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April 9, 2019

VIA ELECTRONIC FILING

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

Re: Meghan Flynn, et al. v. Sunoco Pipeline L.P.; Docket Nos. C-2018-3006116 and P-2018-3006117; **SUNOCO PIPELINE L.P.'S ANSWER OPPOSING INTERVENTION OF STATE SENATOR THOMAS H. KILLION**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s Answer Opposing Intervention of State Senator Thomas H. Killion in the above-referenced proceeding.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

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Kevin J. McKeon
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Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MEGHAN FLYNN	:		
ROSEMARY FULLER	:		
MICHAEL WALSH	:		
NANCY HARKINS	:		
GERALD MCMULLEN	:		
CAROLINE HUGHES and	:		
MELISSA HAINES	:		
	:	Docket Nos.	C-2018-3006116
Complainants,	:		P-2018-3006117
	:		
v.	:		
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

**SUNOCO PIPELINE L.P.’S ANSWER OPPOSING
INTERVENTION OF STATE SENATOR THOMAS H. KILLION**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing State Senator Thomas H. Killion’s March 20, 2019 Petition to Intervene in this proceeding because Senator Killion and those whose interest he purports to represent are already adequately represented in this proceeding, Senator Killion cannot represent the interests of others, and the Petition is untimely and no good cause exists to allow for late intervention.

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”).

A. Petitioner's Interests are Already Adequately Represented

1. Senator Killion's Petition to Intervene should be denied because he failed to show that his interests are not already adequately represented in this proceeding. 52 Pa. Code § 5.72 (a)(2); *see generally* Petition to Intervene. There are already 14 entities that have sought to intervene in this proceeding, 10 of which have been granted. Adding another party that does not have unique interests and is not requesting unique relief serves only increase costs and time for all parties, Your Honor, and the Commission.

2. Senator Killion is seeking to intervene in his official capacity as a State Senator to represent his entire legislative district. Petition at ¶¶ 14-23.

3. He argues that his interests are not adequately represented because not all local governments in his district have sought to intervene in this matter:

While several municipalities, school districts and citizens who reside in Senate District 9 have petitioned for, and have received party status to this matter, no other party in the instant matter possesses an interest identical to the interest of Senator Killion, as said parties' obligations to ensure the safety and reasonableness of Sunoco's pipelines and facilities does not extend to the entirety of the geographic area encompassing the district.

Petition at ¶ 19.

4. Senator Killion represents District 9, *id.*, which includes part of Chester County and part of Delaware County. Contrary to the assertion that the entirety of Senator Killion's district is not represented in this proceeding, both Delaware County and Chester County have sought to intervene. Delaware County has already been granted intervenor status. *Second Interim Order*² at Ordering Paragraph 7. If Chester County's petition to intervene is likewise granted, the entirety of Senator Killion's district will be adequately represented in this matter.

² *Flynn et al v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116 et al. Second Interim Order (Order entered Mar. 12, 2019) (Barnes, J.).

Moreover, Senator Killion requests relief similar to that of multiple intervenors, Petition at ¶ 27, further belying his argument that his district's interests are not adequately represented. Most problematic to Senator Killion's claims, however, is that he does not have standing to represent the interests of others in this proceeding, as described below in Section B.

5. Given the lack of representational standing, Senator Killion is left with his personal interests, which are as a resident of Middletown Township, Delaware County, Pennsylvania, residing "approximately less than 1-mile from the Mariner Pipelines." Petition at ¶ 5. Given Senator Killion does not request relief distinguishable from relief already requested in this proceeding, and that both Delaware County and Middletown Township have already been granted intervenor status in this proceeding, *Second Interim Order* at Order Paragraph 7, Senator Killion's interests are adequately represented and there is no reason to add yet another intervenor to this proceeding.

B. Petitioner Cannot Represent the Interests of Others

6. As a non-lawyer, Senator Killion does not have representational standing – he can only represent his own interests, not the interests of others. *See, e.g., Tomko v. Duquesne Light Co.*, Dkt. No. C-2016- 2577571, at 7-8 (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).

7. Nonetheless, Senator Killion seeks to represent not his personal interests, but the interests of others – his entire legislative district. Petition at ¶¶ 14-23.

8. Senator Killion claims he is special because of his elected position: "Senator Killion, in his capacity as a Pennsylvania State Senator possesses an implicit power to be a litigant in matters touching upon his concerns and the concerns of his constituents." Petition at ¶ 20.

9. This claim is directly contrary to controlling precedent. The Supreme Court has specifically stated that there is no “special category of standing for legislators.” *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016).

10. While SPLP recognizes that the Commission has discretion in granting intervenor status without applying strict standing principles (unlike standing to bring a complaint), that does not mean Senator Killion can be allowed to intervene in this matter on behalf of all of his constituents.

11. As to standing in his capacity as a State Senator, the Supreme Court’s decision in *Markham v. Wolf*, along with decades of precedent from Pennsylvania courts, clearly articulates the boundaries of legislative standing. To have standing in a legislative capacity, a state legislator must either demonstrate that “his or her ability to participate in the voting process is negatively impacted,” or show that “he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator.” *Id.* at 145. Because Senator Killion’s claims against SPLP do not fit within either of these two narrowly defined categories nor does he claim that they do, he does not have standing to represent the interests of others.

12. Moreover, as a non-lawyer, Senator Killion does not have representational standing and he cannot represent the interests of others. *See, e.g., Tomko v. Duquesne Light Co.*, Dkt. No. C-2016- 2577571, at 7-8 (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).

13. Accordingly, Senator Killion should not be allowed to intervene because he can only represent his own interests, interests his Petition does not even allege are at issue here. Any such interests are already adequately represented. *Supra* Section A. If Senator Killion is

nonetheless allowed to intervene, SPLP requests his intervention be limited to his personal interests in this matter, not the interests of his entire legislative district.

C. The Petition is Untimely

14. On November 19, 2018 Complainants filed the Complaint and Petition.

15. On December 20, 2018 Complainants filed an Amended Complaint.

16. Senator Killion filed a Petition to Intervene on March 20, 2019.

17. Senator Killion's Petition is untimely. It was filed 121 days after the Complaint and 91 days after the Amended Complaint.

18. Senator Killion alleges his Petition was timely filed under 52 Pa. Code § 5.54.

19. 52 Pa. Code §§ 5.74 and 5.53 require a petition to intervene in a proceeding be filed within 60 days of the initiating pleading in a proceeding, absent "good cause shown." 52 Pa. Code § 5.74(b)(3) mandates petitions to intervene be filed by the deadline in 52 Pa. Code § 5.53 where no other deadline has been set. Here, no other deadline has been set. 52 Pa. Code § 5.53 has a 60-day deadline.

20. Senator Killion's Petition was untimely because it was filed 121 days after the Complaint and he has not averred good cause for allowing untimely intervention.

21. The December 20, 2018 amendments to the Complaint did not extend the time for interventions. Even if there was a Commission regulation that extended the time for intervention based on an amendment to a pleading, which there is not, Senator Killion's Petition to Intervene would still be untimely, as it was filed 91 days after the Amended Complaint was filed. There is no Commission regulation that extends the time for intervention when an amendment to a pleading is filed. A petition to intervene is due 60 days from an initiating complaint. 52 Pa. Code §§ 5.74 and 5.53.

22. In contrast, the Commission's regulations expressly extend the answering time period when an amended pleading is filed to require an answer within 20 days of the amended pleading. 52 Pa. Code § 5.65(a). The presence of a specific Commission regulation that extends the time for an answer in the event of an amended pleading coupled with the absence of any Commission regulation regarding intervention and amended pleadings means that the Commission has not changed the time period for intervention in the event of an amended pleading. *See, e.g., Popowsky v. Pennsylvania Public Utility Com'n*, 869 A.2d 1144, 1159 (Pa. Cmwlth. 2005) (the inclusion of a specific matter in a statute implies the exclusion of other matters).

23. To allow untimely intervention, the petition to intervene must show good cause. 52 Pa. Code § 5.74.

24. Senator Killion fails to even allege good cause for allowing it to intervene out of time in this proceeding. In the *Second Interim Order*, good cause for local government entities' and school districts' late-filed interventions was found where (1) those entities have interest that were directly affected and (2) judicial efficiency would be served in a consolidated proceeding instead of intervenors filing their own complaints seeking similar relief. This intervention is different and good cause does not exist here.

25. First, Senator Killion does not have an interest sufficient for standing like the school districts and local government entities that sought late intervention. Senator Killian is clearly seeking to intervene on behalf of his entire district to represent the interest of others. Petition at ¶¶ 14-23. Senator Killion does not have standing to do so. The Supreme Court has specifically stated that there is no "special category of standing for legislators." *Markham v. Wolf*, 136 A.3d 134, 140 (Pa. 2016). Instead, to have standing in his capacity as a State Senator,

as the Supreme Court's decision in *Markham v. Wolf*, along with decades of precedent from Pennsylvania courts, clearly articulates the boundaries of legislative standing. To have standing in a legislative capacity, a state legislator must either demonstrate that "his or her ability to participate in the voting process is negatively impacted," or show that "he or she has suffered a concrete impairment or deprivation of an official power or authority to act as a legislator." *Id.* at 145. Because Senator Killion's claims against SPLP do not fit within either of these two narrowly defined categories nor does he claim that they do, he does not have standing to represent the interests of others. That means he does not have standing to represent the interest of others. Instead, he could only have standing in his personal capacity. But the Petition fails to allege any direct, immediate, or substantial interest to Senator Killion rather than to his entire legislative district. Thus, unlike the school districts and local governments that have duties for emergency response that SPLP's actions have allegedly impacted that lead to a finding of good cause for their late intervention, Senator Killion cannot show good cause for his late intervention.

26. Second, Senator Killion does not have standing to file a Complaint in his official capacity against SPLP regarding the allegations in this matter and does not have representational standing to represent the interests of others, so allowing his intervention here in lieu of a Complaint does not serve judicial efficiency. Instead, it adds yet another party that has not shown any unique interest sufficient for participation in this matter.

27. If Senator Killion is nonetheless granted intervenor status, late filed intervenors must take the case as it is and cannot expand the scope of the proceeding. *See Com., et al. v. Energy Services Providers, Inc. d/b/a PaG&E, Order Granting Petition to Intervene*, Docket No. C-2014-2427656, 2015 WL 1957859 (Order entered Apr. 23, 2015) (Cheskis, J.) ("In granting intervention, however, Mr. Sobiech will be required to take the case as it currently stands.

PaG&E is correct that intervenors generally take the record as they find it at the time of intervention.”). *See also Second Interim Order* at 18.

WHEREFORE, Sunoco Pipeline L.P. respectfully requests that Senator Killion’s Petition to Intervene be denied, or in the alternative, that Senator Killion’s participation in this matter be limited to solely to his personal interests and not the interests of his entire legislative district.

Respectfully submitted,



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Dated: April 9, 2019

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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:

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