a more pleasant place to live.

126. Thomas Casey is a member of the Council. (*See* Declaration of Thomas Casey, attached hereto as Exhibit “K”).

127. Mr. Casey lives in West Goshen Township, in Chester County, in a house he has owned for 17 years.

128. SPLP or its agents trespassed on his property to conduct surveys for its Mariner East pipeline(s), without obtaining his permission, and then continued to trespass on his property after he told them to leave.

129. SPLP initially expressed intent to take Mr. Casey's land to build its Mariner 2 pipeline, but has since made a minor adjustment to route the pipeline across the street from his property instead.

130. Mr. Casey does not want new pipelines running across the street from him, or on his property, should SPLP decide to make another minor route adjustment and place the pipeline on his land again.

131. If SPLP were to take his or his neighbor's land for its pipeline project, Mr. Casey's enjoyment of his property would be diminished.

132. SPLP has also built a pumping station for its Mariner 1 pipeline in West Goshen Township.

133. This pumping station creates air pollution that impairs the air where Mr. Casey lives, and that will only increase when flaring at the station begins.

134. Clean Air Council would be injured by SPLP's actions with respect to the Mariner East Project through the harm to its members.

135. Under the Pennsylvania Eminent Domain Code title passes to a condemnor upon the filing of a Declaration of Taking.

136. SPLP already has commenced eminent domain proceedings in western Pennsylvania and central Pennsylvania in more than a dozen cases.

137. Plaintiffs believe and aver that, under both the Declaratory Judgments Act and the Supreme Court's decision in Robinson Twp., Washington Cnty. v. Com., 623 Pa. 564,

707-10, 83 A.3d 901, 989-91 (2013), they are not required to give up their constitutional rights and wait until they have lost title or been otherwise injured in order to obtain a declaration of their rights. Accord Bluegrass Pipeline Company, LLC v. Kentuckians United to Restrain Eminent Domain, Inc., No. 2014–CA–000517–MR, 2015 WL 2437864 (Ky. App. May 22, 2015) (affirming grant of declaratory judgment in favor of landowners threatened by a pipeline builder’s claimed intention to use eminent domain to build an interstate NGL’s pipeline).

138. While the statutory schemes for eminent domain and public utilities are not here being challenged, plaintiffs do challenge SPLP’s role in those processes as well as their false representations and deliberate efforts to keep potential condemnees from obtaining actual notice of what SPLP was doing before the PUC.

139. Under the Pennsylvania Public Utility Code, 66 Pa.C.S. §1102, the PUC is charged with issuing certificates of public convenience when public utilities acquire the assets of other public utilities; when they suspend or abandon operations; and when they change the nature of their operations or territory.

140. Plaintiffs believe and aver that SPLP has not received or even applied for any such certificates authorizing the Mariner 1 or Mariner 2 projects.

141. SPLP in 2002 acquired by merger the pipeline system previously owned and/or operated by Atlantic Pipeline, Keystone Pipeline, and other companies and, at that time, was certificated by PUC to operate those pipelines under the same terms and conditions set forth in previous certificates of public convenience (“CPC’s”) granted to those predecessor entities. In short, SPLP in 2002 took on its predecessors’ CPC’s for then-existing pipelines.<sup>3</sup>

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<sup>3</sup> To be abundantly clear, these ancient, inherited CPC’s do not themselves authorize the construction of the new Mariner 1 or Mariner 2 projects.



142. All of the CPC's prior to that 2002 merger related to in-state pipelines. SPLP's inventory of pipelines was described in detail in CPC's issued prior to 2002.

143. At the time of SPLP's December 2012 FERC application, SPLP was not operating pipelines from the Utica Shale that delivered NGL's to the Commonwealth.

144. Upon information and belief, SPLP has already "re-purposed" an existing 8" diameter pipeline that previously carried gasoline, kerosene, and the like from east to west, to instead transport NGL's from a Marcellus Shale gas facility in Delmont, Pennsylvania from west to east as part of the Mariner 1 project.

145. Plaintiffs believe and aver that SPLP did not file an application or obtain PUC approval at that time or later for the new use of that pipeline.

146. SPLP's recent applications to PUC have deliberately mischaracterized the source of the NGL's in its pipeline system, most notably omitting reference to the petroleum products originating in Ohio and West Virginia.

147. In addition, quite apart from service originating outside the Commonwealth, SPLP has represented to PUC that service originating in Houston, Pennsylvania and terminating in Delaware also is intrastate service.

148. Plaintiffs believe and aver that Mariner 1 already is delivering or intended to deliver NGL's originating outside of Pennsylvania, to its terminal in Pennsylvania and Delaware. Mariner 2, designed to be an entirely new pipeline, is proposed to deliver NGL's originating outside of Pennsylvania across Ohio, West Virginia, Pennsylvania, and into Delaware.

149. Inasmuch as the ICA does not confer eminent domain rights, and §104 of the Public Utility Code makes the code inapplicable, SPLP has no right to exercise eminent domain power in the Commonwealth with respect to Mariner 1 or Mariner 2.

150. In the alternative, plaintiffs believe and aver that even if the Mariner 2 project were deemed to be intrastate, PUC still has not received an application for its approval and the project has never been approved. SPLP's existing certificates of public convenience do not authorize construction of the proposed new pipeline.

151. Plaintiffs believe and aver that SPLP contends that every county in which it operates is available for its eminent domain purposes, no matter where in the county and no matter how many pipelines or how much acreage may be involved.

152. Plaintiffs believe and aver that SPLP contends that it, a private business, has sole authority to determine whose land it wants to take within those counties and how much of it, with no limitation based on need or public benefit or anything else.

153. Those contentions, however, are both illogical and contrary to law, as roughly forty (40%) percent of Pennsylvania would be subject to defendant's eminent domain, willy-nilly. A colorized map identifying the affected counties is attached hereto as Exhibit "L."

154. Moreover, the exercise of eminent domain in Pennsylvania is subject to restrictions based on the takings clauses of the U.S. and Pennsylvania constitutions, which require a public purpose for any taking. *See Kelo v. City of New London*, 545 U.S. 469 (2005); U.S. Const. amend. V; Penna. Const. Art. X, §4.

155. Exercises of eminent domain are only permissible in Pennsylvania where the public is the *primary and paramount* beneficiary. The Pennsylvania Supreme Court has held, "According to our Court, a taking will be seen as having a public purpose only where the public

is to be the primary and paramount beneficiary of its exercise. In considering whether a primary public purpose was properly invoked, this Court has looked for the real or fundamental purpose behind a taking. Stated otherwise, the true purpose must primarily benefit the public.”

Middletown Twp. v. Lands of Stone, 595 Pa. 607, 617, 939 A.2d 331, 337 (2007) (internal citations and quotation marks omitted).

156. SPLP has nowhere demonstrated that a public purpose exists for its taking of private property for the Mariner 1 or Mariner 2 projects generally, let alone for the individual properties over which it has instituted condemnation proceedings. *See id.*, 595 Pa. at 616, 939 A.2d at 337 (“This Court has stressed that the exercise of the right of eminent domain is necessarily in derogation of a private right, and the rule in that case is that the authority is to be strictly construed: What is not granted is not to be exercised.”) (internal quotation marks omitted); *see also Twp. of Cornplanter v. McGregor*, 745 A.2d 725, 727 (Pa. Commw. Ct. 2000) (“Based on this constitutional mandate, it is well settled that private property may be taken for public purposes only in such an amount and to such an extent as these purposes reasonably require.”).

157. Notwithstanding SPLP’s representations to the contrary, the primary purpose of Mariner 1 and Mariner 2 is to deliver NGL’s to Delaware for ultimate trans-shipment to destinations outside the Commonwealth.

158. SPLP already has attested to this purpose in its Mariner 1 and Mariner 2 FERC Petitions.

159. Although SPLP to date has submitted no application to PUC for a certificate of public convenience to construct Mariner 1 or Mariner 2, neither pipeline project is for the benefit of the public. The primary and paramount beneficiary of the projects is SPLP; the

secondary beneficiaries are the handful of large interstate and international NGL shippers with whom SPLP has contracted. The only purchasers of the NGL's that plaintiffs have been able to ascertain are European companies INEOS and Borealis, which seek to ship the NGL's across the Atlantic from the Marcus Hook international port.

160. There is no public purpose in the transmission of ethane, which is used in the manufacture of plastics, and not as a fuel.

161. There is no public purpose in the transmission of propane and butane interstate primarily for export.

162. Article I, §27 of the Pennsylvania Constitution, often referred to as the Environmental Rights Amendment ("ERA"), provides, "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

163. The ERA requires government actors to take environmental considerations into account before making decisions that could harm Pennsylvania residents' environmental rights, and it places a thumb on the scale in weighing those considerations against other considerations.

164. There is no evidence in the record before PUC that PUC or SPLP took environmental considerations into account in any of the proceedings upon which SPLP bases its claims of right to the power of eminent domain.

165. Plaintiffs believe and aver that environmental considerations were never properly considered by the PUC or SPLP in any such proceedings, if they were considered at all.

166. SPLP and/or its agents, in advancing the cause of Mariner 2, has made repeated public announcements that the pipeline will be constructed safely and with due regard for environmental considerations.

167. Plaintiffs believe and aver that construction of the Mariner 2 pipeline has harmed and will continue to harm the environment in derogation of the public's rights under the ERA.

168. Contrary to SXL's public announcements, the pipeline is already an environmental disaster.

169. As of the date of the filing of the instant Complaint, the Commonwealth Department of Environmental Protection ("DEP") has fined SPLP \$95,366 for release of toxic chemicals into public waterways and improper remediation of water pollution.

170. More specifically, SPLP has admitted in a DEP consent order that on six occasions between June 2014 and November 2014, it had discharged toxic chemicals into Commonwealth waterways. Defendant further admitted that in at least an additional five instances, its pipeline construction activity disturbed the land it was working on, causing illegal erosion and runoff into Pennsylvania streams.

171. In addition to the above, DEP is currently investigating additional SPLP Mariner 2-related violations of Commonwealth environmental laws, which investigations could result in further fines.

172. Plaintiffs and other landowners along the proposed Mariner 2 route have every reason to believe that, if SPLP is permitted to exercise eminent domain power, it will be exercised recklessly, dangerously, and in complete disregard of the public's rights under the ERA.

## COUNTS

### COUNT I – DECLARATORY RELIEF (INTERSTATE CHARACTER)

173. Plaintiffs hereby incorporate all of the allegations set forth above as though set forth more fully at length below.

174. The Pennsylvania Business Corporation Law (“BCL”) at 15 Pa.C.S.A. §1511(a)(2) provides in pertinent part that “[a] public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute, have the right to take, occupy and condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of ... [t]he transportation of ... petroleum products ... for the public.”

175. §1103(a)(1) of the BCL defines a public utility corporation as “[a]ny domestic or foreign corporation for profit that ... is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States.”

176. Because SPLP is in interstate commerce and regulated by the federal government, under 66 Pa.C.S. §104, the Public Utility Code does not apply and SPLP is not a public utility for purposes of Mariner 1 or Mariner 2.

177. Likewise, under the Eminent Domain Code, a public utility as defined in the Public Utility Code at 66 Pa.C.S.A. §102 may be a condemnor and exercise the right of eminent domain. 26 Pa.C.S. §§103, 203 and 204(b)(2).

178. But again, because SPLP is in interstate commerce and regulated by the federal government, under 66 Pa.C.S. §104, the Public Utility Code does not apply and SPLP is not a public utility for purposes of Mariner 1 or Mariner 2.

179. Hence, since SPLP is not subject to PUC regulation with respect to the Mariner East projects, it is not a public utility or public utility corporation, and, therefore, it does not have the power of eminent domain under the Eminent Domain Code or under the BCL.

180. Plaintiffs make claim against SPLP pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §7531, *et seq.*

181. §7533 of the Act provides in pertinent part that “[a]ny person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder.”

182. Plaintiffs’ rights are affected by SPLP’s actions under color of the Pennsylvania Utility Code, the Business Corporation Law, and the Eminent Domain Code.

183. “The purpose of the Declaratory Judgment Act ‘is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.’ 42 Pa.C.S. § 7541(a).” Robinson Twp., Washington Cnty. v. Com., 623 Pa. 564, 707-10, 83 A.3d 901, 989-91 (2013) (reversing Commonwealth Court by affirming availability of declaratory relief to determine constitutionality of statute conferring right to use eminent domain).

184. Defendant has notified the general public that it intends to build Mariner 2, a new pipeline project, and that citizens who do not make a deal with them will suffer eminent domain takings.

185. Defendant, through its agent, has sent plaintiffs deMarteleire and Bomstein a copy of the map depicting a route for Mariner 2 through their backyard.

186. Defendant, through its agents or employees, has placed a stake in deMarteleire and Bomstein's backyard to begin the process of eminent domain against them.

187. Defendant, through its agents or employees, has threatened the use of eminent domain against additional members of Clean Air Council for the purpose of building its Mariner 2 pipeline.

188. Under the Eminent Domain Code, the very act of filing a declaration of eminent domain transfers title to a condemnor. 26 Pa.C.S. §302(a)(2).

189. Individual plaintiffs, and Clean Air Council's members, should not have to await loss of their property to a defendant that has no eminent domain rights under Pennsylvania (or any other) law.

WHEREFORE, plaintiffs seek a declaration that, because Mariner 1 and Mariner 2 are interstate pipelines regulated by FERC, SPLP may not exercise the right of eminent domain against plaintiffs deMarteleire and Bomstein, and against Clean Air Council's members.

**COUNT II -DECLARATORY RELIEF  
(NO VALID CERTIFICATE)**

190. Plaintiffs hereby incorporate all of the allegations set forth above as though set forth more fully at length below.

191. This count is brought in the event that the Court determines that Mariner 2 is governed by the Public Utility Code.

192. A Pennsylvania public utility may only use eminent domain through rights conferred on it by the PUC in certificates of public convenience.



193. SPLP has never obtained a certificate of public convenience from the PUC to transport NGL's on an eastbound route through western Pennsylvania to southeastern Pennsylvania or Delaware.

194. PUC orders permitting abandonment or suspension and orders vacating abandonment and suspension orders of the PUC do not constitute Certificates of Public Convenience to operate Mariner 1 or Mariner 2 under Pennsylvania law.

195. Except with respect to service in Washington County, the only certificate of public convenience obtained by SPLP relative to Mariner 1 was the 2013 FERC certificate permitting SPLP as an interstate common carrier. The only certificate of public convenience obtained by SPLP relative to Mariner 2 was the 2014 FERC certificate permitting SPLP as an interstate common carrier.

196. SPLP's purported bases for the use of eminent domain for Mariner 1 and 2 are antiquated certificates of public convenience issued before 2002, and PUC dicta, that do not give that right with respect to those pipeline projects.

197. Even if SPLP had any right of eminent domain with respect to its intrastate activities, *arguendo*, that right does not extend to Mariner 1 and Mariner 2 and that right cannot be deemed all-encompassing; that is, SPLP may not legally or constitutionally take anyone's land for any purpose at any time in the Commonwealth (or the 40% of the Commonwealth in which SPLP has limited certificates of public convenience).

198. Without a PUC certificate of public convenience for Mariner 1 or Mariner 2 (let alone future pipeline projects), SPLP may not lawfully exercise the power of eminent domain for those projects.

WHEREFORE, plaintiffs seek a declaration that, for lack of PUC certificates of public convenience, SPLP may not exercise the right of eminent domain with respect to these interstate transmission pipelines against plaintiffs deMarteleire and Bomstein, or Clean Air Council's members.

**COUNT III – DECLARATORY JUDGMENT  
(FEDERAL TAKINGS CLAUSE)**

199. Plaintiffs hereby incorporate all of the allegations set forth above as though set forth more fully at length below.

200. The right to eminent domain now claimed by SPLP for the Mariner East pipeline projects would violate plaintiffs' property rights as guaranteed by the Fifth Amendment to the United States Constitution as incorporated via the Fourteenth Amendment, as it constitutes a private taking for private use rather than for any public purpose.

WHEREFORE, plaintiffs seek a declaration that Mariner 1 and Mariner 2 are private takings and SPLP may not exercise the right of eminent domain against plaintiffs deMarteleire and Bomstein, or Clean Air Council's members, under federal law.

**COUNT IV – DECLARATORY JUDGMENT  
(COMMONWEALTH TAKINGS CLAUSE)**

201. Plaintiffs hereby incorporate all of the allegations set forth above as though set forth more fully at length below.

202. The right to eminent domain now claimed by SPLP for the Mariner East pipeline projects would violate plaintiffs' property rights as guaranteed by the Pennsylvania

Constitution at Article X, §4, as it constitutes a private taking for private use rather than for any public purpose.

WHEREFORE, plaintiffs seek a declaration that Mariner 1 and Mariner 2 are private takings and SPLP may not exercise the right of eminent domain against plaintiffs deMarteire and Bomstein, or Clean Air Council's members, under Pennsylvania law.

**COUNT V – PROCEDURAL DUE PROCESS  
(FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION)**

203. Plaintiffs hereby incorporate all of the allegations above as though set forth more fully at length below.

204. Plaintiffs deMarteire and Bomstein purchased the premises in September 2013. In anticipation of their purchase they obtained a title search from Commonwealth Land Title Company, which search identified pipeline easements on their property in favor of Sun Oil Company, Atlantic Pipe Line Company and Keystone Pipe Line Company. No other easements were identified.

205. Said title search did not identify any other rights of way or easements affecting their property.

206. Said title search did not identify any claim or potential claim to their title by SPLP by virtue of PUC-granted territorial rights in Delaware County.

207. At no time prior to their purchase did deMarteire and Bomstein ever have actual or constructive notice that their property, by virtue of a certificate of public convenience not recorded in the Delaware County property records, was at risk to be taken for construction of an NGL pipeline.

208. At no time prior to their purchase did deMarteleire and Bomstein ever have actual or constructive notice that SPLP was planning to construct a pipeline in their backyard.

209. SPLP's contention that it has a right to eminent domain everywhere in Delaware County, stemming from an ancient approval of an earlier pipeline that has never been recorded in the Delaware County property records, is in direct conflict with Pennsylvania law.

210. Plaintiffs believe and aver that a certificate of public convenience that putatively conveys a right to take land anywhere within a county is a conveyance subject to Pennsylvania recording laws.

211. SPLP never recorded the subject certificate(s) and plaintiffs, therefore, had neither actual nor constructive notice of same prior to settlement on their home.

212. If SPLP had applied to PUC for approval to build Mariner 1 or Mariner 2 and notified plaintiffs, plaintiffs would have intervened in any such application proceedings before the PUC to oppose such applications.

213. Plaintiff Clean Air Council did intervene in SPLP's zoning exemption proceedings before the PUC, in opposition to SPLP's petitions. The Council would intervene again were SPLP to seek approval to build Mariner 1 or Mariner 2 from the PUC.

214. SPLP's putative right to take deMarteleire and Bomstein's property is outside the scope of an ordinary eminent domain proceeding and under the Fourteenth Amendment to the United States Constitution cannot be decided absent notice and an opportunity to be heard.

215. SPLP's putative right to take the property of Clean Air Council members is outside the scope of an ordinary eminent domain proceeding and under the Fourteenth

Amendment to the United States Constitution cannot be decided absent notice and an opportunity to be heard.

WHEREFORE, plaintiffs pray this Honorable Court set this matter down for a hearing to determine whether SPLP is entitled to exercise eminent domain rights over plaintiffs deMarteleire and Bomstein's, or Clean Air Council's members', property.

**COUNT VI – PROCEDURAL DUE PROCESS  
(ARTICLE I, §1 OF THE PENNSYLVANIA CONSTITUTION)**

216. Plaintiffs hereby incorporate all of their allegations from the first paragraph through this paragraph as if set forth fully herein.

217. Article I, §1 of the Pennsylvania Constitution affords citizens the same rights to due process as the Fourteenth Amendment to the U.S. Constitution.

218. Therefore, for the reasons set forth in Count V above, SPLP has also violated plaintiffs' rights under the due process guarantees of the Pennsylvania Constitution.

WHEREFORE, plaintiffs pray this Honorable Court set this matter down for a hearing to determine whether SPLP is entitled to exercise eminent domain rights over plaintiffs deMarteleire and Bomstein's, or Clean Air Council's members', property.

**COUNT VII – DECLARATORY JUDGMENT  
(ENVIRONMENTAL RIGHTS AMENDMENT)**

219. Plaintiffs hereby incorporate all of the allegations above as though set forth more fully at length below.

220. Officials acting under color of government authority, such as SPLP when purporting to exercise eminent domain, have fiduciary duties as trustees of Pennsylvanians'

public natural resources “to refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources, whether such degradation, diminution, or depletion would occur through direct state action or indirectly....” Robinson Twp., Washington Cnty. v. Com., 83 A.3d 901, 957 (2013).

221. This requires those officials to consider *before* acting whether the proposed action will lead to the “degradation, diminution, or depletion” of our public natural resources either now, *or in the future*. Id. at 952, 957, 959 & n.46; see also id. at 959 n.45, 20 Pa.C.S. §7203(a) & (c)(5); In re Scheidmantel, 868 A.2d 464, 492 (Pa. Super. Ct. 2005) (“trustee’s action must represent an actual and honest exercise of judgment predicated on a genuine consideration of existing conditions”); 20 Pa.C.S. §7773.

222. §27 specifically establishes a preference for protecting the natural quality of the environment and its benefits over development and disturbance, requiring that the officials take the same focus and care in their actions. Id. at 973 n.55.

223. SPLP has not engaged in the required consideration of protection of the natural environment before deciding to move forward with the Mariner East pipeline projects. This failure deprives plaintiffs of their environmental rights under the Pennsylvania Constitution.

WHEREFORE, plaintiffs seek a declaration that SPLP may not obtain eminent domain rights for Mariner 1 or Mariner 2 unless and until it demonstrates to the PUC that its pipeline projects comport with the Environmental Rights Amendment.

#### **COUNT VIII – INJUNCTIVE RELIEF**

224. Plaintiffs hereby incorporate all of the above allegations as though set forth more fully at length below.

225. Mariner 2 is a *proposed* pipeline.

226. As proposed, SPLP has sought and obtained approval from FERC for Mariner 2 solely on grounds that the project is in interstate commerce.

227. SPLP alleged in its Mariner 2 FERC Petition that the primary purpose of Mariner 2 is to remove NGL's from the Northeast, which has a glut of NGL's.

228. Mariner 2 as proposed is a pipeline in commerce between two or more states.

229. Under 66 Pa.C.S. §104, the Public Utility Code does not apply to Mariner 2.

230. It is immaterial to Mariner 2's character that defendant has left open the option that at some unspecified date in the future it may make deliveries within the Commonwealth.

231. For purposes of Mariner 2, defendant is not a public utility.

232. SPLP has no eminent domain rights in Pennsylvania with respect to Mariner 2 inasmuch as it is not functioning as a public utility for this project.

233. SPLP is still at liberty to enter into negotiations with landowners to purchase easements along the proposed Mariner 2 route, just as any other private enterprises are.

234. Plaintiffs deMarteleire and Bomstein do not wish to give or sell an easement to SPLP for Mariner 2.

235. Plaintiffs believe and aver that an additional easement for a new hazardous materials pipeline will lower their property value and permanently alter their property.

236. Clean Air Council has additional members along the proposed route of Mariner 2 who do not wish to give or sell an easement to SPLP for Mariner 2.

237. Based on information obtained relative to defendant's efforts to exercise the right of eminent domain throughout Pennsylvania, plaintiffs believe and aver that the taking of their property by defendant is imminent.

238. The status quo ante will be maintained should an injunction be granted prior to a taking.

239. Plaintiffs believe and aver that with respect to Mariner 2, their claim that SPLP does not have eminent domain rights is more likely than not to prevail on the merits following trial.

240. The harm caused by the granting of an injunction is less than the harm caused by not granting it.

241. SPLP's Mariner 2 project is in such a preliminary stage that the inability to take plaintiffs' property for a period of time will have no effect on the pipeline's construction in the event that plaintiffs lose the underlying case. *See* McCurdy v. Mountain Valley Pipeline, LLC, C.A. No. 1:15-03833, 2015 WL 4497407 (S.D.W.V. July 23, 2015) (“[C]ommon sense ... allows the court to recognize that a project of this magnitude cannot adhere to a rigid schedule and does not hinge on plaintiffs' property alone. It would be improper for this court to attribute any schedule delays, incurred for any reason, solely to defendant's inability to survey plaintiffs' property.”).

242. The public's interest will not be adversely affected by the granting of a preliminary injunction.

243. SPLP, for the reasons in this Complaint, lacks any right to exercise eminent domain for the Mariner East pipeline projects.



244. SPLP threatens plaintiffs, and many other Pennsylvanians, with the imminent deprivation of their property rights.

245. The violation of private property rights by a private company in furtherance of its private profits is contrary to the public interest.

246. There is no cognizable harm to SPLP, or other parties, in being prevented from taking others' private property to which SPLP has no legal right.

247. Money damages cannot compensate plaintiffs for the loss of enjoyment of their private property and the natural environment on that property.

248. Plaintiffs are entitled to a preliminary injunction and, later, a permanent injunction, after a hearing on the merits, barring SPLP from asserting eminent domain to take private property for use for the Mariner East pipeline projects.

WHEREFORE, plaintiffs Clean Air Council and deMarteleire and Bomstein pray this Honorable Court grant a preliminary injunction in their favor and, later, following a final hearing, a permanent injunction, against SPLP, barring defendant from exercising eminent domain rights with respect to Mariner 1 and Mariner 2.

#### **COUNT IX – ADDITIONAL EQUITABLE RELIEF**

249. All of the allegations set forth above are hereby incorporated by reference thereto.

250. After hearing on plaintiffs' above-stated claims, this Court may find that they are entitled to additional equitable relief.

251. Plaintiffs believe that they are entitled to reasonable counsel fees and costs in connection with the above-stated claims.

WHEREFORE, plaintiffs pray for such additional equitable relief as may be appropriate together with reasonable counsel fees and costs.

LAW OFFICES OF PINNOLA &  
BOMSTEIN

CLEAN AIR COUNCIL

/s/ Michael S. Bomstein

Michael S. Bomstein

Attorney for Margaret M. deMarteleire  
and Michael S. Bomstein

/s/ Joseph Otis Minott

Joseph Otis Minott  
Alexander G. Bomstein  
Augusta Wilson

Attorneys for Clean Air Council

VERIFICATION

I, Samuel Koplinka-Loehr, hereby verify that I am an employee of Clean Air Council, plaintiff in the within action; that I have read the within Complaint for Declaratory and Injunctive Relief, and that the facts set forth therein are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



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Samuel Koplinka-Loehr

Dated: August 26, 2015

VERIFICATION

I, Margaret M. deMarteleire, hereby verify that I am plaintiff in the within action; that I have read the within Complaint, and that the facts set forth therein are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

  
Margaret M. deMarteleire

Dated: August 26, 2015

VERIFICATION

I, Margaret M. deMarteleire, hereby verify that I am plaintiff in the within action; that I have read the within Complaint, and that the facts set forth therein are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

  
Michael S. Bomstein

Dated: August 26, 2015