PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held January 17, 2019

Commissioners Present:

Gladys M. Brown, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place, Statement

John F. Coleman, Jr.

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| Meghan Flynn  Rosemary Fuller  Michael Walsh  Nancy Harkins  Gerald McMullen  Caroline Hughes  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:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the *Order Denying Petition for Emergency* *Interim Relief and Certifying Material Question* (*Order*) issued by Administrative Law Judge (ALJ) Elizabeth Barnes on December 11, 2018, relative to the above-captioned proceedings. The *Order* comes before the Commission pursuant to the requirements of our Rules of Practice and Procedure, 52 Pa. Code § 3.10(b), which provide, in pertinent part:

When the presiding officer rules upon the petition for an interim emergency order, the presiding officer will also certify the question of the grant or denial of relief to the Commission as a material question in the form set forth in § 5.305 (relating to interlocutory review of a material question submitted by a presiding officer) . . . .

*Id*.

The *Order* before the Commission for reviewdenied a Petition for Interim Emergency Relief requested by Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines (jointly, Complainants or Petitioners) that was sought in conjunction with a formal complaint (Complaint), wherein Sunoco, L.P. (Sunoco or Company) is named as Respondent. The Complaint and Petition were filed on November 19, 2018. *See Order* at 1. As discussed below, the Complainants filed an Amended Complaint on December 20, 2018 (docketed December 21, 2018).

On consideration of the record, the pleadings of the Parties, and the *Order*, the material question presented by the ALJ’s denial of interim emergency relief is stated as follows:

Whether the December 11, 2018 Order of presiding Administrative Law Judge Elizabeth Barnes should be affirmed as Complainants/Petitioners have not shown that they are entitled to interim emergency relief under Commission Regulations at 52 Pa. Code 3.6 - 3.8?

Upon review of the record before the presiding ALJ, including the transcripts of the hearings held on emergency relief and the briefs of the Parties, pursuant to 52 Pa. Code § 5.305(e)(3), we shall answer the Material Question in the affirmative, and return the matter to the Office of Administrative Law Judge for disposition of the accompanying Complaint at Docket No. C-2018-3006116, consistent with this Opinion and Order.

1. **Background**

**A. Commission Proceedings involving the Mariner East Pipeline**

As a general matter, the Commission has jurisdiction to oversee the safety and adequacy of any operation or facility of a public utility subject to the jurisdiction of the Public Utility Code (Code). 66 Pa. C.S. § 1505. The Commission’s oversight of safety issues regarding the Mariner East (ME) pipeline project, including Mariner East 1 (ME1), Mariner East 2 (ME2) and Mariner East 2X (ME2X), occurs on several administrative levels, including: the continued monitoring of compliance with applicable state and federal pipeline regulations and potential prosecution for safety violations by the Commission’s Bureau of Investigation and Enforcement (BI&E); the hearing and adjudication of formal complaints by the Commission’s Office of Administrative Law Judge (OALJ); the consideration of exceptions at the Commission level; as well as defense of the Commission’s decisions on appeal before the Commonwealth Court. By way of background, ongoing matters before the Commission which pertain to the Mariner East Pipeline may or may not, in certain cases, provide context to or be relevant to the disposition of the matter in question.

1. **History of the Proceedings**

**A. Flynn *et al.* Original Formal Complaint**

On November 19, 2018, the Complainants/Petitioners, filed their formal complaint (Complaint) and concurrently filed a Petition for Interim Emergency Relief against Sunoco concerning the facilities and operations of the ‘Mariner East Pipeline’ through various portions of Chester and Delaware Counties. As noted below, the Complaint has been amended. *See* Docket Nos. C-2018-3006116 (Complaint) and P‑2018-3006117 (Petition). The proceedings were consolidated by Order of ALJ Barnes. Andover Homeowners’ Association, Inc. (AHA) and Range Resources – Appalachia, LLC (Range) were granted intervenor status.[[1]](#footnote-2)

The Complainants/Petitioners are individuals who reside and/or work in close proximity to the ME1 pipeline operations and facilities in Delaware or Chester Counties. *Order* at 1. The Complainants also refer to their proximity to the so-referenced “work-around” 12-inch diameter pipeline that is a part of the Mariner East project. ALJ Barnes has characterized the “work-around” 12-inch diameter pipeline as a pipeline “that circumvents stopped construction on the ME2 and ME2X in West Whiteland Township.” *Order* at 1. ALJ Barnes additionally noted that, “[t]he workaround 12-inch pipeline is a 1930s era pipeline that had been carrying petroleum products such as gasoline until Sunoco repurposed it to connect to ME2 in order to carry highly volatile liquids (HVLs).” *Id.*[[2]](#footnote-3)

In their original Complaint, the Complainants asserted three counts against Sunoco. Count I alleged a violation of 49 CFR § 195.440. The Complainants alleged, *inter alia*, that the route of ME1 and the “workaround pipeline” through and near the Complainants’ lands, which are “high consequence” areas, pose dangers to them, their families and their communities. *See* Complaint ⁋⁋ 60-67.[[3]](#footnote-4) The Complainants averred that they believe that ME1 and the workaround pipeline have leaked multiple times in the past and are likely to leak again. And, Sunoco’s failure to create a “legally compliant” public awareness program increases the dangers to the public of adequate public detection and response to a potential leak. For relief, the Complainants requested an Order directing Sunoco to permanently: (1) cease operation of the ME1 pipeline; (2) cease operation of the workaround pipeline, ME2, and ME2X; and (3) any such other and further relief as may be appropriate. *Id*.

Count II of the original Complaint alleged a violation of 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33. In this count, the Complainants asserted, *inter alia*, that Sunoco’s failure to create a legally compliant public awareness program violates Section 1501 of the Public Utility Code, as well as Section 59.33(b) of Commission Regulations. *See* Complaint ⁋⁋ 68-71. For relief, the Complainants again requested an Order directing Sunoco to permanently cease operation of the ME1 pipeline and permanently and cease operation of the workaround pipeline, ME2, and ME2X. *Id*.

In Count III, the Complainants alleged a violation of 49 CFR §§ 195.248 and 195.210(a), which are incorporated by reference into Commission Regulations. Federal regulation, 49 CFR § 195.248, provides, in pertinent part, that a pipe installed in an industrial, commercial, or residential area must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom is at least thirty-six inches below ground surface. 49 CFR § 195.210(a) provides, in pertinent part, that no pipeline may be located within 50 feet (15 meters) of any private dwelling, industrial building, place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover. *See* Complaint ⁋⁋ 72-80. The Complainants alleged that the “shallowness” of MEl and the workaround pipeline increases the risk of harm to residents and homes in Chester and Delaware Counties in the case of a leak, rupture, or other catastrophic event. Complaint ⁋ 79. For relief, the Complainants requested an Order directing Sunoco to permanently cease operation of the ME1 pipeline and cease operation of the workaround pipeline, ME2, and ME2X. *Id*.

**B. Flynn *et al.* Petition for Emergency Relief**

In the Petition seeking interim emergency relief accompanying the original Complaint, the Petitioners averred that ME1, ME2, ME2X and the “workaround” pipelines carrying or intended to carry High Volatile Liquids (HVLs) are inherently dangerous due to their location to “high consequence” areas of Chester and Delaware Counties. The Petitioners assert that based on the location of these facilities to the high consequence areas, there would or could be catastrophic consequences to the residents of Chester and Delaware Counties in the event of a pipeline leak and/or breach. The harm articulated by the Petitioners is primarily based on their contention that ME1 is being operated and the work-around pipeline is about to be operated without an adequate public awareness program, emergency notification system, or credible emergency management plan, in violation of regulations at 49 CFR § 195.440. The Petitioners also contend that Sunoco is in violation of regulations at 49 CFR § 195.248 in that ME1 and the workaround pipeline are located within fifty feet of private dwellings or industrial buildings or places of public assembly without at least four feet of cover.

The Petition expressly requested the following emergency relief: (1) the Commission review of Sunoco’s public awareness program and a determination of whether the public awareness program is, or is not, suitable, applicable, appropriate, and credibly possible to carry out; and (2) cessation of HVL pipeline operations until the review is complete, *i.e*., the Commission has held a final hearing on the Petitioners’ Complaint and entered an appropriate order. *See* Petition at 2.

On November 26, 2018, a Hearing Notice was issued that scheduled hearings on the Petition for November 29 and 30, 2018.

**C. Sunoco’s Answer to the Petition for Emergency Relief**

On November 27, 2018, Sunoco filed an Answer to the Petition. Sunoco responded to the Petition with the following argument headings:

A. The Commission has already decided SPLP’s Public Awareness program and materials do not merit emergency injunctive relief; Answer at 1-5;

B. The Commission has already decided that ME1 is safe and cannot be enjoined on an emergency basis; Answer at 5-7;

C. Petitioner must prove all four elements to obtain the emergency relief requested; Answer at 7-8;

D. The depth of cover of ME1, ME2, and the 12-inch pipeline are not in violation of any regulation; Answer at 8;

E. The 12-inch pipeline is safe, as the Commission’s Bureau of Investigation and Enforcement has acknowledged; Answer at 8-10;

F. SPLP has taken reasonable steps to warn and protect the public from danger; Answer at 10-11;

G. Allegations concerning other pipelines many of which are in other states or locations are irrelevant and cannot raise a substantial question or otherwise show emergency relief is merited; Answer at 11-12;

H. Allegations concerning County response agencies proposed actions are not within the control of SPLP, not within the jurisdiction of the Commission, are irrelevant, and cannot show emergency relief is merited; Answer at 12;

I. Vague and unsupported allegations regarding past leaks are irrelevant and cannot show emergency relief is merited; Answer at 12;

J. Granting Petitioner’s interim emergency relief will be injurious to SPLP and to the public interest; Answer at 12-13;

K. The Petition for Interim Emergency Relief was not properly supported by verified facts. Answer at 13-14.

On November 29 and 30, 2018, hearings were convened and held, as scheduled. Counsel for the Petitioners was Michael Bomstein, Esquire. The Petitioners Nancy Harkins, Michael Walsh and Caroline Hughes testified. Petitioners offered the testimony of witnesses Timothy Hubbard and Jeffrey Marx. The Petitioners submitted nine exhibits. Appearing for Respondent was Thomas J. Sniscak, Esquire, Whitney E. Snyder, Esquire, Curtis Stambaugh, Esquire, Robert D. Fox, Esquire, Neil S. Witkes, Esquire and Diana A. Silva, Esquire. Respondent offered the testimony of witnesses John Zurcher, Gregory Noll, Anthony Gallagher, Richard Billman and Joseph Perez. Respondent submitted twenty-nine exhibits. Appearing for Intervenor Andover Homeowners’ Association, Inc. was Rich Raiders, Esquire. Appearing for Intervenor Range Resources – Appalachia, LLC was Anthony Kanagy, Esquire and Erin McDowell, Esquire. Alan Engberg testified for Range Resources.

Two transcripts of the proceedings were filed on December 3 and 4, 2018, respectively, totaling 613 pages. The Parties filed briefs in support of their positions on December 7, 2018.[[4]](#footnote-5)

Following the evidentiary hearings, ALJ Barnes entered an order on December 11, 2018. The *Order* denied the request for interim emergency relief and certified the denial as a material question for review by the Commission.

On December 18, 2018, Sunoco, Range, and BI&E.[[5]](#footnote-6) filed briefs addressing the material question. The Petitioners did not file a brief.

**D. BI&E Intervention**

On December 18, 2018, BI&E exercised its authority to intervene in any matter, at any time, and filed a notice of intervention in this proceeding. *See* 52 Pa. Code §§ 5.72(b) and 5.74(b)(4)[[6]](#footnote-7).

**E. Commission Order Extending Consideration Period for Interlocutory Review**

By Order entered December 20, 2018, we waived our applicable regulations and extended the time period for consideration of the merits of the material question certified to the Commission by ALJ Barnes. *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).

1. **Discussion**

As a preliminary consideration, we advise the Parties that any issue that we do not specifically address in our disposition should be deemed to have been duly considered and rejected without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**A. The ALJ’s Recommendation in the December 11, 2018 Order**

Presiding ALJ Barnes has properly addressed those considerations necessary to obtain interim emergency relief.

The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts to support the following:

(1) The petitioner’s right to relief is clear.

(2) The need for relief is immediate.

(3) The injury would be irreparable if relief is not granted.

(4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6 (b).

The Commission may grant interim emergency relief only when allthe foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993). As to the first element, whether the petitioner’s right to relief is clear, it is not necessary to determine the merits of the controversy in order to find that a petitioner’s right to relief is clear. Rather, the only required determination is that the petition raises substantial legal questions. *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*T.W. Phillips*).

We note that presiding ALJ Barnes made a specific reference to Sunoco’s representation of the opinion of the Commission’s BI&E when she stated, “Further, Sunoco argues the Commission’s Bureau of Investigation and Enforcement has acknowledged that the 12-inch pipeline is safe to operate.” *Order* at 2.

On consideration of the pleadings, testimony and exhibits of the Parties, ALJ Barnes recommended that the Petition seeking interim emergency relief be denied. The presiding ALJ was not persuaded that the Petitioners established the requisite existence of an “emergency”[[7]](#footnote-8) so as to support granting interlocutory injunctive relief under the Commission’s regulations:

Without evidence regarding pipeline integrity, the risk or probability of fatalities regarding ME1 or ME2, or evidence of past releases along the Mariner East Project, Petitioners have failed to show a clear and present a danger to human life or property within the meaning of 52 Pa. Code §3.1. Petitioners’ claims and arguments as to the hypothetical consequences of a release from the pipelines have little foundation. I have considered the photographs showing proximity of residences and schools to the pipelines in Exhibits P-1(a)(b) and(c), as well as the testimonies of Ms. Harkins, Mr. Walsh, Ms. Hughes, and Mr. Hubbard, all of whom I find credible to find there are high consequence areas in Chester and Delaware Counties where the Mariner East pipelines traverse. Even Mr. Zurcher testified this case involves high consequence areas.

However, the *Rupture of Hazardous Liquid Pipeline With Release and Ignition of Propane, Carmichael, Mississippi, November 1, 2017, Accident Report* (Exhibit P-6) was already deemed insufficient support for interim emergency relief in the *Dinniman* matter. Exhibit SPLP 10 at 34. Injunctive relief requires sufficient evidence to demonstrate that an emergency condition exists, that it is more probable than not that an emergency will occur imminently, and that it is necessary to preserve the *status quo* before the Commission’s next public meeting. *See* 52 Pa. Code § 3.1 (definition of “emergency” that requires action before next Commission public meeting); *see also Petition of Norfolk Southern Railway Co.*, 2011 WL 612282 at \*12 (“the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding”).

*Order* at 11-12.

**B. Positions of the Parties**

**1. Complainants/Petitioners**

The Petitioners assert that an emergency comes “in many stripes.” Main Brief (MB) at 15. They assert that they have shown a clear and present danger to the residents of Chester and Delaware Counties and an emergency may be found under circumstances where Sunoco’s public awareness program lacks credulity and/or is insufficient. They allege, *inter alia*, that the notice that Sunoco[[8]](#footnote-9) has given the public and its public awareness plan does not provide adequate notice of procedures sufficient to ensure the safety of the public in the event of a leak or rupture of an HVL transmission pipeline. *See, e.g.,* Petition at 1.

The essential premise of the Complainants’ position is that the general reference to the term “Mariner East” pipeline has involved a difference or change in the nature of the facilities originally proposed to be deployed by Sunoco and the nature of the materials transported over those facilities: “ . . . Sunoco has begun referring to this cobbled-together hybrid pipeline as “ME2.” In this petition, the term “workaround pipeline” is used to distinguish it from ME2 as originally proposed by Sunoco. In both cases – ME1 and the workaround pipeline – the probability of injury, death, and property damage is significantly greater than in the case of non-HVL pipelines.” MB at 1; 19-24.

The Complainants seek interim emergency relief and permanent relief thereafter on the basis of their position that the Mariner East project is now different in degree and/or in nature, regarding the materials transported. They emphasize that public interest considerations militate in their favor as the need for an injunction is the result of Sunoco’s own actions and failures. Therefore, the interests of the public cannot be outweighed by financial harm resulting from Sunoco’s own actions and inactions. MB at 29 (citing *Com., Dep’t of Pub. Welfare v. Court of Common Pleas of Philadelphia Cnty.*, 485 A.2d 755, 760 (Pa. 1984)).

**2. AHA**

The AHA is a non-profit corporation that owns “open space” within the Andover subdivision which consists of approximately forty-two acres of land in Thornbury Township, Delaware County. The subdivision is divided into thirty-nine privately owned lots (each of which is occupied by a single-family dwelling) plus community open space. *See* AHA Petition to Intervene.

The AHA shares the Complainants’ concerns regarding the alleged inadequacy of Sunoco’s “public awareness program.” The AHA raises a specific concern about Sunoco’s valve sites upon its property. Specifically, the AHA is concerned that valve sites, including valve assemblies for Mariner East, may possibly at some point become burdened with valve sites for ME2 and ME2X. This industrial valve complex would, according to AHA, be less than fifty feet from an active restaurant and bar and less than one hundred feet from the nearest Andover residence. To the extent this location is expected to serve as a vent point in the event that one or more of these pipelines must be de-inventoried or suffers an incident anywhere along the respective segments, the AHA posits that Sunoco cannot assure the residents that it can safely manage the large amount of ethane, propane or butane that would be released in a pipeline accident or de-inventory event. *See* AHA MB.

Based on the foregoing, the AHA supports the position of the Complainants. The AHA specifically requests that the Commission enjoin operation of ME1, ME2, ME2X, and the “Point Breeze to Montello Work-Around pipeline” unless and until Sunoco has presented “appropriate facts, studies and documentation that demonstrate Sunoco is capable of managing valve sites . . . in a manner to avoid placing a vapor cloud in close proximity to a known and documented collection of ignition sources at a place of dense public assembly . . . .”

**3. Sunoco**

Sunoco opposes the request for interim emergency relief. Sunoco emphasizes its position that the integrity of MEI and ME2 are not at issue in thiscase. Sunoco relies, in substantial part, on its interpretation of theCommission’s prior Orders in the *Dinniman Proceedings* and the Complainants/Petitioners’ acknowledgement that they did not present any evidence regarding the integrity of MEI or ME2.

Sunoco asserts that the Complainants/Petitioners appear to have abandoned their justification for interim emergency relief by forsaking the arguments and proof that the integrity of the Mariner East pipelines pose an imminent threat to life or property. The Company points out that the Petitioners did not offer any evidence that there is any imminent risk of releases from valve sites or from areas where HDDs were used in the construction of the pipelines. Neither did Flynn *et al*. present evidence of increased risk from co-location of pipelines. *See, e.g.,* MB at 7‑11.

Based on the foregoing, Sunoco relies on submittals provided to the Commission in compliance with the directives of the *June 14 Order* in the *Dinniman Proceedings* to assert that it maintains a robust public awareness program that is adequate, appropriate, and meets or exceeds industry standards and applicable regulations. MB at 12-30.

Sunoco concludes its arguments by highlighting the financial consequences of interim emergency relief, which it holds would be contrary to the public interest criterion of the Commission regulations, and the fact that such a grant of relief should require a bond on behalf of the Complainants.

**4. Range**

Range is a transporter on the ME1 pipeline. Tr. at 518. The pipeline transportation provided by the Mariner East pipeline has been cited as “critical” to Range’s business. *Id*.

Range opposes interim emergency relief. Range takes the position that on its face, the Petition fails to allege facts sufficient to demonstrate that the Petitioners are entitled to interim emergency relief under Section 3.6(b) of the Commission’s Regulations at 52 Pa. Code § 3.6(b). Range further asserts that the evidence presented at the hearing in support of the Petition does not demonstrate that the continued operation of the Sunoco Mariner East 1 (ME1) pipeline or the continued construction and subsequent operation of Mariner East 2 (ME2) or Mariner East 2X (ME2X) constitute an “emergency” as defined in the Commission’s Regulations. Range argues that the Petitioners have not established any facts regarding the Mariner East pipeline projects that would result in an immediate, irreparable injury. Range Petition at 1.

Specifically, Range asserts that the Petitioners do not raise issues and have neither presented evidence regarding Sunoco’s public awareness program, Sunoco’s emergency management plan, or the alleged inherent dangers of natural gas liquids (NGL) pipelines, that this Commission has not previously investigated, reviewed and rejected as bases for interim emergency relief in prior orders regarding the Mariner East pipeline project. The Petitioners, according to Range, attempt to re-litigate issues adversely resolved against opponents of the Mariner East pipeline projects in prior proceedings. *See, e.g.,* Petition at 1.

Range explained its concerns regarding the transportation of its products. Based on the foregoing, Range argues that the lack of safe alternative transportation options and the financial consequences of interim emergency relief counsel in favor of affirming the *Order*.

**Disposition**

**A. Disposition of Procedural Matters**

Generally, no pleading filed after the issuance of the ALJ’s Order certifying the Material Question will be considered. Rather, any filing after the ALJ’s Order may be addressed by the ALJ in the accompanying Complaint proceeding as deemed necessary and appropriate.

**B. Disposition of the Material Question**

The ALJ held an evidentiary hearing and issued her Order Denying the Petition for Interim Emergency Relief on December 11, 2018, finding that the Petitioners had failed to sustain their burden of proving any of the four elements required under the Commission's regulation at 52 Pa. Code § 3.6.[[9]](#footnote-10)

At the core of the Commission's rules regarding emergency relief is the necessity of finding that there is an emergency which is so compelling that it supersedes the due process rights of the party against whom the emergency relief is sought, or as defined in our regulations, a situation which presents a clear and present danger to life or property. [[10]](#footnote-11) Without ruling upon whether the Complainants may be able to prove any of their allegations against Sunoco in the accompanying complaint case, a review of the record shows that it does not set forth a clear and present danger to life or property under the facts presented by the Petitioners in this matter.

Upon our review of the Material Question certified before us, we may do one of the following:

(1) Continue, revoke or grant a stay of proceedings.

(2) Determine that the certification was improper and return the matter to the presiding officer for resolution.

(3) Answer the certified question.

52 Pa. Code § 5.305(e).

Based upon our review of the Material Question, whether the December 11, 2018 Order of presiding ALJ Barnes should be affirmed as the Complainants/Petitioners have not shown that they are entitled to interim emergency relief, we find that the Order is thorough and well-reasoned, and there is insufficient evidence of record to reverse it. The Petitioners will now have a full opportunity to present their concerns and evidence to support their allegations of violations in the accompanying Complaint docket. Therefore, we shall affirm the Order denying Interim Emergency Relief and return the matter to the presiding officer for disposition of the accompanying Complaint.

1. **Conclusion**

On consideration of the Material Question presented by the denial of interim emergency relief pursuant to the December 11, 2018 Order of presiding ALJ Barnes, we answer the certified question in the affirmative and return the matter to the Office of Administrative Law Judge for disposition of the accompanying Complaint; **THEREFORE,**

**IT IS ORDERED:**

1. That the Material Question that was certified to the Commission based on the December 11, 2018 Order of Administrative Law Judge Elizabeth Barnes:

Whether the December 11, 2018 Order of presiding Administrative Law Judge Elizabeth Barnes should be affirmed as Complainants/Petitioners have not shown that they are entitled to interim emergency relief under Commission Regulations at 52 Pa. Code § 3.6 - 3.8?

is answered in the affirmative, pursuant to 52 Pa. Code § 5.305(e)(3).

2. That this matter is hereby returned to the Office of Administrative Law Judge for disposition of the accompanying Complaint at Docket No. C-2018-3006116, consistent with this Opinion and Order.

**BY THE COMMISSION**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 17, 2019

ORDER ENTERED: February 1, 2019

1. We note that Sunoco concedes the potential for the present proceeding to be impacted by parallel matters pending before the Commission. For example, Sunoco opposed the intervention of AHA in the present matter and argued, *inter alia*,that proceedings before the Commonwealth Court concerning the Petition for Review of Senator Andrew E. Dinniman in the matter of *Amended Petition of State Senator Andrew E. Dinniman for Interim Emergency Relief*, Docket No. P-2018-3001453 and *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket No. C‑2018-3001451 (*Dinniman Proceedings*), No. 1169 C.D. 2018 (*Dinniman Appeal*), operated as a stay so as to preclude AHA from raising certain issues concerning the Mariner East Pipeline project before the Commission as an intervenor. *See* November 29, 2018 Transcript (Tr.) at 10-14. [↑](#footnote-ref-2)
2. The Petitioners averred the following concerning the “work around” 12-inceh pipeline:

   Finding itself unable to complete either ME2 or ME2X, Sunoco now proposes as a workaround to cobble together another existing 1930s-era 12-inch pipeline with various sections of the new 20- inch ME2 and 16- inch ME2X pipe segments to begin additional transport of HVLs across the Commonwealth for shipment to locales outside the state. In an abrupt but unannounced change of terminology, Sunoco has begun referring to this cobbled-together hybrid pipeline as “ME2.” In this petition, the term “workaround pipeline” is used to distinguish it from ME2 as originally proposed by Sunoco.

   Petition at 1-2; *See, also* Complaint (original) at 2-3. [↑](#footnote-ref-3)
3. *See* 49 CFR § 195.450 – Definitions; “ (2) A high population area, which means an urbanized area, as defined and delineated by the Census Bureau, that contains 50,000 or more people and has a population density of at least 1,000 people per square mile; (3) An other populated area, which means a place, as defined and delineated by the Census Bureau, that contains a concentrated population, such as an incorporated or unincorporated city, town, village, or other designated residential or commercial area . . .” [↑](#footnote-ref-4)
4. By letter dated December 6, 2018, which was received and docketed by the Commission on December 13, 2018, Westtown Township, per its Township Manager on behalf of the Township Supervisors, filed a letter in support of the Complaint and Petition. [↑](#footnote-ref-5)
5. *See* 52 Pa. Code § 5.305(c) (pertaining to briefs of the parties’ addressing the material question). [↑](#footnote-ref-6)
6. We note that BI&E’s intervention and several additional filings were submitted at this “P” docket *after* the ALJ issued her Order. Such filings are extra-record and not considered in our review of the Material Question. While I&E may intervene at any time, consistent with Commission regulations, I&E must take the record as they find it at the time that it intervenes. 52 Pa. Code § 5.74(4). We note that the I&E concern was to address a claim by Sunoco and not to raise a safety concern. In addition, the Commission’s regulations clearly do not anticipate amendment of an answer after the presiding officer has issued her decision in the matter. 52 Pa. Code§ 5.91. A filing submitted at this “P” docket after the ALJ’s Order will be directed to the accompanying Complaint proceeding, in this instance Docket No. C-2018-3006116. I&E will have a full opportunity to exercise its right to intervene in that docket to pursue its concerns. However, this Order addresses those matters properly raised prior to the ALJ’s issuance of her December 11, 2018 Order. [↑](#footnote-ref-7)
7. *See Order* at 3,“An “emergency” is defined as “a situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” . . . An “interim emergency order” is interlocutory. The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1.” [↑](#footnote-ref-8)
8. Petitioner Ex. 2, Sunoco’s Public Awareness Plan (PAP). [↑](#footnote-ref-9)
9. (b) To the extent practicable, a petition for an interim emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief, including facts to support the following: (l) 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 § 3.6. (b). [↑](#footnote-ref-10)
10. 52 Pa. Code § 3.1. [↑](#footnote-ref-11)