**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Commissioners Present:

Gladys M. Brown, Chairman, Statement, Dissenting

Andrew G. Place, Vice Chairman, Statement, Dissenting

Norman J. Kennard, Joint Statement

David W. Sweet, Statement

John F. Coleman, Jr., Joint Statement

Amended Petition of State Senator P-2018-3001453

Andrew E. Dinniman for Interim

Emergency Relief

Pennsylvania State Senator Andrew E. Dinniman C-2018-3001451

v.

Sunoco Pipeline, L.P.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Motion for Certification of the Commission’s June 15, 2018 Order for Interlocutory Appeal (*Motion*) filed by Sunoco Pipeline, L.P. (Sunoco) on June 25, 2018, pursuant to Section 5.633 of the Commission’s Regulations, 52 Pa. Code § 5.633. The *Motion* requests certification and amendment of our Opinion and Order entered at the above-referenced consolidated docket on June 15, 2018 (*June 15 Order*). On July 6, 2018. Senator Dinniman filed an Answer in Opposition to the *Motion* (*Answer in Opposition*) denying all material allegations in the *Motion*.

As a procedural matter, Sunoco requests certification of the *June 15 Order* to allow for interlocutory appeal under Section 5.633 of the Commission’s Regulations, 52 Pa. Code § 5.633, as a prerequisite to seeking permission from Commonwealth Court for immediate appellate review pursuant to Rule 1311 of the Pennsylvania Rules of Appellate Practice, Pa. R.A.P. 1311.

Specifically, Sunoco moves for certification of the *June 15 Order* to allow immediate appellate review on the basis of three findings underlying our grant of Interim Emergency Relief requested by Senator Andrew E. Dinniman (Complainant/Senator Dinniman) regarding serious questions of public safety raised by the Sunoco pipeline projects known as Mariner East 1, Mariner East 2 and Mariner East 2x (hereinafter, ME1, ME2 and ME2X, respectively). The basis for Sunoco’s request for certification include our findings: (1) that Senator Dinniman established standing to bring the Complaint; (2) that there was sufficient evidence to find a clear and present danger warranting emergency relief; and, (3) that imposition of a bond requirement was not warranted to grant injunctive relief.

For the reasons detailed herein, we shall grant, in part, and deny, in part, Sunoco’s *Motion*.

**I. History of the Proceeding**

On April 25, 2018, Senator Dinniman filed a Formal Complaint (Complaint), at Docket No. C‑2018-300145, and a Petition for Interim Emergency Relief, at Docket t No. P-2018-3001453, alleging serious public safety concerns regarding the operation of Sunoco’s ME1 pipeline and the construction of the ME2 and ME2X pipeline. Amendments to the Complaint (Amended Complaint) and Petition for Interim Emergency Relief (Amended Petition) were filed with the Commission on April 30, 2018. The Amended Complaint and Amended Petition for Interim Emergency Relief are incorporated herein by reference thereto. *See* 52 Pa. Code § 1.33 (pertaining to incorporation by reference).

On May 21, 2018, Sunoco filed Preliminary Objections to the Amended Complaint, challenging, among other things, Senator Dinniman’s standing to pursue the Amended Complaint. Also, on May 21, 2018 Sunoco’s Answer and New Matter to the Amended Complaint was filed.[[1]](#footnote-2)

On May 24, 2018, following two days of hearings, Administrative Law Judge (ALJ) Elizabeth Barnes issued an *Interim Emergency Order and Certification of Material Question* (*Interim Emergency Order*), finding that, “Senator Dinniman has demonstrated by a preponderance of the evidence, and meeting all four requirements, that he is entitled to emergency interim relief pursuant to 52 Pa. Code § 3.6.” *Interim Emergency Order* at 22. The *Interim Emergency Order* of ALJ Barnes entered on May 24, 2018 at this consolidated docket is incorporated herein by reference thereto. 52 Pa. Code § 1.33 (pertaining to incorporation by reference).

The *Interim Emergency Order* of presiding ALJ Barnes was certified to the Commission for immediate review as a material question in accordance with the procedures set forth at 52 Pa. Code § 5.305. Upon review, by Opinion and Order entered June 15, 2018, at this consolidated docket, we reversed, in part, and affirmed, in part, the *Interim Emergency Order*. The Commission found that ALJ Barnes “correctly determined that Senator Dinniman met the requirements set forth in 52 Pa. Code § 3.6(b) and carried his burden of demonstrating his right to interim emergency relief with respect to ME2 and ME2X.” *June 15 Order* at 50.

As noted, on June 25, 2018, Sunoco filed its *Motion* seeking the Commission’s permission for interlocutory appeal*.* On July 6, 2018, Senator Dinniman filed his *Answer in Opposition* to the *Motion* denying all material allegations contained in the *Motion*. This matter is now ripe for disposition.

**II. Discussion**

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC*,* 625 A.2d 741 (Pa. Cmwlth. 1993)*;*](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink) *also* see, generally, [University of Pennsylvania v. Pa. PUC*,* 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:\Documents%20and%20Settings\tfarrar\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\Temporary%20Internet%20Files\Content.Outlook\Local%20Settings\research\buttonTFLink)

**A. Sunoco’s Motion for Certification of Interlocutory Order**

Sunoco’s *Motion* requests certification of the *June 15 Order* pursuant to Section 5.633 of our Regulations, 52 Pa. Code § 5.633, as a prerequisite to seeking permission for immediate appeal from an interlocutory order to Commonwealth Court, pursuant to Pa. R.A.P. 1311 (pertaining to appeal by permission).

Specifically, Sunoco requests certification based on three dispositions in the order, including findings that: (1) Senator Dinniman established standing as Complainant; (2) the record supported a finding of “clear and present danger” for purposes of granting emergency relief; and (3) the record did not support imposing a bond requirement related to grant of the injunction.

In furtherance of its request for certification, Sunoco requests that the Commission find and amend the *June 15 Order* to reflect each of our dispositions set forth above, respectively:

. . . involve a controlling question of law as to which there is a substantial ground for difference of opinion ***and*** an immed-iate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter . . . .

52 Pa. Code § 5.633(a) (emphasis added).

**B. Legal Standards**

Pennsylvania’s intermediate appellate courts are granted discretion to permit interlocutory appeals from agency orders pursuant to Section 702 of the Judicial Code, 42 Pa. C.S. § 702. Section 702(b) provides as follows:

**(b) *Interlocutory appeals by permission.* —** When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order *involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter,* it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.

*Id.* (emphasis added).

Our Regulationgoverning certification of interlocutory orders mirrors the language of Section 703 and, similarly, provides that a request for certification is by motion seeking amendment of the interlocutory order to include the necessary findings for certification. Commission certification of interlocutory orders is governed by Section 5.633 of our Regulations, which provides:

1. When the Commission has made an order which is not a final order, a party may *by motion request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter.* The motion shall be filed within 10 days after service of the order, and is procedurally governed by § 5.103(a)-(c)[[2]](#footnote-3),[[3]](#footnote-4)

(relating to hearing motions). Unless the Commission acts within 30 days after the filing of the motion, the motion will be deemed denied.

52 Pa. Code § 5.633(a); (emphasis ours). [[4]](#footnote-5)

As a procedural matter, after filing a motion for certification with the Commission pursuant to Section 5.633, a party must also follow the procedures for appeal by permission set forth in Rule 1311(b) of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. 1311(b). Under Rule 1311(b), permission to appeal may be sought by filing a petition with the prothonotary of the appellate court within thirty days after entry of an agency order granting certification and amending the order to certify the legal questions. *See*, *Commonwealth of Pennsylvania v. McMurren*, 945 A.2d 194 (Pa. Super. Ct. 2008) (discussion of the appellate procedures applicable to appeals from interlocutory orders). Consequently, pursuant to Rule 1311, we are required to rule on Sunoco’s *Motion* within thirty days of filing, or the *Motion* is deemed denied. Pa. R. A. P. 1311(a).

**C. Position of the Parties on the Motion for Certification of Interlocutory**

**Order**

**1. Standing of Senator Dinniman**

**a. Sunoco’s position in support of certification**

In support of the request for certification regarding standing, Sunoco argues that the Commission could not conclude that Senator Dinniman has standing in either his personal or legislative capacity. *Motion* at 5-8. Sunoco avers that the issue of standing involves a controlling question of law as to which there is a substantial ground for difference of opinion on the basis that “there is substantial difference of opinion whether the Commission’s conclusions regarding . . . standing are correct.” *Id*. at ¶ 12.

Sunoco maintains that the Commission was precluded from considering personal standing since the Senator had “disclaimed” any personal standing. *Id*. at ¶ 13. In addition, Sunoco avers that the Commission’s conclusion that the issue of legislative standing was moot, and any finding of legislative standing was “questionable” under applicable authority on standing, including *Markham v. Wolf*, 136 A.3d 134,145 (Pa. 2016). *Id.* at ¶¶ 14-16.

With respect to personal standing, Sunoco avers the Commission’s conclusion was again “questionable” under applicable authority for finding personal standing, including *Municipal Auth. Of Borough of W. View v. Pa. Public Utility Commission*, 41 A.3d 929, 933 (Pa. Cmwlth. 2012). Finally, Sunoco avers that the noted dissents of two Commissioners from our *June 15 Order* is evidence of a substantial difference of opinion on the question of standing. *Motion* at ¶ 18.

Sunoco further avers, in addition to involving a controlling question of law, that an immediate appeal to Commonwealth Court on the issue of standing may materially advance the ultimate termination of the matter. Sunoco argues that if Sunoco prevails on the issue of standing, as a “threshold and dispositive issue,” the decision on standing will terminate the proceeding. *Motion* at 9, citing, *Tishok v. Dep’t of Educ.*, 133A.3d 118, 122-125 (Pa. Cmwlth. 2016).

**b. Senator Dinniman’s position in opposition to certification**

In opposition to the request for certification regarding standing, Senator Dinniman argues that the Commission properly concluded that he has standing for purposes of emergency relief. *Answer in Opposition* at 7. The Senator argues that the issue of standing does not involve a controlling question of law as to which there is a substantial ground for difference of opinion because there can be no difference of opinion on a matter which has yet to be decided. *Answer in Opposition* at 8. Senator Dinniman notes that the issue of standing is still pending before the ALJ on Sunoco’s preliminary objections to the Amended Complaint. Further, the Senator notes that while the Commission found that he has personal standing in this proceeding, the Commission expressly refrained from making a determination regarding legislative standing. *Answer in Opposition* at 8.

Dinniman further argues that immediate appeal to Commonwealth Court on the issue of standing would be premature and will not materially advance the ultimate termination of the matter because the issue of standing is still pending before the ALJ on Sunoco’s preliminary objections. *Answer in Opposition* at 6.

**2. The record supported a finding of “clear and present danger” for**

**purposes of granting emergency relief**

**a. Sunoco’s position in support of certification**

In support of the request for certification regarding the finding of “clear and present danger,” Sunoco argues that the Commission could not conclude that Senator Dinniman had established the necessary elements for the grant of emergency relief. *Motion* at 10. Sunoco avers that either of our findings that Senator Dinniman established sufficient evidence of “clear and present danger,” or that Senator Dinniman satisfied the four factors in 52 Pa. Code § 3.6(b), presents a substantial question for review. *Motion* at 9‑11.

Sunoco further avers, in addition to involving a controlling question of law, that an immediate appeal to Commonwealth Court on the issue of finding of “clear and present danger,” may materially advance the ultimate termination of the matter because a finding that Senator Dinniman fails to make a *prima facia* case for emergency relief would end the proceeding. *Motion* at 11. Sunoco further alleges that it would be “appropriate for Commonwealth Court to clarify what constitutes a ‘clear and present danger’ justifying emergency relief.” *Id*. at ¶ 29.

**b. Senator Dinniman’s position in opposition to**

**certification**

In opposition to the request for certification regarding the finding of “clear and present danger,” Senator Dinniman argues that the Commission properly made a finding of “clear and present danger” for purposes of emergency relief. *Answer in Opposition* at 12-14. Senator Dinniman argues that the issue of establishing “clear and present danger” does not involve a controlling question of law as to which there is a substantial ground for difference of opinion because the necessary elements to petition under 52 Pa. Code § 3.6(b) for interim emergency relief do not require a showing of “clear and present danger.” The Senator avers that the Commission properly held that establishing “clear and present danger” is not essential for emergency relief. *Id*. at 6, 12. In any event, Senator Dinniman argues that the Commission also concluded that to the extent a finding of “clear and present danger” is required, the record is sufficient to support the finding. *Id*. citing *June 15 Order* at n. 11, and 52 Pa. Code § 3.6.

Senator Dinniman further argues that an immediate appeal to Commonwealth Court on the Commission’s finding of “clear and present danger,” will not materially advance the ultimate termination of the underlying matter. He avers that the resolution of the question on “clear and present danger” will have no bearing on resolution of the merits in the underlying complaint proceeding. *Answer in Opposition* at 13. Further, Senator Dinniman refutes Sunoco’s argument that clarification from Commonwealth Court in the issue of “clear and present danger” will advance the ultimate termination of the matter since the meaning and application of the standard of “clear and present danger is already well settled. *Answer in Opposition* at 14.

3. The record did not support imposing a bond requirement related to

grant of injunction

**a. Sunoco’s position in support of certification**

In support of the request for certification regarding the Commission’s denial of a bond requirement, Sunoco argues that the Commission could not deny its requirement of a bond in the circumstances. *Motion* at 11. Sunoco avers that the Commission’s denial of a bond requirement involves a controlling question of law as to which there is a “substantial question whether it was appropriate for the Commission to ignore . . . evidence [of daily damages experienced by Sunoco during a shutdown] in determining that a bond is not required.” *Id*. at 12.

In addition to involving a controlling question of law, Sunoco submits that an immediate appeal to Commonwealth Court on the Commission’s denial of a bond requirement may materially advance the ultimate termination of the matter. Sunoco argues that the appellate court’s ruling that a bond is required will protect Sunoco’s interests and permit Sunoco to develop record evidence of its safe operation, while promoting evaluation of potential damages and thereby promoting settlement. *Motion* at 13.

**b. Senator Dinniman’s position in opposition to**

**certification**

In opposition to the request for certification regarding the Commission’s denial of a bond requirement, Senator Dinniman argues that the Commission properly denied a bond requirement in the circumstances. *Answer in Opposition* at 15. The Senator argues that the Commission’s denial of a bond requirement does not involve a controlling question of law as to which there is a substantial ground for difference of opinion because the language of the Regulation at 52 Pa. Code § 3.8(b), on its face, establishes the Commission’s discretion to require a bond. *Id*. Further, Senator Dinniman notes that existing case law acknowledges the discretionary nature of the Commission’s authority to impose a bond requirement. *Id*. citing *Christo v. Tuscany, Inc*., 533 A. 2d 461, 467(Pa. Super. 1987); and *Green County Citizens united by Cumpson v. Greene County Solid Waste Auth.,* 636 A. 2d 1278 (Pa. Cmwlth. 1994) (the amount of damages to the party whose conduct is sought to be enjoined is not the agency’s primary concern). Finally, Senator Dinniman denies Sunoco’s averment that the Commission ignored evidence of daily damages.

Senator Dinniman further argues that an immediate appeal to Commonwealth Court on the Commission’s denial of a bond requirement will not materially advance the ultimate termination of the matter. *Answer in Opposition* at 16. He avers that Commonwealth Court’s review is not required and will not encourage settlement of the matter. Further, Senator Dinniman denies that the purpose of the bond is to enable Sunoco to develop a record before the ALJ or that such a goal outweighs his right to be heard. *Id*. Senator Dinniman notes that the imposition of a bond requirement will have a negative impact on his right to due process by inhibiting his ability to be heard on the underlying matter. *Id*.

**D. Disposition of Sunoco’s Motion for Certification of Interlocutory Order**

Upon review, for the reasons stated more fully below, we shall grant, in part, and deny, in part, Sunoco’s *Motion* for certification of our *June 15 Order*.

As a general matter, we will exercise our discretion to certify an interlocutory order for immediate appeal only where we find both that “the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and thatan immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter.” 52 Pa. Code § 5.633 (a).

Therefore, Sunoco’s burden is to persuade us that each of our legal conclusions: (1) that Senator Dinniman established standing as Complainant, (2) that the record supports a finding of “clear and present danger” for purposes of granting emergency relief, and, (3) that the record did not support imposition of a bond requirement for purposes of granting injunctive relief, involves a controlling question of law as to which there is a substantial ground for difference of opinion,[[5]](#footnote-6) *and* for which an immediate appeal to Commonwealth Court may materially advance the ultimate termination of the matter.

Like our prior determinations in the *June 15 Order* regarding standing, the finding of “clear and present danger;” and the bond requirement, our present determination whether to certify that order for immediate appeal is also a matter within our discretion. *See, City of Pittsburgh v. Pennsylvania Public Utility Commission*, 33 A.2d 641 (Pa. Super. 1943), (agency has discretion whether to grant request for permission to appeal), and *B.B. v. Department of Public Welfare*, 118 A. 3d 482 (Pa. Cmwlth. 2015)(standard of review for agency determination is “abuse of discretion”).

**1. Standing of Senator Dinniman**

In support of the request for certification, Sunoco argues that Senator Dinniman fails to meet the prerequisites for personal and legislative standing. *Motion* at 5-8. Sunoco essentially argues that the Commission’s application of legal authority in finding standing was erroneous. *Id*. However, our finding on the question of standing in the *June 15 Order* was a matter decided within this Commission’s discretion. *See*, *e.g.*, [*City of Pittsburgh v. Pennsylvania Public Utility Commission*, *supra*.](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1943111318&pubNum=162&originatingDoc=I1257d42233c511d986b0aa9c82c164c0&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)) Sunoco’s request provides no support for the proposition that *June 15 Order* granting Senator Dinniman standing was an abuse of the Commission’s discretion. *See*, *Motion, passim.* Rather, Sunoco alleges that the finding of standing in the *June 15 Order* was “questionable” under applicable precedent. *Motion* at ¶¶ 14, 15 and 17.

In reviewing the agency’s exercise of discretion, the reviewing court does not replace its judgement for that of the agency. Rather, the reviewing court will overturn the ruling only where the agency’s determination was manifestly unreasonable. *B.B. v. Department of Public Welfare*, 118 A.3d 482 (Pa. Cmwlth. 2015).

In exercising our discretion to find Senator Dinniman has personal standing, our analysis considered the facts in the context of an asserted emergency involving allegations of danger to public safety caused by a major infrastructure project conducted by Sunoco within the Commonwealth. *June 15 Order* at 21. Our discretion to grant standing is at its apex where the matter before us concerns an alleged public safety emergency.[[6]](#footnote-7) Under the circumstances, we believe our finding that Senator Dinniman has standing was reasonable.

However, we also acknowledge that the issue of standing has been vigorously contested in this case. We further agree with Sunoco that the issue of Senator Dinniman’s standing is immediately relevant to the jurisdiction of the Commission to hear the case at all.

While the Commission’s *June 15 Order* is well founded, it appears from the record that there is a substantial difference of opinion as to the issue of standing.[[7]](#footnote-8) There is no doubt that the issue of standing is a controlling question of law as to Senator Dinniman’s capacity to bring the present action in the first instance. Therefore, there is no doubt that immediate appeal to the Commonwealth Court may materially advance the ultimate termination of the matter.

Further, we disagree with Senator Dinniman that because our *June 15 Order* specifically refrained from deciding the question of his legislative standing, there can be no “difference of opinion” on an issue which remains to be decided. *Answer in Opposition* at 2. Our *June 15 Order* acknowledged that the substantial question of Senator Dinniman’s standing rests on finding either personal or legislative standing. Our order expressly decided the question of standing altogether in favor of Senator Dinniman’s *personal* standing and found the question of legislative standing to be moot. Further, Senator Dinniman’s argument that the issue of standing is premature because it is pending before the ALJ is no longer true because of the ALJ’s Order Denying Preliminary Objections, as previously noted. Therefore, the question of standing has been decided.

Finally, notwithstanding the apparent and substantial difference of opinion regarding the grant of personal standing versus legislative standing, the fact remains that the Commission has concluded Senator Dinniman has standing to bring the Complaint. Where, as here, an agency has reached a conclusion regarding the grant of standing, an immediate appeal is not premature, and would certainly serve to materially advance the ultimate termination of the matter. *See*, *Cornerstone Family Services, Inc. v. Bureau of Professional and Occupational Affairs*, 802 A. 2d 37, 40 (Pa. Cmwlth. 2002) (citations omitted) (finding that where an agency has not reached a conclusion on an issue, appeal is premature).

Importantly, the grant of Sunoco’s *Motion* as it pertains to standing does not stay the proceeding before the Office of Administrative Law Judge. The current consolidated proceedings can and will proceed during the interlocutory appeal to the Commonwealth Court.[[8]](#footnote-9)

Based on the foregoing, we conclude that Sunoco establishes that our finding that Senator Dinniman has personal standing to bring the Complaint in the *June 15 Order* involves a controlling question of law as to which there is a substantial ground for difference of opinion and thatan immediate appeal to Commonwealth Court from the Order may materially advance the ultimate resolution of Senator Dinniman’s Complaint. Accordingly, we shall grant, in part, Sunoco’s request to certify the order on that basis.

**2. The record supported a finding of “clear and present danger”**

With respect to the request for certification based upon our finding that requisite elements for emergency relief were satisfied, we find Sunoco’s arguments unpersuasive. Sunoco’s assertions amount to alleged legal error in our *June 15 Order*, as opposed to a substantial ground for difference of opinion. We agree with the position of Senator Dinniman that the issue of establishing “clear and present danger” does not involve a controlling question of law as to which there is a substantial ground for difference of opinion because the necessary elements to petition under 52 Pa. Code § 3.6(b) for interim emergency relief do not require a showing of “clear and present danger.” Further, in any event, we also found the record was sufficient to support a finding of “clear and present danger” to the extent such a finding is required. *June 15 Order* at n. 11, and 52 Pa. Code § 3.6.

Additionally, we find that no immediate appeal is warranted regarding our finding of “clear and present danger.” As the finding of “clear and present danger” relies on a finding of factual rather than legal basis, there is no “controlling question of law” to review. On appeal, Commonwealth Court would essentially rely upon the agency’s factual findings in the underlying proceeding. Finally, contrary to Sunoco’s assertions, no clarification of the standard for granting interim emergency is necessary since the meaning and application of the standard of “clear and present danger” is already well settled.

Therefore, we conclude that Sunoco fails to establish that our finding that the record was sufficient to support a “clear and present danger” in our *June 15 Order* involves a controlling question of law as to which there is a substantial ground for difference of opinion, and thatan immediate appeal to Commonwealth Court from the *June 15 Order* may materially advance the ultimate termination of the matter. Accordingly, we shall deny Sunoco’s request to certify the order on that basis.

**3. The record did not support imposing a bond requirement**

With respect to the request for certification based upon our decision not to impose a bond requirement, Sunoco’s arguments are unpersuasive since our decision whether to impose a bond requirement is expressly established as a matter of agency discretion by Commission Regulation. *See*, 52 Pa. Code 3.8(b), which provides:

An order following a hearing on a petition for interim emergency relief *may require a bond to be filed* in a form satisfactory to the Secretary and will *specify the amount* of the bond.

*Id*. (emphasis added).

We must reject Sunoco’s averment that the Commission ignored record evidence of daily damages to Sunoco. To the contrary, in the *June 15 Order*, we specifically acknowledged the detailed record presented by Sunoco of alleged daily damages and negative economic impact due to an unwarranted shut down of pipeline operations. These concerns were specifically addressed in our consideration of the public interest component for interim emergency relief. The public interest in preventing unnecessary economic impact was a consideration expressly weighed together with our finding that Sunoco had complied with all the safety assurances required for ME1 which resulted in our order to reverse, in part, the *Interim Order* with respect to operation of ME1. *June 15 Order* at 49.Further, we agree with the position of Senator Dinniman that immediate appeal of the *June 15 Order* denying a bond requirement will not materially advance ultimate termination of the proceeding, since it would not incentivize settlement of the matter.

Based on the foregoing, we conclude that Sunoco fails to establish that our finding that the record did not support imposing a bond requirement in the *June 15 Order* involves a controlling question of law as to which there is a substantial ground for difference of opinion and thatan immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. Accordingly, we shall deny Sunoco’s request to certify the order on that basis.

**III. Conclusion**

We conclude that Sunoco’s allegations satisfy the requisite elements in support of the *Motion* pertainingto the finding of personal standing of Senator Dinniman, however, fail to satisfy the requisite elements in support of the *Motion* pertaining to the finding of clear and present danger and the finding that no bond is required. We, therefore, conclude that Sunoco demonstrates that the *June 15 Order’s* finding that Senator Dinniman has personal standinginvolves a controlling question of law as to which there is a substantial ground for difference of opinion and that immediate appeal to Commonwealth Court from the *June 15 Order* regarding standingmay materially advance the ultimate termination of the matter. Further, we conclude that the Sunoco’s Motion fails to establish that the findings regarding a clear and present danger, and the bond requirement involve a controlling question of law with substantial ground for difference of opinion and that immediate appeal of those issues may materially advance the ultimate termination of the matter.

Based on our review of the record, the Parties’ positions, and the applicable law, we shall grant, in part, and deny, in part, Sunoco’s *Motion*; **THEREFORE,**

**IT IS ORDERED:**

1. That Sunoco Pipeline, L.P.’s Motion for Certification of the Commission’s Opinion and Order entered June 15, 2018, at the above-captioned dockets, filed on June 25, 2018, is granted in part, and denied in part, consistent with this Opinion and Order.

2. That the Commission’s Opinion and Order entered June 15, 2018, at the above-captioned dockets, as it pertains to the finding of personal standing of Senator Dinniman, involves a controlling question of law as to which there is a substantial ground for difference of opinion and that immediate appeal to Commonwealth Court from the order pertaining to standingmay materially advance the ultimate termination of the matter.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 25, 2018

ORDER ENTERED: July 25, 2018

1. The history of the proceeding includes further procedural matters not directly material to the present disposition of Sunoco’s motion. On May 31, 2018, Senator Dinniman filed Preliminary Objections to Sunoco’s Preliminary Objections, which were treated as Complainant’s Answer to Preliminary Objections. On June 8, 2018 Sunoco filed a Motion to Strike Preliminary Objections and Request for Expedited Treatment. On June 11, 2018, Senator Dinniman filed an Answer to New Matter. On July 16, 2018, ALJ Barnes issue an Order Denying Preliminary Objections, at the above-captioned consolidated dockets. By that order the ALJ denied Sunoco’s preliminary objections, including the objection to Senator Sinniman’s standing, and scheduling a prehearing conference. *Id*. at 8. The ALJ also noted the several additional petitions to intervene filed at these consolidated dockets. Those petitions were granted *via* the ALJ’s Prehearing Order Granting Intervenor Status, entered July 20, 2018 at the above-captioned consolidated dockets. [↑](#footnote-ref-2)
2. Under 52 Pa. Code § 5.103(a)-(c) a party has twenty days to respond to a motion. [↑](#footnote-ref-3)
3. The proponent of the motion has the burden of proof. *See*, 66 Pa. C.S. § 332(a). [↑](#footnote-ref-4)
4. We note that Sunoco’s *Motion* does not operate to stay the proceedings before the ALJ, unless otherwise ordered by this Commission. *See*, 52 Pa. Code § 5.633(b). [↑](#footnote-ref-5)
5. Sunoco argues that a “substantial ground for difference of opinion” is evident because our *June 15 Order* noted two Commissioners joined in dissent. *Motion* at ¶¶ 18 and 26. However, “substantial grounds for difference of opinion” is established by substantial legal authority contradicting the agency’s action, not solely through the existence of a minority dissent to the agency’s order. In fact, our *June 15 Order* articulates the Commission’s majority consensus view of the material issues. The law of finality of agency orders, including those with dissenting opinions, refutes Sunoco’s argument. To conclude otherwise would render every dissent from agency action as “proof of substantial ground for difference of opinion” for purposes of seeking interlocutory review. [↑](#footnote-ref-6)
6. The Commission possesses broad powers to take whatever action deemed necessary to fulfill its duty under the Public Utility Code. 52 Pa. Code Chapter 3 (pertaining to Commission power to grant emergency relief), and 66 Pa. C.S. § 309 (pertaining to Commission power to do all things necessary and proper to implement the Public Utility Code). *See also*, *e.g*., 66 Pa. C.S. § 331 (power of the Commission to investigate and hold hearings if deemed necessary), and 66 Pa. C.S. § 501 (pertaining to general regulatory and enforcement power of the Commission). Such authority encompasses exercising our discretion to grant personal standing in emergency circumstances, if deemed necessary to protect the public safety. *See*, *City of Pittsburgh v. Pennsylvania Public Utility Commission*, (re: agency discretion to grant standing). [↑](#footnote-ref-7)
7. In addition to the parties’ difference of opinion on the issue, there is an apparent and substantial difference of opinion between the presiding ALJ and the Commission’s opinion as to the Commission’s Order granting Senator Dinniman’s personal standing. By her July 19, 2018 Order Denying Preliminary Objections, ALJ Barnes denies Sunoco’s challenge to Senator Dinniman’s standing based on the conclusion that the Commission recognized the Senator’s standing on both his legislative capacity as a member of the General Assembly and his personal capacity as a property owner and resident of West Whiteland Twp. *Order Denying Preliminary Objection* at 3. However, the Commission specifically granted Senator Dinniman standing in his personal capacity and *declined* to decide the question of legislative standing. *June 15 Order* at 21-23*.* We note that the presiding ALJ issued an *Errata* on July 24, 2018, which removed the language stating that the Commission had found legislative standing. [↑](#footnote-ref-8)
8. *See*, 52 Pa. Code § 5.633(b), and Pa. R.A. P. 1313. [↑](#footnote-ref-9)