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January 10, 2019

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Sunoco Pipeline L.P. Docket Number C-2018-3006534;
**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING
INTERVENTION OF THOMAS CASEY**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of Thomas Casey in the above-referenced proceeding.

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.

WES/das
Enclosure

cc: Thomas Casey
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND
ENFORCEMENT

Complainant,

v.

SUNOCO PIPELINE L.P.,

Respondent.

Docket No. C-2018-3006534

**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING
INTERVENTION OF THOMAS CASEY**

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 Thomas Casey (“Petitioner”) served on December 21, 2018 seeking to intervene in the *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement’s* (hereinafter “BI&E”) Formal Complaint filed on December 13, 2018 and Docketed at C-2018-3006534 (the “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”). Given the lack of standing of the party discussed herein, the lack of technical basis or explanation or verifiable expert support for the allegations contained in the Petition SPLP will not respond to unsupported and incorrect assertions and allegations of the Petition.

I. INTRODUCTION

The Petition should be denied because: 1) Petitioner does not have any interest sufficient to grant standing, 2) any alleged interest Petitioner may have is already adequately represented by BI&E who is prosecuting the case for the Commonwealth, 3) Petitioner will not be bound by the outcome of this proceeding, and 4) allowing intervention is not in the public interest.

BI&E's Complaint involves an April 1, 2017, pin-hole leak in the ME1 pipeline segment near 5330 Morgantown Road, Morgantown, Berks County, Pennsylvania and regulatory compliance matters. BI&E's Complaint does not allege that SPLP's ME1 pipeline is unsafe or otherwise in violation of 66 Pa. C.S. § 1501. BI&E does not aver that SPLP's past alleged non-compliance with regulations in any way impacts the safety of people living along the pipeline. Instead, the Complaint involves a specific, singular event and alleged past regulatory non-compliance, not general safety allegations regarding SPLP's pipelines. Petitioner cannot transform this proceeding into a general safety investigation of the entire ME1 pipeline or SPLP's other pipelines. A party seeking intervention must take the proceeding as it currently stands and cannot broaden the scope of what is at issue in the proceeding.² This principle is crucial here, where an intervening party with unrelated personal claims is attempting to tack them onto a regulatory compliance complaint.

Petitioner alleges he should be allowed to intervene for two reasons: 1) He wants additional information about SPLP's other pipelines, Petition at 6; and 2) he has "grave concerns" regarding BI&E's allegations. Neither of these reasons constitutes sufficient standing for intervention under Pennsylvania law.

² 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.")

First, Petitioner fails to even allege how the subject matter of the Complaint (a pin hole leak *distant from his property* and past regulatory compliance matters) has any effect on him. It does not. This means his interest is not immediate, direct, or substantial. Instead, Petitioner's interest is like that of all other citizens in compliance with the law. But Petitioner cannot be allowed to intervene on that basis. *William Penn Parking Garage*, 464 Pa. at 195, 346 A.2d at 282 (“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.**”) (emphasis added).

Second, BI&E adequately represents Petitioner's concerns. It is BI&E's job to enforce pipeline safety regulations. Intervention from a non-expert with no first-hand knowledge of the issues alleged adds nothing to this proceeding. Third, Petitioner will not be bound by the outcome of this proceeding. Because he has no interest in the allegations regarding the Complaint, how that Complaint is adjudicated will have no effect on him, binding or otherwise. Finally, Petitioner fails to even allege how his intervention would be in the public interest. It is not. Allowing Petitioner to intervene would ignore the law (standing principles), needlessly expand this proceeding, interfere with a BIE investigation, and amount to wasting the parties time and resources.

II. 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 Commonwealth Telephone Company, CTSI, 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.

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)).

Accordingly, to have standing to intervene, petitioner must show (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 those three standards. Likewise, Petitioner fails to assert that his intervention would be in the public interest, and in fact it is not.

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

Petitioner cannot show a direct, immediate and substantial interest and thus cannot show any aggrievement to Petitioner that bears a close causal connection to any alleged injury that 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).

Petitioner fails to even allege how the subject matter of the Complaint (a pin hole leak distant from his property and past regulatory compliance matters) has any effect on him. It does not. This means his interest is not immediate, direct, or substantial. Instead, Petitioner's interest is like that of all other citizens in compliance with the law. But Petitioner cannot be allowed to

intervene based on that interest. *Id.* Petitioner’s “grave concerns” regarding BI&E’s allegations do not constitute an adequate interest.

Further, the Petitioner alleges in his Petition that he is seeking “to gain knowledge and understanding concerning the INTERVENER’s property with regards to the new 16” & 20” pipelines.” *See* Petition to Intervene at Paragraph 6. This is not an interest with any relationship to this proceeding. 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. *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.”).

Since Petitioner cannot show a direct or immediate interest, his 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 allegations in BI&E’s Complaint, Petitioner is left with solely a general interest in compliance with gas safety regulations, an interest that all citizens share. That is not sufficient. 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 under its “authority to enforce Federal pipeline safety laws and regulations...” *See* BI&E Complaint at Paragraph 8. The Commission’s Pipeline Safety section likewise is responsible for enforcing safety laws and regulations and providing technical expertise in this proceeding. 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 fails to even argue that his interest is not adequately represented. 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 Complaint proceeding is necessarily limited in scope to the pin-hole leak in Morgantown and past regulatory compliance issues, a Commission decision will have no discernable effect on Petitioner, let alone a binding one. Petitioner fails to even assert it 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 persons or entities without standing is not in the public interest because it ignores the law (standing principles) and needlessly expands this proceeding, wasting the parties time and resources. Moreover, Petitioner fails to allege that intervention is in the public interest. It is not. The Petition should be denied.

III. CONCLUSION

WHEREFORE Sunoco Pipeline L.P. respectfully requests Thomas Casey's Petition to Intervene be denied.

Respectfully submitted,



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Dated: January 10, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

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 ELECTRONIC AND FIRST CLASS

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Dated: January 10, 2019