**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania State Senator Andrew E. Dinniman :

: P-2018-3001453

v. :  C-2018-3001451

:

Sunoco Pipeline, L.P. :

**PREHEARING ORDER**

**Granting Intervenor Status**

On April 26, 2018, Pennsylvania State Senator Andrew E. Dinniman (Senator Dinniman or Complainant) filed a complaint and a petition for interim emergency relief with the Commission against Sunoco Pipeline, L.P. (Sunoco or Respondent). The Complaint was served upon Sunoco on April 26, 2018. On May 1, 2018, Complainant filed an Amended Complaint. The Amended Complaint alleges that Sunoco’s construction and operation of ME 1, ME 2 and ME 2X in West Whiteland Township, Chester County, Pennsylvania are unsafe, unreasonable, and in violation of 66 Pa. C.S. §1501. Senator Dinniman alleges Sunoco violated Section 59.33 of the Commission’s regulations, 52 Pa. Code § 59.33(a) because it has not used reasonable efforts to warn and protect the public from danger and has not exercised reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.

Senator Dinniman requests a public risk analysis pursuant to 49 CFR 195.452(i) and (j). He requests the Commission issue an Order prohibiting the construction of ME 2 and ME 2X in areas of West Whiteland Township and prohibiting the operation of ME 1 in West Whiteland Township until Sunoco fully assesses and the Commission approves the adequacy, condition, efficiency, safety and reasonableness of ME 1 and the geology in which it sits. Alternatively, Senator Dinniman contends Sunoco is not a public utility. Therefore, the Commission should issue an order finding Sunoco is not a Commission public utility, that ME 1, ME 2 and ME 2X are not Commission public utility equipment or facilities. If Sunoco is not a public utility, this matter should be transferred to the appropriate court of competent jurisdiction. Amended Complaint at 1-19.

On May 4, 2018, petitions to intervene were filed by the Clean Air Council and Virginia Marcille Kerslake, respectively. On May 7 and 10, 2018, hearings were held on the Petition for Emergency Interim Relief. At the hearing, Clean Air Council and Ms. Kerslake were granted Intervenor status.

There have been over 50 letters and comments filed by numerous legislators, individuals, government and business entities to these consolidated Docket Nos. C-2018-3001451 and P-2018-3001453. I have reviewed the letters and comments attached to the consolidated cases and have determined they are not petitions to intervene, but rather public comments to Senator Dinniman’s petition for interim emergency relief and complaint. These letter comments do not comply with 52 Pa.Code § 5.73, in that it they do not fulfill the general requirements of a petition set forth in 52 Pa.Code § 5.41.

In addition to the numerous letters and comments filed, a few entities filed petitions to intervene that comply with the form and content requirements for petitions to intervene set forth in 52 Pa.Code § 5.73 and were served on Sunoco, pursuant to 52 Pa.Code §5.75. On May 23, 2018, Andover Homeowners’ Association, Inc. filed a Petition to Intervene. On May 30, 2018, Range Resources – Appalachia, LLC filed a Petition to Intervene. On May 31, 2018, Sunoco filed an Answer Opposing the Intervention of Andover Homeowners’ Association. On June 20, 2018, Senator Dinniman filed an Answer in Opposition to Petition to Intervene and Request for Expedited Review of Range Resources-Appalachia, LLC. On June 28, 2018, West Whiteland Township, Chester County filed a Petition to Intervene. On July 18, 2018, Sunoco filed an Answer Opposing Petition to Intervene of West Whiteland Township. These three petitions to intervene are ripe for a decision.

Petitions to intervene may be filed following the filing of a complaint seeking Commission action. 52 Pa.Code § 5.74(a). With regard to the petitions to intervene, the Commission’s Rules of Practice and Procedure govern this procedure. 52 Pa.Code §§ 5.71-5.76. The provision at 52 Pa.Code § 5.72 governs what entities are eligible to intervene in a proceeding and states as follows:

#### § 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:

    (1)  A right conferred by statute of the United States or of the Commonwealth.

(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.

  (b)  *Commonwealth.* The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)—(3).

  (c)  *Supersession.* Subsections (a) and (b) are identical to 1 Pa. Code §  35.28 (relating to eligibility to intervene).

Allowance of intervention is a matter within the discretion of the Commission. City of Pittsburgh v. Pa. Util. Comm’n, 33 A.2d 641(Pa. Super. 1943); N.A.A.C.P., Inc. v. Pa. Pub. Util. Comm’n., 290 A.2d 704(Pa. Cmwlth. 1972)

None of the entities that have filed petitions to intervene are Commonwealth agencies, pursuant to 52 Pa. Code §5.72(b). In addition, a statute of either the United States or the Commonwealth does not confer on any of the entities that have filed petitions to intervene a right to intervene, pursuant to 52 Pa. Code §5.72(a)(1). Therefore, the petitions to intervene of Andover Homeowners’ Association, Inc., Range Resources – Appalachia, LLC and West Whiteland Township are governed by 52 Pa. Code §5.72(a)(2). Their interests in this proceeding must be of such a nature that they are directly affected and for which there is no adequate representation by existing participants. Additionally, petitioners must show they may be bound by the action of the Commission in this proceeding.

Having set forth the legal standards for granting intervention, the issue is whether the petitions to intervene meet the standards set forth in 52 Pa.Code § 5.72(a). The Commission has defined the language in 52 Pa. Code §§5.72(a)(2), requiring that a person filing a petition to intervene have an interest which may be directly affected, as equivalent to an interest that is substantial, immediate and direct. Re Equitable Gas Co., 76 Pa. PUC 23 (1992). This is the same requirement that an entity must meet in order to have standing to initiate a proceeding.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. PUC 598, 603 (1991). As stated above, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. Joint Application of Pennsylvania‑American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co., A‑212285F0046/47 and A‑210870F01 (July 9, 1998); William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975); Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. P.U.C. 342 (1993); Manufacturers’ Association of Erie v. City of Erie - Bureau of Water, 50 Pa. P.U.C. 43 (1976); Waddington v. Pennsylvania Public Utility Commission, 670 A.2d 199 (Pa. Cmwlth. 1995), alloc. denied, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corp., 73 Pa. PUC 552 (1990).

Here, Andover Homeowners’ Association (Association), Range Resources – Appalachia (Range), and West Whiteland Township’s (WWT) interests in the subject matter of the proceeding are direct if their interests are affected by the outcome in the instant proceeding.

The Petitions are immediate if there is a close causal nexus between their asserted injury and the outcome. They are substantial if they have discernible interests other than the general interest of all citizens in seeking compliance with the law. Ken R. ex rel. C.R. v. Arthur Z., 682 A.2d 1267 (Pa. 1996); In re El Rancho Grande, Inc., 437 A.2d 1150 (Pa. 1981); William Penn Parking Garage, Inc.; Empire Coal Mining & Development, Inc. v. Department of Environmental Resources, 623 A.2d 897 (Pa. Cmwlth. 1993); Landlord Service Bureau, Inc. Mere conjecture about possible future harm does not confer a direct interest in the subject matter of a proceeding. Official Court Reporters of the Court of Common Pleas of Philadelphia County v. Pennsylvania Labor Relations Board, 467 A.2d 311 (Pa. 1983).

Range Resources – Appalachia, LLC, Andover Homeowners’ Association, and West Whiteland Township’s interests are immediate because they may suffer injury as a result of the Commission’s decision in this matter. Their interests are substantial because they have discernible interests other than the general interest of all citizens in seeking compliance with the law. Petitioners have standing to intervene in this proceeding. Their interests in this proceeding are direct. An entity’s interest in the subject matter of a proceeding is direct if its interest is adversely affected by the actions challenged in petitions to intervene.

Range avers it is a Delaware Limited Liability Company registered to do business in Pennsylvania, where it focuses on exploration and production of natural gas and natural gas liquids. Range avers that it holds more than 50% of the firm capacity on the ME 1 pipeline for the transportation of natural gas liquids produced from Range’s operations. Range has committed to transport 40,000 barrels per day of natural gas liquids on ME1. Range’s interests are not being adequately represented by existing participants and Range may be bound by the actions of the Commission in this proceeding. Although Sunoco did present testimony of a Range witness and alleged Range would be harmed if the ME1 pipeline is enjoined from operation, I do not agree with Senator Dinniman that granting Intervenor status would cause unnecessary time, expense or delay to the proceeding. I find that the Commission’s determinations in this proceeding will significantly impact Range’s operations in Pennsylvania.

West Whiteland Township avers it is a Township of the Second Class with an address of 101 Commerce Drive, Exton PA 19341. WWT avers three sinkholes have opened along Sunoco’s pipeline in West Whiteland Township within 550 feet of ME1. The sinkholes appeared in November 2017, March 2 and March 3, 2018, respectively during Sunoco’s installation of two new ME2 pipelines located in the ME1 right-of-way. These sinkholes have been filled with a specialty concrete; however, WWT has a direct, substantial and immediate interest related to consistency with its local land use plans, zoning and zoning approvals, other ordinances, use of its roads, including Lisa Drive and its obligation to protect the health, safety and welfare of its citizens that is unique and not represented by any other party in the proceeding. WWT is also a trustee of the natural resources contained within the Township pursuant to PA. CONST. art. I §27 in protecting natural resources, environment in its jurisdiction.

Sunoco’s contention that WWT’s filing is untimely in violation of 52 Pa. Code § 5.74 and 5.53 is without merit. WWT’s petition to intervene follows the filing of an Amended Complaint, not an application or petition that has a published deadline in the Pennsylvania Bulletin. Thus, the 60-days of publication of notice deadline in Section 5.53 does not apply. 52 Pa. Code § 5.53. I am not persuaded to find Section 5.65(a) applies to bar WWT’s petition to intervene either, as that provision pertains to Answers to Amended Complaints, not petitions to intervene. Section 5.75(d) even provides for petitions filed after a hearing has commenced. Additionally, the Commission has not fixed a deadline for interventions in this matter. Although intervenors must take the case as they find it, a prehearing conference has been scheduled for August 28, 2018 in this matter. Thus, we are in the preliminary phase of litigation. The issues in the case will be discussed at the prehearing conference. I do not find WWT’s petition to be untimely.

Association is a non-profit corporation with a primary business address in Thornbury Township, Delaware County. The Association supports Senator Dinniman’s position and also seeks a public risk assessment and emergency evacuation plan. Association avers the ME1 has leaked at least four times since 1987, including three times in Delaware County. Three recent leaks on the pipeline were not discovered by Sunoco but were reported by landowners in Edgmont Township, Delaware County, approximately one mile from Association property. Sunoco proposed to construct on Association property two additional hazardous, highly volatile liquids pipelines, ME 2 and ME 2X. Association contends its residents frequent shopping malls, restaurants, travel corridors, recreational facilities in WWT within a potential impact radius of an accident involving any ME pipeline. The Association will be bound and affected by Commission action in this matter and its interests are not adequately represented by Senator Dinniman or WWT because Association members reside outside the legal boundaries of WWT. Thus, the Association is not assured its interests are represented without intervention.

Association raises additions concerns beyond those of Senator Dinniman including: above-ground facilities including a valve site for ME1 located on Association property and the ME2 valve site proposed for Association property. The ME1 and ME2 pipelines travers both WWT and Thornbury Twp. in close proximity and it is averred any incident in West Whiteland would directly impact Thornbury Township, the Association and Sunoco’s pipeline and valve site operations on the Association’s open space. The Association hosts a ME1 downstream valve site and is scheduled to host a ME2 downstream valve site. Association avers there is at most one ME1 valve site between WWT and the ME1 valve site on Association property. Additionally, if Sunoco eliminated the West Goshen Township valve site on Boot Road, then the Andover valve site would be the first valve site closed in the event of any ME2 incident in West Whiteland Township.

In conclusion, I find Range Resources – Appalachia, LLC, Andover Homeowners’ Association, and West Whiteland Township have timely filed petitions to intervene, which should be granted. Their interests are immediate because they may suffer injury as a result of the Commission’s decision in this matter. Their interests are substantial because they have discernible interests from the parties and the general interest of all citizens in seeking compliance with the law. They have standing to intervene in this proceeding. Their interests in this proceeding are direct. For these above reasons, the petitions to intervene will be granted subject to the limitations set forth in 52 Pa.Code § 5.75.

THEREFORE,

IT IS ORDERED:

1. That the petitions to intervene of Range Resources – Appalachia, LLC, Andover Homeowners’ Association, and West Whiteland Township are granted.

2. That Range Resources – Appalachia, LLC, Andover Homeowners’ Association, and West Whiteland Township are granted Intervenor status in the consolidated cases at Docket Nos. C-2018-3001451 and P-2018-3001453, pursuant to 52 Pa. Code §5.75.

3. That admission of Range Resources – Appalachia, LLC, Andover Homeowners’ Association, and West Whiteland Township as intervenors will not be construed as recognition by the Pennsylvania Public Utility Commission that they have a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding, pursuant to 52 Pa. Code §5.75(c).

4. That Range Resources – Appalachia, LLC, Andover Homeowners’ Association, and West Whiteland Township be added as intervenors to the service list in the above-captioned proceeding.

Dated: July 20, 2018 /s/

Elizabeth H. Barnes

Administrative Law Judge

**P-2018-3001453 – Pennsylvania State Senator Andrew E. Dinniman v Sunoco Pipeline, L.P. C-2018-3001451 – Pennsylvania State Senator Andrew E. Dinniman v Sunoco Pipeline, L.P. Revised 7/17/2018**

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