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February 7, 2019

VIA ELECTRONIC FILING

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3006116 and P-2018-3006117; **SUNOCO PIPELINE L.P.'S ANSWER OPPOSING PETITION TO INTERVENE OF TWIN VALLEY AREA SCHOOL DISTRICT**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Answer Opposing Petition to Intervene of Twin Valley School District in the above-referenced proceeding.

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

Very truly yours,

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Enclosure

cc: Per Certificate of Service
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:		
ROSEMARY FULLER	:		
MICHAEL WALSH	:		
NANCY HARKINS	:		
GERALD MCMULLEN	:		
CAROLINE HUGHES and	:		
MELISSA HAINES	:		
	:	Docket Nos.	C-2018-3006116
Complainants,	:		P-2018-3006117
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

**SUNOCO PIPELINE L.P.’S ANSWER
OPPOSING PETITION TO INTERVENE
OF TWIN VALLEY SCHOOL DISTRICT**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing Twin Valley School District’s (Petitioner) January 18, 2019 Petition to Intervene in this proceeding because Petitioner’s schools are outside the geographic scope of the Complaint and Petitioner seeks to intervene on issues outside the scope of the Complaint and seeks relief that the law does not allow. Moreover, to the extent the Petition to Intervene raises issues covered by the Amended Complaint, Petitioner has not shown the necessary requirement of intervention under

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”).

the Commission's regulation at 52 Pa. Code § 5.72, that its interests are not adequately represented by a party already litigating these issues.

The Petition alleges intervention is proper based on Petitioner's proximity to the Mariner East pipelines and its duty to assure proper disaster response. The Petition impermissibly requests relief and raises issues well beyond the legal and geographic scope of the Amended Complaint. The Petition also requests relief outside of what the law and applicable PHMSA regulations require of SPLP, including:

- a. That the Commission order Sunoco to *perform continued and ongoing line inspection and geophysical testing and analysis in the areas of School District's schools where the ME Pipelines are operating and/or are in the process of construction;*
- b. That the Commission order Sunoco to *provide to the School District on a timely basis the results of that continued and ongoing line inspection and geophysical testing;*
- c. That the Commission order Sunoco to disclose to the School District when work crews or inspectors will be on or near School District Property;
- d. That the Commission order that *in the absence of either the above testing or inspection, or the delivery of the result of same, or in the absence of testing or inspection results that establish that the ME Pipelines or the valve station are determined by the Bureau of Inspection and Enforcement ("BI&E") and the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") to not pose any risk to the School District's properties, that the ME Pipelines shall immediately cease operations until such time as Sunoco performs all necessary corrective actions and acquires approval of BI&E and PHMSA prior to receiving Commission approval to resume operation and/or construction;*
- e. That the Commission order Sunoco to develop and submit *testing and inspection protocols appropriate to ensure the safe operation and maintenance of ME Pipelines in close proximity to School District's schools, to be approved by BI&E and PHMSA on a regular basis;*
- f. That the Commission order Sunoco to develop and install a *mass early warning notification system* at all potentially affected School District Schools which would provide immediately notice of a leak, potential explosion or another failure in the pipeline system;

- g. That the Commission order Sunoco to disclose to the School District any damage or potential damage to School District facilities or property;
- h. That the Commission order Sunoco provide a School District-specific public education or awareness plan designed to inform and educate the students, families, and School District Staff on proper and effective disaster prevention and response;
- i. Such further relief as may become available during the proceedings on this Application.

(emphasis added).

In contrast, the Amended Complaint in this proceeding raises issues regarding SPLP's public awareness program, emergency response program, and attempts to raise an issue regarding SPLP's integrity management program. The Amended Complaint does not raise issues of geology. The Petition seeks relief that would require consideration of issues (geology) well-beyond the scope of the Amended Complaint. That is not a proper basis for intervention. *See* 52 Pa. Code § 5.72(a)(2) (requiring an interest that may be directly affected by the proceeding).

Likewise, Petitioner's schools for which it claims an interest (Twin Valley Elementary Center in Elverson Borough, Chester County and Twin Valley Middle School and High School in Caernarvon Township, Berks County) are outside the geographic scope of the Complaint. Based on Your Honor's ruling in *DiBernardino v. Sunoco Pipeline L.P.*, Order Granting In Part And Denying In Part Preliminary Objections To Amended Complaint at 11 (Order entered Dec. 21, 2018) (Barnes, J.), that Complainant can only pursue claims and relief for the geographic area in which Complainant claims standing, this proceeding is likewise limited to the geographic areas for which Complainants claim standing. *See* Sunoco Pipeline L.P. Preliminary Objections to Amended Complaint at Paragraphs 20-23, *Flynn et. al. v. Sunoco Pipeline L.P.* (filed Jan. 10, 2019). That geographic scope is: Middletown Township, Delaware County; Thornbury Township, Delaware County; Westtown Township, Chester County; West Whiteland Township, Chester County; East Goshen Township Chester County; and Aston Township, Delaware County.

In contrast, Twin Valley School District claims intervention for three school, none of which are in the Townships for which Complainants claim standing. Allowing Petitioner to intervene would improperly broaden the geographic scope of this proceeding and intervention should be denied.

The Petition also seeks relief improperly outside of the Pennsylvania rulemaking process (The Commonwealth Documents Law and the Regulatory Review Act) and essentially would re-write federal regulations and establish new standards. The additional or new relief Petitioner seeks to inject into this proceeding² is far afield of what federal regulation require of SPLP and is simply relief that the Commission cannot order,³ and pursuit of such issue is a waste of the money and time of the School District, SPLP and the Commission's resources. Intervention is not proper to seek relief that is beyond the power of the Commission to order or to illegally attempt to adopt standards that should only be set by a rulemaking process and conformance to federal law. The rest of the issues the Petition raises are duplicative of the Complaint and Petitioner has not shown that those interests are not already adequately represented by existing parties. The Petition to Intervene should be denied.

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*

² Examples include a regulatory requirement to install an alarm system and shutting down the Mariner East pipelines unless it can be shown a zero risk to Petitioner. Neither of these are required by governing PHMSA regulations nor has the standard for any public utility operation been a "zero risk" to which little if anything in our society is, including riding in a school bus.

³ The Commission may adopt additional or more stringent pipeline safety regulations than 49 C.F.R. Part 195 regulations "only if those standards are compatible with minimum standards." 49 U.S.C.A. § 60104(c). The Commission has not established any relevant regulations and after-the-fact subjective interpretation of 49 C.F.R. Part 195 is therefore inconsistent with the Pipeline Safety Act and should be preempted. In addition, finding a violation based on an after-the-fact subjective interpretation rather than the plain terms of the regulations violates SPLP's due process rights.

Citizens Communications Company of All Stock of the Join Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc., Docket No. A-310800F0010, Order Granting Exceptions (entered Feb. 8, 2007).

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.

Accordingly, to have standing to intervene, Petitioner must show *all of the following*: (1) a direct, substantial, and immediate interest in the challenged action, (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 proceedings. Petitioner here meets none of these three standards.

Further, it is well-established that a petition to intervene cannot expand the scope of the issues in the underlying proceedings. *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.”).

B. Argument

1. Petitioner’s Intervention is Based on Issues that Would Improperly Broaden this Proceeding and Cannot be the Basis for Intervention

The Amended Complaint alleges the following issues:

Count I: Violation of 49 CFR § 195.440 (Alleging deficiencies in the SPLP's public awareness program);

Count II: Violation of 66 Pa.C.S. § 1501 and 52 Pa. Code § 59.33 (Alleging SPLP's failure to properly warn and protect the public);

Count III: Failure to Consider the Value of Lost Human Life (Alleging SPLP failed to consider the economic value of life);

Count IV: Failure of Integrity Management Program (Alleging SPLP Integrity Management Plan deficiencies).

Thus, the scope of the underlying issues in the Complaint case are SPLP's public awareness and emergency response programs, general allegations of risk, and allegations concerning SPLP's integrity management plan, which specifically focus on corrosion control and cathodic protection.

In contrast, this Petition seeks relief for topics, specific to the School Districts grounds along the Mariner East right of way, both geographically distant to the Complainants and unrelated to the scope of the issues the Amended Complaint raises, including new issues regarding geology.

Petitioner's pursuit of its requested relief would without question improperly expand the geographical scope of the proceeding. Based on Your Honor's ruling in *DiBernardino v. Sunoco Pipeline L.P.*, Order Granting In Part And Denying In Part Preliminary Objections To Amended Complaint at 11 (Order entered Dec. 21, 2018) (Barnes, J.), that Complainant can only pursue claims and relief for the geographic area in which Complainant claims standing, this proceeding is likewise limited to the geographic areas for which Complainants claim standing. *See Sunoco Pipeline L.P. Preliminary Objections to Amended Complaint at Paragraphs 20-23, Flynn et. al. v. Sunoco Pipeline L.P.* (filed Jan. 10, 2019). That geographic scope is: Middletown Township, Delaware County; Thornbury Township, Delaware County; Westtown Township, Chester County; West Whiteland Township, Chester County; East Goshen Township Chester County; and Aston Township, Delaware County. In contrast, Twin Valley School District claims intervention for three school, none of which are in the Townships for which Complainants claim standing. Twin Valley

Elementary School is in Elverson Borough, Chester County, and Twin Valley Middle School and High School are in Caernarvon Township, Berks County. Allowing Petitioner to intervene here would improperly expand the geographic scope of the proceeding to other locations and other counties outside of the allowable geographic scope of the Amended Complaint.

Further, Petitioner's pursuit of its requested relief would without question improperly expand the scope of the issues in this proceeding, as discussed above. This improper expansion of geographical and legal scope is not a proper basis for intervention, and the Petition should be denied. *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.").

The Petition also seeks relief that SPLP has already done or is already engaged in. Moot requests for relief are likewise not a proper basis for intervention. Specifically, the Petition requests:

That the Commission order Sunoco provide a School District-specific public education or awareness plan designed to inform and educate the students, families, and School District Staff on proper and effective disaster prevention and response

SPLP has already met with this school district to provide the information necessary for the school district to develop its own hazard response plan or educational materials. Moreover, SPLP's public awareness mailings already provide this information.

2. Interests the Petition Properly Raises are Already Adequately Represented

Complainants adequately represent Petitioner's interests concerning issues already raised within the Amended Complaint. Complainants allege inadequacies in SPLP's public awareness

program and emergency preparedness program. In fact, in the Petition for Interim Emergency Relief Hearing, Complainants called a Downingtown Area School District witness to support these claims, and Complainants can do the same for Twin Valley School District in the ongoing Complaint proceeding, subject to evidentiary limitations, such as relevancy. The Complainants already adequately represent Petitioner's interests in issues raised in the Amended Complaint and the Petition should be denied.

WHEREFORE, Sunoco Pipeline L.P. requests Twin Valley School District's Petition to Intervene be denied.

Respectfully submitted,



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Dated: February 7, 2019

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 and served via overnight mail on the following:

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Dated: February 7, 2019