**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa DiBernardino :

:

v. :  C-2018-3005025

:

Sunoco Pipeline, L.P. :

**ORDER GRANTING INTERVENTION AND SCHEDULING FURTHER PREHEARING CONFERENCE**

On December 19, 2018, Thomas Casey filed a Petition to Intervene in the above-captioned matter. Mr. Casey avers that he has an agreed to right-of-way (ROW) with the Keystone Pipeline Company, later known as Sunoco Pipeline, L.P. (Sunoco or Respondent). Mr. Casey’s property is located directly across from Saints Peter and Paul School’s property boundary within 100 feet. Complainant is primarily concerned with safety as it pertains to the Saints Peter and Paul School, where her children attend classes. Mr. Casey’s interests in this proceeding are separate but not overly broadening of the scope of this proceeding.

Sunoco objects to Mr. Casey’s intervention arguing he has not raised a sufficient interest or standing and because he has petitioned to intervene in the *Bureau of Investigation and Enforcement v. Sunoco Pipeline, L.P.* complaint proceeding at Docket No. at C-2018-3006534.

Virginia Marcille-Kerslake filed a Petition to Intervene in the above-captioned matter on February 8, 2019. Ms. Marcille-Kerslake avers that she lives 100 feet from the Mariner East pipeline in West Whiteland Township, an adjacent township to East Goshen Township. Ms. Marcille-Kerslake argues that although she has Intervenor status in the consolidated case of *Petition of State Senator Andrew E. Dinniman for Interim Emergency Relief* and *Dinniman v. Sunoco Pipeline LP*, at Docket Nos. P-2018-3001453 and C-2018-3001451 (*Dinniman*), that proceeding has been stayed due to an interlocutory appeal made by Respondent. This stay is pending a ruling of the Commonwealth Court of Pennsylvania. Ms. Marcille-Kerslake argues her “circumstances do overlap” those of Ms. DiBernardino in the instant case and that she is concerned for the safety of the public and neighborhood in general. Tr. 8.

Conversely, Sunoco argues Ms. Marcille-Kerslake is already an Intervenor in a similar proceeding and that she should not be able to litigate her claims twice*. Id.* Additionally, Sunoco contends the geographical scope of the instant proceeding is East Goshen Township, and since Ms. Marcille-Kerslake resides in the adjacent West Whiteland Township, she has no standing to intervene.

Disposition

Section 5.72 of the Commission’s regulations governs intervention. 52 Pa. Code § 5.72. This Section provides that “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.” 52 Pa.Code § 5.72(a). Section 5.72 also provides that the right or interest supporting intervention may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(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.

52 Pa.Code § 5.72(a)(1)-(3). Commission regulations also govern the form, content and timing of Petitions to Intervene.

In this case, there is good cause that warrants granting the Petitions to Intervene and allowing these two individuals to participate in this proceeding at this juncture. The Petitioners have unique interests in this case which are directly affected as they reside within East Goshen Township or adjacent to it in West Whiteland Township. Their interest in their personal safety and that of their neighbors is not so broadening to warrant a denial of intervention. Further, although Ms. Marcille-Kerslake is an Intervenor in the *Dinniman*  proceeding, a preliminary issue regarding Senator Dinniman’s standing to proceed is currently pending for disposition before the Commonwealth Court. There is judicial efficiency in permitting intervention rather than requiring each individual to file separate complaints as these Petitions to Intervene raise issues essentially overlapping issues previously raised by Complainant concerning safety and emergency preparedness in East Goshen Township, Chester County. There is a close enough nexus between a potential safety issue in East Goshen Township affecting property interests and rights in the adjacent West Whiteland Township. Thus, I find the Intervenors have common and separate interests that are substantial, immediate and direct in the outcoming of this proceeding.

In granting intervention, however, Intervenors will be required to take the case as it currently stands. Intervenors generally take the record as they find it at the time of intervention. Therefore, the orderly progress of the case will be maintained, the issues will not be significantly broadened beyond those issues in their petitions concerning the geographical boundaries of East Goshen Township, Chester County. Also, the burden of proof will not be shifted.

Further Prehearing Conference

In its prehearing memorandum and at the prehearing conference held on March 14, 2019, Sunoco indicated an intent to file a motion to consolidate the instant proceeding with a similar proceeding at *Flynn et al. v. Sunoco Pipeline, L.P.,* Docket Nos. P-2018-3006117 and C-2018-3006116 (*Flynn*). The parties were willing to forgo establishing a procedural schedule in the instant case. Ms. DiBernardino will have ten (10) days from the filing of the motion to consolidate to file an Answer. She indicated a willingness to attend the *Flynn* prehearing conference scheduled for 10:00 a.m. on April 24, 2019. Any motion to consolidate will be considered at that time. Accordingly, a further notice of prehearing conference will be issued in the instant case also scheduling a prehearing conference at 10:00 a.m. on April 24, 2019.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene filed by Thomas Casey, a *pro se* individual, is granted.
2. That the Petition to Intervene filed by Virginia Marcille-Kerslake, a *pro se* individual, is granted.
3. That a further Prehearing Conference will be scheduled at 10:00 a.m. on April 24, 2019, at the time and date set aside for a prehearing conference in the matter of *Flynn v. Sunoco Pipeline, L.P.* at Docket Nos. C-2018-3006116 and P-2018-3006117.

Date: March 14, 2019 /s/

Elizabeth H. Barnes

Administrative Law Judge

**C-2018-3005025- MELISSA DIBERNARDINO v. SUNOCO PIPELINE L.P.**

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