

# MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

Neil S. Witkes  
484-430-2314  
nwitkes@mankogold.com

*Admitted in PA and NJ*

401 CITY AVENUE, SUITE 901  
BALA CYNWYD, PA 19004  
TEL: 484-430-5700  
FAX: 484-430-5711  
WWW.MANKOGOLD.COM

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Via Electronic Filing

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Bo 3265  
Harrisburg, PA 17105-3265

\*CHERRY HILL, NJ  
\*\*HONOLULU, HI  
PHILADELPHIA, PA  
*by appointment only*

*\*Partner responsible – John F. Gullace  
\*\*Partner responsible – Brenda H. Gotanda*

Re: *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline L.P.,  
Docket No. P-2018-3001453*

Dear Ms. Chiavetta:

Attached for filing is Respondent's Response to Amended Petition for Interim Emergency Relief to be filed in the above-referenced matter.

Respectfully submitted,



Neil S. Witkes  
For MANKO, GOLD, KATCHER & FOX, LLP

NSW/bad/11842-009

Enclosure

cc: The Honorable Elizabeth Barnes (via email: [ebarnes@pa.gov](mailto:ebarnes@pa.gov))  
Thomas J. Sniscak, Esquire (via email: [tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com))  
Kevin J. McKeon, Esquire (via email: [kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com))  
Whitney E. Snyder, Esquire (via email: [wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com))  
Mark L. Freed, Esquire (via email: [mlf@curtinheefner.com](mailto:mlf@curtinheefner.com))  
Robert D. Fox, Esq. (via email: [rfox@mankogold.com](mailto:rfox@mankogold.com))  
Diana A. Silva, Esq. (via email: [dsilva@mankogold.com](mailto:dsilva@mankogold.com))



3. Petitioner alleges that SPLP is not a public utility and that the Mariner East 1 (“ME1”), Mariner East 2 (“ME2”) and Mariner East 2X (“ME2X”) pipelines are not public utility equipment or facilities.

4. Based upon Petitioner’s allegations, the Petition for Interim Emergency Relief (the “Petition”) does not invoke the Commission’s jurisdiction, and the Commission lacks the statutory authority to grant the relief requested in Petitioner’s Petition.

**B. SPLP is a public utility and the ME1, ME2 and ME2X pipelines are facilities of a public utility.**

5. The Commission concluded that SPLP is a public utility and that the ME1, ME2 and ME2X pipelines are facilities of a public utility, which conclusions the Pennsylvania Commonwealth Court affirmed. *E.g., In re Condemnation by Sunoco Pipeline L.P.*, 143 A.3d 1000 (Pa. Commw. Ct.) (en banc), *appeal denied*, 164 A.3d 485 (Pa. 2016).

6. The Commission issued certificates of public convenience to SPLP.

7. The Commission’s findings that SPLP is a public utility and that the ME1, ME2 and ME2X pipelines are facilities of public convenience are prima facie evidence of the facts found. 66 Pa. C.S.A. § 316.

8. SPLP is a public utility. The ME1, ME2 and ME2X pipelines are facilities of a public utility.

**C. Petitioner lacks standing to pursue the relief requested in the Petition.**

9. Petitioner lacks standing to pursue the relief requested in the Petition.

**D. Petitioner must prove four elements to obtain the emergency relief requested.**

10. The standards that govern the issuance of interim emergency relief are set forth at 52 Pa. Code § 3.6. These mandatory elements include proof 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; and
- (4) The relief requested is not injurious to the public interest.

11. The Commission may grant interim emergency relief only when all of the four elements exist. *Glad Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993).

12. Petitioner cannot meet his burden of proof on any of the required four elements for obtaining interim emergency relief. Even if the Petitioner could meet his burden of proof (which he cannot), the relief he requests should be issued subject to a bond<sup>2</sup> sufficient to cover the extreme and significant revenue losses of SPLP, its customers, and other adversely affected members of the public should Petitioner ultimately lose on the merits of his complaint.

**E. There is no need for emergency relief to prohibit the construction or operation of the ME2 and ME2X pipelines within West Whiteland Township.**

13. SPLP is not currently constructing or operating the ME2 or ME2X pipelines in West Whiteland Township. As such, there is no emergency in fact, and there are no grounds for the entry of the interim emergency relief requested to prohibit the construction and operation of the ME2 and ME2X pipelines within West Whiteland Township.

**F. There will be no irreparable injury if the Commission does not grant interim emergency relief.**

14. As SPLP is not currently constructing or operating the ME2 or ME2X pipelines in West Whiteland Township, there can be no injury, let alone irreparable injury, if the Commission does not grant the interim emergency relief requested. As such, there are no grounds for the

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<sup>2</sup> 52 Pa. Code § 3.8(b) (“An order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and will specify the amount of the bond.”).

entry of the interim emergency relief requested to prohibit the construction and operation of the ME2 and ME2X pipelines within West Whiteland Township.

**G. Construction of the ME2 and ME2X pipelines does not create a risk of IRs that endanger public or private drinking water supplies within West Whiteland Township.**

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15. During construction of the ME2 pipeline within West Whiteland Township, there has been no inadvertent return (“IR”) of drilling mud to wetlands, streams, drinking water supplies or aquatic resources.

16. The primary components of drilling mud are water and bentonite. Bentonite is essentially clay that is used in a variety of commercial products, including infant suntan lotion, face creams and wound dressings. Neither bentonite nor any approved drilling-mud additives pose any risk to human health or the environment. Thus, IRs do not pose a danger to public or private drinking water supplies.

17. By definition, IRs only occur during horizontal direction drilling (“HDD”). To complete construction of ME2 in West Whiteland Township, only 5 HDDs remain to be completed, none of which are within the Karst formation.

18. Sunoco has agreed and the Pennsylvania Department of Environmental Protection has approved additional safeguards in Sunoco’s HDD IR Plan that minimize the likelihood of IRs occurring and any impacts resulting from those IRs.

**H. Construction of the ME2 and ME2X pipelines does not create a risk of sinkholes or other subsidences that would endanger occupied dwellings or residents.**

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19. Sinkholes can occur in Karst formations during HDD if water is introduced into the drilled hole causing material to collapse into the drilled hole created by the HDD.

20. None of the HDDs that remain to be completed within West Whiteland Township will be conducted within the Karst formation. Thus, no risk of sinkholes from future HDDs exists in West Whiteland Township.

**I. The depth of the ME1 pipeline did not and does not create an increased risk of harm in the event of a catastrophic event and is not in conflict with the regulations.**

21. The ME1 pipeline is at an appropriate depth within West Whiteland Township, in compliance with applicable laws and regulations.

22. There is no additional risk of a catastrophic event and there is no additional risk of greater harm or damage from a catastrophic event because of the depth of the ME1 pipeline, which has existed and operated safely within West Whiteland Township since the 1930s.

23. The regulatory provision that pipelines be at a certain depth if located within 50 feet of certain facilities does not apply to the ME1 pipeline because the subchapter applies to new construction; thus, the provision does not apply to the ME1 pipeline. 49 C.F.R. § 195.200.

**J. Construction of the ME2 pipeline does not create a risk of damage to the ME1 pipeline.**

24. The subsidences that occurred in connection with the HDD on Lisa Drive did not damage the integrity of the ME1 pipeline, which is safe to be returned to service.

25. The Commission's Bureau of Investigation and Enforcement ("I&E") has concluded that the integrity of the ME1 pipeline has not been compromised by subsidence events in connection with the HDD on Lisa Drive, and I&E concluded that the use of the ME1 pipeline will not create a safety issue. I&E recommended that the ME1 pipeline be returned to service.

26. By unanimous vote, the Commission entered an Order on May 3, 2018 that reinstated utility transportation of hazardous liquids utilizing the ME1 pipeline. The Commission's Order is prima facie evidence of the facts found. 66 Pa. C.S.A. § 316.

27. For the remaining construction in West Whiteland Township, geological conditions do not create a risk of damage to the ME1 pipeline from the construction of the ME2 and ME2X pipelines.

**K. It is safe to operate ME1 within West Whiteland Township.**

28. The ME1 pipeline has operated since its installation in the 1930s.

29. The ME2 pipeline and ME2X pipeline are largely co-located with the ME1 pipeline within West Whiteland Township, which was a recommendation of the Governor's Pipeline Task Force of which Petitioner and his counsel in this petition and complaint docket were members.

30. Numerous other pipelines operate within West Whiteland Township.

31. The ME1 pipeline route is not unsafe and is not too close to private dwellings, buildings or places of public assembly to be operated safely.

**L. SPLP has taken reasonable steps to warn and protect the public from danger.**

32. For the ME2 and ME2X pipelines, SPLP is not required to develop a written Pipeline Integrity Management Plan until one year after each begins operation. 49 C.F.R. § 195.452(b).

33. SPLP has prepared and implemented a Pipeline Integrity Management Plan applicable to the ME1 pipeline.

34. The Pipeline Integrity Management Plan contains confidential security information that is not subject to disclosure to third parties under the Public Utility Confidential Security Information Disclosure and Protection Act, 35 P.S. §§ 2141.1-2141.6, and the Commission's regulations. 52 Pa. Code §§ 102.1-102.4.

35. It is a second-degree misdemeanor for any public official or public employee to disclose Confidential Security Information, including SPLP's Pipeline Integrity Management Plan, and the penalties for disclosure include fines up to \$5,000, up to one-year imprisonment, and removal from public office or agency employment.

36. SPLP has sent Public Awareness Program mailings to approximately 66,000 persons, including property owners within one-eighth mile of the ME1 pipeline, public officials, emergency responders, schools and excavating companies.

37. SPLP has conducted training for over 2,000 emergency responders and public officials at over sixteen meetings held during 2017, including public officials and emergency response personnel in Chester County.

38. The Commission's Pipeline Safety Section has conducted inspections of SPLP's public awareness program for ME1, including most recently in November 2016, and has not identified any deficiencies.

39. The Commission's Pipeline Safety Section has spent the equivalent of 76 inspection days during 2017 on the Mariner East project, including throughout construction of the ME2 pipeline.

40. SPLP has conducted integrity assessments of the ME1 pipeline to ensure that it can provide safe services. It can.

41. The modified IR Plan provides additional extensive notification requirements during any HDD activities, including, by way of example: (1) notification to all landowners within 450 feet with a private or public water supply prior to commencement of the HDD; (2) the notice will offer all such landowners to have their well tested before, during and after construction, and offer a temporary water supply even before the HDD commences; (3)



notification in the event of any loss of circulation of drilling mud, any “making of water” during the HDD and of any IR; (4) suspension of the HDD after any IR, submission of information to the Pennsylvania Department of Environmental Protection (“DEP”), and in designated circumstances, DEP inspection and approval before re-start; and (4) comprehensive evaluation of the HDD and alternatives, subject to DEP approval of re-start, if repeated IRs occur.

**M. Granting Petitioner’s interim emergency relief will be injurious to SPLP and to the public interest.**

42. SPLP has and will suffer significant financial losses for any day that the ME1 pipeline is shut down, and for any delays in the completion of the ME2 and ME2X pipelines.

43. Shippers of product delivered through the ME1 pipeline will suffer significant financial losses for every day that the ME1 pipeline is shut down and for any delays in the completion of the ME2 and ME2X pipelines.

44. The labor force operating the ME1 pipeline and constructing the ME2 and ME2X pipelines will suffer significant lost wages from the shutdown of the operation of the ME1 pipeline or from the shutdown of construction of the ME2 and ME2X pipelines.

45. All of these direct economic circumstances are multiplied by the additional losses to Pennsylvania’s economy in the form of lost taxes, lost spending and the loss of other indirect expenditures.

WHEREFORE, Respondent Sunoco Pipeline L.P. respectfully requests that Petitioner's Amended Petition for Interim Emergency Relief be denied.

Respectfully submitted,

/s/ Thomas J. Sniscak

Thomas J. Sniscak, Esq. (PA ID No. 33891)  
Kevin J. McKeon, Esq. (PA ID No. 30428)  
Whitney E. Snyder, Esq. (PA ID No. 316625)  
HAWKE, MCKEON & SNISCAK LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Tel: (717) 236-1300  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

/s/ Robert D. Fox

Robert D. Fox, Esq. (PA ID No. 44322)  
Neil S. Witkes, Esq. (PA ID No. 37653)  
Diana A. Silva, Esq. (PA ID No. 311083)  
MANKO, GOLD, KATCHER & FOX, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
Tel: (484) 430-5700  
[rfox@mankogold.com](mailto:rfox@mankogold.com)  
[nwitkes@mankogold.com](mailto:nwitkes@mankogold.com)  
[dsilva@mankogold.com](mailto:dsilva@mankogold.com)

*Attorneys for Respondent  
Sunoco Pipeline L.P.*

Dated: May 4, 2018

**VERIFICATION**

I, Matthew Gordon, certify that I am Project Director, for Sunoco Pipeline LP, and that in this capacity I am authorized to, and do make this Verification on their behalf, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Sunoco Pipeline LP, expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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Matthew Gordon  
Project Director

DATED: 5/4/18

