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December 18, 2018

BY ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.; Docket No. C-2018-3006116 and P-2018-3006117; **SUNOCO PIPELINE L.P.'S BRIEF IN SUPPORT OF ALJ ELIZABETH BARNES' RECOMMENDED DECISION (PUBLIC VERSION)**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Brief in Support of Administrative Law Judge Elizabeth Barnes' December 11, 2018 Recommended Decision (Public Version) in the above-referenced proceeding.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Honorable Elizabeth Barnes, ALJ (By email ebarnes@pa.gov and first class mail)
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Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party). This document has been filed electronically on the Commission's electronic filing system and served via overnight mail on the following:

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Dated: December 18, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MEGHAN FLYNN,	:		
ROSEMARY FULLER,	:		
MICHAEL WALSH,	:		
NANCY HARKINS,	:	Docket Nos.	C-2018-3006116
GERALD MCMULLEN,	:		P-2018-3006117
CAROLINE HUGHES, and	:		
MELISSA HAINES	:		
	:		
Petitioners/Complainants	:		
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent	:		

RESPONDENT SUNOCO PIPELINE L.P.'S
BRIEF TO AFFIRM ADMINISTRATIVE LAW JUDGE BARNES ORDER

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Dated: December 18, 2018

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I. Introduction and Summary of Argument

Pipelines are the safest method to transport petroleum hydrocarbons, including propane, ethane, and butane. Petitioners do not dispute this. There are approximately 2.4 million miles of pipelines in the United States, including 210,000 miles of hazardous liquids transmission pipelines, 300,000 miles of natural gas transmission pipelines, 1.4 million miles of distribution pipelines, and 500,000 - 600,000 miles of gathering lines. N.T. 376. Approximately 90% of the United States population lives near a pipeline. N.T. 378. There are approximately 80,000 miles of transmission pipelines in the United States that transport highly-volatile liquids (“HVLs”), half of which are in high-consequence areas. N.T. 378; 49 C.F.R. § 192.903 (definition of high-consequence area). To shut down SPLP’s Mariner East (“ME”) pipelines, Petitioners were required to prove that the operation of these pipelines creates a clear and present danger to the public. There was no such evidence.

Petitioners admit that they did not present *any* evidence of the integrity of the ME pipelines. They offered no evidence that there is an imminent risk of releases from valve sites or from areas where HDDs were used in the construction of the pipelines. They offered no evidence of increased risk from co-location of pipelines. They offered no evidence about the integrity of ME1 or ME2, and no evidence about construction of ME2/2X. They simply abandoned these arguments. They likewise abandoned any claim of the probability or likelihood of a leak occurring.

All Petitioners had left were two arguments, both of which ALJ Barnes properly found to lack any support. First, without any evidence of the probability that an incident will occur and focusing solely on a worst-possible “what if” scenario of a pipeline rupture, Petitioners argued that the consequences of such a worst-case hypothetical will result in fatalities. But focusing on worst-case consequences without any evidence of the risk of that worst-case occurring would shut down every transmission pipeline, gathering line, and distribution line in any populated area. In fact, focusing only on the consequences of worst-case scenarios without any evidence of risk would force most of the activities of daily life to come to a grinding halt – since there is a risk of injury or death whenever a person drives a car, flies on a plane, crosses a street, turns on a stove, or heats a home. Having found in *Dinniman* that evidence of prior incidents on other pipelines was insufficient to establish a clear and present danger, SPLP Ex. 10 at 34, then theorizing about an absolute worst-case scenario, without any evidence of any probability that such a scenario will occur, was necessarily insufficient as a matter of fact, logic, and law to establish the imminence necessary to obtain interim emergency relief to shut down the pipelines.

Petitioners' remaining case was premised on the testimony of three residents who claim that SPLP's public-awareness program is inadequate because they claim not to know what to do in the event of a pipeline-related emergency. But the Commission addressed SPLP's public-awareness and emergency-response program in *Dinniman*, in which the petitioner there raised the same criticisms of SPLP's public-awareness program. Indeed, the three Petitioners here admitted that they (1) know where the ME pipelines are located; (2) know how to identify a release from a pipeline using sight, sound, and smell; and (3) know that if they suspect a release from a pipeline, they should move away from the pipeline on foot until they reach a safe place where they can then call emergency services. And SPLP offered uncontradicted evidence that it maintains a robust public-awareness program that exceeds the regulatory requirements to inform the public and local officials (including school districts) of the location and hazards related to pipelines, and to inform the public and local emergency responders about what to do, and what not to do, in the event of an emergency.

Finally, the shutdown of the ME pipelines would adversely affect the public interest by causing lay-offs, lost union jobs (including during the upcoming holiday season), lost royalties to property owners, lost revenues to SPLP, shippers and related industries, and an increase to Pennsylvanians in the price of propane and natural gas during the peak winter heating season.

The Commission should deny the petition for emergency relief for the reasons set forth in Judge Barnes' December 11, 2018 Order.

II. Statement of the Case

Petitioners seek to shut down the operation of the Mariner East 1 pipeline ("ME1") and enjoin the future operation of the Mariner East 2 and 2X pipelines, including an existing 12-inch pipeline that will be used as part of the Mariner East 2/2X pipeline system (collectively "ME2"). Pet., Introduction at 2. Petitioners allege that SPLP's public-awareness program is inadequate, and request that the Commission evaluate the program for compliance with the PHMSA regulations on public awareness listed at 49 C.F.R. § 195.440. Pet. ¶¶ 34-40. Unlike in *Dinniman*, Petitioners here make no request to stop the ongoing construction of ME2.

Petitioners raised additional issues in their Petition, including allegations of hazards at valve sites and where horizontal directional drilling ("HDD") was used to install ME2, the integrity of ME1 or ME2, the risk of co-location of pipelines, and the overall risk of a release from the pipelines. Pet. ¶¶ 28-33, 49-64. But Petitioners did not offer *any* evidence to support these allegations, and conceded that they were abandoned. Rather, at the hearing,

Petitioners confined their evidence to two issues – (1) the adequacy of SPLP’s public-awareness program; and (2) the theoretical worst-possible consequences of a complete pipeline rupture. N.T. 16, 345.

A. The integrity of ME1 and ME2 is not at issue.

Petitioners conceded that they offered no evidence on the integrity of ME1 or ME2; therefore, that issue is not before the Commission. N.T. 32 (“If Your Honor please, we’re not talking about the integrity of the pipelines. That’s not an issue in this proceeding.”); N.T. 345 (“[T]he integrity of the program is not in dispute.”) When Judge Barnes asked Petitioners’ counsel whether they were waiving issues regarding the integrity of ME1 and ME2, counsel confirmed that “we did not put any evidence on concerning that.” N.T. 347. “If you’re talking about the integrity of the pipeline, we’ve conceded that point, as we’ve just made clear.” N.T. 351.

Just as Petitioners presented no evidence on the safety or integrity of ME1 and ME2, they presented no evidence of unsafe construction of ME2. Indeed, the Petition does not even seek to enjoin construction of ME2, so that issue is also not before the Commission.

B. Petitioners offered no evidence of the likelihood or risk of a pipeline incident.

Petitioners also conceded that they did not offer any evidence of the likelihood or risk of a release from ME1 or ME2. Although alleged, Petitioners presented no evidence of an increased risk associated with the location of block-valve stations, entry and exit points of HDD, or the co-location of ME1 and ME2.

The allegations of risk set forth in the Petition were based on a report prepared by Quest Consultants, Inc. Pet. ¶¶ 30-33. Petitioners called the author of the Quest report, Jeffery Marx, as an expert on quantitative analysis. As part of Mr. Marx’s testimony, Petitioners offered the Quest report into evidence, over SPLP’s objection. N.T. 277, 302. But during cross-examination challenging the faulty assumptions on which the Quest report was based, Petitioners objected and admitted that “the relative incidence of events is small.” N.T. 328. In fact, Petitioners did not offer *any* evidence of the relative incidence of an event. Unwilling to subject the Quest report to scrutiny, Petitioners withdrew the Quest report from evidence. N.T. 329-30. Thus, Petitioners had no evidence of the likelihood or probability of a release from ME1 or ME2, and counsel so conceded. N.T. 353 (“[T]his case from our perspective is not about the risk of an event happening. . . . We concede that.”).

C. Petitioners’ consequence analysis is based on a generic and hypothetical, absolute worst-case scenario that does not reflect actual data.

Petitioners’ evidence focused exclusively on an absolute worst-case scenario, using faulty assumptions and a prediction of the worst-case consequences from such an event. Mr. Marx admitted that his hypothetical analysis

was based on worst-case assumptions that overpredict the impact of his hypothetical worst-case scenario. N.T. 307, 314, 323-27, 329. Mr. Marx agreed that he applied worst-case assumptions and limited his evaluation to the most catastrophic circumstance of a complete rupture of a pipeline. N.T. 304. Mr. Marx conceded that his analysis over-predicts the impact. N.T. 310-11.

Moreover, Mr. Marx’s analysis was generic and not specific to ME1 or ME2. N.T. 331. Mr. Marx conceded that the same analysis would apply to *any* HVL pipeline, including another operator’s existing pipeline that parallels ME1 and ME2:

Q. Right. So if you had an eight-inch pipeline, the TEPPCO pipeline -- I ask you to assume that’s eight inches in diameter, and you’ve seen the maps that show where that is. That would have the same consequence area that one-quarter mile away; correct?

A. Yes.

Q. So you would just apply this theory, this worst-case, absolute worst-case possibility of fatality to any other pipeline in the country; correct?

A. Yes, we could.

N.T. 331.

D. The Commission already determined that SPLP’s public-awareness program is adequate, appropriate, and complies with applicable regulations.

The Commission found SPLP’s public-awareness program adequate, appropriate, and in compliance with applicable regulations. Most recently, in its June 15, 2018 Order in *Dinniman*, SPLP Ex. 8, the Commission required SPLP to submit a compliance filing that included its public-awareness program, emergency-response program and associated materials. *Id.* at 48, Ordering ¶¶ 6. The Commission allowed the ME1 pipeline to resume operation, despite arguments that SPLP’s public-awareness program was inadequate. SPLP Ex. 8 at 5-6 (explaining that Count II of the Petition in *Dinniman* alleged that “Sunoco has failed to warn and protect the public from danger or reduce the hazards to the public by reasons of its equipment and facilities”), Order ¶¶ 1, 3 (allowing ME1 to resume operation).

SPLP made the required filing (the relevant excerpt of which was admitted as SPLP Ex.11), and the Commission expressly found compliance:

The documentary materials provided by Sunoco, on their face, indicate communication to the affected public and stakeholders concerning the Mariner East Pipeline projects. Therefore, we conclude Sunoco has established that it has complied with standard notice procedures of DEP and its internal policies and

such procedures, as outlined, comply with the requirements of Ordering Paragraph No. 6.

SPLP Ex. 12 at 24-25. Notably, the public-information mailing that Petitioners challenge here – Ex. P-2 – is the same document that the Commission reviewed and found adequate.¹ SPLP Ex. 11 at Ex. 65. Further, BI&E conducted an audit of SPLP’s public-awareness program in 2016 and did not identify any deficiencies. SPLP Ex. 41 at 2.

E. SPLP’s robust public-awareness program is adequate, appropriate, and meets industry standards and applicable regulations.

SPLP has adopted a comprehensive public-awareness program that includes individual and group meetings, mass mailings, and training programs that raise awareness of the location of the ME1 and ME2 pipelines, educates the public and emergency responders about what to do and what not to do in the event of a release, and provides the relevant information for stakeholders to develop emergency-response and evacuation plans. SPLP Exs. 31 and 41; N.T. 584-607.

Joseph Perez, Vice President, Technical Services, Operations and Engineering Services, Energy Transfer Partners and SPLP, oversees SPLP’s public-awareness and emergency-response programs. N.T. 585, 589. Mr. Perez testified that SPLP has a robust public-awareness program that engages the community, utilizing a variety of methods, including meetings, mailings, and specialized training. N.T. 589. The primary goal is to raise awareness with the public and other stakeholders of SPLP’s facilities to ensure that the community knows where the pipelines are located. N.T. 590. SPLP mailed its most recent public-outreach brochures in September 2018, SPLP Exs. 18-19, to the affected public (all residents, businesses, farms, schools, and other places of congregation), excavators, public officials, and emergency response organizations. N.T. 590-93; SPLP Ex. 41 at 4. Consistent with PHMSA regulations, SPLP completes this mailing every two years. But SPLP goes beyond the 660-foot PHMSA criteria for public-awareness mailings by mailing to those located within 1,000 feet of ME1 or ME2. N.T. 592.

Mr. Perez also discussed that SPLP conducts specialized trainings for emergency responders – 1,950 responders and officials in Pennsylvania have attended since the program began in 2013. N.T. 593-95. SPLP’s

¹ Petitioners’ Exhibit P-2 is neither a complete nor current copy of SPLP’s public-information mailing. Complete copies of SPLP’s prior versions of the public mailings were submitted to the Commission with SPLP’s June 22, 2018 compliance filing, provided as SPLP Ex. 11 at Exs. 65-70. Current copies sent to the public and emergency responders were admitted as SPLP Exs. 18 and 19.

records show that Petitioners' expert witness, Timothy Hubbard, was invited to the past two trainings, although he did not attend. N.T. 604-05.

SPLP initiated supplemental school outreach in 2017, and since that time has provided emergency-planning information for 53 school officials located within one-half mile of the ME2 pipeline across Pennsylvania. N.T. 597; SPLP Ex. 41 at 10. A portion of the materials provided to these school districts during supplemental outreach is provided in SPLP Ex. 32. N.T. 587. SPLP is continuing this supplemental school outreach with additional meetings scheduled in December. N.T. 597-98. Once it completes its supplemental outreach, SPLP will have 100% participation from school districts located within one-half mile of its ME pipelines. N.T. 599.

John Zurcher offered un rebutted testimony as SPLP's expert on public awareness, hazard warnings, and pipeline safety. Mr. Zurcher was a member of the committee that drafted the industry standards for public-awareness plans, which were adopted in the PHMSA regulations at 49 C.F.R. § 195.440. N.T. 372. Mr. Zurcher has consulted with pipeline companies and reviewed public-awareness programs for hundreds of companies, and has been an independent auditor of public-awareness programs. N.T. 372-74.

Mr. Zurcher reviewed SPLP's public-awareness program, including the direct mailings sent to the public, schools, local officials, and emergency responders. N.T. 379-92, 397-99; SPLP Ex. 18, 19 and 31. Mr. Zurcher explained that the public-awareness mailings contain standardized instructions for a reason – PHMSA and the pipeline industry want the information communicated to the public and emergency responders to be standard so that there is no confusion about how to identify the location of a pipeline, how to identify a pipeline release, and what to do in response to a pipeline-related emergency. N.T. 372-73. Consistent with other companies' mailings, SPLP's mailings focus on using sight, smell, and sound to identify a pipeline release. N.T. 380, 382-92; SPLP Exs. 21, 22, 24, 25. As Mr. Zurcher explained, "they're remarkably similar and that is on purpose." N.T. 396. The standard message is particularly important where, as in Delaware and Chester counties, there are multiple pipelines within a discrete area, because if a release were to occur, the public may not initially know which pipeline is leaking. N.T. 396-97.

Mr. Zurcher stated that in his expert opinion, SPLP's public-awareness program is appropriate, adequate, meets industry standards, and complies with PHMSA regulations. Importantly, it communicates all information that is necessary for the public to know: (1) where SPLP's pipelines are located by the comprehensive marker system;

(2) how to recognize a release by sight, smell, and sound; and (3) what to do in the event of an emergency. N.T. 382-84, 389-90, 392, 399.

F. SPLP also performed significant outreach and provided extensive training to local emergency responders and public officials.

Gregory Noll testified about SPLP’s extensive outreach to, and training with, local emergency responders. Mr. Noll has been involved with emergency planning and response for over 48 years, as both a volunteer and professional first responder. Mr. Noll is a member of the PHMSA codes and standards committee, which is charged with developing training standards that deal with hazardous materials emergency response. N.T. 462. Mr. Noll quite literally “wrote the book” on emergency response to hazardous materials, which has been adopted by several state and federal agencies as the basis for hazardous materials and incident commander training. N.T. 463.

Mr. Noll implemented the Mariner Emergency Responder Outreach (“MERO”) program, which is targeted for emergency responders and planners for communities located along the ME1 and ME2 rights-of-way. N.T. 465. Mr. Noll led the MERO training in both Chester and Delaware counties (SPLP Ex. 7), which were well attended by local emergency responders, public officials, and school district representatives. N.T. 467-69. Mr. Noll provided the unchallenged professional opinion that SPLP, through its MERO training, provided appropriate information to emergency responders to enable them to develop a pre-incident emergency plan, including decisions whether to evacuate or shelter in place, which can only be assessed in response to a specific incident. N.T. 479-80, 486-87.

In addition to performing the MERO training, the Chester County Department of Emergency Management Services also hired Mr. Noll to facilitate a table-top training session that took place in May/June 2017, and which is scheduled to occur again in December 2018. N.T. 487-88. Delaware County Local Emergency Planning Committee also coordinated a similar table-top training exercise, a summary of which was provided through a video shown during the hearing. N.T. 492; SPLP Ex. 27.² Mr. Noll testified that he is also aware that SPLP has provided and is currently providing training directed to school districts to address their specific concerns. N.T. 495.

Mr. Noll confirmed that, in all instances, it is local emergency responders – not the pipeline operator – who is responsible for developing emergency-response plans. N.T. 480. Mr. Noll also confirmed that each emergency event, and the appropriate response, depends on the facts and circumstances presented, and that emergency responders are trained on the concept of risk-based response, which is based on facts, circumstances, and science.

² Available at: <https://www.lepc.org/pipeline-emergency-response-tabletop-exercise/>.

N.T. 481-82. Mr. Noll confirmed that determining a safe distance from an emergency event is not unique to pipelines, but applies to any emergency. N.T. 501.

Emergency responders may also take affirmative action to minimize the hazard, including using water to knock down a vapor cloud, dissipate it, and reduce the level or risk from the release. N.T. 506-07, 511. Mr. Noll also testified that in his experience, civilians know what to do to protect themselves even before emergency responders arrive at a scene and take over, with the primary goal “in the very simplest terms, is to separate people from the problem.” 483-84. For individuals with limited mobility, Mr. Noll confirmed that most counties in Pennsylvania maintain a vulnerable-needs registry, incorporated into the emergency-dispatch system, which identifies individuals with limited mobility. N.T. 484. Mr. Noll testified that in his professional opinion, there is no method to address issues with individuals with limited mobility prior to an incident, and that is one of the reasons why first responders arrive to assist civilians when an incident occurs. N.T. 485.

Mr. Noll testified that in his professional opinion, SPLP’s emergency-response planning, training, and public-awareness activities that he conducted for the ME pipelines comply with PHMSA regulations, is consistent with what other pipeline operators are providing in Chester and Delaware counties, and provides appropriate and sufficient information for emergency responders to respond safely to a pipeline incident, including to address any issues related to schools or to individuals with limited mobility. N.T. 496-97.

In contrast, the only evidence that Petitioners offered on emergency response was testimony from Timothy Hubbard, Chief Security Officer for Downingtown Area School District, who claimed that SPLP did not provide him with sufficient information that he needs for emergency response. N.T. 80-81. Mr. Hubbard did not attend the various training sessions that SPLP offered to local emergency responders and public officials. N.T. 158 (“I never went to the six-hour training sessions that would teach me how to do everything I needed to do.”). But he was invited, N.T. 248-49, he participated in a table-top exercise and other presentations and training with the Chester County Hazmat Team that dealt with pipeline emergency response, including the ME pipelines, N.T. 72, 161, and he will be participating in a training session in December with the Chester County Department of Emergency Services that will specifically relate to pipeline emergency events and will address Mr. Hubbard’s concerns related to emergency response issues within the Downingtown School District. N.T. 74, 163.

Nevertheless, Mr. Hubbard admitted that he received information directly from SPLP on how to identify the location of a pipeline, how to recognize a leak, and what to do in response to a pipeline-related emergency. He

knows where the pipelines are located and knows that they are (or will be) transporting propane, butane, and ethane. N.T. 81-82, 109. Mr. Hubbard knows how to identify a pipeline leak, N.T. 83-84, 85, and he knows that potentially-affected persons need to evacuate on foot away from the pipeline in an upwind and uphill direction, if possible, and should not operate ignition sources. N.T. 87. He acknowledged that Downingtown Area School District has an emergency-response plan, which is required by the state Department of Education, and which includes provisions on how to evacuate the schools. N.T. 120. The emergency-response plan has existed since at least 2014, before Mr. Hubbard assumed his current position, and it contains information on emergency response to a pipeline incident. N.T. 126. The emergency-response plan accounts for students who have disabilities, and Mr. Hubbard agreed that “I know how to efficiently move them out of the buildings, yes.” N.T. 122.

Mr. Hubbard acknowledged that he received information from other pipeline operators for pipelines located in the Downingtown Area School District, including a pipeline operated by Enterprise Products, referred to during testimony as the TEPPCO line. N.T. 127, 134-55. Mr. Hubbard is aware that other pipelines are located near the school buildings that he manages, and is specifically aware that the TEPPCO pipeline, which parallels ME1 and ME2, is closer to many of his school district’s buildings than SPLP’s ME1 and ME2 pipelines. N.T. 130-31. Because the TEPPCO line has existed for the past several decades, the school district’s emergency-response plan addresses how to respond to a pipeline-related emergency. N.T. 131. Mr. Hubbard agreed with Mr. Noll that it is the school district’s responsibility to develop its own emergency-response plan, not the responsibility of a pipeline operator. “It’s just their responsibility to give information sufficient to create the plan.” N.T. 127. And Mr. Hubbard agreed that SPLP’s public-awareness program and mailings provide that information, as required by the PHMSA regulations. N.T. 145-46.

G. Petitioners’ testimony demonstrates that SPLP’s public-awareness program adequately warns the public of potential hazards of pipelines and how to respond to a pipeline-related emergency.

Petitioners take issue with SPLP’s public-information pamphlets and public-awareness program. Pet. ¶¶ 41-47. But they offered no expert opinion that the pamphlets or program were inadequate or inconsistent with PHMSA regulations. Indeed, while three of the seven petitioners testified at the hearing, they acknowledged that they are aware of the information that SPLP has distributed, establishing that SPLP’s public-awareness program has served its intended purpose. Each knows where the ME1 and ME2 pipelines are located. N.T. 20, 37, 172-74, 195, 204-09. Each knows to recognize a pipeline leak by site, sound and smell. N.T. 228-29. And each knows that, in the

event of a pipeline incident, they should avoid ignition sources and move by foot away from the pipeline, uphill and upwind if possible. 21-22, 36, 38, 45-46, 55, 57, 196-98, 214, 217. Indeed, two of the three petitioners testified about their emergency evacuation plans, which they have practiced. N.T. 198-99, 229-30. Petitioners' expert, Mr. Hubbard, also acknowledged that he knows where the ME1 and ME2 pipelines are located, knows how to recognize a release, and knows what to do in the event of a pipeline-related emergency. N.T. 81-91, 109-11, 122-24.

In addition, Petitioners' expert, Mr. Marx, conceded that SPLP's warnings and instructions on recognizing and responding to a pipeline release are adequate and appropriate. Mr. Marx agreed that if there were a rupture of a pipeline, you would hear it, see it, or smell it, the three methods to identify a pipeline release that SPLP lists in its public-awareness pamphlet:

Q. For the type of catastrophic rupture that you're talking about, would there be a sound, a sight, or smell?

Q. You would either hear that, see it, or smell it; correct?

A. You would certainly hear that if you're anywhere close to the pipeline, and you can most likely see it. Smell is not quite so clear; it's possible

N.T. 332. Mr. Marx also agreed that the appropriate response is to evacuate on foot, away from the pipeline, upwind and uphill if possible. N.T. 334.

H. Shutting down operation of ME1 and enjoining operation of ME2 will damage SPLP and the public.

SPLP, Intervenor Range Resources, and Steamfitters Union Local 420 provided unrebutted evidence that the public interest will be harmed if interim emergency relief is granted. The Commission has already recognized that the public interest was damaged during ME1's prior shutdown. SPLP Ex. 8 at 10. A shutdown of ME1 and ME2 now, during the peak heating season, will result in even greater public harm, [BEGIN HIGHLY

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Anthony

Gallagher, business manager for Steamfitters Local Union 420, explained that significant job losses or lay-offs resulted when ME1 was previously shut down, and that if ME1 is shut down or ME2 is prevented from operating, that further job losses will occur (during the holiday season) and that vital job-creating development projects at the Marcus Hook facilities, which are dependent on ME1 and ME2 for raw product, may no longer occur, which is pushing capital investments out of the Commonwealth. N.T. 547-49.

III. Legal Argument

A. Standard for interim emergency relief.

To obtain interim emergency relief, Petitioners have the burden to prove “a clear and present danger to life or property,” 52 Pa. Code § 3.1; 66 Pa. C.S. § 332(a), and establish all four of the following elements: (1) the right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief is not injurious to the public interest.” 52 Pa. Code § 3.6(b). The burden must be “satisfied by establishing a preponderance of the evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. PUC*, 134 Pa. Commw. 218, 222-23 (Pa. Commw. Ct. 1990). Interim emergency relief requires that Petitioners prove that an emergency exists, as opposed to offering inferences, conjecture or concerns. *Peoples Natural Gas Co. v. PUC*, 555 A.2d 288, 291 (Pa. Commw. Ct. 1989); Order Denying Interim Emergency Relief, *Buffalo-Lake Erie Wireless Sys. Co. v. Verizon-PA*, Dkt. No. C-2010-2158408 (Mar. 2, 2010) (Colwell, J.) at 10; *Edan Transp. Corp. v. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993).

Lay opinions on matters requiring scientific, technical or specialized knowledge are not competent evidence to support a finding of fact. *Pickford v. Pennsylvania-American Water Co.*, Dkt. No. C-2007-8029, 2009 WL 1514962 (Order entered May 14, 2009); Pa. R.E. 701(c) (“If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is . . . not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.”). Similarly, a lay witness’s references to reports or conclusions of others is not substantial evidence, as the lay witness cannot rely on that type of information in reaching a conclusion. *See* Pa.R.E. 701 and 703.

B. The Commission’s previous rulings on SPLP’s public-awareness and emergency-response programs are dispositive.

In *Dinniman*, the Commission rejected challenges to SPLP’s public-awareness and emergency-response programs. In its June 15, 2018 Order in *Dinniman*, the Commission reinstated service on ME1 in the face of allegations of inadequacy in SPLP’s public-awareness program and emergency-response training. SPLP Ex. 10,

¶¶ 1.3. In its August 2, 2018 Order in *Dinniman*, the Commission approved SPLP’s compliance filing, and concluded that SPLP’s public-awareness program and emergency-response outreach and training program comply with applicable requirements:

The documentary materials provided by Sunoco, on their face, indicate communication to the affected public and stakeholders concerning the Mariner East projects and comply with applicable requirements.

SPLP Ex. 12 at 25.

Those orders are *prima facie* evidence that SPLP’s public-awareness and emergency-response programs are adequate. 66 Pa. C.S. § 316 (“whenever the commission shall make any rule, regulations, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all affected thereby, unless set aside, annulled or modified on judicial review.”). Petitioners offered no evidence to upset the Commission’s prior determinations.

C. Judge Barnes properly found that Petitioners failed to satisfy any of the four requirements to obtain interim emergency relief.

1. SPLP’s public-awareness program is appropriate.

Judge Barnes properly found that SPLP’s public-awareness program informed the public of the location of the ME1 and ME2 pipelines, how to recognize a pipeline release by sight, sound and smell, and what to do (and what not to do) in the event of a release from a pipeline. Judge Barnes properly credited the testimony of John Zurcher, SPLP’s expert on public-awareness, whose testimony was un rebutted. And while the three petitioners testified to dissatisfaction with an earlier version of SPLP’s public-awareness brochure, all three acknowledged that they know where the pipelines are, they know how to recognize a release by sight, sound and smell, and they know to move away from the pipeline by foot, uphill and upwind if possible, in the event of a pipeline-related emergency.

2. SPLP’s emergency-response training is appropriate.

Judge Barnes also properly found that SPLP’s emergency-response training was appropriate. Judge Barnes properly credited the testimony of Gregory Noll, who literally “wrote the book” on emergency response to hazardous materials. Mr. Noll explained that SPLP provided the appropriate information for emergency planners to develop emergency-response plans, and Petitioners’ expert Timothy Hubbard agreed that the emergency planners – not SPLP as the pipeline operator – are responsible for developing an emergency-response plan. Petitioners complain that SPLP does not instruct how to evacuate the infirm or disabled or how far is a safe distance to

evacuate. But those are incident-specific issues that are to be addressed in the evacuation plans of emergency planners; they are not the proper subject for SPLP's public-awareness program.

3. A hypothetical worst-case scenario, without any evidence of the likelihood or probability of that scenario occurring, does not establish a clear and present danger.

Without any evidence that ME1 or ME2 are structurally unsound, or any evidence of an imminent release from one of the pipelines or related equipment, or any evidence that such a release is likely to occur, Judge Barnes properly found that Petitioners did not establish a clear and present a danger to human life or property, which is the essential element of a petition for interim emergency relief. Without any evidence that ME1 or ME2 are unsafe or pose any risk of an actual incident occurring, Petitioners' claims and arguments as to the hypothetical consequences of an absolute, worst-case scenario are irrelevant. In the absence of the probability of an event occurring, there can be no clear and present danger or immediate need for relief, no matter what the worst-case consequences of a theoretical incident may be. Similarly, evidence of incidents on other pipelines was insufficient to establish a clear or present danger in *Dinniman*, and Judge Barnes properly found the same evidence lacking here.

4. A shutdown of ME1 and ME2 pipelines will be injurious to the public interest.

Even though Petitioners bear the burden of proof to meet each element for emergency injunctive relief, they did not present any evidence on the fourth prong, that the relief requested is not injurious to the public interest. In contrast, SPLP established that the requested injunctions would injure the public interest, including SPLP, its customers, Range Resources, union and non-union jobs, growth of facilities at Marcus Hook, economic growth,

[BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END HIGHLY CONFIDENTIAL] Judge Barnes properly found that the shutdown of ME1 and ME2 would be injurious to the public.

5. If the Petition is granted, the Commission must require Petitioners to post a bond equal to the damages that SPLP will suffer.

Since the 1800s, Pennsylvania courts have recognized the requirement at common law to post a bond when seeking an injunction, and that common law rule has been codified in the Pennsylvania Rules of Civil Procedure. Pa. R.C.P. 1531(b); *see also Lawrence Cnty. v. Brenner*, 582 A.2d 79, 84 (Pa. Commw. Ct. 1990) (“Failure to post a bond when either special relief or a preliminary injunction is being sought nullifies both the injunction and any disposition in the pending matter.”) (citing *Rosenzweig v. Factor*, 457 Pa. 492, 327 A.2d 36 (Pa. 1974)). The reason for the bond requirement is two-fold. “For one, it serves to compensate a wrongfully enjoined party. It also serves to ‘deter[] rash applications for interlocutory orders; the bond premium and the chance of liability on it cause plaintiff to think carefully beforehand.’” *Synthes, Inc. v. Gregoris*, 228 F. Supp. 3d 421, 447 (E.D. Pa., 2017) (citing *Sprint Comm'cns Co. L.P. v. CAT Comm'cns Intern., Inc.*, 335 F.3d 235, 241 n.5 (3d Cir. 2003) and *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804 (3d Cir. 1989)).

This reasoning applies with equal force to the Commission’s emergency injunctive relief procedures and the petition for interim emergency relief. In fact, the Commission’s regulations state that the Commission “may” require a bond, and it should here, were the Commission to enjoin ME1 and ME2. In *Dinniman*, the Commission declined to require a bond because it was lifting the injunction on the operation of ME1 and construction of ME2 had been halted by DEP. Were the Commission to impose an injunction now, it should be conditioned on the posting of a bond to pay the substantial damages that would necessarily flow from the shutdown of ME1 and ME2, as demonstrated by the uncontradicted damage testimony introduced on the proprietary record.

IV. Conclusion

Without any evidence that ME1 or ME2 is unsafe, any evidence of issues with the integrity of the pipelines, or any evidence of the risk that a release or pipeline-related emergency could occur, all Petitioners have is a hypothetical absolute worst-case scenario. What Petitioners thus seek is a referendum on locating HVL pipelines in high-consequence areas without any supporting scientific evidence. Doing so would ignore existing regulations that specifically contemplate that HVL pipelines will be located in high-consequence areas, and that require heightened inspection and safety requirements built into PHMSA’s regulations. It also ignores that there are 40,000 miles of HVL transmission pipelines in the United States located in high-consequences areas – including specifically in Chester and Delaware counties.

PUBLIC VERSION

The uncontradicted and overwhelming evidence establishes that SPLP's robust public-awareness and emergency-response programs provide the appropriate information to the public and first responders, and that the program is working as intended. All three petitioners who testified at the hearing, and both of Petitioners' expert witnesses, admitted that they: (1) know where ME1 and ME2 are located; (2) know how to identify a release from a pipeline using sight, sound, and smell; and, (3) know that in the event of a release, they should not use an ignition source and should move away from the pipeline on foot, upwind and uphill in possible.

For the Commission to grant Petitioners relief, they must present substantial credible evidence to meet the heavy burden of establishing that there is a "clear and present danger to the public" such that the Commission should shut down an operating public utility and cause significant harm to SPLP, shippers, industry, labor, and Pennsylvanians who rely on propane and natural gas during the peak winter heating season. Because Petitioners have not met this heavy burden, the ME1 and ME2 pipelines should not be enjoined from operating, and the Petition should be denied for the reasons set forth in Judge Barnes' Order.

Respectfully submitted,



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