**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rebecca Britton :

:

v. :  C-2019-3006898

:

Sunoco Pipeline, L.P. :

**ORDER**

**DENYING PRELIMINARY OBJECTIONS AND GRANTING INTERVENION**

On January 2, 2019, Rebecca Britton (Complainant) filed a complaint with the Commission against Sunoco Pipeline, L.P. (Sunoco or Respondent). The Complaint was served on January 4, 2019. Complainant avers she resides at 1211 Andover Drive, Exton, Pennsylvania in Uwchlan Township, Chester County. She and her family reside downhill approximately 450 feet from an easement containing the Mariner East 1 (ME1) pipeline and the 12-inch workaround pipeline, as well as from construction on the Mariner East 2 (ME2) and Mariner East 2X (ME2X) pipelines (collectively “Mariner East Project”). Complainant’s two children will spend their academic years in the school facilities of the Downingtown Area School District (DASD), in direct proximity to the Mariner East Project. Specifically, Complainant avers these schools include: Lionville Elementary, 1520 feet; Marsh Creek 6th Grade Center (MC6GC), 1005 feet; Lionsville Middle School, 645 feet; and Downingtown East High School, 1150 feet. Complaint at 3. Additionally, she avers her family relies upon the Marsh Creek Lake Reservoir and Great Marsh to maintain water supply. The 12 inch and 8 inch (ME1) lines traverse this water resource.

Complainant avers Chester County is a high consequence area faced with a “compounded risk of multiple pipelines filled with NGL’s[[1]](#footnote-1) essentially 24 hours a day.” Complaint at 4. Complainant argues Sunoco has violated 66 Pa. C.S. § 1501 in that its service is not safe or reasonable as no pipeline siting agency or local municipality ever approved the siting of these pipelines in close proximity to her residence, water supply and schools her children attend. Complaint at 6.

Complainant contends the proximity of a valve station located at Dorlan Mills Road in Upper Uwchlan Township to the Shamona Creek Elementary School and the MC6GC presents a significant safety risk to staff and students, should an internal or external pipeline related emergency occur. Complainant’s children will attend the MC6GC school for their 6th grade year. Thus, this valve is not installed such that it is protected from damage or tampering as it is only protected by a chain link fence. This could be a potential target for National Security. Complaint at 17, Exhibits 9 and 10.

Complainant contends the risk of a hazardous volatile liquid (HVL) leak at the valve station at Dorlan Mills Road within 1000 feet to two schools is unreasonable and in violation of 49 CFR §§ 195.254(5); 195.258 and 195.260(c). Complainant requests the Commission determine the safety of the valve station. Complainant avers it is unreasonable service in violation of 66 Pa. C.S. § 1501 for Sunoco to have located its Mariner East Project next to places of public assembly, including the Lionville Elementary School, Lionville Middle School, Downingtown East High School, Shamona Creek Elementary School and MC6GC due to pipeline integrity concerns and deficient emergency preparedness plans and public awareness programs.

Complainant seeks a Commission determination as to the following issues: 1) whether the pipeline system is safe; 2) whether the Dorlin Mill Rd. valve station is safe; 3) if PEMA hazard insurance policy is a safe, adequate and reasonable risk to the Commonwealth; 4) whether Sunoco’s public awareness program is adequate; and 5) whether a mass warning system should be in place.

Sunoco filed Preliminary Objections and an Answer and New Matter on January 24, 2019. The Answer and New Matter substantially denies the material averments in the Complaint and avers that Complainant’s claims are barred by issue and claim preclusion and are an improper collateral attack on prior orders and determinations of the Commission. Sunoco also avers that Complainant lacks standing to bring claims beyond the geographic region for which she has standing, Uwchlan Township. Specifically, she lacks standing to raise claims pertaining to a leak on ME1 in Morgantown, Berks County, which is the subject of a Bureau of Investigation and Enforcement Complainant against Sunoco. Sunoco claims any issue regarding the location of Sunoco’s pipelines are barred by laches. Sunoco requests the assessment of costs and counsel fees and a dismissal of the complaint. New Matter at 20-21.

On February 2, 2019, Complainant filed an Answer to Preliminary Objections. On February 8, 2019, Josh Maxwell, Mayor of Downingtown, filed a Petition to Intervene. On February 12, 2019, Complainant filed a Response to Answer and New Matter. On February 14, 2019, a Motion Judge Assignment Notice was issued assigning me as the Presiding Officer responsible for deciding the Preliminary Objections. On February 25, 2019, Sunoco filed an Answer to Petition to Intervene. The Preliminary Objections and Petition to Intervene are ripe for a decision.

Preliminary Objections

The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code §5.101(a) as follows:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

52 Pa. Code §5.101(a).

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C‑00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Gas Company*, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Ms. DiBernardino and should dismiss the complaint only if it appears that she would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa. Code §5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code §5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa. Code §5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa. Code §5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm’n*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. Pub. Util. Comm’n*, 103 A.2d 502 (Pa. Super. 1954).

In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code §5.22(a)(4). Here, the complaint alleges facts that could be construed as a violation by Sunoco of a statute, regulation or order which the Commission has jurisdiction to administer by failing to provide adequate, reasonable service and facilities.

The statute at 66 Pa.C.S. §1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. §1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Telephone Co.,* 372 A.2d 1203 (Pa. Super. 1977) *aff’d* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Telephone Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission’s regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. §1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Laboratory Services, Inc. v. Metropolitan Edison Co.*, Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.,* Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metropolitan Edison Co.*, 80 PAPUC 662 (1993).

The Commission regulations at 52 Pa.Code § 59.33, promulgated pursuant to 66 Pa.C.S. § 1501, require that hazardous liquid utilities shall have minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101-60503 and the regulations at 49 CFR Parts 191-193, 195 and 199. The Commission regulations adopt federal safety standards for hazardous liquid facilities. These standards include what materials must be used for new hazardous liquid pipelines, how those pipelines should be constructed, as well as corrosion control, maintenance and testing of existing hazardous liquid pipelines. The standards also address emergency preparedness and public awareness plans at 49 CFR § 195.440 (relating to public awareness).

It is routine for the Commission to examine the complaints filed by *pro se* complainants to determine whether there is a matter over which it can exercise jurisdiction, even if the complaint is not fashioned in a technically correct way. If there exists a possibility that a relevant fact may be in dispute, preliminary objections and prehearing motions are denied giving the *pro se* complainant an opportunity to state a case over which the Commission can exercise its jurisdiction. The Commission has stated, however, that a customer should be heard on an allegation that equipment installed by a utility may be unsafe or its installation unreasonable. Recently, in *Paul v. PECO Energy Co.*, Docket No. C-2015-2475355 (Opinion and Order entered June 14, 2018) (*Paul*) the Commission reiterated that pursuant to Section 1501 of the Code, a public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public, referencing 66 Pa.C.S. § 1501, cited above. Again, “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995).

In *Paul v. PECO* and *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018), the Commission noted that pursuant to Section 1501 of the Code, the Commission developed regulations governing electric safety standards. Under these regulations, an electric distribution company (EDC) must use reasonable efforts to properly warn and protect the public from danger. The EDC must also exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC’s provision of electric utility service and its associated equipment and facilities. *See* 52 Pa. Code § 57.28(a)(1). Similarly, in the instant case, a pipeline operator utility must comply with Section 59.33, which provides that it should use every reasonable effort to properly warn and protect the public from danger and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. 52 Pa. Code § 59.33(a). Whether the actions of Sunoco are reasonable efforts to properly warn and protect the public from danger is an issue over which the Commission has jurisdiction.

Failure to verify the alleged facts with an expert’s verification

Sunoco’s Position

Sunoco argues the Complaint should be dismissed in its entirety pursuant to 52 Pa. Code § 5.101(a)(2) because of failure to verify the alleged facts with expert verification. Throughout the Complaint, Complainant relies on scientific assertions, opinions, and alleged facts which are not supported by any expert verification. Sunoco seeks to strike the Complaint at Paragraphs G, H, L, 1, 2, 3, 4, 6, 10, 15, 1, 17, 25, 29, 30, 32 and Relief Requested 3, 11, and 12 because these paragraphs form the very basis of the Complaint and Complainant is not an expert in pipeline safety, risk, public awareness, or pipeline siting and any averments used for the basis of the Complaint consisting of technical conclusions require expert verification under 52 Pa. Code § 1.36. Without this basis, the Complaint should be dismissed pursuant to § 5.101(a)(2) for failing to conform with 52 Pa. Code § 1.36.

Complainants’ Position

Complainant admits she is not an expert in pipeline safety, risk, public awareness or pipeline siting; however, she avers her concerns as an affected community member, especially regarding her personal safety and that of her minor children does not require expert verification.

Disposition

I am not persuaded by Sunoco’s argument to strike these paragraphs even though they are verified by a lay person as opposed to experts. Section 1.36 of the Commission’s regulations has no such requirement that only an expert can verify the averments. 52 Pa. Code § 1.36.

Motion to Strike Allegations Unrelated to Public Utilities

Sunoco’s Position

Sunoco argues that portions of the Complaint should also be stricken pursuant to 52 Pa. Code § 5.101(a)(1) for lack of Commission jurisdiction over the allegations. Throughout her Complaint, Complainant alleges violations of various health and safety statutes in Paragraphs G, H, J, M, N, 2, 5, 8, 11, 15-28, 29-31, 34, 36-38, 40-46, 49 and Relief Requested 1, 6-10, 13 and 14. The Commission does not have jurisdiction over these claims. *See* 66 Pa. C.S. § 701.

Complainants’ Position

Conversely, Complainant argues Sunoco mischaracterizes her claims and clarifies that she has not alleged non-public utilities are in violation of state law outside the Commission’s jurisdictional authority.

Disposition

I agree with Complainant that nothing in the Complaint requests the Commission direct any local emergency service, school or other agency to do specific performance. It is uncontested the Commission has no authority to issue directives to County-level emergency responders. I find in favor of Complainant on this issue.

Geographic Scope of Relief

Sunoco’s Position

Sunoco also argues that portions of the Complaint should be stricken pursuant to 52 Pa. Code § 5.101(a)(7) because Complainant lacks standing to bring claims regarding SPLP’s pipelines outside the geographic area of her residence, regarding other individuals, schools or entities, or regarding remote events where Complainant’s children “***will*** spend their entire kindergarten through 12 grade academic careers” for which Complainant claims standing based on her children’s ***future*** attendance at those schools. Complaint at Paragraphs 3, and 8 (emphasis added). Sunoco requests that Paragraphs G-I, L, N, 3, 4, 6, 9, 12, 13, 30-32, 35, 38, 39, 46, 47, 49 and Relief Requested 4, 5, and 12 be stricken. These paragraphs all make allegations regarding areas disconnected from the geographic area surrounding Complainant’s residence or make allegations of general public concern. Thus, Complainant does not have standing to bring claims for these allegations. Events and locations regarding other individuals, schools or entities, or having nothing to do with the Complainant’s property or the pipelines on said property, or regarding remote, future events have no “discernable effect”[[2]](#footnote-2) on Complainant, and thus Complainant has no requisite immediate, direct, and substantial interest to bring a Complaint regarding those events and other areas. Further, the relief in this proceeding should be limited based on Complainants’ geographic standing. Sunoco cites the Order 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) as authority for its position. In that proceeding, the relief requested was limited to East Goshen Township, where Complainant resides. Sunoco argues the same should be done here. *Id.*

Complainants’ Position

Complainant does not claim to speak on behalf of other individuals, schools or entities. Her two minor children will attend and are in the geographical region of Uwchlan Township. They are current students at an affected facility, the Lionville Elementary School, which is located on a campus-like-setting co-located with Lionville Middle School and the Downingtown East High School. She claims her eldest child is in the third grade and will attend the MC6GC school in the near future. Complainant has an immediate, direct, and substantial interest in the safety of her children while they are attending public school at these facilities. Further, all schools are located within Uwchlan Twp., which is her immediate community. She contends these Paragraphs and the Relief Requested should remain as the schools listed in her Complaint as well as her residential address all are within the geographical boundary of Uwchlan Twp., Chester County.

Disposition

Complainant musthave a direct, substantial, and immediate interest in order to pursue any complaint allegation.

[A]ny person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the [PUC] has jurisdiction to administer, or of any regulation or order of the [PUC].

66 Pa.C.S. § 701. To bring a formal complaint under Section 701 (i.e. to have “an interest”), Complainants “must have a direct, immediate and substantial interest.” *See, e.g.*, *M**un. Auth. of Borough of West View v. PUC*, 41 A.3d 929, 933 (Pa. Commw. Ct. 2012) (“In order to have standing to pursue a formal complaint before the PUC under Section 701 of the Code, the complainant ‘***must have a direct, immediate, and substantial interest*** in the subject matter of the controversy.’”) (emphasis added) (quoting *W**addington v. PUC*, 670 A.2d 199, 202 (Pa. Commw. Ct. 1995)); *H**atchigan v. PECO*, Docket No. C-2015-2477331 2016 WL 3997201, at \* 6 (Order entered Jul. 21, 2016) (“In order to have standing to pursue a formal complaint before the Commission under Section 701, the complainant ***must have a direct, immediate, and substantial interest in the subject m******atter of the controversy***.”).

On this issue, I agree with Sunoco that Complainant does not have standing to bring a claim regarding the pipeline for issues all across Pennsylvania for which she may be claiming standing. However, it appears from Complainant’s response, that she is not attempting to claim standing beyond the geographical boundaries of Uwchlan Township, Chester County. The Commonwealth Court recently issued an opinion in *Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525, 534–35 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018), holding that where standing based on proximity is alleged, there must be “discernable adverse effects” that infringe on the use and enjoyment of property, not just mere proximity or aesthetic concerns. Slip. Op. at 7 (finding homeowners within a quarter to a half mile of landfill had standing to challenge expansion of landfill where they experienced “pungent odors of rotting garbage, dust, bird droppings, and truck traffic directly affecting their properties.”).

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), I found a *pro se* Complainant had personal standing as follows:

Therefore, I find Complainant has personal standing to file the instant Complaint regarding safety of the pipeline in proximity to Saints Peter and Paul School in East Goshen Township. I am persuaded to limit the scope of relief claimed to whether Sunoco’s operations should be enjoined in East Goshen Township as although Complainant avers that she and her family spend much of their time in the “probable impact radius of the Mariner East Project” through multiple townships and counties, she is unspecific as to what counties and townships in addition to East Goshen Township. Amended Complaint at 4.

The Commission has regularly had to consider documentary, statistical and testimonial evidence throughout its history to evaluate whether actions of utilities, their employees and their contractors comply with the Public Utility Code and pertinent regulations promulgated thereunder. In the instant case, allegations relating to incidents pertaining to the Mariner East Project outside of the area in East Goshen Township where the Saints Peter and Paul School is located may be relevant to the issue of whether it is safe to operate ME1 and ME2 and ME2X in East Goshen Township in close proximity to Complainant’s children’s school.

At this preliminary stage in the litigation proceedings, I am unpersuaded to find averments in the Amended Complaint are “scandalous and impertinent” or to strike portions of the complaint that Sunoco argues are irrelevant because they allege past occurrences that have no relationship to whether it is safe to operate the pipelines in East Goshen Township.

*Id.* at 11.

In the instant case, Complainant does not have standing to represent other individuals, schools or entities. However, as Complainant avers that she and her family reside and are educated in Uwchlan Township located in Chester County, I will limit the scope of Complainant’s standing to Uwchlan Township, Chester County. I am not prepared to strike these paragraphs and relief requested as I am not prepared to make an evidentiary ruling at this preliminary juncture that the averments in these paragraphs have no relationship or relevance to whether it is safe to operate these pipelines in Uwchlan Township, Chester County.

Motion to Strike Impertinent Matter Regarding Early Warning Systems

Sunoco’s Position

Sunoco contends that Complaint Paragraphs 1-3 and Relief Requested 1 should be stricken pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency of a pleading. Specifically, Sunoco argues allegations regarding early warning systems under 49 CFR § 195.452 are impertinent because a warning system is not required under applicable regulations or law. Additionally, Sunoco contends the reference to an Emergency Response Procedures Manual regarding a pipeline in Sarnia Ontario, Canada is impertinent and has no bearing on Complainant’s claim.

Complainants’ Position

In response to this preliminary objection, Complainant argues she is within her right to allege Sunoco is in violation of 49 CFR § 195.440 by not having an adequate early warning system as she seeks that relief pursuant to 66 Pa. C.S. § 1501 and 52 Pa. Code § 59.33. Further, she responded that the Emergency Response Procedures Manual is relevant as it was prepared by the same operator, regarding the same pipeline contents under the same pressure and for a pipeline with an 8” pipeline diameter, the same as ME1.

Disposition

A mere reference to a statute or report does not require attachment to a complaint. I disagree with Sunoco that references to early warning systems under 49 CFR § 195.452 are impertinent. Additionally, the reference to an Emergency Response Procedures Manual regarding a pipeline in Sarnia Ontario, Canada may be relevant to this proceeding.

Sunoco’s Request for attorney’s fees and costs in New Matter

Sunoco’s request for attorney’s fees and costs in its New Matter will be stricken as the Commission has consistently held that it has no authority to award attorneys’ fees and costs. *See Edward Kovler & Elena Glozman v. PECO Energy Co.,* C-2013-2365555, 2013 WL 6248460, at \*4 (Pa. Pub. Util. Comm’n Nov. 18, 2013) (“Nothing in the Public Utility Code, the Commission’s regulations or orders gives the Commission the power to grant attorney fees in this case.”); *MCI Worldcom, Inc. v. Bell Atlantic-Pa.,* 94 Pa. P.U.C. 509 (Pa. Pub. Util. Comm’n Dec. 21, 2000) (“The Commission does not have jurisdiction to award attorney’s fees and costs.”); and Pennsylvania Pub. Util. Comm’n v. Nat’l Fuel Gas Distribution Corp., 63 Pa. P.U.C. 68 (Pa. Pub. Util. Comm’n Jan. 8, 1987).

Mayor Josh Maxwell’s Petition to Intervene

Sunoco objects to Mayor Josh Maxwell’s Petition to Intervene. 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 particular, Section 5.74 provides deadlines by which Petitions to Intervene shall be filed. This includes filing the Petition no later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings and no later than the date fixed for filing protests as published in the Pennsylvania Bulletin. 52 Pa.Code § 5.74(b)(1)-(2). To date, there has not been any publication in the Pennsylvania Bulletin. Also, there is not fixed date in any order.

Both of these provisions, however, include “absent good cause shown” provisions that allow for exceptions to the regulations under certain circumstances. *Id.*; see also, 52 Pa.Code § 5.74(c) (“intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.”) (emphasis added); *Pennsylvania Public Utility Comm’n, Bureau of Investigation and Enforcement v. West Penn Power Co.,* Docket No. C-2012-2307244, Opinion and Order (entered Aug. 29, 2013) (West Penn) (“The Commission has been liberal in interpreting this ‘good cause’ requirement, particularly where the grant of intervention will not delay the orderly progress of the case, significantly broaden the issues or shift the burden of proof.”).

In this case, there is good cause that warrants granting this Petition to Intervene and allowing Mayor Maxwell to participate in this proceeding at this juncture. The impact of the Mariner East Project throughout Pennsylvania is being extensively examined by the Commission, the Pennsylvania General Assembly, County and municipal authorities. The Petitioner has a unique interest in this case which is directly affected as he is the responsible authority for emergency management and public education in his township. Further Mayor Maxwell avers the pipeline is in close proximity to the Downingtown Water Supply, threatening his community’s access to clean water and near a dam that if fractured would put thousands of individuals in immediate risk of harm. This concern is not so broadening to the instant complaint to warrant a denial of intervention.

There is judicial efficiency in permitting intervention rather than requiring each entity to file separate complaints further congesting the docket system at the Commission, as this Petition raises issues essentially overlapping issues previously raised by Complainant concerning safety and emergency preparedness in Chester County. The Intervenors have common and separate interests that are substantial, immediate and direct in the outcoming of this proceeding. Thus, there is good cause to grant intervention.

In granting intervention, however, Intervenor will be required to take the case as it currently stands. Also, the burden of proof will not be shifted.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Sunoco Pipeline, L.P. at Docket No. C-2018-3006898 are denied.
2. That Sunoco Pipeline, L.P.’s request for attorney’s fees and costs in its New Matter is hereby stricken.
3. That Complainant has personal standing to file the instant Complaint regarding safety of the Mariner East Project in proximity to schools in the Downingtown Area School District and to her residence in Uwchlan Township, Pennsylvania.
4. That Complainant has no standing to assert claims to enjoin operations of Sunoco Pipeline, L.P. outside Uwchlan Township, Chester County, Pennsylvania.
5. That a telephonic call-in prehearing conference shall be held at 10:00 a.m. on April 24, 2019.
6. That Josh Maxwell, Mayor of Downingtown, is granted Intervenor status.

Date: March 15, 2019 /s/

Elizabeth H. Barnes

Administrative Law Judge

**C-2019-3006898 - REBECCA BRITTON v. SUNOCO PIPELINE LP**

REBECCA BRITTON211 ANDOVER DREXTON PA 19341**215.776.7516*Accepts E-Service***

CURTIS STAMBAUGH

ASSISTANT GENERAL COUNSELSUNOCO PIPELINE LP212 N THIRD STREET SUITE 201 HARRISBURG PA 17101**717.236.1731*Accepts E-Service***

*Representing Sunoco Pipeline LP*

THOMAS J SNISCAK ESQUIREKEVIN J MCKEON ESQUIRE

WHITNEY E SNYDER ESQUIRE

HAWKE MCKEON AND SNISCAK LLP100 N TENTH STREET HARRISBURG PA 17101**717.236.1300**

***Accepts E-Service***

*Representing Sunoco Pipeline LP*

ROBERT D FOX ATTORNEY

NEIL S WITKES ATTORNEY

DIANA A SILVA ATTORNEY MANKO GOLD KATCHER & FOX LLP401 CITY AVE SUITE 901BALA CYNWYD PA 19004**484.430.2312484.430.2314**

**484.430.2347*Accepts E-Service***

*Representing Sunoco Pipeline LP*

JOSH MAXWELLMAYOR OF DOWNINGTOWN

4 W LANCASTER AVENUEDOWNINGTON PA 19335*Intervener*

1. Natural Gas Liquids are components of natural gas that are separated from the gas state in the form of liquids. [↑](#footnote-ref-1)
2. *See Friends of Lackawanna v. Dunmore Borough Zoning Hearing Bd.*, 186 A.3d 525 (Pa. Commw. Ct. 2018), *reargument denied* (June 26, 2018) [↑](#footnote-ref-2)