



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 7, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Sunoco Pipeline L.P. a/k/a Energy Transfer
Partners
Docket No. P-2018-

Dear Secretary Chiavetta:

Enclosed please find the Petition of the Bureau of Investigation and Enforcement
of the Pennsylvania Public Utility Commission for the Issuance of an *Ex Parte*
Emergency Order Regarding Sunoco Pipeline L.P. a/k/a Energy Transfer Partners.

Should you have any questions, please feel free to contact me.

Sincerely,

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|--|---|-------------------------|
| Pennsylvania Public Utility Commission, | : | |
| Bureau of Investigation and Enforcement, | : | |
| Petitioner | : | |
| | : | |
| v. | : | Docket No. P-2018-_____ |
| | : | |
| Sunoco Pipeline L.P. a/k/a Energy Transfer | : | |
| Partners, | : | |
| Respondent | : | |

**PETITION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
FOR THE ISSUANCE OF AN *EX PARTE* EMERGENCY ORDER**

AND NOW, comes the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission” or “PUC”), pursuant to 52 Pa. Code § 3.2, and petitions the Commission for the issuance of an *ex parte* emergency order: 1) requiring Sunoco Pipeline L.P. a/k/a Energy Transfer Partners (“Sunoco” or “Company”) to immediately suspend operations of its Mariner East 1 pipeline (“ME1”) due to safety concerns regarding the integrity of said pipeline as being potentially hazardous to life, property and/or the environment. In support of this Petition, I&E avers as follows:

I. INTRODUCTION

1. On or about On March 3, 2018, the PUC was notified through email communications from a local resident regarding the formation of sinkholes near and/or

above Sunoco's ME1 pipeline facility near 491 Lisa Drive, West Whiteland Township, West Chester, Chester County, Pennsylvania.¹ The sinkholes occurred at three locations within 550 feet along the path of the ME1 pipeline.

2. ME1 is an eight-inch diameter (8") Natural Gas Liquids ("NGL") pipeline with a Maximum Operating Pressure ("MOP") of 1,440 PSI. ME1 is an active pipeline that has been in operation since approximately 1931. ME1 currently operates in a west to east direction pursuant to its intrastate transportation tariffs filed with the Commission and transports liquid propane, butane and ethane at the MOP allowed.

3. Sunoco is installing a new sixteen-inch diameter (16") pipeline in the common right-of-way ("ROW") through a twenty-four inch diameter (24") horizontal directional drill bore ("HDD") in a high consequence area ("HCA"). This new pipeline is referred to as Mariner East 2X (ME2X). Sunoco is also installing a pipeline called Mariner East 2 ("ME2") in the same ROW across the Commonwealth and is twenty (20) inches in diameter.

4. In December 2017, the first sinkhole ("Sinkhole No. 1") was discovered near station 12+00 (HDD station), just south of railroad tracks used by Amtrak. The size of this sinkhole was approximately 8 feet wide and 3 feet deep. On March 1, 2018, the new ME2X was pulled back.² During post drilling, Sunoco workers noticed the second sinkhole ("Sinkhole No. 2") near station 13+00, measuring 8 feet wide by 15 feet deep.

¹ "Sinkhole" refers to a form of soil collapse.

Sinkhole No. 2 is located 300 feet from Amtrak's facilities. The third sinkhole ("Sinkhole No. 3") was discovered on Saturday, March 3, 2018 at approximately 8:30 a.m. at 491 Lisa Drive, near station 9+00, approximately 10 feet from the house's foundation wall. Sinkhole No. 3 measured approximately 15 feet wide and 20 feet deep and partially exposed the buried ME1 pipeline.

5. Sinkhole Nos. 1 and 2 were located over ME2X and near ME1. Sinkhole No. 3 was located within the path of ME1. ME1 is believed to be approximately 4 to 8 feet deep in the areas of HDD. ME2X varies in depth from 50 feet to 115 feet. The lateral separation between the two pipelines is 10 to 15 feet. ME2X crossed under ME1 in the vicinity of Sinkhole No. 3.

6. On March 3, 2018, Sunoco's Operations Group conducted an inspection of the sinkhole sites and directed that flowable fill (specialty concrete) be introduced into the three known sinkhole areas.

7. Sunoco did not provide any notification to the PUC or PHMSA of these sinkholes. In fact, Sunoco's Compliance Group was also unaware of these events until March 3, 2018.

8. On March 5, 2018, PUC Safety Engineers accompanied by the PUC Safety Division Manager visited Lisa Drive in West Chester, Pennsylvania, at the site of Sunoco's ME1 and ME2X pipelines that are the subject of the above-referenced events.

² The term "pulled back" refers to a pipeline procedure whereby a welded segment of pipeline is pulled through the pre-bored shaft.

Additionally, an engineer from the federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) joined the inspection.

9. All three sinkholes were filled on March 3, 2018 and construction work had ceased at the time of the PUC Engineers’ inspection on March 5, 2018, although Sunoco continued to perform surveys and other geological testing at the site.

10. During their on-site inspection on March 5, 2018, PUC Safety Engineers also discovered that additional sinkholes were developing south of 491 Lisa Drive, also in the path of ME1 and/or in the path of the under construction ME2X.

11. Due to, *inter alia*, the concern for the safety of the public given the unknown effects on the nature of the geological instability of the area and the sinkhole events referenced herein which correspond to the construction of the ME2X pipeline, the close proximity of the ME2X construction to the existing and active ME1 pipeline as well as the close proximity of residential single-family dwellings, apartment buildings, Route 100 and Amtrak lines to the site of ME1 and ME2X, I&E is compelled to bring this Petition for Issuance of *Ex Parte* Emergency Order and requests that the Commission direct: 1) that Sunoco shall immediately suspend operations of its Mariner East 1 pipeline and shall not reinstate transportation service on ME1 until the completion of repairs to I&E’s satisfaction at which time Sunoco may then file with the Commission a petition for reinstatement of service; 2) Sunoco shall perform the necessary geo-physical tests and analyses, including but not limited to, i) Resistivity, ii) Seismic, iii) Gravity on the HDD project at the Lisa Drive site from the bore beginning to end; 3) Sunoco shall perform a

drawdown/purge of the hazardous liquid products between the first valve upstream and downstream at the Lisa Drive site within 72 hours of the entry of the Commission's Emergency Order; and 4) upon conclusion of the drawdown/purge, Sunoco shall immediately run an in-line inspection ("ILI") tool at the Lisa Drive site and report the findings to PHMSA and I&E.

II. PARTIES

12. The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

13. Petitioner is the Commission's Bureau of Investigation and Enforcement and is the entity established to initiate proceedings that are prosecutory in nature for violations of the Public Utility Code and Commission regulations. *See Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

14. Respondent is Sunoco Pipeline L.P., Utility Code A-14001, a certificated public utility in the Commonwealth of Pennsylvania, with a place of business at 4041 Market Street, Ashton, Pennsylvania, 19014, and a common carrier transporter of hazardous liquids.

III. JURISDICTION

15. The Commission has jurisdiction over this matter pursuant to 66 Pa.C.S. § 501, which provides in pertinent part: “In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, **and it shall be its duty to enforce**, execute and carry out, by its regulations, orders, or otherwise, **all and singular, the provisions of this part, and the full intent thereof . . .**” (emphasis added).

16. Section 1501 of the Public Utility Code states that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and that such service shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S § 1501. *See also*, 66 Pa.C.S § 1505.

17. Moreover, 52 Pa. Code § 59.33 reads:

- (a) Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.
- (b) *Safety code.* The minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § § 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191—193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission’s regulations with regard to the minimum safety standards for all natural gas and hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes

a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

- (c) *Definition.* For the purposes of this section, “hazardous liquid public utility” means a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.
- (d) *Enforcement.* Each public utility shall be subject to inspections as may be necessary to assure compliance with this section. The facilities, books and records of each public utility shall be accessible to the Commission and its staff for the inspections. Each public utility shall provide the Commission or its staff the reports, supplemental data and information as it shall from time to time request in the administration and enforcement of this section.

IV. STANDARD FOR ISSUANCE OF AN EMERGENCY ORDER

18. Section 3.2 of the Commission’s regulations, 52 Pa. Code § 3.2, permits a petition to the Commission for the issuance of an *ex parte* emergency order where supported by a verified statement of facts which establishes the existence of an emergency. The petition must establish facts to demonstrate that:

- 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.

52 Pa. Code § 3.2(b).

19. “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 meeting.” 52 Pa. Code § 3.1 (emphasis added).

20. The person or entity seeking emergency relief bears the burden of proving that the facts and circumstances meet all four of the above requirements. 66 Pa.C.S. § 332; 52 Pa. Code § 3.2(b). 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). The petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (1950).

21. The Chairperson, a Commissioner, the Commission’s Director of Operations and the Commission’s Secretary have the authority to issue an emergency order. 52 Pa. Code § 3.3(a). An emergency order will be issued in writing. 52 Pa. Code § 3.3(b). An emergency order will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order. 52 Pa. Code § 3.3(c). An emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision with copies to the Commissioners and the Director of Operations. 52 Pa. Code § 3.3(d).

22. A person against whom an emergency order is issued *may* file a petition for an expedited hearing to be held before a presiding officer within 10 days of receipt of the petition by the Secretary. 52 Pa. Code § 3.4.

A. I&E's Right To Relief Is Clear

23. As a certificated public utility, Sunoco is subject to the jurisdiction of the Commission. Pursuant to 52 Pa. Code § 59.33, there are specific safety standards that must be met by a hazardous liquid public utility, such as Sunoco. Under Section 59.33, the Commission has adopted the federal pipeline safety laws as set forth at 49 CFR Parts 191, *et seq.* Such safety provisions are enforced by the Commission's Bureau of Investigation and Enforcement, Safety Division. It is not necessary to determine the merits of the controversy or dispute in order to find that a petitioner has satisfied the first prong of Section 3.2(b) of the Commission's regulations, 52 Pa. Code 3.2(b), by showing that the right to relief is clear. Rather, the Commission has found that if a petitioner raises "substantial legal questions," then a petitioner has established that its right to relief is clear. *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002); *T.W. Phillips Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985).

24. I&E serves as the Commission's prosecutory bureau and enforces compliance with the Public Utility Code and Commission regulations. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011), p. 5.

25. Section 1501 of the Public Utility Code states, in pertinent part, as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in, or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay.

66 Pa.C.S § 1501.

26. The construction of ME2 and ME2X at or near the location of the active ME1 pipeline, and the resulting sinkhole events that are occurring concomitant to the boring of the ME2X pipeline compromise the safety of the public.

27. Based on its investigation to date, I&E is not able to conclude that Sunoco has met its required threshold of safety pursuant to 66 Pa.C.S. § 1501 and 52 Pa. Code § 59.33 without Sunoco first conducting the necessary and appropriate elements of an integrity management plan and affording an opportunity for I&E to review the results of those integrity management efforts in order to ascertain that the continued operation of ME1 is viable and safe under the circumstances described herein.

28. Permitting the continued flow of hazardous liquid through the ME1 pipeline without the proper steps to ensure the integrity of the pipeline could have catastrophic results impacting the public near or adjacent to the paths of ME1, ME2 and ME2X.

B. The Need For Relief Is Immediate

29. I&E's need for relief is immediate. The very recent sinkhole events witnessed by I&E Safety Engineers establish that the integrity of the ME1 pipeline may

be compromised by these or other similar but yet to-be-discovered sinkholes. It is Sunoco's obligation, pursuant to Section 315(c) of the Public Utility Code, 66 Pa.C.S. § 315, to establish that their pipeline is adequate, safe and reasonable and not a safety hazard to the public.

30. Should Sunoco not immediately suspend operation of ME1 while integrity management steps are taken and then reviewed by I&E to confirm the safety of the pipeline, and should ME1 in fact be compromised by these or other sinkholes while permitting the continued flow of hazardous liquids, the resulting event would have an immediate adverse impact on the operation of ME1, the continued construction of ME2 and ME2X and, most importantly, the health and welfare of the public, property and surrounding environment.

C. The Injury From Respondents' Actions Will Be Irreparable If Relief Is Not Granted

31. By failing to immediately suspend operations of ME1 pending review of integrity steps conducted by Sunoco, the safety of the public would be jeopardized. The pipeline in question transports hazardous liquids in densely populated areas defined by PHMSA as High Consequence Areas. Needless to say, any compromise or failure of the pipeline would have dire results, and the injuries resulting therefrom would most certainly be irreparable.

D. The Relief Requested Is Not Injurious To The Public Interest

32. The relief that I&E requests is certainly not injurious to the public interest.

To the contrary, it is clear that it will be injurious to the public interest if the relief requested is *not* granted.

V. PRAYER FOR RELIEF

WHEREFORE, the Bureau of Investigation and Enforcement, Petitioner herein, respectfully requests that the Commission enter an Emergency Order that directs that:

1) Sunoco shall immediately suspend operations of its Mariner East 1 pipeline and shall not reinstate transportation service on ME1 until the completion of repairs to I&E's satisfaction at which time Sunoco may then file with the Commission a petition for reinstatement of service;

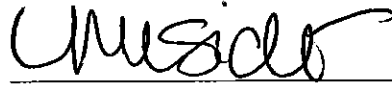
2) Sunoco shall perform the necessary geo-physical tests and analyses, including but not limited to, i) Resistivity, ii) Seismic, iii) Gravity on the HDD project at the Lisa Drive site from the bore beginning to end;

3) Sunoco shall perform a drawdown/purge of the hazardous liquid products between the first valve upstream and downstream at the Lisa Drive site within 72 hours of the entry of the Commission's Emergency Order;

4) Upon conclusion of the drawdown/purge, Sunoco shall immediately run an in-line inspection ("ILI") tool at the Lisa Drive site and report the findings to PHMSA and I&E; and

5) Any other such relief that the Commission deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Swindler", written over a horizontal line.

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-6369

Date: March 7, 2018

VERIFICATION

I, Paul J. Metro, Fixed Utility Valuation Manager, Safety Division, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 7, 2018

A handwritten signature in black ink, appearing to read "Paul J. Metro", is written over a horizontal line.

Paul J. Metro
Fixed Utility Valuation Manager,
Bureau of Investigation and Enforcement
Safety Division

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Dated: March 7, 2018