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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 WEST WHITELAND TOWNSHIP**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of West Whiteland Township 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

**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

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**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING  
INTERVENTION OF WEST WHITELAND TOWNSHIP**

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Pursuant to 52 Pa. Code § 5.66,<sup>1</sup> Sunoco Pipeline L.P. (“SPLP”), by and through its attorneys, Hawke McKeon & Sniscak LLP, submits this Answer Opposing the Petition to Intervene of West Whiteland Township (“Petitioner” or “WWT”) served on February 11, 2019 seeking to intervene in the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement’s (“BI&E”) Formal Complaint filed on December 13, 2018 and Docketed at C-2018-3006534 (“Complaint”).

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<sup>1</sup> 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”).

## **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 does not have any interest sufficient to grant standing and has no right to act as a third-party attorney general, and 3) 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 must show a direct, immediate, and substantial interest in this proceeding to be eligible for intervention. It cannot. Instead, WWT raises issues unrelated the Complaint as a basis for intervention, including geology issues in West Whiteland Township for which Petitioner makes no attempt to relate to the issues in this proceeding. Petition at PP 17- 23. The pin-hole leak that forms the basis of the Complaint had no effect on WWT, as it was approximately 19 miles away, was a singular and isolated event, and did not involve ME1 facilities adjacent to WWT. 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 Petitioner here.

Finally, WWT’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;
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.

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).

WWT raises issues of geology unrelated to the Complaint. Petition at PP 17- 23. 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. West Whiteland Township is approximately 19 miles downstream from where the pin-hole leak



occurred, and WWT fails to aver how a pin-hole leak in Morgantown could affect WWT. 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 WWT, which was not involved in the leak.

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.

D. Granting Intervention is Not in the Public Interest

WWT’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 WWT has can be raised in comments to the Commission regarding the Settlement Agreement.

**III. CONCLUSION**

**WHEREFORE** Sunoco Pipeline L.P. respectfully requests West Whiteland Township's Petition to Intervene be denied.

Respectfully submitted,



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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**

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Dated: March 4, 2019