

  
**Curtin & Heefner** LLP  
ATTORNEYS AT LAW

2005 S. EASTON ROAD • SUITE 100 • DOYLESTOWN, PA 18901

(267) 898.0570 • (800) 773.0680 • FAX (215) 340.3929

WWW.CURTINHEEFNER.COM

CELEBRATING OVER 80 YEARS

MARK L. FREED  
MLF@curtinheefner.com

April 23, 2018

Via Electronic Filing

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Docket No. P-2018-3000281**  
**In re: Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners**

Dear Secretary Chiavetta:

Attached for filing is Senator Andrew E. Dinniman's Preliminary Objections to Sunoco's "Answer" Opposing Intervention or, in the alternative, Reply thereto to be filed in the above-referenced matter.

A copy of the attached has been forwarded in the manner indicated on the attached Certificate of Service.

Thank you.

Very truly yours,



Mark L. Freed  
For CURTIN & HEEFNER LLP

MLF:jmd  
Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Sunoco Pipeline, L.P. a/k/a	:	
Energy Transfer Partners	:	Docket No. P-2018-3000281
	:	
Petition of the Bureau of Investigation and	:	
Enforcement of the Pennsylvania	:	
Public Utility Commission For the Issuance of	:	
An Ex Parte Emergency Order	:	

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §5.101(a), You are hereby notified to file a written response to the enclosed Preliminary Objections within ten (10) days from service hereof or the Preliminary Objections may be granted. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Mark L. Freed, Esquire  
Curtin & Heefner LLP  
2005 S. Easton Road, Suite 100  
Doylestown, PA 18901

Dated: April 23, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Sunoco Pipeline, L.P. a/k/a	:	
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**SENATOR ANDREW E. DINNIMAN’S PRELIMINARY OBJECTIONS TO SUNOCO’S  
“ANSWER” OPPOSING INTERVENTION OR, IN THE ALTERNATIVE, REPLY  
THERE TO**

NOW COMES, Pennsylvania Senator Andrew E. Dinniman (hereinafter “Senator Dinniman”), pursuant to 52 Pa. Code § 5.101, and files Preliminary Objections to Sunoco Pipeline, L.P. a/k/a Energy Transfer Partners’ (hereinafter “Sunoco”) “Answer” Opposing Intervention or, in the alternative, replies thereto pursuant to 52 Pa. Code § 5.63, and in support thereof states the following:

1. On March 7, 2018, the Public Utility Commission’s Bureau of Investigation and Enforcement (“BIE”) petitioned the Public Utility Commission (“Commission”) for an *ex parte* emergency order under 52 Pa. Code § 3.2 to require Sunoco to suspend operations on its Mariner East 1 pipeline (“ME1”). Petition at ¶ 2.

2. On or about March 26, 2018, Senator Dinniman, *pro se*, filed a letter requesting intervention into this matter. The letter states as follows:

Dear Ms. Chiavetta,

I am writing to officially petition to intervene in the matter of the Emergency Order issued by the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission issued on March 7, 2018.

As elected State Senator for the 19th District, representing West Whiteland Township, and the surrounding area of Chester County, myself and my constituents are deeply concerned about construction activity related to the Sunoco Pipeline that has contaminated almost two dozen private wells, disrupted businesses, created significant environmental damage, and resulted in the development of a number of expanding sinkholes that currently threaten at least two private homes and is within 100 feet of Amtrak's Keystone Line. Many, if not all of these instances, have occurred in part due to environmentally sensitive geology in the Exton region that is well documented as being potentially unstable. With this in mind, the operation of the existing Mariner East pipeline has raised a number of public concerns and is deserving of detailed professional oversight in order ensure high consequence communities are adequately protected.

As State Senator representing tens of thousands of constituents potentially impacted by such action, it is my duty and responsibility to intervene in this matter. Please do not hesitate to contact me if you should have any questions or concerns.

3. On or about April 16, 2018, Sunoco filed a purported "Answer" to dismiss Senator Dinniman's petition.

4. The gravamen of Sunoco's filing is that Senator Dinniman lacks standing to intervene. *See* Sunoco's Answer, pp. 1-2.

**PRELIMINARY OBJECTION IN THE NATURE OF MOTION TO STRIKE FOR  
FAILURE TO CONFORM TO PUC'S RULES  
FAILURE TO PROPERLY CHALLENGE STANDING**

5. Senator Dinniman hereby incorporates by reference the forgoing paragraphs of this pleading.

6. 52 Pa. Code § 5.101(a)(2) provides that preliminary objections may be filed in response to a pleading for “[f]ailure of a pleading to conform to this chapter . . . .”

7. Sunoco’s pleading fails to conform to this chapter.

8. 52 Pa. Code § 5.101(a)(7) clearly states that “[s]tanding of a party to participate in the proceeding” may only be challenged by preliminary objections.

9. Similarly, the PUC’s Regulations provide that the “[f]ailure of a pleading to conform to this chapter” and the “[l]egal insufficiency of a pleading may only be challenged by preliminary objections.” 52 Pa. Code §§ 5.101(a)(2), (4).

10. Preliminary objections must be accompanied by a “notice to plead” and an opponent to the preliminary objections must have the opportunity to respond to the preliminary objections. 52 Pa. Code § 5.101(a), (c).

11. Sunoco seeks to have Senator Dinniman’s petition dismissed for lack of standing in the form of an “answer” rather than by preliminary objections.

12. Sunoco’s answer is not accompanied by a notice to plead.

WHEREFORE, Senator Dinniman respectfully requests that this Commission strike Sunoco’s purported “Answer” to his petition to intervene, grant Senator Dinniman’s petition to intervene, and grant such other relief as the Commission finds to be just and appropriate.

**REPLY IN OPPOSITION TO SUNOCO’S ANSWER**

13. Senator Dinniman hereby incorporates by reference the forgoing paragraphs of this pleading.

14. In addition to the procedural failures of Sunoco’s pleading, Sunoco’s claims are entirely without merit.

15. Senator Dinniman has standing in this matter pursuant to 52 Pa. Code § 5.72(a).

16. Sunoco erroneously claims that “to have standing to intervene, the Honorable Petitioner must show that he 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, (3) that the petitioner may be bound by the action of the Commission in the proceeding.” Sunoco Answer, p. 6. The statement fails for numerous reasons.<sup>1</sup>

17. The Commission’s rules specifically allow intervention for various reasons, including “[a]nother interest of such nature that participation of the petitioner may be in the public interest.” 52 Pa. Code § 5.72(3).

18. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598 (1991).

19. A Commission proceeding is an administrative law proceeding which generally operates with less formalities than are utilized in Pennsylvania civil practice.

20. Generally, Pennsylvania courts and the Commission have held that a person or entity has standing when the person or entity has a direct, immediate, and substantial interest in the subject matter of a proceeding. *Application of Artesian Water Pennsylvania, Inc.*, Docket No. A-

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<sup>1</sup>Even under Sunoco’s conception of the test for standing, Sunoco takes an unreasonably limited view of the elements for standing. For example, Sunoco ignores the Commission precedent that a person may meet the element of being “bound by the action of the Commission in the proceeding” even when the action may only interfere with the person’s claims in another action. See *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.*, Docket No. C-2012-2308997.

2014-2451241; *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A 210870F01 (Opinion and Order entered on July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195-197, 346 A.2d 269, 282-284 (1975); *Waddington v. Pa. PUC*, 670 A.2d 199, 202 (Pa. Cmwlth. 1995); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993).

21. Sunoco concedes that were Senator Dinniman a resident of West Whiteland Township, he would have standing to intervene. Sunoco Answer, n. 3. In fact, Senator Dinniman *is a resident of West Whiteland Township* and resides approximately two miles from ME1.

22. Senator Dinniman also has standing in his capacity of a Pennsylvania State Senator.

23. The Commission has historically, continually and regularly permitted members of the General Assembly to participate in proceedings, and has specifically permitted Senator Dinniman to participate as a party in the past. *See, e.g., Application of Artesian Water Pennsylvania, Inc.*, Docket No. A-2014-2451241.

24. The necessary facts exist for Senator Dinniman's intervention, they are established on the face of intervention letter, and are common knowledge as a result of the nature of the Senate Office and committees of which Senator Dinniman is a member.

25. Senator Dinniman expressly states in his intervention letter that he is a member of the General Assembly as a Senator and that he represents the 19th Senatorial District. The 19th Senatorial District includes West Whiteland Township.

26. Senator Dinniman's intervention letter also expresses his direct, immediate and substantial interest in this matter, and that his interest is in the public interest, including the following impacts to him and his constituents:

- the contamination of almost two dozen private wells, businesses disruption and the creation of significant environmental damage;
- the development of a number of expanding sinkholes that currently threaten at least two private homes and are within 100 feet of Amtrak's Keystone Line; and,
- the environmentally sensitive geology in the Exton region that is well documented as being potentially unstable.

Senator Dinniman possesses particular knowledge of a local perspective on the current and historical facts and the potential effects that are essential to the Commission's determination.

27. Senator Dinniman's office and membership on the various associated legislative committees also provide him with particular knowledge of the effects of, and a particular interest in, matters concerning the health, safety and welfare of his district. Senator Dinniman is a member of the standing Senate Environmental Resources and Energy Committee; a member of the Joint Legislative Air and Water Pollution Control and Conservation Committee; a member of the General Assembly with the authority to receive, review and comment upon the Governor's annual expenditure plan for the Environmental Stewardship Fund under 27 Pa.C.S. § 6104, which funds in part the Chester County Conservation District and its oversight of the watersheds and water supply of West Whiteland Township; and served as a member of the Pennsylvania Pipeline Infrastructure Task Force, a group of experts and stakeholders that recommended policies, guidelines and best practices to guide expansion of pipeline infrastructure in the Commonwealth. Senator Dinniman



receives annual, mandatory reports from the Commission under the Pennsylvania Public Utility Code. 66 Pa.C.S. §§ 320, 1327.

28. If there is any doubt as to the sufficiency of the information in the letter of intervention, it must be noted that Senator Dinniman's letter of intervention was prepared and signed by him as a Senator, done so in his own behalf without representation, and he should be afforded the opportunity to develop a record. Commission precedent establishes that the Commission generally permits a *pro se* party the opportunity to develop a record, to be heard orally, and not have their case dismissed on the basis of a preliminary pleading. *Guesman v. Columbia Gas of Pennsylvania, Inc.*, Docket no. C-2012-2326301.

29. Sunoco erroneously claims that "[i]t is black letter law that a legislator does not have standing to intervene in his representative capacity on behalf of others except in limited circumstances not present here." Sunoco Answer, p. 2. Sunoco relies on *Camille "Bud" George v. Pennsylvania Public Utility Commission*, 735 A.2d 1282 (Pa. Cmwlth. 1999). However, the facts in *George* are clearly distinguishable from this matter. In *George*, while the court agreed that State Representative George lacked standing because the Commission's action did not diminish or interfere with specific constitutional powers unique to his legislative functions, the court found that Representative George "***advance[d] no argument*** explaining how the Commission's action diminishes or interferes with his constitutional powers as a state representative." *Id.* at 1286 (emphasis added). The court did not provide a detailed discussion or argument regarding what legislative duties found in the Constitution or statutes may be sufficient in Representative George's case, because he did not claim standing based on his official capacity as a State Representative. Instead, he claimed standing based on a "personal interest in having all ratepayers be provided with

adequate notice," which the court rejected "for want of an adequate causal relationship." *Id.* (emphasis added). As such, *George* is distinguishable from the facts presented to the Commission here regarding legislative standing and does not apply to the Protestant's claim that he has standing based on his official capacity as a State Senator and member of the General Assembly.

30. Contrary to Sunoco's contention, legislators are granted standing in their official capacity to challenge agency actions that may implicate their legislative functions. *Fumo v. City of Philadelphia*, 972 A.2d 487, 497 (Pa. 2009); *Corman v. NCAA*, 74 A.3d 1149, 1161 (Pa. Cmwlth. 2013). "[L]egislators, as legislators, are granted standing to challenge executive actions when specific powers unique to their functions under the Constitution are diminished or interfered with." *Fumo v. City of Philadelphia*, 972 A.2d 487, 497 (Pa. 2009) (citing *Wilt v. Beal*, 363 A.2d 876, 881 (Pa. Cmwlth. 1976) (granting legislative standing to state legislators in a challenge to an agency action implicating the General Assembly's authority to license submerged lands within the Commonwealth). These specific powers may be found in the Constitution and are in addition to those rights enjoyed by all citizens. *Id.* Additionally, these powers may be granted by state statute. *Corman v. NCAA*, 74 A.3d 1149 (Pa. Cmwlth. 2013). In *Corman*, the Commonwealth Court granted standing to State Senator Gorman in his official capacity to file a complaint against the National Collegiate Athletic Association ("NCAA") to compel the NCAA to pay any installment made on a \$60 million fine by Penn State University into an endowment fund as mandated by state statute. *Id.* The court granted standing because "the legislature statutorily vested certain specifically-identified individuals, including Senator Corman, with the right to 30 days advance notice of proposed expenditures from the [Endowment] Fund in order to review and comment upon the proposed expenditures," and as such, "the legislature invested those named individuals with

oversight responsibility and authority regarding the monies subject to the Endowment Act." *Id.* at 1161. Senator Gorman's statutory duties for overseeing Fund expenditures is a "matter touching upon his concerns," and he was a proper party litigant. *Id.* (citing *Pennsylvania Game Comm'n v. Dep't Env'tl. Res.*, 555 A.2d 812, 815 (Pa. 1989)). Pennsylvania courts have granted legislative standing when the agency action may affect the legislator's constitutional or statutory duties.

31. Senator Dinniman's duties as a member of the General Assembly, as well as certain statutory duties and oversight authority granted to him, provide him with standing to intervene in the captioned action. Senator Dinniman receives annual, mandatory reports from the Commission under the Pennsylvania Public Utility Code. 66 Pa.C.S. §§ 320, 1327. Similar to the facts in *Corman*, Senator Dinniman, as a member of the General Assembly, also has the authority to receive, review and comment upon the Governor's annual expenditure plan for the Environmental Stewardship Fund under 27 Pa.C.S. § 6104, which funds in part the Chester County Conservation District. Consequently, statutory duties for overseeing such expenditures from the Fund constitute matters touching upon Protestant's concerns as a legislator. *Corman*, 74 A.3d at 1161. Senator Dinniman's unique interests as a State Senator and representative of the individuals in the 19th District are not adequately represented by any other entity.

32. In fact, the Commission has already rejected the very issues raised by Sunoco in its answer, and approved Senator Dinniman's party status before the Commission. In *Application of Artesian Water Pennsylvania, Inc.*, Docket No. A-2014-2451241, Senator Dinniman filed a protest letter to an application to expand service. The letter stated simply that:

In reference to **Docket No. A-2014-2451241**, I am writing to protest Artesian Water's application to expand service in New Garden

Township. Please consider this an official notice of intervention in the matter.

As state Senator for the 19<sup>th</sup> District, representing New Garden, Franklin and the surrounding area, my constituents are deeply concerned about this application's potential impact on their water supply.

The overriding concern is that this is the First step in Artesian pumping water from the Broad Run well over the state line to its tens of thousands of customers in Delaware - something Artesian has expressed interest in doing in the past.

Said letter is attached hereto as Exhibit "A" (emphasis in original). In response to this letter the applicant filed preliminary objections (a procedure that Sunoco did not follow here) arguing that Senator Dinniman did not have standing to participate in the proceeding. As Sunoco has done here, the applicant relied on *George* to support its contention. Two administrative law judges rejected the applicants contentions and granted Senator Dinniman party status. In so doing, the judges found that:

In his Protest and the Response in Opposition to Preliminary Objection, Senator Dinniman has demonstrated that as the Senator representing the 19<sup>th</sup> District he has expressed an interest in this proceeding. He explained that his duties as a member of the General Assembly, as well as certain statutory duties and oversight authority granted to him, provide him with standing to intervene in this proceeding. In addition, he stated that he has participated in previous Commission proceedings in his capacity as a Senator without objection.

The Protestant has provided information to show that his participation in this matter relates to his official duties as a Senator for the affected district. In addition, he is involved with several committees that address water issues. He has personal knowledge of the subject matter and has the responsibility of commenting on or approving expenditures related to water resources etc. in Chester County.

Consequently, Senator Dinniman’s interest is direct because it will be adversely affected by the actions challenged in this Protest. His interest is immediate because there is a close causal nexus between Senator Dinniman’s asserted injury and the actions challenged in the Protest. In addition, the interest is substantial because Senator Dinniman has a discernible interest other than the general interest of all citizens in seeking compliance with the law. Accordingly, the decision regarding this Application will have a direct, immediate and substantial effect on Senator Dinniman.

The Commission must likewise find that Senator Dinniman has standing in this matter.

33. Sunoco also argues Senator Dinniman lacks standing because his physical offices are located in Harrisburg and West Chester and not West Whiteland Township. See Sunoco Answer, p. 6. Such a statement misapprehends the nature of Senator Dinniman’s “Office”. As the representative of the 19th Senatorial District, Senator Dinniman’s Office includes the entire District, including West Whiteland. And, as the representative of the individuals in the 19th District, Senator Dinniman possesses particular knowledge of a local perspective on the surrounding facts and potential effects essential to the Commission’s determination.

34. Senator Dinniman does not seek to expand the scope of this matter. Sunoco states that this “is limited by the geography of the emergency condition”. Sunoco Answer, 2. The Commission’s Bureau of Investigation & Enforcement (“BIE”) brought this action due to, *inter alia*, the concern for the safety of the public given the unknown effects on the nature of the geological instability of the area and the sinkhole events referenced herein which correspond to the construction of the ME2X pipeline, the close proximity of the ME2X construction to the existing and active ME1 pipeline as well as the close proximity of residential single-family dwellings, apartment buildings, Route 100 and Amtrak lines to the site of ME1 and ME2X . . . .” BIE Petition for *Ex Parte* Emergency Order, ¶11.

35. “The geography of the emergency condition” extends well beyond Lisa Drive. Major geologic formations in West Whiteland Township include the Conestoga Limestone and Ledger Dolomite formations. Limestone is a sedimentary rock consisting chiefly of calcium carbonate, primarily in the form of the mineral calcite. Because of the high solubility of this mineral, the rock is particularly susceptible to karst features such as sinkholes and caves. Dolomite consists of calcium magnesium carbonate. It is also susceptible to karst development. The limestone and dolomite portions of West Whiteland Township are characterized by karst features. There are hundreds of closed depressions and sinkholes in the limestone and dolomite areas of West Whiteland Township. Caves have been described in the same rock units within Chester County. Sinkholes and collapses are an inherent danger in most karst areas, and have been documented to result in property loss and death, particularly when exacerbated by construction or other activities. The northern portion of West Whiteland Township is also characterized by at least four (4) mapped fault lines. These fault lines increase the susceptibility of the area in West Whiteland Township to geologic problems. Construction activities, wet weather conditions and the removal of groundwater are known triggers that exacerbate instabilities inherent with calcium carbonate formations such as limestone and dolomite, particularly at and around fault lines and at contacts with non-soluble lithologies. The area in and around West Whiteland Township includes surface mining quarries with groundwater water withdrawals, public water supplies, public rail (Amtrak and SEPTA), highway infrastructure, and schools. It would be a mistake for the

Commission to concede to Sunoco's limited view and put on blinders as to the risks posed by the complex geologic history and current setting in and around West Whiteland Township.

36. Even were the Commission to conclude that the investigation in this matter should be limited to the immediate area of Lisa Drive -- given the "potential catastrophic results impacting the public" (Emergency Order dated May 7, 2018, p. 2), and the fact that Senator Dinniman's District includes Lisa Drive, his duties as a member of the General Assembly, as well as certain statutory duties and oversight authority granted to him, and that he has participated in previous Commission proceedings in his capacity as a Senator -- it is clear that Senator Dinniman has a direct, immediate, and substantial interest in the subject matter of this proceeding and should be granted intervention.

37. Allowing Senator Dinniman, with his unique interests and knowledge, to intervene in this matter will not harm the public interest. "To the contrary, it is clear that it will be injurious to the public interest if the relief requested is *not* granted." BIE Petition for Ex Parte Emergency Order, ¶32 (emphasis in original). Senator Dinniman's intervention will not unnecessarily extend the time of the injunction beyond what is necessary to insure safety. Rather, it will help the Commission make a fully informed decision that safeguards the well-being of the citizens of the 19<sup>th</sup> Senatorial District living in and around the complex rock type, geologic history, and current setting of West Whiteland Township.

WHEREFORE, Senator Dinniman respectfully requests that this Commission grant Senator Dinniman's petition to intervene, and grant such other relief as the Commission finds to be just and appropriate.

Respectfully submitted,

CURTIN & HEEFNER LLP



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By: Mark L. Freed (Pa. I.D. No. 63860)  
2005 South Easton Road, Suite 100  
Doylestown, PA 18901

Dated: April 23, 2018



**VERIFICATION**

I, Andrew E. Dinniman, hereby state that the facts set forth in the foregoing Reply to Answer are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



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Andrew E. Dinniman  
State Senator  
19<sup>th</sup> District

Date: April 23, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Sunoco Pipeline, L.P. a/k/a	:	
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	:	
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Enforcement of the Pennsylvania	:	
Public Utility Commission For the Issuance of	:	
An Ex Parte Emergency Order	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this date, served a true and correct copy of the foregoing on the following:

*Via electronic service*

Michael L. Swindler  
Deputy Chief Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
mswindler@pa.gov

Thomas J. Sniscak, Esquire  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
tjsniscak@hmslegal.com

Respectfully submitted,

CURTIN & HEEFNER LLP

By:



Date: April 23, 2018

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Mark L. Freed  
PA ID No. 63860