



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

Kevin J. McKeon
(717) 703-0801
kjmckeon@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

March 4, 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 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: David J. Brooman, Esquire
Richard C. Sokorai, Esquire
Mark R. Fischer, Jr., Esquire
Thomas Casey (Pro Se Petitioner)
Josh Maxwell (Pro Se Petitioner)
Vincent M. Pompo, Esquire
Alex J. Baumler, Esquire
Per Certificate of Service

I. INTRODUCTION

The Petition should be denied because: 1) This proceeding has resulted in a settlement in principle in full for which a Settlement Agreement will be filed by the Parties to this proceeding (BI&E and SPLP) on or before April 1, 2019, so there is no proceeding in which to intervene and Petitioner can instead file comments to the settlement concerning its alleged interests in this matter, 2) Petitioner has not served the Petition on SPLP, 3) Petitioner does not have any interest sufficient to grant standing, has no right of private attorney general, and cannot represent his constituents, and 4) allowing intervention is not in the public interest.

On March 1, 2019, SPLP and BI&E jointly filed a letter in this proceeding that indicated:

1. BI&E and SPLP have reached a settlement-in-principle to fully resolve the Complaint in this proceeding;
2. The settlement promotes public safety;
3. BI&E and SPLP request abeyance of the proceeding for 30 days to allow the parties to prepare and file a settlement agreement;
4. BI&E and SPLP request that the Parties and interested persons (including those that have filed petitions to intervene in this matter) be provided the opportunity to submit Comments and Reply Comments regarding the Settlement Agreement; and
5. The Commission will consider and decide whether the Settlement Agreement should be approved.

Given the pending settlement of this proceeding, there is no underlying litigated proceeding in which to intervene, and all petitions to intervene should be denied. *See, e.g., 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 at 10 (Order entered May

3, 2018) (finding interventions moot once SPLP and BI&E had resolved matter without need for evidentiary hearing) (“An intervenor’s role in proceedings before this Commission is on a non-party basis, meaning that the *initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors*. See 52 Pa. Code § 5.75(c).”).

Moreover, the process that BI&E and SPLP have proposed for approval of the pending Settlement Agreement allows interested persons to comment on the Settlement Agreement prior to Commission approval. Petitioner can voice any concerns it has regarding this matter at that time for the Commissions consideration.

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.

Petitioner must show a direct, immediate, and substantial interest in this proceeding to be eligible for intervention. He cannot. Petitioner is 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 right-of-way and approximately 16 miles from where the leak at issue in this Complaint occurred. 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 cannot represent his constituents in this proceeding. It is black-letter law that in order to have standing a party must have a personal interest and cannot represent the general interest of others in compliance with the law. *See, e.g., Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280–81, 464 Pa. 168, 192

(Pa. 1975) (“[I]t is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.”). Likewise, as a non-lawyer, Mr. Maxwell does not have representational standing – ie. he can only represent his own interests, not the interest of others. *See, e.g., Tomko v. Duquesne Light Co.*, Docket No. C-2016- 2577571 (Order entered Jul. 20, 2017) (affirming ALJ Calvelli’s conclusion that a non-lawyer utility customer attempting to represent other customers’ interests in addition to his own, lacked standing to pursue the interests of others). Petitioner has not alleged his petition was filed in any official capacity on behalf of Downingtown. “Complainant does not have standing to represent other individuals, schools or entities.” *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.). Petitioner cannot represent the interests of Downingtown and its population in a petition filed on his own behalf.

Moreover, Petitioner cannot act as a third-party attorney general especially where, as here, BI&E is prosecuting this Complaint on behalf of the public interest. *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). Pipeline safety law and regulations allow no such standing. 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.

Finally, Petitioner’s intervention is contrary to the public interest. Allowing intervention could needlessly prolong this proceeding and inhibit entry and execution of a Settlement Agreement that will promote public safety.

II. ARGUMENT

A. Legal Standard

1. Intervention in Settled Matters

“An intervenor’s role in proceedings before this Commission is on a non-party basis, meaning that the *initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors.*” *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 at 10 (Order entered May 3, 2018) (citing 52 Pa. Code § 5.75(c)). Thus, where the initiating party (BI&E) has reached an agreement that will fully resolve the proceeding without the need for an evidentiary hearing, there is no litigated proceeding in which potential intervenors can intervene.

2. Standing to Intervene

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.

B. There is no litigated proceeding in which potential intervenors can intervene

This proceeding has resulted in a settlement in principle in full for which a Settlement Agreement will be filed by the Parties to this proceeding (BI&E and SPLP) on or before April 1,

2019, so there is no proceeding in which to intervene. Petitioner can instead file comments to the settlement concerning its alleged interests in this matter.

On March 1, 2019, SPLP and BI&E jointly filed a letter in this proceeding that indicated:

1. BI&E and SPLP have reached a settlement-in-principle to fully resolve the Complaint in this proceeding;
2. The settlement promotes public safety;
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4. BI&E and SPLP request that the Parties and interested persons (including those that have filed petitions to intervene in this matter) be provided the opportunity to submit Comments and Reply Comments regarding the Settlement Agreement; and
5. The Commission will consider and decide whether the Settlement Agreement should be approved.

Given the pending settlement of this proceeding, there is no underlying litigated proceeding in which to intervene, and all petitions to intervene should be denied. *See, e.g., 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 at 10 (Order entered May 3, 2018) (finding interventions moot once SPLP and BI&E had resolved matter without need for evidentiary hearing) (“An intervenor’s role in proceedings before this Commission is on a non-party basis, meaning that the *initiating and responding parties can drive the outcome without regard to the alleged interests of would-be intervenors*. See 52 Pa. Code § 5.75(c).”).

Moreover, the process that BI&E and SPLP have proposed for approval of the pending Settlement Agreement allows interested persons to comment on the Settlement Agreement prior

to Commission approval. Petitioner can voice any concerns it has regarding this matter at that time for the Commissions consideration.

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

Petitioner cannot show a direct, immediate and substantial interest. “[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 is too remote from both the ME1 pipeline and the pin-hole leak at issue here to have an interest in this proceeding. The Complaint alleges violations of federal regulations concerning cathodic protection measurements and records thereof. The Complaint centers on a pin-hole leak that occurred near 5530 Morgantown Road, Morgantown, Berks County, Pennsylvania. Complaint at ¶ 18. Petitioner lives approximately 16 miles downstream from where

the pin-hole leak occurred, and he fails to aver how a pin-hole leak in Morgantown could affect him. It did not. The pin-hole leak occurred between the Elverson block valve and the Beckersville pumping station, which were the facilities used to isolate the leak. These facilities are upstream from the nearest upstream facility to Petitioner, which was not involved in the leak. Moreover, Petitioner lives over 22,000 feet from the ME1 right-of-way.

Petitioner cannot represent his constituents in this proceeding. It is black-letter law that in order to have standing a party must have a personal interest and cannot represent the general interest of others in compliance with the law. *See, e.g., Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280–81, 464 Pa. 168, 192 (Pa. 1975) (“[I]t is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.”). Likewise, as a non-lawyer, Mr. Maxwell does not have representational standing – ie. he can only represent his own interests, not the interest of others. *See, e.g., Tomko v. Duquesne Light Co.*, Docket No. C-2016- 2577571 (Order entered Jul. 20, 2017) (affirming ALJ Calvelli’s conclusion that a non-lawyer utility customer attempting to represent other customers’ interests in addition to his own, lacked standing to pursue the interests of others). Petitioner has not alleged his petition was filed in any official capacity on behalf of Downingtown. “Complainant does not have standing to represent other individuals, schools or entities.” *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.). Petitioner cannot represent the interests of Downingtown and its population in a petition filed on his own behalf.

Moreover, Petitioner cannot act as a third-party attorney general especially where, as here, BI&E is prosecuting this Complaint on behalf of the public interest. *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). Pipeline safety law and regulations allow no such standing for Mr. Maxwell to enforce them here.

D. Granting Intervention is Not in the Public Interest

Petitioner's intervention is contrary to the public interest. Allowing intervention could needlessly prolong this proceeding and inhibit entry and execution of a Settlement Agreement that will promote public safety. That is not in the public interest. Public interest concerns Petitioner has can be raised in comments to the Commission regarding the Settlement Agreement.

III. CONCLUSION

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

Respectfully submitted,



Thomas J. Sniscak, Attorney I.D. # 33891
Kevin J. McKeon, Attorney I.D. # 30428
Whitney E. Snyder, Attorney I.D. # 316625
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300
tjsniscak@hmslegal.com
kjmckeon@hmslegal.com
wesnyder@hmslegal.com

Dated: March 4, 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.

VIA ELECTRONIC AND FIRST CLASS

Stephanie M. Wimer, Senior Prosecutor
Michael L. Swindler, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
stwimer@pa.gov
mwindler@pa.gov



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

Dated: March 4, 2019