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

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|  | Public Meeting held December 20, 2018 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman | |  |
| Andrew G. Place, Vice Chairman, Statement, Dissenting | |  |
| Norman J. Kennard |  | |
| David W. Sweet |  | |
| John F. Coleman, Jr. |  | |
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| Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines,  v.  Sunoco Pipeline, L.P.,  Petition of Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines for Interim Emergency Relief | C-2018-3006116  P-2018-3006117 | |

**OPINION AND ORDER**

**BY THE COMMISSION:**

On December 11, 2018, Administrative Law Judge Elizabeth Barnes issued the Interim Emergency Order and Certification of Material Question (Interim Emergency Order) in the above-captioned proceeding.

The Commission’s regulation at 52 Pa. Code § 5.305(e) requires the Commission to act on the certified question within thirty days of the date it is filed (*i.e.*, on or before January 10, 2019).

In order to review the matter thoroughly, we **waive** the thirty-day period for consideration set forth in 52 Pa. Code § 5.305(e) and, thereby, extend our consideration beyond the thirty days provided for in said Regulation in order to afford us adequate time to address the question raised. *See* 52 Pa. Code § 1.2(c); *see also,* *C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, Docket No. C-00924416 (June 4, 1993). Accordingly, the Petition will be addressed at a forthcoming Public Meeting.

**Discussion**

OnNovember 19, 2018,the Pennsylvania Public Utility Commission (Commission) received a Formal Complaint and a Petition for Interim Emergency Relief from Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (Petitioners). The Complaint and the Emergency Petition were served on Sunoco Pipeline, L.P. on November 20, 2018.

Petitioners oppose the operation and/or construction associated with Sunoco’s pipelines Mariner East 1 (ME1), Mariner East 2 (ME2) and Mariner East 2X (ME2X), arguing the transport of hazardous, highly volatile liquids presents an unacceptable risk to life and property. In the Emergency Petition, Petitioners ask the Commission to direct, *inter alia*, Sunoco to cease operation of its ME1 pipeline immediately and to prohibit operation of an ME2 and ME2X “workaround pipeline,” until a final order is issued in the Complaint proceeding.

On November 21, 2018, Sunoco requested via email an extension of time in which to answer the Complaint and Emergency Petition, given the Thanksgiving holiday. In the prehearing order, scheduling hearings for November 29 and 30, 2018, the Administrative Law Judge allowed Sunoco until November 27, 2018, to file an answer to the Emergency Petition.

Noting the length of the testimony and the requests of the Parties to extend deadlines, the presiding officer issued an interim order on December 3, 2018, which consolidated the above-captioned dockets, granted intervenor status, and allowed the Parties to file briefs on or before December 7, 2018. The interim order also indicated the order resolving the Emergency Petition would be issued on or before December 11, 2018.

Because of the nature of interim emergency relief, the timing for answers, hearings, and orders is necessarily abbreviated. Because allegations are deemed denied by opposing parties, answers are not required. 52 Pa. Code § 3.6. Still, Commission regulations allow for answers to petitions for interim emergency relief to be filed no later than five days after service of the petition. *Id.* Additionally, hearings on the merits of the emergency petition must be held within 10 days of the filing date, and the presiding officer must issue an order within fifteen days of the filing date. 52 Pa. Code §§ 3.6a and 3.7.

Commission review of the presiding officer’s Interim Emergency Order is also on an abbreviated schedule. The presiding officer is required to certify the question of the grant or denial of relief to the Commission as a material question. 52 Pa. Code § 3.10. Within seven days of service of the certification, the parties may submit briefs addressing the merits. 52 Pa. Code § 5.305. Within thirty days of the certification, the Commission will address the ruling of the presiding officer or it is deemed an affirmation of the presiding officer’s decision. *Id*.

In this instance, the presiding officer’s Interim Emergency Order denying the petition and certifying the material question was issued on December 11, 2018. The Parties’ briefs were due on or before December 18, 2018. The only public meeting scheduled within the thirty-day time frame is December 20, 2018, less than forty-eight hours after briefs are due.

Generally, a presiding officer may grant extensions and continuances. 52 Pa. Code § 1.15. Presiding officers routinely extend the time in which *parties* are required to act. In the case of emergency petitions, however, extensions could disturb regulations directing *Commission* action: deadlines for hearings, ALJ orders, and Commission orders. The parties would need waivers of these regulations if the hearings or orders could not be issued within the specified time frames. Waivers of Commission regulations can only be accomplished by petitioning the Commission as they require express permission to allow for or provide for a waiver.

A petition for waiver could have been filed, detailing the reasons the waiver was needed. In making a determination on a petition for waiver, the Commission will consider whether compliance with our regulation or order will cause an undue burden or hardship on the petitioner and whether granting the waiver is in the public interest.

Regulatory deadlines have already been extended. Further, the new time frame has affected the timing of our own review and consideration of the Emergency Petition, necessarily moving consideration to our January public meeting.

**Conclusion**

Accordingly, in order to review the matter thoroughly, we shall, *sua sponte*, waive the thirty-day period for consideration set forth in 52 Pa. Code § 5.305 and, thereby, extend our consideration beyond the thirty days in order to afford us adequate time to address the question raised.  *See* 52 Pa. Code § 1.2; *see also C.S. Warthman Funeral Home et. al. v. GTE North Inc.*, Docket No. C-00924416 (June 4, 1993). **THEREFORE,**

**IT IS ORDERED:**

1. That the thirty-day period consideration period set forth in 52 Pa. Code § 5.305(e) is hereby waived, *sua sponte*, in order to afford the Commission adequate time to address the question raised.

2. That the Interim Emergency Order and Certification of Material Question that was issued on December 11, 2018, by Administrative Law Judge Elizabeth Barnes, will be considered at the Pennsylvania Public Utility Commission’s January 17, 2019 public meeting.

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**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 20, 2018

ORDER ENTERED: December 20, 2018