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November 29, 2018

VIA ELECTRONIC FILING

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3006116
and P-2018-3006117; **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 proceeding.

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

Very truly yours,

/s/ Thomas J. Sniscak

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

WES/das
Enclosure

cc: Rich Raiders, Esq., Garret Lent, Esq.
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:		
ROSEMARY FULLER	:		
MICHAEL WALSH	:		
NANCY HARKINS	:		
GERALD MCMULLEN	:		
CAROLINE HUGHES and	:		
MELISSA HAINES	:		
	:	Docket Nos.	C-2018-3006116
Complainants,	:		P-2018-3006117
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

**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 (“Andover”) served on November 23, 2018 seeking to intervene in the *Flynn et al* Formal Complaint and Petition for Emergency Relief, filed on November 20, 2018 and Docketed at C-2018-3006116 and P-2018-3006117 (“Emergency Petition”).

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”).

I. SUMMARY

Andover's Petition to Intervene should be denied because Andover is attempting to relitigate the exact issues raised before the Pennsylvania Public Utility Commission ("Commission") in the consolidated Dinniman Proceeding, *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 *et al.* ("Dinniman Proceeding"), which Andover insisted should be consolidated with its complaint contesting public awareness, use of the 12-inch line, ME1 and ME2. Andover was and remains a party in that consolidated matter and is bound by the Orders of the Commission and the Order of the Commonwealth Court staying that matter.² SPLP appealed the Commission's Orders in the Dinniman Proceeding, and on September 28, 2018, the Commonwealth Court stayed the consolidated proceeding pending resolution of SPLP's appeal. *Sunoco Pipeline L.P. v. Pennsylvania State Senator Andrew E. Dinniman and Public Utility Commission*, Docket No. 1169 C.D. 2018 (Pa. Cmwlth Sept. 28, 2018). Now, Andover is attempting to intervene here to circumvent the Commonwealth Court's stay. In short, Andover seeks to have Your Honor and this Commission allow it to be in contempt of that stay by pursuing the very same issues here.

Moreover, Andover as a consolidated party and intervenor in *Dinniman* who took the case as it stood, is bound by the PUC's June 15, 2018 and August 2, 2018 Orders. 66 Pa. C.S. § 316. ("Whenever the commission shall make any ... order, the same shall be prima facie evidence of the facts found and *shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.*") (emphasis added). Andover's Petition to Intervene here is also nothing more than an invalid attempt to relitigate issues the Commission has already decided.

² Contrary to Andover's assertions, Andover remains a consolidated party with the Dinniman Proceeding, yet willfully mis-represents as such. See Andover's Petition for Intervention, ¶¶ 24 - 25.

Intervention is allowed under 52 Pa. Code § 5.72(a) where a person is “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.” *Id.* (emphasis added) Intervention here is neither necessary nor appropriate because: 1) it is an attempt to circumvent the Commonwealth Court’s stay in the Dinniman Proceeding, and 2) it is an attempt to relitigate Commission holdings that Andover is bound by in direct contravention of 66 Pa. C.S. § 316.

II. ARGUMENT

A. The History of the Consolidated Dinniman Proceeding

Andover petitioned to intervene in the Dinniman Proceeding on May 23, 2018. In her order granting Andover’s intervention, ALJ Barnes held: “*The Association will be bound and affected by Commission action in this matter*”. *Dinniman et al.*, July 20, 2018 Prehearing Order Granting Intervenor Status, pp. 6-7 (emphasis added). Likewise, in its Petition to Intervene in the Dinniman Proceeding, Andover admitted it would be bound by a PUC decision in that proceeding: “[t]he Association will be bound and affected by PUC action in this matter.” Andover Petition to Intervene, ¶ 16, (filed May 23, 2018).

Next, on July 24, 2018, Andover filed a Motion to Consolidate their case and the Dinniman Proceedings before the PUC. On August 28, 2018, the ALJ granted consolidation of Andover’s case with Senator Dinniman’s. Andover was fully aware of SPLP’s appeal to the Commonwealth Court that could stay those proceedings, yet argued vehemently for consolidation. It cannot now try to side-step those arguments and circumvent the Commonwealth Court’s stay.

B. Andover Alleges the Same Issues Raised In, and Ruled Upon by the Commission in the Dinniman Proceeding

First, in its Petition to Intervene in *Flynn et al*, Andover alleges safety issues for ME1. *See* Andover’s Petition at ¶ 5 (alleging SPLP is transporting HVLs in a 1930s-era pipeline); ¶ 7

(alleging that ME1 carries materials more hazardous than natural gas or gasoline); ¶ 8 (alleging concerns of pressurized transport through pipelines); ¶ 9 (alleging concerns for densely populated areas and safety); ¶ 10 (alleging SPLP is about to transfer HVLs in the 12” Point Breeze to Montello pipeline); ¶ 12 (alleging that SPLP constructed a valve site on Andover property for ME1); ¶ 13 (alleging that above ground valve sites are high-risk locations); ¶ 20 (alleging ME1 and the “workaround pipeline” have leaked near Andover and that SPLP failed to detect the leaks); ¶ 37 (alleging that ME1 leaked hazardous, highly volatile liquids three times in less than one year, and “denies that it has ever operated ‘safely’”); ¶ 38 (alleging general hazardous conditions in the event of a failure of any or all Mariner East Pipelines).

These allegations of safety issues regarding ME1 are the same as the allegations raised in the Dinniman Proceeding. The determinations made by the Commission regarding Dinniman’s allegations on ME1’s safety are binding on Andover itself because Andover’s petition was consolidated with the Dinniman Proceeding. See 66 Pa. C.S. § 316. In the Dinniman Proceeding, Senator Dinniman argued that ME1 is unsafe, *inter alia*, because it is too close to residences, does not meet depth of cover requirements, and has leaked in the past. *E.g.* June 15, 2018 Order at p. 29 (reciting Senator Dinniman allegation that past leaks make ME1 unsafe); May 31, 2018 Dinniman Brief in Support of Emergency Order at 21-22 (arguing ME1 unsafe because it is within 50 feet of private dwelling despite being less than 48 inches underground). The Commission rejected each of these arguments in the Dinniman Proceeding and overturned the injunction of the ME1 pipeline. June 15, 2018 Order at pp. 19 (noting “any issue we do not specifically address herein has been duly considered and will be denied without further discussion”), p 34 (finding ME1 pipeline safe), Ordering paragraphs 1-3 (lifting injunction of ME1 pipeline).

Second, Andover raises the category of “SPECIFIC PUBLIC AWARENESS PROGRAM CONCERNS” in its Petition to Intervene in *Flynn et al.* This category directly raises issues with

SPLP's Public Awareness program and materials. *See* Andover's Petition at ¶ 41 (alleging reverse 911 capability and PHMSA's cell phone warning); ¶ 42 (alleging SPLP's public awareness program's sole recommendation is for residents to 'leave the area immediately on foot' and that this is inadequate for elderly, very young or inform); ¶ 43 (alleging "the association intends to seek Commission review of Sunoco's boilerplate, implausible, one-size-fits-all public awareness program in consideration of the economic impacts suffered by and threatened above the Association, its Members and neighbors...").

These allegations that SPLP's Public Awareness program and materials are inadequate are also the same as the allegations raised in the Dinniman Proceeding. The determinations by the Commission on Dinniman's allegations regarding SPLP's Public Awareness program and materials are binding on Andover itself because Andover's was a party to that proceeding. *See* 66 Pa. C.S. § 316. In the Dinniman Proceeding, both Senator Dinniman and the Clean Air Council alleged that SPLP's Public Awareness program, including public outreach, public awareness, and emergency response materials, were inadequate and a basis for enjoining ME1, ME2, and ME2X. *E.g. State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 *et al.*, June 15, 2018 Order at pp. 5-6 (explaining Count II of Petition alleged "Sunoco has failed to warn and protect the public from danger or reduce the hazards to the public by reasons of its equipment and facilities"), August 2, 2018 Order at pp. 20-21, ("Upon examination of Sunoco's outreach activities and materials, Senator Dinniman contends that it is entirely inadequate. ... These alleged inadequacies are as follows: 1) Sunoco's informational brochure mailings every two years to the public *contain no explanation or specifics on how to respond to an emergency* and fail to identify the high risk of subsidence(s) in and around West Whiteland Township; 2) *Sunoco's lack of responsiveness to the needs of local school districts*, concerning the need for a comprehensive risk assessment required to establish adequate protocols for emergencies related to ME1, ME2,

and ME2X. 3) Sunoco's *inadequate outreach and training to emergency responders and public officials*, referencing letters from Chester County Commissioners, as well as the West Whiteland Township Board of Supervisors."), p 22 (describing CAC arguments that "Sunoco's SOPs fail to protect the public" and "Sunoco's communication of emergency response plans is inadequate").

As to ME1, the Commission flat-out rejected this argument, overturning the ALJ's injunction of ME1. *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 *et al.*, June 15, 2018 Order at Ordering paragraphs 1, 3. As to ME2, the Commission required SPLP to file information related to:

Comprehensive emergency response plan, including but not limited to:

- a. Communications and coordination necessary to report and respond to a release or ignition of highly volatile liquids from pipelines or appurtenances;
- b. Public educational materials and notification protocols intended to instruct how affected parties along the right-of-way should respond and how Sunoco Pipeline will notify the public in the event of a pipeline-related incident; and
- c. Specific procedures pertaining to coordination with state and local officials, local fire, police, the Pennsylvania Emergency Management Agency, the Pipeline Hazardous Materials Safety Administration, this Commission, and other utilities located in West Whiteland Township in responding to an incident.

Id. at p. 48, Ordering paragraph 6.

SPLP made the required filing. The Commission reviewed it and found:

The documentary materials provided by Sunoco, on their face, indicate communication to the affected public and stakeholders concerning the Mariner East Pipeline projects. Therefore, we conclude Sunoco has established that it has complied with standard notice procedures of DEP and its internal policies and such procedures, as outlined, comply with the requirements of Ordering Paragraph No. 6.

State Senator Andrew Dinniman v. Sunoco Pipeline L.P., Docket Nos. P-2018-3001453 *et al.*, August 2, 2018 Order at pp. 24-25. Thus, the Commission lifted the injunction of ME2 and ME2X and would not have done so unless these emergency plans, public educational materials,

procedures and documents were adequate. Importantly, the Commission rejected all of Senator Dinniman and the CAC's arguments that these documents were inadequate and merited injunction. *Id.* at pp. 10 ("any issue or argument that we do not specifically address should be deemed to have been duly considered and rejected without further discussion"), 20-22 (describing Senator Dinniman and CAC's arguments discussed above), 24-25 (rejecting Senator Dinniman and CAC's arguments).

C. Andover's Petition to Intervene in *Flynn et al* is a Blatant Attempt to Circumvent the Commonwealth Court's Order Staying Andover's Consolidated Proceeding and is Contrary to Law

On September 28, 2018, the Commonwealth Court issued an order staying the consolidated proceeding before the Commission pending the resolution of SPLP's appeal to Commonwealth Court. All parties of the consolidated proceedings were bound by this order. This includes Andover. Continuing to litigate the exact issues on which the Commonwealth Court has issued a stay is a direct violation of the Commonwealth Court's order.

As ALJ Barnes concluded in her order granting Andover's Petition to Intervene in the Dinniman proceeding, Andover's interests there were "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." *Dinniman et al.* July 20, 2018 Prehearing Order Granting Intervenor Status.

Most importantly, Andover alleged "[t]he Association will be bound and affected by PUC action in this matter," which ALJ Barnes affirmed. *Andover Petition to Intervene*, p. 16, May 23, 2018; *Dinniman et al.* July 20, 2018 Prehearing Order Granting Intervenor Status, p. 6-7. This is

further reinforced by Andover's motion to consolidate its case with Senator Dinniman's, which ALJ Barnes granted. As Andover is bound by the Dinniman Proceeding, they are bound by its rulings, outcome and status on all issue raised therein. The current rulings and status of the consolidated Dinniman Proceeding is the Commonwealth Ordered stay, a cease to all proceedings and all decisions on the issues before the Commission pending Commonwealth Court review. For this reason, Andover's Petition to Intervene in *Flynn et al* should be denied as it is a direct attempt to circumvent the Commonwealth Court's Order, and fully disregards the Court's appellate authority over Andover's matter in direct contravention to the law.

D. Andover's Petition to Intervene in *Flynn et al* is in Violation of 66 Pa. C.S. 316 Regarding the Binding Effect of a Commission Order

Andover's Petition is nothing more than an attempt to relitigate issues the Commission already decided in the Dinniman Proceeding. The Public Utility Code does not allow this. 66 Pa. C.S. § 316. ("Whenever the commission shall make any ... order, the same shall be prima facie evidence of the facts found and *shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.*") (emphasis added). Andover was not just an intervenor in that proceeding, but at its own discretion moved to consolidate its case with the Dinniman Proceeding (both the Emergency Petition and the Complaint), admitting it would be bound by the Commission's determinations therein. The Commission found that SPLP's ME1 is safe. The Commission found that SPLP's Public Awareness program and materials cannot form the basis of an emergency injunction. These findings are binding on Andover. Andover cannot not simply choose to relitigate the same issues previously brought before the Commission and duly ruled upon. Therefore, Andover petitioning for intervention here is a direct disregard of 66 Pa. C.S. § 316 and Andover's Petition to Intervene here must be denied.

III. CONCLUSION

WHEREFORE Sunoco Pipeline L.P. respectfully requests Andover's Petition to Intervene be denied.

Respectfully submitted,

/s/Thomas J. Sniscak

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Dated: November 29, 2018

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, 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 and served via overnight mail on the following:

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