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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 for filing is the Main Brief on behalf of Range Resources – Appalachia, LLC (“Range”) in the above-referenced proceeding. The Public Version of Range’s Main Brief is being electronically filed with the Pennsylvania Public Utility Commission (“Commission”). Due to the COVID-19 pandemic, the **HIGHLY CONFIDENTIAL** version of Range’s Main Brief is being filed with the Commission via e-mail to Secretary Rosemary Chiavetta.

Copies will be provided as indicated on the Certificate of Service. The **HIGHLY CONFIDENTIAL** version of Range’s Main Brief will only be served upon counsel for parties that have executed an appropriate non-disclosure certificate pursuant to the Protective Order issued in this proceeding.

Respectfully yours,

Anthony D. Kanagy

ADK/kl
Attachment

Rosemary Chiavetta, Secretary
December 16, 2020
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cc: Honorable Elizabeth Barnes
Certificate of Service

CERTIFICATE OF SERVICE

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	Docket No. C-2018-3006116
Rosemary Fuller	:	Docket No. P-2018-3006117
Michael Walsh	:	
Nancy Harkins	:	
Gerald McMullen	:	
Caroline Hughes	:	
Melissa Haines	:	
Andover Homeowners Association	:	Docket No. C-2018-3003605
Melissa DiBernardino	:	Docket No. C-2018-3005025
Rebecca Britton	:	Docket No. C-2018-3006898
Laura Obenski	:	Docket No. C-2018-3996905
v.	:	
Sunoco Pipeline L.P.	:	

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I. INTRODUCTION

Intervenor, Range Resources – Appalachia, LLC (“Range” or the “Company”) is an independent natural gas and natural gas liquids (“NGLs”)¹ producer in Pennsylvania and relies heavily on the operation of the Mariner East Pipelines² so that it may continue to operate and produce its wells and move its products to market. The relief sought by the Complainants, including complete shut-down of these critical pipelines, would have far-reaching negative impacts on Range and its ability to produce both natural gas and NGLs, its royalty owners, consumers and the Commonwealth. Despite the Commission’s prior reviews of the Mariner East Pipelines, the Complainants continue to seek an absolute shut-down of these pipelines contrary to the law and salient facts.

Therefore, Range files this Post-Hearing Brief in Opposition to the relief sought in: (1) the Second Amended Formal Complaint filed by Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines (“Flynn Complainants”) on June 18, 2019 at Pennsylvania Public Utility Commission (“Commission”) Docket No. C-2018-3006116 (the “Flynn Complaint”); (2) the Formal Complaint filed by Andover Homeowners’ Associations, Inc. (“Andover”) on July 24, 2018 at Docket No. C-2018-3003605; (3) the *pro se* Formal Complaint filed by Melissa DiBernardino on October 1, 2018 at Docket No. C-2018-3005025; (4) the *pro se* Formal Complaint filed by Rebecca Britton on December 27, 2018 at Docket No. C-2018-3006898; and (5) the *pro se* Formal Complaint filed

¹ When Range refers to “NGLs,” it is specifically referring to ethane, propane, normal butane, isobutane and pentanes. Range St. 1-R at 2.

² The Mariner East 1 pipeline (“ME1”), Mariner East 2 pipeline (“ME2”) and the Mariner East 2X pipeline (“ME2X”) are collectively referred to as the “Mariner East Pipelines.”

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by Laura Obenski at Docket No. C-2018-3996905 (hereinafter the “the Complaints” and the “Complainants”).

Range supports Sunoco Pipeline, L.P.’s (“Sunoco” or “SPLP”) arguments in opposition to the specific allegations and relief sought by the Complainants. Range intervened in this proceeding to underscore and demonstrate the substantial harms to Range, Range’s royalty owners, other shippers on ME1, ME2 and ME2X, and the public as a whole. Therefore, Range focuses on the substantial public harms that would result if the Complainants’ requested injunctive relief were to be granted and the Complainants’ failure to satisfy the requirements for injunctive relief.

The Complainants and the Complainant-Aligned Intervenors³ continue to re-litigate issues which have been reviewed and resolved in prior proceedings. Petitioners and counsel are aware of these proceedings, many have participated in these proceedings and yet they continue to present the same issues. The Complainants have failed to demonstrate that the Commission should order: (1) the permanent cessation of operations on Sunoco’s 8-inch ME1, its workaround pipeline, ME2, or ME2X (*see* Flynn Compl. Count I, ¶ 122 (alleging Sunoco has a non-compliant public awareness program); *see also* Flynn Compl. Count II, ¶ 126 (alleging a violation of 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33)), (2) a temporary cessation of operations on Sunoco’s 8-inch ME1, the 12-inch workaround pipeline, ME2, and ME2X “until

³ The following parties intervened in this proceeding and aligned themselves with the Complainants: Andover, which filed a separate petition to intervene in the Flynn Complaint proceeding; Clean Air Council (“CAC”); Downingtown Area School District (“DASD”); Rose Tree Media School District (“Rose Tree”); Twin Valley School District (“TVSD”); East Goshen Township (“East Goshen”); West Whiteland Township (“WWT”); Uwchlan Township (“Uwchlan”); Middletown Township (“Middletown”); the County of Delaware (“Delaware”); West Chest Area School District (“WCASD”); Thornbury Township, Delaware County (“Thornbury”); Edgmont Township (“Edgmont”); the County of Chester (“Chester”); and Pennsylvania Senator Thomas Killion (“Pa. Sen. Killion”). Although not all of the Complainant-Aligned Intervenors have joined in the Complainants’ requests for injunctive relief, Range expects that the Complainants may rely upon certain of the testimony and exhibits presented by the Complainant-Aligned Intervenors to argue in support of their requested injunctive relief.

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such time as the Commission has evaluated the potential loss of human life, property, and public infrastructure, and has ensured the risk is reduced to a tolerable level” (*see* Flynn Compl. Count III, ¶ 136 (alleging inherent risk of harm)), and/or (3) a temporary cessation of operations on Sunoco’s ME1 pipeline⁴ and 12-inch workaround pipeline until a remaining life study of those pipelines by an independent consultant is completed (*see* Flynn Compl. Count IV, ¶ 143). As explained below, Range submitted un rebutted, material evidence that the injunctive relief sought by the Complainants would cause substantial harm to the public and substantially increase the costs of an essential energy source across the Commonwealth and the Northeastern region of the United States. These substantial public harms demonstrate that the Complainants’ requested injunctive relief is not in the public interest and should be denied. Moreover, the Complainants have failed to satisfy the elements required to obtain an injunction under Pennsylvania law, and Range supports Sunoco’s arguments in this regard.

For these reasons and the reasons more fully explained below, the Complainants’ requests for injunctive relief should be denied by the ALJ and the Commission.

II. PROCEDURAL SUMMARY

The extensive procedural history of the above-captioned proceeding is more fully set forth in the Main Brief of Sunoco. Range makes reference to and adopts the summary of the procedural history set forth in Sunoco’s Main Brief, but provides the following information specific to Range’s participation in these proceedings.

⁴ By Order dated September 25, 2020, the ALJ granted in part Sunoco’s Motion in Limine To Narrow Issues and concluded that “the relief requested of an independent consultant conducting a remaining life study on Mariner East 1 is stricken as moot.” September 25, 2020 Order, at Ordering Paragraph 9. However, the ALJ also concluded that “the relief requested of an independent consultant conducting a remaining life study on the 12-inch workaround pipeline in Chester and Delaware Counties remains in the Flynn Complainants’ complaint.” *Id.* As such, this aspect of the Complainants’ requested relief is narrowed to exclude consideration of the ME1 pipeline.

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Importantly, 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 ME1*, 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 of ME1, Pennsylvania State Senator Andrew E. Dinniman sought to enjoin ME1 operation, ME2 and ME2X. *See* 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,⁵ 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. *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket Nos. C-2018-3001451 and P-2018-3001453, at Ordering Paragraph 3 (Order entered June 15, 2018) (“*Dinniman Order Reinstating ME1*”). 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. 51-53, Ordering Paragraphs 6-8 (setting forth specific reporting conditions for SPLP to comply with). Thereafter, Sunoco made the requisite Compliance Filings as recognized by the Commission, and the pipelines have remained in service. *See, e.g., Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*,

⁵ *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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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, and the continued service provided by ME1 and ME2, which went into service in December 2018, the Petitioners filed the Flynn Petition and an associated Complaint on November 20, 2018, which yet again sought Commission review of the safety and reasonableness of ME1, ME2 and ME2X operations.

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

On December 7, 2018, Range filed a Brief in Opposition to the Interim Emergency Relief sought by the Flynn Petition.

On December 11, 2018, the ALJ issued an Order Denying the Petition for Interim Emergency Relief. The order summarily and correctly denied the Flynn Complainants’ request for interim emergency relief and certified the denial of the relief requested to the Commission as a material question requiring interlocutory review.

On December 18, 2018, Range filed a Brief in Support of the Order Denying Interim Emergency Relief.

On February 1, 2019, the Commission affirmed the ALJ’s December 11, 2018 Order Denying the Petition for Interim Emergency relief and returned this matter to the ALJ for disposition.

In-person lay, pro se litigant hearing(s) were held over multiple days in October 2019.

The Complainants and Complainant-Aligned Intervenors submitted pre-served written direct testimony on January 1, 2020.

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Range submitted its pre-served written direct testimony, Range Statement No. 1-R – Rebuttal Testimony of Alan Engberg (public and HIGHLY CONFIDENTIAL versions) on June 15, 2020, pursuant to the amended procedural schedule established in the ALJ’s May 28, 2020 Order.

The Complainants and Complainant-Aligned Intervenors submitted preserved written surrebuttal testimony on June 15, 2020.

Range participated in the evidentiary hearings held via ZOOM video-conferencing on September 29, 2020 through October 9, 2020 and October 13-14, 2020. Range witness Mr. Engberg appeared at the hearing and was subject to cross-examination on the October 5, 2020 hearing date.

A Briefing Order was issued on October 23, 2020, and Range hereby submits its Main Brief in accordance with the Briefing Order.

III. LEGAL STANDARDS

A. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). Only if the proponent of the rule or order present evidence found to be of greater weight than the other parties, will it have carried its burden of proof. *Morrissey v.*

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Commonwealth, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. Pub. Util. Comm’n*, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217, 1220 (Pa. Cmwth. 2001). Consequently, as the parties seeking affirmative relief in this proceeding, the Complainants bear the burden of proving that Sunoco has violated the Public Utility Code, or a Commission regulation or order, and proving that they are entitled to the relief they seek.

Although the factual burden may shift during a proceeding, the proponent of the rule or order (*i.e.*, the complainant) always maintains the overarching burden of proof. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983). The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwth. 2001); *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order dated Oct. 9, 1980).

Finally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm’n*, 960 A.2d 189, 193 n.2 (Pa. Cmwth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwth. 2007) (citation omitted).

B. STANDARDS FOR INJUNCTIVE RELIEF

In order to obtain any relief, a complainant must demonstrate that a utility violated the Public Utility Code, a Commission regulation or order or a Commission-approved tariff. *West*

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Penn Power Co. v. Pa. Pub. Util. Comm'n, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (“*West Penn*”) (“We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.” (emphasis added)); *Township of Spring et al. v. Pennsylvania-American Water Company*, Docket Nos. C-20054919 et al, 2007 WL 2198196 at *6 (Order entered Jul. 27, 2007) (“If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.”) (citing *West Penn*); *Baker v. SPLP*, Docket No. C-2018-3004294, at 6 (Opinion and Order entered Sept. 23, 2020) (“*Baker*”) (citing 66 Pa. C.S. § 701).

In order to obtain permanent injunctive relief,⁶ a party must establish that his or her right to relief is clear and that the relief is necessary to prevent a legal wrong for which there is no adequate redress at law. *See Buffalo Twp. v. Jones*, 571 Pa. 637, 644, 813 A.2d 659, 663 (Pa. 2002), *cert. denied*, 157 L. Ed. 2d 41, 2003 U.S. LEXIS 6042 (2003). Where a complainant seeks temporary injunctive relief,⁷ however, they must also demonstrate that (1) the need for relief is immediate; and (2) injury would be irreparable if relief is not granted. *See Buffalo Twp.* 813 A.2d at 663 (citing *Soja v. Factoryville Sportsmen's Club*, 361 Pa. Super. 473, 522 A.2d 1129, 1131 (Pa. Super. 1987)). In addition, the Commission's regulations contemplate a party

⁶ The Flynn Complainants have specifically sought the permanent cessation of operations on Sunoco's 8-inch ME1, its workarround pipeline, ME2, and ME2X. *See* Flynn Compl. Counts I and II, ¶¶ 122 and 126.

⁷ The Flynn Complainants have specifically sought a temporary cessation of operations on Sunoco's 8-inch ME1, the 12-inch workarround pipeline, ME2, and ME2X “until such time as the Commission has evaluated the potential loss of human life, property, and public infrastructure, and has ensured the risk is reduced to a tolerable level” (*see* Flynn Compl. Count III, ¶ 136 (alleging inherent risk of harm)), and/or a temporary cessation of operations on Sunoco's 12-inch workarround pipeline until a remaining life study of those pipelines by an independent consultant is completed (*see* Flynn Compl. Count IV, ¶ 143).

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seeking a temporary injunction must also demonstrate that the requested relief is not injurious to the public interest. 52 Pa. Code § 3.6(b); *see also Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). If any one of these essential pre-requisites is not proved by a complainant, the Commission will deny the relief requested. *See 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).

Importantly, however, the ALJ and this Commission have previously held that injunctive relief must be narrowly tailored to abate the harm complained of:

Injunctive relief must be narrowly tailored to abate the harm complained of. *Pye v. Com. Ins. Dep't*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury”); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018).

West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, at p. 42 (Recommended Decision dated July 16, 2018) (Barnes, J.), *adopted in full*, (Order dated Oct. 1, 2018). *See also Baker* at 26 (holding directives to provide additional training, submit a plan to enhance public awareness and emergency training plans and record keeping, and complete an audit of public awareness program by a third-party “were not justified on the basis of the finding of a violation of the duty meet public awareness and outreach obligations under 49 C.F.R. § 195.440”).

Moreover, the Commonwealth Court held that an injunction that commands the performance of an affirmative act, a “mandatory injunction,” is the rarest form of injunctive relief and is often described as an extreme remedy. *Woodward Twp. v. Zerbe*, 6 A.3d 651 (Pa.

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Cmwlth. 2010) (citing *Big Bass Lake Community Assoc. v. Warren*, 950 A.2d 1137, 1144 (Pa. Cmwlth. 2008)). The case for a mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction. *Id.* at 1145; *see also Crums Mill Assoc., et al. v. Dauphin Consolidated Water Supply Company*, Docket No. C-00934810, 1993 Pa. PUC LEXIS 89, at *10 (Interim Emergency Order Denying Relief dated Mar. 23, 1993) (citing *Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. 1980)). Indeed, Pennsylvania courts have previously held that a party seeking a mandatory injunction “must demonstrate that they are clearly entitled to immediate relief and that they will suffer irreparable injury if relief is not granted.” *See Allen*, 417 A.2d at 401.

IV. SUMMARY OF ARGUMENT

The Complainants have failed to demonstrate that they are entitled to the extraordinary remedies they seek, let alone any relief at all, with respect to the consolidated Complaints at issue in this proceeding. The Complainants' allegations that Sunoco's public awareness program, emergency management plan and/or integrity management plan are somehow insufficient, and that the Mariner East Pipelines' construction and/or operation are somehow so inherently dangerous that they should be permanent enjoined from operating are unfounded and unsupported by credible record evidence.

Importantly, the Complainants' request that the Commission order Sunoco to cease operations of the Mariner East Pipelines—in some cases permanently—would substantially harm Range and the public at large. Range presented extensive un rebutted evidence that the Complainants' requests to cease operations over the Mariner East Pipelines would substantially harm the public and Range. Among these harms, Range showed that:

- The Complainants' requested relief would eliminate the primary means by which NGL producers such as Range transport NGL products across Pennsylvania;
- The Complainants' requested relief would undermine Range's ability to utilize the safest and most reliable means of transporting natural gas and NGLs across Pennsylvania, *i.e.*, pipeline transportation;
- The Complainants' requested relief would force Range, and likely other producers to shut-in natural gas production, resulting in losses to production, capital investment, jobs and revenue for the entire natural gas supply chain;
- The Complainants' requested relief would harm Range's Pennsylvania-based royalty owners, in the form of reduced or non-existent royalty payments resulting from shut-ins of natural gas production;
- The Complainants' requested relief would decrease ethane, propane, butane and natural gas supplies and would very likely increase the price of NGLs and natural gas to consumers in Pennsylvania and across the Northeastern United States;
- The Complainants' requested relief would decrease available feedstock supplies used to manufacture products such as detergents, hygiene products, face masks, medical

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gowns and medical devices, which are essential for fighting the COVID-19 pandemic;

- The Complainants’ requested relief would substantially reduce the amount of drilling impacts fees collected by the Commonwealth and deprive communities in Pennsylvania in millions of dollars in annual revenues; and
- The Complainants’ requested relief could exacerbate the economic impacts of COVID-19 on the Commonwealth at a time when access to less-expensive, locally produced energy products is critical.

The evidence presented by Range demonstrates that the Complainants’ requested injunctive relief will result in significant and widespread harms to the public. Rather than addressing any alleged violation of the Public Utility Code, a Commission regulation or a Commission order, the Complainants’ requested injunctive relief would directly harm Range, other shippers on the Mariner East Pipelines and members of the public that rely upon the products shipped. In this regard, Range’s evidence shows that the injunctions sought are neither tailored toward the unproven harms alleged by the Complainants nor in the public interest.

Furthermore, Range supports Sunoco’s arguments on the merits of each alleged violation advanced by the Complainants, and for each, Complainants have failed to demonstrate that they are entitled to any relief, let alone the injunctive relief sought. For purposes of its Main Brief, however, Range specifically notes that the Complainants have failed to demonstrate that their right to the mandatory injunctive relief sought is “entirely clear” or that the injunctive relief sought is necessary to prevent a legal harm for which there is no adequate remedy at law.

Indeed, the Complainants failed to demonstrate that their right to relief is “entirely clear.” Because the Complainants seek mandatory injunctive relief that alters the status quo, *i.e.*, the Mariner East Pipelines currently transport NGLs across Pennsylvania and the Complainants have sought a Commission order requiring such transportation to cease, the Complainants must make

a very strong showing, one stronger than that required for a restraining-type injunction. The Complainants have failed to do so.

For these reasons, and the reasons more fully explained below, the ALJ and the Commission should deny the Complaints and decline to award the Complainants any of the relief they seek.

V. ARGUMENT

A. THE COMPLAINANTS' REQUESTED SHUTDOWN OF THE MARINER EAST PIPELINES WILL CAUSE SUBSTANTIAL PUBLIC HARMS AND IS NOT IN THE PUBLIC INTEREST.

1. A Shutdown Of The Mariner East Pipelines Will Result In Significant Harms To Range.

a. Range Is A Large Producer Of Marcellus Gas In Pennsylvania And An Active Shipper On The Mariner East Pipelines.

Range presented unrebutted and credible testimony that a shutdown of the Mariner East Pipelines will result in substantial harms to Range and the public at large. Unlike any of the other parties to this proceeding, Range is a shipper on the Mariner East Pipelines. *See* Range St. 1-R at 5. Range witness Mr. Alan Engberg, Vice President of Liquids Marketing, provides the ALJ and the Commission with a unique and important perspective on the impacts of the Complainants' requested injunctive relief.

Range is a pioneer in the development of the Marcellus Shale in Pennsylvania and, since 2004, has acquired approximately 833,00 net acres across the Commonwealth. Range St. 1-R at 3. Range is a top 10 natural gas producer and a top 5 NGL producer in the country. Range St. 1-R at 3. Since 2004, Range has invested over \$7 billion of capital in the Commonwealth. Range St. 1-R at 3. In addition, since 2015, Range has paid Pennsylvania-based royalty owners over \$1.115 billion. Range St. 1-R at 3. Furthermore, Range has paid over \$216 million to the

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Commonwealth via the drilling impact fee. Range St. 1-R at 4. In sum, Range has a substantial presence in the Commonwealth and its drilling activities result in significant economic contributions throughout Pennsylvania.

b. The Mariner East Pipelines Are Essential To Range’s Business.

The ME1 and ME2 pipelines are essential to Range’s business. Range currently directly and indirectly transports 70,000 barrels per day (“BPD”) of natural gas liquids on ME1 and ME2, as follows:

- Range transports 20,000 BPD of ethane on ME1. Range St. 1-R at 5.
- Range transports 30,000 BPD of propane and 10,000 BPD of normal butane on the ME2 pipeline. Range St. 1-R at 5.
- Range sells 10,000 BPD of a combination of propane and normal butane to a third party that transports this product on ME2.

Range’s shipments on the Mariner East Pipelines represents approximately 32% of its typical ethane and 100% of its current propane and normal butane production in Pennsylvania. Range St. 1-R at 5.

Pipeline transportation provides the safest and most reliable means of transportation of natural gas and natural gas liquids. Range St. 1-R at 7. More specifically, the Mariner East Pipelines provide Range with a safe and reliable takeaway capacity for the NGLs it produces from the NGL-rich natural gas that is produced in portions of the southwestern region of Pennsylvania. Range St. 1-R at 7. In addition, the Mariner East Pipelines alleviate NGL supply congestion and over-supply in the Appalachian market. Range St. 1-R at 7. Without these pipelines, products produced in the local Appalachian market could not be reliably transported to downstream consumers. And, as explained below, the lack of reasonable alternatives means that these products would likely be shut-in rather than transported by alternative means to alternative markets.

c. Range Has No Reasonable Alternatives To Transport Its Products.

Range has no reasonable alternatives to transport its products across Pennsylvania to its customers other than the Mariner East Pipelines. Truck or rail transportation are inadequate and/or inefficient methods for transporting the products Range produces in and across Pennsylvania. With respect to the ethane that Range produces, large volumes can only be transported by pipeline due to its boiling point that makes large scale bulk truck or rail transportation ineffective and uneconomic. *See* Range St. 1-R at 7-8. In the absence of pipeline capacity, Mr. Engberg explained that a natural gas producer would be forced to limit or possibly shut in production after it reaches the maximum level of ethane in the gas stream. Range St. 1-R at 8.

At the hearing, CAC suggested in cross-examination that there may soon be additional rail transportation alternatives for Range's ethane production. Tr. 2820. Although CAC attempted to question Mr. Engberg about a prospective rail alternative for liquified natural gas transportation through Pennsylvania being planned by New Fortress Energy, Mr. Engberg explained that this alternative is not applicable to the transport of ethane and therefore does not alleviate the restraints on shipping ethane by rail. Tr. 2820. Furthermore, Mr. Engberg explained that he was unaware of a project similar to that being planned by New Fortress Energy having been implemented in any part of the country and that, because it will involve train switches, only a relatively small volume of natural gas relative to total production and consumption will be able to be transported. *See* Tr. 2820. In any event, this hypothetical alternative cannot reasonably be expected to supplement the existing limited rail transportation alternatives that Mr. Engberg has concluded are inadequate, particularly with respect to ethane.

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With respect to propane and butane, Mr. Engberg acknowledged that these products can be more easily chilled and/or compressed for transportation by rail or truck. Range St. 1-R at 8. However, the volume of these products transported by Range on the Mariner East Pipelines in any given month would necessitate 2,130 railcars or 7,600 trucks. Range St. 1-R at 8. Setting aside the significant impacts this increased transportation could have on local rails and roads, Mr. Engberg further noted that “the total volumes of Appalachian-produced propane and normal butane flowing on the Mariner East Pipelines today (estimated at a maximum of 200,000 barrels/day) exceed the available railcar and truck loading capacity in Appalachia.” Range St. 1-R at 8 (emphasis added). This fact is particularly significant because, without sufficient loading capacity, it does not matter if additional railcars or trucks could be made available to transport these products.⁸ If there is insufficient loading capacity, then the products themselves cannot be moved onto and by these methods of transportation.

Finally, Mr. Engberg made clear that other pipelines in the region are not viable alternatives for the movement of propane and butane currently transported on the Mariner East Pipelines.⁹ Importantly, he explained that the Mariner East Pipelines are one of only two pipeline systems transporting propane from production in western Pennsylvania, Ohio and West Virginia. Range St. 1-R at 9-10. The only other pipeline system is Enterprise’s TEPPCO pipeline, but it only has approximately 12.5% of ME2’s capacity for reaching the Marcus Hook storage, distribution and export terminal. Range St. 1-R at 9. Similarly, there is no other

⁸ Range specifically noted that, in the past, it had confirmed the rail loading facilities operated by its midstream service provider did not have adequate loading capacity to accommodate the current NGL flows on the Mariner East Pipelines, *i.e.*, 226,000 BPD of NGLs. Range St. 1-R at 9.

⁹ Mr. Engberg acknowledged other pipeline alternatives were available for the transportation of ethane. Tr. 2821-2822.

pipeline alternative for transporting normal butane out of western Pennsylvania. Therefore, Mr. Engberg concluded:

if western Pennsylvania production is prohibited from flowing on the Mariner East Pipelines, and the TEPPCO pipeline is already subscribed, the remainder of this Pennsylvania-based production would be forced to flow on available rail and truck loading capacity which would be quickly overwhelmed resulting in well-pad shut-ins followed by the attendant consequences described above.

Range St. 1-R at 9.

d. If The Complainants' Requested Cessation Of Operations Of The Mariner East Pipelines Occurs, Range Will Be Significantly Harmed.

If the Mariner East Pipelines are forced to cease operations as the Complainants have requested, then Range, and possibly other producers, would be forced to shut-in natural gas production throughout Pennsylvania, resulting in significant economic harms. Range St. 1-R at 8-9. The negative impacts of a cessation of Mariner East Pipeline operations on Range are well-documented and substantial.

With respect to the direct harms to Range, Mr. Engberg explained that Range's ethane that normally flows on ME1 would either be sold into an alternate market or be rejected into the gas stream, but only in limited quantity, resulting in significant financial losses. Range St. 1-R at 12. Mr. Engberg differentiated between a scenario where Range would be able to identify an alternative market for its ethane and a scenario where it could not be placed into an alternative market. Assuming Range could find an alternative market for the ethane it normally flows on ME1, Range would incur approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in additional transportation costs and lost profits per year.

Moreover, Mr. Engberg explained:

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

Range St. 1-R at 13 (emphasis added).

If the ME2 system were forced to cease operations, Mr. Engberg explained that approximately 50,000 BPD of propane and normal butane would be at risk. Assuming, railcars and railcar loading facilities were available in adequate quantities to transport the 50,000 BPD production and alternate rail markets were available, Mr. Engberg estimated that Range would incur [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in increased costs (e.g., increased logistics fees and lower priced markets) per year. Range St. 1-R at 13. Mr. Engberg further explained however, that it was more likely that Range would only be able to access rail cars and railcar loading capacity for the equivalent of 19,000 BPD of propane and butane and specifically noted that truck loading is not available for Range’s NGL production. Range St. 1-R at 13. In this scenario, 31,000 BPD of Range’s propane and butane production would be without access to rail or pipe loading [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL] Range St. 1-R at 13-14.

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Contrary to the arguments of other parties, Mr. Engberg’s calculation of economic harms to Range are well-founded and based on Range’s past experience.¹⁰ Specifically, Mr. Engberg identified three prior shutdowns of ME1, and quantified the additional costs incurred by Range due to each of these prior shutdowns. *See* Range St. 1-R at 10-12. In addition, [BEGIN

HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END
HIGHLY CONFIDENTIAL] Tr. 2787.

Mr. Engberg’s quantification of harms was further corroborated on cross examination, when counsel for CAC asked if Range incurred losses due to a scheduled shutdown of ME1 in September 2019, for work at the Marcus Hook facility. *See* Tr. 2816-2818. First, Mr. Enberg explained that a *scheduled* shutdown is dissimilar to an *unscheduled* shutdown (i.e., what the Complainants request here) due to the amount of pre-planning that is able to take place to avoid more significant losses. *See* Tr. 2817. Second, the September 2019 work was limited and resulted in only a short disruption. Even during this pre-planned and limited outage, Range was impacted as Mr. Engberg confirmed that it was forced to divert ethane that was not able to flow on ME1 and, although Range did not have to shut-in wells (Tr. 2817) it did incur [BEGIN

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

[END **HIGHLY**

CONFIDENTIAL] in increased costs. Tr. at 2840.

¹⁰ Counsel for the Flynn Complainants specifically attempted to disparage Mr. Engberg for presenting these calculations. *See, e.g.*, Tr. 2785-2786, 2787-2792, 2793. However, the Flynn Complainants never sought the underlying documentation relied upon by Mr. Engberg to make his calculations and presented no factual testimony that contradicted it. It is well-established that if a party rebuts a complainant’s evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut that party’s evidence by a preponderance of the evidence. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983). If the complainants do not rebut this evidence, they have failed to satisfy their burden.

2. A Shutdown Of The Mariner East Pipelines Will Result In Substantial Harms To The Public.

In addition to the substantial economic harms that Range would directly experience if the Complainants' requested injunctive relief were granted, Mr. Engberg also testified regarding the negative impacts to royalty owners, natural gas and propane consumers throughout the Northeastern United States, Pennsylvania workers, and the Commonwealth. These additional indirect economic impacts upon the individuals Range does business with and the communities that rely, in some fashion, upon the products it produces could also further exacerbate the adverse impacts of the COVID-19 pandemic. The Complainants' requested relief would also significantly harm the public at large.

a. Royalty-Landowners Would Suffer Substantial Economic Harm If The Pipelines Are Shut Down.

In order to develop natural gas and NGLs in Pennsylvania, Range has entered into individual leases or contracts with landowners. Those leases and landowners and the forthcoming development by Range pursuant to those leases is centered in Washington County, Pennsylvania. As part of the lease agreement, Range pays a royalty each month to those landowners which is largely based upon the amount of production and the price received by Range for that production. Those monthly payments, therefore, are contingent upon Range's ability to produce natural gas, and the associated NGLs, and transport and NGLs on the Mariner East Pipelines. *See* Tr. 2830 (Mr. Engberg noting that a shutdown of the Mariner East Pipelines "would have [an] interruption to their cash flows" and "I would think most people, their budgets may be tight at this time and impact to cash flow could be significant."). If the Complainants' request to shutdown ME1 and ME2 were granted, these Pennsylvania citizens would be substantially harmed.

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Specifically, Mr. Engberg estimated that a shutdown of ME1, which would affect Range's transportation of ethane, could [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14. Assuming that Range was unable to access alternate ethane markets and ethane rejection was not available, its royalty owners would [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14.

Similarly, if ME2 was shut-down and Range could only access railcars and railcar loading capacity for 38% of its 50,000 BPD of ME2 flows, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [REDACTED] [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14. However, the harms to royalty owners would be substantially worse if Range could not access railcars and rail loading capacity for its ME2 flows at all.

The Complainants simply ignore these significant impacts to other Pennsylvanians. Their failure to consider such impacts further demonstrates that the requested injunctive relief should be denied.

b. Natural Gas And Propane Consumers Throughout The Northeastern United States Will Be Harmed If The Pipelines Are Shut Down.

Shutting down the Mariner East Pipelines would cause significant economic harms to natural gas and propane consumers in the Northeast. Mr. Engberg quantified the adverse impacts on Northeastern United States' natural gas and propane consumers, that would result from another shutdown of the Mariner East Pipelines. He explained that:

A decrease in ethane, propane, butane and natural gas supply resulting from a shut-in of ME1 and ME2 would very likely increase the price of NGLs and natural gas to consumers in Pennsylvania. Demand for both propane and natural gas is highest during the winter when people use these key products to heat their homes in the region. It is estimated that the shut-down of these pipelines would result in the shut-in of approximately one third of Appalachian NGL production and 8% of Appalachian natural gas production. This would likely leave the region short of supply to meet winter demand and require high cost imports to the region by rail, pipeline and from overseas. Accordingly, decreasing supply could result in severe price inflation for consumers during the critical winter months. If we assumed a 10% increase in Northeastern winter propane and natural gas prices as a result of this lost supply, the EIA's October 2019 Winter Fuels Outlook report suggests that Northeastern natural gas consumers would pay an extra \$71/household during the winter while Northeastern propane consumers would pay an extra \$166/household.

Range St. 1-R at 14-15.¹¹

At the hearing, counsel for CAC attempted to discredit Mr. Engberg's calculations. Tr. 2823. These attempts were fruitless given the reality of the situation and the sound data and methodology provided by Range. Indeed, Mr. Engberg fully explained and supported his method for reaching these conclusions on cross examination. He explained:

Q. So, to be clear, Mr. Engberg, the question I'm asking is, for the analysis you just referred to that looked at the economic impacts to the Commonwealth, how did you perform that analysis?

A. By looking at what the impact would be on Range Resources, first and foremost. And I identified those numbers in the report. And then I also identified the effect on royalty owners, which are landholders in the state that would not get paid if we are not producing a certain well on their property. And I looked at the impact on the payment of the state impact fees.

Then I took that and said, all right, that's the effect on Range. Range is roughly a quarter of what is being transported on ME2. So, I could take -- assuming other producers were impacted

¹¹ Mr. Engberg corrected the certain of the figures (i.e., the extra amounts that would be paid for natural gas and propane consumers per household) at the hearing prior to the admission of his testimony. Tr. 2778. The above-quoted portion of his rebuttal testimony reflects these corrections.

in the same way as us, I could gross that up by a factor of four and say what the impact is on the industry. And I came up with percent of industry gas relative to the production in Appalachia that's taken off line -- that's roughly 8 percent -- a percentage of industry Appalachian NGLs that are taken offline are propane and butane specifically as a result of this. And that ended up being 33 percent.

Then I took a government report that was issued last winter that identifies the cost – or it's the forecast that the government made of the cost into homes in the northeast for natural gas and for propane. And to be very, very conservative, I said, all right, if we lost 8 percent of our natural gas production, 33 percent of the region's NGL production, what would the impact be on propane and natural gas? There's a lot of study you can do to come up with an exact number on that. I thought I was being very conservative saying this is a 10 percent increase.

If there's a 10 percent increase, then that turns into the number that I show, I believe, on page 15 of the document. So, it would be that incremental 71 dollars per household during the winter for natural gas consumers and 166 dollars per household for propane consumers.

Tr. 2824-2826. And, importantly, Mr. Engberg explained that, while this analysis may seem complicated, it essentially follows the basic tenets of supply and demand, *i.e.*, “If you increase supply, prices go down. If you decrease, it can go up. Vice versa for demand.” Tr. 2831. Effectively, the Complainants’ requested injunctive relief will decrease the available natural gas and propane supply in the Northeastern United States by eliminating volumes transported on the Mariner East Pipelines, which will result in a substantial increase in the price of natural gas and propane consumed by many households and businesses.

At the hearing, parties also suggested that there was no proof that products transported on the Mariner East Pipelines are used by Pennsylvanians. *See* Tr. 2800-2801, 2830-2831 (Enberg Cross). This argument should not be accepted for several reasons. First, it is uncontested that Pennsylvanians rely heavily on the types of products that are shipped on the Mariner East Pipelines, including propane. While such molecules are not tracked with specificity, it is only

logical that the closest consumers to the pipeline outlet consume and use the products that are being moved on the pipelines. It does not make logistical or economic sense for propane sellers to incur additional transportation costs; rather, the market is set up to rely upon local and regional supply. Second, Mr. Engberg testified that [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Tr.

2803. In this regard, Mr. Engberg’s testimony directly corroborates the testimony of Sunoco witness Mr. Billman regarding the adverse impacts a shutdown of the Mariner East Pipelines would have on propane, butane and ethane supplies and, as a result, prices. *See* SPLP St. 10 at 7.

c. Pennsylvania Jobs Would Be Adversely Impacted If The Pipelines Are Shut Down.

Mr. Engberg also testified regarding the impacts a shutdown of the Mariner East Pipelines would have on individuals employed by Range as employees, contractors and subcontractors. Mr. Engberg explained that Range has 457 employees in Pennsylvania and, if it were forced to shut-in production due to a cessation of ME1 and/or ME2 operations, it would likely be forced to implement lay-offs. Range St. 1-R at 15. Range further explained that these impacts could reverberate down the supply chain (Range St. 1-R at 15) and, indeed, affect “people’s livelihoods” (Tr. 2807).

Mr. Engberg corroborated the testimony of Sunoco witnesses Mr. Snell regarding the impacts of a shutdown of the Mariner East Pipelines on Pennsylvania jobs. Consistent with Mr. Engberg’s testimony regarding Range, Mr. Snell testified that any stoppage of the Mariner East Pipelines would idle skilled workers across the Commonwealth, and result in these individuals losing work and the opportunity to make a living. SPLP St. 11 at 4.

d. The Commonwealth Of Pennsylvania Will Collect Less Drilling Impact Fees If The Pipelines Are Shut Down.

Range demonstrated that specific harms to the Pennsylvania drilling impact fee that would result if the Complainants' requested relief were granted. Since the inception of the drilling impact fee in 2012, it has generated nearly \$1.67 billion in new revenue for communities in all 67 counties of the Commonwealth. Range St. 1-R at 15. Drilling impact fees are based on production. Range St. 1-R at 16. As such, assuming only Range's volumes on ME1 and ME2 were impacted by the Complainants' requested relief, the Commonwealth itself would lose out on approximately \$8.7 million in drilling impact fees per year. Range St. 1-R at 16. The collective impact, accounting for the other producers that ship on ME1 and ME2, would be far greater. Range St. 1-R at 16. The Complainants' requested relief would specifically decrease the amount of these revenues gained by communities across Pennsylvania.

e. The Harms Identified By Range Could Exacerbate The Impacts Of The COVID-19 Pandemic On Pennsylvania.

Finally, it is important to recognize that natural gas extraction and pipeline transportation activities have been deemed to be "life sustaining" businesses in the face of the COVID-19 pandemic. Pennsylvania Governor Tom Wolf issued a 90-Day Declaration of Disaster Emergency on March 4, 2020 and thereafter ordered the closure of all non-life-sustaining businesses on March 21, 2020. Natural gas extraction and pipeline transportation companies, which provide critical supplies of energy to Pennsylvania residents and businesses, were deemed life-sustaining businesses and were permitted to remain open. *See* Range St. 1-R at 5-6. Governor Wolf extended his original Declaration of Disaster Emergency for another ninety days on June 4, 2020. Range St. 1-R at 6.

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Since the onset of the COVID-19 pandemic in Pennsylvania, it has been well-recognized that natural gas extraction and pipeline transportation activities are essential and life-sustaining businesses. Mr. Engberg testified:

While the duration of the COVID-19 pandemic and its effects upon Pennsylvania businesses remain unclear, it is essential that Pennsylvania-based energy producers continue to have access to safe and reliable means of transporting essential, locally produced products to end users across the state. The Complainants request would eliminate the primary means by which NGL producers such as Range-Appalachia transport these products in and across Pennsylvania. This would result in the substantial economic harms I detail below and could exacerbate the economic impacts of COVID-19 on the Commonwealth at a time when access to less-expensive, locally produced energy products is critical.

Range St. 1-R at 6 (emphasis added).

The aforementioned impacts on Range, Pennsylvania and the Northeastern United States are heightened by the ongoing effects of the COVID-19 pandemic. While the pandemic continues to affect the daily lives of Pennsylvanian's, it is all the more important that they have reliable access to affordable, locally produced energy supplies transported by producers like Range, over the Mariner East projects. Shutting down the Mariner East Pipelines could result in a result in a price spike for Northeastern natural gas consumers of approximately 10%, and increase their heating bills during critical winter months, while the COVID-19 pandemic rages on. *See* Range St. 1-R at 15.

Furthermore, the products Range transports on the Mariner East Pipelines are needed to help prevent the spread of COVID-19. Mr. Engberg explained the “[c]hemicals and polymers made from ethane, propane and butane feedstocks are critical...for the manufacturing of detergents, hygiene products, face masks, medical gowns and medical devices.” Range St. 1-R at 6. A shutdown of ME1 and ME2 could limit the availability of Range-produced NGLs that

are essential to the manufacturing of these products. The ALJ and the Commission must consider these impacts when evaluating the Complainants’ requested relief.

3. Conclusion.

The Complainants’ requested injunctive relief will cause significant direct and indirect economic harms to Range, its Pennsylvania-based royalty owners, natural gas and propane consumers throughout the Northeastern United States and the Commonwealth as a whole. The Complainants have not demonstrated any legal right to the relief that they request. As explained below, the Complainants’ requested injunctive relief should, therefore, be denied by both the ALJ and the Commission.

B. THE COMPLAINANTS HAVE FAILED TO DEMONSTRATE THAT THEY ARE ENTITLED TO INJUNCTIVE RELIEF REQUIRING A CESSATION OF OPERATIONS ON THE MARINER EAST PIPELINES.

The Complainants have failed to demonstrate that they are entitled to a shutdown of the Mariner East Pipelines, as requested in Counts I-IV of the Flynn Complaint, the Obenski Complaint, the DiBernardino Complaint and the Andover Complaint. As noted above, in order to demonstrate that they are entitled to injunctive relief, the Complainants must demonstrate that Sunoco has violated the Public Utility Code, a Commission regulation or order or a Commission-approved tariff. *See West Penn* at 949 (“We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.” (emphasis added). Moreover, in order to obtain the mandatory injunctive relief that they seek, the Complainants must establish a “strong case” showing that their right to injunctive relief is entirely clear and that the injunction sought is necessary to avoid a legal harm for which they have no adequate remedy at law. *See* Section III.B. *supra* (citing authorities).

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Furthermore, “[a]n injunction is an extraordinary remedy to be granted only with extreme caution.” *Pye v. Com. Ins. Dep’t*, 372 A.2d 33, 35 (Pa. Cmwlth. 1977). “Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury”); *see also West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346, at pp. 17-18 (Order entered Mar. 15, 2018). Although the Complainants’ allegations advance unfounded and speculative theories of harm that might occur from the continued operation of the Mariner East Pipelines,¹² Range presented credible and un rebutted evidence regarding the harms to Range, other producers and the public at large that have occurred due to prior shutdowns of the Mariner East Pipelines and will occur if the Complainants’ requested relief is granted.

Range supports the arguments raised in Sunoco’s Main Brief, which make clear that the Complainants have failed to carry their burden of proof with respect to any of the relief sought in this proceeding. *See* Sunoco M.B. at Sections II and V.A.-D. With respect to various injunctive relief requested by the Complainants, Range specifically notes below that the Complainants have (1) failed to demonstrate that their right to relief is “entirely clear,” (2) failed to demonstrate that any injunctive relief is necessary to address an immediate harm, (3) failed to demonstrate that any injunctive relief is necessary to avoid an irreparable harm, and (4) failed to demonstrate that the injunctions sought are necessary to avoid a legal harm for which they have no adequate remedy at law. Moreover, Range submits that the Complainants’ requested injunctive relief is injurious to the public interest. *See* Section V.A. *supra*. Therefore, and for the reasons explained below, the requested injunctive relief should be denied.

¹² As with the Flynn Complainants’ Petition for Interim Emergency Relief, none of the Complainants in this proceeding presented any evidence of the probability or likelihood that a pipeline release or failure will occur on the Mariner East Pipelines. Therefore, as explained in Sunoco’s Main Brief, the Complainants did not and cannot meet their burden of proving that the Mainer East pipelines are unsafe or present an undue risk to the public. *See* Sunoco M.B. at Section V.A.2.a.

1. The Complainants Have Failed To Demonstrate Their Right To Mandatory Injunctive Relief Is Entirely Clear.

As the Complainants seek a mandatory type injunction, they must demonstrate that their right to relief is entirely clear. *Allen*, 417 A.2d at 401. This requires a stronger showing than a typical “restraining type” injunction. *Big Bass Lake Community Assoc.*, 950 A.2d at 1145.

The Complainants allege four primary issues with regard to the injunctive relief that they seek in this proceeding. With respect to the permanent cessation of operations, the Complainants argue that they have a right to injunctive relief because they allege (1) Sunoco’s public awareness program is deficient and (2) Sunoco’s emergency management program is deficient. *See Flynn Compl. Counts I and II, ¶¶ 122 and 126.* With respect to the temporary cessation of operations, the Complainants argue they have a right to relief because they allege (1) the Commission must evaluate the potential loss of human life, property, and public infrastructure, and ensure the risk is reduced to a tolerable level (*see Flynn Compl. Count III, ¶ 136* (alleging inherent risk of harm), and (2) a temporary cessation of operations on Sunoco’s ME1 pipeline¹³ and 12-inch workaround pipeline until a remaining life study of those pipelines by an independent consultant is completed (*see Flynn Compl. Count IV, ¶ 143*).

The Complainants 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*¹⁴ and was again rejected by the Commission

¹³ *See* footnote 4 *supra*.

¹⁴ 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 (Dep’t of Transp.) (Closure Letter May 13, 2016),

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in the Order denying the Flynn Complainants' Petition for Interim Emergency Relief. The Commission has twice denied arguments 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, 3.¹⁵

Moreover, Sunoco has demonstrated that it has a robust public awareness program that meets or exceeds all applicable state and federal regulations, and provides the public with information on pipeline safety and what to do in the event of a release from the Mariner East Pipelines. *See* Sunoco M.B., Section V.C. More specifically, Sunoco's expert, Mr. Zurcher, presented testimony explaining that:

- Sunoco's brochures are substantially similar to the brochures of several hundred other pipeline companies, including those that operate in Chester and Delaware Counties. *See* SPLP St. 2 at 14.
- Industry brochures are standardized so that messages are consistent to the audiences from all pipeline companies. SPLP St. 2 at 14.
- Sunoco's brochures are compliant with all regulations, with industry practices, and appropriately cover the topics that they are required to cover. SPLP St. 2 at 14.

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

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 (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_320175005.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).

¹⁵ 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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- Sunoco has a robust public awareness program that includes meetings (both in one-on-one and group settings), mass mailings and specialized training. SPLP St 5 at 6.
- Sunoco has held numerous open houses at regarding the construction of the Mariner East Pipelines that the public has attended. *See* SPLP St. 5 at 9-10.
- Sunoco has conducted and is continuing to conduct extensive outreach to school districts to provide emergency planning information. *See* SPLP St. 5 at 10-11.
- Sunoco’s additional outreach efforts have been acknowledged by parties to this proceeding and, in many cases, the parties have attempted to take advantage of those additional efforts. *See, e.g.*, Tr. 2367 (DASD witness Mr. Hubbard admitting he “welcomes the assistance” offered by Sunoco in an August 13, 2020 letter); Tr. 2467 (Middletown witness Mr. Kirchgasser admitting the township council “would give strong consideration” to the additional outreach Sunoco offered in an August 13, 2020 letter).

The aforementioned evidence in this proceeding demonstrates that Complainants’ have no right to injunctive relief, let alone an “entirely clear” right to relief, based upon their allegations that Sunoco’s public awareness program is deficient.

Complainants’ next argument that Sunoco’s emergency management program is deficient and provides sufficient basis for injunctive relief has also been repeatedly denied by the Commission. Paragraphs 1-12 of an Interim Emergency Order issued on May 24, 2018, contained specific requirements relating to Sunoco’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 Sunoco’s emergency management. *See Dinniman Order Reinstating ME1*, pp. 33-34, Order Paragraphs 1, 3. The Commission also directed Sunoco to file additional information regarding its emergency management plan with respect to ME2. *Dinniman Order Reinstating ME1*, Ordering Paragraph 2. Sunoco has

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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*”). Moreover, the Commission reached similar findings and conclusions with respect to the Flynn Complainants’ allegations in support of their Petition for Interim Emergency Relief in this proceeding. *See* Order Denying Petition for Interim Emergency Relief at 18 (concluding that the Flynn Complainants’ allegations regarding Sunoco’s emergency management plan did not constitute an emergency and denying the petition). Therefore, the Commission has already held that ME1, ME2 and ME2X cannot be enjoined for alleged issues related to Sunoco’s emergency management plan.

In addition, Sunoco has shown that it has developed and implements a comprehensive emergency response and preparedness program that exceeds state and federal regulatory requirements. *See* Sunoco M.B. Sections B.C.2.d. In particular:

- Sunoco witness Mr. Noll, an expert in emergency planning, response and management, testified regarding SPLP’s Mariner Emergency Responder Outreach (“MERO”) program. SPLP St. 4 at 6-28.
- Sunoco witness Mr. Noll further testified that local officials are the point person to address any incidents. SPLP St. 4 at 12.
- Sunoco witness Mr. Perez testified about the MERO program training provided to emergency response officials by Sunoco. *See, e.g.*, SPLP St 4. at 6-10.

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

The Complainants’ 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 Compl., Count III, ¶ 136. Although the Complainants have attempted to

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raise concerns about Sunoco’s integrity management program and the existence of corrosion within the Mariner East Pipelines, Sunoco has demonstrated that the Complainants have failed to present any evidence regarding the risk or probability of an incident happening justify an injunction. *See* Sunoco M.B., Section V.B. Moreover, Sunoco has shown that its comprehensive integrity management program applicable to the Mariner East Pipelines is compliant with state and federal law. *See* Sunoco M.B., Section V.B.

In this regarding, the Complainants’ arguments 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 (SPLP. St. 2 at 9), 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* Exhibit SPLP JPS-4 at 2 (“Studies have confirmed that pipelines are the safest way to transport energy in the United States”); *see also* Range St. 1-R at 7 (“Pipeline transportation provides the safest and most reliable means of transportation of natural gas and natural gas liquids.”).

Likewise, Sunoco 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 Sunoco’s actions in accordance with a prior 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.

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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.

2. The Complainants Have Failed To Demonstrate That The Need For The Requested Injunctive Relief Is Immediate.

The need for injunctive 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).

Here, the Complainants’ have simply presented no evidence regarding the likelihood or probability of a fatality occurring due to an accidental leak on any of the Mariner East Pipelines. *See Sunoco M.B.*, Section V.A.2. In this regard, the Petitioners have failed to demonstrate that the need for relief is immediate.

Importantly, the Flynn Complainants’ witness, Mr. Marx, confirmed that his “risk” analysis did not examine the “probability” that the hypothetical loss of containment described in his testimony would actually occur. The following exchange occurred:

Q. Does your written testimony include any evaluation of the likelihood or probability that the hypothetical pipeline, loss of containment...that you describe in your testimony, will occur?

A. No. My testimony in this case was confined to evaluating the consequences of such events.

Tr. 1832. When asked again, Mr. Marx unequivocally confirmed his analysis did not evaluate the probability of the subject even occurring, stating:

Q. And you did no evaluation of the probability or likelihood of any other kind of event, including an event having no consequence occurring, correct?

A. That's correct.

Tr. 1833. Rather, Mr. Marx conceded that his analysis was based upon assumptions specifically designed to represent a “worst case scenario” without evaluating the likelihood or probability of that scenario occurring. Tr. 1842-1843.

Mr. Marx’s analysis was further undermined by the fact that he admitted he has analyzed the likelihood or probability of an accident or event occurring as part of a risk assessment for other pipelines. Tr. 1833. He further admitted that he, and his company, have performed quantitative risks assessments using probabilistic values for other pipelines (Tr. 1835), that those pipelines are located in high consequence areas (Tr. 1836), and that certain of those pipelines remain in operation today (Tr. 1837). By failing to use a consistent methodology when analyzing other pipelines, and making clear that the other pipelines analyzed using that different methodology still operate today, Mr. Marx made clear that his analysis of the Mariner East Projects is not credible.

Finally, Range notes that counsel for the Flynn Complainants appears to have, once again, admitted that the Complainants have presented no evidence regarding risk because they have presented no evidence regarding the probability of the hypothetical events identified by Mr. Marx as occurring. The following exchange occurred during cross-examination of Mr. Marx by Sunoco’s counsel:

Q. And so when a risk is determined, safety is determined, it's not based only on the hypothetical worst case consequence. It considers some evaluation of the likelihood of a range of consequences, correct?

MR. MICHAEL BOMSTEIN: Objection, relevance.

JUDGE BARNES: (Inaudible) -- the question.

MR. WITKES: I'm sorry, Your Honor. I just couldn't hear you.

JUDGE BARNES: What is the relevance of the question?

MR. WITKES: That risk cannot be determined by looking solely at a consequence.

MR. MICHAEL BOMSTEIN: But we're not talking about risk here.

JUDGE BARNES: Apparently one side is. I'm going to overrule the objection.

Tr. 1861 (emphasis added). Indeed, the Complainants have not presented any evidence regarding risk because they have failed to present any evidence regarding the probability or likelihood of the hypothetical consequences identified by Mr. Marx occurring.

As explained above, the Complainants have presented no evidence that there is an imminent threat of fatality from an accidental leak on the Mariner East Pipelines. Therefore, the Complainants' requests for injunctive relief must be denied.

3. The Complainants Have Failed To Demonstrate That The Requested Mandatory Injunctive Relief Is Necessary To Avoid Irreparable Injury.

A complainant seeking a mandatory injunction must also demonstrate that the injunction is necessary to avoid an irreparable harm. *See Allen*, 417 A.2d at 401; *see also* 52 Pa. Code § 3.6(b). The Complainants have failed to demonstrate irreparable harm would result from continued operation of the Mariner East Pipelines.

While the Petitioners have alleged that an accidental leak of an HVL pipeline could result in physical injuries or a fatality, they have not provided credible evidence to show that, 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 state and federal regulations, the

alleged irreparable harm is likely to occur. Indeed, Sunoco demonstrated that it has constructed, operated and maintains the Mariner East Pipelines in accordance with all applicable state and federal regulatory requirements. *See* Sunoco M.B., Sections V.A. through V.D. For these reasons, the Complainants have failed to demonstrate that irreparable harm would result from the continued, safe operation of the Mariner East Pipelines.

4. The Complainants Have Failed To Demonstrate That The Requested Injunctive Relief Is Necessary To Avoid A Legal Harm For Which They Have No Adequate Remedy At Law.

As noted above, in order to prevail, the Complainants must demonstrate that their requested cessation of operations over the Mariner East Pipelines is necessary to prevent a legal wrong for which there is no adequate redress at law. *See Buffalo Twp.*, 813 A.2d at 663. As explained in Sunoco’s Main Brief, the Complainants have simply failed to demonstrate that any legal wrong has occurred. Therefore, the Complainants have failed to satisfy this requirement to demonstrate they are entitled to injunctive relief.

5. The Relief Sought By The Complainants Is Not Narrowly Tailored To The Harms Alleged.

Range has also demonstrated that a shutdown of the Mariner East Pipelines will result in substantial harms to: (1) Range; (2) Range’s Pennsylvania-based royalty owners; (3) natural gas and propane consumers throughout the Northeastern United States; (4) Pennsylvania jobs at every point of the natural gas supply chain; and (5) Pennsylvania communities that would be deprived of drilling impact fee revenues. *See* Section V.A. *supra*. The injunctive relief sought by the Complainants is not narrowly tailored but rather has direct, wide-ranging and significant adverse impacts on the public, which far exceed the narrow issues they allege justify the requested relief (*e.g.*, Sunoco’s allegedly inadequate public awareness program). Where the Complainants did not and cannot demonstrate that the complained of harms will or are likely to

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occur, and it has been demonstrated that the relief sought by the Complainants will result in substantial public harms, the ALJ and the Commission must reject the requested injunctive relief as being overbroad and contrary to the public interest.

VI. CONCLUSION

WHEREFORE, Range Resources – Appalachia, LLC respectfully requests that the Administrative Law Judge Elizabeth J. Barnes and the Pennsylvania Public Utility Commission: (1) dismiss with prejudice the Complaint filed at Docket No. C-2018-3006116 by Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines on June 18, 2019; (2) dismiss with prejudice the Complaint filed by the Andover Homeowners Association at Docket No. C-2018-3003605 on July 24, 2018; (3) dismiss with prejudice the *pro se* Complaint filed by Melissa DiBernardino at Docket No. C-2018-3005025 on October 1, 2018; (4) dismiss with prejudice the *pro se* Complaint filed by Rebecca Britton at Docket No. C-2018-3006898 on December 27, 2018; (5) dismiss with prejudice the *pro se* Complaint filed by Laura Obenski at Docket No. C-2018-3006905 on January 2, 2019; and (6) close the above-captioned dockets.

Respectfully submitted,



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Date: December 16, 2020

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APPENDIX A
PROPOSED FINDINGS OF FACT

Range Resources – Appalachia, LLC (“Range” or the “Company”) proposes the following findings of fact:

1. Range is a shipper on the Mariner East Pipelines. *See* Range St. 1-R at 5.
2. Range is a pioneer in the development of the Marcellus Shale in Pennsylvania and, since 2004, has acquired approximately 833,00 net acres across the Commonwealth. Range St. 1-R at 3.
3. Range is a top 10 natural gas producer and a top 5 NGL producer in the country. Range St. 1-R at 3.
4. Since 2004, Range has invested over \$7 billion of capital in the Commonwealth. Range St. 1-R at 3.
5. Since 2015, Range has paid Pennsylvania-based royalty owners over \$1.115 billion. Range St. 1-R at 3.
6. Range has paid over \$216 million to the Commonwealth via the drilling impact fee. Range St. 1-R at 4.
7. Range currently directly and indirectly transports 70,000 BPD of natural gas liquids on ME1 and ME2. Range St. 1-R at 5.
8. Range transports 20,000 barrels per day (“BPD”) of ethane on ME1. Range St. 1-R at 5.
9. Range transports 30,000 BPD of propane and 10,000 BPD of normal butane on the ME2 pipeline. Range St. 1-R at 5.
10. Range sells 10,000 BPD of a combination of propane and normal butane to a third party that transports this product on ME2.

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11. Range's shipments on the Mariner East Pipelines represents approximately 32% of its typical ethane and 100% of its current propane and normal butane production in Pennsylvania. Range St. 1-R at 5.

12. Pipeline transportation provides the safest and most reliable means of transportation of natural gas and natural gas liquids. Range St. 1-R at 7.

13. The Mariner East Pipelines provide Range with a safe and reliable takeaway capacity for the NGLs it produces from the NGL-rich natural gas that is produced in portions of the southwestern region of Pennsylvania. Range St. 1-R at 7.

14. The Mariner East Pipelines alleviate NGL supply congestion and over-supply in the Appalachian market. Range St. 1-R at 7.

15. Large volumes of ethane can only be transported by pipeline due to its boiling point that makes large scale bulk truck or rail transportation ineffective and uneconomic. *See* Range St. 1-R at 7-8.

16. In the absence of NGL pipeline capacity, a natural gas producer would be forced to limit or possibly shut in wells and natural gas production as the downstream natural gas pipelines limit the BTU content of the natural gas, and therefore the amount of ethane that may be "rejected" or left in the natural gas stream that is transported by intra-or interstate pipelines. Range St. 1-R at 8.

17. A rail alternative for liquified natural gas transportation through Pennsylvania, whether someday offered by New Fortress Energy or another entity, is not applicable to the transport of ethane and therefore does not alleviate the restraints on shipping ethane by rail. Tr. 2820.

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18. Propane and butane can be more easily chilled and/or compressed than ethane for transportation by rail or truck. Range St. 1-R at 8.

19. The volume of propane and butane transported by Range on the Mariner East Pipelines in any given month would necessitate 2,130 railcars or 7,600 trucks. Range St. 1-R at 8.

20. The total volumes of Appalachian-produced propane and normal butane flowing on the Mariner East Pipelines today (estimated at a maximum of 200,000 barrels/day) exceed the available railcar and truck loading capacity in Appalachia. Range St. 1-R at 8.

21. Range has previously confirmed the rail loading facilities operated by its midstream service provider did not have adequate loading capacity to accommodate the current NGL flows on the Mariner East Pipelines, *i.e.*, 226,000 BPD of NGLs. Range St. 1-R at 9.

22. The Mariner East Pipelines are one of only two pipeline systems transporting propane from production in western Pennsylvania, Ohio and West Virginia. Range St. 1-R at 9-10.

23. The other pipeline system is Enterprise's TEPPCO pipeline, which has approximately 12.5% of ME2's capacity. Range St. 1-R at 9.

24. If western Pennsylvania production is prohibited from flowing on the Mariner East Pipelines, and the TEPPCO pipeline is already subscribed, the remainder of this Pennsylvania-based production would be forced to flow on available rail and truck loading capacity which would be quickly overwhelmed resulting in well-pad shut-ins. Range St. 1-R at 9.

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25. If the Mariner East Pipelines are forced to cease operations, then Range, and possibly other producers, would be forced to shut-in natural gas production throughout Pennsylvania, resulting in significant economic harms. Range St. 1-R at 8-9.

26. IF the Mariner East Pipelines are forced to cease operations, Range’s ethane that normally flows on ME1 would either be sold into an alternate market or be rejected into the gas stream, but only in limited quantity, resulting in significant financial losses. Range St. 1-R at 12.

27. Assuming Range could find an alternative market for the ethane it normally flows on ME1, Range would incur approximately [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in additional transportation costs and lost profits per year. Range St. 1-R at 13.

28. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END HIGHLY CONFIDENTIAL] Range St. 1-R at 13 (emphasis added).

29. Assuming, railcars and railcar loading facilities were available in adequate quantities to transport the 50,000 BPD propane and normal butane production and alternate rail markets were available, Range would incur [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] in increased costs (e.g., increased logistics fees and lower priced markets) per year. Range St. 1-R at 13.

30. It is more likely that Range would only be able to access rail cars and railcar loading capacity for the equivalent of 19,000 BPD of propane and butane and specifically noted

that truck loading is not available for Range’s NGL production. Range St. 1-R at 13. In this scenario, 31,000 BPD of Range’s propane and butane production would be without access to rail or pipe loading [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL]

Range St. 1-R at 13-14.

31. Range’s estimates of harm are based off past experience with three prior shutdowns of ME1. *See* Range St. 1-R at 10-12.

32. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Tr. 2787.

33. As part of its lease agreement, Range pays a royalty each month to those landowners which is largely based upon the amount of production and the price received by Range for that production. Those monthly payments are contingent upon Range’s ability to produce natural gas, and the associated NGLs, and transport and NGLs on the Mariner East Pipelines. *See* Tr. 2830.

34. A shutdown of ME1, which would affect Range’s transportation of ethane, could [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14.

PUBLIC VERSION – HIGHLY CONFIDENTIAL INFORMATION REDACTED

35. A shutdown of ME2, which would affect propane and butane transportation, where Range could only access railcars and railcar loading capacity for 38% of its 50,000 BPD of ME2 flows, [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Range St. 1-R at 14.

36. A decrease in ethane, propane, butane and natural gas supply resulting from a shut-in of ME1 and ME2 would very likely increase the price of NGLs and natural gas to consumers in Pennsylvania. Assuming a 10% increase in Northeastern winter propane and natural gas prices as a result of this lost supply, the EIA’s October 2019 Winter Fuels Outlook report suggests that Northeastern natural gas consumers would pay an extra \$71/household during the winter while Northeastern propane consumers would pay an extra \$166/household. Range St. 1-R at 14-15.

37. Range’s price impacts analysis follows the basic tenets of supply and demand, *i.e.*, “If you increase supply, prices go down. If you decrease, it can go up. Vice versa for demand.” Tr. 2831.

38. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[END HIGHLY CONFIDENTIAL] Tr. 2803.

39. Range has 457 employees in Pennsylvania and, if it were forced to shut-in production due to a cessation of ME1 and/or ME2 operations, it would likely be forced to implement lay-offs. Range St. 1-R at 15.

PUBLIC VERSION – HIGHLY CONFIDENTIAL INFORMATION REDACTED

40. These job impacts could reverberate down the supply chain (Range St. 1-R at 15) and, indeed, affect “people’s livelihoods” (Tr. 2807).

41. Since the inception of the drilling impact fee in 2012, it has generated nearly \$1.67 billion in new revenue for communities in all 67 counties of the Commonwealth. Range St. 1-R at 15.

42. Drilling impact fees are based on production. Range St. 1-R at 16.

43. Assuming only Range’s volumes on ME1 and ME2 were impacted by the Complainants’ requested relief, the Commonwealth itself would lose out on approximately \$8.7 million in drilling impact fees per year. Range St. 1-R at 16.

44. The collective impact, accounting for the other producers that ship on ME1 and ME2, would be far greater. Range St. 1-R at 16.

45. Natural gas extraction and pipeline transportation companies, which provide critical supplies of energy to Pennsylvania residents and businesses, were deemed life-sustaining businesses and were permitted to remain open. *See* Range St. 1-R at 5-6. Range witness Mr. Engberg testified:

While the duration of the COVID-19 pandemic and its effects upon Pennsylvania businesses remain unclear, it is essential that Pennsylvania-based energy producers continue to have access to safe and reliable means of transporting essential, locally produced products to end users across the state. The Complainants request would eliminate the primary means by which NGL producers such as Range-Appalachia transport these products in and across Pennsylvania. This would result in the substantial economic harms I detail below and could exacerbate the economic impacts of COVID-19 on the Commonwealth at a time when access to less-expensive, locally produced energy products is critical.

Range St. 1-R at 6.

APPENDIX B
PROPOSED CONCLUSIONS OF LAW

Range Resources – Appalachia, LLC (“Range” or the “Company”) proposes the following conclusions of law:

1. Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

2. A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

3. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999).

4. Only if the proponent of the rule or order present evidence found to be of greater weight than the other parties, will it have carried its burden of proof. *Morrissey v. Commonwealth*, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. Pub. Util. Comm’n*, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

5. Consequently, as the parties seeking affirmative relief in this proceeding, the Complainants bear the burden of proving that Sunoco has violated the Public Utility Code, or a Commission regulation or order, and proving that they are entitled to the relief they seek.

6. Although the factual burden may shift during a proceeding, the proponent of the rule or order (*i.e.*, the complainant) always maintains the overarching burden of proof. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983).

7. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order dated Oct. 9, 1980).

8. Finally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

9. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008).

10. The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

11. The Complainants have failed to carry their burden of proving that Sunoco has violated the Public Utility Code, or a Commission regulation or order, and proving that they are entitled to the relief they seek.

12. In order to obtain any relief, a complainant must demonstrate that a utility violated the Public Utility Code, a Commission regulation or order or a Commission-approved tariff. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (“*West Penn*”) (“We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.” (emphasis added)); *Township of*

Spring et al. v. Pennsylvania-American Water Company, Docket Nos. C-20054919 et al, 2007 WL 2198196 at *6 (Order entered Jul. 27, 2007) (“If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.”) (citing *West Penn*); *Baker* at 6.

13. In order to obtain permanent injunctive relief,¹ a party must establish that his or her right to relief is clear and that the relief is necessary to prevent a legal wrong for which there is no adequate redress at law. *See Buffalo Twp. v. Jones*, 571 Pa. 637, 644, 813 A.2d 659, 663 (Pa. 2002), *cert. denied*, 157 L. Ed. 2d 41, 2003 U.S. LEXIS 6042 (2003).

14. Where a complainant seeks temporary injunctive relief,² however, they must also demonstrate that (1) the need for relief is immediate; and (2) injury would be irreparable if relief is not granted. *See Buffalo Twp.* 813 A.2d at 663 (citing *Soja v. Factoryville Sportsmen’s Club*, 361 Pa. Super. 473, 522 A.2d 1129, 1131 (Pa. Super. 1987)).

15. In addition, the Commission’s regulations contemplate a party seeking a temporary injunction must also demonstrate that the requested relief is not injurious to the public interest. 52 Pa. Code § 3.6(b) *see also Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n*, 555 A.2d 288, 291 (Pa. Cmwlt. 1989).

16. If any one of these essential pre-requisites is not proved by a complainant, the Commission will deny the relief requested. *See Crums Mill Assoc. v. Dauphin Consolidated*

¹ The Flynn Complainants have specifically sought the permanent cessation of operations on Sunoco’s 8-inch ME1, its workaroud pipeline, ME2, and ME2X. *See Flynn Compl. Counts I and II, ¶¶ 122 and 126.*

² The Flynn Complainants have specifically sought a temporary a temporary cessation of operations on Sunoco’s 8-inch ME1, the 12-inch workaroud pipeline, ME2, and ME2X “until such time as the Commission has evaluated the potential loss of human life, property, and public infrastructure, and has ensured the risk is reduced to a tolerable level” (*see Flynn Compl. Count III, ¶ 136 (alleging inherent risk of harm)*), and/or a temporary cessation of operations on Sunoco’s 12-inch workaroud pipeline until a remaining life study of those pipelines by an independent consultant is completed (*see Flynn Compl. Count IV, ¶ 143*).

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).

17. The ALJ and this Commission have previously held that injunctive relief must be narrowly tailored to abate the harm complained of:

Injunctive relief must be narrowly tailored to abate the harm complained of. *Pye v. Com. Ins. Dep't*, 372 A.2d 33, 35 (Pa.Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa.Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury”); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018).

West Goshen Township v. Sunoco Pipeline L.P., Docket No. C-2017-2589346, at p. 42 (Recommended Decision dated July 16, 2018) (Barnes, J.), *adopted in full*, (Order dated Oct. 1, 2018). *See also Baker* at 26 (holding directives to provide additional training, submit a plan to enhance public awareness and emergency training plans and record keeping, and complete an audit of public awareness program by a third-party “were not justified on the basis of the finding of a violation of the duty meet public awareness and outreach obligations under 49 C.F.R. § 195.440”).

18. An injunction that commands the performance of an affirmative act, a “mandatory injunction,” is the rarest form of injunctive relief and is often described as an extreme remedy. *Woodward Twp. v. Zerbe*, 6 A.3d 651 (Pa. Cmwlth. 2010) (citing *Big Bass Lake Community Assoc. v. Warren*, 950 A.2d 1137, 1144 (Pa. Cmwlth. 2008)).

19. The case for a mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction. *Id.* at 1145; *see also Crums Mill Assoc., et al. v. Dauphin Consolidated Water Supply Company*, Docket No. C-00934810, 1993

Pa. PUC LEXIS 89, at *10 (Interim Emergency Order Denying Relief dated Mar. 23, 1993) (citing *Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. 1980)).

20. A party seeking a mandatory injunction “must demonstrate that they are clearly entitled to immediate relief and that they will suffer irreparable injury if relief is not granted.” *See Allen*, 417 A.2d at 401.

21. The Complainants have failed to satisfy any of elements required to show they are entitled to temporary and/or permanent injunctive relief.

APPENDIX C
PROPOSED ORDERING PARAGRAPHS

Range Resources – Appalachia, LLC (“Range” or the “Company”) proposes the following ordering paragraphs:

1. Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines have failed to carry their burden of proof under the Public Utility Code to demonstrate that they are entitled to any of the relief sought in the Second Amended Formal Complaint filed at Docket No. C-2018-3006116 by on June 18, 2019.

2. Complainant Andover Homeowners Association has failed to carry its burden of proof under the Public Utility Code to demonstrate that it is entitled to any of the relief sought in the Complaint filed at Docket No. C-2018-3003605 on July 24, 2018.

3. *Pro se* Complainant Melissa DiBernardino has failed to carry her burden of proof under the Public Utility Code to demonstrate that she is entitled to any of the relief sought in the Complaint filed at Docket No. C-2018-3005025 on October 1, 2018.

4. *Pro se* Complainant Rebecca Britton has failed to carry her burden of proof under the Public Utility Code to demonstrate that she is entitled to any of the relief sought in the Complaint filed at Docket No. C-2018-3006898 on December 27, 2018.

5. *Pro se* Complainant Laura Obenski has failed to carry her burden of proof under the Public Utility Code to demonstrate that she is entitled to any of the relief sought in the Complaint filed at Docket No. C-2018-3006905 on January 2, 2019.

6. The aforementioned Complaints are dismissed with prejudice.

7. The above-captioned dockets are hereby marked close.