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December 7, 2018

VIA ELECTRONIC FILING

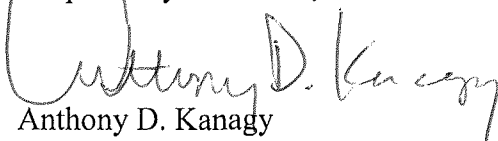
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.
Docket Nos. C-2018-3006116 and P-2018-3006117

Dear Secretary Chiavetta:

Enclosed please find the Post-Hearing Brief in Opposition to Petition for Interim Emergency Relief of Range Resources – Appalachia, LLC in the above-referenced proceeding. The HIGHLY CONFIDENTIAL version of this brief will only be provided to counsel who have executed an appropriate non-disclosure agreement pursuant to the Protective Order issued in this proceeding. In addition, the HIGHLY CONFIDENTIAL version of this brief is being separately filed with the Commission in a sealed envelope stamped HIGHLY CONFIDENTIAL. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/kl
Enclosure

cc: Certificate of Service
Honorable Elizabeth Barnes

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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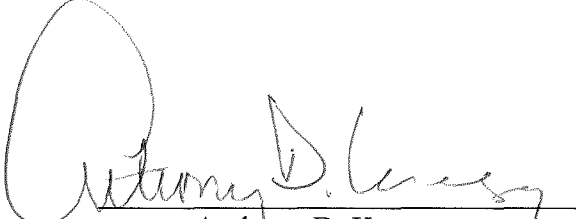
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Date: December 7, 2018


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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Rosemary Fuller :
Michael Walsh :
Nancy Harkins :
Gerald McMullen : Docket No. C-2018-3006116
Caroline Hughes : Docket No. P-2018-3006117
Melizza Haines :
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Complainants, :
:
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v. :
:
Sunoco Pipeline L.P., :
:
:
Respondent :

**RANGE RESOURCES – APPALACHIA, LLC’S
POST-HEARING BRIEF IN OPPOSITION TO PETITION FOR INTERIM
EMERGENCY RELIEF**

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I. INTRODUCTION

Intervenor, Range Resources – Appalachia, LLC (“Range” or the “Company”) hereby files this Post-Hearing Brief in Opposition to the Petition for Interim Emergency Relief filed by Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melizza Haines (“Petitioners”) on November 20, 2018 (the “Flynn Petition”). On its face, the Flynn Petition utterly fails to allege facts sufficient to demonstrate the Petitioners are entitled to interim emergency relief under Section 3.6(b) of the Pennsylvania Public Utility Commission (“Commission”) regulations. 52 Pa. Code § 3.6(b). Furthermore, the evidence presented at hearing conclusively demonstrates that the continued operation of Sunoco Pipe Line Company L.P.’s (“SPLP”) Mariner East 1 (“ME1”) pipeline or the continued construction and subsequent operation of SPLP’s Mariner East 2 (“ME2”) or Mariner East 2X (“ME2X”) pipelines do not constitute an “emergency” that would result in an immediate, irreparable injury.

It is clear that based on the facial deficiencies of the Flynn Petition and the Petitioners’ failure to provide a scintilla of credible record evidence supporting the insufficient allegations set forth in the Flynn Petition, that the Petitioners have done nothing more than attempt to abuse the regulatory process to prevent a pipeline public utility from exercising its lawful rights. Indeed, the Petitioners raise no issues and present no evidence regarding SPLP’s public awareness program, SPLP’s emergency management plan, and/or the alleged inherent dangers of natural gas liquids (“NGL”) pipelines, that the Commission has not previously investigated, reviewed and rejected as bases for interim emergency relief. Despite being fully aware of the Commission’s prior, public investigation and review of ME1, ME2 and ME2X, Petitioners improperly attempt to re-litigate these issues for the third time this year.¹

¹ See *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

For these reasons, and the reasons more fully explained below, Administrative Law Judge Elizabeth J. Barnes (the “ALJ”) and the Commission must immediately deny the Petitioners’ insufficient, improper and duplicative request for interim emergency relief.

II. PROCEDURAL SUMMARY

By way of background, the Commission has twice previously comprehensively reviewed ME1 operations. On May 3, 2018, the Commission relied upon the comprehensive investigation of its Bureau of Investigation and Enforcement (“I&E”) to unanimously lift its prior suspension of ME1 operations. *Commission’s Unanimous Order Reinstating ME*, p. 13. Therein, the Commission approved I&E’s assessment and permitted SPLP to reinstate utility transportation of NGLs 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 I&E’s investigation, Pennsylvania State Senator Andrew E. Dinniman sought to enjoin ME1 operation, ME2 and ME2X, and, materially, filed an Amended Petition for Interim Emergency Relief and Amended Complaint at the consolidated Docket Nos. C-2018-3001451 and P-2018-3001453. While the ALJ granted Sen. Dinniman’s Amended Petition for Interim Emergency Relief,² the Commission relied upon its prior *Unanimous Order Reinstating ME1* and reversed the Interim Emergency Order dated May 21, 2018, with respect to ME1 operations. *Dinniman Order Reinstating ME1*, Ordering Paragraph 3. In addition, the Commission indicated it would lift the injunction on ME2 and ME2X imposed by the ALJ’s Interim Emergency Order if SPLP complied with certain conditions set forth in the order. *Dinniman Order Reinstating ME1*, pp.

“*Commission’s Unanimous Order Reinstating ME1*”); see also *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451 and P-2018-3001453 (Order entered June 15, 2018) (“*Dinniman Order Reinstating ME1*”).

² *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451, P-2018-3001453 (Interim Emergency Order dated May 21, 2018).

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51-53, Ordering Paragraphs 6-8 (setting forth specific reporting conditions for SPLP to comply with). It is Range's understanding that SPLP made the requisite Compliance Filings as recognized by the Commission. *See, e.g., Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451, P-2018-3001453 (Secretarial Letter dated Aug. 24, 2018) ("*Secretarial Letter Further Lifting ME2 and ME2X Injunction*").

Despite these prior findings and conclusions, the Petitioners filed the above-captioned Flynn Petition and an associated Complaint on November 20, 2018.

SPLP filed a Petition for Extension of Time to Answer the Petition on November 21, 2018.

A Hearing Notice was issued on November 26, 2018. Pursuant to the Hearing Notice, evidentiary hearings were scheduled for November 29-30, 2018.

Andover Homeowners' Association, Inc., ("Andover") filed a Petition to Intervene on November 26, 2018. SPLP filed an Answer to Andover's Petition to Intervene on November 29, 2018. Andover was granted intervenor status at the November 29, 2018 evidentiary hearing.

Range filed its Petition to Intervene on November 27, 2018. Range was granted intervenor status at the November 29, 2018 evidentiary hearing.

SPLP filed a Motion for Protective Order on November 27, 2018.

Two days of evidentiary hearings were held on November 29 and 30, 2018. At the hearing, the Petitioners presented their case in chief on November 29, 2018. SPLP presented its case in chief on November 30, 2018, and Range representative Alan C. Engberg testified on this date.

III. SUMMARY OF ARGUMENT

The Petitioners have completely and utterly failed to allege, let alone demonstrate, facts that entitle them to the extraordinary remedy of interim emergency relief. On its face, the Flynn

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Petition is devoid of credible allegations that SPLP's continued operation of ME1, and/or continued construction and subsequent operation of ME2 or ME2X constitute an "emergency" that would result in an immediate, irreparable injury. Instead, the Petitioners merely argue that SPLP's public awareness program and emergency management plan are somehow insufficient, and that NGL pipelines are somehow so inherently dangerous that they should be enjoined from operating, regardless of the integrity of the pipeline or the risk of an accident.

The record evidence presented in this proceeding further demonstrates that Petitioners have not and, indeed, cannot satisfy any one of the essential pre-requisites justifying interim emergency relief. Petitioners' have not alleged and have presented no evidence that in any way demonstrate an emergency, *i.e.* "a clear and present danger to life or property." Rather, they concede their allegations of harm are neither clear nor present. *See* Flynn Petition ¶ 80.

Petitioners similarly have no right to their requested relief. Expert testimony demonstrates that SPLP has implemented a robust public awareness program and comprehensive emergency management plan. Moreover, Petitioners have conceded that the "integrity" of the Mariner East Projects is not at issue in this proceeding.

Petitioners also conceded that their need for relief is not immediate. Rather, Petitioners' counsel admitted that the likelihood, *i.e.* risk, of the alleged harms was outside the scope of the Petitioners' case; counsel further confirmed that the Petitioners had not, and would not, present any evidence on this issue. Indeed, Petitioners cannot demonstrate that the need for relief is immediate when their allegations of harm are based on a model that is not specific to the pipelines at issue, and where the Petitioners themselves concluded that they are *two orders of magnitude more likely* to be struck by lightning than be impacted by an accidental leak of an NGL pipeline.

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Furthermore, the Petitioners failed to demonstrate that the harm they would suffer is irreparable. The integrity of ME1 and the safety of ME2 and ME2X construction activities is not at issue in this proceeding and, importantly, the Commission has already imposed conditions on ME1 operations and ME2 and ME2X construction activities that prevent the harms alleged.

Finally, the injunctive relief requested by the Petitioners would substantially harm the public and Range. If ME1 operations were once again enjoined, **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[BEGIN HIGHLY CONFIDENTIAL]**

Based on the facial deficiencies of the Flynn Petition and the Petitioners' failure to provide a scintilla of credible record evidence supporting the insufficient allegations set forth in the Flynn Petition, Range further submits that the Petitioners have done nothing more than attempt to abuse the regulatory process to prevent a pipeline public utility from exercising its lawful rights. Indeed, the Petitioners raise no issues and present no evidence regarding SPLP's public awareness program, SPLP's emergency management plan, and/or the alleged inherent dangers of NGL pipelines, that the Commission has not previously investigated, reviewed and rejected as bases for interim emergency relief.

For these reasons, and the reasons more fully explained below, the ALJ and the Commission must deny the Flynn Petition.

IV. ARGUMENT

A. THE PETITIONERS HAVE COMPLETELY FAILED TO DEMONSTRATE THEY ARE ENTITLED TO INTERIM EMERGENCY RELIEF.

An interim emergency order is an extraordinary remedy that can only be granted after a party meets several, “essential prerequisites.” See *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003) (citations omitted); *Golden Triangle News v. Corbett*, 689 A.2d 974, 978 (Pa. Cmwlth. 1997) (citation omitted); *Schwartz v. Delaware & Hudson Rwy. Co.*, 2011 Pa. PUC LEXIS 1715, at *12-13 (Order entered July 5, 2011) (citation omitted).

In order to justify this extraordinary relief, Petitioners must demonstrate all of the following elements: (1) the petitioner’s right to relief is clear; (2) the need for relief is immediate; (3) injury would be irreparable if relief is not granted; (4) relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b); see also *Summit*, 828 A.2d at 1001 (citations omitted); see also *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). If the petitioners fail to prove any one of the four requirements, the Commission will deny the relief requested. *Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co.*, 1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993); see also *County of Allegheny v. Commonwealth*, 518 Pa. 556, 544 A.2d 1305, 1307 (Pa. 1988) (“For a preliminary injunction to issue, every one of the[] prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.”).

As explained below, however, the Complainants have completely failed to satisfy each, or any, of these “essential prerequisites” and, therefore, are not entitled to the requested injunctive relief.

1. No Emergency Justifying The Requested Interim Emergency Relief Exists.

As an initial matter, Petitioners have failed to allege, let alone demonstrate, that an emergency exists. Section 3.1 of the Commission's regulations defines an "emergency" as "[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting." 52 Pa. Code § 3.1 (emphasis added). A common sense reading of the Commission's regulations governing interim emergency relief confirms that a petition must demonstrate an emergency exists. Section 3.6(a) reads, "A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief..." 52 Pa. Code § 3.6(a) (emphasis added).

Furthermore, appellate courts have also confirmed that a petitioner is not entitled to interim emergency relief, where there is no evidence of an emergency. *Peoples Natural Gas Co.*, 555 A.2d at 291 (affirming the decision of the ALJ that an interim emergency order was not warranted because the ALJ properly found that "the record is devoid of evidence of an emergency.>"). In *Peoples Natural Gas*, an ALJ recommended the denial of an interim emergency order under 52 Pa. Code § 3.7, the predecessor to current Section 3.6, and "expressly found that no emergency existed." *Id.* at 291. The Commission reversed. *Id.* On appeal, the Commonwealth Court held that the Commission abused its discretion by granting the interim emergency relief, because the petitioner failed to submit any evidence of an emergency. *Id.* The Commonwealth Court explained:

In *Brinks, Inc. v. Pennsylvania Public Utility Commission*, 76 Pa. Commonwealth Ct. 496, 464 A.2d 639 (1983) (*Brinks II*), this Court reversed the Commission's temporary grant of authority because the Commission failed to find the existence of an emergency. We held that a finding that economic detriment would result if the temporary grant were not issued did not amount to an

"emergency" as a matter of law. After a review of the record, we agree with the ALJ's determination that the record is devoid of evidence of an emergency.

Id. (emphasis added).

While the Commission has previously suggested that Section 3.6 “does not require a petitioner to establish the existence of an emergency,” the Commission’s analysis and decision ultimately focused on whether an emergency existed. *Commission’s Unanimous Order Reinstating ME1*, p. 32, n.11. The Commission first cited the definition of “emergency” set forth in Section 3.1 of the Commission’s regulations when it described the appropriate legal standard. *Commission’s Unanimous Order Reinstating ME1*, pp. 19-20 (quoting the definition of emergency). Then, in evaluating whether the petitioner had carried his burden, explained that the material question was whether complained of conduct “gives rise to an ‘emergency’ as defined in our regulations.” *Id.*, at p 34. The Commission specifically held that the petitioner failed to carry this burden with respect to the continued operation of Mariner East 1. *See id.* Clearly, a petitioner’s failure to demonstrate the existence of an “emergency,” as defined under the Commission’s regulations, is fatal to its request for interim emergency relief.

Here, Petitioners concede that no emergency, *i.e.* a clear and present danger to life or property, exists. Flynn Petition ¶ 80 (“...no one can predict exactly where and when a leak or rupture might take place...”). Even if this concession is not fatal to the Flynn Petition, which it is, the evidence presented at hearing affirms that Petitioners failed to demonstrate the existence of an emergency. *See* Sections IV.A.2-3 *infra*. Indeed, the complained of actions are, at best, *two orders of magnitude less likely to occur* than being struck by lightning. Hearing Tr. 319-320. The Petitioners failure to allege, or demonstrate, the existence of a clear and present danger to life or property and, therefore, the Flynn Petition must be denied.

2. The Petitioners Have No Right To Injunctive Relief.

In order to find that Petitioners' right to relief is clear, the Petition must raise substantial legal questions, in addition to satisfying the other criteria for interim emergency relief. *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. Ct. 1985). This inquiry requires the petitioner to demonstrate that "substantial legal questions must be resolved to determine the rights of the respective parties." *Fischer v. Department of Public Welfare*, 497 Pa. 267, 439 A.2d 1172, 1174 (Pa. 1982). A necessary corollary of this principle is that if no legal questions need to be resolved to determine the rights of the parties, then substantial legal questions do not exist.

Petitioners raise three limited issues in this proceeding. They allege that:

- (1) SPLP's public awareness program is deficient;
- (2) SPLP's emergency management program is deficient; and
- (3) Natural gas liquids pipeline operations are so inherently dangerous that they should be enjoined from operating, regardless of the integrity of the pipeline or the risk of an accident.

See Hearing Tr. 347-356.

Petitioners have no right to relief, much less injunctive relief, on these issues. Petitioners' argument that SPLP's public awareness program is deficient was conclusively addressed in the *Dinniman Order Reinstating ME1*.³ The Commission denied Dinniman's

³ At no time—for at least the last ten years—has the United States Department of Transportation ever required a pipeline operator to shut down a pipeline while the operator amends a deficient public awareness program, let alone before a determination has even been made that a particular public awareness program is in fact deficient. It is not appropriate to shut-down pipeline operations due to alleged deficiencies in a pipelines public awareness program. Rather, the appropriate remedial process for alleged deficiencies in a public awareness plan required under 49 C.F.R. § 195.440 is for the Commission or the United States Department of Transportation to issue a notice of amendment, a warning, or in rare occasions after all other enforcement methods have been exhausted, a compliance order with the potential for a civil penalty. *See In re the Matter of Toledo Refining Company, LLC*, Case No. 3-2014-5001M (Dept of Transp.) (Closure Letter May 13, 2016), https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_320145001_M.html?nocache=6907 (defendant ordered to amend public awareness plan distributed to the public because it did not include all baseline messages required by API RP 1162); *In re the Matter of Nova Chemicals (dba Vantage Pipeline)*, Case No. 3-2018-5006W

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argument that SPLP's public awareness program was inadequate, and concluded that this argument was not an adequate basis for enjoining ME1. *Dinniman Order Reinstating ME1*, pp. 5-6, 20-21, Order Paragraphs 1, 3.⁴

Moreover, Petitioners presented no expert testimony alleging that the public awareness program is deficient. Petitioners presented lay testimony regarding concerns about the public awareness program. However, none of Petitioners witnesses were qualified to speak about the sufficiency of the public awareness program. On the other hand, SPLP's expert, Mr. Zurcher, presented testimony explaining that:

- SPLP's brochures are substantially similar to the brochures of several hundred other pipeline companies. Hearing Tr. 372.
- Industry brochures are standardized so that messages are consistent to the audiences from all pipeline companies. Hearing Tr. 372-373.
- SPLP's brochures are compliant with all regulations, with industry practices, and appropriately cover the topics that they are required to cover. Hearing Tr. 392.

SPLP also presented extensive evidence regarding its public outreach program and efforts. SPLP witness Mr. Perez testified:

- SPLP has a robust public awareness program that includes meetings (both in one-on-one and group settings), mass mailings and specialized training. SPLP Ex. No. 41, p. 2.

(Dep't of Transp.) (Warning Letter July 3, 2018), https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_320185006W.html?nocache=9516 (company issued warning letter for failure to include convey all baseline messages using printed material); *In re the Matter of ONEOK Partners LP*, Case No. 3-2017-5005 (Dep't of Transp.) (Final Order March 29, 2018; Closure Letter March 30, 2018), https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_320175_005.html?nocache=3204 (company issued warning regarding failure to include provisions in public education program to educate the public on all hazards associated with unintended release in 2013; company fined in 2018 after additional instance of failing to include these provisions); *In re the Matter of Mid-Valley Pipeline Company*, Case No. 3-2003-5022 (Dep't of Transp.) (Final Order January 3, 2006), https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_320035022.html?nocache=6267 (company fined \$15,000 for failure to keep record of material distributed to affected public, emergency responders, local officials, and other appropriate figures).

⁴ The Commission also found that SPLP's public awareness program for ME2 was adequate and did not provide a basis for enjoining ME2. *Order Partially Lifting ME2 and ME2X Injunction*, pp. 24-25.

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- SPLP has met with sixty-two (62) responders and officials from Chester and Delaware counties from July-September 2018, from twenty-eight (28) different agencies. SPLP Ex. No.41, p. 8.
- SPLP has conducted and is continuing to conduct extensive outreach to school districts to provide emergency planning information. SPLP Ex. No. 41, p. 10.

The aforementioned evidence in this proceeding demonstrates that Petitioners have no right to injunctive relief based upon their allegations that SPLP's public awareness program is deficient.

Petitioners' argument that SPLP's emergency management program is deficient and provides sufficient basis for injunctive relief has also been recently denied by the Commission. Paragraphs 1-12 of the Interim Emergency Order issued by the ALJ on May 24, 2018, contained specific requirements relating to SPLP's emergency management plan in enjoining ME1 operations and ME2 and ME2X construction activities. *See Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451, P-2018-3001453, Ordering Paragraphs 10-12 (Interim Emergency Order dated May 21, 2018). The Commission ultimately overturned the Interim Emergency Order's injunction of ME1 operations for all reasons, including arguments regarding the inadequacy of SPLP's emergency management. *See Dinniman Order Reinstating ME1*, pp. 33-34, Order Paragraphs 1, 3. The Commission also directed SPLP to file additional information regarding its emergency management plan with respect to ME2. *Dinniman Order Reinstating ME1*, Ordering Paragraph 2. SPLP has complied with this directive. *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451, P-2018-3001453 (Order entered Aug. 14, 2018) ("*Order Partially Lifting ME2 and ME2X Injunction*"). Therefore, the Commission has already conclusively held that ME1, ME2 and ME2X cannot be enjoined for alleged issues related to SPLP's emergency management plan.

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In addition, SPLP presented substantial evidence in this proceeding explaining its emergency management plan and its actions and efforts to communicate with emergency responders.

- SPLP witness Mr. Noll, an expert in emergency planning, response and management, testified regarding SPLP's Mariner Emergency Responder Outreach ("MERO") program, including the training provided to emergency responders in September and October 2017. *See* Hearing Tr. 465-471; *see also* SPLP Ex. No. 7.
- SPLP witness Mr. Noll further testified that local officials are the point person to address any incidents. Hearing Tr. 482.
- SPLP witness Mr. Perez testified about the MERO program training provided to emergency response officials between 2013 and 2018. SPLP Ex. No. 41, pp. 6-9.

In addition to this evidence, as explained above, SPLP has an extensive emergency management plan that has been reviewed and accepted by the Commission. For these reasons, Petitioners have no right to injunctive relief based upon their allegations that SPLP's emergency management plan is deficient.

Petitioners' third argument is that they are entitled to injunctive relief because NGL pipeline operations are so inherently dangerous that they should be enjoined from operations. *See* Flynn Petition ¶¶ 15, 28-33; *see also* Hearing Tr. 18, 346, 349-350. As an initial matter, Petitioners have stipulated that the integrity of the pipelines themselves is not an issue in this proceeding. Hearing Tr. 32:8-16; *see also* Hearing Tr. 346-347.

Importantly, Petitioners' counsel confirmed that the scope of the Flynn Petition was limited, and does not involve any allegations or evidence regarding the integrity of the pipelines, as follows:

MR. BOMSTEIN: If Your Honor please, we're not talking about the integrity of the pipelines. That's not an issue in this proceeding. We're talking about the consequences of explosions when they occur, and we're asking specifically, as we've alleged in the petition, for the Commission to consider that these pipeline have, when they explode, dangerous consequences, and we've

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alleged in our petition it has bearing on the kind of relief we're seeking. It's certainly relevant.

Hearing Tr. 32:8-16 (emphasis added). Attorney Bomstein further elaborated on the definition of "integrity" after the Petitioners rested their case:

MR. BOMSTEIN: ...[L]et's be clear what "integrity" means, okay? So if we're talking about, do they have rules, do they have practices, do they follow them, we didn't put on evidence concerning that. We don't intend to put on evidence concerning that.

Hearing Tr. 347:6-9 (emphasis added).

Indeed, Petitioners made no allegations and presented no evidence that a leak in the pipeline supports their request or that the pipeline is violating any federal or state law with respect to its operations. Petitioners also are not arguing that the risk or probability of an incident happening justify an injunction. Hearing Tr. 327-328. Their argument is that if an event happens, it could be catastrophic, and therefore the pipeline operations should be enjoined. Hearing Tr. 327 ("Our case has not been about the frequency of events or risk analysis, it's solely in the event that something happens, this is what is likely to occur.").

Petitioners' argument regarding the alleged inherent dangers of pipelines provides no basis for injunctive relief. NGL pipeline operations are lawful and cannot be enjoined on the basis that a worst case scenario accident "could" cause catastrophic injury. There are 210,000 miles of NGL pipelines in the United States (Hearing Tr. 376), and these operations cannot be enjoined on the basis that a worst case scenario event could cause catastrophic injury—particularly, when it is an accepted fact that pipelines are the safest mode of transporting these products important to everyday life. *See* Hearing Tr. 519-520.

Likewise, SPLP worked extensively with I&E and the Commission's pipeline safety decision to ensure that its operations are safe. *See, e.g., Commission's Unanimous Order*

Reinstating ME1, p. 13 (citing I&E's satisfaction with SPLP's actions in accordance with the *March Emergency Order*). The Commission also completely lifted prior injunctions on ME1 and partially lifted injunctions on ME2 and ME2X based upon its findings that ME1 can safely operate, and that the reinstated segments of ME2 and ME2X can safely be constructed and operated.

For the reasons explained above, the Petitioners have provided no legal or factual basis supporting their right to injunctive relief. Therefore, the Flynn Petition must be denied.

3. The Petitioners Failed To Demonstrate That The Need For Relief Is Immediate.

The need for relief is not immediate where the complained of events are not imminent, or likely to occur. *See Application of Fink Gas Company for Approval of the Abandonment of Service by Fink Gas Company to 22 Customers Located in Armstrong County, Pennsylvania, and the Abandonment by Fink Gas Company of all Natural Gas Services and Natural Gas Distribution Services*, Docket No. A-2015-2466653, 2015 Pa. PUC LEXIS 408, *21-22 (Order entered Aug. 20, 2015); *see also Zebra v. School Dist.*, 206 A.2d 748, 752 (Pa. 1972).

The Petitioners have failed to demonstrate that the need for relief is immediate. Importantly, the Petitioners have conceded that they presented no evidence regarding the likelihood, *i.e.* risk, of a fatality occurring due to an accidental leak on any of the Mariner East Projects. While objecting to SPLP's cross examination of Mr. Marx regarding the document identified as Exhibit P-5, Petitioners' counsel, Attorney Bomstein, conceded:

MR. BOMSTEIN: If I may, for the record, may I renew the objection? Our case has not been about the frequency of events or risk analysis, it's solely in the event that something happens, this is what is likely to occur. That's consequence analysis. All of the cross-examination on this point is entirely beyond the scope, and it doesn't go to credibility either. It's entirely objectionable.

Hearing Tr. 327:17-24 (emphasis added). Attorney Bomstein further clarified:

This particular aspect of the report has nothing to do with the case, because as Mr. Marx stated at the beginning, risk, as he uses it, is a function of both frequency and consequences. We have not talked about frequency. We've conceded that the relative incidence of [the complained of] events is small.

Hearing Tr. 328:11-16 (emphasis added).

Not only did Petitioners' counsel concede that the probability of a fatality from a highly volatile liquids ("HVL") pipeline was small, Petitioners' witness Mr. Marx confirmed that the probability is orders of magnitude less than the risk of death from lightning, specifically:

Q. So if you're assuming one fatality in the PHMSA data set from an accidental leak of an HVL pipeline over eight years, you would have a probability of fatality of one to the minus one?

A. It's about ten to the minus ten.

JUDGE BARNES: I'm going to overrule the objection. I got 3.47 times ten to the negative ten also.

BY MR. WITKES:

Q. So that is more than two orders of magnitude less than the risk of death from lightning in the United States; correct?

A. Yeah, based on the initial assumption of one fatality in eight or nine years from an HVL pipeline.

See Hearing Tr. 319-320 (emphasis added).

Mr. Marx further conceded that his analysis was not unique to ME1, ME2 or ME2X, rather it applies to any HVL pipeline. Hearing Tr. 331. This generic model simply "assumes an HVL" is being carried through pipelines of comparable diameter; it is not specific to SPLP's ME1, ME2, or ME2X pipelines. Hearing Tr. 331-332.

As explained above, the Petitioners have conceded that there is no imminent threat of fatality from an accidental leak on the Mariner East Projects. At best, the "immediacy" of the Petitioners' need for relief is so attenuated as to be *two orders of magnitude* less probable than

any one of the Petitioners' suffering a death from lightning. At worst, Petitioners' have conceded that the probability, *i.e.* risk, of the complained of events is not even at issue in this proceeding. Therefore, the Flynn Petition must be denied.

4. The Petitioners Failed To Demonstrate That The Injury Would Be Irreparable If Relief Is Not Granted.

The third standard that the Commission evaluates in determining whether to grant injunctive relief is whether the alleged injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b). Petitioners have failed to demonstrate irreparable harm would result from continued ME1 operations, or the continued construction of ME2 and ME2X.

While the Petitioners have alleged that an accidental leak of an HVL pipeline could result in physical injuries or a fatality, the basis for these allegations has been resolved by the Commission's prior orders. With respect to irreparable harm related to ME1 operations, the Commission has previously concluded that ME1 is being operated safely, and rejected claims that irreparable harm would result from its operation. *Dinniman Order Reinstating ME1*, p. 42 (rejecting petitioners' allegations of irreparable harm being there was "insufficient evidence to support a finding that ME1 is being operated unsafely."). Here, Petitioners have conceded that ME1 is being operated safely and that its integrity is not an issue. *See* Hearing Tr. 32, 347. Indeed, so long as SPLP continues to operate ME1 and construct and operate ME2 and ME2X in compliance with the processes, directives and conditions imposed by the Commission, the Petitioners cannot demonstrate irreparable harm will occur.

For these reasons, Petitioners have failed to demonstrate that irreparable harm would result from the continued, safe operation of ME1 and the construction of ME2 and ME2X. Therefore, the Flynn Petition must be denied.

5. The Relief Requested Would Cause Substantial Harms To Range And The Public At Large.

The fourth standard that the Commission evaluates in determining whether to grant injunctive relief is whether the relief requested is injurious to the public. 52 Pa. Code § 3.6(b)(4). Although Petitioners have the burden to prove the relief request is not injurious to the public, they did not present any evidence on this issue. Instead, Range demonstrated that enjoining ME1 and ME2 will cause substantial harm to both Range and the public. This is especially true with respect to the continued operation of ME1 and the significant impacts of any shutdown of ME1 would have, but particularly during the winter months. Indeed, the ME1 pipeline is vital to ensuring continued production of propane and natural gas used to heat Pennsylvania businesses and residences.

As an initial matter, when ME1 was enjoined in March through June of this year, Range suffered harm of [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] due to higher transportation costs and diversion of propane to lower-priced markets. Hearing Tr. 526.

However, a shutdown of ME1 now will cause substantially more harm than was experienced in March through June. With respect to propane, Range is currently shipping

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
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[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[END HIGHLY CONFIDENTIAL]

As explained by Mr. Engberg at the hearing and as demonstrated above, enjoining ME1 operations and ME2 will cause significant material harm to both Range and the public, including Range’s Pennsylvania royalty owners and Pennsylvania residents and businesses. This harm is especially significant because of the public need for propane and natural gas as heating sources during the winter. Therefore, the Flynn Petition is injurious to the public interest and should be denied.

B. THE PETITION ABUSES THE REGULATORY PROCESS BY SEEKING TO ENJOIN ME1 AND ME2 PIPELINE OPERATIONS

The Commission has previously found that a pattern of pleadings designed to forestall a public utility’s lawful exercise of its rights may constitute abuse of the Commission’s administrative or regulatory process. *See Argento’s Pizza v. Philadelphia Gas Work*, Docket Nos. C-2009-2138055 C-2010-2167822, 2010 Pa. PUC LEXIS 2252, at *10-12 (Initial Decision

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dated Aug. 2, 2010) (Van Nguyen, J.), *becoming final without further action*, Docket Nos. C-2009-2138055 C-2010-2167822 (Order entered Oct. 1, 2010); *see also Application of Modern Motor Coaches, Inc. d/b/a Modern Piano Moving, for the right to transport, by motor vehicle, household goods in use, limited to pianos and organs, between points in Pennsylvania*, 2011 Pa. PUC LEXIS 1736, at *9 (Initial Decision dated May 19, 2011) (Colwell, J.) (warning that the filing of pleadings that attempt to “slow down” a motor carrier’s application process constitute an abuse of process). Indeed, where a party files pleadings that repeatedly litigate issues resolved and dismissed by the Commission, the Commission has consistently found the filing party is abusing the administrative process. *See Argento’s Pizza*, 2010 Pa. PUC LEXIS 2252, at *10-12 (summarizing case law where the Commission has found that complainants who repeatedly file complaints regarding previously litigated and dismissed issues have abused the administrative process).

The Flynn Petition does nothing more than seek to re-litigate issues related to ME1 operations, and ME2 and ME2X construction, that were reviewed and resolved by the *Commission’s Unanimous Order Reinstating ME1* and the *Dinniman Order Reinstating ME1*. As explained below, the Commission has conducted a comprehensive investigation of ME1 operations and concluded that the pipeline is safe to operate. In addition, the Commission has concluded the specific conditions it imposed in the *Dinniman Order Reinstating ME1* with respect to ME2 and ME2X construction activities have been fulfilled by SPLP, and authorized SPLP to continue construction activities. Based on its comprehensive investigation and oversight of the Mariner East Projects, the Commission denied a subsequent petition for interim emergency relief and rejected allegations and evidence that are identical to the allegations set forth in the Flynn Petition. Petitioners, and their counsel, are aware of these prior, binding

orders, yet filed the Flynn Petition to conduct an unlawful end-run around the Commission's prior findings and conclusions regarding the integrity of ME1 and the safety of its operations. Therefore, and for the reasons more fully explained below, the Flynn Petition constitutes an unlawful abuse of the administrative and should be denied.

1. The Commission Conducted A Comprehensive Investigation Of ME1 And Reinstated Operations Based On That Investigation.

The Commission fully investigated the safety of ME1 operations 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*). 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 any concerns regarding the safety of ME1 operations were addressed. *Id.*, p. 9.

2. The Commission Rejected Pennsylvania State Senator Andrew E. Dinniman's Subsequent Request To Enjoin ME1 Operations.

After the *Commission's Unanimous Order Reinstating ME1* was issued, Pennsylvania State Senator Andrew E. Dinniman filed a Petition and Amended Petition for Interim Emergency Relief that, once again, sought to enjoin ME1 operations. *See Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451, P-2018-3001453

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(Amended Petition for Interim Emergency Relief dated April 24, 2018). After a hearing was held regarding Sen. Dinniman’s petition, the ALJ issued an Interim Emergency Order that enjoined ME1 operations and certified the issuance of the interim emergency relief as a material question to the Commission. *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451, P-2018-3001453 (Interim Emergency Order dated May 21, 2018).

In the *Dinniman Order Reinstating ME1*, the Commission answered the certified material question with respect to ME1 operations in the negative, and lifted the injunction imposed by the ALJ’s Interim Emergency Order. Specifically, it concluded that there was “no new, credible evidence to support a finding that the continued operation of ME1 poses a clear and present danger to life or property” and “insufficient evidence to support a finding that ME1 is being operated unsafely.” *Dinniman Order Reinstating ME1*, pp. 34, 42. Based on these conclusions, the Commission specifically ordered that:

That Ordering Paragraph No. 5 of the Interim Emergency Order is reversed, and the injunction against operation of the ME1 pipeline is, hereby, dissolved, and resumption of operations of the ME1 pipeline is authorized, consistent with the processes and directives as contained in the Commission Order entered at Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order at Docket No. P-2018-3000281 (Order entered May 3, 2018).

Dinniman Order Reinstating ME1, p. 51, Ordering Paragraph 5 (emphasis added). Therefore, the *Dinniman Order Reinstating ME1* conclusively resolved all issues related to the integrity and safe operation of ME1, so long as SPLP continued to operate ME1 consistent with the “processes and directives” set forth in the *Commission’s Unanimous Order Reinstating ME1*.

3. SPLP Has Satisfied Certain Of The Conditions Regarding ME2 And ME2X Construction Activities Set Forth in the *Dinniman Order Reinstating ME1*.

The *Dinniman Order Reinstating ME1* also set forth specific conditions that SPLP was required to satisfy before recommencing ME2 and ME2X construction activities. *Dinniman Order Reinstating ME1*, pp. 51-53, Ordering Paragraphs 6-8 (setting forth specific reporting conditions for SPLP to comply with). SPLP has satisfied certain of these requirements, as explained in the *Order Partially Lifting ME2 and ME2X Injunction* and the subsequent *Secretarial Letter Further Lifting ME2 and ME2X Injunction*. As of August 24, 2018, the Commission has lifted its injunction of ME2 and ME2X construction activities on ten of the 12 locations at which construction activities were halted by its prior orders.

4. The Flynn Petition Seeks To Re-Litigate The Same Issues Resolved In The Prior Proceedings.

Despite these prior findings and conclusions with respect to ME1 operations, the Flynn Petition seeks to re-litigate the same issues that were conclusively resolved in the *Commission's Unanimous Order Reinstating ME1* and the *Dinniman Order Reinstating ME1*. The Flynn Petition alleges that: (1) SPLP's public awareness program is deficient; (2) SPLP's emergency management program is deficient; and (3) NGL pipeline operations are so inherently dangerous that they should be enjoined from operating, regardless of the integrity of the pipeline or the risk of an accident. Hearing Tr. 16-17, 348-349.

These allegations were conclusively resolved in the Commission's prior orders.⁶ In the *Dinniman Order Reinstating ME1*, the Commission conclusively denied claims that alleged deficiencies in SPLP's public awareness program and emergency management program justified

⁶ Petitioners should be precluded from re-litigating the same issues raised in the prior proceedings, with respect to ME1 operations. See *In re Stevenson*, 40 A.3d 1212, 1223 (Pa. 2010) (explaining modern collateral estoppel doctrine no longer requires mutuality). Even if the Flynn Petition is not barred by the doctrine of collateral estoppel, Section 316 of the Code states that the *Commission's Unanimous Order Reinstating ME1* and the *Dinniman Order Reinstating ME1* are "prima facie evidence" that ME1 is safe to operate. 66 Pa. C.S. § 316.

enjoining ME1 operations. *See Dinniman Order Reinstating ME1*, pp. 19, 29, 33-34. Relatedly, the Commission reviewed SPLP's awareness program and emergency management program with respect to ME2 and ME2X construction, and concluded that they were sufficient. *Order Partially Lifting ME2 And ME2X Injunction*, Ordering Paragraph 1 (concluding SPLP's Compliance filed, including the request programs, was approved). With respect to the allegations regarding the inherent dangers of NGL pipelines, the Commission specifically concluded that the ME1 pipeline was safely operating and overturned the injunction imposed by the ALJ. *Dinniman Order Reinstating ME1*, pp. 19, 33-34. SPLP has worked in tandem with I&E to address all concerns related to the safety and integrity of ME1. *See, e.g., Commission's Unanimous Order Reinstating ME1*, p. 13 (citing I&E's satisfaction with SPLP's actions in accordance with the *March Emergency Order*). Moreover, Petitioners stipulated that the integrity, *i.e.* safety, ME1, ME2 and ME2X is not at issue in this proceeding. Hearing Tr. 346-347.

5. Summary Regarding Abuse Of The Regulatory Process.

Petitioners and their counsel are fully aware of the prior proceedings related to the *Commission's Unanimous Order Reinstating ME1* and the *Dinniman Order Reinstating ME1*. Each of these orders is a publicly available document that was accessible to the Petitioners and their counsel. Indeed, Petitioners' witness Mr. Marx reviewed testimony from the evidentiary hearing in the *Dinniman Order Reinstating ME1* proceeding and was questioned about it. *See* Hearing Tr. 282-284. Furthermore, both of the Commission's prior orders concluding ME1 was safe to operate were also admitted into evidence without objection. Hearing Tr. 608-609 (admitting SPLP Exhibit No. 8 (*Commission's Unanimous Order Reinstating ME1*) and SPLP Exhibit No. 10 (*Dinniman Order Reinstating ME1*)).

Despite having access to and being completely aware of the *Commission's Unanimous Order Reinstating ME1* and the *Dinniman Order Reinstating ME1*, Petitioners yet again seek to enjoin ME1 operations based upon the precise same issues and allegations rejected in those orders. By failing to raise any new or unresolved facts or issues with respect to the integrity and safety of ME1 operations, and/or the safety of ME2 or ME2X construction activities, or the safety or integrity of ME2 or ME2X operations, the Flynn Petition appears to be nothing more than a repeated attempt to forestall SPLP's lawful exercise of its rights to operate and construct the Mariner East Projects and Range's lawful contractual rights with SPLP. *See, e.g., Argento's Pizza*, 2010 Pa. PUC LEXIS 2252, at *10-12. Therefore, the Flynn Petition constitutes an abuse of the regulatory process and must be denied by the ALJ and the Commission.

C. IF THE REQUESTED RELIEF IS GRANTED, THE PETITIONERS SHOULD BE REQUIRED TO POST A BOND.

Section 3.8(b) of the Commission's regulations states that "[a]n order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and will specify the amount of the bond." 52 Pa. Code § 3.8(b).

Any order granting the relief sought in the Flynn Petition must be conditioned upon the provision of a suitable bond by the Petitioners to cover damages to SPLP, its shippers and the public. Range fully supports and joins in SPLP's request that Petitioners be required to post a bond sufficient to cover the damages that would result from the requested relief. *See* SPLP Brief, Section IV.G. Therefore, and for the reasons more fully explained in Section IV.A.5 *supra*, any order granting the relief sought must be conditioned upon Petitioners posting a suitable bond.

V. CONCLUSION

WHEREFORE, Range Resources – Appalachia, LLC respectfully requests that the Administrative Law Judge Elizabeth J. Barnes and the Pennsylvania Public Utility Commission immediately deny the Petition for Interim Emergency Relief filed by Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melizza Haines on November 20, 2018.

Respectfully submitted,



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