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April 3, 2018

VIA ELECTRONIC FILING

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

Re: Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order; Docket No. P-2018-3000281; **SUNOCO PIPELINE L.P.'S ANSWER OPPOSING INTERVENTION OF REPRESENTATIVE CAROLYN T. COMITTA**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of Representative Carolyn T. Comitta in the above-referenced matter. Copies of this document have been served in accordance with the attached Certificate of Service.

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

Very truly yours,

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

TJS/WES/das

Enclosures

cc: Per Certificate of Service
Representative Carolyn T. Comitta

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of the Bureau of Investigation and :
Enforcement of the Pennsylvania Public : Docket No. P-2018-3000281
Utility Commission for the Issuance of an :
Ex Parte Emergency Order :

**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING INTERVENTION
OF REPRESENTATIVE CAROLYN T. COMITTA**

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 Commonwealth of Pennsylvania State Representative Carolyn Comitta (“Petition”) served on March 14, 2018 seeking intervention in the Commission’s March 7, 2018 *Ex Parte* Emergency Order (“Emergency Order”).

SUMMARY

The Commission has previously decided in many instances the standing or lack of standing in instances such as the instant petition to intervene. Consistent with those determination, the Petition clearly should be denied because, with all due respect, Representative Comitta does not have any requisite direct interest sufficient to grant standing, any alleged interest is already adequately represented by BI&E and its Pipeline Safety Division in this proceeding, and allowing

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”). Given the lack of standing of the petitioner discussed herein, the lack of technical basis or explanation or verifiable expert support for the allegations contained in the Petition, and SPLP’s ongoing cooperation with the Bureau of Investigation and Enforcement and Pipeline Safety and their experts in this matter, SPLP will not respond to unsupported and incorrect assertions and allegations of the Petition. For example, Petitioner makes various assertions as to geology and the integrity of the ME1 line, which are highly technical issues, yet the Petition is verified solely by Petitioner, and provides no information that she is qualified to provide verification for such allegations.

intervention will unnecessarily broaden the narrow issues involved in this proceeding, cause unnecessary time and expense, invites delay, is contrary to the interest of SPLP' shipper customers whose service has been interrupted, and will prolong an injunction that is necessarily limited to the circumstances of the Emergency Order, which are in West Whiteland Township not the areas of Petitioner's residence, offices, or District, none of which are within West Whiteland Township.²

This proceeding is limited by the geography of the emergency conditions in the Lisa Drive Area of West Whiteland Township, and in the context of an *ex parte* Emergency Order proceeding that granted an injunction, that cannot be extended to other geographical regions, especially where, as here, there are no emergency circumstances beyond the Lisa Drive Area. This proceeding is not and procedurally cannot be transformed by a petition to intervene into a general safety investigation of the entire ME1 line or right-of-way with an injunction preventing operation of the line and requiring testing and remediation because there is no allegation, indication, or evidence of any conditions that could satisfy the "emergency" standard outside of the Lisa Drive Area in West Whiteland Township. *See* 52 Pa. Code § 3.2 (requiring, inter alia clear right to relief and immediate need for relief). A party seeking intervention must take the proceeding as it currently stands and cannot broaden the scope of what as is at issue in the proceeding³ and this principle is crucial here, in the context of an *ex parte* Emergency Order proceeding involving an injunction,

² Representative Comitta represents the 156th District, while West Whiteland Township is in the 167th District. *See* (http://www.legis.state.pa.us/cfdocs/legis/home/findyourlegislator/county_list.cfm?CNTYLIST=Chester). The Petition at p.1 lists Petitioner's offices in West Chester and Harrisburg, neither of which are in West Whiteland Township. While Petitioner does not give her residence address, as a Representative she must reside within her District, Pa. Const. Art. II. § 5 Qualifications of Members ("They shall have been citizens and inhabitants of the State four years, and inhabitants of their respective districts one year next before their election . . . and shall reside in their respective districts during their terms of service."), and as discussed supra n. 4, her District does not include West Whiteland Township.

³ *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.")

because injunctive relief must be narrowly tailored to the emergency circumstance because such relief is ordered without hearing.⁴

Petitioner here is State Representative Carolyn T. Comitta, who, under black letter law, does not have legislative standing to intervene behalf of her constituents.⁵ Moreover, since Representative Comitta's residence, offices, and District are all outside the area at issue in this proceeding, she cannot meet the Commission's intervention standard in either a representative or personal interest capacity. In particular, Petitioner does not have a sufficient interest to have standing, any interest she alleges are more than adequately represented by BI&E and its Pipeline Safety division, and neither Petitioner's office nor residence areas nor District will be the subject to or bound by the Commission's decision in this proceeding.

Moreover, given the lack of interest and that any alleged interests are already sufficiently represented in this proceeding, allowing Representative Comitta and the multiple other petitioners to intervene will unnecessarily prolong the injunction beyond what is required to address circumstances the Emergency Order raised, thereby harming SPLP's shippers, their customers, and SPLP, which is a public utility providing a service in the public interest. Accordingly, the Petition to Intervene should be denied.

ARGUMENT

A. Legal Standard

Standing to intervene is governed under 52 Pa. Code § 5.72(a) and "pertinent case law discussing the types of interests sufficient for purposes of intervention." *Joint Application of*

⁴ See *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) ("Even where the essential prerequisites of an injunction are satisfied, *the court must narrowly tailor its remedy to abate the injury.*") (emphasis added).

⁵ E.g., *George v. Pennsylvania Pub. Util. Comm'n*, 735 A.2d 1282, 1286-87 (Pa. Cmwlth. 1999) ("The PUC and the Intervenor argue that Petitioner lacks standing as a legislator to litigate the adequacy of the notice afforded his constituents because the PUC's action in this matter does not diminish or interfere with any specific powers unique to Petitioner's function under the Pennsylvania Constitution as a state representative. The Court agrees.")

Commonwealth Telephone Company, CTSL, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communications Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc., Docket No. A-310800F0010, Order Granting Exceptions (entered Feb. 8, 2007) ("Commonwealth Telephone").

52 Pa. Code § 5.72 states:

§ 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:

...

(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 subsection (a)(1)–(3)*.

Id. (emphasis added). Pertinent case law provides that:

one who seeks to challenge governmental action must show a direct and substantial interest and, in addition, must show a sufficiently close causal connection between the challenged action and the asserted injury to qualify the interest as “immediate” rather than “remote.” Consequently, in order to have standing, a person must be “aggrieved” or adversely affected by the matter he seeks to challenge. [A] party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. To surpass that interest, the interest must be substantial, direct, and immediate.

Commonwealth Telephone (citing and quoting *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 202, 346 A.2d 269, 286 (1975); *Parents United for Better Schools, et al., v. School District of Phila.*, et al., 684 A.2d 689 (Pa. Commw. 1994); *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992)).

It is black-letter law that a legislator does not have standing to intervene in a representative capacity on behalf of others except in the limited circumstance not present here, where an agency's action could "diminish or interfere with any specific powers unique to Petitioner's function under the Pennsylvania Constitution as a state representative." *George v. Pennsylvania Pub. Util. Comm'n*, 735 A.2d 1282, 1286–87 (Pa. Cmwlth. 1999) ("The PUC and the Intervenors argue that Petitioner lacks standing as a legislator to litigate the adequacy of the notice afforded his constituents because the PUC's action in this matter does not diminish or interfere with any specific powers unique to Petitioner's function under the Pennsylvania Constitution as a state representative. The Court agrees.") (citing *Wilt v. Beal*, 363 A.2d 876 (Pa. Cmwlth. 1976) (legislator standing granted to challenge action on behalf of constituents which diminishes or interferes with specific constitutional powers unique to legislator's functions)); *see also Fumo v. City of Phila.*, 972 A.2d 487 (Pa. 2009) ("Legislative standing has been recognized in the context of actions brought to protect a legislator's right to vote on legislation or a council member's viable authority to approve municipal action. Legislative standing also has been recognized in actions alleging a diminution or deprivation of the legislator's or council member's power or authority. At the same time, however, legislative standing has not been recognized in actions seeking redress for a general grievance about the correctness of governmental conduct.").

Accordingly, to have standing to intervene, the Honorable Petitioner here must show that she personally (not in a representative capacity) has (1) a direct, substantial, and immediate interest

meeting the legal standards discussed above, (2) that is not adequately represented by existing participants, and (3) that the petitioner may be bound by the action of the Commission in the proceeding. Petitioner here meets none of these standards. Likewise, Petitioner's intervention is not in the public interest.

B. Petitioner's interest is not direct, immediate, or substantial

The Honorable Petitioner, as a Commonwealth General Assembly Member does not have legislative standing in this proceeding to intervene on behalf of her constituents because Petitioner's allegations relate to general compliance with the law, not interference with her legislative functions. *See George v. Pennsylvania Pub. Util. Comm'n*, 735 A.2d 1282, 1286–87 (Pa. Cmwlth. 1999). Moreover, Petitioner, even if considered an officer of the Commonwealth pursuant to 52 Pa. Code § 5.72(b), her right of intervention is still subject to subsection (a), which requires a direct interest. *Id.* at (b) (“The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding *subject to subsection (a)(1)–(3).*”) (emphasis added). Petitioner has not alleged, with respect to her District or her personal interest a direct, immediate and substantial interest because Petitioner's District does not encompass West Whiteland Township,⁶ Petitioner's offices are not located in West Whiteland Township,⁷ and Petitioner's residence⁸ is not within West Whiteland Township.

The Honorable Petitioner cannot show, as it she required to, a direct, immediate and substantial interest because neither Petitioner's residence, nor her offices, nor her District are

⁶ Representative Comitta represents the 156th District, while West Whiteland Township is in the 167th District. *See* http://www.legis.state.pa.us/cfdocs/legis/home/findyourlegislator/county_list.cfm?CNTYLIST=Chester

⁷ *See* Comitta Petition at p.1 listing offices West Chester and Harrisburg, neither of which are in West Whiteland Township.

⁸ While Petitioner does not give her residence address, as a Representative she must reside within her District, Pa. Const. Art. II. § 5 Qualifications of Members (“They shall have been citizens and inhabitants of the State four years, and inhabitants of their respective districts one year next before their election . . . and shall reside in their respective districts during their terms of service.”), and as discussed *supra* n. 6, her District does not include West Whiteland Township.

within the geographic region to which this limited *ex parte* Emergency Order proceeding pertains, and thus she cannot show any aggrievement that bears a close causal connection to this proceeding and is distinguishable from the interest of the general public in compliance with the law. “[T]he requirement that an interest be ‘direct’ means that a person claiming to be aggrieved must show causation of the harm by the matter of which he or she complains.” *In Re Peco Energy Co.*, A-110550F0160, 2005 WL 1959191, at *2–6 (July 18, 2005). “An ‘immediate’ interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question. Both the immediacy and directness requirements primarily depend upon the causal relationship between the claimed injury and the action in question.” *George v. Pennsylvania Pub. Util. Comm'n*, 735 A.2d 1282, 1286–87 (Pa. Commw. Ct. 1999) (citing *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)). “The requirement of a ‘substantial’ interest means there must be some discernible adverse effect to some interest other than the general interest in having others comply with the law.” *See William Penn Parking Garage*, 464 Pa. at 195, 346 A.2d at 282; *see also Friends of the AtGlen-Susquehanna Trail, Inc. v. PA. PUC*, 717 A. 2d 581 (Pa. Cmwlth. 1998), *appeal denied* 559 Pa. 695 (1999).

First, the Honorable Petitioner’s interests are neither direct or immediate because *the Emergency Order does not pertain to Petitioner’s residence, office, or District area*, but instead the Lisa Drive area in West Whiteland Township, where the Commission expressly found the emergency circumstances exist. There is no causal connection between what was ordered to occur in this proceeding, solely in West Whiteland Township, and any alleged harm to other geographic

areas. Instead, the Petition attempts to improperly expand the proceeding to include the entire ME1 pipeline and right-of-way to create an interest. This it cannot do.

This proceeding is limited by the geography of the emergency conditions, and in the context of an *ex parte* Emergency Order proceeding that granted an injunction, cannot be extended to other geographical regions, especially where, as here, there are no emergency circumstances beyond the Lisa Drive Area. This case is an *ex parte* Emergency Order proceeding specific to addressing concerns of geological and pipeline conditions in the Lisa Drive area of West Whiteland Township, Pennsylvania. See Emergency Order at Ordering Paragraph 1. This proceeding is not and procedurally cannot be transformed by a petition to intervene into a general safety investigation of the entire ME1 line or right-of-way with an injunction preventing operation of the line and requiring testing and remediation because there is no allegation, indication, or evidence of any conditions that could satisfy the “emergency” standard outside of the Lisa Drive Area in West Whiteland Township. See 52 Pa. Code § 3.2 (requiring, *inter alia* clear right to relief and immediate need for relief). The bases for BI&E’s Petition are the subsidence issues near Lisa Drive and how they may effect the ME1 line in that area. See *e.g.*, BI&E Petition at PP 1, 4, 5-11, 26.

A party seeking intervention must take the proceeding as it currently stands and cannot broaden the scope of what as is at issue in the proceeding, especially here, where in BI&E’s Petition and in the Commission’s March 7, 2018 Order, there is no indication of emergency circumstances at issue outside of the Lisa Drive area of West Whiteland Township. 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.”).

This principle is especially important in the context of an Emergency Order proceeding involving an injunction because injunctive relief must be narrowly tailored to the emergency circumstance because such relief is ordered without hearing. *Pye v. Com., Ins. Dep’t*, 372 A.2d 33,35 (Pa. Cmwlth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, *the court must narrowly tailor its remedy to abate the injury.*”) (emphasis added).

Since Petitioner cannot show a direct or immediate interest, her interest is necessarily not substantial. A substantial interest means an interest greater than that of all citizens in compliance with the law. Since there is no causal connection between Petitioner and the Emergency Order or the alleged harm to Petitioner and the Emergency Order, Petitioner is left with solely a general interest in compliance with gas safety regulations, an interest that all citizens share. Accordingly, Petitioner has not shown an interest adequate to fulfill standing requirements to intervene.

C. BI&E Adequately Represents Petitioner’s Alleged Interest

Assuming arguendo Petitioner could show an interest, that interest is more than adequately represented by BI&E and Pipeline Safety. BI&E initiated this proceeding pursuant to its statutory and regulatory mandates to prosecute and investigate “violations of the Public Utility Code and Commission regulations.” BI&E Petition at 13. The Commission’s Pipeline Safety section likewise is responsible for enforcing safety laws and regulations and providing technical expertise in this proceeding pursuant to the Emergency Order. See Emergency Order at Ordering Paragraph 1. BI&E’s authority to enforce the gas safety laws on behalf of the general public takes into

account the broad public interest in providing safe pipeline transportation service and adequately represents any alleged interest Petitioner may have. *See In Re Peco Energy Co.*, A-110550F0160, 2005 WL 1959191, at *2–6 (July 18, 2005) (finding individual’s interest adequately represented by public advocates representing the public interest).

Petitioner’s argument that BI&E does not adequately represent its interests is meritless. Petitioner alleges that because the Emergency Order does not pertain to essentially the entire ME1 pipeline and right-of-way, her interests are not represented. This is a chicken and egg argument that relies on Petitioner’s improper attempt to expand this proceeding discussed above. The Honorable Petitioner’s insinuation that BI&E and Pipeline Safety are incapable of administering their duties or act in good faith is likewise both inappropriate and baseless. *See* Petition at P14(d) (alleging it is in the public interest to allow intervention “to ensure that the **parties do not, by agreement or otherwise, limit or fail to undertake or to require and inspect in a workmanlike, good faith manner** any of the protective actions required by the Emergency Order”) (emphasis added). Since Petitioner has no interest greater than that of the public, and BI&E expressly represents the public interest in enforcing safety laws and regulations, BI&E adequately represents Petitioner’s interests.

D. Petitioner Will Not Be Bound by This Proceeding

Again, since this *ex parte* Emergency Order injunction proceeding is necessarily limited in scope to emergency conditions alleged in West Whiteland Township, there is no binding effect on Petitioner or her District. Petitioner fails to even assert she could be bound by the Commission’s actions in this proceeding. As such, Petitioner likewise fails to meet this prong of the intervention standard.

E. Granting Intervention is Not in the Public Interest

Allowing intervention of entities without any direct interest and outside the geographic region of the *ex parte* Emergency Order is not in the public interest because those parties have no direct interest and thus their intervention and the time needed for their participation will unnecessarily extend the time of the injunction beyond what is necessary to ensure the safety of the ME1 pipeline, harming SPLP's shippers, their customers, and SPLP, which is a public utility. Entities outside the geographic region at issue in regions where there is no emergency attempting to intervene and unnecessarily prolong the injunction causes harms that clearly outweigh any public interest in participation of such entities, especially where, as here, BI&E and Pipeline Safety adequately represent the public interest in compliance with pipeline safety laws and regulations.

CONCLUSION

WHEREFORE Sunoco Pipeline L.P. respectfully requests the Commission deny the Petition to Intervene.

Respectfully submitted,



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DATED: April 3, 2018

Attorneys for Sunoco Pipeline L.P.

VERIFICATION

I, Chris Lason, certify that I am Vice President - Pipeline Integrity, Corrosion Services, materials QA/QC at Energy Transfer Partners, and that in this capacity I am authorized to, and do make this Verification on behalf of Sunoco Pipeline L.P., an Energy Transfer Partnership, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that Sunoco Pipeline L.P., expects to be able to prove the same at any hearing that may be held in this matter. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsifications to authorities.



Chris Lason
Vice President - Pipeline Integrity, Corrosion
Services, materials QA/QC
Energy Transfer Partners
On behalf of Sunoco Pipeline L.P.

DATED: _____

4/3/18

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing 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.

VIA ELECTRONIC AND FIRST-CLASS MAIL

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DATED: April 3, 2018