



Thomas J. Sniscak
(717) 703-0800
tjsniscak@hmslegal.com

Kevin J. McKeon
(717) 703-0801
kimckeon@hmslegal.com

Whitney E. Snyder
(717) 703-0807
wesnyder@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

February 25, 2019

VIA ELECTRONIC FILING

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

Re: Rebecca Britton v. Sunoco Pipeline L.P.; Docket No. C-2019-3006898;
**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING INTERVENTION OF
JOSH MAXWELL**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of Josh Maxwell 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: Josh Maxwell
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

REBECCA BRITTON,	:	
	:	
Complainant/Petitioner,	:	
	:	
v.	:	
	:	Docket No. C-2019-3006898
SUNOCO PIPELINE L.P.,	:	
	:	
Respondent.	:	
	:	
	:	
	:	
	:	

**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING
INTERVENTION OF JOSH MAXWELL**

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 Josh Maxwell (“Petitioner”) dated as January 20, 2019 seeking to intervene in the Rebecca Britton v. Sunoco Pipeline L.P. Formal Complaint, filed on January 3, 2019 and Docketed at C-2019-3006898 (“Formal Complaint”).

Petitioner did not serve SPLP with a copy of his Petition. To date, SPLP has not received any copy of this Petition to Intervene from the Petitioner in any format. Further, Petitioner did not e-file his document, so e-service did not occur. Petitioner claims to have served SPLP’s counsel via email, but that is not a proper method of service under 52 Pa. Code § 1.54. SPLP was first

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”).

alerted to the submission of the Petition when it was posted to the Docket associated with this case on February 8, 2019. Given the complete lack of service of the Petition, the Petition should be stricken. Alternatively, SPLP's Answer is timely as it has been filed within 20-days of posting of the Petition to the Commission's online docket and the Petition should be denied.

I. SUMMARY

The Petition should be denied because Petitioner does not have any requisite direct or immediate interest sufficient to meet the standards governing eligibility to intervene. Even if Petitioner had standing to intervene, any alleged interest is already adequately represented by the Complainant in this proceeding. Finally, the Petitioner would not be bound by the action of the Commission in this proceeding and granting this petition is not in the public interest.

Petitioner here is Mr. Josh Maxwell, an individual residing at 219 William Street, Downingtown, PA 19335, located in Chester County. Petitioner lives over 22,000 feet from the Mariner East 1 and 2 right-of-way and over 19,000 feet from the 12-inch bypass pipeline. Petitioner is intervening in his personal capacity on behalf of himself, not Downingtown. While Petitioner is the Mayor of Downingtown, and claims to "represent thousands of families, businesses, and emergency responders" *see* Petition at 4, he cannot represent the interests of Downingtown in his personal capacity. Petitioner has not alleged his petition was filed in any official capacity on behalf of Downingtown. As Your Honor recognized 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.), "Complainant does not have standing to represent other individuals, schools or entities." Petitioner cannot represent the interests of Downingtown and its population in a petition filed on his own behalf. Therefore, the

scope of the Petition must be limited to Petitioner's interests, not the interest of others. Petitioner has failed to show his personal interests are sufficient to grant intervention.

Further, the geographic scope of the Petition is unrelated to the geographic scope of the Complaint. The Complaint is limited in geographic scope to the area of the Complainant's residence in Uwchlan Township. Petitioner here is a resident of Downingtown and lives over 19,000 feet from the Mariner East pipelines. Thus, the Petitioner cannot meet the Commission's intervention standard of having a direct and immediate interest. Therefore, Petitioner does not have any requisite direct or immediate interest to grant standing. Accordingly, the petition to intervene should be denied.

Intervention is allowed under 52 Pa. Code § 5.72(a) where a person is "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." *Id.* (emphasis added) Intervention here is neither necessary nor appropriate because: 1) Petitioner does not have the requisite standing to intervene in the Complaint, 2) even if Petitioner had standing, his interests are adequately represented by the Complainant in this proceeding, 3) Petitioner would not be bound by the action of the Commission in this proceeding, and 4) Petitioner's participation is not in the public interest. Accordingly, the petition to intervene should be denied.

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, while Petitioner fails to assert that his intervention would be in the public interest. In fact, such intervention is not in the public interest.

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

Petitioner cannot show, as he is required to, a direct, immediate and substantial interest. Petitioner does not have a sufficient interest as his allegations of the public concern “as Mayor of Downingtown” are improper given he did not petition in his official capacity on behalf of Downingtown, but instead petitioned as an individual on his own behalf without alleging the official capacity to represent Downingtown itself. *See* Petition Paragraph 4. Further, Petitioner cannot show an interest sufficient to grant standing as he lives over 19,000 feet from the Mariner East pipelines and the Complaint involves a separate Township – Uwchlan, that is geographically separate from Petitioner's residence.

Petitioner cannot show any aggrievement that bears a close causal connection to this proceeding 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).

First, Petitioner here fails to allege that his interests are direct or immediate, and simply restates a summary of 52 Pa. Code § 5.72(a). *See* Petition Paragraph 3. Petitioner then goes on to allege concerns “as Mayor of Downingtown” claiming to “represent thousands of families, businesses, and emergency responders.” *See* Petition Paragraph 4. However, Petitioner here has filed in his personal capacity on his own behalf, and not in any official capacity as the Mayor of Downingtown on behalf of Downingtown. Petitioner does not have standing to assert the rights of others, and thus those allegations cannot serve as the basis for Petitioner to have an interest in this proceeding. *See, e.g., See 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.). To the extent that the Petitioner raises allegations of concern to “access to clean water” and an allegation that “a dam that if fractured would put thousands of individuals in immediate risk of harm,”, again, Petitioner cannot show an interest based on the interests of others or of general public concern. Rather, Petitioner must show a direct interest, that is he “must show causation of the harm by the matter of which he or she complains,” but he has failed to do so. *See In Re Peco Energy Co.*, A-110550F0160, 2005 WL 1959191, at *2–6 (July 18, 2005).

Petitioner further goes on to state “grave concerns regarding the allegations filed by the Pa PUC Bureau of Investigations & Enforcement,” apparently referencing the December 13, 2018 BI&E Complaint filed against SPLP. *See* Docket No. C-2018-3006534. The bases for BI&E’s Complaint is a singular leak, which occurred geographically apart from the Petitioner’s residence, and at a time nearly two years prior. These allegations regarding a geographically distant and past event are irrelevant, and do not warrant granting standing to Petitioner. There is no causal connection to Petitioner regarding the BI&E Complaint sufficient to be a direct or immediate interest in the allegations in the Petition.

Finally, the Complaint arises under the geographic scope of the Complainant’s residence in Uwchlan Township, Chester County. Petitioner here is a resident Downingtown. He lives 19,000 from the Mariner East pipelines. Simply put, Petitioner here has failed to allege a causal relationship between the claimed injury in his Petition and the underlying Complaint, and thus fails to meet either the immediacy or directness requirements to fulfill standing in a petition to intervene. *See 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)).

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 underlying Complaint, Petitioner is left with solely a general interest in compliance with regulations, an interest that all citizens share. Accordingly, Petitioner has not shown an interest adequate to fulfill standing requirements to intervene.

C. Petitioner's interests are adequately represented by the Complainant in this proceeding.

Assuming, *arguendo*, that Petitioner could show an interest, that interest is more than adequately represented by Complainant. Complainant already raises concerns for water supplies and for concerns over the Mariner East right-of-way. Therefore, any concerns raised by petitioner on the same issues are adequately represented by Complainant. Finally, Petitioner does not specifically allege, as he is required to do, why his interests are not adequately represented by the Complainant. The Complainant already adequately represents Petitioner's interests in the issues raised in the Complaint and the Petition should be denied.

D. Petitioner will not be bound by this proceeding

Since this Complaint proceeding should be limited in scope to the geographic area where Complainant claims standing, there is no binding effect on Petitioner. Petitioner fails to even assert he could be bound by the Commission's actions in this proceeding. As such, Petitioner fails to meet this prong of the intervention standard.

E. Petitioner's participation is not in the public interest.

Allowing intervention of persons or entities outside the geographic region of the Complaint is not in the public interest because those parties have no direct interest and thus their intervention and the time needed for their participation will unnecessarily extend the proceeding beyond what is necessary to resolve the underlying Complaint. This may ultimately harm the public interest including SPLP's shippers, the shippers' customers, and SPLP, which is a public utility. As such, Petitioner fails to meet this prong of the intervention standard.

WHEREFORE Sunoco Pipeline L.P. respectfully requests Josh Maxwell's Petition to Intervene be denied.

Respectfully submitted,



Thomas J. Sniscak, Esq. (PA ID No. 33891)
Kevin J. McKeon, Esq. (PA ID No. 30428)
Whitney E. Snyder, Esq. (PA ID No. 316625)
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Tel: (717) 236-1300
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com

Robert D. Fox, Esq. (PA ID No. 44322)
Neil S. Witkes, Esq. (PA ID No. 37653)
Diana A. Silva, Esq. (PA ID No. 311083)
MANKO, GOLD, KATCHER & FOX, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Tel: (484) 430-5700

Dated: February 25, 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 on the following:

VIA FIRST CLASS MAIL

Rebecca Britton
211 Andover Drive
Exton, PA 19341



Thomas J. Sniscak, Esq.
Kevin J. McKeon, Esq.
Whitney E. Snyder, Esq.

Dated: February 25, 2019