

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 3, 2018

Commissioners Present:

Gladys M. Brown, Chairman, Statement
Andrew G. Place, Vice Chairman
Norman J. Kennard
David W. Sweet
John F. Coleman, Jr.

Petition of the Bureau of Investigation and
Enforcement of the Pennsylvania Public
Utility Commission for the Issuance of an
Ex Parte Emergency Order

P-2018-3000281

ORDER

BY THE COMMISSION:

On March 7, 2018, the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (BIE) filed a Petition for Issuance of an *Ex Parte* Emergency Order (*March Petition*) pursuant to 52 Pa. Code Section 3.2 at the above-referenced docket. The Commission's Pipeline Safety Section (within BIE's Safety Division) enforces public utilities' compliance with the Public Utility Code, Commission regulations and the federal pipeline safety regulations governing the distribution and transportation of natural gas and hazardous liquids, including natural gas liquids.

The *March Petition* asserted that the area proximate to both the Mariner East 1 (ME 1) and Lisa Drive, West Whiteland Township, Chester County (Lisa Drive) had developed soil subsidence issues, commonly referred to as "sinkholes." In the *March Petition*, BIE requested that the Commission issue an emergency order immediately

suspending transportation services on the ME 1 natural gas liquids pipeline owned and operated by the public utility Sunoco Pipeline L.P. a/k/a/ Energy Transfer Partners (SPLP) owing to these discrete issues on the segment of ME 1 in the vicinity of Lisa Drive. Subsequently, on March 7, 2018, Commission Chairman Gladys M. Brown granted the *March Petition*, and issued an *Ex Parte* Emergency Order (*Emergency Order*), containing specific terms and conditions discussed below. The Commission ratified the *Emergency Order* without modification at the Public Meeting of March 15, 2018. Sunoco has neither filed an Answer to the *March Petition* nor requested a hearing on the emergency order as permitted by the *Emergency Order* and Commission regulations. See 52 Pa. Code § 3.4.

This proceeding is directed at this specific safety concern on a specific portion of the ME 1 pipeline. The *March Petition*, and the *Emergency Order* issued from it, focused on the Lisa Drive concerns and did not initiate a public docket on pipeline utility safety in general, nor open a public inquiry regarding the safety and operations of SPLP as a public utility. The *Emergency Order* was the Commission's direct and immediate response to a specific pipeline safety issue brought to it by the Commission's pipeline safety staff in BIE.

Under the terms of the *Emergency Order*, SPLP had two options under which it could seek relief from the suspension of transportation service directed in the *Emergency Order*. One option was to take the steps necessary to satisfy BIE that SPLP had addressed all safety issues raised in the *March Petition* and *Emergency Order*. The other was for SPLP to file an answer and conduct hearings to show why SPLP should no longer be subject to the restrictions of the *Emergency Order*. SPLP proceeded under the former option by taking those steps necessary to satisfy BIE, then in filing its *SPLP Petition*.

Under the terms of the *Emergency Order*, on April 27, 2018, SPLP filed a Petition for Lift of *Ex Parte* Emergency Order and Request for Expedited Treatment (*SPLP Petition*). Also, on April 27, 2018, BIE filed a Statement of the Bureau of Investigation

and Enforcement Concurring with the Request of Sunoco Pipeline L.P. A/K/A Energy Transfer Partners for Reinstatement of Transportation Service on its Mariner East 1 Pipeline (*BIE Concurrence*). The *Emergency Order* directs that the Commission must now review the *SPLP Petition* and the *BIE Concurrence* to determine if the contentions of BIE have been addressed and to approve reinstatement of service on ME 1 if the BIE Pipeline Safety Section is satisfied that subsidence issues proximate to Lisa Drive do not threaten the integrity of ME 1.

Specifically, these filings trigger OP 1.c.i of the *Ex Parte* Emergency Order discussed in full below. *Emergency Order* at 3.

BACKGROUND

The *March Petition* asserted that the Lisa Drive sinkholes appeared to be related to the SPLP's construction of new pipelines, known as Mariner East 2 (ME 2) and Mariner East 2x (ME 2x), within the right of way containing ME 1 near Lisa Drive. Regardless of cause, ME 1 was exposed at one sinkhole. BIE believed that additional sinkholes could develop along the then-active ME 1 because of the nearby construction of ME 2 and ME 2x and requested the Commission order the suspension of service so that SPLP could demonstrate to BIE that "the continued operation of ME 1 is safe and viable under the circumstances described [in the *March Petition*]." *March Petition* at ¶ 27. The *March Petition* requested the Commission direct SPLP to conduct an investigation (overseen by BIE) of the cause and nature of the sinkholes and to assess whether the integrity of the existing ME 1 pipeline had been compromised. *March Petition*, Para. V (1)-(5).

The *Emergency Order* mandated, *inter alia*, that for SPLP to reinstate hazardous liquids transportation service on ME 1 without an evidentiary hearing, SPLP must satisfy BIE that appropriate corrective action had or would occur, and also required SPLP to obtain BIE's concurrence that reinstatement of transportation service on ME 1 could resume. *Emergency Order* at 3. The *Emergency Order* provided that these reinstatement

filings would thereafter be subject to Commission review and approval if BIE concurred that the enumerated terms were satisfied. *Id.* The ratified *Emergency Order* was not appealed or challenged; its terms are binding on BIE, SPLP, and the Commission.

Shortly after the issuance of the *Emergency Order*, interested entities and persons began to file petitions for intervention in this docket. On March 14, 2018, the Commission received a petition to intervene from Uwchlan Township, Chester County. On March 14, 2018, Pennsylvania State Representative Carolyn T. Comitta petitioned the Commission to intervene. On March 19, 2018, Mr. George A. Alexander petitioned the Commission to intervene. On March 22, 2018, East Goshen Township, Chester County, petitioned to intervene. On March 26, 2018, Pennsylvania State Senator Andrew E. Dinniman, the Pipeline Safety Coalition, Mr. Lex T. Pavlo, Mr. Mitch Trembicki, Mr. William R. Wegemann, and the Andover Homeowner's Association individually petitioned the Commission to intervene. On March 27, 2018, Thornbury Township, Delaware County petitioned the Commission to intervene. On March 29, 2018, Karen Faridum petitioned the Commission to intervene. On March 30, 2018, Rosemary F.R. Fuller petitioned the Commission to intervene. On April 2, 2018, Ronald Cocco petitioned to intervene. SPLP filed timely Answers to these petitions. Several potential intervenors filed replies to the SPLP Answers in the form of preliminary objections.

Several energy industry stakeholders filed letters urging the Commission to consider the importance of the ME 1 to natural gas liquids transportation in the Commonwealth and request prompt resumption of safe and reliable transportation service on ME 1. On April 30, 2018, Senator Andrew E. Dinniman filed an objection to the substance of the *SPLP Petition* filed in accordance with the *Emergency Order* terms provided above. On May 1, 2018 West Whiteland Township filed a Petition to Intervene.

DISCUSSION

Terms Of The Emergency Order

The operative safety terms of the *Emergency Order* mandate specific locational inspection and testing requirements that SPLP is to achieve, and further provides instructions on how BIE is to participate in that ME 1 safety review process. These terms appear in the following Ordering Paragraphs (OP or OPs) in the *Emergency Order*:

1. The *BIE Petition* is granted as set forth in this Emergency Order with the following relief:
 - a. Within 24 hours of the entry of this Order Sunoco shall run at least one in line inspection tool through the Mariner East 1 Pipeline, inspecting the pipeline from a point at least 1 mile upstream from the Lisa Drive location to a point at least 1 mile downstream from Lisa Drive.
 - b. Within 12 hours of completing the inspection tool run Sunoco will suspend hazardous liquids transportation service on its Mariner East 1 pipeline for a period of time, presently estimated by BIE and Sunoco to be of 10-14 days duration (the "Study Period"), in order for Sunoco to perform the following:
 - i. Conduct geophysical testing and analyses (including at least the following: resistivity, seismic and gravity) in the HDD area described in the BIE Petition; and
 - ii. Share all findings of the inspection tool run and geophysical testing with BIE/Pipeline Safety staff; and
 - iii. Meet and discuss the findings with BIE/Pipeline Safety staff, such discussions shall include, but not be limited to Sunoco's addition of strain gauges to Mariner East 1 in the study area.
 - iv. During the Study Period, Sunoco shall maintain sufficient minimum pressure in Mariner East 1 to avoid gasification of NGLs. Such pressures are estimated to be in the range between 475 and 650 psig, however, the NGLs shall not be flowing during such period.
 - c. Sunoco will not reinstate hazardous liquids transportation service on Mariner East 1 until the earlier of the following:

- i. Completion of (a) and (b)(i)-(iv), with any corrective actions taken, or planned to be taken, to the satisfaction of BIE/Pipeline Safety coupled with BIE/Pipeline Safety's concurrence with reinstatement of transportation service on Mariner East 1, subject to Commission review and approval.
- ii. If BIE/Pipeline Safety does not concur with Sunoco's request to resume service on ME1, Sunoco may file an Answer to the BIE Petition within 3 business days following notice of BIE's nonconcurrence.
 1. The Petition and Answer will be assigned for expedited hearing(s) before the Office of Administrative Law Judge;
 2. Sunoco may not resume hazardous liquids transportation service on Mariner East 1 without prior Commission approval.

Emergency Order at 2-3. While these terms and conditions direct SPLP actions, they also establish that BIE is the entity charged with analysis of the conclusions of the SPLP testing. *Id.*

As to a resumption of service on ME 1, the *Emergency Order* provides that the party complaining of ME 1 safety issues, specifically BIE, must state that its Safety Division personnel are satisfied with the results provided by SPLP, before SPLP may resume hazardous liquids transportation service on ME 1. Although SPLP has filed the *SPLP Petition*, the terms of the *Emergency Order* do not provide that petition with any substantive effect absent the concurrence of BIE. That is, while the Commission notes that SPLP has provided significant detail in the *SPLP Petition*, because SPLP wishes to proceed under *Emergency Order* OP 1.c.i, the analysis and concurrence of BIE is critical to whether the terms of the emergency order have been met.

BIE Concurrence

The *BIE Concurrence* sets forth in detail the background and chronology of the BIE Safety Division staff's oversight and review of SPLP's investigation of the sinkholes

proximate to Lisa Drive in West Whiteland Township. The Commission will not repeat that matter in full here.

Regarding OP 1.a, the *BIE Concurrence* provides that on March 10, 2018, BIE received the initial in-line inspection (ILI) tool data required by that Ordering Paragraph. As stated in the *BIE Concurrence*, on March 12, 2018, BIE received updates on ILI, shutdown, strain gauges, resistivity testing, and discussion on purging ME 1 of hazardous liquids, and BIE conducted its initial review of the ILI tool data report. BIE also received a ME 1 pressure data report from pump stations system-wide. *BIE Concurrence* at 6.

On March 14, 2018, BIE retained an independent geophysical consulting firm qualified to provide BIE with analysis of ME 1 within the scope of the *Emergency Order*. With the assistance of its geophysical consultant, BIE served an initial investigation letter on SPLP seeking the following data:

1. Full geophysical survey work scope including detailed descriptions of the following:
 - a) The locations of all seismic lines, and gravity stations (coordinates and/or maps).
The seismic data collection parameters such as seismic source type and size, anticipated seismic shot locations, spacing between shots, geophone type / spacing / locations, sampling rate, sample collection time.
 - b) Seismic processing parameters including type of processing (e.g., refraction, reflection, MASW, etc.).
 - c) Type & model of gravimeter, gravity measurement time for each data point, method used to determine gravity measurement coordinates and elevations, gravity data processing methods and corrections, drift calculation method, and any other types of gravity data processing.
 - d) Detailed descriptions of any other geophysical survey methods.
2. All field notes and driller's logs from the HDD borings.

3. Field notes describing sinkhole location / width / depth, onsite photos of sinkholes, other field observations.

Id. at 6-7. On March 14, 2018, BIE's geophysical consultant was on site at the Lisa Drive location. The *BIE Concurrence* states that SPLP provided preliminary responses to BIE's queries, as well as drilling reports. *Id.*

BIE further reports that on March 15, 2018, it received the final ILI Tool run report and conducted an all-day off-site meeting with SPLP, SPLP geophysical consultants, and a representative of Pipeline Hazardous Materials Safety Administration (PHMSA). Between March 16-19, 2018, SPLP and BIE agreed on the parameters of conducting resistivity testing. On March 20, 2018, the BIE geophysical consultants obtained and analyzed a map of the HDD right-of-way, including survey points for use in placing the resistivity grid. On March 23, 2018, BIE requested that SPLP provide additional electrical resistivity field data. Over the following several weeks, BIE analyzed the data provided to it. On April 23, 2018, BIE and SPLP conducted a second all-day meeting, including discussions with the Department of Environmental Protection regarding the status of the Emergency Order investigation and to finalize any remaining information requests posed by BIE and its geophysical consultant. *Id.* at 8.

BIE informs the Commission that its safety engineers have logged over 150 hours on-site at Lisa Drive during its investigation. This is in addition to over 110 hours of on-site review provided by BIE geophysical consultants. BIE points out that this field work is in addition to hundreds of office hours spent reviewing data and analyzing data outputs obtained from observations and SPLP. *Id.*

The *BIE Concurrence* provides that BIE pipeline safety experts and their geophysical consultants have engaged in a coordinated and exhaustive extraction of data and thorough analysis using multiple disciplines "to render a professional opinion as to whether the on-going pipeline construction in the Lisa Drive study area has compromised

the integrity of the existing ME 1 pipeline.” *Id.* BIE attached its geophysical consultant’s highly detailed technical report to the BIE Concurrence to identify the tasks completed by SPLP and its geophysical consultants, the tasks completed by the BIE geophysical consultant and to provide the latter’s opinion that the integrity of ME 1 pipeline remains intact. *Id.* Moreover, the *BIE Concurrence* notes that it will engage in ongoing monitoring of ME 1 for six months after construction activity in the Lisa Drive area has concluded. *Id.* at 9.

Given the above, BIE concluded that it has now conducted a comprehensive investigation on the issues that led it to file its *March Petition*. The *BIE Concurrence* opines that its concerns have been adequately addressed and given the corrective actions taken and planned, that is satisfied that the integrity of the ME 1 pipeline has not been compromised by the subsidence events identified in its *March Petition*. *Id.* at 9-10.

Although the *BIE Concurrence* mentions future planned actions, it provides little detail as to what is to occur other than continued strain gauge and pipeline elevation monitoring for six months after SPLP concludes construction activities at Lisa Drive. *BIE Concurrence* at 9. The Commission will address forward-looking reporting issues below to provide for a more complete resolution of the issues surrounding public safety concerns raised by SPLP construction activities proximate to an operational ME 1.

SPLP Petition

The *SPLP Petition* is largely consistent with the *BIE Concurrence* regarding completion of the analysis required by the *Emergency Order*. The *SPLP Petition* states that SPLP conducted testing beyond that required in the *Emergency Order*. *SPLP Petition* at ¶¶ 17-25. While the Commission appreciates that SPLP has taken these extra steps to validate the safety of ME 1, the Commission will not rely upon these assertions to the extent that they are not similarly discussed in the *BIE Concurrence*.

That said, the 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 occasioned by the safety threat imposed by the Lisa Drive subsidence.

Petitions For Intervention

As is discussed above, the *Emergency Order* provides specific procedural requirements on this docket. Specifically, OP 1.c.i., as noted above, establishes that BIE, as the petitioning party, may advise the Commission that it is satisfied that SPLP has addressed the safety issues BIE raised in the *March Petition*. In the *BIE Concurrence*, BIE has stated that this is the case. BIE has stated its satisfaction with the safety result of the analyses mandated in the *Emergency Order*.

By express terms, the *Emergency Order* provides that SPLP may resume service on ME 1 following the Commission's approval after the condition that BIE affirmatively express to the Commission that it is satisfied with the integrity of ME 1 in the study area of Lisa Drive in West Whiteland Township. With the filing of the *BIE Concurrence*, and Commission review of that filing, the above-referenced docket is complete.

We will not consider or rule upon the requests for intervention in this matter at this time, as they are mooted by this Order. An intervenor's role in proceedings before this Commission is on a non-party basis, meaning that the initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors. See 52 Pa. Code § 5.75(c). Notably, the Commission's regulations establishing the *ex parte* emergency process provide that only the party constrained by an emergency order may file for an expedited hearing. 52 Pa. Code § 3.4(b). In application, SPLP singularly

holds the right to request a hearing on the *Emergency Order*. Third parties such as would-be intervenors possess no such rights under the Commission's emergency order regulations. Moreover, under the provisions of the *Emergency Order*, no other person or potential party could direct BIE to be dissatisfied with its own analysis. To the contrary, BIE has expressly concurred in the *SPLP Petition*, for resumption of transportation services along ME 1, bringing this matter to a close. For this reason, and for those reasons articulated below, we find that petitions for intervention in this docket are now moot.

The OP 1.c.i. of the *Emergency Order* provides that SPLC may resume service if the corrective actions specified in the emergency order are completed to the satisfaction and concurrence of BI&E, subject to Commission review and approval of that concurrence. The matter in dispute in the *March Petition* has now been resolved to the satisfaction of BIE. Moreover, the Commission has reviewed the BIE statement and attached independent geophysical engineering report and finds that the requirements of the *Emergency Order* have been met. Accordingly, the basis for Commission action as to the Lisa Drive portion of ME 1 is no longer present. The very terms of the *Emergency Order* provide that upon Commission review and approval of a *BIE Concurrence*, the safety issues addressed at this docket are moot as no further action is possible. *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 94 S.Ct. 1694, 40 L.Ed2d 1 (1974).

Nevertheless, the Commission acknowledges the public interest and safety concerns raised by the petitions to intervene regarding SPLP operations and the construction of ME 2 and ME 2x. However, the safety examination of ME 1 in the Lisa Drive study area at this docket is not the appropriate forum to address those wide-ranging concerns about the construction and operation of the ME pipelines.

In *Delaware Riverkeeper Network*, the Commonwealth Court *en banc* wrote:

[T]he Public Utility Code's provisions afford Plaintiffs a forum for their rights, and reasonable notice and hearing, on complaint that the location of Sunoco's utility facilities are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code. 66 Pa. C.S. §§701 (entitled 'Complaints'), 1505(a) (entitled 'Proper service and facilities established on complaint').

Delaware Riverkeeper Network v. Sunoco Pipeline L.P., 179 A.3d 670, 693-94 (Pa. Cmwlth. 2018) (citations omitted). Accordingly, the would-be intervenors can address their concerns regarding SPLP to the Commission through the Commission's formal complaint process and not through this emergency proceeding.

The Commission notes that on April 25, 2018, Senator Andrew E. Dinniman filed a Formal Complaint with the Commission at Docket No. C-2018-3001451 and an accompanying Petition for Interim Emergency Relief at Docket No. P-2018-3001453 regarding the continued construction of ME 2.¹ Senator Dinniman also included in amended filings various challenges to the continued operation of any portion of ME 1 that range well beyond the scope of the Lisa Drive subsidence issues addressed in the *Emergency Order* addressed herein.

As a formal complainant in his own proceeding, Senator Dinniman has full party status and may proceed with litigation before the Commission including exercising the right of discovery, the presentation of testimony and evidence, and the cross-examination of opposing witnesses. Those opposed to the continued operation or construction of the ME pipelines may likewise present formal complaints to the Commission² such as that

¹ Both the Formal Complaint and the Petition for Interim Emergency Relief are available on the Commission's website at www.puc.pa.gov. Please note that Commission actions are limited by our jurisdiction and that our reference here does not guarantee that the allegations in the formal complaint will be matters upon which the Commission may rule.

² See 52 Pa. Code §§ 5.21-5.23 and the Commission's website for more information regarding filing formal complaints.

filed by Senator Dinniman or may seek to intervene in the formal complaint filed by Senator Dinniman.³

Conclusion

The *BIE Concurrence* sets forth BIE Pipeline Safety Section's satisfaction with the results of the analysis mandated in the *Emergency Order*. In addition, BIE has now concurred with the SPLP request to reinstate transportation service on ME 1. The *BIE Concurrence* meets the review and approval directed by OP 1.c.i of the *Emergency Order*. Accordingly, based on our review, the Commission will give its approval to the reinstatement of transportation service on SPLC's Mariner East 1 pipeline subject to the conditions imposed by this Order; **THEREFORE,**

IT IS ORDERED:

1. That the Bureau of Investigation and Enforcement Pipeline Safety Section statement, concurring with the request of Sunoco Pipeline L.P. for reinstatement of transportation service on its Mariner East 1 pipeline in accordance with the terms of the Ex Parte Emergency Order at Docket No. P-2018-3000281, is hereby approved.
2. That Sunoco Pipeline L.P. may reinstate utility transportation of hazardous liquids utilizing its Mariner East 1 pipeline subject to the conditions enumerated below.
3. That Sunoco Pipeline L.P. shall notify the Bureau of Investigation and Enforcement Pipeline Safety Section, affected municipal officials, and property owners within a 500 foot radius, of any subsidence event or construction variances occurring within or proximate to the right-of-way of the Mariner East 1 pipeline within twelve (12)

³ See 52 Pa. Code §§ 5.41-5.44.

hours of discovery, and report to those entities and individuals of all current or intended mitigation efforts to address the conditions.

4. That Sunoco Pipeline L.P. shall file “post grouting” reports via continued strain gauge and pipeline elevation monitoring as prescribed in the ARM Group Inc. report with the Bureau of Investigation and Enforcement Pipeline Safety Section every sixty (60) days commencing with the entry date of this Order for a period of six months following construction activities.

5. That Sunoco Pipeline L.P. shall immediately notify the Bureau of Investigation and Enforcement Pipeline Safety Section of alternative construction methods used in the construction of ME 2 and ME 2X and the status of any Department of Environmental Protection permitting changes related to those methods.

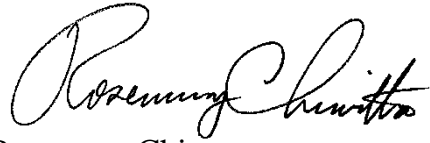
6. That Sunoco Pipeline L.P. shall serve all reports required by this Order on the Bureau of Investigation and Enforcement Pipeline Safety Section for evaluation and monitoring.

7. The Docket at P-2018-3000281 shall remain open only for the filing of required reports.

8. That the petitions for intervention are dismissed as moot.

9. That a copy of this Order be posted on the Commission's website at www.puc.pa.gov.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 3, 2018

ORDER ENTERED: May 3, 2018