



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Kevin J. McKeon
(717) 703-0801
kjmckeon@hmslegal.com

Whitney E. Snyder
(717) 703-0807
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

February 11, 2019

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 PETITION TO INTERVENE OF EAST GOSHEN TOWNSHIP**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Answer Opposing Petition to Intervene of East Goshen Township in the above-referenced proceeding.

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

Very truly yours,

Thomas J. Sniscak

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

WES/das
Enclosure

cc: Per Certificate of Service
Margaret A. Morris (mmorris@regerlaw.com)
Guy A. Donatelli (gdonatelli@lambmcerlane.com)
Alex J. Baumler (abaumler@lambmcerlane.com)
Leah Rotenberg (rotenberg@mcr-attorneys.com)

**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 PETITION TO INTERVENE
OF EAST GOSHEN TOWNSHIP**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing East Goshen’s Township’s January 22, 2019 Petition to Intervene in this proceeding because the Petition is untimely and East Goshen Township has not shown its interests are not adequately represented.

1. On November 19, 2018 Complainants filed the Complaint and Petition.
2. On December 20, 2018 Complainants filed an Amended Complaint.

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”).

3. East Goshen Township filed a Petition to Intervene on January 22, 2019.
4. East Goshen Township's Petition is untimely. It was filed 64 days after the Complaint.
5. East Goshen Township does not allege its Petition was timely filed.
6. 52 Pa. Code §§ 5.74 and 5.53 require a petition to intervene in a proceeding be filed within 60 days of the initiating pleading in a proceeding, absent "good cause shown."
7. East Goshen Township's Petition was untimely because it was filed 64 days after the Complaint and East Goshen Township has not averred good cause for allowing untimely intervention.
8. The December 20, 2018 amendments to the Complaint did not extend the time for interventions. There is no Commission regulation that extends the time for intervention when an amendment to a pleading is filed. A petition to intervene is due 60 days from an initiating complaint. 52 Pa. Code §§ 5.74 and 5.53.
9. In contrast, the Commission's regulations expressly extend the answering time period when an amended pleading is filed to require an answer within 20 days of the amended pleading. 52 Pa. Code § 5.65(a). The presence of a specific Commission regulation that extends the time for an answer in the event of an amended pleading coupled with the absence of any Commission regulation regarding intervention and amended pleadings means that the Commission has not changed the time period for intervention in the event of an amended pleading. *See, e.g., Popowsky v. Pennsylvania Public Utility Com'n*, 869 A.2d 1144, 1159 (Pa. Cmwlth. 2005) (the inclusion of a specific matter in a statute implies the exclusion of other matters).
10. To allow untimely intervention, the petition to intervene must show good cause. 52 Pa. Code § 5.74.

11. East Goshen Township fails to even allege good cause for allowing it to intervene out of time in this proceeding. There is no good cause to allow East Goshen Township to intervene out of time and its Petition should be denied. Moreover, on information and belief, East Goshen Township knew about and considered the Flynn et al complaints, and even discussed intervening in the complaints on December 5, 2018. In particular, the East Goshen Board of Supervisors consider a memo submitted by the Township Manager, Rick Smith, entitled “Consider Petition to Intervene” dated November 30, 2018. See the Publicly available East Goshen Township December 5, 2018 Board of Supervisors Agenda and Minutes (December 5, 2018) (available at https://eastgoshen.org/wp-content/uploads/2018/11/2018-12-05_Board-of-Supervisors-Agenda-for-web-with-links.pdf). Both the agenda (See “12. New Business – f. Consider Petition to Intervene”) and minutes (including Rick Smith’s memo) reflect consideration of a Petition to Intervene, both of which are provided in Attachment A to this Answer. The memo discussed the complaint and petition for the Flynn et al case (Docketed Numbers C-2018-3006116 and P-2018-3006117) as well as the West Chester Area Council of Governments November 29, 2018 “motion to recommend that each of the municipalities consider filing a motion to intervene in the complaint and petition for emergency relief filed by 7 residents of Chester and Delaware Counties.” See Attachment A. East Goshen knew about, considered, and actively chose when to file their petition, which under 52 Pa. Code § 5.53 was untimely.

12. East Goshen Township’s Petition to Intervene should also be denied because it has failed to show that its interests are not already adequately represented in this proceeding. 52 Pa. Code § 5.72 (a)(2); *see generally* Petition to Intervene.

13. Indeed, East Goshen Township merely states its interest “is not (and cannot) be adequately represented by any other party.” Petition to Intervene at ¶ 15. However, 52 Pa. Code § 5.72(a)(2) expressly provides that to intervene, petitioner must possess “an interest which may be directly affected **and which is not adequately represented by existing participants.**” *Id.* (emphasis added). Accordingly, East Goshen Township’s Petition to Intervene should be denied on this basis as well.

14. SPLP notes that if East Goshen Township is nonetheless granted intervenor status, late filed intervenors must take the case as it is, and cannot expand the scope of the proceeding. *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.”). Even if intervention is allowed, East Goshen Township cannot pursue issues beyond the scope of the Amended Complaint.

WHEREFORE, Sunoco Pipeline L.P. requests East Goshen Township's Petition to Intervene be denied.

Respectfully submitted,



Thomas J. Sniscak, Esq. (PA ID No. 33891)
Kevin J. McKeon, Esq. (PA ID No. 30428)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Tel: (717) 236-1300
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com

Robert D. Fox, Esq. (PA ID No. 44322)
Neil S. Witkes, Esq. (PA ID No. 37653)
Diana A. Silva, Esq. (PA ID No. 311083)
MANKO, GOLD, KATCHER & FOX, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Tel: (484) 430-5700
rfox@mankogold.com
nwickes@mankogold.com
dsilva@mankogold.com

Attorneys for Respondent Sunoco Pipeline L.P.

Dated: February 11, 2019

Attachment A

AGENDA
EAST GOSHEN TOWNSHIP
BOARD OF SUPERVISORS
Tuesday, December 4, 2018
7:00 PM

6:00 PM Executive Session – Personnel Matter

1. Call to Order (7:00 PM)
2. Pledge of Allegiance
3. Moment of Silence – Supervisor Carmen Battavio
4. Announce that the meeting is being livestreamed
5. Chairman’s Report (7:05 PM to 7:10 PM)
 - a. The Board met in executive session for a personnel matter prior to tonight’s meeting.
 - b. The U.S. Board of Geographic Names has approved the proposal to name the serpentine area in Hershey’s Mill Village as the “Hershey’s Mill Barrens”.
6. Public Comment on non-agenda items – 30 minutes (7:10 PM to 7:40 PM)
7. Emergency Services Reports
 - a. WEGO – None
 - b. Goshen Fire Co – None
 - c. Malvern Fire Co – None
 - d. Good Fellowship – None
 - e. Fire Marshal – None
8. Financial Report – None
9. Approval of Minutes and Treasurer’s Report (7:40 PM to 7:55 PM)
 - a. Minutes – November 20, 2018
 - b. Treasurers Report – November 29, 2018
10. Public Hearing - None
1. Old Business
 - a. Consider Fire Prevention Program (7:55 PM to 8:05 PM)
12. New Business
 - a. Consider adoption of 2019 Township Budget and 2019 WEGO Police Budget (8:05 PM to 8:20 PM)
 - b. Consider Police Agreement (8:20 PM to 8:25 PM)
 - c. Consider recommendation for Open Space Ordinance. (8:25 PM to 8:30 PM)
 - d. Consider Wash Bay Addition bid. (8:30 PM to 8:35 PM)
 - e. Consider proposal for Grant Assistance (8:35 PM to 8:40 PM)
 - f. Consider Petition to Intervene (8:40 PM to 8:45 PM)
13. Any Other Matter
14. Continued Public Comment on non-agenda items – if necessary
15. Liaison Reports - none
16. Correspondence, Reports of Interest (8:45 PM to 8:50 PM)
 - a. Keystone Audit for July 1, 2017 to June 30, 2018
17. Adjournment (8:50 PM)

Memo

East Goshen Township

Voice (610) 692-7171

E-mail rsmith@eastgoshen.org

Date: November 30, 2018

To: Board of Supervisors

From: Rick Smith, Township Manager

Re: Consider Petition to Intervene

Seven residents of Chester and Delaware Counties have filed a complaint and petition for emergency relief with the PUC asking that the Commission direct Sunoco to cease operation of the 8-inch ME1 pipeline; and prohibit operation of the workaround pipeline, ME2, and ME2X.

The complaint and petition are available for review on the PUC web site (Docket Numbers C-2018-3006116 and P-2018-3006117).

Their allegations are similar to those in the complaints filed by Senator Dinniman and the Andover Homeowners Association against Sunoco.

At the West Chester Area Council of Governments meeting on November 29, 2018 the WCACOG approved a motion to recommend that each of the municipalities consider filing a motion to intervene in the complaint and petition for emergency relief filed by 7 residents of Chester and Delaware Counties.

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:

VIA FIRST CLASS AND E-MAIL

Michael S. Bomstein, Esquire
Pinnola & Bomstein
Suite 2126 Land Title Building
100 South Broad Street
Philadelphia, PA 19110
mbomstein@gmail.com

Counsel for Complainants

Anthony D. Kanagy, Esquire
Garrett P. Lent, Esquire
Post & Schell PC
17 North Second Street, 12th Floor
akanagy@postschell.com
glent@postschell.com

*Counsel for Range Resources – Appalachia
LLC*

Rich Raiders, Esquire
Raiders Law
321 East Main Street
Annville, PA 17003
rich@raiderslaw.com

*Counsel for Andover Homeowner's
Association, Inc.*



Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire

Dated: February 11, 2019