

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG PENNSYLVANIA 17120**

**Meghan Flynn, Rosemary Fuller,
Michael Walsh, Nancy Harkins,
Gerald McMullen, Caroline Hughes,
And Melissa Haynes**

**Public Meeting held January 17, 2019
3006117-OSA
Docket Nos P-2018-3006117, C-2018-
3006116**

v.

Sunoco Pipeline, L.P.

**Petition of Meghan Flynn, Rosemary
Fuller, Michael Walsh, Nancy Harkins,
Gerald McMullen, Caroline Hughes,
And Melissa Haines for Interim
Emergency Relief**

MOTION OF VICE CHAIRMAN DAVID W. SWEET

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the *Order Denying Petition for Emergency Interim Relief and Certifying Material Question (Order)* issued by Administrative Law Judge (ALJ) Elizabeth Barnes on December 11, 2018, relative to the above-captioned proceedings. The *Order* comes before the Commission pursuant to the requirements of our Rules of Practice and Procedure, 52 Pa. Code § 3.10(b), which require a presiding officer who rules upon a petition for an interim emergency order to certify the question of the grant or denial of relief to the Commission as a material question.

In this instance, the ALJ denied the emergency relief and certified the denial to this Commission for review. Therefore, the material question presented today is:

Whether the December 11, 2018 Order of presiding Administrative Law Judge Elizabeth Barnes should be affirmed as Complainants/Petitioners have not shown that they are entitled to interim emergency relief under Commission Regulations at 52 Pa. Code 3.6 - 3.8?

The Petition expressly requested the following emergency relief: (1) the Commission review of Sunoco's public awareness program and a determination of whether the public awareness program is, or is not, suitable, applicable, appropriate, and credibly possible to carry out; and (2) cessation of HVL pipeline operations until the review is complete, *i.e.*, the Commission has held a final hearing on the Petitioners' Complaint and entered an appropriate order. *See* Petition at 2.

Sunoco filed an Answer opposing the Petition.

The ALJ held an evidentiary hearing and issued her Order Denying the Petition for Interim Emergency Relief on December 11, 2018, finding that the Petitioners had failed to sustain their burden of proving any of the four elements required under the Commission's regulation at 52 Pa. Code § 3.6.¹

At the core of the Commission's rules regarding emergency relief is the necessity of finding that there is an emergency situation which is so compelling that it supersedes the due process rights of the party against whom the emergency relief is sought, or as defined in our regulations, a situation which presents a clear and present danger to life or property.² Without ruling upon whether the Complainants may be able to prove any of their allegations against Sunoco in the accompanying complaint case, a review of the record shows that it does not set forth a clear and present danger to life or property under the facts presented by the Petitioners in this matter.

The Order Denying the Petition for Interim Emergency Relief is thorough and well-reasoned, and there is insufficient evidence in the record to reverse it. The Petitioners will now have a full opportunity to present their concerns and evidence to support their allegations of violations in the Complaint docket.

I note that there are now numerous cases pending before the Commission regarding one or more of the pipelines owned and operated by Sunoco, and while these cases may have some issues in common, they are separate cases, none of which has reached a final Commission determination which may or may not impact the Commission's findings in the present case.³ The only docket before us today is the Petition for Interim Emergency Relief at P-2018-3006117.

I note further that there were numerous filings at this "P" docket after the ALJ issued her order, and as such, all of them are extra-record and will not be considered here.⁴ Each has its own allegations, and each is at a different stage in its litigation schedule.⁵

The complaint associated with the "P" docket will be returned to the ALJ for appropriate proceedings, and the ALJ may consider the additional filings in the complaint docket if they are relevant to the issues in the proceeding.

¹ (b) To the extent practicable, a petition for an interim emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief, including facts to support the following: (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; (4) The relief requested is not injurious to the public interest. 52 Pa. Code §3.6. (b).

² 52 Pa. Code § 3.1.

³ *Pennsylvania State Senator Andrew E. Dinniman v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3001451; *Bureau of Investigation & Enforcement v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3006534; *Rebecca Britton v. Sunoco Pipeline, L.P.*, C-2019-3006898; *Laura Obenski v. Sunoco Pipeline, L.P.*, C-2019-3006905.

⁴ While I&E may intervene at any time, they must take the record as they find it. 52 Pa. Code § 5.74(4). In this instance, the ALJ's order was already issued. In addition, Commission regulations clearly do not anticipate the amendment of an answer after the presiding officer has issued her decision on the subject matter. 52 Pa. Code § 5.91. To permit amendment after the decision is issued would be contrary to the ability of the tribunal to reach finality in a matter.

⁵ The *Dinniman* proceeding is presently stayed by order of the Commonwealth Court.

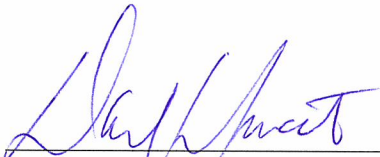
My motion answers the certified question in the affirmative and returns the underlying complaint to the ALJ for appropriate proceedings.

THEREFORE,

I MOVE:

1. That the Commission answer the certified question, whether the December 11, 2018 Order of presiding Administrative Law Judge Elizabeth Barnes should be affirmed as Complainants/Petitioners have not shown that they are entitled to interim emergency relief under Commission Regulations at 52 Pa. Code 3.6 - 3.8, in the affirmative.
2. That the underlying Complaint in this matter, Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines v. Sunoco Pipeline, L.P., at Docket No. C-2018-3006116, be returned to the Office of Administrative Law Judge for appropriate proceedings.
3. That the Office of Special Assistants prepare an appropriate order consistent with this Motion.

January 17, 2019
DATE



DAVID W. SWEET
VICE CHAIRMAN