

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG PENNSYLVANIA 17120**

**Amended Petition of State Senator
Andrew E. Dinniman for Interim
Emergency Relief
Pennsylvania State Senator Andrew E.
Dinniman**

**Notational Vote held July 20, 2018
3001453-OSA
P-2018-3001453, C-2018-3001451**

**v.
Sunoco Pipeline, L.P.**

STATEMENT OF COMMISSIONER DAVID W. SWEET

In general, the Opinion and Order in this matter speaks for itself. However, having read the statements of my colleagues, I respectfully disagree with the dissenters. First, what is before this Commission is not a reconsideration of our June 15, 2018 Order in this case, which found that Senator Dinniman has personal standing to pursue his Complaint, and the standards for reconsideration do not apply here. Obviously, as I voted in favor of the Commission's Order which made that finding, I believe that the Senator has personal standing. Second, the issue is not whether that finding is reasonable. Again, as I voted for it, I believe it to be reasonable.

Rather, what is before us it is simply a Motion for Certification for Interlocutory Review of some aspects of the Commission's June 15, 2018 Order. The test for determining whether such a motion should be granted is whether certain determinations in the Order involve questions of law as to which there is a substantial ground for difference of opinion and whether an immediate appeal to Commonwealth Court may materially advance the ultimate termination of the matter.¹

There is nothing more basic to litigation than the jurisdiction of the forum to hear the case, and in order to exercise jurisdiction, the parties to the case must have standing to participate.² Accordingly, there is nothing more likely to result in the ultimate termination of the matter than an appellate decision that the Complainant in the litigation does not have standing to bring the case. While I believe that Senator Dinniman has personal standing, it would not be unreasonable for the Commonwealth Court to conclude otherwise.

The presence of no fewer than four statements on the issue proves that reasonable lawyers can differ on both personal and legislative standing. In our own agency, there is disagreement between the Commission and an ALJ who has twice ruled that Senator Dinniman qualifies with both personal and legislative standing.

¹ 52 Pa. Code §5.633; RAP 1113.

²I note that we made a decision that Senator Dinniman has personal standing and did not reach the equally contentious issue of whether he has standing as a sitting state senator, which is also a question that raises substantial grounds for difference of opinion and that an immediate appeal to Commonwealth Court may materially advance the ultimate termination of the matter.

My own review of case law leads me to believe that both personal and legislative standing are debatable questions. This issue has ramifications that have applicability far beyond PUC proceedings to other administrative law cases and as such, is well suited to a decision by the Commonwealth Court.


Denying this Motion would not promote judicial efficiency. Isn't it better to know now what the Commonwealth Court thinks of Senator Dinniman's standing instead of continuing to spend significant taxpayer and ratepayer money only to find out on appeal that the Senator did not have standing and the litigation was in vain? I respectfully disagree with the argument that it is somehow more efficient to wait until the end of the litigation to find out what the Commonwealth Court thinks about Senator Dinniman's standing rather than allowing the Court to address the issue now.

Importantly, granting this motion does not stay the proceeding nor does it stymie or delay any remedial activities by any agency or by Sunoco.

Moreover, Senator Dinniman's major argument against granting this motion is that it was premature, because the question was pending before the ALJ in Sunoco's Preliminary Objections. ALJ Barnes has eliminated this argument with her Order Denying Preliminary Objections, and the issue is no longer premature.

Therefore, because the petition raises an important legal issue about which reasonable legal minds can differ, and because if Senator Dinniman is found by the Commonwealth Court to not have requisite standing in either his individual or legislative capacities, then this case will end,³ it seems clear to me that the law requires that we grant Sunoco's motion. This is particularly compelling since Senator Dinniman's major argument urging denial is no longer applicable.

July 25, 2018
DATE



DAVID W. SWEET
COMMISSIONER

³ Should the present litigation end due to a finding that Senator Dinniman lacks requisite standing to bring it, the Commission's ability to address safety concerns does not end, as any person with standing, including the Commission's own Bureau of Investigation & Safety, can bring a complaint.