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July 2, 2021

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:

Attached for filing please find the Reply to Exceptions on behalf of Range Resources – Appalachia, LLC (“Range”) in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Sincerely,



Garrett P. Lent

GPL/cls

cc: Honorable Elizabeth H. Barnes (*via email*)
Office of Special Assistants (*via email*)
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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A handwritten signature in cursive script, reading "Garrett P. Lent". The signature is written in black ink and is positioned above a horizontal line.

Garrett P. Lent

**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.	:	

**RANGE RESOURCES – APPALACHIA, LLC’S
REPLY TO EXCEPTIONS**

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Table of Contents

	Page
I. INTRODUCTION	1
II. REPLY TO ANDOVER’S LATE EXCEPTION NO. 2 – THE ALJ CORRECTLY DENIED THE COMPLAINANTS’ REQUESTED MANDATORY INJUNCTIVE RELIEF THAT WOULD HAVE RESULTED IN A CESSATION OF OPERATIONS OVER SPLP’S 8-INCH ME1, ITS WORKAROUND PIPELINE, ME2, AND/OR ME2X. I.D. AT 98, 175-176.....	3
A. INTRODUCTION.....	3
B. ANDOVER’S LATE EXCEPTIONS ARE UNTIMELY.....	4
C. THE I.D. CORRECTLY CONCLUDED THAT GRANTING A MANDATORY INJUNCTION THAT REQUIRES A TEMPORARY AND/OR PERMANENT CESSATION OF OPERATION OF THE MARINER EAST PIPELINES WOULD CAUSE SUBSTANTIAL PUBLIC HARM.....	6
D. THE I.D. CORRECTLY CONCLUDED THAT THE COMPLAINANTS REQUESTING A CESSATION OF MARINER EAST PIPELINE OPERATIONS, INCLUDING ANDOVER, FAILED TO DEMONSTRATE THEY WERE ENTITLED TO THIS MANDATORY INJUNCTIVE RELIEF.....	7
III. CONCLUSION.....	10

TABLE OF AUTHORITIES

Pennsylvania Court Decisions

Allen v. Colautti, 417 A.2d 1303 (Pa. Cmwlth. 1980).....2

Buffalo Twp. v. Jones, 571 Pa. 637, 813 A.2d 659 (2002), *cert. denied*, 540 U.S. 821 (2003).....3

Cnty. of Allegheny v. Commonwealth, 518 Pa. 556, 544 A.2d 1305 (1988)3

Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n, 555 A.2d 288 (Pa. Cmwlth. 1989).....3

Soja v. Factoryville Sportsmen’s Club, 361 Pa. Super. 473, 522 A.2d 1129 (1987).....3

Walker v. Unemployment Compensation Board of Review, 461 A.2d 346 (Pa. Cmwlth. 1983)5

Pennsylvania Agency Decisions

Cheryl Nickelberry v. Philadelphia Elec. Co., Docket No. F-8642641, 1987 Pa. PUC LEXIS 249 Order entered Jun. 29, 1987) (“*Nickelberry*”)5, 6

Crums Mill Assoc v. Dauphin Consolidated Water Supply Company, Docket No. C-00934810, 1993 Pa. PUC LEXIS 93 (Interim Emergency Order Denying Relief dated Mar. 23, 1993)2

Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co., 1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993)3

Salwa Mohamed and Ahmed Abdulrahman v. PECO Energy Company, Docket No. F-2018-3001318, 2019 Pa. PUC LEXIS 286, at *14 (Order entered Aug. 29, 2019)5

Pennsylvania Regulations

52 Pa. Code § 5.533(a).....4, 5

I. INTRODUCTION

Range Resources – Appalachia, LLC (“Range” or the “Company”) hereby files these Replies to the late-filed¹ Exceptions of Andover Homeowners Association, Inc. (“Andover”). Although Exceptions were also filed by Sunoco Pipeline, L.P.’s (“SPLP”), East Goshen Township, Downingtown Area School District, Chester County, Uwchlan Township,² and Melissa DiBernardino. Range is limiting its Reply Exceptions to the Exceptions of Andover, as Andover is the only party to except to the I.D.’s denial of specific mandatory injunctive relief that was requested by certain of the parties to this proceeding, *i.e.*, that the Commission permanently and/or temporarily enjoin SPLP’s operation of the Mariner East Pipelines.³

In the Late Exceptions, Andover argues, *inter alia*, that the ALJ erred in the I.D. by declining to grant certain specific mandatory injunctive relief, related to the operation of SPLP’s Mariner East Pipelines. *See* Andover Exc. No. 2. In particular, Andover argues that the ALJ erred by denying Andover’s and other Complainants’⁴ requests for the Commission to order either a

¹ On April 12, 2021, the Pennsylvania Public Utility Commission (“Commission”) served the Initial Decision (“I.D.”) of the Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) in the above-captioned consolidated proceedings. On April 19, 2021, a Joint Request For Extension Of Time For Exceptions And Reply Exceptions, For Procedures For The Filing And Service of Exceptions And Reply Exceptions, And Extension Of Page Limits was filed. On April 23, 2021, the Commission issued a Secretarial Letter that, among other things, granted the requested extension of time for the filing of exceptions and replies as follows: for the Complainants, exceptions and reply exceptions were extended to 60 days from the date of service of the I.D. for exceptions and to 30 days from the deadline for exceptions for reply exceptions; and for all other parties, exceptions and reply exceptions were extended to 55 days from the date of service of the I.D. for exceptions and to 25 days from the deadline for exceptions for reply exceptions. As such, the deadline for Complainants to file exceptions was extended to June 11, 2021 and the deadline for all other parties to file exceptions was extended to June 7, 2021. Andover did not file or serve its exceptions until June 13, 2021 (the “Late Exceptions”).

² Uwchlan Township filed a letter stating that it joined in, and adopted, Chester County’s Exceptions.

³ 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.”

⁴ The terms “Complaints” and the “Complainants” hereinafter collectively refers to: 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

permanent or temporary cessation of operations on SPLP’s 8-inch ME1, its workaround pipeline, ME2, and/or ME2X. *See* Andover Exc. at 8; *see also* Range M.B. at 2-3 (summarizing the injunctive relief sought by the Complainants that would result in a permanent and/or temporary cessation of service over the Mariner East Pipelines).

For the reasons explained below, and those set forth in the I.D., Andover’s Late Exceptions should be denied. Contrary to Andover’s arguments, the ALJ correctly denied the Complainants’ requests to enjoin operations on the Mariner East Pipelines. As explained in its Briefs, 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. In addition, the I.D. correctly concludes that the Complainants failed to satisfy their burden of proof or make the “very strong showing” required to obtain mandatory injunctive relief.⁵ Andover’s Late Exceptions are untimely, ignore un rebutted evidence, are inconsistent the law, and should be denied.

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 by Laura Obenski at Docket No. C-2018-3996905.

⁵ *See* I.D. at 196 (citing *Crums Mill Assoc v. Dauphin Consolidated Water Supply Company*, Docket No. C-00934810, 1993 Pa. PUC LEXIS 93, at *10 (Interim Emergency Order Denying Relief dated Mar. 23, 1993) (citing *Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. 1980)).

II. REPLY TO ANDOVER’S LATE EXCEPTION NO. 2 – THE ALJ CORRECTLY DENIED THE COMPLAINANTS’ REQUESTED MANDATORY INJUNCTIVE RELIEF THAT WOULD HAVE RESULTED IN A CESSATION OF OPERATIONS OVER SPLP’S 8-INCH ME1, ITS WORKAROUND PIPELINE, ME2, AND/OR ME2X. I.D. AT 98, 175-176.

A. INTRODUCTION.

In its disposition of the requested injunctive relief seeking a cessation of operations over the Mariner East Pipelines, the I.D. correctly identifies and explains the legal standards that the Complainants must meet under Pennsylvania law and the Commission’s regulations in order to obtain the relief they seek. The I.D. correctly explains that:

in order to obtain permanent injunctive relief, 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 (2002), *cert. denied*, 540 U.S. 821 (2003)). Where a complainant seeks temporary injunctive relief, 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 (1987)). 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. *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 Cnty. of Allegheny v. Commonwealth*, 518 Pa. 556, 544 A.2d 1305, 1307 (1988).

I.D. at 170-171. The I.D. accurately concluded that the un rebutted evidence submitted by Range demonstrated that a shutdown of the Mariner East Pipelines would be injurious to the public interest and, among other things, negatively impact Range (as a shipper) and the public at large. *See* I.D. at 171-175. Indeed, the ALJ correctly concludes that “Complainants and their aligned Intervenors have failed to prove a mandatory permanent or temporary injunction enjoining the operator from transporting NGLs through Chester and Delaware Counties is warranted or in the

public interest as a whole” and that “Complainants’ right to relief on this issue is not clear and an injunction would negatively economically impact the utility and its shipper.” I.D. at 175. Therefore, the relief requested to cease operations on the Mariner East Pipelines was correctly denied.

Andover, in its Late Exceptions, raises five primary arguments to claim that the I.D. erred by denying the requested injunctive relief. First, Andover argues that the I.D. “refuses to accept its duty to protect the citizens of the Commonwealth from possible mortal harm which Sunoco must now admit to the public.” Andover Exc. at 6. Second, it claims that the proposed relief set forth in the I.D. provides no “useful response” to possible alleged harms related to a rupture release of the pipelines. *See* Andover Exc. at 6-7. Third, Andover argues that the SPLP is required to inform the public of what it must do to avoid harm in the event of a release, but has failed to do so. *See* Andover Exc. at 7. Fourth, Andover relatedly claims that SPLP’s public awareness plan is implausible and unworkable. *See* Andover Exc. at 7. And, finally, Andover argues that if Sunoco cannot implement a credible and implementable public awareness program, that the Commission “has both the authority and the responsibility to obtain SPLP’s compliance with part 195 by any means necessary, including directing a halt to operations of SPLP’s current and proposed HVL pipelines.” Andover Exc. at 8. Each of these arguments should be denied.

B. ANDOVER’S LATE EXCEPTIONS ARE UNTIMELY.

As an initial matter, Andover’s Late Exceptions should be denied because they were untimely filed. Section 5.533(a) of the Commission regulations states that that “exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided.” 52 Pa. Code § 5.533(a) (emphasis added). By Secretarial Letter dated April 23, 2021, the Commission extended the timing for exceptions and replies as follows:

- For Complainants: Exceptions and Reply Exceptions are extended to 60 days for Exceptions and to 30 days for Reply Exceptions;
- For all other Parties: Exceptions and Reply Exceptions are extended to 55 days for Exceptions and to 25 days for Reply Exceptions

Meghan Flynn, et al. v. Sunoco Pipeline, L.P., Docket Nos. C-2018-3006116, P-2018-3006117, C-2018-3003605, C 2018 3005025, C-2018-3006898, and C-2018-3006905 (April 23, 2021 Secretarial Letter at 1). The deadline for Complainants to file exceptions was extended to June 11, 2021, and the deadline for all other parties to file exceptions was extended to June 7, 2021. Andover did not file its exceptions until June 13, 2021,⁶ and provided no basis as to why it untimely filed its exceptions.

The Commission previously denied similar untimely exceptions. *See, e.g., Salwa Mohamed and Ahmed Abdulrahman v. PECO Energy Company*, Docket No. F-2018-3001318, 2019 Pa. PUC LEXIS 286, at *14 (Order entered Aug. 29, 2019) (denying arguments raised for the first time in reply exceptions because a “request to reverse the ALJ’s decision is untimely as Exceptions are due within twenty days after the Initial Decision. 52 Pa. Code § 5.533(a.)”); *Cheryl Nickelberry v. Philadelphia Elec. Co.*, Docket No. F-8642641, 1987 Pa. PUC LEXIS 249, at *3 (Order entered Jun. 29, 1987) (“*Nickelberry*”) (“In reviewing untimely exceptions, we have followed the Commonwealth Court of Pennsylvania’s opinion in *Walker v. Unemployment Compensation Board of Review*, 461 A.2d 346, 347 (Pa. Cmwlth. 1983). The Court wrote, ‘An untimely appeal may be allowed where the untimeliness is not the result of the negligence of the appellant.’”). In *Nickelberry*, the Commission denied exceptions that were untimely and a complainant alleged that there were “irregularities” in the post service of the presiding officer’s

⁶ June 13, 2021, was a Sunday.

initial decision. *Id.*, at *3. Nevertheless, the Commission denied her exceptions and explained that too much time had passed between the time the complainant received the exceptions, and filed them.

Here, Andover provides no basis for the untimeliness of its exceptions. Unlike the scenario presented in *Nickelberry*, Andover was further provided additional time to file its exceptions, beyond the deadline established by the Commission's regulations. Andover is also represented by counsel. Nevertheless, Andover did not file or serve its exceptions until June 13, 2021, which falls after the extended deadlines set forth in the Secretarial Letter. Andover's Late Exceptions are untimely and no reasonable basis for their untimeliness has been provided. Therefore, the Late Exceptions should be denied.

C. THE I.D. CORRECTLY CONCLUDED THAT GRANTING A MANDATORY INJUNCTION THAT REQUIRES A TEMPORARY AND/OR PERMANENT CESSATION OF OPERATION OF THE MARINER EAST PIPELINES WOULD CAUSE SUBSTANTIAL PUBLIC HARM.

Andover's Late Exception No. 2 should be denied on the merits because it cannot overcome the unrebutted record evidence presented by Range and SPLP that demonstrated a shutdown of the Mariner East Pipelines would cause substantial public harms and is not in the public interest. Range demonstrated that it is a shipper on the Mariner East Pipelines and has a substantial presence in the Commonwealth. *See* Range M.B., Section V.A.1.a. Range further demonstrated that the Mariner East Pipelines are essential to its business (Range M.B., Section V.A.1.b.) and that Range does not possess reasonable alternatives to the Mariner East Pipelines to transport its products (Range M.B., Section V.A.1.c.). Range further explained that the negative impacts of a cessation of Mariner East Pipeline operations on Range are well-documented and substantial, and could include possible shut-ins of natural gas production throughout Pennsylvania. *See* Range M.B., Section V.A.1.d. In addition, Range presented unrebutted evidence of the substantial negative

impacts to royalty owners, natural gas and propane consumers throughout the Northeastern United States, Pennsylvania workers, and the Commonwealth, that would result from the Complainants' requests injunctive relief. Range M.B., Section V.A.1.2. Andover's Late Exceptions fail to address any of these negative impacts to Range or the public at large and, therefore, should be denied.

D. THE I.D. CORRECTLY CONCLUDED THAT THE COMPLAINANTS REQUESTING A CESSATION OF MARINER EAST PIPELINE OPERATIONS, INCLUDING ANDOVER, FAILED TO DEMONSTRATE THEY WERE ENTITLED TO THIS MANDATORY INJUNCTIVE RELIEF.

Regarding the specific arguments raised by Andover in Exception No. 2, Range explained in detail its Main Brief that the Complainants failed to satisfy each of the essential prerequisites necessary to obtain their requested injunctive relief. *See* Range M.B., Section V.B. In summary, the Complainants (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. *See* Range M.B. at 28.

With respect to Andover's arguments that (1) the I.D. "refuses to accept its duty to protect the citizens of the Commonwealth from possible mortal harm which Sunoco must now admit to the public"⁷ and (2) the proposed relief set forth in the I.D. provides no "useful response" to possible alleged harms related to a rupture release of the pipelines,⁸ Range also explained in its Briefs that the Complainants presented no evidence regarding the likelihood or probability of a fatality occurring due to an accidental leak on any of the Mariner East Pipelines. Range M.B.,

⁷ Andover Exc. at 6.

⁸ *See* Andover Exc. at 6-7.

Section V.B.2; *see also* SPLP M.B., Section V.A.2. Andover’s first argument appears to concede this point when it asserts that “possible mortal ham” could occur, but points to no record evidence that shows the likelihood or probability of such harm occurring. As explained in Range’s Main Brief, by failing to present any evidence that there is an imminent threat of fatality from an accidental leak on the Mariner East Pipelines, the Complainants have not and cannot demonstrate that the need for the requested mandatory injunctive relief is immediate and, therefore, the requested relief should be denied. Range M.B., Section V.B.2.

Andover’s further arguments that SPLP has failed to inform the public of what it must do to avoid harm in the event of a release,⁹ and that SPLP’s public awareness plan is implausible and unworkable,¹⁰ should similarly be denied. As explained by Range, the Commission has repeatedly rejected arguments that SPLP’s public awareness program is inadequate. Range M.B. at 29-33.

Andover’s final argument—*i.e.*, if Sunoco cannot implement a credible and implementable public awareness program, then the Commission should enjoin the operation of the Mariner East Pipelines because the Commission “has both the authority and the responsibility to obtain Sunoco’s compliance with part 195 by any means necessary”¹¹— should also be denied. The I.D. correctly notes that “[i]njunctive relief must be narrowly tailored to abate the harm complained of.” I.D. at 187 (Conclusion of Law No. 18). The mandatory injunctive relief sought by Andover in its Late Exceptions is not narrowly tailored because it would be injurious to the public interest and have widespread negative economic impacts unrelated to the complained-of harms. *See* I.D. at 175-176. Moreover, as explained in the Interim Decision, the requested injunction is not needed to obtain compliance with these requirements. *See* I.D. at 176 (concluding that, if an operator were

⁹ *See* Andover Exc. at 7.

¹⁰ *See* Andover Exc. at 7.

¹¹ Andover Exc. at 8.

out of compliance with applicable regulations, “There are other means besides a shut-down or restrictive amendment to the operator’s COS to bring the operator into compliance...”). Therefore, Andover’s Late Exception No. 2 should be denied.

For these reasons, and the reasons more fully explained in Range’s briefs and testimony, the Commission should deny Andover’s Late Exception No. 2 and affirm the I.D.’s denial of the requested mandatory injunctive relief that seeks a permanent and/or temporary cessation of service over the Mariner East Pipelines.

III. CONCLUSION

WHEREFORE, Range Resources – Appalachia, LLC respectfully requests that the Pennsylvania Public Utility Commission deny the Late Exceptions of Andover Homeowners Association, Inc.

Respectfully submitted,



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