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May 31, 2018

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
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 and P-2018-3001453**

Dear Secretary Chiavetta:

Attached for filing is a Brief of Petitioner Senator Andrew E. Dinniman in Support of Interim Emergency Order to be filed in the above-referenced matter.

Thank you.

Very truly yours,



Mark L. Freed
For CURTIN & HEEFNER LLP

MLF:jmd

Enclosure

cc: The Honorable Elizabeth Barnes (via email: ebarnes@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA STATE SENATOR	:	
ANDREW E. DINNIMAN,	:	
	:	
Petitioner,	:	
	:	Docket No.: C-2018-3001451
v.	:	Docket No.: P-2018-3001453
	:	
SUNOCO PIPELINE, L.P.,	:	
	:	
Respondent.	:	

**BRIEF OF PETITIONER SENATOR ANDREW E. DINNIMAN
TO THE COMMISSION
IN SUPPORT OF INTERIM EMERGENCY ORDER**

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I. SUMMARY OF ARGUMENT

Judge Barnes' determination that Petitioner has standing is consistent with the precedent of the courts of this Commonwealth, this Commission, and its judges, including a prior decision which found that Petitioner had standing. It is also supported by the Commission's May 3, 2018 Order, which recognized that "Senator Dinniman has full party status and may proceed with litigation before the Commission" In addition, Judge Barnes properly found, based on a preponderance of the evidence, that Petitioner established a clear right to relief. Sunoco's failure to undertake necessary investigations and prudent precautions in the volatile geology of West Whiteland Township has created an imminent risk to the public and the need for further study on ME1, ME2 and ME2X. Sunoco has failed to take reasonable efforts to warn and protect the public from danger and select a pipeline right-of-way so as to avoid areas containing private dwellings and places of public assembly. And, despite having changed ME1 in recent years, Sunoco has allowed the pipeline to remain less than 48 inches underground within 50 feet of private dwellings in a high consequence area. These conditions pose a clear and present danger of irreparable injury, for which immediate relief is required. The requested relief will not be injurious to the public interest. On the contrary, it will be injurious to the public interest if the requested relief is not granted. Any stay of the Interim Emergency Order will likewise result in injury to the public interest. Accordingly, the Interim Emergency Order must be affirmed.

II. STATEMENT OF THE CASE

The facts established through evidence presented at hearing are set forth at length in Petitioner's Brief in Support of Interim Emergency Relief, are incorporated herein by reference, and include the following:

A. Senator Dinniman

Petitioner Senator Andrew E. Dinniman ("Senator Dinniman" or "Petitioner") has served as a Pennsylvania State Senator for the 19th Senatorial District for the past thirteen years. (N.T. 53). He is a member of the Environmental and Energy Committee and the Agricultural Committee. (N.T. 56). He is also a member of the Joint Conservation Committee of the Legislature, which is involved in setting policy

involving the environment, and is the Senate representative of the Ben Franklin Partnership. (N.T. 57). Petitioner represented the Senate Democratic Caucus on the Pennsylvania Pipeline Infrastructure Task Force. *Id.* The recommendations of the Task Force, and Senator Dinniman's participation therein, were topics of testimony throughout the hearing. (*See* N.T. 47-48, 50-51, 57-58, 135, 137-140, 142, 205, 211, 222, 389, 399, 431, 433, 485, 580). As a Chester County Commissioner, Senator Dinniman served as a Commission's representative on the Conservation District Board and was involved in the decision by the County to purchase a significant portion of land to protect and preserve the area water supplies. (N.T. 72).

Senator Dinniman resides in West Whiteland Township, approximately two (2) miles from ME1 and the ME2/2X right-of-way. (N.T. 52). Hundreds of area residents have come to Senator Dinniman about the pipelines (N.T. 63). Many bring bottles of their well water containing material that "almost looks like the kind of thing you'd find a in a toilet." (N.T. 89).

B. West Whiteland Township

The 19th Senatorial District includes West Whiteland Township, which has suburban areas and urban centers. (N.T. 70). When ME1 was built in the 1930s, West Whiteland Township was farmland and countryside. *Id.* The Township now has a population of over 18,000 people in 13 square miles and a density of more than 1,400 per square mile. (N.T. 54, 55). West Whiteland is one of the key commercial centers of Chester County. (N.T. 54). It has more places of public assembly than any other location in Chester County except West Chester. (N.T. 71).

The pipelines at issue in this petition come, or are proposed to come, into West Whiteland Township through the center of the commercial district, next to the largest mall in the County (Exton Mall), behind the County library, under Route 30 and Amtrak/SEPTA rail lines, and through highly concentrated residential areas that include apartment complexes. (N.T. 68-69, 70). The pipelines are also located near schools and senior care facilities. (N.T. 54, 55). The pipelines pass within 50 feet of residences (N.T. 70, 481) and within three feet of Sts. Peter and Paul Catholic School. (N.T. 69).

The valley in which West Whiteland Township is located is a basic source of water for the growing population. (N.T. 72). There are more than 700 private water wells in West Whiteland

Township, approximately 200 of which are residential water supplies. (N.T. 71). There are also three (3) ground water withdrawals for public water supply wells along the route of the pipeline in West Whiteland Township (p. 71-72, 73).

C. Geology

The geology of West Whiteland Township looks like a “Rorschach pattern”. (N.T. 250). It contains rocks of very disparate type. *Id.* In the south of the Township is Octoraro phyllite, a clay based rock that has been metamorphosed. (N.T. 250). To the north is Conestoga limestone (calcium carbonate – a rock soluble under normal earth/water conditions) and Ledger dolomite (calcium manganese carbonate – a rock that is also soluble under normal conditions). (N.T. 250, 255-56). Limestone and dolomite “are two units that are certainly susceptible to karstification and to dissolution.” (N.T. 251, 260). In karst areas, rock can dissolve and big channels, such as caves and sinkholes, can form. (N.T. 251). There are numerous sinkholes and depressions in and around West Whiteland Township (N.T. 253). The greatest predominance of sinkholes and depressions are in the area around the Exton Mall and the County Library (N.T. 75, 80). West Whiteland Township also contains numerous fault lines. (N.T. 252, 254). Faults are a type of fracture that allow the movement of water and the generation of voids. (N.T. 262). Carbonate rock (e.g., limestone) touching non-carbonate rock (e.g. phyllite) tends to be a focus area for dissolution and karst development. (N.T. 257). Acidic runoff from phyllite is neutralized when it hits the limestone, and that neutralization reaction dissolves the rock. (N.T. 259). “[Y]ou would expect there to be significant karst development, and we see that in many places at the boundary between non-carbonate and carbonate units.” *Id.*

Human activity is frequently a factor in the creation of collapsed sinkholes. (N.T. 263). Activities like groundwater pumping, removal of underground support, construction activities and excessive loading can destabilize the land surface and result in sink holes. (N.T. 263, 278). Sinkholes resulting from human activity may not occur right away. Activities might leave an arch that is temporarily stable and a collapse may not occur for weeks, months or a year later. (N.T. 264). The collapse could be triggered by something benign, like someone driving a tractor over an area, a drought or an intense rain storm. *Id.*

Mixed infrastructure only adds another layer of challenge. (N.T. 292). Sinkholes “are scary things. They are hazardous things . . . There’s property loss. There’s people losing their lives . . .” (N.T. 261).

D. Horizontal Directional Drilling, Flex Bore and Open Trench

Sunoco uses horizontal directional drilling (“HDD”) for the construction of ME2/2X. The Pennsylvania Department of Environmental Protection (“DEP”) has identified Sunoco’s drilling in and around West Whiteland as “most concerning”. (Ex. P-6, at 4). HDD makes use of pressurized fluid. (N.T. 265). The introduction of fluids underground in a karst area can “absolutely” contribute to sinkholes. (N.T. 277). Introducing water in a karst area can also result in moving sediments and bacteria into the water supply. (N.T. 280). HDD can also result in inadvertent returns (“IR” or “frac-outs”). IRs occur when the pressure of the drilling fluid exceeds the overburden pressure and there is a leakage of drilling fluid onto the surface. (N.T. 269). Drilling fluid consists of bentonite and other materials.

Initially, when Sunoco used HDD it was required to give notice to homeowners with water supplies located within 150 feet of the pipeline. (N.T. 85, 86). In the entire 350 miles of the pipeline, Sunoco identified only 22 private wells. (N.T. 86). Only three of those wells were in Chester County. (N.T. 86). In and around Shoen Road alone, 14 wells were impacted from Sunoco’s activities. (N.T. 87). Sunoco intends to continue using HDD in areas containing fractures or faults. (N.T. 699).

Sunoco originally proposed the use of HDD along Swedesford Road (N.T. 413). After Aqua raised a concern that HDD could negatively impact its water source, Sunoco proposed to change the method of construction from HDD to flex bore along Swedesford Road. (N.T. 414, 473, 666). Flex bore can also use fluid. (N.T. 229, 474, 694).

Open trench or open cut does not remove all the concerns associated with karst geology. (N.T. 267). There is still the potential of cutting into soil-filled voids, which has the potential for developing a collapse. (N.T. 267). Having the open trench can result in the loss of stability. In addition, rain on an open trench or hitting groundwater can result in sediment mobilization. (N.T. 268). “Any time you’re mucking around in limestone like this, you have a potential for creating problems.” (N.T. 288).

E. Shoen Road

Intervenor, Virginia Marcille-Kerslake resides on Shoen Road in West Whiteland Township (N.T. 335). There is an HDD drill site across the road from her house. *Id.* HDD in the area of Shoen Road crosses a fault known as the Ketch Fault (N.T. 657). Drilling at the site commenced on June 15, 2017. On the evening of June 22, Ms. Kerslake observed lots of water flooding out of the drill hole at the drill site. (N.T. 336, 337). Despite the flowing water, Sunoco continued to drill at the site. (N.T. 337). Sunoco drilled at the site until July 5, 2017, at which time Sunoco grouted the hole (N.T. 339-340). Sunoco then resumed drilling for a few more days. (N.T. 340).

On July 20, 2018, Ms. Kerslake observed that two springs had emerged on her property. (N.T. 342, 658). The springs were in line with the route of ME1. (N.T. 346). To prevent the water from flowing into the street, Sunoco dug a trench across the front of Ms. Kerslake's property and put straw bales on the grass between the springs and the road. (N.T. 343). The water from these springs continues to flow on Ms. Kerslake's property to this day. *Id.* A parking pad across from Ms. Kerslake property has also been saturated since July of 2017 (N.T. 347). Prior to the drilling, Ms. Kerslake was never advised that water might be popping-up on her land. (N.T. 359). Ms. Kerslake has been advised by Sunoco that they don't know what will happen at her property when it begins drilling again. (N.T. 346). A representative of DEP has advised Ms. Kerslake that when drilling resumes, DEP believes the first place water will emerge will be on her property. (N.T. 346).

North of Shoen Road is a neighborhood known as Marchwood, which has a number of private drinking water wells (N.T. 340). From July 6, 2017 through July 10, 2017, DEP received 14 water supply complaints from homeowners at and around Shoen Road. Homeowners complained of, *inter alia*, cloudy water, turbid water, discolored water, loss of water pressure, and diminution of water. (Ex. P-7, at 3).¹

¹These facts rely, in part, on a Consent Order and Agreement entered into between DEP and Sunoco. During the hearing in this matter, Sunoco argued that the Consent Order could not be relied upon by Petitioner because of a provision in the Consent Order indicated that the parties thereto did not authorize any other person to use the findings in the consent order in any matter or proceeding. (Ex. P-7, at 7). Such a provision does not preclude Petitioner, who was not a party to the Consent Order, from using of the Consent Order in this matter. *See City of Chester v. Pennsylvania*, 773 A.2d 1280 (Pa. Cmwlth.

One resident in Meadowbrook, David Mano, had his drinking water analyzed and found that bentonite was in it. (N.T. 149, 150). Five families were required to leave their homes. (N.T. 97). DEP determined that Sunoco's drilling activities in and around Shoen Road adversely impacted the well water of at least 14 homeowners. (Ex. P-7, at 5). DEP also determined that Sunoco failed to immediately notify the DEP of adverse impacts to private water supplies in the Shoen Road area as required by its permit. *Id.* **Prior to construction, Sunoco had classified the Shoen Road and Devon Drive sections as "low risk".** (N.T. 227).

F. Lisa Drive

Lisa Drive is located along a fissure of carbonate geology (Conestoga limestone) and non-carbonate geology (Octoraro phyllite) (N.T. 76). On November 11, 2017, DEP received notice of an IR from "a third party", not Sunoco, near 479 Lisa Drive in West Whiteland Township. (Ex. P-15). Sunoco did not notify DEP of the IR (N.T. 105). On or about November 16, 2017, DEP issued an NOV for this IR. *Id.* The NOV stated, among other things, that discharge of drilling solution appears to have caused ground subsidence and the potential to pollute the groundwater. (Ex. P-15; N.T. 104). The sinkhole referenced in the NOV was just south of railroad tracks used by Amtrak (identified in the Bureau of Investigation and Enforcement's ("BIE") Petition for *Ex Parte* Emergency Order as "Sinkhole No. 1"). (BIE Petition, at 2). The size of the sinkhole was approximately 8 feet wide and 3 feet deep. *Id.*

On or about March 1, 2018, while Sunoco was undertaking the "pull-back" of the pipe, Sunoco workers noticed another sinkhole measuring 8 feet wide and 15 feet deep about 300 feet from Amtrak's facilities (identified in the BIE's Petition as "Sinkhole No. 2"). (BIE Petition, at 2; N.T. 350). On Saturday, March 3, 2018, another sinkhole measuring approximately 15 feet wide and 20 feet deep was

2001); *Mary E. Collier v. Commonwealth*, 2012 WL 2950743 (Pa. Env. Hrg. Bd. 2012). The Commission has also previously relied on NOV's issued by DEP. *See, e.g., Pennsylvania Public Utility Commission v. Deer Haven, LLC d/b/a Deer Haven Sewer Company*, 2011 WL 2530243 (Pa. PUC May 19, 2011); *Application of Aqua Pennsylvania Wastewater, Inc.*, 2017 WL 3116400 (Pa. PUC July 12, 2017); *Sheryl R. DeVaul v. Clarendon Water Company* 2007 WL 2325579 (Pa. PUC September 17, 2007).

discovered at 491 Lisa Drive, West Whiteland Township, approximately 10 feet from the house's foundation wall (identified in BIE's Petition as "Sinkhole No. 3"). *Id.* at 3. One of these sinkholes caused ME1 to become exposed. (N.T. 84). People residing next to the sinkholes were evacuated from their homes on March 3. (N.T. 352). Sunoco did not provide any notification to the Commission or PHMSA of these sinkholes. (BIE Petition, at 3). Also on or about March 5, 2018, PUC Safety Engineers discovered that additional sinkholes were developing south of 491 Lisa Drive, in the path of ME1 and/or ME2X. (BIE Petition, at 4; N.T. 351). The next day, while ME1 was still operating, Sunoco had two or three diggers on top of ME1 digging into the ground. (N.T. 352).

On or about March 7, 2018, the PUC BIE filed a petition for issuance of an Emergency *Ex Parte* Emergency Order, seeking to have Sunoco "immediately suspend operations of its Mariner East 1 pipeline" On March 7, 2018, Commission Chair Gladys M. Brown granted BIE's petition and issued the emergency order, finding that "permitting the continued flow of hazardous liquids through ME1 pipeline without proper steps to ensure the integrity of the pipeline could have catastrophic results impacting the public." Commission March 7, 2018 Order. The Chair's order was unanimously ratified by the Commission on or about March 15, 2018. ***Prior to construction, Sunoco had classified the Lisa Drive area as a "very low risk" area.*** (N.T. 226).

As part of the Commission's Order, Sunoco undertook a study of the area around Lisa Drive. ***The project area ran about 1,200 feet,*** from south of the Amtrak/SEPTA rail line to south of Lyntree Drive. (Ex. SPLP 19, Figure 1). Sunoco has not produced any forensic explanation of why the sinkholes at Lisa Drive occurred. (N.T. 263, 295). The BIE letter and consultant report summarizing the investigation was merely a study of the extent of the potential problem. (N.T. 273). "[I]f you want to fix something, it's important to understand what went wrong first so that you can avoid having it happen again, as well as to make the best fix possible" (N.T. 274). At the hearing, Sunoco attributed the sinkholes at Lisa Drive to DEP's refusal to allow it to undertake drilling of the hole at Lisa Drive during its suspension order. (N.T. 678-679). Despite the fact that no subsidence occurred when Sunoco resumed

its drilling after the suspension (N.T. 680), Sunoco claims that had DEP allowed it to drill during the suspension, the subsidence would not have occurred. (N.T. 680-681).

Other than at the project area around Lisa Drive, Sunoco has not done any geotechnical or geophysical work to determine the stability of the geology after the construction of ME2 began. (N.T. 690).

G. Other ME1/ME2 Compliance History

Since May 9, 2017, DEP has issued Sunoco over 50 Notices of Violation for IRs and other violations in Pennsylvania, including in West Whiteland Township. (*See* Exhibit P-15).

In April 2016, Sunoco received a Notice of Probable Violation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) for pipeline construction irregularities in Texas alleging Sunoco used unqualified welders and unqualified welding procedures to make more than 3,000 welds on PEX II. (Notice of Probable Violation dated April 28, 2016). The PHMSA notice stated that “[u]pon discovery of these errant practices, Sunoco attempted to qualify welders by re-testing them after-the-fact. While this is not consistent with the requirements of Part 195, it is even more problematic that some of the welders . . . failed multiple qualification attempts.” *Id.* Sunoco put PEX II in service despite this, upon which it promptly failed “in the vicinity of a girth weld.” (Corrective Action Order dated September 14, 2016). Sunoco failed to determine its pipeline had ruptured for 11 days and misreported underestimating the number of barrels of hazardous liquids leaked. *Id.*

On April 1, 2017, a landowner called the Sunoco Control Center via the company emergency number and reported a possible leak along the ME1 pipeline right-of-way in Morgantown, Pennsylvania. (Ex. CAC-1). From the time the landowner informed the operator of a probable leak, it took approximately 90 minutes to shut the pipeline down. *Id.* In that time nearly 1,000 liquid gallons of a natural gas liquids mixture was released. *Id.*

On or about January 3, 2018, DEP issued an order immediately suspending all work authorized by the permits issued to Sunoco under 25 Pa. Code Chapters 102 and 105 because Sunoco 1) conducted unpermitted activities; 2) failed to comply with the permits that were issued; 3) failed to notify DEP

before the start of drilling operations; 4) allowed IRs; and 5) failed to “immediately” report IRs. (Ex. P-8). DEP’s January 3, 2018 order concluded that “Sunoco’s unlawful conduct . . . demonstrates *a lack of ability or intention on the part of Sunoco to comply* with the Clean Streams Law, the Dam Safety and Encroachment Act, and the permits issued thereunder.” *Id.* (emphasis added). Subsequently, DEP and Sunoco entered into a Consent Order and Agreement in which Sunoco agreed to pay DEP a penalty in the amount of \$12,599,326.00. (Ex. P-13).

On or about January 11, 2018, PHMSA issued a Notice of Probable Violation and Proposed Compliance Order to Sunoco related to construction of ME2 near Hopedale, Ohio. The violations related to “numerous coating scrapes on at least 5 segments of pipe”, “severe coating damage” and a joint pipe with a gouge that extended into the wall of the pipe. (Ex. P-12, at 2). Upon review of Sunoco’s pipe bending procedures, PHMSA found that “[a] process for inspection of field bending was not included in the Procedure.” *Id.* at 3.

H. Public Awareness Notices and Outreach

The public, school districts and elected officials have been seeking information from Sunoco regarding the pipelines’ risk assessment and how to respond in the event of an emergency. By letter dated March 29, 2018, West Chester Area School District advised Governor Wolf that to safeguard its students, it requires a risk assessment regarding construction of ME2 that includes “worse case evacuation routes.” (Ex. P-1). The School District noted that “it is difficult to measure our plan against potential risks if we don’t know what they are.” *Id.* A similar letter, dated April 16, 2018, was sent by the Downingtown Area School District. (Ex. P-2). One of the District’s middle schools is located approximately 500 feet from the pipelines. *Id.* The District requested that it be provided with information on “evacuation routes, evacuation procedures, detection equipment, safety training from first responders, as well as, an analysis and recommendation for the appropriate distance of the pipeline from schools to ensure safe evacuation, if

needed.” *Id.*² Saints Peter and Paul Catholic School has lost twenty (20) students this year because the pipeline project is adjacent to the school. (N.T. 62).

Sunoco claims to have met twice with emergency responders in Chester County, at which time it showed them a PowerPoint. (N.T. 422). However, Emergency Management personnel continue to seek information from Sunoco regarding its Integrity Management Plan. (N.T. 190, 193). Sunoco also claims to have sent a public awareness program mailing to people in Chester County. The content of this mailing is unclear. Sunoco’s website contains a document called “Facts About Pipeline Safety in Your Community” and contains little information on how to respond to an emergency. (Ex. P-16). Sunoco claims there is another document on the website as well which was identified during the hearing at Ex. SPLP 46, which also contains little information.

III. ARGUMENT

The Interim Emergency Order is supported by preponderance of the evidence presented over two full days of hearings and conforms to the requirements of the Public Utility Act and the Commission’s regulations. The evidence relied upon by Judge Barnes in the Order is meticulously referenced in the Order. For this and the reasons set forth more fully below, the Interim Emergency Order must be affirmed and remain in full force and effect.

A. The Interim Emergency Order Properly Concluded that Senator Dinniman has Standing

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania Natural Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598 (1991). Generally, Pennsylvania courts have held that a person or entity has standing when the person or entity has a direct, immediate, and substantial interest in the subject matter of a proceeding.

William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 282-284 (Pa. 1975);

Pennsylvania Game Commission v. Department of Environmental Protection, 555 A.2d 812 (Pa. 1989).

²Sunoco’s pipeline safety expert, Mr. John Zurcher, was unable to answer how people unable to run (e.g., kids at a day care center, kids at a high school, people in prison) can protect themselves when a leak occurs.

Legislators are granted standing in their official capacity to challenge agency actions that may implicate their legislative functions. *Fumo v. City of Philadelphia*, 972 A.2d 487, 497 (Pa. 2009); *Corman v. NCAA*, 74 A.3d 1149, 1161 (Pa. Cmwlth. 2013).

In *Corman v. NCAA*, 74 A.3d 1149 (Pa. Cmwlth. 2013), an *en banc* panel of the Commonwealth Court applied these principals to the standing of State Senator Jake Corman. Therein the court examined the specific and unique official duties of Senator Corman and found that because of those duties, Senator Corman had standing. 74 A.3d 1161-62. Specifically, the court found that “[c]learly, Senator Corman’s statutory duties for overseeing Fund expenditures is a ‘matter [] touching upon [his] concerns.’” *Id.* at 1161 (quoting *Pennsylvania Game Comm’n*, 521 Pa. at 128, 555 A.2d at 815). The court further noted that Senator Corman was one of “10 General Assembly leaders from different political parties” with the specific authority that provided him standing in that matter. *Id.* at n. 16.

Pennsylvania Senators have been found to have standing to proceed as complainants or intervenors in prior Commission cases. See *Senator Vincent J. Fumo v. Bell Atlantic – Pennsylvania*, Docket No. I-00980080, Complaint filed October 19, 1998; *Rydal-Meadowbrook Civic Ass’n v. Pa. Pub. Util. Cmm’n*, 98 A.2d 481 (Pa. Super 1953). Two (2) administrative law judges of the Commission have previously granted Petitioner himself party status to appear before the PUC. See *Application of Artesian Water Pennsylvania, Inc.*, Docket No. A-2014-2451241. *Artesian Water* involved an application by a water company to serve an additional portion of New Garden Township, Chester County. Petitioner filed a protest to the application. *Application of Artesian Water Pennsylvania, Inc.*, slip op., Docket No. A-2014-2451241 (March 13, 2015), at 1. In support of his protest, Petitioner alleged, *inter alia*, that he is a Senator in the Pennsylvania General Assembly who represents the 19th Senatorial District, which is affected by the application; that the Commission is a creation of the General Assembly and has statutory reporting duties under 66 Pa.C.S. § 320; that he is a member of the standing Senate Environmental Resources and Energy Committee; that he is member of the Joint Legislative Air and Water Pollution Control and Conservation Committee; that he is a member of the General Assembly with the authority to receive, review and comment upon the Governor’s annual expenditure plan for the Environmental

Stewardship Fund under 27 Pa.C.S. § 6104, which funds in part the Chester County Conservation District and its oversight of the watersheds and water supply of New Garden Township; that he possessed knowledge of a local perspective on the potential effects essential to make a determination of the application; that he was involved in the creation of the County Landscape Plan; and that he was involved with the Chester County Conservation District. *Application of Artesian Water Pennsylvania, Inc., slip op.*, Docket No. A-2014-2451241 (March 13, 2015), at 7, 8.

In finding that Petitioner had standing, the judges properly stated that:

The Protestant has provided information to show that his participation in this matter relates to his official duties as a Senator for the affected district. In addition, he is involved with several committees that address water issues. He has personal knowledge of the subject matter and has the responsibility of commenting on or approving expenditures related to water resources etc. in Chester County.

Id. at 11.

In the case at bar, Petitioner alleges standing based on the following:

- He is a member of the General Assembly as a Senator and represents the 19th Senatorial District, which includes West Whiteland Township (Petition, ¶ 11; N.T. 53). The 19th District includes West Whiteland Township (N.T. 54, 55);
- He is the representative of the individuals in the 19th District affected by the project;
- He is a member of the standing Senate Environmental Resources and Energy Committee;
- He is a member of the Joint Legislative Air and Water Pollution Control and Conservation Committee;
- He served as a member of the Pennsylvania Pipeline Infrastructure Task Force, a group of experts and stakeholders that recommended policies, guidelines and best practices to guide expansion of pipeline infrastructure in the Commonwealth. The recommendations of the Task Force, and Petitioner's participation therein, were topics of testimony throughout the hearing. (*See* N.T. 47-48, 50-51, 57-58, 135, 137-140, 142, 205, 211, 222, 389, 399, 431, 433, 485, 580);
- He is a member of the General Assembly with the authority to receive, review and comment upon the Governor's annual expenditure plan for the Environmental Stewardship Fund under 27 Pa.C.S. § 6104, which funds in part the Chester County Conservation District and its oversight of the watersheds and water supply of West Whiteland Township;
- He receives annual, mandatory reports from the Commission under the Pennsylvania Public Utility Code. 66 Pa.C.S. § 320; and

- He resides approximately two miles from ME1, ME2 and ME2X, and possesses knowledge of a local perspective on the potential effects essential to make a determination. Petition, ¶ 10; N.T. 52-53.

Petition, ¶¶ 10-12. During testimony, Petitioner affirmed these unique roles and responsibilities. *See* Statement of the Case, above.

Just as the court found in regard to Senator Corman, and as the judges of this Commission have previously found with regard to Petitioner and others, Petitioner’s interests in this matter far exceed those of the general population. And, as the two judges found in *Artesian*, Petitioner has provided information to show that his participation in this matter relates to his official duties as a Senator for the affected district; he is involved with several committees that address issues directly impacted by the pipeline; has personal knowledge of the subject matter; and has the responsibility of commenting on or approving expenditures.

The Commission has already recognized Petitioner’s standing in this very matter. In its May 3, 2018 Order regarding the *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order* at P-2018-3000281 the Commission stated that “[a]s a formal complainant in his own proceeding, **Senator Dinniman has full party status** and may proceed with litigation before the Commission” *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order* P-2018-3000281, (Order entered May 3, 2018) at 12 (emphasis added).

Sunoco has presented numerous arguments in opposition to Petitioner’s standing. Each of these arguments fail. First, Sunoco argues that the decision in *Artesian* is distinguishable, because it involved a protest to an application and not a complaint or petition. Sunoco claims that because the *Artesian* matter involved a protest, Petitioner was not required to establish that he had a “direct, immediate, and substantial interest” in the matter. However, in *Artesian*, the water company specifically argued that Petitioner “has not identified any **direct, immediate and substantial interest** in the action he challenges” *Application of Artesian Water Pennsylvania, Inc.*, PUC Docket No. A-2014-2451241 (March 13, 2015) at 5. And, in rejecting this argument, the two PUC judges expressly found that Petitioner’s

interests were direct, immediate and substantial. *Id.* at 11 (emphasis added). Perhaps recognizing the weakness of its first argument, Sunoco has also argued that that the decision in *Artesian* was “legal error”. However, the judges’ decision in *Artesian* was entirely consistent with applicable case law, including the *en banc* decision in *Corman v. National Athletic Association*, 74 A.3d 1149 (Pa. Cmwlth. 2013).

Sunoco has also argued that, if *Artesian* is not distinguishable (which it is not) and if *Artesian* was not decided in error (which it was not), then the Pennsylvania Supreme Court’s decision in *Markham v. Wolf*, 136 A.3d 134 (Pa. 2016) overruled prior precedent. It did not. Rather, by its very terms, *Markham* merely reviewed “our Commonwealth’s prior caselaw applying these principles as they relate to legislators.” 136 A.3d at 141. It neither set out to, nor overruled, any of the prior case law on this issue. Furthermore, *Markham* involved a facial challenge to an executive order before the Commonwealth Court in its original jurisdiction. The petitioners in that case claimed that they were seeking to vindicate the voting rights of “*every member* of the General Assembly.” 136 A.2d at 138-39 (emphasis added). The court characterized petitioners claims as “legislators claiming an *institutional injury*”. *Id.* at 140 (emphasis added). The court found that petitioners’ claims were “not directly or substantially related to unique legislative prerogatives, but, rather, are generalized interests in the conduct of government common to the general citizenry.” *Id.* at 146. The present case deals with a very different situation than the one addressed in *Markham*. Rather, it deals with Petitioner’s “unique legislative prerogatives” and his interests far exceed those “common to the general citizenry.” In light of the forgoing, it is clear that Judge Barnes properly determined that Petitioner has standing to pursue this matter.

B. The Interim Emergency Order Properly Found that Petitioner’s Right to Relief is Clear

Judge Barnes properly found, based on a preponderance of the evidence, that Petitioner established a clear right to relief. It is not necessary to determine the merits of the controversy in order to find that a petitioner’s right to relief is clear. *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985). Rather, the only required determination is that the petition raises substantial legal questions. *Id.*

1. The Interim Emergency Order Properly Concluded that There Is an Imminent Risk to the Public and a Need for Immediate Relief and Further Study on ME1, ME2 and ME2X

The facts of this case show that the construction and operation of ME1 and ME2/ME2X are anything but reasonable, safe, adequate or otherwise in compliance with the regulations. Since May 9, 2017, DEP has issued Sunoco over *50 Notices of Violation* for IRs and other violations in Pennsylvania, including in West Whiteland Township. The project has been *shut down twice* in the last five months, one time for problems that arose in West Whiteland Township and the other time for, among other things, Sunoco's conduct of unpermitted activities. DEP's January 3, 2018 order concluded that "Sunoco's unlawful conduct . . . demonstrates *a lack of ability or intention on the part of Sunoco to comply* with the Clean Streams Law, the Dam Safety and Encroachment Act, and the permits issued thereunder." (Ex. P-8) (emphasis added). Sunoco has received Notices from PHMSA for pipeline construction irregularities, severe coating damage and ruptures. Sunoco has repeatedly failed to properly report problems when they occur. Within the past year, ME1 has experienced three leaks, all in high consequence areas. Sunoco failed to identify leaks on its pipeline and failed to report the leak or spill to proper authorities when they occurred. In West Whiteland Township, Sunoco's activities have resulted in household water supplies becoming cloudy, turbid, discolored, and diminished; families having to leave their homes; and water bubbling-up onto property. It has also resulted in inadvertent returns and multiple large sinkholes near a rail line, including one immediately over ME1.

Significantly, Sunoco has not produced any forensic explanation for the problems that have occurred in West Whiteland Township. With regard to Lisa Drive, the sinkholes in this geology should have come as no surprise. Lisa Drive sits by a fault line between carbonate Conestoga limestone and non-carbonate Octoraro phyllite. As Dr. Ira Sasowsky explained, carbonate rock touching non-carbonate rock tends to be a focus area for dissolution and karst development. (N.T. 257). "[Y]ou would expect there to be significant karst development, and we see that in many places at the boundary between non-carbonate and carbonate units." (N.T. 259) (emphasis added). These conditions are only exacerbated by the "human activity" associated with the construction of ME2/2X. It is unclear how Sunoco could classify such a

location as “very low risk”. (N.T. 226). Instead of carefully considering the forensic explanation for the problem, Sunoco has chosen to consider this a one-time event attributable to DEP’s refusal to allow them to continue drilling during a suspension (which itself was the result of Sunoco’s poor compliance). (N.T. 678-679). This explanation is difficult to understand as Sunoco concedes that when it restarted drilling after the suspension, there were no problems. It was only when Sunoco undertook to pull-back ME2X at this location that the subsidence occurred.

Judge Barnes, as the trier of fact with the benefit of ascertaining the credibility of the witnesses, found that Sunoco’s expert witness, *David Demko, was not convincing*. Interim Emergency Order at 13. Mr. Demko was not only presented as Sunoco’s geologic expert, but is the lead geologist on the ME2/ME2X project in Southeast Pennsylvania. Judge Barnes’ finding with regard to Mr. Demko, is in sharp contrast to what she found to be the “credible” and “persuasive” testimony of Petitioner’s geologic expert, Dr. Sasowsky, including her finding that “Petitioner’s witness Sasowsky credibly testified that carbonate rock touching non-carbonate rock tends to be a focus area for dissolution and karst development,” Interim Emergency Order 13. (*See also* Interim Emergency Order at 12-14 concerning Dr. Sasowsky’s persuasive testimony that “open trenching does not remove all concerns and there is a possibility of hitting soil filled voids where only pseudo-stable soil can collapse,” and his persuasive testimony that “the introduction of fluids underground in West Whiteland could result in sediment reaching water supplies, which is an unsafe condition”).

The development of sinkholes at Lisa Drive leads to another significant point: To date, *the only portion of ME2X to be installed in West Whiteland Township is at Lisa Drive*. And, the results were catastrophic. (N.T. 448-49). This does not bode well for the installation of the remainder of the line.

In a May 24, 2018 letter to Commission Secretary Rosemary Chiavatta, Sunoco claims that the Interim Emergency Order “directly conflicts with the Commission’s May 3, 2018 order approving the restart of ME1.” It does not. Sunoco’s assessment of the project around Lisa Drive was limited in scope. The project area ran *approximately 1,200 feet*, from south of the Amtrak/SEPTA rail line to south of Lyntree Drive. (Ex. SPLP 19, Figure 1). As the Commission’s May 3, 2018 Order stated, “[t]his

proceeding is directed at this specific safety concern *on a specific portion of the ME 1 pipeline.*” *Petition for the Issuance of an Ex Parte Emergency Order*, PUC Docket No. P-2018-3000281 (May 3, 2018) at 2 (emphasis added). Furthermore, the Commission acknowledged “the public interest and safety concerns raised by the petitions to intervene regarding SPLP operations and the construction of ME 2 and ME 2x” and stated that while that proceeding was “not the appropriate forum to address those wide-ranging concerns about the construction and operation of the ME pipelines,” such issues could be properly addressed in other actions, like the very action filed by Petitioner presently being considered by the Commission. *Id.* at 11-13.³

Sunoco also claims that it has resolved the problems in West Whiteland Township by changing construction methods in certain locations. However, it is difficult to develop a proper solution if the cause of the problem has not been identified. “[I]f you want to fix something, it’s important to understand what went wrong first so that you can avoid having it happen again, as well as to make the best fix possible” (N.T. 274). In addition, Sunoco’s proposed remedies are not adequate. For example, to avoid subsidence in karst areas, Sunoco has applied to DEP to change its method of construction from HDD to open cut and boring, including flex bore. However, *open trench does not remove all of the concerns associated with Karst geology.* (N.T. 267). There is still the potential of cutting into soil-filled voids, which has the potential for developing a collapse. *Id.* Having the trench open can result in the loss of stability. In addition, rain on an open trench or hitting groundwater can result in sediment mobilization. (N.T. 268). “Any time you are mucking around in limestone like this, you have a potential

³The Commission’s Order on BIE’s Petition *Ex Parte* Emergency Order does not implicate the “law of the case” doctrine. The law of the case doctrine is a judicial rule that prohibits a court involved in a later phase of litigation from reopening questions decided by another judge of the same court or a higher court in an earlier phase of the litigation. *City of Philadelphia v. F.A. Realty Investors Corp.*, 146 A.3d 287, 297 (Pa. Cmwlth. 2016). The doctrine of one of convenience and public policy and must be accommodated to the needs of justice by the discriminating exercise of judicial power. *Commonwealth v. McCandless*, 880 A.2d 1262, 1268 (Pa. Super. 2005). The Commission’s May 3 Order was issued in a separate matter, not “in an earlier phase of the litigation.” Furthermore, as set forth above, the Commission’s Order expressly recognized that issues related to the construction and operation of the ME pipelines could be properly addressed in other actions.

for creating problems.” (N.T. 288). In addition, *flex bore can use fluid*. (N.T. 474, 694). Sunoco has not committed to how it will undertake its flex bore.

Open trench poses another problem on this project. John Zurcher, Sunoco’s pipeline safety expert, testified that “[p]ipelines do leak, yes . . . Number one because an excavator dug up the pipeline and hit it . . .” (N.T. 563). By using open cut to excavate areas around ME1, Sunoco is increasing the risk that an excavator will hit an operating hazardous liquids pipeline.⁴

In addition, we have no assessment of how Sunoco’s work to date has impacted the volatile geology of West Whiteland Township. Sunoco concedes that, other than at Lisa Drive -- where Sunoco was ordered by the PUC to undertake geophysical work -- *there has been no geophysical work in areas of West Whiteland Township where construction activities have occurred*. (N.T. 450). The northern portion of West Whiteland Township consists of carbonate limestone and dolomite, and a predominance of sinkholes and depressions. (N.T. 75, 80, 250, 255-56). The impacts from construction activities in these areas may not occur for weeks, months or a year later. (N.T. 264). The collapse could be triggered by something benign, like someone driving a tractor over an area, a drought or an intense rain storm. *Id.* Mixed infrastructure only adds another layer of challenge. (N.T. 292).

2. **The Interim Emergency Order Properly Concluded that Sunoco has Failed to Take Reasonable Efforts to Warn and Protect the Public From Danger**

Section 59.33(a) of the PUC regulations, provides that “[e]ach public utility shall at all times use *every reasonable effort to properly warn and protect* the public from danger . . .” 52 Pa. Code §59.33(a) (emphasis added). It is clear that Sunoco has failed to take every reasonable effort to “properly” warn and

⁴Mr. Zurcher also testified that there has been one “fatality” in the “general public” resulting from hazardous liquid pipelines “since 2010”. (N.T. 530, 574). However, he conceded that there have been explosions of hazardous liquids pipelines that did not result in fatalities. (N.T. 574, 575). *Since 2006, Sunoco has had 295 incidents on its hazardous liquids pipelines.* https://primis.phmsa.dot.gov/comm/reports/operator/OperatorIM_opid_18718.html?nocache=432#_Incidents_tab_2. Although Mr. Zurcher minimizes the risk of injury resulting from a pipeline, he noted that has a combustible gas detector in his home, has bought them for his family and friends, and “if I had a way to buy them for everybody in the United States or if I had a way to require the building codes to be adjusted, that’s what I would do, sir.” (N.T. 568-69).

“protect” the public from danger. Sunoco claims that its efforts to warn and protect the public include: Sending a cover letter and brochure to elected officials; sending a brochure to residents; and holding a few meetings with PowerPoints.

Such efforts fall well short of Sunoco’s regulatory responsibility. In fact, as the testimony revealed, Sunoco has, among other things:

- Failed to properly identify – nonetheless warn – residents with drinking water supplies near the pipelines. (N.T. 71, 86).
- Failed to properly warn residents, like Ms. Kerslake, of the risks to their property from the construction activities and, once the damage was done, failed to responsibly correct the problem. (N.T. 344-45, 346, 359).
- Failed to properly instruct emergency management personnel of actions they can take to protect the public from danger. (N.T. 190, 193).
- Failed to instruct the school districts on procedures for safeguarding children. (Ex. P-2).

Remarkably, Sunoco has argued that it is not required to use every reasonable effort to properly warn and protect the public from danger because it is not a “public utility” under 52 Pa. Code § 59.33(a). Such an argument requires Sunoco to ignore the definition of “public utility” in 66 Pa. C.S. 102, under which the regulations are promulgated; ignore the definition of “hazardous liquid public utility” set forth in 52 Pa. Code § 59.33 itself, and argue that the more specific term of “hazardous liquid public utility” is somehow broader than the more general term “public utility” used in the same section; claim that “gas” is not a “hazardous liquid” for the purposes of 52 Pa. Code 59.33, when the very definition of “hazardous liquid public utility” contained in 52 Pa. Code 59.33 defines a “hazardous liquid public utility” as “a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting . . . *gasoline* . . . by pipeline or conduit, for the public for compensation.” 52 Pa. Code 59.33(d) (emphasis added). In sum, Sunoco attempts to cherry pick the provisions that support its assertion while ignoring those that clearly show it’s argument is without merit.

Sunoco has also argued that Petitioner seeks to have Sunoco disclose “confidential security information” under Public Utility Confidential Security Information Disclosure Act, 35 P.S. §§ 2141.1, *et*

seq., and the regulations thereunder, 52 Pa. Code §§ 102.1, *et seq.* First, the Act does not prohibit Sunoco from releasing any information. *See* 35 P.S. § 2141.5(a). More importantly, Petitioner does not seek the disclosure of any such information. Rather, he asks to have “Sunoco fully conduct[] and release[] to the public *a* written integrity management program, risk analysis *and any other information required to warn and protect the public from danger and to reduce the hazards to which the public may be subjected by reason of ME1, ME2 and ME2X . . .*” Amended Petition for Interim Emergency Relief at 19. To comply with Petitioner’s request, Sunoco can redact any confidential security information or prepare documents that exclude the confidential security information, and release and/or prepare such other non-confidential security information as is required to warn and protect the public from danger and to reduce the hazards to which the public may be subjected. Rather than provide this information, Sunoco has chosen to hide behind the claims of “security” to produce virtually none of the requested information.

3. Sunoco has Failed to Select a Pipeline Right-Of-Way so as to Avoid Areas Containing Private Dwellings and Places of Public Assembly

49 CFR §195.210(a) of the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations, incorporated by reference into the PUC regulations, provides that a “[p]ipeline right-of-way *must* be selected to avoid, as far as practicable, areas containing *private dwellings*, industrial buildings, and *places of public assembly*.” 49 CFR §195.210(a) (emphasis added). Sunoco justifies its decision to place the pipeline through the center of the commercial district, next to the largest mall in the County (Exton Mall), behind the County library, under Route 30 and Amtrak/SEPTA rail lines, and through highly concentrated residential areas that include apartment complexes (N.T. 68-69, 70), because it believes it should be collocating ME2 and ME2X with ME1.

In support of this argument, Sunoco claims that such collocation will, among other things, reduce the impacts on such sensitive environmental features as wetlands, bog turtle habitats, bat habitats and cultural sites. (N.T. 392). It admits, however, that the collocated route contains turtle habitat, wetlands, bat habitat, cultural resources and greenfields (N.T. 439, 447). Sunoco also relies on the Task Force report. However, the Task Force Report was merely an unsigned collection of recommendations from the

various subcommittees. (N.T. 57, 140, 206).⁵ It is not the law. Where collocating the pipeline conflicts with a regulatory requirement, the regulatory requirement, and not a set of recommendations from an *ad hoc* task force, must prevail.⁶

4. ME1 is Located within 50 Feet of Private Dwellings Despite Being Less than 48 Inches Underground

49 CFR §195.210(a) of the PHMSA regulations, incorporated by reference into the PUC regulations, provides that:

No pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248.

49 CFR §195.210(a).

The evidence presented is clear that ME1 is within 50 feet of private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, and that the pipeline does not have 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248 (i.e. 48 inches of cover). Sunoco did not present any evidence to dispute this. Instead Sunoco argues that the requirements of 49 CFR §195.210(a) do not apply because ME1 is an “existing” pipeline. However, 49 CFR §195.200 provides that “[t]his subpart prescribes minimum requirements for constructing new pipeline systems with steel pipe, and for *relocating, replacing, or otherwise changing existing pipeline systems* that are constructed with steel pipe.” (emphasis added). ME1 has been changed in two ways. First, In 2014, ME1 was changed to a Hazardous Liquids pipeline and the flow of materials through the

⁵Petitioner was not a member of the subcommittee that proposed the collocation recommendation. (Ex. SPLP 16; N.T. 137; N.T. 206).

⁶Sunoco has also argued that this claim is barred by the equitable doctrine of laches. However, the key events in West Whiteland Township that prompted Complainant’s claims did not start until the summer of 2017 (i.e., the inadvertent returns) and did not culminate until November 2017 and March of 2018 (i.e., the development of sinkholes that, among other things, exposed ME1). Nor can Sunoco claim it has been prejudiced, as it has been well aware of opposition to the project from the outset but chose to proceed with construction at its own risk. See, e.g., *Clean Air Council v. Sunoco Pipeline, L.P.*, C.C.P. Philadelphia, Docket No. 150803484 (filed August 2015); *Delaware Riverkeeper Network v. Sunoco Pipeline, L.P.*, C.C.P. 2017-05040 (filed May 2017).

pipeline was also switched from westward to eastward. (N.T. 60). In addition, ME1 is not separate and distinct from ME2/ME2X. Rather, by Sunoco's own admission, ME2/ME2X is an "expansion" of its existing pipeline systems "*for the purpose of interconnecting with existing SPLP Mariner East pipelines.*" (Exs. SPLP-6 at 1-1; SPLP-7 at 1) (emphasis added). Such an expansion and interconnection of ME1 is a change to the existing pipeline system requiring compliance with 49 CFR §195.210(a).

C. The Interim Emergency Order Properly Found that the Need for Relief is Immediate

The need for relief is immediate. But for the Interim Emergency Order, ME1 would be operating and the construction of ME2/2X could proceed at any time. Evidence presented at hearing revealed the existence of significant ruptures, construction irregularities, sinkholes, IRs, impacted water supplies, unpermitted activities, the continued use of unqualified workers and procedures, and a repeated failure to report to timely respond to these problems, on the Mariner East and other similar pipelines. In addition, there are significant concerns regarding the impact of ME2/2X construction activities on the highly volatile geology of West Whiteland Township. To date, the only portion of ME2X to be installed in West Whiteland Township has resulted in sinkholes, one of which exposed ME1. (N.T. 448-49). Other subsidences from construction activities might not reveal themselves for weeks, months or a year later. (N.T. 264). There is an immediate need for, among other things, the cessation of operations and a full and thorough investigation.

D. The Injury Would be Irreparable if Relief is not Granted

In determining whether an injury is irreparable, the Commission determines "whether the harm can be reversed if the request for emergency relief is not granted." *Application of Fink Gas Co.*, 2015 WL 5011629, at *9 (Pa. P.U.C. Aug. 20, 2015). The pipeline project has been beset by problems such as IRs, sinkholes and other depressions, and impacted water supplies in West Whiteland Township. Sunoco projects, including other portions of ME1, have suffered from ruptures and releases. Sunoco has shown a repeated failure to timely respond to or report problems when they occur. Sunoco has not produced any forensic explanation for the problems that have occurred in the past, nor has it implemented adequate

remedies that would prevent problems from occurring in the future. Rather, Sunoco's plan is merely to attempt to fix the problems if they are inadvertently discovered. (N.T. 276). Without understanding the cause of the problem, irreparable harm cannot be prevented, remedied or reversed.

E. The Relief Requested is Not Injurious to the Public Interest

The public interest is adversely affected where greater injury would result by refusing the preliminary injunction rather than by granting it. *See, e.g., Valley Forge Historical Soc. v. Washington Memorial Chapter*, 426 A.2d 1123 (Pa. 1981). Where an action is clearly within the public interest, the preliminary injunction should issue. *Shondra Rushing v. Pennsylvania Am. Water Co.*, Opinion and Order, Docket No.: F-2015-2461147 (Pa. PUC April 9, 2015). Sunoco claims that an injunction would monetarily impact Sunoco, a supplier and a trade union.⁷ Even if true, financial considerations cannot trump the need to protect the health and safety of the public (including the significant financial losses to the business and residents of West Whiteland Township). Furthermore, the need for an injunction is the result of Sunoco's own actions and failures. The interests of the public cannot be outweighed by financial harm resulting from Sunoco's own actions and inactions. As Judge Barnes properly determined, "Sunoco has made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices available in our time that might best ensure public safety." Interim Emergency Order, at 21.

Sunoco has also sought to have Petitioner post a bond. However, generally, an "officer of the Commonwealth" is not required to post bond in order to obtain special relief. *See Pa. R. C. P. 1531*. Petitioner is an elected officer of this Commonwealth. *See, e.g., Stilp v. Com.*, 905 A.2d 918, 945, (Pa. 2006). Even under normal circumstances, a bond is not required. Rather, it is discretionary with the

⁷Sunoco has also claimed that Petitioner has failed to join "necessary parties" to the action. Sunoco claims that such parties include shippers, like Range Resources, Union workers, the "gas industry" as a whole and every "landowner who will be deprived of royalties". This claim was not raised in response to Senator Dinniman's Petition for Interim Emergency Relief and is not properly before the Commission. Furthermore, there is no validity to Sunoco's claim that this wide array of hundreds of entities and individuals (many of whose identities are known only to Sunoco) are required for relief to be granted in this action. *See Com., Dept. of Transp. v. Pennsylvania Power & Light Co.*, 383 A.2d 1314, 1317 (Pa. Cmwlth. 1978); *Pennsylvania Fish Commission v. Pleasant Tp.*, 388 A.2d 756 (Pa. Cmwlth. 1978).

Commission. *See* 52 Pa. Code 3.8(b). Where the damages could be great and plaintiffs may be unable to provide sufficient security, “the court may determine, based upon the balance of the equities, that the injunction should nevertheless issue. Consequently, a relatively low bond in light of possible damages may be set.” *Christo v. Tuscani, Inc.*, 533 A.2d 461, 467 (Pa. Super. 1987). In addition, there is no requirement that a bond cover all damages, because the nature of a preliminary injunction hearing makes a court's primary duty the consideration of whether to grant an injunction; the amount of potential damages to the party whose conduct is sought to be enjoined is not the court's primary concern. *Green County Citizens United by Cumpston v. Greene County Solid. Waste Auth.*, 636 A.2d 1278 (Pa. Cmwlth. 1994). Imposition of an excessive bond could deprive a party of his due process rights by preventing him from seeking relief to which he is entitled. Accordingly, the Commission must reject Sunoco’s request for a bond.

F. Sunoco Has Not Been Deprived of Due Process Rights

Throughout the hearing and subsequent filings, Sunoco has raised the specter that it has been deprived of its “due process” rights for one reason or another. Such claims are specious. On the contrary, Petitioner and Judge Barnes have gone out of their way to provide Sunoco with due process that is above and beyond what is required by the Commission’s rules. In order to allow for two days of hearing on the Interim Emergency Order, Petitioner agreed to waive the 10-day hearing requirement set forth in 52 Pa. Code § 3.4 and the 15-day requirement for the issuance of an order set forth in 52 Pa. Code § 3.4. In addition, Petitioner limited itself to three (3) witnesses. Sunoco presented seven (7) witnesses.⁸

G. The Commission Should Not Stay the Interim Emergency Order

The Interim Emergency Order was properly issued to address an “imminent risk to the public” Interim Emergency Order at 19. For the reasons set forth above, the need for this relief is immediate.

⁸In a May 24, 2018 letter to Commission Secretary Rosemary Chiavatta, Sunoco also claims that the Interim Emergency Order contains “regulation-like standards”. However, Section 1505(a) of the Public Utility Code provides that “the commission shall determine and prescribe, *by regulation or order*, the reasonable, safe, adequate, sufficient, service or facilities” 66 Pa. C.S. §1505(a) (emphasis added). The Order does just that.

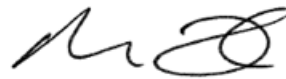
Staying the Order would subject the public to the risk of significant public injury. Accordingly, any request for a stay should be denied.

IV. CONCLUSION

In light of the forgoing, Petitioner respectfully requests that this Honorable Commission affirm the Interim Emergency Order issued in the above-referenced matter, and grant such other relief as the Commission finds to be just and appropriate.

Respectfully submitted,
CURTIN & HEEFNER LLP

By:



Date: May 31, 2018

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA STATE SENATOR ANDREW E. DINNIMAN,	:	
	:	
Complainant,	:	Docket No.: C-2018-3001451
	:	Docket No.: P-2018-3001453
v.	:	
	:	
SUNOCO PIPELINE, L.P.,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have, on this date, served a true and correct copy of the foregoing on the following:

Via electronic service


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