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May 31, 2018

VIA ELECTRONIC FILING

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

Re: In re: Amended Formal Complaint and Amended Petition for Interim Emergency Relief of Pennsylvania State Senator Andrew Dinniman, Docket Nos. C-2018-3001451 and P-2018-3001453; **SUNOCO PIPELINE L.P.'S ANSWER OPPOSING INTERVENTION OF ANDOVER HOMEOWNERS' ASSOCIATION**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of Andover Homeowners' Association in the above-referenced matter. Copies of this document have been served in accordance with the attached Certificate of Service.

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

Very truly yours,

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

TJS/WES/das
Enclosures

cc: Administrative Law Judge Elizabeth Barnes (via e-mail)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Amended Formal Complaint and	:	
Amended Petition for Interim Emergency	:	Docket No. C-2018-3001451 and
Relief of Pennsylvania State Senator	:	Docket No. P-2018-3001453
Andrew Dinniman,	:	
Petitioner,	:	
	:	
v.	:	
	:	
Sunoco Pipeline L.P. a/k/a Energy	:	
Transfer Partners	:	

**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING
INTERVENTION OF ANDOVER HOMEOWNERS' ASSOCIATION**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. ("SPLP"), by and through its attorneys, Hawke McKeon & Sniscak LLP, submits this Answer in Opposition to the Petition to Intervene of Andover Homeowners' Association served via First Class Mail on May 8, 2018 seeking intervention in the above-caption proceeding.

SUMMARY

The Petition should be denied because Andover Homeowners' Association does not have any requisite direct interest sufficient to grant standing, any alleged interest is already adequately represented by Senator Dinniman in this proceeding, and allowing intervention will unnecessarily broaden the narrow issues involved in this proceeding, cause unnecessary time and

¹ SPLP notes that it is not required to specifically answer the allegations within a petition to intervene, and any such allegations are not deemed admitted by SPLP's non-response. *Compare* 52 Pa. Code § 5.66 ("party may file an answer to a petition to intervene within 20 days of service, and in default thereof, may be deemed to have waived objection to the granting of the petition. Answers shall be served upon all other parties.") *with* § 5.61(b)(3) (as to form of answers to complaints, answers must "Admit or deny specifically all material allegations of the complaint"). Given the lack of standing of the party discussed herein and the lack of technical basis or explanation or verifiable expert support for the allegations contained in the Petition, SPLP will not respond to unsupported and incorrect assertions and allegations of the Petition.

expense, invite delay, is contrary to the interest of SPLP' shipper customers whose service has been interrupted, and will prolong an injunction that is necessarily limited to the circumstances of the allegations presented in the Amended Complaint and Amended Petition for Emergency Relief, which are in West Whiteland Township, Chester County, not Thornbury Township, Delaware County, where the Andover Homeowners' Association is located. *See* Petition at P 3.

This proceeding is limited by the scope of the Amended Complaint and Amended Petition to West Whiteland Township, and cannot be extended to other geographical regions, especially where, as here, there are no emergency circumstances beyond the West Whiteland Township Area. This proceeding is not and procedurally cannot be transformed by a petition to intervene into a general safety investigation of the entire ME1, ME2, and ME2X pipelines because there is no allegation, indication, or evidence of any conditions that could satisfy the "emergency" standard. *See* 52 Pa. Code § 3.2 (requiring, inter alia clear right to relief and immediate need for relief). A party seeking intervention must take the proceeding as it currently stands and cannot broaden the scope of what is at issue in the proceeding.² This principle is crucial here, in the context of a proceeding involving an injunction, because injunctive relief must be narrowly tailored to the emergency circumstance.³

Petitioner here is Andover Homeowners' Association, which is a non-profit corporation located in Thornbury Township, Delaware County, Petition at P 3, which is outside the area at issue in this proceeding, and thus cannot meet the Commission's intervention standard. In particular, Andover Homeowners' Association does not have a sufficient interest to have

² *See Com., et al. v. Energy Services Providers, Inc. d/b/a PaG&E*, Order Granting Petition to Intervene, Docket No. C-2014-2427656, 2015 WL 1957859 (Order entered Apr. 23, 2015) (Cheskis, J.) ("In granting intervention, however, Mr. Sobiech will be required to take the case as it currently stands. PaG&E is correct that intervenors generally take the record as they find it at the time of intervention.")

³ *See Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) ("Even where the essential prerequisites of an injunction are satisfied, *the court must narrowly tailor its remedy to abate the injury.*") (emphasis added).

standing, any interest it alleges is more than adequately represented by Senator Dinniman, and Andover Homeowners' Association will neither be the subject of nor bound by the Commission's decision in this proceeding.

Moreover, given the lack of interest and that any alleged interests are already sufficiently represented in this proceeding, allowing Andover Homeowners' Association to intervene will unnecessarily prolong the injunction beyond what is required to address circumstances the Amended Complaint and Petition for Interim Emergency Relief raised, thereby harming SPLP's shippers, their customers, and SPLP, which is a public utility providing a service in the public interest. Accordingly, the Petition to Intervene should be denied.

ARGUMENT

A. Legal Standard

Standing to intervene is governed under 52 Pa. Code § 5.72(a) and "pertinent case law discussing the types of interests sufficient for purposes of intervention." *Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc.*, Docket No. A-310800F0010, Order Granting Exceptions (entered Feb. 8, 2007) ("*Commonwealth Telephone*").

52 Pa. Code § 5.72 states:

§ 5.72. Eligibility to intervene.

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

...

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

Pertinent case law provides that:

one who seeks to challenge governmental action must show a direct and substantial interest and, in addition, must show a sufficiently close causal connection between the challenged action and the asserted injury to qualify the interest as “immediate” rather than “remote.” Consequently, in order to have standing, a person must be “aggrieved” or adversely affected by the matter he seeks to challenge. [A] party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. To surpass that interest, the interest must be substantial, direct, and immediate.

Commonwealth Telephone (citing and quoting *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 202, 346 A.2d 269, 286 (1975); *Parents United for Better Schools, et al., v. School District of Phila., et al.*, 684 A.2d 689 (Pa. Commw. Ct. 1994); *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992)).

Accordingly, to have standing to intervene, petitioner must show (1) a direct, substantial, and immediate interest meeting the legal standards discussed above, (2) that is not adequately represented by existing participants, and (3) that the petitioner may be bound by the action of the Commission in the proceeding. Petitioner here meets none of those three standards. Likewise, while Petitioner fails to assert that its intervention would be in the public interest, in fact such intervention is not in the public interest.

B. Petitioner’s interest is not direct, immediate, or substantial

Petitioner cannot show, as it is required to, a direct, immediate and substantial interest because Petitioner is not within the geographic region to which this limited proceeding pertains.

and thus cannot show any aggrievement to Petitioner that bears a close causal connection to this proceeding and is distinguishable from the interest of the general public in compliance with the law. “[T]he requirement that an interest be ‘direct’ means that a person claiming to be aggrieved must show causation of the harm by the matter of which he or she complains.” *In Re Peco Energy Co.*, A-110550F0160, 2005 WL 1959191, at *2–6 (July 18, 2005). “An ‘immediate’ interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question. Both the immediacy and directness requirements primarily depend upon the causal relationship between the claimed injury and the action in question.” *George v. Pennsylvania Pub. Util. Comm'n*, 735 A.2d 1282, 1286–87 (Pa. Commw. Ct. 1999) (citing *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)). “The requirement of a ‘substantial’ interest means there must be some discernible adverse effect to some interest other than the general interest in having others comply with the law.” *See William Penn Parking Garage*, 464 Pa. at 195, 346 A.2d at 282; *see also Friends of the At Glen-Susquehanna Trail, Inc. v. PA. PUC*, 717 A. 2d 581 (Pa. Commw. Ct. 1998), *appeal denied* 559 Pa. 695 (1999).

First, Petitioner essentially admits that its interests are neither direct or immediate because the Amended Complaint and the Petition for Interim Emergency Order do not pertain to Andover Homeowners’ Association, which is located in Thornbury Township, Delaware County, not West Whiteland Township, Chester County, the sole geographic location involved in the above-captioned proceedings. There is no causal connection between what is complained of in this proceeding, solely in West Whiteland Township, and any alleged harm to Andover Homeowners’ Association. Instead, the Petition attempts to improperly expand the proceeding to include

Andover Homeowners' Association (Thornbury Township) to create an interest. This it cannot do.

This proceeding is limited by the geography of the alleged emergency conditions complained of, and cannot be extended to other geographical regions, especially where, as here, there are no emergency circumstances. This proceeding is limited to addressing allegations of geological and pipeline conditions in West Whiteland Township, Pennsylvania. This proceeding is not and procedurally cannot be transformed by a petition to intervene into a general safety investigation of the entire ME1, ME2, or ME2X pipelines because there is no allegation, indication, or evidence of any conditions that could satisfy the "emergency" standard outside of West Whiteland Township. *See* 52 Pa. Code § 3.2 (requiring, *inter alia* clear right to relief and immediate need for relief).

A party seeking intervention must take the proceeding as it currently stands and cannot broaden the scope of what is at issue in the proceeding, especially here, where in the Amended Complaint and Petition for Interim Emergency Relief, there is no indication of emergency circumstances at issue outside of West Whiteland Township. *See Com., et al. v. Energy Services Providers, Inc. d/b/a PaG&E*, Order Granting Petition to Intervene, Docket No. C-2014-2427656, 2015 WL 1957859 (Order entered Apr. 23, 2015) (Cheskis, J.) ("In granting intervention, however, Mr. Sobiech will be required to take the case as it currently stands. PaG&E is correct that intervenors generally take the record as they find it at the time of intervention.").

This principle is especially important in the context of a Complaint and Petition for Emergency Relief seeking an injunction because injunctive relief must be narrowly tailored to the emergency circumstance because such relief is ordered without hearing. *Pye v. Com., Ins. Dep't*, 372 A.2d 33,35 (Pa. Cmwlth. 1977) ("An injunction is an extraordinary remedy to be granted only

with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, *the court must narrowly tailor its remedy* to abate the injury.”) (emphasis added).

Since Andover Homeowners’ Association cannot show a direct or immediate interest, its interest is necessarily not substantial. A substantial interest means an interest greater than that of all citizens in compliance with the law. *See William Penn Parking Garage*, 464 Pa. at 195, 346 A.2d at 282 (“Thus, the requirement of a ‘substantial’ interest simply means that the individual’s interest must have substance—there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.”) Since there is no causal connection between Petitioner and the allegations in the Amendment Complaint or the alleged harm to Petitioner and right to relief, Petitioner is left with solely a general interest in compliance with gas safety regulations, an interest that all citizens share. Accordingly, Petitioner has not shown an interest adequate to fulfill standing requirements to intervene.

C. Senator Dinniman Adequately Represents Petitioner’s Alleged Interest

Assuming arguendo Petitioner could show an interest, that interest is more than adequately represented by Senator Dinniman. Senator Dinniman initiated this proceeding by Complaint, including public safety claims. Senator Dinniman’s Complaint and Petition for Interim Emergency Relief take into account the broad public interest in providing safe pipeline transportation service and adequately represents any alleged interest Petitioner may have. *See In Re Peco Energy Co.*, A-110550F0160, 2005 WL 1959191, at *2–6 (July 18, 2005) (finding individual’s interest adequately represented by public advocates advocating for the public interest).

Petitioner fails to assert its interest is not adequately represented. Since Andover Homeowners’ Association has no interest greater than that of the public, and Senator Dinniman

adequately represents the public interest in enforcing safety laws and regulations, Senator Dinniman adequately represents Andover Homeowners' Association's interests.

D. Petitioner Will Not Be Bound by This Proceeding

Again, since this proceeding is necessarily limited in scope to emergency conditions alleged in West Whiteland Township, there is no binding effect on Andover Homeowners' Association. Petitioner fails to even assert it could be bound by the Commission's actions in this proceeding. As such, Petitioner likewise fails to meet this prong of the intervention standard.

E. Granting Intervention is Not in the Public Interest

Allowing intervention of entities outside the geographic region of the Amended Complaint and Petition for Emergency Relief is not in the public interest because Andover Homeowners' Association has no direct interest and thus their intervention and the time needed for their participation will unnecessarily extend the time of the injunction beyond what is necessary to ensure the safety of the ME1, ME2, and ME2X pipelines, harming SPLP's shippers, the shippers' customers, and SPLP, which is a public utility. Entities outside the geographic region at issue in regions where there is no emergency attempting to intervene and unnecessarily prolong the proceeding causes harms that clearly outweigh any public interest in participation of such entities, especially where, as here, Senator Dinniman adequately represent the public interest.

CONCLUSION

WHEREFORE Sunoco Pipeline L.P. respectfully requests the Commission deny the Petition to Intervene.

Respectfully submitted,

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Attorneys for Sunoco Pipeline L.P.

DATED: May 31, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the the entities, 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.

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DATED: May 31, 2018