

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**CM ENERGY, GP AND ITS SUBSIDIARIES CM  
ENERGY HOLDINGS, LP, CM ENERGY  
FACILITIES, LP AND CM ENERGY OPERATIONS,  
LP, SUCCESSORS TO JUSTICE HIGHWALL  
MINING, INC.**

**and**

**Case 06-CA-202855**

**INTERNATIONAL UNION, UNITED MINE  
WORKERS OF AMERICA, DISTRICT 17, AFL-CIO,  
CLC.**

**and**

**Case 06-CA-200465**

**THOMAS McCOMAS, an Individual**

**and**

**Case 06-CA-198911**

**NICHOLAS CODY DOVE, an Individual**

**INTERNATIONAL UNION, UNITED MINE WORKERS  
OF AMERICA, DISTRICT 17, AFL-CIO CLC'S OPPOSITION  
TO MOTION TO DISMISS THE CONSOLIDATED COMPLAINT**

Pursuant to Section 102.24(b) of the Board's Rules and Regulations, the Charging Party International Union, United Mine Workers of America, District 17, AFL-CIO CLC ("UMWA" or Union) hereby submits its Opposition to the Motion to Dismiss filed by CM Energy, GP, and its subsidiaries CM Energy Holdings, LP, CM Energy Facilities, LP and CM Energy Operations, LP (collectively, "the Respondent"). In support of this Opposition, the UMWA expresses its concurrence with and its support of the Counsel for General Counsel's Opposition to Respondent's Motion to Dismiss. Accordingly, the UMWA hereby adopts and incorporates the facts and arguments presented by the General Counsel in its Opposition, and urges the NLRB to deny the

Motion in its entirety or, alternatively, not to issue a Notice to Show Cause, so that Respondent's arguments and the General Counsel's and Charging Parties' responses may be presented to the Administrative Law Judge for factual development and adjudication.

The UMWA submits that the charges it originally filed in Case 06-CA-202855 on July 21, 2017 raised factual and legal allegations that were carried forward in each of amended charges the UMWA filed thereafter, culminating in the issuance of the Consolidated Complaint. The UMWA's original, second and third amended charges all assert Respondent's violation of Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the Act. All three charges assert Respondent's discriminatory refusal and failure to employ bargaining unit employees based on their UMWA related union activity, and all three charges assert Respondent's unlawful effort to avoid any consequent unionization. Notably, the progression of the amended charges did not expand the factual or legal allegations, but rather refined and contracted their scope. Indeed, the allegations set forth in the Third Amended Complaint which preceded the issuance of the Complaint were carried over from the charges originally filed on July 21, 2017 and presented Respondent with no new claims to contend with. The Union asserts that Respondent can hardly argue that this diminution of the case has prejudiced its ability to defend itself.

The General Counsel's careful and thorough investigation of the charges and the resulting amendment of those charges is a process anticipated by the Act and supported by NLRB practice and policy. The first set of charges filed with the Regional Director serve to activate the General Counsel's function of gathering and examining evidence, thereby putting into motion the development of the case with the goal of reaching a coherent and sustainable outcome in the public interest. The amendment of charges serves to further that process, and it has been long recognized that amended charges and the resulting Complaint will be regarded as timely under Section 10(b) so long as they relate both factually and legally to the first set of charges timely filed, and the

Respondent might raise the same or similar defenses to the amended charges as it would to those originally filed. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307-308 (1959). And see, e.g., *Carey Salt Co.*, 360 NLRB 201, 206 (2014); *Alternative Energy Applications, Inc.*, 361 NLRB 1203, 1203 (2014), citing *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988).

For reasons set forth above, and as set forth in the General Counsel's Opposition to the Motion to Dismiss, the UMWA asserts that the amended charges and the Consolidated Complaint amply meet these *Fant Milling* and *Redd-I* standards under Section 10(b). Accordingly, the UMWA submits this Opposition to Respondent's Motion, expresses its concurrence and support for the General Counsel's request that Respondent's Motion to Dismiss be denied in its entirety, or, in the alternative, that the Board not issue a Notice to Show Cause, and requests that the Board permit the Complaint to proceed before the Administrative Law Judge where the factual and legal presentation of the case may be appropriately developed.

Respectfully submitted,

February 3, 2020

\_\_\_\_\_/s/Deborah Stern\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I, Deborah Stern, hereby certify that on February 3, 2020, I electronically filed the International Union, United Mine Workers of America, District 17, AFL-CIO CLC Opposition to the Motion to Dismiss the Consolidated Complaint with the National Labor Relations Board's Office of the Executive Secretary, and served a copy of such by electronic mail to the parties listed below:

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