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VIA ELECTRONIC FILING

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.; Docket No. C-2018-3006116 and
P-2018-3006117; **SUNOCO PIPELINE L.P.'S BRIEF (PUBLIC)**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Brief (Public) in the above-referenced proceeding.

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

Very truly yours,

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WES/das
Enclosure

cc: Per Certificate of Service

CERTIFICATE OF SERVICE

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

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Dated: December 7, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**RESPONDENT SUNOCO PIPELINE L.P.'S POST-HEARING BRIEF
IN OPPOSITION TO PETITION FOR EMERGENCY RELIEF**

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I. Introduction

Pipelines are the safest method to transport petroleum hydrocarbons, including the natural gas liquids (“NGLs”) propane, ethane, and butane. Petitioners do not dispute this. There are 40,000 miles of transmission pipelines located in high-consequence areas that transport highly-volatile liquids (“HVLs”). To shut down the transportation of HVLs on SPLP’s Mariner East 1 and Mariner East 2 pipelines, Petitioners must prove that there is something specific to them that creates a clear and present danger to the public. There is no such evidence. Theorizing about a hypothetical, absolute worst-case scenario does not satisfy Petitioners’ burden. There must be evidence of an imminent safety hazard that necessitates an interim emergency order before the Commission’s next scheduled public meeting. Petitioners proffered no such evidence.

As the Commission held in the *Dinniman* matter, evidence of prior pipeline accidents and their consequences is insufficient to obtain interim emergency relief:

[I]n our view, the question presented by the Petition is whether Sunoco’s continued operation of ME1 gives rise to an “emergency” as defined in our regulations. We are not persuaded that it does. While the record contains accounts of mishaps in other jurisdictions and other pipelines, there is no new evidence to support a finding that the continued operation of ME1 poses a clear and present danger to life or property in West Whiteland Township.

SPLP Ex. 10 at 34.

So too here. If the Commission found that evidence of prior incidents on other pipelines was insufficient to establish a clear and present danger, then theorizing about an absolute worst-case scenario, without any evidence of any probability that such a scenario will occur, is necessarily insufficient as a matter of fact, logic, and law to establish the imminence necessary to obtain an interim emergency injunction in the few days remaining before the Commission’s next scheduled public meeting.

II. Summary of Argument

Petitioners admitted that they did not present *any evidence* of the integrity of the Mariner East pipelines from which the Commission could find that there is an imminent threat to life or property that is required for the extraordinary remedy of interim emergency relief. They offered no evidence that there is any imminent risk of releases from valve sites or from areas where HDDs were used in the construction of the pipelines. They offered no evidence of increased risk from co-location of pipelines. They offered no evidence at all about ME1 and no evidence about construction of any Mariner East pipelines. They simply abandoned these arguments at the hearing. They likewise abandoned, in the middle of the testimony of their primary expert, any claim of the probability of a leak occurring from the pipelines or whether the risk of a pipeline leak is unacceptable.

So, all Petitioners are left with are two arguments, both of which are meritless and not supported by evidence in the record. First, without any evidence of the probability that an incident will occur and focusing solely on a worst possible “what if” scenario of a pipeline rupture, Petitioners argue that the consequences of such a worst-case hypothetical will result in fatalities. But focusing on worst-case consequences without any evidence of the risk of that worst-case occurring would shut down every transmission pipeline, gathering line, and distribution line in any populated area. In fact, focusing only on the consequences of worst-case scenarios without any evidence of the risk or probability of that scenario occurring would force most of the activities of daily life to come to a grinding halt – since there is a potential risk of injury or death whenever a person drives a car, flies on a plane, crosses a street, turns on a stove, or heats a home. In short, Petitioners are saying that they have no evidence that the risk is unacceptable or is greater than the risk involved in many aspects of every day life, but if a worst-case scenario were to occur, the consequences would be bad. Focusing only on consequences without also considering the corresponding risk of a particular event is not sufficient evidence to meet Petitioners’ heavy burden. The Petitioners also create a false

logical construct that the potential risks of certain daily activities – such as having fuel oil tanks in their homes, driving, or flying, which are acceptable and should be distinguished because Petitioners “voluntarily” assume the potential consequences of those activities, where they do not do so for the SPLP pipelines. This is not a legitimate distinction and if anything, ignores the potential consequences *assumed every day by other members of the general public* of tanker trucks, rail cars, and pipelines, to get commodities to their homes. Every person in the United States consumes energy, and every consumer of energy does so by imposing risk on others.

Petitioners’ remaining case is premised on the testimony of three residents who claim that SPLP’s public awareness program is inadequate because they claim not to know what to do in the event of a pipeline-related emergency. Petitioners’ complaints do not establish that any emergency exists such that the requested interim emergency relief is warranted. Petitioners want a one-size-fits-all set of directives, when in reality, emergency response depends on the situation presented in the field and depending upon the real-time judgment of the local emergency responders to develop and communicate with the public. In short, it is the utility’s duty to provide information as to the facilities involved and it is up to the local first responders to decide what the appropriate response is under the circumstances.

As a threshold matter, SPLP’s public awareness and emergency response program has already been addressed by the Commission in the *Dinniman* matter. The exact same criticisms with SPLP’s public awareness program were raised in that matter, and after careful review, the Commission ruled that SPLP’s public awareness program satisfied all applicable requirements made under the Commission’s Orders and regulations. And, in fact, the testimony of each of the three Petitioners demonstrates that SPLP’s public awareness program has worked exactly as intended and in accordance with applicable regulations – each admitted that he or she (1) knows where the Mariner East pipelines are located; (2) knows how to identify a release from a pipeline using sight, sound, and smell; and (3) knows that if they suspect a release from a pipeline, they should move

away from the pipeline on foot until they reach a safe place where they can then call emergency services.

SPLP offered uncontradicted evidence that it maintains a robust public awareness program and has gone *above and beyond* the regulatory requirements to inform the public, and local officials (including school districts) of the location and hazards related to pipelines, and to inform the public and to train local emergency responders what to do, and what not to do, in the event of a pipeline-related emergency. SPLP's uncontradicted evidence includes that:

- SPLP sends bi-annual mailings to everyone located within 1,000 feet of each side of the ME1 and ME2 pipelines, a distance significantly beyond the 660-foot PHMSA requirement, which SPLP completed most recently in September 2018, where mailings were sent to: 40,046 members of the affected public; 16,338 excavators; 4,384 public officials; and 3,301 emergency response organizations;
- SPLP conducts specialized trainings for emergency responders located along the pipeline right-of-way, known as the Mariner Emergency Responder Outreach, which a total of 1,950 emergency responders have attended since 2013, with more trainings being scheduled;
- SPLP performs specific outreach to local school districts, including providing emergency planning information to school officials located within one-half-mile of the pipeline right-of-way, which is continuing in December 2018 with scheduled meetings with several schools in Chester and Delaware Counties;
- SPLP's public awareness program provides information that is appropriate, adequate, meets industry standards, and complies with PHMSA regulations, and that informs the public where pipelines are located, how to recognize a release, and what to do, and what not to do, in the event of a pipeline emergency;
- SPLP has provided specific information and training to emergency responders and schools that is necessary to develop local emergency response plans, and to know how to safely respond to a pipeline incident; and
- Every expert witnesses who testified at the hearing, including Petitioners' own experts, agreed that SPLP's public awareness program provides the information that is required by the PHMSA regulations.

Finally, while there is no evidence that supports the extreme remedy of interim emergency relief, if an injunction were entered, the shutdown of the Mariner East pipelines will adversely affect the public interest by: virtue of lay-offs; lost union jobs (including during the upcoming holiday

season); lost royalties; lost revenues and associated economic benefits to SPLP; shippers and related industries; and last but certainly not least, significantly adversely impact the price for Pennsylvania-sourced Marcellus Shale for propane and natural gas during the peak winter heating season. The timing of Petitioners' request could not be any worse.

III. Statement of the Case

Petitioners filed a Complaint and Petition for Interim Emergency Relief (the "Petition") against Sunoco Pipeline L.P. ("SPLP"), which seeks to temporarily and permanently shut down the existing operation of the Mariner East 1 pipeline ("ME1") and to temporarily and permanently enjoin the operation of the Mariner East 2 and Mariner East 2X pipelines, which are in the process of being constructed and commissioned, as well as the operation and use of an existing 12-inch pipeline that will be used as part of the Mariner East 2/2X pipeline system.¹ As a consequence of Petitioners' request, they would also shut down numerous related industries such as gas processing at Marcellus Shale facilities and Marcus Hook, and cause the "shut-in" of numerous Marcellus Shale natural gas wells, that in addition to natural gas produce ethane, butane and propane liquids. Petitioners seek interim emergency relief in the form of an injunction to prohibit the operation of ME1 and ME2 until the Commission reviews SPLP's public awareness program and determine whether it is "suitable, applicable, appropriate, and credibly possible to carry out." Pet., Introduction at 2. Petitioners make no request to stop ongoing construction of ME2. A hearing on the Petition was held on November 29 and 30, 2018 before Administrative Law Judge Elizabeth Barnes.

The primary focus of the Petition is SPLP's public awareness program, which establishes the process for how SPLP communicates with the public regarding ME1 and ME2 and related safety issues, including SPLP's coordination with local emergency responders. Petitioners allege that SPLP's public awareness program is inadequate, ineffective, and not "credible," and request that the

¹ For ease of reference, unless otherwise noted, ME2, ME2X, and the 12-inch pipeline will be referred to collectively as "ME2."

Commission review and evaluate the program for compliance with the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) regulations on public awareness listed at 49 C.F.R. § 195.440. Pet. ¶¶ 34-40. Petitioners also argue that SPLP lacks an adequate plan for emergency response to a pipeline-related incident, arguing that SPLP’s public informational pamphlets do not provide “credible” information on how the public would be informed of a leak, how individuals with limited mobility would evacuate, how the public can determine wind direction, how the public can determine when they have arrived at a safe location, how and when to call 911, and when to determine whether to evacuate or shelter-in-place. Pet. ¶¶ 41-48.

Petitioners raised additional issues in their Petition and Complaint, including allegations on the alleged hazards at valve sites and where a horizontal directional drill (“HDD”) was used, the integrity of ME1 or ME2, the risk of co-location of pipelines, and the overall risk of a release from the pipelines. Pet. ¶¶ 28-33, 49-64. But as set forth at length below, Petitioners did not offer any evidence to support these allegations at the hearing on the Petition, and conceded they were voluntarily abandoning them, in one case in the middle of the testimony of Petitioners’ primary expert. Rather, at the hearing, Petitioners’ evidence was confined to two issues – (1) the adequacy of SPLP’s public awareness program, and (2) the theoretically worst-possible consequences of a pipeline-related emergency due to the location of the pipelines in a high consequence area. *See* N.T. 16:4-17, 345:24-16. During the hearing, Petitioners also clarified the relief that they seek, which is a temporary injunction to shut down ME1 service and to prevent the commencement of service for ME2 until SPLP’s public awareness program can be considered by the Commission. N.T. 349:7-19. That request ignores that the Commission considered the very same issues this summer and found SPLP’s program to be acceptable and in conformance with its Orders and applicable regulations.

A. The integrity of ME1 and ME2 are not at issue in this case, based on the Commission’s prior Orders and Petitioners’ concession that they did not present any evidence regarding the integrity of ME1 or ME2.

From the outset, any issues regarding the safety or integrity of ME1 are foreclosed by two prior orders of the Commission – the May 3, 2018 Order reinstating service on ME1 (SPLP Ex. 8), and the June 15, 2018 Order entered in the *Dinniman v. Sunoco Pipeline L.P.*, Dkt. No P-2018-3001453 et al., matter (SPLP Ex. 10). On May 3, 2018, the Commission unanimously approved the recommendation of the Pipeline Safety Section of the Commission’s Bureau of Investigation and Enforcement (“BI&E”) to reinstate utility transportation of hazardous liquids on ME1. *See* SPLP Ex. 8 at 13; *see also* SPLP Ex. 9, Brown Statement on May 3, 2018 Order (“BI&E has reviewed Sunoco’s remedial efforts extensively and is satisfied that the pipeline can resume operation safely.”). The Commission then again found that ME1 was safe when it found on June 15, 2018 that service on ME1 should not be enjoined in the *Dinniman* matter:

[I]n our view, the question presented by the Petition is whether Sunoco’s continued operation of ME1 gives rise to an “emergency” as defined in our regulations. We are not persuaded that it does. While the record contains accounts of Sunoco’s mishaps in other jurisdictions and other pipelines, there is no new, credible evidence to support a finding that the continued operation of ME1 poses a clear and present danger to life or property in West Whiteland Township. Moreover, considering that the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding, we are not persuaded that Senator Dinniman has a clear legal right to the relief requested in the Petition regarding the continued operation of ME1.

SPLP Ex. 10 at 34.

Moreover, Petitioners conceded that they offered no evidence at the hearing regarding the integrity of ME1 or ME2; therefore, this issue is not before the Commission. During Petitioner Nancy Harkins’ direct testimony, Petitioners’ counsel conceded that integrity of ME1 and ME2 were not at issue in the proceeding: “If Your Honor please, we’re not talking about the integrity of the pipelines. That’s not an issue in this proceeding.” N.T. 32:8-10. At the conclusion of Petitioners’ case in chief in response to SPLP’s hearing-motion for a directed verdict on the integrity and risk

issues, counsel again confirmed Petitioners conceded that they were not challenging the safety of ME1 or ME2 or SPLP's corresponding integrity management and maintenance program: "we're not here today to challenge Sunoco's maintenance program. We're not here today to talk about how many welds they put on, whether the welds are good and bad. In that respect, there's no challenge to the integrity of their program. . . . the integrity of the program is not in dispute. . . ." N.T. 345:1-9; *see id.* at 346:15-16 (summarizing evidence petitioners presented, and that "none of those things directly implicate integrity."). When Judge Barnes asked Petitioners' counsel whether they were waiving issues regarding the integrity of ME1 and ME2, counsel confirmed that "we did not put any evidence on concerning that." N.T. 347:1-3; *id.* 347:9 (same). After a lengthily colloquy with Judge Barnes, counsel again confirmed that "[i]f you're talking about the integrity of the pipeline, we've conceded that point, as we've just made clear." N.T. 351:16-18.

Just as Petitioners presented no evidence of the safety or integrity of ME1 and ME2, they likewise did not present any evidence of unsafe construction of ME2 from which the Commission could determine that the construction of ME2 presents any safety concerns. Indeed, Petitioners do not even seek to enjoin construction of ME2, so that issue is likewise not before the Commission.

B. Petitioners concede that they did not present any evidence of the risk that a pipeline-related emergency was likely to occur.

Petitioners also conceded during the hearing that they did not offer any evidence of the risk that a pipeline release was, or was not, likely to occur, or that a release would result in an emergency that would present a clear and present danger to the public. Petitioners presented no evidence of the alleged risks associated with the ME1 and ME2 pipelines, no evidence of an increased risk associated with the location of a block valve station, no evidence regarding risks associated with the entry and exit points of an HDD location, and no evidence of risk from the co-location of pipelines.

The allegations of the risk of a pipeline-related emergency alleged in the Petition and Complaint were based upon a report prepared by Quest Consultants, Inc. (the "Quest Report"). *See*

Pet. ¶¶ 30-33. During the hearing, Petitioners called the author of the Quest Report, Jeffery Marx, whom Petitioners proffered as their expert on risk and quantitative analysis. As a component of Mr. Marx's testimony, Petitioners initially admitted the Quest Report into evidence, over SPLP's objection. N.T. 277:10 (introduced), 302:21-22 (admitted). During cross-examination of Mr. Marx challenging the faulty assumptions on which the Quest Report was based, Petitioners' counsel conceded that "risk analysis has nothing to do with what we're talking about in our case." N.T. 320:12-13. Petitioners' counsel again objected to cross-examination questioning of Mr. Marx regarding probability of risks from a pipeline-related emergency, and stated that "[o]ur case is not about the frequency of events or risk analysis. . . ." N.T. 327:18-20. Petitioners in fact conceded that it is unlikely that a pipeline-related emergency would occur: "We've conceded that the relative incidents of events is small." N.T. 328:15-16. In fact, Petitioners failed to offer *any* evidence of the probability of an incident.

Ultimately, during cross-examination and upon scrutiny of the conclusions and findings in the Quest Report, Petitioners withdrew the report from evidence. N.T. 329:14-330:3. During a colloquy with Judge Barnes, Petitioners' counsel again conceded that they "have not put on evidence of risk and we have not focused on risk. . .," and "that this case from our perspective is not about the risk of an event happening . . . [w]e concede that." N.T. 353:1-2, 353:15-18. Petitioners' counsel confirmed that "[w]e've put on no evidence today, we didn't intend to put on any evidence today how often these things happen[]." N.T. 354:3. Similarly, Petitioners proffered no evidence of the *likelihood* that an incident would happen.

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

Petitioners did not present any evidence of the integrity of ME1 and ME2, or the risk or probability that a release from ME1 or ME2 would occur. Instead, they focused exclusively on what they admit is an absolute worst-case scenario, using unrealistic and unlikely absolute worst-case

assumptions, and a prediction of the worst-case consequences from such an event. Mr. Marx admitted that his hypothetical analysis was based on worst-case assumptions that over-predict the impact of his hypothetical worst-case scenario. *See e.g.*, N.T. 307, 314, 323-327, 329. Mr. Marx agreed that he only applied worst-case assumptions and limited his evaluation to the most catastrophic circumstance of a complete rupture of a pipeline that would result in the most catastrophic emergency conditions. N.T. 304:14-18. Mr. Marx testified that his analysis over-predicts the impact (and over-estimates the risk)² because he only evaluated the worst-case scenario. N.T. 310:17-311:5.

And even though Mr. Marx applied the worst-case scenario and made worst-case assumptions, his analysis was completely generic and not specific to ME1 or ME2:

Q. You were just saying that in the absolute worst-case scenario, using the absolute worst-case assumptions, something like that theoretically could happen; correct?

A. That's right.

Q. And that is true for any pipeline, any HVL pipeline. That's not unique to this pipeline other than its location; correct?

A. Well, its not unique in the sense that if you're comparing an HVL pipeline of the same diameter and pressure and flowing material, then it's not specific to the Mariner line.

² While the likelihood and risk of a pipeline-related emergency is not an issue in this case, before Petitioners withdrew that issue from the case, during cross-examination Mr. Marx repeatedly admitted that his analysis overstates the risk of a pipeline-related emergency in several ways. N.T. 327:3-5. First, he assumed that a person stays in one location near a pipeline, 24-hours a day, 365-days a year, which he admitted was a false assumption that "certainly []could not be applied to a school location." N.T. 314:14-17, 327:6-9. Second, he included releases from pipelines in his analysis that were too small to lead to a fatality, or that could not even ignite. N.T. 323:8-19. On calculating the total releases from a pipeline, Mr. Marx admitted that he included releases that are very small, including releases as small as five gallons, which he admitted are unlikely to ignite and would "[c]ertainly not" create a vapor cloud that would be of concern or that could travel a significant distance away from the pipelines. N.T. 325: 6-19. Mr. Marx also admitted that his analysis overstates risks because it assumes that no one takes evasive action in response to a release from a pipeline, and that no one would move away from a fire caused by a pipeline release. N.T. 329:3-8. And remarkably, Mr. Marx admitted that his analysis did not look at the actual total fatalities to a member of the general public that have been reported to PHMSA from a pipeline release. N.T. 307:8-12, 326:10-12.

N.T. 331:1-11. Mr. Marx further admitted that the same analysis would apply to *any* HVL pipeline, such as an existing pipeline operated by Enterprise Products, referred to during testimony as the “TEPPCO” pipeline, which parallels ME1 and ME2 in Chester and Delaware Counties:

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

A. Yes.

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

A. Yes, we could.

N.T. 331:12-21.

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

The Commission or Bureaus have, at least twice, found that SPLP’s public awareness program is adequate, appropriate, and in compliance with applicable regulations.

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

SPLP made the required filing (the relevant excerpt of which is SPLP Exhibit 11 in this proceeding), and the Commission expressly found:

The documentary materials provided by Sunoco, on their face, indicate communication to the affected public and stakeholders concerning the Mariner East Pipeline projects. Therefore, we conclude Sunoco has established that it has complied with standard notice procedures of DEP and its internal policies and such procedures, as outlined, comply with the requirements of Ordering Paragraph No. 6.

SPLP Ex. 12, August 2, 2018 Order at 24-25 (emphasis added). Notably, the exact public information mailing that Petitioners challenge here, Exhibit P-2,³ is the document that the Commission reviewed and found adequate. *See* SPLP Ex. 11 at referenced Exhibit 65.

Furthermore, in 2016, BI&E conducted an audit of SPLP's public awareness program and did not identify any deficiencies in SPLP's public awareness program. SPLP Ex. 41 at 2.

E. SPLP has a robust public awareness program that is adequate, appropriate, and meets or exceeds industry standards and applicable regulations.

SPLP has adopted a comprehensive public awareness program that includes individual and group meetings, mass mailings, and specialized training programs that raise awareness of the location and presence of SPLP's pipelines, educates the public and emergency responders about what to do and what not to do in the event of a pipeline release, and provides all of the relevant information for stakeholders to develop emergency response and evacuation plans. *See e.g.* SPLP Ex. 31, Public Awareness Plan; *see also* SPLP Ex. 41, Perez Presentation (summarizing public awareness plan); N.T. 584:23-607:15 (Perez testimony regarding same).

Joseph Perez, Vice President, Technical Services, Operations and Engineering Services, Energy Transfer Partners and SPLP, testified that he oversees the companies' public awareness and emergency response teams. N.T. 585, 589. Mr. Perez testified that SPLP has a robust public awareness program that engages the community, utilizing a variety of methods, including meetings,

³ Petitioners' Exhibit P-2 is neither a complete copy of SPLP's public information mailing, nor a current copy of the mailing. Complete copies of SPLP's prior versions of the public mailings were submitted to the Commission with SPLP's June 22, 2018 compliance filing, provided as SPLP Ex. 11, at referenced Exhibit 65-70. Current copies of SPLP's two information mailings, sent to members of the public and emergency responders, were admitted as SPLP Exhibits 18 and 19.

mailings, and specialized training. N.T. 589. The primary goal of the plan is to raise awareness with the public and other stakeholders of SPLP's facilities and to ensure that everybody knows where the pipelines are located. N.T. 590. SPLP mailed its most recent public outreach brochures in September 2018 (*see* SPLP Exs. 18-19) to the affected public (all residents, businesses, farms, schools, and other places of congregation within 1,000 feet of each side of the pipeline), excavators, public officials, and emergency response organizations. N.T. 590; *see also* SPLP Ex. 41 at 4. These brochures were sent to:

- 40,046 members of the affected public;
- 16,338 excavators;
- 4,384 public officials; and
- 3,301 emergency response organizations.

N.T. 593; SPLP Ex. 41 at 4. SPLP completes this mailing every two years consistent with PHMSA regulations. N.T. 591. Notably, SPLP goes beyond the required 660-foot PHMSA criteria for public awareness mailings by using a 1,000-foot mailing zone. N.T. 592.

Mr. Perez also discussed that, as Mr. Noll testified, SPLP conducts specialized trainings for emergency responders. N.T. 593-94. SPLP has conducted these trainings since 2013 and has had success at engaging emergency responders to attend; a total of 1,950 responders and officials in Pennsylvania have attended since the program began. N.T. 595. Mr. Perez confirmed that company records show that Petitioner expert witness, Timothy Hubbard, was invited to the past two trainings, even though Mr. Hubbard did not attend. N.T. 604-605. As to the 12-inch pipeline specifically, Mr. Perez explained that SPLP started reaching out to affected communities, police, fire, and emergency management beginning in July 2018, and SPLP has already held meetings with 62 emergency responders and officials from Chester and Delaware Counties, including 28 agencies. N.T. 596; SPLP Ex. 41 at 8-9.

Regarding schools, SPLP initiated supplemental school outreach in 2017, and since that time has provided emergency planning information to administrators for 53 school officials located within

one-half of a mile of the ME2 pipeline across Pennsylvania. N.T. 597; SPLP Ex. 41 at 10. A portion of the materials provided to these school districts during supplemental outreach is provided in SPLP Exhibit 32. N.T. 587. SPLP is continuing this supplemental school outreach and has the following meetings currently scheduled:

- December 10: Rose Tree Media School District
- December 11: Downingtown School District
- December 12: Chester Community Charter School
- December 13: Penn Delco School District
- December 19: Chichester School District

N.T. 597-598. SPLP is still working to schedule meetings with additional school districts, and once it completes its supplemental outreach, it will have 100% participation from school districts. N.T. 599.

As noted above, SPLP's public awareness program has been reviewed and approved by the Commission in the *Dinniman* matter (*see* SPLP Ex. 12 at 25), and was also briefly summarized in a February 2, 2018 letter from Chairman Brown to Governor Wolf, which noted that at that time, SPLP had sent out more than 20,000 direct mailings to Chester County residents, separate mailings were sent to local public officials, and that SPLP had conducted trainings for more than 2,000 emergency responders and public officials at more than 16 public meetings held during 2017. *See* SPLP Ex. 6. As reflected in Mr. Perez's testimony, more has been done in public outreach since Chairman Brown's February 2018 letter.

John Zurcher, SPLP's expert on public awareness, hazard warnings, and pipeline safety, testified that he reviewed SPLP's public awareness program, including the direct mailings sent to the public, schools, local officials, and emergency responders. N.T. 379-392, 397:20-39912; *see also* SPLP Ex. 18, 19 and 31. Mr. Zurcher testified that not only is SPLP's public awareness program sent directly to the affected public who are located near one of its pipelines, SPLP also maintains the same information on its website for anyone to review and access. N.T. 381:8-18.

Mr. Zurcher was a member of the committee that originally drafted the industry standards for public awareness plans, which were ultimately adopted in the PHMSA regulations at 49 C.F.R. § 195.440. N.T. 372:2-8. Mr. Zurcher has consulted with pipeline companies and reviewed public awareness programs for hundreds of different companies, and has been an independent auditor of public awareness programs. N.T. 372:9-25, 373:24-374:1-10. Mr. Zurcher also explained that the public awareness mailings contain standardized instructions for a reason – PHMSA and the pipeline industry want the information communicated to the public and emergency responders to be standard so that there is no confusion about how to identify the location of a pipeline, how to identify a pipeline release, and what to do in response to a pipeline-related emergency. N.T. 372:20-373:5. Standardization among the various pipeline companies’ public awareness mailings allows the message to be consistent and avoids any conflicting messaging, which is why all of the pipeline company mailings focus on using sight, smell, and sound to identify a pipeline release. N.T. 380:23-25, 382-392; *see also e.g.*, SPLP Exs. 21, 22, 24, 25. As Mr. Zurcher explained, “they’re remarkably similar and that is on purpose.” N.T. 396:21-22. The standard message is particularly important when there are multiple pipelines in an area, because if a release were to occur, the public may not initially know which pipeline is leaking. N.T. 396:23-397:8.

Mr. Zurcher testified that there are approximately 2.4 million miles of pipelines in the United States, including 210,000 miles of hazardous liquids transmission pipelines, 300,000 miles of natural gas transmission pipelines, 1.4 million miles of distribution pipelines, and 500,000 - 600,000 miles of gathering lines. N.T. 376:9-20. Approximately 90% of the United States population lives near a pipeline. N.T. 378:1-3. There are approximately 80,000 miles of HVL transmission pipelines in the United States, half of which are located in a high-consequence area, which is defined by the PHMSA regulations to include densely-populated areas such as portions of Chester and Delaware Counties. N.T. 378:8-24; *see also* 49 C.F.R. § 192.903 (definition of high-consequence area).

Mr. Zurcher stated that in his expert opinion, SPLP's public awareness program is appropriate, adequate, meets industry standards, and complies with PHMSA regulations, and most importantly, communicates all information that is necessary for the public to know: (1) where SPLP's pipelines are located by the comprehensive marker system; (2) how to recognize a release by sight, smell, and sound; and (3) what to do in the event of a pipeline-related emergency. N.T. 382-384, 389-390, 392:2-11, 399:8-12.

As summarized on the front cover of SPLP's public information pamphlet, SPLP's public awareness program provides the public with information on how to "Know," "Recognize," and "Respond" to a pipeline release. *See* SPLP Ex. 18 and 19. Mr. Zurcher described that SPLP's public awareness program includes marking the location of the pipelines on the landscape, which includes identifying the substance in the pipelines, contact information for the pipeline company, and to call 811 before digging near a pipeline. N.T. 383-384. The public awareness program includes information on how to recognize a pipeline leak using sight, smell, and sound. Mr. Zurcher testified that the NGL product in the ME1 and ME2 pipelines has a natural hydrocarbon/petroleum odor that is observable. N.T. 385-387. He testified that even a small breach of the pipeline, like a quarter-inch leak, would create a "tremendous amount of noise" due to the pressure of the materials inside the pipeline, comparing it to being much louder than the sound of an air compressor that individuals use in their home. N.T. 387:20-388:12. Mr. Zurcher testified regarding the final method of detection by sight, which includes observation of a vapor cloud, dust and debris blowing, a hole or depression on the ground, bubbles in water and wetland areas, discolored vegetation, and icing. N.T. 388:13-390:2.

Mr. Zurcher also described how SPLP's public awareness program provides information to the public on how to respond in the event of a pipeline-related emergency. This includes leaving the area on foot and walking away from the pipeline, abandoning any equipment, avoiding open flames, and calling 911 from a safe location, which each individual will need to determine for themselves depending on the particular facts and circumstances. SPLP's public awareness and hazard warnings

also include warnings not to attempt to extinguish a fire, and not to operate a pipeline valve, but to allow professionals to address those issues. N.T. 390:3-392:2, 394:3-24. Mr. Zurcher also explained that in most scenarios, emergency response to a pipeline incident would be instant, and that any significant event would be reported immediately by multiple sources, and often by dozens of people. N.T. 401:1-14. A significant event that would present a risk to the public will be reported promptly and immediately responded to:

In my experience, if the leak is significant, it's going to be reported and the location is going to be reported. If I can't determine that and I have to actually walk the pipeline, that leak must be so small that it may be almost insignificant.

N.T. 401:18-22.

Mr. Zurcher testified that the particular distance that you would have to go to get away from a hazard depends on the particular circumstances, cannot be decided in advance, that individuals will have to make a determination for themselves of what is a safe distance, and that emergency responders will also make that assessment and tell people what to do. N.T. 394:2-395:11. As Mr. Zurcher summarized and explained, there is no universal definition of what a "safe" distance is, and no practical way for a pipeline company to dictate that distance in advance of a particular incident occurring:

A. . . . I don't know what else the company could tell you. That's what I want to say. They have warned you to move to a safe location. I don't think the company can tell every individual along the pipeline right-of-way what is a safe distance for them. It would depend on how far away your home is, how far away your business is, how far away you may need to go. It may depend on a number of other factors. I don't know how you would possibly come up with a number that would be universal if that is, in fact, what you're looking for, a number. If you think the pipeline company should attempt to define safe, then I don't know how you would do that objectively. It's kind of a subjective term for you to determine. The company can't tell you. I don't believe the company can tell you to go a block away or to go half a mile away or two miles away.

Q. Why not?

A. I don't think it's up to them. It's up to you to make that determination, but they're warning you to move to a safe distance before making a call.

N.T. 414:16-415:11; *see id.* at 413:14-19 ("I don't think the company can dictate to you. So I think it's asking you to decide for yourself what that is, but I'm going to go to what I view as a safe location.").

Mr. Zurcher testified that an individual can rely on his or her senses to determine what is a safe distance:

Q. . . . Is that where those senses would take over to give you a feel of how far was far enough away?

A. Yes, I believe it would. I have my three senses working for me. If I smell it, it could be close. I'm going to go till I can't smell it. Or if I see the vapor cloud, I'm going to get away from that vapor cloud. O[r] if I can still hear it, I may want to go further. But yes, you would absolutely use your senses to kind of give you some indication of how far to go and then go a little further.

Q. I was just going to say, I take it if in doubt, just keep walking away?

A. Keep walking, yes.

N.T. 395:18-396:4. Mr. Zurcher clarified that if you cannot see, hear, or smell a leak, then there is most likely not an imminent danger, and you will have sufficient time to evacuate:

A. If you can't hear it, then I wouldn't worry about it. If you're so far away that you can't hear it, unless you have a hearing problem, which is a possibility, but for a person with normal hearing, you're going to hear it. If you're 200 feet away and can't hear it, I would say that leak is not something that you need to be - - you need to be concerned about it, obviously, but it's not something that's imminent. You're going to have time to get away.

N.T. 407:12-19.

Regarding individuals with limited mobility, Mr. Zurcher testified that the ultimate goal in a pipeline-related emergency is to get away from the leak, and that all individuals, whether mobile or not, need to attempt to get away from the pipeline. N.T. 392:12-393:3. Mr. Zurcher also explained that the regulations do not require a pipeline operator to tell people with limited mobility how they

should get away; that it would be impractical for a pipeline operator to do so, but rather, this is where local emergency response takes over, and even so, the advice would be the same – try to get away:

Q. Is it the responsibility under the regulations for the pipeline operators to tell people how to get away if they're infirm?

A. It's not in the regulations, and from a practical standpoint, I can't even begin to imagine how to accomplish such a goal. Pipeline operators are not going to know if someone is infirm or not. The pipeline operator is not going to know if someone is about to undergo surgery or if someone is on drugs or hung over or something. They're not going to know that. I don't know how you would advise the people, and then I also wonder why would the message be different. You have to try to get away no matter what.

Q. Is that where the role of community and emergency responders and planners takes over?

A. In my opinion, yes.

N.T. 393:4-19. Mr. Zurcher also testified that in most communities, individuals with special needs can register with local emergency responders so that if an event occurs, the emergency responders know that the person has limited mobility. N.T. 393:23-394:1; *see also* N.T. 484:9-23 (Noll, testifying that both Chester and Delaware Counties, as most counties in Pennsylvania, have vulnerable needs registries).

As discussed at length below, Gregory Noll, SPLP's emergency management expert, agreed that SPLP's emergency response outreach and training program is adequate and provides all information that is necessary for the public and emergency responders to identify a pipeline release and to respond to a pipeline-related emergency, and is consistent with industry standards and PHMSA regulations. N.T. 494:11-495:12, 496:10-497:3. Even Petitioners' own expert on emergency response, Tim Hubbard, who serves as the chief security officer for the Downingtown School District, and is also the fire marshal for Charlestown Township, Chester County, agreed that SPLP's public awareness program and related public pamphlet mailings provide the information that is required by the PHMSA regulations. N.T. 145:4-146:10.

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

Gregory Noll, an expert on emergency planning, emergency response, public awareness and incident management, testified regarding SPLP's extensive outreach to and training with local emergency responders regarding the Mariner East pipelines. Mr. Noll has been involved with emergency planning and emergency response for over 48 years, as both a volunteer and professional first responder, and an emergency response consultant and training provider. N.T. 460:24-461:13. Mr. Noll is a member of the PHMSA codes and standards committee, which is charged with developing training standards that specifically deal with hazardous materials emergency response. N.T. 462:16-25. Mr. Noll quite literally "wrote the book" on emergency response to hazardous materials, entitled Hazardous Materials: Managing the Incident, which has been adopted by several state and federal agencies as the basis for hazardous materials and incident commander training. N.T. 463:6-24.

For the Mariner East pipelines, Mr. Noll was charged with implementing the Mariner Emergency Responder Outreach ("MERO") program, which is a specific training targeted for emergency responders and emergency planners for communities located along SPLP's ME1 and ME2 right-of-way. N.T. 465:5-12. Mr. Noll coordinated with all the communities along the right-of-way to schedule and provide the MERO training program, which consisted of a two-hour training, held during 23 different sessions in Pennsylvania, Ohio, and West Virginia. N.T. 465:25-466:8. Mr. Noll was charged with building upon a pre-existing MERO training program, reviewing and modifying that training program to ensure that it was consistent with the latest protocols and curriculum for pipeline emergency and hazardous materials response, and providing the training as a lead instructor. N.T. 466:17-24. Mr. Noll also ensured that the MERO training included training on risk-based responses to emergency events. *Id.* Mr. Noll led the MERO training in both Chester and Delaware Counties – two sessions held in Delaware County on September 25, 2017 and October 14,

2017, with approximately 40 attendees at each session comprised of local emergency responders, public officials, and school district representatives; and two sessions in Chester County held on October 23 and 26, 2017, with approximately 50 attendees at each session of similar composition as the Delaware County MERO training sessions. N.T. 467-469.

Mr. Noll explained that the MERO training program (SPLP Ex. 7) included several key elements:

- Information and training on the nature of the materials in the ME1 and ME2 pipelines (N.T. 472-473:1-17);
- The direction that product flows in the pipelines (N.T. 473:18-25, 474:1-9);
- Mapping resources that provide the location of the ME1 and ME2 pipelines, and other pipelines in the area (N.T. 474:10-475:1-5);
- Information on how to detect a release from a pipeline (N.T. 475:6-18);
- Emergency response protocols for both a non-ignition release event and an event where the release is ignited (N.T. 475:194-476:22, 476:25-477:9);
- Identification of danger areas when a release occurs (N.T. 477:10-478:2);
- How emergency responders should assess and respond to a pipeline release (N.T. 478:3-8); and
- The importance of the relationship between the pipeline operator and emergency responders, and that SPLP established those relationships through the MERO training (N.T. 478:19-479:21).

In Mr. Noll's professional opinion, through its MERO training, SPLP provided the specific information to emergency responders to enable them to develop a pre-incident emergency plan, including decisions whether to evacuate or shelter in place. N.T. 479:22-480:5, 486:3-18.

Specifically, the decision whether to evacuate or shelter in place is something that can only be assessed in response to a specific incident. N.T. 486:10-18, 487:1-14. As for determining wind direction, Mr. Noll confirmed it is "straightforward," and that he has never had anyone ask that question in his 40 years of emergency response training. N.T. 487:16-18.

In addition to the MERO training, Mr. Noll was also independently hired by the Chester County Department of Emergency Management Services to facilitate a table-top training session that took place in May/June 2017, and which is scheduled to occur again this month (December 2018). N.T. 487:19-488:3. Chester County also prepared an after-action report following the training that provided feedback on the training that Mr. Noll performed. N.T. 490:4-492:6; *see also* SPLP Ex. 28. Delaware County Local Emergency Planning Committee also coordinated a similar table-top training exercise, a summary of which was provided through a video shown during the hearing. N.T. 492:7-17; *see also* SPLP Ex. 27, LEPC Pipeline Emergency Response Tabletop Exercise Video.⁴ Mr. Noll testified that he was also aware that SPLP has provided and is currently providing training directed to school districts to address their specific concerns. N.T. 495:11-495:13.

Mr. Noll confirmed that in all instances, it is local emergency responders who are responsible for developing emergency response plans, not a pipeline operator:

A. Within the Commonwealth of Pennsylvania, each county is responsible for the development of an emergency operations plan. That is typically developed through the county emergency management agency, and that would incorporate many of the questions that were asked yesterday. After that point, there are also planning requirements that exist at the local jurisdiction level, i.e. the townships, the towns and boroughs.

Q. So just to be clear on this, the obligation on the pipeline operator is to provide information sufficient for the local or county planning and emergency responders to develop their emergency response plan?

A. Yes.

N.T. 480:13-25. Mr. Noll also confirmed that each emergency event is different, and what the response entails will be entirely dependent on the particular facts and circumstances, and that emergency responders are trained on the concept of risk-based response, which is based on facts, circumstances, and science. N.T. 481:1-482:4.

⁴ Available at: <https://www.lepc.org/pipeline-emergency-response-tabletop-exercise/>.

For each emergency event, an incident commander is appointed, typically the local fire chief, and that incident commander is responsible for making specific decisions based on the unique facts and circumstances presented. N.T. 482:5-18. The incident commander is charged with determining what a safe distance is at that time, based on “the basics of facts, science, and circumstances.” N.T. 482:19-483:18. Mr. Noll confirmed that determining a safe distance from an emergency event is not unique to pipelines, but applies to any emergency and in particular those that deal with hazardous materials. *Id.* As Mr. Noll explained:

From a process perspective, as emergency responders, we will try to move the public towards an area of less harm. What that distance is, the relative safety will vary based on the parameters I outlined before. Also, understand that at the beginning of the incident, that is going to be a very, Your Honor, subjective process based upon what you see, what you recognize, what you know.

N.T. 501:17-23. An incident commander will determine the “hot zone” as well as the safe area depending upon the facts and circumstances present at the time. N.T. 505:2-10, 506:5-18. Depending upon the incident, emergency responders would take affirmative action to minimize the hazard, including using water to knock down a vapor cloud, dissipate it, and reduce the level or risk from the release: “if we’re looking at a vapor cloud release, the best thing that emergency responders have coming with them is water. So I’m probably going to start to look to apply water to knock down that vapor cloud.” N.T. 506:21-507:1, 511:11-16.

Mr. Noll also testified that in his experience, civilians know what to do to protect themselves even before emergency responders arrive at a scene and take over:

My experience has been, is that in most cases civilians are already taking actions to protect themselves prior to our arrival. If not, we initiate that process. ***But our initial goal, in the very simplest terms, is to separate people from the problem.*** What that distance is will be dependent upon what the scenario is and what the location is. . . . We would look to establish an isolation perimeter and have your control zones. Most people would refer to them as hot, warm, and cold zones. And then we would initiate actions for public protective actions, i.e., would we want to evacuate or were we able to shelter in place, again based upon incident specific considerations.

N.T. 483:12-484:3 (emphasis added).

For individuals with limited mobility, Mr. Noll confirmed that most counties in Pennsylvania maintain a vulnerable-needs registry that is incorporated into the emergency dispatch system, that will identify individuals with limited mobility to the incident commander or first responders. N.T. 484:9-23. Mr. Noll testified that in his professional opinion, there is no method to address issues with individuals with limited mobility prior to an incident, and that is exactly why first responders arrive to assist civilians when an incident occurs:

It would be extremely difficult, even if we take this outside of the realm of pipelines and just look at fire calls. We run into continuous experiences where we go to emergencies where people need assistance to get out. It's not unique to one specific hazard. It's part of what we do.

N.T. 485:3-7.

Mr. Noll testified that in his professional opinion, SPLP's emergency response planning, training, and public awareness activities that he conducted for the Mariner East pipelines comply with PHMSA regulations, is consistent with what other pipeline operators are providing in Chester and Delaware Counties, and most importantly, provides appropriate and sufficient information for emergency responders to respond safely to a pipeline incident, including to address any issues related to schools or to individuals with limited mobility. N.T. 496:10-497:3.

In contrast, the only evidence that Petitioners offered on emergency response was testimony from Timothy Hubbard, who claimed that SPLP did not provide him with sufficient information that he needs for emergency response. N.T. 80:18-81:2. Mr. Hubbard is responsible for 17 buildings in the Downingtown School District, six of which are located near ME1 or ME2. N.T. 81:9-18. Mr. Hubbard admitted that he did not attend the various training sessions that SPLP offered to local emergency responders and public officials. N.T. 158:1-2 ("I never went to the six-hour training sessions that would teach me how to do everything I needed to do."). Mr. Hubbard did recently participate in a table-top exercise and other presentations and training with the Chester County

Hazmat Team that dealt with pipeline emergency response, including the Mariner East pipelines. N.T. 72:5-16, 161:7-16. Mr. Hubbard also testified that he would be participating in another upcoming training session on December 11, 2018 with the Chester County Department of Emergency Services that will specifically relate to pipeline emergency events and will address Mr. Hubbard's concerns related to emergency response issues within the Downingtown School District. N.T. 74:8-19, 163:18-22. Significantly, Mr. Hubbard was invited to the MERO training but did not attend. N.T. 248:20-249:5.

But even without attending these specific trainings, Mr. Hubbard admitted that he received information directly from SPLP on how to identify the location of a pipeline, how to recognize a leak, and what to do in response to a pipeline-related emergency. Mr. Hubbard testified that he knows where the ME1 and ME2 pipelines are located in relation to the Downingtown School District buildings and knows that the pipelines are (or will be) transporting propane, butane, and ethane. N.T. 81:9-82:18, 109:3-5. Mr. Hubbard testified that he knows how to visually identify a leak, which includes looking for dead vegetation near the pipeline, ice formation, a fog or mist, or a vapor cloud, and that the product in the pipelines has a natural odor that can be observed. N.T. 83:22-84:25, 85:17-18. He also testified that he is aware that NGL products are heavier than air and would tend to settle near the ground in low spots, that there is an asphyxiation danger from a release, and a danger of the product being ignited. N.T. 86:15-87:1, 109:6-9. Mr. Hubbard admitted that SPLP's public awareness campaign informs the public to evacuate on foot in an upwind and uphill direction if possible, move away from the pipeline, to not turn on light switches, to not operate a vehicle. N.T. 87:13-17. Mr. Hubbard stated that he understands what it means to go to a "safe location," which is generally uphill and upwind from the pipeline. N.T. 89:22-24, 90:21-22. Mr. Hubbard admitted that Downingtown School District has an emergency response plan, which is required by the state Department of Education, and which includes provisions on how to evacuate the schools. N.T. 120:8-19. The emergency response plan has existed since at least 2014, before Mr. Hubbard

assumed his current position, and Mr. Hubbard testified that the current version of the plan contains information on emergency response to a pipeline incident. N.T. 126:3-18. The emergency response plan accounts for students who have physical and mental disabilities, and Mr. Hubbard agreed that “I know how to efficiently move them out of the buildings, yes.” N.T. 122:15-20.

In regard to determining a safe distance away from the school in the event of an emergency, such as a fire, bomb threat, or active-shooter, Mr. Hubbard admitted that the emergency response plan does not include a definition of what a safe distance is, but rather the goal is to get the children out of the school no matter what, to whatever distance he believes is safe under the circumstances, or whatever first responders identify to be a safe distance:

A. Well, I mean you’re going to get them out no matter what. I don’t care if it’s small or big. I’m going to get them to what I believe to be a safe distance or that first responders would advise me is a safe distance.

Q. . . . So there’s going to be a determination made at that time as to what a safe distance is; correct?

A. Correct.

Q. And that’s going to be made by first responders; correct?

A. I would say in coordination with school officials.

N.T. 124:16-125:1; *id.* at N.T. 125:23-24 (regarding what is a safe distance: “That’s an individual decision that’s made by the person in charge of the children that are evacuating.”). Mr. Hubbard also stated that wind direction could be determined by looking at a flag in front of the school. N.T. 91:1-4, 122:9-10. He also testified that the distance the public and emergency responders would need to maintain away from an incident depends on the circumstances, and that a perimeter would be established by local emergency responders:

So, it would be somewhat of a seat of your pants decision based on the information that’s available at that given time as to how far away we want to have personnel.

N.T. 111:6-9; *see also id.* 110:15:111-24. Mr. Hubbard testified that local emergency response personnel have and carry devices that detect combustible gas, and that in Chester County, he estimated there are at least 50 combustible gas detection devices used by first responders. N.T. 98:1-18.

Mr. Hubbard admitted that he received information from other pipeline operators for pipelines that are located in the Downingtown School District, including a pipeline operated by Enterprise Products, referred to during testimony as the TEPPCO line. N.T. 127:12-19, 134-155. Mr. Hubbard was aware that other pipelines were located near the school buildings that he manages, and was specifically aware of the TEPPCO pipeline, which parallels ME1 and ME2, and is closer to many of the school buildings than SPLP's ME1 and ME2 pipelines. N.T. 130:15-131:14. And Mr. Hubbard agreed that because the TEPPCO line existed in the area for the past several decades, the school district would have been required to include pipeline-specific emergency response protocols in its existing emergency response plan. N.T. 131:15-23. Thus, even before Mr. Hubbard received information from SPLP on the Mariner East pipelines, or before he attends the additional training later this month that is being specifically provided to address issues related to the Downingtown School District, he already has all of the information that he needs to allow him to develop an emergency response plan for the schools for which he is responsible – in fact, the emergency response plan likely already contains information related to pipeline emergencies. Mr. Hubbard also admitted that every emergency responder has access to, or a copy of, the PHMSA 2016 Emergency Response Guidebook, which includes specific instructions on how to respond to a pipeline emergency. N.T. 162:16-25. Mr. Hubbard also admitted and agreed that it is the school district's responsibility to develop its own emergency response plan, not the responsibility of a pipeline operator: "It's just their responsibility to give information sufficient to create the plan." N.T. 127:7. Importantly, Mr. Hubbard agreed that SPLP's public awareness program and related public pamphlet mailings provide the information that is required by the PHMSA regulations. N.T. 145:4-146:10.

Lastly, there is uncontested and uncontradicted evidence that SPLP has performed significant outreach and provided significant training to local emergency responders located in the communities where ME1 and ME2 are located, as established by the testimony of Joseph Perez, summarized at length above. *See supra*, Section III.E.

G. Petitioners' testimony demonstrates that SPLP's public awareness program adequately warns the public of potential hazards of pipelines and informs the public what to do, and what not to do, in the event of a pipeline-related emergency.

Petitioners allege that SPLP's public informational pamphlets – which provide information on SPLP's pipelines, how to recognize a release, and steps to take in response to a release – are inadequate. *See Pet.* ¶¶ 41-47. On this point, they offered no expert testimony, but rather presented testimony from three of the petitioners who are residents in Chester and Delaware Counties, who live near the ME1 and ME2 pipelines, and who claim that the information provided by SPLP is inadequate. This testimony does not establish that SPLP's public communications are inadequate, but instead demonstrates that SPLP's public awareness program is not only adequate and appropriate, but has accomplished the intended goal of informing the public of the location of the pipelines, how to recognize a release, and what to do in response to a pipeline-related emergency.

Petitioner Nancy Harkins testified that she has lived in Westtown Township, Chester County for seventeen years, that she knows that ME1 and ME2 are located along Route 352, and that the pipelines are located approximately 1,100 feet from her home. N.T. 20:4-21:11, 37:14-25. Ms. Harkins admitted that she received an earlier version of SPLP's public awareness pamphlet at least twice, and that it informed her that if a leak were to occur, she should move to a safe location and to then call 911. N.T. 21:17-22:9, 36:5-6. Ms. Harkins also testified that if she had to evacuate her home, she knew what direction to move away from the ME1 and ME2 pipelines, and that she should move upwind and uphill if possible. N.T. 38:1-8, 55:10-14, 57:13-19. Ms. Harkins testified that she attended presentations regarding the pipelines at various times in 2016 and 2017 in which SPLP

participated. N.T. 36:24-37:7. Ms. Harkins also testified that she has visited websites that show the location of transmission pipelines in Chester County and in her community. N.T. 39:2-19. Ms. Harkins’s primary complaint with SPLP’s public awareness pamphlet is that she does not know how to identify what a “safe location” would be, and that there could be time when she would not be aware that a release had occurred. N.T. 22:10-12, 25:9-11, 23:4-24:1. But Ms. Harkin agreed that regardless of the type of emergency event, whether it be a fire or a pipeline incident, she knew that she should leave her home on foot and move away from the hazard. N.T. 45:21-46:1.

Similarly, petitioner Caroline Hughes testified that she has lived in West Chester, Chester County for 14 years, and that she knows where the ME1 and ME2 pipelines are located in relation to her home, her workplace, and her children’s schools. N.T. 172:24-173:11, 174:18-24, 195:6-12. Ms. Hughes testified that when she learned of an ME2 construction location near one of her children’s school, she did research to obtain further information on the pipelines. N.T. 175:2-18. Ms. Hughes testified that she looked at maps to determine the location of the ME1 and ME2 pipelines. N.T. 178:6-10. She also testified that she understands what to do in the event of a pipeline incident – namely, to walk away from the pipeline, uphill if possible – and that she knows which way to walk to move away from the pipelines. N.T. 196:25-197:3, 197:24-198:12. Ms. Hughes’ primary complaint with the public awareness information is that she believes schools and local emergency responders do not have enough information to develop an evacuation plan. N.T. 190:3-17.

But Ms. Hughes testified that she has a family emergency evacuation plan that involves leaving her home on foot, and that she has practiced that plan with her family. N.T. 198:13-199:1. Ms. Hughes also testified that she has practiced how to evacuate her workplace, the Exton Ambulatory Care Facility for Bryn Mawr Rehabilitation Hospital, in Exton, Pennsylvania, which includes evacuating people who have limited mobility. N.T. 199:5-200:14. Likewise, Ms. Hughes testified that one of her children’s schools, Fugett Middle School, has an evacuation plan for

hazardous materials that the school has recently practiced through a drill that included on-foot evacuation, and identifying wind direction using a flag or leaves on the ground. N.T. 182:24-183:12.

The third petitioner, Michael Walsh, has lived in his home in Glenn Mills, Delaware County, for three years. Mr. Walsh also testified that he knows where the ME1 and ME2 pipelines are located, knows what direction to move to get away from the pipelines, and knows to evacuate on foot. N.T. 204:23-209:14, 217:22-23. Mr. Walsh testified that he first became aware of the ME1 and ME2 pipelines through a condemnation filing against his homeowners' association, Intervenor Andover Homeowners' Association, and that he then did research to understand more about the pipelines, including where they are located, what materials they transport, and where a valve station is located near his property. N.T. 204:23-207:13, 212:12-215:12. Mr. Walsh also testified that he has received the public awareness pamphlet from SPLP, that it informed him how to identify a leak from the pipeline using sight, smell, and sound, and that if a pipeline leak occurred, he should evacuate on foot. N.T. 207:14-209:14, 228:4-229:5. Mr. Walsh further testified that if a leak occurred, he knows that he should run away from where the pipelines are located. N.T. 217:22-23. Mr. Walsh also testified that he and his family have an evacuation plan for his home that they have practiced. N.T. 229:6-230:2.

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

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

...

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

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

N.T. 332:14-21. Mr. Marx further clarified and admitted that the NGLs transported in ME1 and to be transported in ME2 have a hydrocarbon odor similar to gasoline, and that in the right conditions "you most likely could" smell a release from an NGL pipeline. N.T. 332-22:333-9. Mr. Marx agreed that it was appropriate to tell people to look for odors, a sound, and visible evidence of a release, such as a vapor cloud, because "those are methods for detection" of a release. N.T. 333:10-25. Mr. Marx also agreed with SPLP's recommended practice of evacuating on foot, away from the pipeline, in an upwind direction as long as that direction is away from the pipeline. N.T. 334:4-17.

Last, Petitioners' emergency management expert, Mr. Hubbard, also admitted that he knows where the ME1 and ME2 pipelines are located, knows how to recognize a release from a pipeline, and what to do in the event of a pipeline-related emergency. *See* N.T. 81-83, 85-86, 89-91, 109-111, 122-124.

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

SPLP, Intervenor Range Resources, and a major union, Steamfitters Union Local 420, provided compelling evidence that the public interest will be harmed if interim emergency relief is granted. First, the Commission has already recognized that the public interest was damaged during ME1's prior shutdown:

That said, the Commission is cognizant of the economic effect of ordering the suspension of ME1 service. Natural gas liquid pipelines play a vital role in many industries given that these petroleum products serve as industrial feedstocks as well as additives to gasoline. The Commission understands that shippers that utilize ME1 as customers, and users of products transported by ME1 either have had to suspend operations or look elsewhere for supplies due to the ME1 closure . . .

SPLP Ex. 8 at 10. A shutdown of ME1 now, during the peak heating season, will result in even greater public harm, as the market for propane, which is currently transported on ME1 and is an

important winter heating resource for many Pennsylvanians, will no longer be in the market. N.T. 527-28; 572-74. Moreover, shutting down ME1 and delaying or shutting down ME2 puts public safety at risk as pipelines are a safer transportation mode than the alternatives of truck and rail. N.T. 402 (Zurcher), 519-20 (Engberg). As SPLP’s unchallenged pipeline safety expert John Zurcher testified, truck transportation is 70 times more likely to result in an accident that involves a fatality than a pipeline. N.T. 402.

Additionally, as Mr. Billman and Mr. Enberg testified (*see* below), shutting down ME1 and ME2 will have the cascade effect of adversely impacting natural gas supply and prices for Pennsylvania-sourced Marcellus Shale gas. That is because if liquid fuels cannot be shipped to market, the wells will be shut-in and natural gas production will be restricted. N.T. 527-28, 542.

Range Resources, a natural gas exploration and production company, also offered testimony regarding the injury to the public interest if interim emergency relief were to be granted. Alan Enberg, Director of Liquids Marketing for Range Resources, testified that stopping ME1 would result in a shortage of propane in the market that would impact market prices for propane during the heating season, when demand for propane as a heating fuel is the greatest. N.T. 527-28. Range Resources alone transports 20,000 barrels per day of propane on ME1. N.T. 518. [BEGIN HC]⁵

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵ Highly Confidential has been abbreviated as “HC” herein.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HC]

Likewise, Richard Billman, SPLP’s Vice President of Business Development, testified

[BEGIN HC] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END HC]

Mr. Billman also testified that when ME1 was previously shutdown, SPLP suffered losses to which he previously testified in the *Dinniman* proceeding. N.T. 568-569. [BEGIN HC] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] [END HC].

Anthony Gallagher, business manager for Steamfitters Local Union 420, explained that significant job losses or lay-offs resulted when ME1 was previously and unnecessarily shut down, and that if ME1 and/or ME2 is prevented from operating, that further major job losses will occur (during the holiday season) and that vital planned job-creating development projects at the Marcus Hook facilities which are dependent on ME1 and ME2 for raw product, may no longer occur, which is pushing capital investments out of the Commonwealth. N.T. 547-549. He stated:

Anything that would delay or stop that project is detrimental to the economy, not only of steamfitters, the building trades, but the area. I mean, these delays and stoppages continue to drive capital away from us, you know. The big picture that I'm talking about, the fact that we're delaying the jobs and I have members sitting idle hurts my membership. But there's the fact that you have a lot of people that want to invest capital in the state of Pennsylvania you know, that's tied to the shale, to the liquids and gases. It scares them away from doing business here in Pennsylvania, and that is very problematic, you know, when they recognize that they have so much resistance to something that's so natural, you know. And when we scare that kind of capital away, that really costs. That costs major jobs for the building trades and the area and the economy, local economy, you know. And the ripple effect to that's tremendous, as everyone knows. Just on the state income tax, you could imagine, on the building trades, five million manhours, and we all make a pretty good wage there, we're talking about tens of millions of dollars in income tax, state income tax that we're losing, you know, as a state just on that. But the vendors, the shops, the community around, the diners, you know, all the things we do when we spend money, so it has a tremendous impact when we shut these things down.

N.T. 550-51. He also explained that the Marcus Hook facilities were largely inoperative with severe local consequences on the local and state economy prior to being essentially resurrected and transformed due to Marcellus Shale development with its gas liquids. N.T. 550-51. An injunction would move the economic and employment needle absolutely in the wrong direction in a way clearly contrary to the public interest.

Mr. Billman confirmed [BEGIN HC] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END

HC]

IV. Legal Argument

A. Standard for interim emergency relief.

The purpose of an interim *emergency* order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. “Emergency” is defined in the Commission’s Regulations as “[a] situation which *presents a clear and present danger to life or property* or which is uncontested *and requires action prior to the next scheduled public meeting.*” *Id.* (emphasis added.)

The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. A Petitioner who seeks the Commission to enter an order for interim emergency relief must establish four elements:

- (1) The petitioner’s right to relief is clear;
- (2) The need for relief is immediate;
- (3) The injury would be irreparable if relief is not granted; and
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code. § 3.6(b). Interim emergency relief is only available when petitioner proves *each of these elements*. *Glade Park East Home Owners Ass’n v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Commw. Ct. 1993). Interim emergency relief also requires that a petitioner prove that an emergency exists, as opposed to offering inferences, conjecture or concerns. *Peoples Natural Gas Co. v. PUC*, 555 A.2d 288, 291 (Pa. Commw. Ct. 1989) (reversing Commission decision entering injunction where no evidence of emergency); Order Denying Interim Emergency Relief, *Buffalo-Lake Erie Wireless Sys.*

Co. v. Verizon-PA, Dkt. No. C-2010-2158408 (Mar. 2, 2010) (Colwell, J.) at 10 (“BLEW”); *Edan Transp. Corp. v. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993). The petitioner’s burden is very steep. A petitioner must establish each of these elements by a preponderance of the evidence. 66 Pa. C.S. § 332(a) (“proponent of a rule or order has the burden of proof”); *Samuel J. Lansberry, Inc. v. PUC*, 134 Pa. Cmwlth. 218, 222-23 (Pa. Commw. Ct. 1990) (“The 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.”).

Failure to prove even a single element requires the Commission to deny a petition for interim emergency relief. *Crums Mill Assoc. v. Dauphin Consol. Water Supply*, Dkt. No. C-00934810 (Order entered April 16, 1993), slip op. at 4 (failure of a petitioner to meet any one of four elements requires denial of relief); *Peoples Natural Gas Co. v. PUC*, 555 A.2d at 291 (reversing Commission’s reversal of ALJ’s decision to deny interim emergency order because ALJ found that evidence did not establish an emergency circumstance). The findings of fact “necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Trimac Transp. East, Inc.*, Dkt. No. M-2012-2314062 (Order entered Nov. 13, 2012), at 2.

Petitioners must provide more “than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.” *Petition of Norfolk Southern Railway Co.*, Dkt. No. C-00019560, 2011 WL 6122882 (Order entered Dec. 1, 2011), at 8 (citing *Norfolk & Western Ry. v. PUC*, 413 A.2d 1037 (Pa. 1980)); *Erie Resistor Corp. v. Unemployment Comp. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep’t of Pub. Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984). Petitioners bear both the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. Ct. 2000). Unlike the burden of production, the burden of persuasion “includes determinations of credibility and acceptance or rejection of inferences” *BLEW* at 11-12 (citing *Suber v. Pa. Comm’n on Crime & Delinquency*, 885 A.2d 678 (Pa. Commw.

Ct. 2005). Moreover, certain evidence, even though it may have been admitted into the record, is not competent evidence to meet petitioners' burden of proof. *See Gruelle c/o Toll Diversified Props., Inc. v. PPL Electric Util. Corp.*, Dkt. No. C-2015-2463573, 2015 WL 7873828, at *10–12 (Order entered Oct. 27, 2015) (Colwell, ALJ).

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

Petitioners also cannot meet the burden of proving an emergency by offering inference, conjecture or concerns. *Petition of Norfolk Southern Railway Co.*, 2011 WL 6122882. (“More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.”). The standard is not what might happen or what personal concerns one holds but rather, the standard is that an emergency in fact exists. *Peoples Natural Gas Co.*, 555 A.2d at 291 (reversing Commission's reversal of ALJ's decision to deny interim emergency order because ALJ found that evidence did not establish an emergency circumstance).

Petitioners have not presented any evidence from which the Commission could determine that there is an imminent threat to life or property from the operation of the ME1 and ME2 pipelines. Nor have Petitioners presented any evidence to satisfy the heavy burden of proving that SPLP's public awareness program and emergency response outreach and training are inadequate, inappropriate, or fail to provide the information required set forth in the applicable regulations. As such, Petitioners' request for interim emergency relief in the form of an injunction to suspend service

on ME1 and to enjoin the commencement of service for ME2 until the Commission's next public meeting must be denied.

B. Petitioners' arguments regarding SPLP's public awareness and first responder programs are a repeat of arguments rejected this summer by the Commission in the *Dinniman* matter, where the Commission found SPLP's programs to be adequate, appropriate, and in compliance with its 2018 Orders and applicable regulations.

The Petition fails as a matter of fact and law because the Commission has already reviewed, evaluated, and reached a conclusion regarding the adequacy of SPLP's public awareness and emergency response outreach and training programs. Specifically, the Commission just this summer found them to be adequate, appropriate, and in conformance with its orders and applicable regulations. As to ME1, the Commission rejected the argument that any alleged deficiency in SPLP's public awareness and emergency response programs warranted a shutdown of ME1 when it reinstated service on ME1 in the *Dinniman* matter. *See* SPLP Ex. 10, June 15, 2018 Order ¶¶ 1, 3. As to ME2, on June 15, 2018, the Commission issued an order that required, among other things, that SPLP submit to the Commission for review and approval a copy of SPLP's public awareness program and emergency response outreach and training:

- (2) Comprehensive emergency response plan, including but not limited to:
 - (a) Communications and coordination necessary to report and respond to a release or ignition of highly volatile liquids from pipelines or appurtenances;
 - (b) Public educational materials and notification protocols intended to instruct how affected parties along the right-of-way should respond and how Sunoco Pipeline will notify the public in the event of a pipeline-related incident; and
 - (c) Specific procedures pertaining to coordination with state and local officials, local fire, police, the Pennsylvania Emergency Management Agency, the Pipeline Hazardous Materials Safety Administration, this Commission, and other utilities located in West Whiteland Township in responding to an incident.

Id. at 52.

On June 22, 2018, SPLP made a compliance filing with the Commission that provided detailed information and documentation regarding SPLP’s public awareness program and emergency response outreach and training programs. *See* SPLP Ex. 11 at 9-15 (with referenced exhibits). On August 2, 2018, the Commission issued an order confirming that SPLP’s public awareness program and emergency response outreach and training programs – which apply to all SPLP’s pipelines, including ME1 and ME2 – were adequate and complied with applicable requirements:

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

SPLP Ex. 12 at 25. The June 15 and August 2, 2018 orders are *prima facie* evidence that SPLP’s public awareness and emergency response programs are adequate, and the Commission’s findings are binding and case dispositive. *See* 66 Pa. C.S. § 316 (“Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.”).

Petitioners here presented no evidence that can overcome the Commission’s prior findings and conclusions. First, Petitioners focused on the same public information mailing the Commission has already reviewed and found adequate. *Compare* Exhibit P-2 with SPLP Ex. 11 (Compliance Filing to Commission at referenced Exhibit 65). Second, Petitioners simply repeated the same allegations and arguments that the Commission recently rejected in *Dinniman*:

<i>Flynn</i> Petitioners Allegation Here	Senator Dinniman and/or Clean Air Council Allegations in Docket P-2018-3001453
SPLP’s Public Awareness brochure is inadequate because it does not define “safe location.” N.T. 22, 25, 35, 89-91, 107.	“Sunoco’s informational brochure mailings every two years to the public contain no explanation or specifics on how to respond to an emergency.” August 2, 2018 Order at pp. 20-21 (summarizing Dinniman’s Response Letter to SPLP June 22, 2018 Submission).
SPLP does not provide adequate evacuation procedures for people with	“The guidance provided by Sunoco (rapid on-foot self-evacuation in the correct upwind or uphill direction) is

<i>Flynn</i> Petitioners Allegation Here	Senator Dinniman and/or Clean Air Council Allegations in Docket P-2018-3001453
physical or mental limitations. N.T. 28-29, 35, 88-89, 180-81, 184.	simply not possible for many members of the public while they are in unsafe proximity to Mariner East in West Whiteland Township or elsewhere, particularly at night or during inclement weather. Expecting seniors, children, and disabled individuals to be able to quickly self-evacuate at a moment’s notice is not credible, given obstacles, limited self-evacuation routes, and potential dark or inclement conditions. Moreover, the most routine everyday actions could trigger ignition of an entire vapor cloud: things which the federal government warns people to avoid are light switches; doorbells; garage door openers; and vehicles.” CAC July 2, 2018 Letter Response to SPLP June 22, 2018 Submission at 6-7.
SPLP does not provide emergency responders with enough information. N.T. 80-83.	“Sunoco’s inadequate outreach and training to emergency responders” August 2, 2018 Order at pp. 20-21 (summarizing Dinniman’s Response Letter to SPLP June 22, 2018 Submission).
SPLP does not provide school districts with enough information. N.T. 80-83, 103, 182-83.	“Sunoco’s lack of responsiveness to the needs of local school districts, concerning the need for a comprehensive risk assessment required to establish adequate protocols for emergencies related to ME1, ME2, and ME2X.” August 2, 2018 Order at pp. 20-21 (summarizing Dinniman’s Response Letter to SPLP June 22, 2018 Submission).
SPLP’s public awareness brochure is inadequate because it does not tell people what to do in the event of a leak. N.T. 179-180.	“Sunoco’s informational brochure mailings every two years to the public contain no explanation or specifics on how to respond to an emergency.” August 2, 2018 Order at pp. 20-21. (summarizing Dinniman’s Response Letter to SPLP June 22, 2018 Submission).

The Commission’s findings in the *Dinniman* matter cannot simply be overruled or ignored here, and there is a clear need for finality instead of a cycle of continuing collateral attacks by pipeline opponents acting in concert to misuse the Commission’s emergency order process without any ramification or sanction (such as a bond) for their repeated attempts to destabilize these public utility operations that the Commission has declared, in granting SPLP a certificate of public convenience, are “necessary and proper” for the public interest, and to put Pennsylvanians out of jobs or to have the public unnecessarily pay higher propane and natural gas rates.

C. Petitioners have not established the existence of a clear and present danger from the operation of the ME1 or ME2 pipelines, or that there is an immediate need for relief.

Petitioners have not, and cannot, establish that there is a clear and present danger to life or property that could support the Commission granting the extraordinary remedy of interim emergency relief. Petitioners presented no evidence whatsoever on several issues that Petitioners raised in their Petition, but then entirely abandoned during the hearing, issues which are essential for an extraordinary remedy of an injunction to shut down service on ME1 and to prevent the commencement of service on ME2.

Petitioners admit that they offered no evidence, much less substantial evidence necessary to meet their burden of proving that there is any issue or concern with the integrity of the ME1 and ME2 pipelines. *See supra*, Section III.A. Petitioners also admit that they offered no evidence of the likelihood that a release could occur from ME1 or ME2. *See supra*, Section III.B. Petitioners offered no evidence that there is an imminent risk of a release from any of the valve sites, or any evidence regarding an imminent risk of release from areas where HDDs were used to construct ME2, or any evidence of an imminent risk of a release from any location where the ME1 or ME2 pipelines are co-located. Petitioners conceded that they did not offer any evidence that an enhanced risk actually exists at any of these locations. All that was presented was evidence of the location of one valve site near the Andover development, near Duffers Tavern. *See e.g.*, N.T. at 435-436. But even so, Petitioners did not offer any evidence to establish a clear and present danger, or an imminent safety risk at that valve site, or any other location along the ME1 or ME2 pipelines.

Nor did Petitioners offer any evidence that the continued construction of ME2 creates any imminent risk, or anything in the record to overturn the Commission's prior August 2, 2018 Order that determined the ongoing construction of ME2 is safe. *See* SPLP Ex. 12. And Petitioners offered no evidence of any issue outside of Chester and Delaware Counties, so there is no basis to shut down

operation of ME1 or the continued construction, commissioning, and commencement of service of ME2.

Without any evidence that ME1 or ME2 are structurally unsound, or any evidence of an imminent release from one of the pipelines or related equipment, or any evidence that such a release is likely to occur, Petitioners cannot establish a clear and present danger to human life or property, which is the essential element of a petition for interim emergency relief. Without any evidence that ME1 or ME2 are unsafe or pose any risk of an actual incident occurring, Petitioners' claims and arguments as to the hypothetical consequences of a release from the pipelines have no foundation. Simply stated, in the absence of the probability of an event occurring, there can be no clear and present danger or immediate need for relief, no matter what the worst-case consequences of a theoretical incident may be.

By way of comparison, in the *Dinniman* matter, even where the petitioner presented evidence of alleged issues with the integrity of the ME1 pipeline and alleged releases from pipelines operated by SPLP from which the petitioner in that case could argue the Commission should draw an inference of a potential safety issue with ME1 and ME2, the Commission nevertheless found that there was no emergency that warranted an injunction to prevent the operation of ME1 or the continued construction of ME2. *See* SPLP Ex. 10, June 15, 2018 Order at 34. Here, Petitioners conceded that they did not present **any evidence** of the integrity of the ME1 or ME2 pipelines from which the Commission could determine that there is an "emergency" that would warrant the Commission shutting down service on the operating ME1 pipeline or preventing the ME2 pipeline from completing construction, commissioning, and commencing service. In fact, the only evidence of a release from any pipeline was a NTSB report for a November 1, 2007 incident on a pipeline operated by the Dixie Pipeline Company in Carmichael, Mississippi, a pipeline that is not located in

Pennsylvania and that is not operated by SPLP.⁶ *See* P-6. Such evidence was already deemed insufficient support for interim emergency relief in the *Dinniman* matter. *See* SPLP Ex. 10 at 34 (releases from other pipelines in other jurisdiction is not credible evidence to support a shutdown of ME1). If the evidence presented in the *Dinniman* matter was insufficient, then evidence in this case that Petitioners concede ***does not even exist*** and was not presented in the record, necessarily is insufficient to meet the high burden for interim emergency relief.

Without evidence of the integrity of the ME1 and ME2 pipelines or any evidence of the risk of a release actually occurring, all that is left is a theoretical emergency situation. If theoretical emergencies were sufficient to meet the burden of proof for interim emergency relief, then all operating pipelines should be shut down, all electric utility service should end, all vehicles should be barred from public roadways, all airplanes should be grounded, and most of the activities of modern life should cease because there is a theoretical risk than an injury, death or property damage could occur.

Conceding, as they must, that they presented no evidence on the integrity of the ME1 or ME2 pipelines, or any evidence regarding a potential release from ME1 or ME2, or any evidence of the risk that a pipeline-related emergency could occur, Petitioners focus exclusively on the theoretical consequence of a release. But focusing exclusively on theoretical consequences in the absence of

⁶ Petitioners attempted to elicit testimony regarding alleged releases from SPLP's pipelines through the testimony of Alan Enberg of Intervenor Range Resources, by asking whether Mr. Enberg agreed that ME1 was safely operating since the Commission's May 3, 2018 Order that resumed service on ME1. N.T. 536:16-538:25. Petitioners then attempted to introduce PHMSA data on alleged incidents involving ME1 through Petitioners' counsel's leading questions to Mr. Enberg, which assumed and presented false data by Petitioners' counsel asserting there were "ten different leak incidents involving ME1," and "\$12 million worth of property damage." N.T. 537:18-21. SPLP and Range Resources objected to Petitioners' questions, since they assumed facts not in evidence, and because Mr. Enberg testified that he was unfamiliar with PHMSA data. *See id.* In fact, Petitioners never introduced any PHMSA data into the record through any witness, and never even questioned SPLP's corporate representative, Joseph Perez, regarding any alleged release from ME1 or any other SPLP pipeline. If Petitioners' counsel had done so, Mr. Perez would have confirmed that Petitioners' counsel's allegation of ten releases from ME1 was patently false. And Petitioners' counsel's reference to \$12 million does not relate to property damage at all, but instead likely refers to a DEP civil penalty related to environmental issues during ME2 construction. It is well settled law that attorneys' statements or questions at trial are not evidence. *Com. v. LaCava*, 542 Pa. 160, 182 (Pa. 1995); *see also Brady v. W.C.A.B. (Morgan Drive Away, Inc.)*, 923 A.2d 529, 533 (Pa. Commw. Ct. 2007); *Grover v. Dep't of Transportation, Bureau of Driver Licensing*, 734 A.2d 941, 944 (Pa. Commw. Ct. 1999).

evaluating the probability of an event occurring is insufficient support for injunctive relief, which requires sufficient evidence to demonstrate that an emergency condition exists, that it is more probable than not that an emergency will occur imminently, and that it is necessary to preserve the status quo before the Commission's next public meeting. *See* 52 Pa. Code § 3.1 (definition of "emergency" that requires action before next Commission public meeting); *see also* *Petition of Norfolk Southern Railway Co.*, 2011 WL 612282 at *12 ("the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding"). Interim emergency relief must be based on the actual harm that will occur during the limited time period before which the Commission can address the underlying issues, rather than on conjectures or hypothetical harms that have no foundation.

Furthermore, the claimed emergency cannot just be based on allegations that a given activity has some inherent danger, as Petitioners argue here. In *Petition of Norfolk Southern Railway Co.*, the Commission found that there was no clear right to emergency relief when a railroad union argued that the railroad must install certain safety measures to prevent car collisions and injuries to employees, where the union had presented evidence that several incidents had recently occurred. The Commission affirmed the ALJ's denial of interim emergency relief, because while the cited incidents indicated that operations at the railyard were hazardous, that was partly due to the nature of the operations, and where the union's primary witness agreed that the incidents could happen anywhere, at any other railyard in the country. *See id.* at *10. In affirming the denial of interim emergency relief, the Commission stated that:

We note that the operations at the Yard are inherently dangerous. In our view, the narrow question presented by the Union's Petition is whether Norfolk Southern's installation of and its elimination of the use of portable skates and retarder operators, gives rise to an "emergency" as defined in our regulations. We are not persuaded that it does. Moreover, considering that the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding (Norfolk Southern's Amended Petition), we are not

persuaded that the Union has a clear legal right to the broad relief requested in the petition for interim emergency relief.

Id. at *12; *see also id.* at *13 (“Based on our review of the record, we find that the preponderance of the evidence does not demonstrate an immediate need for relief. As discussed above, the circumstances giving rise to the run out and walking hazards, as alleged by the Union, are not new.”).

Even if the Commission were to focus exclusively on hypothetical consequences of a pipeline-related emergency in the abstract, as Petitioners here ask the Commission to do, Petitioners adopt a faulty set of assumptions that present only a worst-case scenario that does not reflect actual data on pipeline releases or reflect the realities of a pipeline-related emergency. Petitioners presented seven conclusions from their expert Mr. Marx, which lack the underlying foundation that is required for an expert opinion under the Pennsylvania Rules of Evidence. *See* P-7, Marx Conclusions; *see also e.g., Pickford v. Pennsylvania-American Water Co.*, C-20078029, 2009 WL 1514962 (Order May 14, 2009) (“[The Commission] cannot rely on testimony that is without foundation.”); *see also Commonwealth v. Rounds*, 518 Pa. 204 (Pa. 1988) (expert opinion proper if it is based on facts that are in the record); *Commonwealth v. Khamphouseane*, 434 Pa. Superior Ct. 93 (Pa. Super. Ct. 1995) (“In Pennsylvania, the admissibility of any experimental or scientific evidence depends upon presenting an adequate foundation.”) (internal quotation omitted). Specifically, during cross examination and upon scrutiny of the Quest Report, Petitioners withdrew that report from evidence. N.T. at 329-330. Mr. Marx’s conclusions, therefore, are not supported with any credible evidence, and should therefore be given no weight. *See e.g., SPLP Ex. 10*, June 15, 2018 Order (finding no credible evidence to support that ME1 operation presents clear and present danger). Even so, Mr. Marx admitted that his entire analysis is generic and would apply to any HVL pipeline. N.T. at 331. There are over 40,000 miles of HVL pipelines located in high consequence areas. N.T. 378:8-24. If the Commission were to adopt Mr. Marx’s unsupported conclusions, it could effectively allow any

operating HVL pipeline to be shut down without any proof that the pipeline presents an imminent threat to human life or property.

Moreover, Mr. Marx's entire consequence analysis assumes that no one responds or takes any action in response to a pipeline release, no one tries to get away from the hazards, neither SPLP nor emergency responders respond to an event, and no one acts in any way to mitigate a release once it occurs. N.T. at 329. This conclusion is not supported by any evidence, and in fact is overwhelmingly refuted by the substantial evidence that SPLP presented, which establishes that: members of the public know where the ME1 and ME2 pipelines are located; know how to identify a release using sight, sound, and smell; know that they should evacuate on foot in a direction that is away from the pipeline and that is upwind and uphill if possible; that first responders have been trained and know how to respond to a pipeline-related emergency; first responders will do everything possible to mitigate the release and reduce the risk of injury and property damage to the greatest extent possible. N.T. at 584-607. Thus, Mr. Marx's hypothetical consequences are not supported by substantial evidence, are not credible, and simply do not reflect reality.

The law requires that the Petitioners establish a danger that is both clear and present. They have not done either. Because there is no evidence to support a clear and present danger from the operation of the ME1 or ME2 pipelines, and no evidence of a need for immediate relief, the Commission should not upset the status quo and suspend service on ME1 or enjoin the commencement of service of ME2.

D. Petitioners' request for the Commission to review SPLP's public awareness plan is not a proper basis for interim emergency relief.

A request for interim emergency relief is an extraordinary remedy that if granted is limited to preserving the status quo pending the disposition of the underlying proceeding, and there must be a clear and present danger to life or property that can only be remedied through the relief that is requested. *See* 52 Pa. Code § 3.1. Here, Petitioners' requested relief is to shut down ME1 and ME2

until the Commission reviews SPLP's existing public awareness plan. First and foremost, as discussed at length above, the Commission has already done so, and found SPLP's plan to be appropriate, adequate, and in compliance with the applicable regulations. But importantly, the Commission reviewing SPLP's public awareness plan would not alleviate any "emergency" condition that Petitioners assert exist, and which is necessary for a grant of interim emergency relief. Reviewing a set of documents does not lessen or alleviate any clear and present danger to life or property. Petitioners' requested relief is misplaced and demonstrates that interim emergency relief is inappropriate.

E. Even if Commission review were appropriate, the evidence establishes that SPLP has a robust public awareness program that provides all necessary information to the public, local officials, and emergency responders, and that meets or exceeds industry standards and applicable regulations.

The uncontradicted evidence presented at the hearing establishes that SPLP's public awareness program is robust, goes above and beyond PHMSA regulatory requirements, and provides all necessary information to the public, local officials (including school districts) and emergency responders to know where the pipelines are located, the hazards related to pipelines, what to do to recognize a release, and what to do, or not to do, to respond to a pipeline-related emergency.

As described on the front page of SPLP's public mailings, the evidence establishes that SPLP's public awareness program provides information to the public on how to "Know,"

"Recognize," and "Respond," as demonstrated by the following:

- SPLP sends bi-annual mailings to all affected public located within 1,000 feet of each side of the ME1 and ME2 pipelines, a distance significantly beyond the 660-foot PHMSA requirement. SPLP's most recent mailing campaign took place in September 2018, where mailings were sent to: 40,046 members of the affected public; 16,338 excavators; 4,384 public officials; and 3,301 emergency response organizations. N.T. 589-593 (Perez); SPLP Ex. 41 at 4.
- SPLP performs specific outreach to local school districts, including providing emergency planning information to school officials located within one-half-mile of the pipeline right-of-way, which is continuing in December 2018 with scheduled

meetings with several schools in Chester and Delaware Counties. N.T. 597-598 (Perez); SPLP Ex. 32; SPLP Exs. 32 and 41.

- SPLP’s public awareness program provides information to the public and emergency responders that warns the public of the potential hazards of pipelines and informs the public: (1) where pipelines are located, (2) how to recognize a release using a person’s sight, smell, and sound, and (3) what to do, and not to do, in the event of a pipeline-emergency. N.T. 382-384, 389-390, 392, 399 (Zurcher); N.T. 475-480, 486 (Noll); N.T. 81-87, 91, 109, 122 (Hubbard); N.T. 20-22, 36-38, 45-46, 55, 57 (Harkins); N.T. 172-174, 178, 196-199 (Hughes); N.T. 204-209, 217, 228-229 (Walsh).
- All three residents – Ms. Harkins, Ms. Hughes, and Mr. Walsh – testified that they (1) know where the pipelines are located, (2) know how to identify a release, (2) know that if they suspect a release from a pipeline, they should move away from the pipeline on foot until they reach a safe place where they can call emergency services. N.T. 20-22, 36-38, 45-47, 55, 57 (Harkins); N.T. 172-174, 178, 196-199 (Hughes); N.T. 204-209, 217, 228- 229 (Walsh).
- What a “safe” distance is cannot be established in advance of a particular incident, and each individual and emergency responders must make a determination at the time, given the specific conditions presented. N.T. 394-396, 407, 413-415 (Zurcher); N.T. 482-483 (Noll); N.T. 124-125 (Hubbard).
- That there will be individuals with limited mobility who must evacuate an area is an undeniable fact that must be dealt with in a particular situation. Emergency responders routinely assist individuals with limited mobility for all various types of emergency events and develop emergency response plans that address how to evacuate individuals who have limited mobility. *See e.g.*, N.T. 392-393 (Zurcher); N.T. 485 (Noll); N.T. 122 (Hubbard).
- Individuals can register on a vulnerable-needs registry so that emergency responders are aware of individual limitations as soon as emergency responders are dispatched to a location. N.T. 393-394 (Zurcher); N.T. 484 (Noll).
- SPLP has provided, and continues to provide, specific information and training to emergency responders and schools that is sufficient for emergency responders to develop local emergency response plans, and to know how to safely respond to a pipeline incident. This training includes the MERO training through emergency response expert Gregory Noll, which a total of 1,950 emergency responders have attended to date since 2013. SPLP also participates in table-top exercises, including recent events in Chester and Delaware Counties, as well as school-specific outreach and training, which is ongoing. N.T. 487-488, 490-492 (Noll); N.T. 584-598 (Perez); SPLP Ex. 7, MERO Training; SPLP Exs. 27 and 41.
- Emergency responders have been provided the necessary information to create response plans. N.T. 479, 486 (Noll).

- Every expert witnesses who testified at the hearing, including Petitioners' own experts, agreed that SPLP's public awareness program provides the information that is required by the PHMSA regulations. N.T. 394-396, 407, 413-415 (Zurcher); N.T. 494-497 (Noll); N.T. 145-146 (Hubbard).

Thus, even if it were necessary for the Commission to reevaluate the adequacy of SPLP's public awareness program, which it is not for the reasons set forth herein, the overwhelming evidence establishes that SPLP's public awareness program is appropriate, adequate, and complies with applicable regulations.

F. Petitioners have not established that a shutdown of ME1 and ME2 pipelines will not cause injury to SPLP or the public interest.

Even though Petitioners bear the burden of proof to meet each element of emergency injunctive relief, they did not present any evidence of the fourth prong, that the relief requested is not injurious to the public interest. In contrast, SPLP has shown that the requested injunctions will injure, if not have a devastating effect upon, the public interest, including SPLP, its customers, Range Resources, union and non-union jobs, growth of facilities at Marcus Hook, economic growth, property owners in southwestern Pennsylvania who have gas leases and will be deprived of millions of dollars in royalties, the once idle and now resurrected Marcus Hook facilities and growth thereof, and other people and businesses (restaurants, hotels, contractors, equipment vendors, local businesses, etc.) that rely on these projects. SPLP's evidence and testimony as well as that from Range Resources and Steamfitters Local 420 prove that the economic impact from the requested emergency relief will be tens of millions of dollars or more in the short term, and hundreds of millions of dollars or more in the long run.

The Commission has already recognized this past spring that injunction of SPLP's pipelines comes at a significant cost to the public interest:

[T]he Commission is cognizant of the economic effect of ordering the suspension of ME 1 service. Natural gas liquid pipelines play a vital role in many industries given that these petroleum products serve as industrial feedstocks as well as additives to gasoline. The Commission understands that shippers that utilize ME 1 as customers, and users of

products transported by ME 1 either have had to suspend operations or look elsewhere for supplies due to the ME 1 closure . . .

SPLP Ex. 8 at 10. The Commission further explained that ME1 plays a “vital role” and thus its operation is in the public interest, as shown by the fact that SPLP holds a certificate of public convenience. *See* 66 Pa. C.S. § 1103(a) (“A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”). Harm to SPLP as a utility is harm to the public interest.

As established through the testimony of Alan Enberg and Richard Billman, a shutdown of ME1 now, during the peak heating season, will result in even greater public harm, as the market for propane will be negatively impacted when the total volume of NGLs that are currently transported on ME1, including propane, which is an important winter heating resource for many Pennsylvanians, will no longer be in the market. N.T. 527-28; 572-74. Shutting down service on ME1 and enjoining the commencement of some on ME2 will directly and significant financially impact SPLP shippers, including Range Resources, and royalty holders. *See supra* Section III. H (summarizing Enberg and Billman testimony). Moreover, shutting down ME1 and delaying or enjoining the commencement of ME2 puts public safety at risk as pipelines are a safer transportation mode than the alternatives of truck and rail. N.T. 402 (Zurcher), 519-20 (Engberg). As pipeline safety expert John Zurcher testified, truck transportation is 70 times more likely to result in an accident that involves a fatality than a pipeline. N.T. 402.

Lastly, as Anthony Gallagher testified, if ME1 is shut down and ME2 is prevented from commencing operation, there will be significant job losses and/or lay-offs (during the Holiday season) and vital planned job-creating development projects in the Marcus Hook facilities which are dependent on ME1 and ME2 for raw product may no longer occur, which is pushing capital

investments out of the Commonwealth. N.T. 547-551. An injunction would move the economic and employment needle absolutely in the wrong direction in a way clearly contrary to the public interest.

In sum, SPLP has presented overwhelming evidence of the harm to the public interest that will result from enjoining operation of ME1 and ME2. Petitioners presented no evidence on harm to the public. They cannot prevail on this prong, and their request for relief fails.

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

While SPLP believes that there is no basis in law or fact for the requested injunctions, SPLP nevertheless requests that if an injunction were to be ordered, prior to that injunction becoming effective, Petitioners must post a bond. The courts and many agencies in exercising injunction powers do this as a matter of course to balance and protect a business that is shutdown where it turns out that the shutdown was not sustainable on further review or upon the merits of the underlying case. An interim injunction is an extraordinary remedy, and as such anyone who seeks and gets such relief should be held accountable should their case prove to be insufficient on review or on the underlying merits. Otherwise, there is an invitation – with no ramifications – to file meritless injunction requests taking advantage of the process.

It could not be clearer that bonds are inextricably tied to the issuance of an injunction of the type sought here. Since the 1800s, Pennsylvania courts have recognized the requirement at common law to post a bond when seeking an injunction, and that common law rule has been codified in Pennsylvania’ Rule of Civil Procedure. Pa. R.C.P 1531(b); *see also Lawrence Cnty. v. Brenner*, 582 A.2d 79, 84 (Pa. Commw. Ct. 1990) (“Failure to post a bond when either special relief or a preliminary injunction is being sought nullifies both the injunction and any disposition in the pending matter.”) (citing *Rosenzweig v. Factor*, 457 Pa. 492, 327 A.2d 36 (Pa. 1974)). The reason for the bond requirement is two-fold. “For one, it serves to compensate a wrongfully enjoined party. It also serves to ‘deter[] rash applications for interlocutory orders; the bond premium and the chance of

liability on it cause plaintiff to think carefully beforehand.”” *Synthes, Inc. v. Gregoris*, 228 F. Supp. 3d 421, 447 (E.D. Pa., 2017) (citing *Sprint Comm'cns Co. L.P. v. CAT Comm'cns Intern., Inc.*, 335 F.3d 235, 241 n.5 (3d Cir. 2003) and *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804 (3d Cir. 1989)).

This reasoning applies with equal force to the Commission’s emergency injunctive relief procedures and the petition for interim emergency relief. Preliminary injunctive relief is a fast-track procedure with the potential for litigation ambush with no bar to getting to a hearing. The responding party has at most ten days to prepare a defense, while the petitioning party had as much time as it wanted to prepare its case prior to filing. The ALJ’s decision, which is due only fifteen days after the petition is filed, becomes operative in enjoining the requested activity before the Commission even reviews it. The Commission can and has in the past taken longer than the prescribed 30-day period to review the injunction. It is a process tilted heavily in favor of the petitioning party by the prescribed procedure. Recognizing this, a petitioning party is required to have some risk if it goes so far as to seek a preliminary injunction, disrupt a business, shuts utility operations, causes losses, but then loses on the merits. Thus, where a preliminary injunction is granted and then overturned, the party against whom the injunction was improperly granted is entitled to damages. When enjoining public utility actions, such as petitioners request here, those damages can be enormous and may come at the expense of rate payers as business expenses. But, without a bond, there is absolutely no guarantee that the petitioning party will later be able to pay those damages and the utility may be unable to recover them.

In fact, the Commission’s regulations state the Commission “may” require a bond, and in a case like this one, it must under controlling Pennsylvania law. That the Commission cannot issue damages is irrelevant to whether the Commission should require a bond be posted for an injunction. Establishing a bond is not awarding damages. There is a bi-furcated process where the Commission determines the merits of a case within its jurisdiction, but the court determines any award of

damages. *See e.g. Elkin v. Bell Tel. Co. of Pa.* 420 A.2d 371 (Pa. 1980). If the Commission has jurisdiction to enjoin a utility from conducting business or construction, it has jurisdiction to require a bond for the utility to recover its costs at the civil damage award phase in the event the injunction is wrongly issued. Otherwise, the Commission would be writing out of its regulation the bond reference.

Here, the request for an injunction is not a hypothetical scenario. Evidence here shows that when the ME1 pipeline was wrongfully enjoined in the *Dinniman* proceeding, both SPLP and Range Resources suffered tens of millions of dollars of damage. N.T. 526, 568-69. Evidence shows that the harm if SPLP is again enjoined will be even greater now. *See supra*, Section III.H.

Moreover, in the *Dinniman* proceeding the Commission clearly did not limit whether a bond should be required to the circumstance where there is a contractual arrangement between the parties when it considered whether a bond should be issued there. The Commission declined to require a bond for the injunction as to ME1 solely because it was lifting the injunction. The Commission declined to require a bond for the injunction as to construction of ME2 because construction was already halted. Clearly, neither of those circumstances is present here if either of the pipelines is enjoined from operating. The Commission stated:

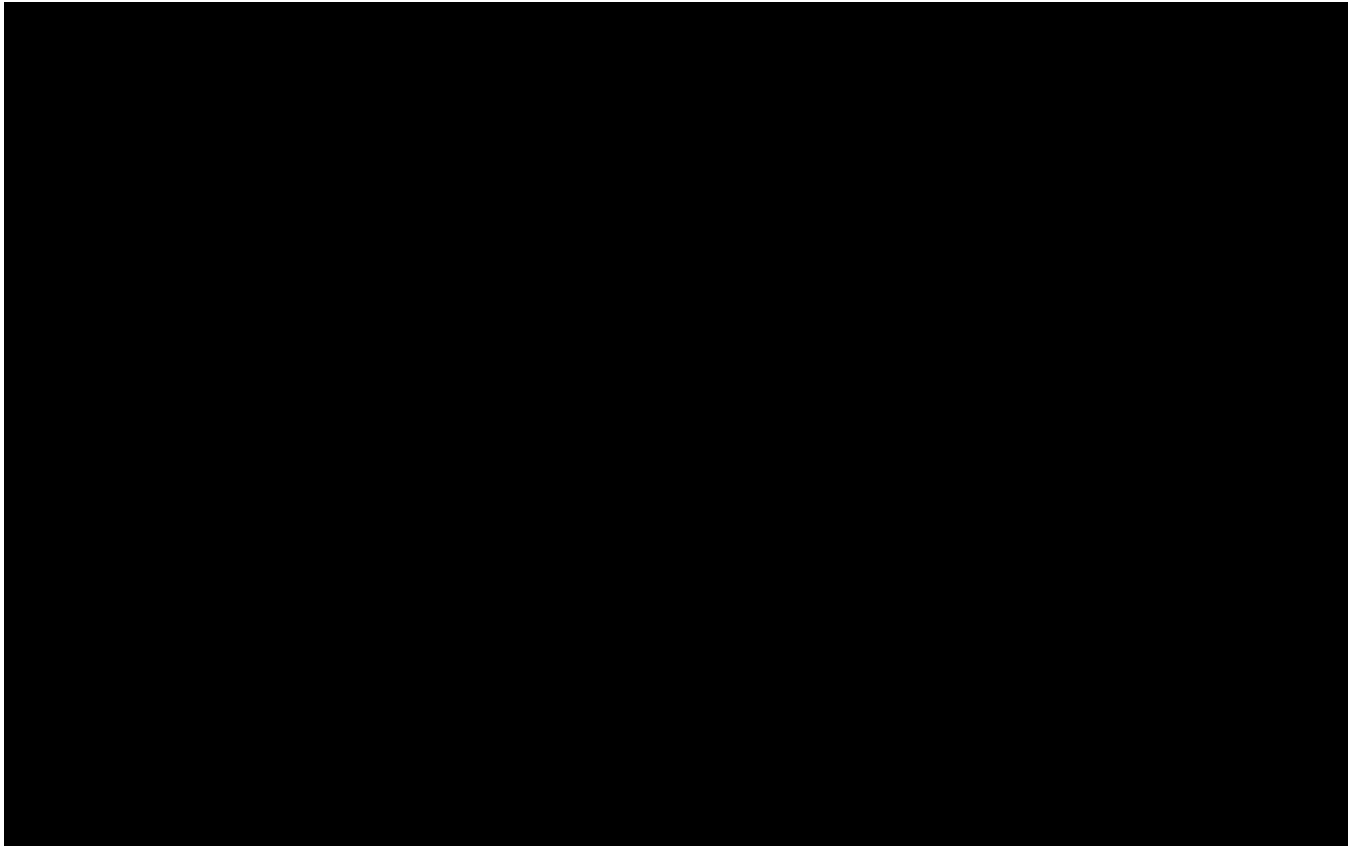
On consideration of the Sunoco request for a bond requirement, we shall decline to impose such an obligation. As a result of our reversal in part, and affirmance, in part, of the Interim Emergency Order, Sunoco will be permitted to resume operation of ME1. While Sunoco's injunction regarding further construction on ME2 and ME2X will be continued, we note that the status quo reflects that construction is presently halted. Therefore, the limited continuation of the stay in this matter under the facts of this Complaint do not support imposition of a bond.

Id. at 47.

A bond must be required to here to prevent the abuse of the Commission's interim emergency procedures. 52 Pa. Code § 3.8(b) expressly provides for the Commission to require a

petitioner to post a bond in the event injunctive relief is granted. *Id.* (“An order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and will specify the amount of the bond.”). The requested injunctions, if granted, will cause extreme financial harm to SPLP and Range Resources, for which Petitioners must post bond because if the injunction is later dissolved, SPLP and Range Resources are entitled to seek in the court of common pleas, damages resulting from the incorrectly-entered injunction. Nowhere else in Pennsylvania jurisprudence can a petitioner seek an emergency order to shut down another’s business and get such relief without posting a bond to protect the party who ultimately may be found to have been wrongly shut down from damages.

The only way to ensure SPLP will be able to recover these damages from Petitioners is if they are required to post a bond. The amount the bond that should be required was established through testimony of Richard Billman. **[BEGIN HC]**



[END HC]. SPLP Ex. 42. Range Resources [BEGIN HC]

[REDACTED] [END HC] Mr. Anthony Gallagher testified that an injunction would cost members of the union and building trades hundreds of millions of dollars per year in lost wages and benefits. N.T. 554.

A decision on the Petition is anticipated by December 11, 2018. Given the end of the year and holiday time-frame, SPLP believes it is that the Commission may not rule on the certified question prior to its January 17, 2018 Public Meeting. That means a wrongfully entered injunction could be in place for at least 37 days. In any event, SPLP and any other party injured by a wrongful injunction that stops the operation of the ME1 and ME2 pipelines would only draw on the bonds to the extent of the daily damages experienced.

Accordingly, SPLP requests the following bond amounts if the relevant injunction is issued:

- Injunction of ME1 Operation: \$143,734,000.00
- Injunction of ME2 Operation: \$19,902,500.00
- Injunction of both ME1 and ME2: \$ 155,336,500.00

If and when appropriate, SPLP and any person harmed by potential wrongful injunctions are entitled to seek all damages, legally taxable costs and fees from Petitioners in civil court.⁷

Accordingly, the bond requests above and as explained below actually underestimate the amount of damages Petitioners may in the future be required to pay.

[BEGIN HC]

[REDACTED]

⁷ Under the Rules of Civil Procedure, bonds must be conditioned such that “if the injunction is dissolved because improperly granted or for failure to hold a hearing, the plaintiff *shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees.*” Pa.R.C.P. 1531 (b)(1).

[REDACTED]

[REDACTED]

[REDACTED]

[END HC]

V. Conclusion

There is no dispute that pipelines are the safest method to transport petroleum and natural gas products, including NGLs, and that pipelines serve as our nation’s “energy highways,” providing vital resources on which both consumers and industry depend. Without any evidence that ME1 or ME2 are unsafe, or any evidence that there are issues with the integrity of the pipelines, or any evidence on the risk that a release or pipeline-related emergency could actually occur, all Petitioners are left with is a hypothetical absolute worst-case scenario that focuses exclusively on the location of the pipelines.

In reality, what Petitioners seek is a referendum on locating HVL pipelines in high-consequence areas without any supporting scientific evidence, and based solely on the subjective complaints of lay persons. Doing so would ignore existing regulations that specifically contemplate HVL pipelines will be located in high-consequence areas, and which require heightened inspection and safety requirements that are built into the applicable regulatory framework. It also ignores that

there are over 40,000 miles of HVL transmission pipelines in the United States located in high-consequences areas – including specifically in Chester and Delaware Counties – 210,000 miles of hazardous liquids transmission pipelines, and 300,000 miles of natural gas transmission pipelines in the United States. In fact, when distribution and gathering lines are included, there are over 2.4 million miles of pipelines in the United States, and 90% of the United States population lives near a pipeline.

Adopting Petitioners’ flawed logic and arguments based solely on worst-possible “what if” hypothetical scenarios would shut down every public utility, since there is a potential risk of injury or death whenever someone uses electricity from the grid, heats their home using natural gas or oil that was transported through a pipeline, drives on a highway, takes a bus, or flies on a commercial airline. People face and manage risk every day, and the risks associated with pipelines are no different, and in fact are objectively less. An individual must be informed where and when a potential risk arises, how to recognize a hazard when it is presented, and how to respond if that hazard creates a potential risk of harm. The uncontradicted and overwhelming evidence in this case establishes that SPLP’s robust public awareness and emergency response program provides all necessary and appropriate information to the public and first responders, and that the program is working exactly as intended. All three of the petitioners who testified at the hearing, and both of Petitioners’ expert witnesses, admitted that they: (1) know where the Mariner East pipelines are located; (2) know how to identify a release from a pipeline using his or her sight, sound, and smell; and, (3) know that if they suspect a release from a pipeline, they should move away from the pipeline on foot until they reach a safe place where they can then call emergency services.

For the Commission to grant Petitioners relief, they must present substantial credible evidence to meet the heavy burden of establishing that there is a “clear and present danger to the public” such that the Commission should shut down an operating public utility and cause significant harm to SPLP, shippers, industry, labor, and Pennsylvanians who rely on propane and natural gas

during the peak winter heating season. Because Petitioners have not met this heavy burden, the ME1 and ME2 pipelines should not be enjoined from operating, and the Petition should be denied.

Respectfully submitted,

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APPENDIX A

**RESPONDENT SUNOCO PIPELINE L.P.'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDERING PARAGRAPHS**

PROPOSED FINDINGS OF FACT

1. Petitioners filed a Complaint and Petition for Interim Emergency Relief (the “Petition”) against Sunoco Pipeline L.P. (“SPLP”), which seeks to temporarily and permanently shut down the existing operation of the Mariner East 1 pipeline (“ME1”) and to temporarily and permanently enjoin the operation of the Mariner East 2 and Mariner East 2X pipelines, which are in the process of being constructed and commissioned, as well as the operation and use of an existing 12-inch pipeline that will be used as part of the Mariner East 2/2X pipeline system (collectively referred to as “ME2”).

2. Petitioners seek interim emergency relief in the form of an injunction to prohibit the operation of ME1 and ME2 until such time as the Commission would review SPLP’s public awareness program and determine whether it is “suitable, applicable, appropriate, and credibly possible to carry out.” Pet., Introduction at 2.

3. Petitioners make no request to stop ongoing construction of ME2.

4. Petitioners’ evidence was limited to two issues – the adequacy of SPLP’s public awareness program and the theoretically worst-possible consequences of a pipeline-related emergency due to the location of the pipelines in a high consequence area. *See* N.T. 16:4-17 and 345:24-16.

5. The integrity of ME1 and ME2 are not at issue in this case and Petitioners conceded that they offered no evidence at the hearing regarding the integrity of ME1 or ME2. N.T. 32:8-10, 345:1-9, 346:15-16, 347:1-3, 347:9, 351:16-18.

6. The risk that a pipeline release will or will not occur and whether a release would result in an emergency is not at issue in this case and Petitioners offered no evidence of this issue. N.T. 320:12-13, 327:18-20, 328:15-16, 353:1-2, 353:15-18, 354:3.

7. Petitioners' consequence analysis is based on a generic and hypothetical, absolute worst-case scenario that does not reflect actual data and over-predicts the impact and over-estimates risk and would apply to any highly-volatile liquids ("HVL") pipeline. *See e.g.*, N.T. 327:3-5, 314:14-17, 327:6-9, 323:8-19, 325:6-19, 329:3-8, 307:8-12, 326:10-12; N.T. 310:17-311:5; N.T. 331:12-21.

8. The Commission found that SPLP's public awareness program is adequate, appropriate, and in compliance with applicable regulations. *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 et al., August 2, 2018 Order at pp. 24-25.

9. In 2016, the Commission's Bureau of Investigation and Enforcement conducted an audit of SPLP's public awareness program. BI&E identified no deficiencies with SPLP's public awareness program. SPLP Ex. 41 at slide 2.

10. SPLP has adopted a comprehensive public awareness program that includes individual and group meetings, mass mailings, and specialized training programs that raise awareness of the location and presence of SPLP's pipelines, educates the public and emergency responders about what to do and what not to do in the event of a pipeline release, and provides all of the relevant information for stakeholders to develop emergency response and evacuation plans. *See e.g.* SPLP Ex. 31, Public Awareness Plan; *see also* SPLP Ex. 41, N.T. 584:23-607:15.

11. SPLP mailed its most recent public outreach brochures in September 2018 (*see* SPLP Exs. 18-19), to the affected public (all residents, businesses, farms, schools, and other places of congregation within 1,000 feet of each side of the pipeline), excavators, public

officials, and emergency response organizations. N.T. 590; *see also* SPLP Ex. 41 at 4. These brochures were sent to:

- 40,046 members of the affected public;
- 16,338 excavators;
- 4,384 public officials; and
- 3,301 emergency response organizations.

N.T. 593; SPLP Ex. 41 at 4.

12. SPLP completes its public awareness mailing campaign every two years consistent with PHMSA regulations. N.T. 591.

13. SPLP goes above and beyond the required 660-foot PHMSA criteria for public awareness mailings by using a 1,000-foot mailing zone. N.T. 592.

14. SPLP conducts specialized trainings for emergency responders. N.T. 593-94. SPLP has conducted these trainings since 2013 and has had success at engaging emergency responders to attend; to date a total of 1,950 responders and officials in Pennsylvania have attended since the program has started. N.T. 595.

15. Gregory Noll, SPLP's emergency management expert, has implemented the Mariner Emergency Responder Outreach ("MERO") program, which is a specific training targeted for emergency responders and emergency planners for communities located along SPLP's ME1 and ME2 right-of-way. N.T. 465:5-12.

16. The MERO training program (SPLP Ex. 7) included several key elements:

- Information and training on the nature of the materials in the ME1 and ME2 pipelines (N.T. 472-473:1-17);
- The direction that product flows in the pipelines (N.T. 473:18-25, 474:1-9);
- Mapping resources that provide the location of the ME1 and ME2 pipelines, and other pipelines in the area (N.T. 474:10-475:1-5);

- Information on how to detect a release from a pipeline (N.T. 475:6-18);
- Emergency response protocols for both a non-ignition release event and an event where the release is ignited (N.T. 475:194-476:22, 476:25-477:9);
- Identification of danger areas when a release occurs (N.T. 477:10-478:2);
- How emergency responders should assess and respond to a pipeline release (N.T. 478:3-8); and,
- The importance of the relationship between the pipeline operator and emergency responders, and that SPLP established those relationships through the MERO training (N.T. 478:19-479:21).

17. In Mr. Noll's professional opinion, through its MERO training, SPLP provided specific information to emergency responders that is necessary for emergency responders to develop a pre-incident emergency plan, including decisions whether to evacuate or shelter in place. N.T. 479:22-480:5, 486:3-18.

18. In all instances, it is local emergency responders who are responsible for developing emergency response plans, not a pipeline operator. N.T. 480:13-25.

19. Each emergency event is different, and what the response entails will be entirely dependent on the particular facts and circumstances, and that emergency responders are trained on the concept of risk-based response, which is based on facts, circumstances, and science. N.T. 481:1-482:4.

20. For individuals with limited mobility, most counties in Pennsylvania maintain a vulnerable-needs registry that is incorporated into the emergency dispatch system, that will identify individuals with limited mobility to the incident commander or first responders. N.T. 484:9-23. Mr. Noll testified that in his professional opinion, there is no method to address issues with individuals with limited mobility prior to an incident, and that is exactly why first responders arrive to assist civilians when an incident occurs. N.T. 485:3-7.

21. Regarding the 12-inch pipeline, SPLP started reaching out to affected communities, police, fire, and emergency management beginning in July 2018, and SPLP has held meetings with 62 responders and officials from Chester and Delaware Counties, including 28 agencies. N.T. 596, SPLP Ex. 41 at 8-9.

22. Mr. Noll testified that in his professional opinion, SPLP's emergency response planning, training, and public awareness activities that he conducted for the Mariner East pipelines complies with PHMSA regulations, is consistent with what other pipeline operators are providing in Chester and Delaware Counties, and most importantly, provides appropriate and sufficient information for emergency responders to respond safely to a pipeline incident, including to address any issues related to schools or to individuals with limited mobility. N.T. 496:10-497:3.

23. Petitioners' witness Mr. Hubbard admitted that he did not attend the various training sessions that SPLP offered to local emergency responders and public officials. N.T. 158:1-2. Mr. Hubbard also testified that he would be participating in another upcoming training session on December 11, 2018 with the Chester County Department of Emergency Services that will specifically relate to pipeline emergency events that will specifically address Mr. Hubbard's concerns related to emergency response issues within the Downingtown School District. N.T. 74:8-19, 163:18-22.

24. SPLP initiated supplemental school outreach in 2017, and since that time has provided emergency planning information to administrators for 53 school officials located within half a mile of the ME2 pipeline across Pennsylvania. N.T. 597; SPLP Ex. 41 at 10.

25. SPLP is continuing this supplemental school outreach and has the following meetings scheduled:

- December 10: Rose Tree Media School District
- December 11: Downingtown School District
- December 12: Chester Community Charter School
- December 13: Penn Delco School District
- December 19: Chichester School District

N.T. 597-598.

26. John Zurcher, SPLP's expert on public awareness, hazard warnings, and pipeline safety, reviewed SPLP's public awareness program, including the direct mailing pamphlets sent to the public, schools, local officials, and emergency responders. N.T. 379-392, 397:20-39912; *see also* SPLP Ex. 18, 19 and 31.

27. Not only is the public awareness program sent directly to the affected public who are located near one of its pipelines, SPLP also maintains the same information on its website for anyone to review and access. N.T. 381:8-18.

28. Mr. Zurcher stated that in his expert opinion, SPLP's public awareness program is appropriate, adequate, meets industry standards and complies with PHMSA regulations, and most importantly, communicates all information that is necessary for the public to know: (1) where SPLP's pipelines are located by the comprehensive marker system; (2) how to recognize a release by sight, smell, and sound; and (3) what to do in the event of a pipeline-related emergency. N.T. 382-384, 389-390, 392:2-11, 399:8-12.

29. Gregory Noll agreed that SPLP's emergency response outreach and training program is adequate and provides all information that is necessary for the public and emergency responders to identify a pipeline release and to respond to a pipeline-related emergency, and is consistent with industry standards and PHMSA regulations. N.T. 494:11-495:12, 496:10-497:3.

30. Petitioners' own expert on emergency response, Tim Hubbard, who serves as the chief security officer for the Downingtown School District, and is also the fire marshal for

Charlestown Township, Chester County, agreed that SPLP's public awareness program and related public pamphlet mailings provide the information that is required by the PHMSA regulations. N.T. 145:4-146:10.

31. The Commission has already recognized that shutting down operation of ME1 damages the public interest. SPLP Ex. 8 at 10.

32. Shutting down ME1 and delaying or shutting down ME2 puts public safety at risk as pipelines are a safer transportation mode than the alternatives of truck and rail. N.T. 402 (Zurcher), 519-20 (Engberg).

33. Truck transportation is 70 times more likely to result in an accident that involves a fatality than a pipeline. N.T. 402.

34. A shutdown of ME1 now, during the peak heating season, will result in public harm, as the market for propane will be negatively impacted when the total volume of NGLs, including propane, which is an important winter heating resource for many Pennsylvanians, that are currently transported on ME1 to Pennsylvania destinations will no longer be in the market. N.T. 527-28; 572-74.

35. **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END HIGHLY CONFIDENTIAL]**

37. Anthony Gallagher, business manager for Steamfitters Local Union 420, explained that significant job losses or lay-offs resulted when ME1 was previously and unnecessarily shutdown, and that if it and/or ME2 is prevented from operating, that further major job losses will occur (during the Holiday season) and that vital planned job-creating development projects in the Marcus Hook facilities which are dependent on ME1 and ME2 for raw product may no longer occur, which is pushing capital investments out of the Commonwealth. N.T. 547-549.

PROPOSED CONCLUSIONS OF LAW

1. The purpose of an interim *emergency* order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1.
2. “Emergency” is defined in the Commission’s Regulations as “[a] situation which *presents a clear and present danger to life or property* or which is uncontested *and requires action prior to the next scheduled public meeting.*” *Id.* (emphasis added.)

3. A petitioner who seeks the Commission to enter an order for interim emergency relief must establish four elements:

- (1) The petitioner's right to relief is clear;
- (2) The need for relief is immediate;
- (3) The injury would be irreparable if relief is not granted; and
- (4) The relief requested is not injurious to the public interest.

52 Pa Code. § 3.6(b).

4. Interim emergency relief is only available when petitioner proves each of the four elements. *Glade Park East Home Owners Ass'n v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Commw. Ct. 1993).

5. Interim emergency relief also requires that Petitioner prove that an emergency exists as opposed to offering inferences, conjecture or concerns. *Peoples Natural Gas Co. v. PUC*, 555 A.2d 288, 291 (Pa. Commw. Ct. 1989) (reversing Commission decision entering injunction where no evidence of emergency); Order Denying Interim Emergency Relief, *Buffalo-Lake Erie Wireless Sys. Co. v. Verizon-PA*, Dkt. No. C-2010-2158408 (Mar. 2, 2010) (Colwell, J.) at 10 (“BLEW”) (*Edan Transp. Corp. v. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993)).

6. A petitioner must establish each of these elements by a preponderance of the evidence. 66 Pa. C.S. § 332(a) (“proponent of a rule or order has the burden of proof”); *Samuel J. Lansberry, Inc. v. PUC*, 134 Pa. Cmwlth. 218, 222-23 (Pa. Commw. Ct. 1990) (“The 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.”).

7. Failure to prove even a single element requires the Commission to deny a petition for interim emergency relief. *Crums Mill Assoc. v. Dauphin Consol. Water Supply*, Dkt. No. C-00934810 (Order entered April 16, 1993), slip op. at 4 (failure of a petitioner to meet any one of four elements requires denial of relief); *Peoples Natural Gas Co. v. PUC*, 555 A.2d at 291

(reversing Commission’s reversal of ALJ’s decision to deny interim emergency order because ALJ found that evidence did not establish an emergency circumstance).

8. The findings of fact “necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Trimac Transp. East, Inc.*, Dkt. No. M-2012-2314062 (Order entered Nov. 13, 2012), at 2.

9. Petitioners must provide more “than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.” *Petition of Norfolk Southern Railway Co.*, Dkt. No. C-00019560, 2011 WL 6122882 (Order entered Dec. 1, 2011), at 8 (citing *Norfolk & Western Ry. v. PUC*, 413 A.2d 1037 (Pa. 1980)); *Erie Resistor Corp. v. Unemployment Comp. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep’t of Pub. Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

10. Petitioners bear both the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). Unlike the burden of production, the burden of persuasion “includes determinations of credibility and acceptance or rejection of inferences....” *BLEW* at 11-12 (citing *Suber v. Pa. Comm’n on Crime & Delinquency*, 885 A.2d 678 (Pa. Commw. Ct. 2005)).

11. Moreover, certain evidence, even though it may have been admitted into the record, is not competent evidence to meet Petitioners’ burden of proof. *See Gruelle c/o Toll Diversified Props., Inc. v. PPL Electric Util. Corp.*, Dkt. No. C-2015-2463573, 2015 WL 7873828, at *10–12 (Order entered Oct. 27, 2015) (Colwell, ALJ.).

12. Likewise, lay opinions on matters requiring scientific, technical or specialized knowledge are not competent evidence to support a finding of fact. *Pickford v. Pennsylvania-*

American Water Co., Dkt. No. C-2007-8029, 2009 WL 1514962 (Order entered May 14, 2009); Pa. R.E. 701(c) (“If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is . . . not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.”).

13. Similarly, a lay witness’s references to reports or conclusions of others is not substantial evidence, as the lay witness cannot rely on that type of information in reaching a conclusion. *See* Pa.R.E. 701 and 703. Instead, that is the role of a qualified expert witness.

14. Petitioners also cannot meet the burden of proving an emergency by offering inference, conjecture or concerns. *Petition of Norfolk Southern Railway Co.*, Dkt. No. C-00019560, 2011 WL 6122882 (Order entered Dec. 1, 2011). (“More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.”).

15. The standard is not what might happen or what personal concerns one holds. Rather, the standard is that an emergency in facts exists. *Peoples Natural Gas Co.*, 555 A.2d at 291 (reversing Commission’s reversal of ALJ’s decision to deny interim emergency order because ALJ found that evidence did not establish an emergency circumstance).

16. Petitioners have not met their burden to show their right to relief is clear.

17. Petitioners have not met their burden to show the need for relief is immediate.

18. Petitioners have not met their burden to show the alleged injury would be irreparable if relief is not granted.

19. Petitioners have not met their burden to show the public interest will not be harmed because Petitioners presented absolutely no evidence on this issue.

20. The Commission has already reviewed SPLP’s public awareness program, found it to be adequate and not meriting of interim emergency relief.

21. Petitioners have not and cannot establish that there is a clear and present danger to life or property that could support the Commission granting the extraordinary remedy of interim emergency relief because the conceded that there is no issue or concern with the integrity of the ME1 and ME2 pipelines and admitted that they offered no evidence regarding the risk that a release could occur from ME1 or ME2, or that a release was likely to happen.

22. Petitioners have not and cannot establish that there is a clear and present danger to life or property that could support the Commission granting the extraordinary remedy of interim emergency relief because Petitioners offered no evidence that the continued construction of ME2 creates any imminent risk, or anything in the record to overturn the Commission's prior August 2, 2018 Order that determined the ongoing construction of ME2 is safe.

23. Theoretical consequences in the absence of evaluating the probability of an event occurring is insufficient support for injunctive relief, which requires sufficient evidence to demonstrate that an emergency condition exists, that it is more probable than not that an emergency will occur immediately, and that it is necessary to preserve the status quo before the Commission's next public meeting. *See* 52 Pa. Code § 3.1 (definition of "emergency" that requires action before next Commission public meeting); see also *Petition of Norfolk Southern Railway Co.*, 2011 WL 612282 at *12 ("the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding.").

24. In *Petition of Norfolk Southern Railway Co.*, the Commission found that there was no clear right to emergency relief when a railroad union argued that the railroad must install certain safety measures to prevent car collisions and injuries to employees, where the union had presented evidence that several incidents had recently occurred. The Commission affirmed the ALJ's denial of interim emergency relief, because while cited incidents indicated that operations

at the railyard were hazardous, it was partly due to the nature of the operations, and where the union's primary witness agreed that the incidents could happen anywhere, at any other railyard in the country. *See id.* at *10; *see also id.* at *13 (“Based on our review of the record, we find that the preponderance of the evidence does not demonstrate an immediate need for relief. As discussed above, the circumstances giving rise to the run out and walking hazards, as alleged by the Union, are not new.”).

25. Commission review of SPLP's public awareness plan would not alleviate any “emergency” condition that Petitioners assert exist, and which is necessary for a grant of interim emergency relief.

26. Despite Petitioners' lack of evidence, SPLP has shown SPLP's public awareness program is robust, goes above and beyond PHMSA regulatory requirements, and provides all necessary information to the public, local officials (including school districts) and emergency responders to know where the pipelines are located, that hazards related to pipelines, what to do to recognize a release, and what to do, or not to do, to respond to a pipeline-related emergency.

27. Despite Petitioners' lack of evidence, SPLP has shown that enjoining operation of ME1 and ME2 pipelines will harm the public interest.

28. Given the public harm that will occur due to an injunction, if an injunction is issued, Petitioners must post a bond for any injunction to become effective.

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Petition for Interim Emergency Relief filed on November 19, 2018 is DENIED.

2. That the denial of interim emergency order is certified to the Commission as a material question requiring interlocutory review.