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CELEBRATING OVER 80 YEARS

MARK L. FREED
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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 Uwchlan Township'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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**UWCHLAN TOWNSHIP’S PRELIMINARY OBJECTIONS TO SUNOCO’S “ANSWER”
OPPOSING INTERVENTION OR, IN THE ALTERNATIVE, REPLY THERETO**

NOW COMES, Uwchlan Township, 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 14, 2018, Uwchlan Township filed a petition to intervene into this matter.
3. On or about April 3, 2018, Sunoco filed a purported “Answer” to dismiss Uwchlan Township’s petition.

4. The gravamen of Sunoco's filing is that Uwchlan Township 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. Uwchlan Township 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 Uwchlan Township'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, Uwchlan Township respectfully requests that this Commission strike Sunoco's purported "Answer" to its petition to intervene, grant Uwchlan Township'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. Uwchlan Township 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 without merit.

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

16. Sunoco erroneously claims that "to have standing to intervene, petitioner must show (1) a direct, substantial, and immediate interest meeting the legal standards discussed above, (2) that it 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. 4. The statement fails for numerous reasons.¹

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).

¹Even 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.

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-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. Uwchlan Township has a direct, immediate, and substantial interest in the subject matter of a proceeding.

22. As set forth in its petition, Uwchlan Township is adjacent to West Whiteland Township, and ME1 crosses Uwchlan Township, Petition, ¶ 25; The Lisa Drive sinkholes are located approximately 2 miles from Uwchlan Township, Petition, ¶ 26; On information and belief, the sinkholes at Lisa Drive occurred along a fault line, Petition, ¶ 29; As noted on various State mapping, a fault line exists immediately adjacent to the West Whiteland/Uwchlan Township border in the area of ME1, Petition, ¶ 31; Safety regulations require pipelines to be buried and installed so

that the depth of cover between the top of the pipe and ground level is 48 inches, for industrial, commercial, and residential areas that are within 50 feet of a private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, Petition, ¶¶ 33, 34; However, in some areas of Uwchlan Township, ME1 is as shallow as approximately 2 feet or less, Petition, ¶ 36; The March 7, 2018 Commission Order in this matter confirms that construction of the ME2 and ME2X is impacting the integrity of ME1, and that the integrity of ME1 can no longer be assured, Petition, ¶ 41; and Sunoco has a history of failing to report the formation of sinkholes. Petition, ¶ 45.

23. It is clear that Uwchlan Township -- located a mere two miles from the epicenter of activities threatening a hazardous liquids pipeline that crosses its municipality; where a fault line, suspected to be a contributing factor of the incidents at Lisa Drive, crosses ME1 at the border between West Whiteland Township and Uwchlan Township; where ME1 fails to conform with modern safety standards within the municipality and the PUC has found that construction activities, like those taking place in the municipality, are impacting the integrity of ME1; and Sunoco, as the operator of ME1, has a history of failing to properly report incidents -- has “a direct, immediate, and substantial interest in the subject matter of a proceeding.”

24. Nor does Uwchlan Township seek to expand the scope or delay this matter. Even were the Commission to conclude that the investigation in this matter should be limited to the immediate area of Lisa Drive, based on its proximity to Lisa Drive and the “potential catastrophic results impacting the public” (Emergency Order dated May 7, 2018, p. 2), Uwchlan Township has a direct, immediate, and substantial interest in the subject matter of this proceeding and should be granted intervention.

25. However, 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 areas beyond Lisa Drive. Sunoco concedes that this proceeding "is limited by the geography of the emergency condition". The "geography of the emergency conditions" at issue in this matter – exacerbated by the ongoing construction activities and other factors -- extend well beyond Lisa Drive and into Uwchlan Township.

WHEREFORE, Uwchlan Township respectfully requests that this Commission grant its petition to intervene, and grant such other relief as the Commission finds to be just and appropriate.

Respectfully submitted,

CURTIN & HEEFNER LLP



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

Dated: April 23, 2018

VERIFICATION

I, Mark L. Freed, hereby verify 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.



Date: April 23, 2018

Mark L. Freed

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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

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Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
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Respectfully submitted,

CURTIN & HEEFNER LLP

By:



Date: April 23, 2018

Mark L. Freed
PA ID No. 63860