

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**Amended Petition of State Senator Andrew E.
Dinniman for Interim Emergency Relief**

**Notational Vote held July 20, 2018
3001453-OSA**

**Pennsylvania State Senator Andrew E.
Dinniman**

**Docket No. P-2018-3001453
Docket No. C-2018-3001451**

**v.
Sunoco Pipeline, L.P.**

STATEMENT OF CHAIRMAN GLADYS M. BROWN

Before the Commission for consideration and disposition is the Motion for Certification of the Commission's June 15, 2018 Order for Interlocutory Appeal (Motion) filed by Sunoco Pipeline, L.P. (Sunoco) on June 25, 2018, pursuant to Section 5.633 of the Commission's Regulations, 52 Pa. Code § 5.633. Sunoco requests certification of the June 15 Order to allow for interlocutory appeal under Section 5.633 of the Commission's Regulations, as a prerequisite to seeking permission from Commonwealth Court for immediate appellate review pursuant to Rule 1311 of the Pennsylvania Rules of Appellate Practice, Pa. R.A.P. 1311.

The basis for Sunoco's request for certification includes our findings: (1) that Senator Dinniman established standing to bring the Complaint; (2) that there was sufficient evidence to find a clear and present danger warranting emergency relief; and, (3) that imposition of a bond requirement was not warranted to grant injunctive relief.

It should be noted that a determination whether to certify an order for immediate appeal is a matter within our discretion. *See, City of Pittsburgh v. Pa. PUC*, 33 A.2d 641 (Pa. Super. 1943), (agency has discretion whether to grant request for permission to appeal), and *B.B. v. Department of Public Welfare*, 118 A. 3d 482 (Pa. Cmwlth. 2015)(standard of review for agency determination is "abuse of discretion"). I do not believe that we should exercise our discretion to certify any of the above-mentioned Commission findings to Commonwealth Court. Litigation of these issues should run their course here at the Commission.

With regard to the first of those three findings, Senator Dinniman's standing, the Commission has consistently ruled that the Senator has standing to bring his case and I see no reason to question this determination in the middle of the proceeding. Because the Complaint filed by Senator Dinniman involves serious public safety allegations against a jurisdictional public utility, because the proceeding is well under way here at the Commission, and because this is the agency charged with public utility oversight and is the subject matter expert on the issues raised in Dinniman's Complaint, moving any portion of this proceeding to the courts at this juncture is counter-productive and administratively inefficient. I see no reason to deviate from the normal administrative process for litigated proceedings. That is, exhaust all agency remedies, then, take an appeal to the Commonwealth Court, if necessary. This deviation is especially concerning

given the serious public safety concerns alleged in the instant Complaint. Our discretion to grant standing is at its apex where the matter before us concerns an alleged public safety emergency.¹

Since the inception of this matter, the Commission has consistently ruled that Senator Dinniman has standing to raise the important public safety claims he has presented. Our May 3rd Order in a related case, *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 (*Ex Parte Order*), stated that Senator Dinniman had **full party status** in his own complaint case. In fact, in the *Ex Parte Order*, we went so far as to point out to other potential intervenors that the appropriate venue to voice their concerns would be to bring a complaint similar to the Senator's, or to join onto the Senator's Complaint. Additionally, in exercising our discretion to find Senator Dinniman has personal standing, our June 15, 2018 analysis considered the facts in the context of an asserted emergency involving allegations of **danger to public safety caused by a major infrastructure project** conducted by Sunoco within the Commonwealth. (June 15 Order at 21, emphasis added). Given that this is a matter of public safety, our finding that Senator Dinniman has standing was reasonable. In fact, as recently as July 19, 2018, when ruling to dismiss Sunoco's preliminary objections on the issue of standing, ALJ Barnes determined that Senator Dinniman has personal standing to proceed with the Complaint.

Based on his residence in the area affected by Sunoco's operations and construction, I believe that Senator Dinniman has presented sufficient evidence to establish his standing to participate in this proceeding is direct, immediate, and substantial. Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania Natural Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598 (1991). Additionally, our June 15th Order does not involve a controlling question of law as to which there is a substantial ground for difference of opinion, in fact, there has been no difference of opinion on this issue until this late date. The Motion to certify this matter for immediate appeal to Commonwealth Court will not materially advance the ultimate termination of the matter in that the Parties will now be forced to litigate in two venues. As such, I will dissent on this matter.

July 25, 2018

Date



Gladys M. Brown, Chairman

¹ The Commission possesses broad powers to take whatever action deemed necessary to fulfill its duty under the Public Utility Code. 52 Pa. Code Chapter 3 (pertaining to Commission power to grant emergency relief), and 66 Pa. C.S. § 309 (pertaining to Commission power to do all things necessary and proper to implement the Public Utility Code). *See also, e.g.*, 66 Pa. C.S. § 331 (power of the Commission to investigate and hold hearings if deemed necessary), and 66 Pa. C.S. § 501 (pertaining to general regulatory and enforcement power of the Commission). Such authority encompasses exercising our discretion to grant personal standing in emergency circumstances, if deemed necessary to protect the public safety. *See, City of Pittsburgh v. Pa. PUC*, 33 A.2d 641 (Pa. Super. 1943) (re: agency discretion to grant standing).