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May 30, 2018

VIA ELECTRONIC FILING
VIA HAND DELIVERY

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline L.P., Docket Nos. C-2018-3001451, P-2018-3001453

Dear Secretary Chiavetta:

Enclosed please find the *Amicus Curiae* Brief In Opposition to the Interim Order Granting Emergency Brief And Request For Expedited Relief of Range Resources – Appalachia, LLC (“Range”). Range files the enclosed Brief In Opposition as *amicus curiae* because, as of the time of filing, Range is not a party to the above-captioned proceedings. However, simultaneous herewith, Range has filed and served a Petition to Intervene in the above-captioned proceedings as a full party.

In addition, Range requests that the Pennsylvania Public Utility Commission (“Commission”) immediately deny the Interim Emergency Order issued by the Administrative Law Judge Elizabeth Barnes on May 24, 2018, in order to eliminate the substantial harms to Range, its Pennsylvania-based royalty owners, and numerous other segments of the natural gas liquids supply chain, that are caused by the Interim Emergency Order. As noted in Range’s Brief In Opposition, the Interim Emergency Order improperly overturns the Commission’s prior order reinstating service over the Mariner East 1 pipeline.

Finally, enclosed is a sealed envelope containing the Highly Confidential version of Range’s *Amicus Curiae* Brief. Copies will be provided as indicated on the Certificate of Service, with only those parties who have executed a confidentiality agreement receiving the Highly Confidential Version.

Rosemary Chiavetta

May 30, 2018

Page 2

Respectfully submitted,



Anthony D. Kanagy

ADK/skr

Enclosure

cc: Honorable Elizabeth Barnes
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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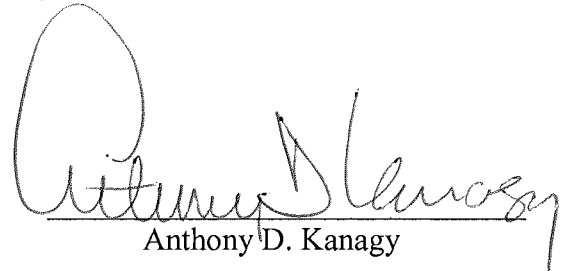

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Table of Contents

	Page
I. INTRODUCTION	1
II. PROCEDURAL SUMMARY	2
III. ARGUMENT.....	4
A. THE INTERIM EMERGENCY ORDER IMPROPERLY OVERTURNS THE <i>COMMISSION'S UNANIMOUS ORDER</i> <i>REINSTATING ME1</i>	4
1. The Interim Emergency Order Ignores Undisputed Record Evidence And Improperly Relies Upon Extrajudicial, Non-Record Evidence, Contradictory Findings And Hearsay To Support Its Findings and Conclusions.....	4
2. The Interim Emergency Order Violates Fundamental Principles of Administrative Law.	9
3. The Interim Emergency Order Violates The Law Of The Case Doctrine. 11	11
B. THE INTERIM EMERGENCY ORDER IGNORES THE SUBSTANTIAL PUBLIC INJURY THAT RESULTS FROM A SHUTDOWN OF ME1 OPERATIONS.....	12
C. THE INTERIM EMERGENCY ORDER IS INCONSISTENT WITH THE COMMISSION'S POLICY PROMOTING THE PRODUCTION AND CONSUMPTION OF MARCELLUS SHALE PRODUCTS.....	13
IV. STAY OF THE PROCEEDING.....	16
V. REQUEST FOR EXPEDITED REVIEW	16
VI. CONCLUSION.....	18

TABLE OF AUTHORITIES

Page

Pennsylvania Court Decisions

Bell Atl. v. Pa. Pub. Util. Comm'n, 672 A.2d 352 (Pa. Cmwlth. 1995). 9

Duquesne Light Co. v. PUC, 507 A.2d 433 (Pa. Cmwlth. Ct. 1986).. 10

Great Valley School District v. Zoning Hearing Board, 863 A.2d 74 (Pa. Cmwlth. 2004). 10

Harrison v. Cabot Oil and Gas Corp., 110 A.3d 178 (Pa. 2015)..... 13

Pocono Water Co. v. PUC, 630 A.2d 971 (Pa. Cmwlth. Ct. 1993)..... 9, 10

Sossong v. Shaler Area School District, 945 A.2d 788 (Pa. Cmwlth. 2008)..... 11

Pennsylvania Administrative Agency Decisions

Americus Ctr., Inc. v. PPL Elec. Utilities Corp. City of Allentown, C-20077427, 2007 WL 1484284 (Order entered May 15, 2007) 9

Application of UGI Central Penn Gas, Inc. for Approval of the Transfer by Sale of an Approximately 11 Mile Natural Gas Pipeline, Appurtenant Facilities and Rights of Way Located in Tioga Cnty., Pa., to UGI Storage Co., and for Approval of an Associated Reduction in Base Rates, Docket Nos. A-2012-2289607, *et al.*, 2012 Pa. PUC LEXIS 1803 (Order entered Dec. 5, 2012) 14

In Re: Application of PPL Electric Utilities Corporation, 2009 Pa. PUC LEXIS 905 (Recommended Decision dated Jan. 30, 2009)..... 10

Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc., Docket No. P-2013-2356232 (Statement of Commissioner Pamela A. Witmer) (Feb. 20, 2014)..... 13, 14

Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. for Approval to Implement Growth Extension Tariff Pilot Programs to Facilitate the Extension of Gas Service to Unserved and Underserved Areas Within the Companies’ Service Territories, Docket No. P-2013-2356232 (Jan. 23, 2014) (Recommended Decision), *adopted*, (Order entered Feb. 20, 2014)..... 14

See also Joint Application of Aqua Pennsylvania, Inc., Docket Nos. A-2008-2074746, A-2008-2074747, 2008 Pa. PUC LEXIS 1071 (Order entered and adopted Dec. 29, 2008) (adopting a Final Order through notational voting under 4 Pa. Code § 1.43(c) to allow for the scheduled closing of a transaction before December 30, 2008). 2, 16, 17

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

Jurisdictional and Pipeline Safety Issues Related to the Marcellus Shale, Docket No. I-2010-2163461, 2010 Pa. PUC LEXIS 729 (Order entered Apr. 1, 2010) 14

Pa. PUC v. Columbia Gas of Pa., Inc., Docket Nos. R-2014-2407345 (Order entered Oct. 23, 2014) 14

Pa. PUC v. Columbia Gas of Pa., Inc., Docket Nos. R-2014-2407345 (Statement of Commissioner Pamela A. Witmer) (Oct. 23, 2014)..... 13

Pa. PUC v. Peoples Natural Gas Co. LLC, et al., Docket Nos. R-2014-2429610, *et al.* (Feb. 9, 2015) (Recommended Decision), *adopted*, (Order entered Mar. 26, 2015) 14

Peoples Natural Gas Co., LLC, Peoples Natural Gas Co. LLC – Equitable Division, and Peoples TWP LLC, Docket Nos. R-2014-2429610, *et al.* (Statement of Commissioner Pamela A. Witmer) (Mar. 26, 2015)..... 13

Petition of Norfolk S. Ry. Co., Dkt. No. C-00019560, 2012 WL 1794909 (Recommended decision entered Mar. 6, 2012) (Salapa, J.)..... 9

Petition of the Bureau of Investigation and Enforcement of the Pa. Pub. Util. Comm’n for the Issuance of an Ex Parte Emergency Order, Docket No. P-2018-3000281 (Order entered May 3, 2018).....*passim*

Petition of the Bureau of Investigation and Enforcement of the Pa. Pub. Util. Comm’n for the Issuance of an Ex Parte Emergency Order, Docket No. P-2018-3000281 (Order entered May 3, 2018).....*passim*

Schwartz v. Del. & Hudson Ry. Co., Inc., Dkt. No. C-2011-2237486, 2013 WL 6503449 (Order entered Dec. 5, 2013)..... 9

Regulations

4 Pa. Code § 1.43(c) 2, 16

52 Pa. Code § 3.10(b) 4, 16

52 Pa. Code § 5.302(c)..... 16

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

I. INTRODUCTION

On May 3, 2018, the Pennsylvania Public Utility Commission (“Commission”) ended its comprehensive investigation of potential safety issues related to the operation of the Mariner East 1 pipeline (“ME1”) and issued a unanimous order lifting its prior suspension of operations on ME1. *Petition of the Bureau of Investigation and Enforcement of the Pa. Pub. Util. Comm’n for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 (Order entered May 3, 2018) (the “*Commission’s Unanimous Order Reinstating ME1*”). Twenty-one days later, however, by Interim Emergency Order dated May 24, 2018, Administrative Law Judge Elizabeth Barnes (the “ALJ”) reversed the *Commission’s Unanimous Order Reinstating ME1* by accepting hearsay over factual and expert analysis and relying upon personal views and matters outside of the record. This improper Interim Emergency Order thereby halted the flow of natural gas liquids on ME1 in the above-captioned proceedings brought by Pennsylvania State Senator Andrew E. Dinniman (“Complainant” or “Petitioner”).¹

Amicus curiae, Range Resources – Appalachia, LLC (“Range” or the “Company”) hereby files this Brief in Opposition to the Interim Order Granting Emergency Relief and requests that the Commission act immediately to deny this irregular and improper decision of the ALJ, and to reinstate operation of ME1. The Interim Emergency Order, in the face of the *Commission’s Unanimous Order Reinstating ME1*, completely ignores the substantial evidence supporting the continued safe operation of ME1. The Interim Emergency Order also fails to consider the harm to the public that will occur by suspending operations on the ME1 pipeline. Range fully supports the safe and reliable operation of the ME1 pipeline and supports the

¹ Range notes that Petitioner brings this action in his official capacity. For the reasons more fully explained in the Brief in Opposition of Sunoco Pipeline L.P., Petitioner lacks standing to bring this suit in his official capacity because, *inter alia*, the challenged actions do not implicate Petitioner’s legislative function. *See* Sunoco Pipeline L.P. Brief in Opposition, Section II.A.

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Commission's Unanimous Order Reinstating ME1. Therefore, Range requests that the Commission immediately reinstate its *Unanimous Order*.

Given the unique situation whereby the Interim Emergency Order overturns the *Commission's Unanimous Order Reinstating ME1*, Range requests that the Commission utilize notational voting under 4 Pa. Code § 1.43(c), to immediately deny the Interim Emergency Order and restart service on ME1.²

II. PROCEDURAL SUMMARY

On March 7, 2018, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Petition for Issuance of an *Ex Parte* Emergency Order that asserted the area proximate to ME1 in West Whiteland Township had developed soil subsidence issues and requested the Commission issue an emergency order immediately suspending the transportation services on ME1 and that a comprehensive investigation be commenced to ensure safety. Subsequently, on March 7, 2018, Commission Chairman Gladys M. Brown granted the Petition, and issued an *Ex Parte* Emergency Order ("*March Emergency Order*"), which was ratified at the March 15, 2018, public meeting.

Under the terms of the *March Emergency Order*, and after a comprehensive investigation, Sunoco Pipeline LP ("SPLP"), on April 27, 2018, filed a Petition for Lift of *Ex Parte* Emergency Order and Request for Expedited Treatment. Also, on April 27, 2018, I&E filed a Statement of the Bureau of Investigation and Enforcement Concurring with the Request of Sunoco Pipeline L.P. A/K/A Energy Transfer Partners for Reinstatement of Transportation Service on its Mariner East 1 Pipeline ("I&E Statement"). Therein, I&E opined that its concerns were addressed and, given the corrective actions taken and planned, that it is satisfied that the

² See also *Joint Application of Aqua Pennsylvania, Inc.*, Docket Nos. A-2008-2074746, A-2008-2074747, 2008 Pa. PUC LEXIS 1071 (Order entered and adopted Dec. 29, 2008) (adopting a Final Order through notational voting under 4 Pa. Code § 1.43(c) to allow for the scheduled closing of a transaction before December 30, 2008).

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integrity of the ME1 pipeline has not been compromised by the subsidence events identified in its prior Petition. I&E Statement, at pp. 9-10. I&E specifically stated that:

This comprehensive investigation, culminating in the study performed by ARM, was intended to answer the uncertainties that led I&E to file its Petition seeking to stop the flow of product on ME1 until I&E was satisfied that the integrity of that active pipeline had not been compromised by the recent subsidence events. Having considered the corrective action taken by SPLP, as well as the corrective action planned to be taken, I&E avers that those concerns have been adequately addressed.

I&E Statement, p. 10 (emphasis added).

Relying upon I&E's comprehensive review of ME1, on May 3, 2018, all five Commissioners approved an Order lifting the suspension of operations on ME1. *Petition of the Bureau of Investigation and Enforcement of the Pa. Pub. Util. Comm'n for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281 (Order entered May 3, 2018) (i.e. the *Commission's Unanimous Order Reinstating ME1*). In addition, the Commission established "forward-looking" reporting requirements to provide for a complete review of the issues surrounding public safety raised by the construction activities near ME1. *Commission's Unanimous Order Reinstating ME1*, p. 9. Importantly, the Commission approved I&E's assessment that SPLP had addressed the issues raised by the *March Emergency Order* and permitted SPLP to reinstate utility transportation of hazardous liquids over ME1, subject to certain enumerated conditions. *Commission's Unanimous Order Reinstating ME1*, Ordering Paragraphs 1-6.

Concurrent with the Commission's review and resolution of the *March Emergency Order*, Senator Andrew E. Dinniman filed the above-captioned Formal Complaint and an accompanying Petition for Interim Emergency Relief regarding the continued construction of the Mariner East 2 pipeline ("ME2") on April 25, 2018. On May 1, 2018, Petitioner filed an

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Amended Petition for Interim Emergency Relief and Amended Complaint at the consolidated Docket Nos. C-2018-3001451 and P-2018-3001453. Therein, Petitioner sought an Emergency Order to prohibit the continued operation of ME1, and the construction of the Mariner East 2 pipeline (“ME2”) and Mariner East 2X pipeline (“ME2X”), “until such time as Sunoco fully assesses, and the Commission approves, the condition, adequacy, efficiency, safety and reasonableness of ME1...”

Two days of hearings regarding the assertions and allegations in the Petitioner’s filings were held by the ALJ on May 7 and May 10. Despite I&E’s comprehensive investigation, the Commission’s prior findings in the *Commission’s Unanimous Order Reinstating ME1*, testimony by SPLP witnesses and industry experts regarding the safety of continued ME1 operations and the testimony of a Range representative regarding the reinstatement of service over ME1, the ALJ issued an Interim Emergency Order that re-suspended ME1 operations. Pursuant to Section 3.10(b) of the Commission’s regulations, the Interim Emergency Order also certified the question of the grant or denial of the relief sought to the Commission for review. 52 Pa. Code § 3.10(b).

Range files this *Amicus Curiae* Brief in Opposition of the ALJ’s Interim Emergency Order and requests that the Commission restore its *Unanimous Order Reinstating ME1* and immediately deny the improper Interim Emergency Order.

III. ARGUMENT

A. THE INTERIM EMERGENCY ORDER IMPROPERLY OVERTURNS THE COMMISSION’S UNANIMOUS ORDER REINSTATING ME1.

- 1. The Interim Emergency Order Ignores Undisputed Record Evidence And Improperly Relies Upon Extrajudicial, Non-Record Evidence, Contradictory Findings And Hearsay To Support Its Findings and Conclusions.**

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a. The Interim Emergency Order Disregards The Commission's Unanimous Order Reinstating ME1.

The Interim Emergency Order is not based upon actual substantial evidence and should be immediately overturned. The Interim Emergency Order does not contain a single, material citation to the *Commission's Unanimous Order Reinstating ME1*, the I&E Concurrence Statement, and the ARM Group Inc. Report, despite the fact that these materials constituted undisputed record evidence regarding the integrity of ME1. Instead, the Interim Emergency Order contains express findings and conclusions regarding the integrity of ME1 that were not presented by any party and arbitrarily conflict with the Commission's findings and conclusions in the *Commission's Unanimous Order Reinstating ME1*. See, e.g., Interim Emergency Order, p. 19 (finding that SPLP should be required to conduct tests and submit reports in addition to the requirements imposed by the Commission in the *Commission's Unanimous Order Reinstating ME1*).

The Commission fully investigated the safety of ME1 operations in West Whiteland and determined that, subject to certain reporting conditions, the transportation of natural gas liquids over ME1 does not pose a threat to public health and safety. See *Commission's Unanimous Order Reinstating ME1*, p. 13 (citing I&E's satisfaction with SPLP's actions in accordance with the *March Emergency Order*).³ Moreover, this order and the documents the Commission relied

³ Indeed, I&E and its consultant, ARM Group Inc., engaged in on-site meetings, reviewed SPLP's horizontal directional drilling program, reviewed and monitored the geophysical techniques used by SPLP, monitored SPLP's soil boring program implementation, and reviewed all SPLP geophysical test results in order to render an opinion regarding the integrity of the ME1 pipeline in West Whiteland. I&E Concurrence Statement, Docket No. P-2018-3000281 (dated April 27, 2018) (including ARM Group Inc. summary report of the review and investigation of ME1). As a result of this comprehensive investigation and study, I&E concluded that the integrity of ME1 was not compromised and that its concerns were addressed. *Id.*, p. 9.

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upon to issue it were entered into the record in this proceeding, and have neither been disputed nor contradicted by any party.⁴

Importantly, Petitioner does not contest the findings and/or conclusions contained in the *Commission's Unanimous Order Reinstating ME1*, the I&E Concurrence Statement or the consultant report attached to the I&E Concurrence Statement. In fact, Petitioner testified that he had not seen, had not reviewed or had not been provided these publically available documents. *See* Tr. 176-180. Moreover, Petitioner testified that neither he nor any individual acting on his behalf had conducted investigations and/or tests similar to those conducted by I&E and its consultant ARM Group Inc. on ME1. *See* Tr. 180-182. As such, SPLP Exhibits 18 (I&E Concurrence Statement), 19 (ARM Group Inc. report included in the I&E Concurrence Statement) and 20 (*Commission's Unanimous Order Reinstating ME1*), and the findings and conclusions of the Commission, I&E, and I&E's consultant, ARM Group Inc., contained therein constitute undisputed record evidence.

As such, the Interim Emergency Order fundamentally errs by failing to reference, let alone rely upon, the *Commission's Unanimous Order Reinstating ME1*, the I&E Concurrence Statement, and the ARM Group Inc. Report, in reaching its conclusions regarding the safety of ME1 operations.

b. The Interim Emergency Order Disregards Unrebutted Expert Testimony.

⁴ Witnesses for the Petitioner, SPLP and Range all acknowledged the Commission's investigation and findings regarding the operation of ME1. Petitioner himself acknowledged that I&E's concurrence, and the consultant report incorporated therein, cited by the Commission's Unanimous Order Reinstating ME1 were publically available for his review and admitted that he had failed to review these public documents. *See* Tr. 178-180 (cross examination regarding the availability of the I&E statement and the consultant report that formed the basis of that statement). Finally, Range representative Alan Engberg also testified as to the existence of the I&E statement, the consultant report, and the Commission's Unanimous Order Reinstating ME1. Tr. 606:18-607:2.

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In addition, the Interim Emergency Order consistently disregards unrebutted expert testimony. The following are just two examples that highlight the Interim Emergency Order's arbitrary and capricious disregard of credible, unrebutted expert testimony. First, the Interim Emergency Order does not credit or reference the unrebutted testimony of two expert witnesses that credibly testified regarding the safety "concerns" identified by the order. David Demko, P.G., an expert in geology and hydrogeology, testified that any seeps near ME1 have not and will not cause any impact to the structural integrity of ME1. Tr. 660:4-15; SPLP Ex. 47. No other party presented credible expert testimony challenging Mr. Demko's testimony. Yet, the Interim Emergency Order ignores this unrebutted testimony, and found that "flowing water is one of the requirements for subsidence" (Interim Emergency Order, p. 14), despite failing to find either of the other requirements for a creation of subsidence: (1) an underground void for soil to fall into; and (2) soil cover that's able to move. *See* Tr. 652:13-20 (Demko testimony); Tr. 261:13-262:20 (Sasowsky testimony).

Second, SPLP expert John Zurcher also testified that SPLP readily provides adequate safety information to the public, regarding how to respond to an ME1 emergency on its website. Tr. 540:3-23; SPLP Ex. 46. Importantly, Mr. Zurcher wrote the very regulations and industry standards with which SPLP complies. Tr. 519:5-11. Yet, the Interim Emergency Order ignores Mr. Zurcher's credible, expert testimony and states that "Residents receive specific instructions, but only receive boilerplate general information." Interim Emergency Order, p. 15.

c. The Interim Emergency Order's Conclusions Are Based Entirely On Hearsay And Extrajudicial Matters.

The Interim Emergency Order ultimately compounds these fundamental errors by relying upon extrajudicial facts and/or hearsay in reaching its conclusions. Critically, the Interim Emergency Order *questions* whether ME1 "meets today's engineering standards," but cites no

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record evidence to support this conclusion. *See* Interim Emergency Order, p. 18. Page 18 of the Interim Emergency Order specifically states:

It is unknown whether the welded seams along Mariner East 1 consist of oxygen-acetylene welding or electrical resistance welded seams and whether there have been radiographic inspections of the welded seams. The technologies available in the 1930's are not as good as they are today. For example, I do not believe electric resistance welding (ERW) was an available technology. Seamless pipe did not exist at that time. I have questions regarding the heat affected zones on the welds of ME1 and what the possible casualties' scenarios might be given certain hypothetical situations. There was no HAZOP analysis offered; rather, testimony from Sunoco witness Gordon that the ME 1 pipeline passed a hydrostatic test prior to operations. I presume that a cold drawn seamless pipe instead of a steel welded pipe from the 1930's would be a better engineering construction and less of a risk to the public safety. I question whether the repurposed pipe needed to go through weld tests, and whether this was done prior to operation. I question whether the ME1 pipe meets today's engineering standards to hold the HVLs of ethane, butane and methane gases, especially so close to dwellings.

Interim Emergency Order, p. 18. This passage in the Interim Emergency Order, which purports to address "today's engineering standards," does not contain a single citation to record evidence that sets forth the asserted standards. Indeed, the Interim Emergency Order cannot cite to such record evidence because none exists. In this regard, the order's conclusions appear to be, at best, based solely upon extrajudicial facts and/or hearsay. Therefore, these unsupported assertions cannot serve as substantial evidence supporting the suspension of ME1 operations.

The Interim Emergency Order further opines that construction of ME2 creates an imminent risk to the structural integrity of ME1, but contradictorily acknowledges there are no ongoing ME2 construction activities of ME2 in West Whiteland Township, and that construction will not recommence until July 1, 2018 at the earliest. Interim Emergency Order, p. 9. In this regard, the Interim Emergency Order contradicts its own findings; ME2 construction cannot

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

serve as the basis for concerns regarding the safety of ME1 operations if ME2 construction is not, in fact, taking place.

In sum, the Interim Emergency Order's findings and conclusions have no basis in the record of this proceeding and appear to be fashioned to reach a pre-determined conclusion necessary to shutdown ME1 operations and service. Therefore, the Commission must immediately deny the Interim Emergency Order and restore its *Unanimous Order Reinstating ME1*.

2. The Interim Emergency Order Violates Fundamental Principles of Administrative Law.

The Interim Emergency Order violates principles of consistency and due process that bind adjudicatory proceedings before the Commission. By disregarding undisputed record evidence of the Commission's prior review and reinstatement of ME1 operations, the Interim Emergency Order starkly contradicts the *Commission's Unanimous Order Reinstating ME1*. The Commission "must render consistent opinions and should either follow, distinguish or overrule its own precedent." *Bell Atl. v. Pa. Pub. Util. Comm'n*, 672 A.2d 352, 354 (Pa. Cmwlth. 1995). The Interim Emergency Order both fails to consider, let alone follow or distinguish, the *Commission's Unanimous Order Reinstating ME1* and, therefore, violates this fundamental principle of administrative agency law.

The Interim Emergency Order also raises significant due process concerns. The Commission cannot issue an interim emergency order on grounds that were not raised by the petitioner in their filing seeking emergency relief. The issues in a hearing seeking interim emergency relief are limited to the allegations made in the petition seeking that relief. *Schwartz v. Del. & Hudson Ry. Co., Inc.*, Dkt. No. C-2011-2237486, 2013 WL 6503449, at *2 (Order entered Dec. 5, 2013); *Petition of Norfolk S. Ry. Co.*, Dkt. No. C-00019560, 2012 WL 1794909,

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

at *6 (Recommended decision entered Mar. 6, 2012) (Salapa, J.); *Americus Ctr., Inc. v. PPL Elec. Utilities Corp. City of Allentown*, C-20077427, 2007 WL 1484284, at *4 (Order entered May 15, 2007).

Furthermore, the Commission cannot issue an interim emergency order on information that is not part of the evidentiary record. When an administrative tribunal rules on issues outside of the petition or relies on extrajudicial evidence, a party's due process rights are violated because that party is deprived of notice of the issues to be litigated and an opportunity to present evidence. *Pocono Water Co. v. PUC*, 630 A.2d 971, 973-74 (Pa. Cmwlth. Ct. 1993) (finding that the Commission violated the utility's due process rights "because it assessed liability after determining an issue which [the utility] had not been afforded a reasonable opportunity to defend at the hearing."); *Duquesne Light Co. v. PUC*, 507 A.2d 433, 437 (Pa. Cmwlth. Ct. 1986) (holding that the Commission violated the utility's due process rights because the utility was "not given adequate notice of the specific conduct being investigated, and hence its defense was gravely prejudiced.").

As explained above, the Interim Emergency Order violates both of these due process principles. It bases its findings and conclusions on concerns that were neither part of the evidentiary record nor raised by the Petitioner. *See e.g.*, Interim Emergency Order, pp. 18-19 (containing no citations to record evidence to the items the order purports are part of "today's engineering standards"). It ignores undisputed record evidence and disregards the unrebutted testimony of SPLP's expert witnesses. And, it engages in a self-contradicting analysis. Through these errors, the Interim Emergency Order directly contradicts and improperly overturns the *Commission's Unanimous Order Reinstating ME1*.

For these reasons, the Interim Emergency Order should be immediately denied.

3. The Interim Emergency Order Violates The Law Of The Case Doctrine.

Finally, the Interim Emergency Order represents an improper attempt to re-litigate a set of factual circumstances that were subject to extensive review by the Commission. The law of the case doctrine discourages a tribunal from re-litigating a prior determination by that tribunal, in a subsequent phase of the case. *See Great Valley School District v. Zoning Hearing Board*, 863 A.2d 74, 81 (Pa. Cmwlth. 2004); *see also In Re: Application of PPL Electric Utilities Corporation*, 2009 Pa. PUC LEXIS 905, at *216 (Recommended Decision dated Jan. 30, 2009) (recognizing the applicability of the law of the case doctrine before the Commission). Further, “departure from the law of the case doctrine is allowed only in exceptional circumstances, where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous or would create a manifest injustice if followed.” *Sossong v. Shaler Area School District*, 945 A.2d 788, 793 (Pa. Cmwlth. 2008).

The *Commission’s Unanimous Order Reinstating ME1* was based on a comprehensive investigation of the Commission’s safety concerns regarding operation of ME1. As explained above, the *Commission’s Unanimous Order Reinstating ME1* was based upon the extensive investigation conducted by I&E and its consultant, ARM Group Inc., which included on-site meetings, review and monitoring of SPLP practices and program implementations, and review of SPLP geophysical tests. The results of this investigation, contained in SPLP Exhibits 18 (I&E Concurrence Statement), 19 (ARM Group Inc. report included in the I&E Concurrence Statement) and 20 (*Commission’s Unanimous Order Reinstating ME1*), undisputedly demonstrate that ME1’s operations should not be suspended. Yet, the Interim Emergency Order contains no reference to an intervening change in the controlling law, a substantial change in the

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by its impact, and another day that the *Commission's Unanimous Order Reinstating ME1* is rebuked.

Finally, the Interim Emergency Order also ignores the “vital role” that natural gas liquids pipelines play in serving the public. In its prior Order, the Commission stated:

...the Commission is cognizant of the economic effect of ordering the suspension of ME 1 service. Natural gas liquid pipelines play a vital role in many industries given that these petroleum products serve as industrial feedstocks as well as additives to gasoline. The Commission understands that shippers that utilize ME 1 as customers, and users of products transported by ME 1 either have had to suspend operations or look elsewhere for supplies due to the ME 1 closure occasioned by the safety threat imposed by the Lisa Drive subsidence.

Commission's Unanimous Order Reinstating ME1, p. 10. As explained above, Range is one such market participant.

The record demonstrates that the testimony of Range representative Mr. Engberg was not limited to the economic harms that Range alone would suffer.⁵ Mr. Engberg testified regarding the interests of Range, its royalty owners, other market participants, and people employed by businesses involved in the natural gas liquids supply chain in allowing ME1 operations to continue. The Interim Emergency Order's conclusions regarding Mr. Engberg's testimony are, therefore, in error and should be rejected.

C. THE INTERIM EMERGENCY ORDER IS INCONSISTENT WITH THE COMMISSION'S POLICY PROMOTING THE PRODUCTION AND CONSUMPTION OF MARCELLUS SHALE PRODUCTS.

⁵ The Interim Emergency Order appears to exclusively rely on *Harrison v. Cabot Oil and Gas Corp.* for the proposition that “Oil companies are free to protect their investments through tolling provisions in their leases.” Interim Emergency Order, at pp. 21-22 (citing *Harrison v. Cabot Oil and Gas Corp.*, 110 A.3d 178, 186 (Pa. 2015)). However, this case is inapposite. The dispute in *Harrison* involved the tolling of a lease during the pendency of litigation challenging the validity of that lease. *Harrison*, 110 A.3d at 179 (“We accepted certification from the United States Court of Appeals for the Third Circuit to address whether the primary term of an oil-and-gas lease should be equitably extended by the courts, where the lessor has pursued an unsuccessful lawsuit challenging the validity of the lease.”). There is no lease at issue in this matter, and no party is contesting the validity of any lease. However, Range and its royalty owners are negatively impacted each day the *Commission's Unanimous Order Reinstating ME1* is not respected.

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

The Commission has repeatedly recognized that the production and consumption of natural gas and the associated natural gas liquids found in the Marcellus Shale is in the public interest. In particular, “Pennsylvania sits on top of one of the largest natural gas reserves in the world,” and “[t]he ability to economically extract Marcellus Shale gas has made Pennsylvania the second largest producer of natural gas in the country.”⁶ The Commission has long recognized the abundant opportunities presented by this dramatic increase in Pennsylvania’s natural gas production and natural gas supply,⁷ including the reduction of natural gas prices for consumers.⁸ However, those opportunities would be limited if the natural gas cannot get to consumers and entities that need them.

As a result, the Commission has encouraged efforts to expand the transport of and access to natural gas from the Marcellus Shale. For example, the Commission approved several natural gas utilities’ programs aimed at reducing the upfront costs of expanding natural gas service to customers in unserved and underserved areas.⁹ In other proceedings, the Commission has touted

⁶ *Peoples Natural Gas Co., LLC, Peoples Natural Gas Co. LLC – Equitable Division, and Peoples TWP LLC*, Docket Nos. R-2014-2429610, *et al.*, p. 1 (Statement of Commissioner Pamela A. Witmer) (Mar. 26, 2015); *see Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc.*, Docket No. P-2013-2356232, p. 1 (Statement of Commissioner Pamela A. Witmer) (Feb. 20, 2014) (stating the same); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2014-2407345, p. 1 (Statement of Commissioner Pamela A. Witmer) (Oct. 23, 2014) (stating the same).

⁷ *See Jurisdictional and Pipeline Safety Issues Related to the Marcellus Shale*, Docket No. I-2010-2163461, 2010 Pa. PUC LEXIS 729, at *1-2 (Order entered Apr. 1, 2010) (noting that Marcellus Shale development would “unleash billions of dollars of natural gas production” and would “have untold impacts on our economy,” citing estimates of “\$13.5 billion per year in economic value” and the creation of “175,000 jobs in Pennsylvania alone by 2020.”).

⁸ *Application of UGI Central Penn Gas, Inc. for Approval of the Transfer by Sale of an Approximately 11 Mile Natural Gas Pipeline, Appurtenant Facilities and Rights of Way Located in Tioga Cnty., Pa., to UGI Storage Co., and for Approval of an Associated Reduction in Base Rates*, Docket Nos. A-2012-2289607, *et al.*, 2012 Pa. PUC LEXIS 1803, at *24 (Order entered Dec. 5, 2012) (“[T]he transfer of the TL-96 Line from CPG to UGI Storage may help utilize Marcellus Shale gas supplies in the region, benefitting the local economy and helping to constrain wholesale gas prices ultimately benefitting customers.”).

⁹ *See Joint Petition of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. for Approval to Implement Growth Extension Tariff Pilot Programs to Facilitate the Extension of Gas Service to Unserved and Underserved Areas Within the Companies’ Service Territories*, Docket No. P-2013-2356232 (Jan. 23, 2014) (Recommended Decision), *adopted*, (Order entered Feb. 20, 2014); *Pa. PUC v. Peoples Natural Gas Co.*

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

the public benefits from increasing access to Marcellus Shale-produced gas supplies.¹⁰ Furthermore, the Commission has recognized the need for additional pipeline capacity to transport Marcellus Shale natural gas to eastern Pennsylvania and New England to help reduce natural gas prices and deliver supply to the consumers. See “Pennsylvania Gas Outlook Report,” Pennsylvania Public Utility Commission, p. 6 (October 2016), available at http://www.puc.state.pa.us/NaturalGas/pdf/Gas_Outlook_Report-2016.pdf. Specifically, the report states the following:

Marcellus shale production has risen from 2 Bcfd in January 2010 to over 17 Bcfd in May 2016. Despite this vast increase in production, many portions of eastern Pennsylvania and New England are still subject to higher priced gas, as well as dramatic spikes in price during cold snaps in the winter heating season. These price differences are mostly caused by a lack of pipeline capacity to transport the excess of supply to the markets where it is most needed. There are 5.2 Bcfd of pipeline projects slated to come online during the remainder of 2016 in the Northeast region to help move gas to market, and 19.5 Bcfd slated for 2017 as shown in Tables 1 and 2 below, respectively. The additional pipeline will help remove the above-mentioned constraints and assist in stabilizing regional prices, by moving the increased Marcellus Shale gas production to market.

Id. (emphasis added).

The transportation of Pennsylvania-produced natural gas liquids over ME1 is in line with the Commission’s policy to promote production and transportation of Marcellus Shale products. Indeed, as mentioned above, Mr. Engberg testified that the interests of Range, its employees, royalty owners, who are primarily Pennsylvania-landowners residing in Washington County,

LLC, et al., Docket Nos. R-2014-2429610, *et al.* (Feb. 9, 2015) (Recommended Decision), *adopted*, (Order entered Mar. 26, 2015); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket Nos. R-2014-2407345 (Order entered Oct. 23, 2014).

¹⁰ See, e.g., *Application of UGI Penn Natural Gas, Inc. for Approval of the Transfer by Sale of a 9.0 Mile Natural Gas Pipeline, Appurtenant Facilities and Right of Way Located in Mehoopany, Pa.*, Docket Nos. A-2010-2213893, *et al.*, 2011 Pa. PUC LEXIS 1521, at *39 (Order entered July 25, 2011) (“We see the promotion of Marcellus Shale development and enhanced access to Marcellus Shale natural gas as one significant public benefit of the proposed transaction . . .”).

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

Pennsylvania (Tr. 607), other market participants, and people employed by businesses involved in the natural gas liquids supply chain all benefit by allowing ME1 operations to continue to safely operate.

The Interim Emergency Order, however, attempts to restrict the Pennsylvania's access to these benefits by improperly overturning the *Commission's Unanimous Order Reinstating ME1*. Therefore, the Commission should immediately deny the Interim Emergency Order and reinstate transportation of natural gas liquids over ME1 consistent with the *Commission's Unanimous Reinstatement of ME1*.

IV. STAY OF THE PROCEEDING

Under Section 5.305(c), parties writing a Responsive Brief to an Interim Emergency Order and Certification of Material Question must address whether a stay of the proceedings is required to protect the substantial rights of a party. 52 Pa. Code § 5.302(c); *see* 52 Pa. Code § 3.10(b) (stating the procedures applicable to interlocutory review of a material question certified by a presiding officer apply to the Commission's review of an interim emergency order). Range does not believe that a stay of the proceedings is appropriate in order to protect the substantial rights of the parties and other affected entities. The Commission has recently determined that it is safe for the ME1 pipeline to resume operations, and therefore Range requests that the Commission immediately deny the Interim Emergency Order.

V. REQUEST FOR EXPEDITED REVIEW

As explained above, the Interim Emergency Order improperly overturns the *Commission's Unanimous Order Reinstating ME1*. Every day that the Interim Emergency Order stands injures Range, its Pennsylvania-based royalty owners, and numerous segments of the natural gas liquids supply chain, including those employed through those supply chains.

PUBLIC VERSION - HIGHLY CONFIDENTIAL MATERIALS REDACTED

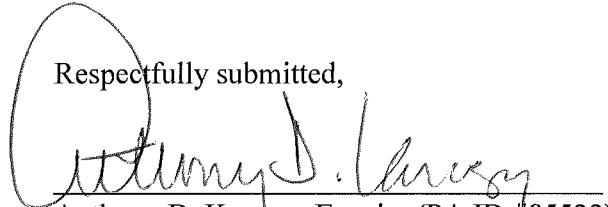
Therefore, Range respectfully requests that the Commission immediately deny the Interim Emergency Order.

Given the very unique situation here – the issuance of an improper Interim Emergency Order halting flow on ME1 merely 21 days after the *Commission's Unanimous Order Reinstating ME1* – Range requests that the Commission utilize all options at its disposal, including but not limited to notational voting under 4 Pa. Code § 1.43(c), to immediately deny the Interim Emergency Order and restart service on ME1. *See also Joint Application of Aqua Pennsylvania, Inc.*, Docket Nos. A-2008-2074746, A-2008-2074747, 2008 Pa. PUC LEXIS 1071 (Order entered and adopted Dec. 29, 2008) (adopting a Final Order through notational voting under 4 Pa. Code § 1.43(c) to allow for the scheduled closing of a transaction before December 30, 2008).

VI. CONCLUSION

WHEREFORE, Range Resources – Appalachia, LLC respectfully requests that the Pennsylvania Public Utility Commission immediately deny the Interim Order Granting Emergency Relief, issued by Administrative Law Judge Elizabeth Barnes on May 24, 2018.

Respectfully submitted,



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