

Hawke
 Mckeon &
 Sniscak LLP
ATTORNEYS AT LAW

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

July 1, 2019

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

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 UPPER UWCHLAN TOWNSHIP**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Sunoco Pipeline L.P.'s
Answer Opposing Intervention of Upper Uwchlan Township in the above-referenced proceeding.

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

Very truly yours,

Thomas J. Sniscak

Thomas J. Sniscak
Kevin J. McKeon
Whitney E. Snyder
Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Honorable Elizabeth H. Barnes
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.

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JUL 1 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C-2018-3006534

**SUNOCO PIPELINE L.P.'S ANSWER OPPOSING
INTERVENTION OF UPPER UWCHLAN TOWNSHIP**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. ("SPLP"), by and through its attorneys, Hawke McKeon & Sniscak LLP, submits this Answer Opposing the Petition to Intervene of Upper Uwchlan Township ("Petitioner" or "Upper Uwchlan") served on June 14, 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.

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").

I. INTRODUCTION AND SUMMARY OF ARGUMENT

BI&E and SPLP settled the Complaint and filed a Joint Petition for Settlement (“Settlement”) on April 3, 2019. A term of the Settlement is that a comment process be utilized for consideration of the Settlement. Filing of comments is not required by law or due process for entities who are not the complainant and respondent. Rather, it is something that the PUC has done to allow input for its consideration. This comment process gives would-be intervenors more process than is due² under law and thus denial of intervention does not affect Petitioner’s substantive rights.

The Commission’s Order referring the Settlement to an ALJ to recommend what process is appropriate did not address an inescapable fundamental of Pennsylvania law which is that where a complainant and respondent settle intervenors cannot continue litigation on the merits of the complainant’s complaint. That prevailing law is fatal to petitioner’s intervention request and essentially renders intervention moot. The petitioning intervenor additionally cannot under Pennsylvania law act as a private attorney general.

Moreover, allowing Intervention under the present circumstances will create a chilling effect on settlement contrary to the Commission’s longstanding policy and practice of encouraging settlements. 52 Pa. Code § 5.231(a) (“It is the policy of the Commission to encourage settlements.”). Clearly, why would one settle and make concessions only to be subjected potentially to discovery, additional process and even hearings, briefing, exceptions and reply exceptions. The answer is SPLP and most other respondents will and would not. It also invites

² As detailed below, intervenors have no rights in a complaint proceeding that survive settlement or withdrawal of an action by a Complainant thus do not have a due process right whatsoever, including a hearing or discovery process. Nor can they act as “private attorney general” under Pennsylvania law.

an invasion of the confidentiality of the settlement process, which by the Commission's own regulation is confidential and without admission. 52 Pa. Code §§ 5.231, 5.232.

Furthermore, grant of interventions, (particularly if discovery is allowed and/or hearings are held) delays implementation of the provisions of the Settlement that promote public safety, and leaves SPLP with no incentive to remain in the Settlement³ that chiefly fulfills the relief BI&E requested in its Complaint, contains public safety measures above and beyond regulatory requirements (including undertaking the Remaining Life Study that Governor Wolf requested),⁴ and which the Commission could not order SPLP to undertake involuntarily.⁵ Grant of intervention where, as here, Petitioner has no standing, its interests are already adequately represented by BI&E, and a Settlement so clearly in the public interest has been reached, is contrary to the public interest, Commission policy, and an enormous waste of time and resources of the Commission and its bureaus, the parties, and would be intervenors. If SPLP has to litigate this case in any way, it will withdraw from the Settlement and the above and beyond safety measures the Settlement provides cannot be ordered as a result of litigation.

³ On June 28, 2019 BI&E and SPLP filed an Addendum to the Settlement. In exchange for SPLP agreeing not to withdraw from the Settlement at this time due to the Commission's assignment of this matter to an ALJ, BI&E and SPLP agreed that SPLP can withdraw in the future if any process other than comments are ordered in this proceeding, described in more detail in Section II.

⁴ Press Release, Governor Wolf Issues Statement on DEP Pipeline Permit Bar (Feb. 8, 2019) (available at <https://www.governor.pa.gov/newsroom/governor-wolf-issues-statement-dep-pipeline-permit-bar/>)

⁵ See I&E Statement in Support of Joint Petition for Settlement at p. 5 ("I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and achieves a preferable outcome compared to one that would have been reached through litigation in that SPLP has agreed to perform actions above and beyond those required by any applicable law or regulation").

The Petition should be denied because:

1) Intervention is Moot. BIE and SPLP have entered into a Settlement in full resolving the Complaint in this proceeding and even if intervention were granted, intervenors have no rights that survive discontinuance of this proceeding.⁶ Petitioner must take the case as it stands at the time of intervention and cannot raise issues beyond the scope of the Complaint, particularly where, as here, this matter is settled.⁷ As Your Honor recognized in the *Flynn* proceeding, persons such as Petitioner do not have the statutory authority to pursue this Complaint like BI&E does; they cannot act as a private attorney general. *See Flynn et al. v. SPLP*, Dockets Nos. C-2018-3006116, Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order at 5-6 (Order entered June 6, 2019) (Barnes, J.) ("The Complainants do not have the statutory authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa.Code § 1.8 as I&E to bring such a complaint against Respondent."). The Settlement should be considered by Your Honor via comments, so there is no proceeding in which to intervene or need for intervention to allow Petitioner to be heard (it can do so through comments) and thus the Petition is moot.

⁶ "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)) ("Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.").

⁷ *See, e.g., 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."); *Flynn et al v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116 et al *Second Interim Order* at 18 (Barnes J.) (Mar. 12, 2019) ("intervenors generally take the record as they find it at the time of intervention.").

2) Petitioner lacks standing. Petitioner does not have standing and has no right to act as a third-party attorney general to pursue BI&E's Complaint. Petitioner does not aver that it was personally aggrieved by the leak incident in Morgantown, nor could it given that Upper Uwchlan is approximately 12 miles from the location of the pinhole leak. Petitioner has neither standing nor statutory authority to pursue BI&E's Complaint. *Flynn et al. v. SPLP*, Dockets Nos. C-2018-3006116, Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order at 5-6 (Order entered June 6, 2019) (Barnes, J.) ("None of the Flynn Complainants have averred that they reside, work or attend school in Morgantown, Berks County. They argue they are not requesting relief in Morgantown, but rather in Chester and Delaware Counties. Although the I&E complaint addresses general practices in addition to a specific leak incident in Morgantown, the Flynn Complainants do not have the same standing as I&E to bring an action regarding reasonableness of service across the Commonwealth of Pennsylvania. This is not a class-action lawsuit. The Complainants do not have the statutory authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa. Code § 1.8 as I&E to bring such a complaint against Respondent.").

3) Petitioner's interests are already adequately (actually more than adequately) represented by BI&E who has expertise regarding pipeline safety. Pursuant to 66 Pa. C.S. §§ 308, 701, and 52 Pa. Code § 1.8, BI&E is vested with the statutory enforcement and prosecutorial authority to bring complaints to protect the public interest regarding violation of pipeline safety laws and regulations.

4) Allowing intervention is not in the public interest because it delays implementation of Settlement terms that promote public safety, may cause SPLP to withdraw from the Settlement, and is a waste of time and resources of the Commission and its bureaus, the parties, and would be intervenors.

II. THE SETTLEMENT AND ADDENDUM

A. Above and Beyond Provisions of the Settlement

The Settlement requires SPLP to perform actions above and beyond regulatory requirements.⁸ Specifically, the Settlement requires SPLP to undertake a Remaining Life Study (which Governor Wolf requested) and accelerate In-Line Inspections and Close Interval Potential Surveys.

The Commission could not order SPLP to perform these provisions involuntarily as a result of this litigation because these measures are not required under current regulations. The Commission implicitly acknowledges this regarding frequency of testing in its June 13, 2019 Advanced Notice of Proposed Rulemaking at Docket No. L-2019-3010267 (“ANOPR”) when it seeks to potentially implement more stringent regulations regarding frequency of these tests. *See* ANOPR at 16-19. State Senator Andrew Dinniman evidenced that a remaining life study is not currently a regulatory requirement when he proposed a bill that would require such study and require the Commission to implement regulations regarding such study. SB 677 of 2019 (available at <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=S&billTyp=B&billNbr=0677&pn=0871>) To order SPLP to comply with regulations or law that have not even been drafted yet is *de facto* and illegal retroactive regulation that does not comport with The Commonwealth Documents Law and the Regulatory Review Act.

⁸ *See* I&E Statement in Support of Joint Petition for Settlement at p. 5 (“I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and achieves a preferable outcome compared to one that would have been reached through litigation in that SPLP has agreed to perform actions above and beyond those required by any applicable law or regulation”).

Moreover, injunctive relief requiring action above and beyond regulatory requirements regarding these terms could not be obtained through litigation because an injunction must be narrowly tailored to abate the harm complained of.

Injunctive relief must be narrowly tailored to abate the harm complained of. *Pye v. Com. Ins. Dep't*, 372 A.2d 33, 35 (Pa.Cmwth. 1977) (“An injunction is an extraordinary remedy to be granted only with extreme caution”); *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa.Cmwth. 2010) (“Even where the essential prerequisites of an injunction are satisfied, the court must narrowly tailor its remedy to abate the injury”); *West Goshen Township v. Sunoco Pipeline L.P.*, Docket No. C-2017-2589346 at 17-18 (Order entered Mar. 15, 2018).

West Goshen Township v. Sunoco Pipeline L.P., Docket No C-2017-2589346, Recommended Decision at 42 (Barnes, J.) (adopted in full by Commission by Order dated Oct. 1, 2018). The Complaint does not allege any facts that show a technical or safety basis to order SPLP increase the frequency of its testing or perform a remaining life study and, therefore, such injunctive relief would likewise not be available if this proceeding were litigated.

B. Addendum

On June 28, 2019, SPLP and BI&E filed an Addendum to the Settlement. The Addendum modifies the Settlement Agreement Condition of Settlement at Paragraph 21 in exchange for SPLP not exercising its withdrawal from the Settlement at this time due to the Commission’s not considering the Settlement directly and instead referring the matter to an Administrative Law Judge for determinations of what, if any, further process is due or appropriate. Condition of Settlement at Paragraph 21 now provides:

The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the assigned Administrative Law Judge or Commission modifies this Settlement Agreement in any way, including, but not limited to, ordering any

additional process⁹ in this settlement matter other than the notice and Comment and Reply Comment process specified in Paragraph 26, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the other party within twenty (20) days after the latter of¹⁰ entry of any Administrative Law Judge or Commission Order or Ruling modifying the Settlement in any way, including, but not limited to, the modifying procedures, events or actions described above and in footnote 1 below. A decision not to elect to withdraw from this Settlement Agreement for any modification shall not constitute a waiver of election and right to withdraw for any other or future modification. The Joint Petitioners agree that the benefits of the Settlement, which contain certain public safety features which are “above and beyond” current regulatory requirements,¹¹ are in the public interest and should neither be delayed nor discouraged by any further litigation-like process that works at cross-purposes with encouraging, accomplishing and promptly allowing for implementation of this Settlement.

⁹ “Additional Process” as used herein shall mean a procedural process in excess of notice and Comment and Reply Comment including, but not limited to, granting interventions, discovery, hearings, briefing or other process.

¹⁰ For instance, if the ALJ made a ruling that modified the Settlement, the parties may elect to withdraw then or elect to withdraw within 20 days of the Commission’s final ruling upon review of the ALJ’s proposed modification.

¹¹ These include undertaking on an expedited basis a Remaining Life Study for ME, which was suggested by Governor Wolf in a statement he released on February 8, 2019. The Study will assess the longevity of ME1, including risks to the pipeline and SPLP procedures. This Study will be conducted by an independent expert and submitted to BIE with ongoing annual summary reports. The Settlement also provides for ILI inspection tool runs at intervals that are accelerated and other testing and reporting that are above and beyond what existing state and federal regulations or law require. Finally, the Settlement includes Close Interval Surveys of ME1 pipeline at accelerated intervals above and beyond any federal or state regulation or law. All of these features of the Settlement will be significantly delayed if any procedure other than notice, Comments and Reply Comments occurs.

III. ARGUMENT

A. Legal Standard

1. Intervenor Status

Persons not Complainants or Respondents in a complaint proceeding cannot drive the outcome of a proceeding. Under Pennsylvania law an intervenor has no right to proceed to separately pursue claims made by a complainant when the complaint has been resolved:

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)) (“Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenor is granted no rights which survive discontinuance of a case.”). Indeed, an intervenor possesses no right to appeal¹² and its participation is contingent upon a complainant proceeding to litigation. *Id.*

¹² To have the right to appeal, a party must have actual standing and in fact be aggrieved by the order in question. *Bensalem Racing Ass'n, Inc. v. Pennsylvania State Harness Racing Comm'n*, 19 A.3d 549, 556 (Pa. Cmwlth. 2011) (General Rules of Administrative Practice and Procedure (GRAPP) provide that a person seeking intervention in agency proceeding must have interest which may be directly affected, and it does not require demonstration of a direct, immediate, and substantial interest, which is the traditional test for standing). *See also* 2 Pa. C.S. § 702 (“Any person *aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication* shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).” (emphasis added)).

Moreover, as Your Honor recognized in the *Flynn* proceeding, persons such as Petitioner do not have the statutory authority to pursue this Complaint like BI&E does. *Flynn et al. v. SPLP*, Dockets Nos. C-2018-3006116, Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order at 5-6 (Order entered June 6, 2019) (Barnes, J.) ("The Complainants do not have the statutory authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa. Code § 1.8 as I&E to bring such a complaint against Respondent.").

2. Eligibility to Intervene

Eligibility 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:

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. The Petition Should be Denied as Moot

BI&E and SPLP have settled BI&E’s Complaint. Litigation between Complainant and Respondent has been discontinued. Intervention, by law, cannot change that outcome. Persons not Complainants or Respondents in a complaint proceeding cannot drive the outcome of a proceeding. Under Pennsylvania law an intervenor has no right to proceed to separately pursue claims made by a complainant when the complaint has been resolved:

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)) (“Rights upon grant of petition. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.”). Indeed, an intervenor possesses no right to appeal¹³ and its participation is contingent upon a complainant proceeding to litigation. *Id.*

The Commission’s Order referring the Settlement to an ALJ to recommend what process is appropriate did not address an inescapable fundamental of Pennsylvania law which is that where a complainant and respondent settle intervenors cannot continue litigation on the merits of the complainant’s complaint. That prevailing law is fatal to petitioners’ intervention request and essentially renders intervention moot. The petitioning intervenors additionally cannot under Pennsylvania law act as a private attorney general.

Intervention is further moot here where persons can be heard through a comment process that does not require intervenor status. Comments are not required by law or due process for entities who are not the complainant and respondent. Rather, it is something that the PUC has

¹³ To have the right to appeal, a party must have actual standing and in fact be aggrieved by the order in question. *Bensalem Racing Ass’n, Inc. v. Pennsylvania State Harness Racing Comm’n*, 19 A.3d 549, 556 (Pa. Cmwlth. 2011) (General Rules of Administrative Practice and Procedure (GRAPP) provide that a person seeking intervention in agency proceeding must have interest which may be directly affected, and it does not require demonstration of a direct, immediate, and substantial interest, which is the traditional test for standing). *See also* 2 Pa. C.S. § 702 (“Any person *aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication* shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).” (emphasis added)).

done to allow input for its consideration. This comment process is more process than is due because, as discussed above, even if petitioners had standing (which they do not), intervenors have no rights that survive the discontinuance of litigation in this proceeding.

Moreover, Petitioner does not have the statutory authority to pursue this Complaint and essentially stand in the shoes of BI&E. As Your Honor recognized in the *Flynn* proceeding, persons such as Petitioner do not have the statutory authority to pursue this Complaint like BI&E does. *Flynn et al. v. SPLP*, Dockets Nos. C-2018-3006116, Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order at 5-6 (Order entered June 6, 2019) (Barnes, J.) ("The Complainants do not have the statutory authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa.Code § 1.8 as I&E to bring such a complaint against Respondent.").

Further, Petitioner cannot raise issues beyond the scope of the Complaint and broaden this proceeding. It is black-letter law at the Commission that an intervenor takes the case as it stands at the time of intervention. *See, e.g., 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."); *Flynn et al v. Sunoco Pipeline L.P.*, Docket Nos. C-2018-3006116 et al *Second Interim Order* at 18 (Barnes J.) (Mar. 12, 2019) ("intervenors generally take the record as they find it at the time of intervention."). The case is settled. The myriad of unrelated issues that Upper Uwchlan raises in its Petition cannot be injected into this proceeding and are thus moot.

C. Petitioner Lacks Standing

Standing requires a Petitioner to 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).

Here, 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. Upper Uwchlan Township is approximately 12 miles from where the pin-hole leak occurred, and Upper Uwchlan fails to aver how a pin-hole leak in Morgantown could affect Upper Uwchlan Township. It did not.

Because it cannot show a direct, immediate, and substantial interest in the allegations of the Complaint, Petitioner instead raises unrelated allegations as a basis for intervention, including allegations regarding, including allegations of SPLP's facilities in close proximity to buildings and public areas in Upper Uwchlan Township, that SPLP's facilities "pass through or beneath Marsh Creek Lake or tributaries thereof," that Upper Uwchlan Township's interest is governed by the Pennsylvania Second Class Township Code, 53 P.S. § 65101 *et seq*, that "any revisions to Sunoco's protocols and/or additional testing data ordered by the Commission will directly impact [Upper Uwchlan Township]," that SPLP must provide Upper Uwchlan Township with "supplemental information and data... for it to review in connection with its on-going review of Sunoco's Mariner East 1 pipeline," that Upper Uwchlan Township's interest is in public safety and protecting environmental assets, and that "[Upper Uwchlan Township] is interested in its Township staff and consultants reviewing accurate information and data regarding the Mariner East 1 pipeline..." Petition at PP 6-20. None of these allegations unrelated to the Complaint can serve as a direct, immediate, or substantial interest.

The only interest Petitioner has regarding the Complaint is a general interest in having SPLP comply with the law. That is not sufficient for standing. *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). Petitioner does not have authority or standing to prosecute the allegations of the Complaint. As Your Honor recognized in the *Flynn* proceeding, persons such as Petitioner do not have the statutory authority to pursue this Complaint like BI&E does. *Flynn et al. v. SPLP*, Dockets Nos. C-2018-3006116, Order Granting in Part and Denying in Part Complainants' Motion for Reconsideration of Second Interim Order at 5-6 (Order entered

June 6, 2019) (Barnes, J.) (“The Complainants do not have the statutory authority under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa. Code § 1.8 as I&E to bring such a complaint against Respondent.”).

D. Petitioner’s Interest is Already Adequately Represented in this Proceeding

BI&E, which has expertise regarding pipeline safety more than adequately represents the only interest Petitioner has in this proceeding, which is a general interest in having others comply with the law. Pursuant to 66 Pa. C.S. §§ 308, 701, and 52 Pa. Code § 1.8, BI&E is vested with the statutory enforcement and prosecutorial authority to bring Complaints to protect the public interest for violations of the Public Utility Code and the Commission’s regulations. **“BI&E will serve as the prosecutory bureau for purposes of representing the public interest . . . and enforcing compliance with the state and federal . . . gas safety laws and regulations.”** *Implementation of Act 129 of 2008 - Organization of Bureaus and Offices*, Docket No. M-2008-2071852, Final Procedural Order at 5 (Order entered Aug. 11, 2011) (emphasis added).

E. Granting Intervention is Not in the Public Interest

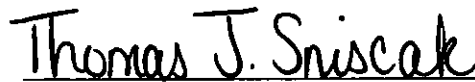
Allowing intervention in this matter is contrary to the public interest. The Settlement requires SPLP to implement important public safety measures that go above and beyond regulatory requirements and which the Commission could not order SPLP to undertake involuntarily if this proceeding were litigated. If interventions are granted, discovery allowed, and/or hearings held (ie. if any process is ordered other than comments), SPLP is left with no incentive to remain a party to the Settlement and has the ability to withdraw. Allowing litigation where a settlement has been reached chills the incentive to settle and is contrary to the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a) (“It is the policy of the Commission to encourage settlements.”). Moreover, even if SPLP elects not to withdraw from the Settlement due to interventions and additional process, such additional process delays implementation of the important public safety measures contained in the Settlement. Allowing intervention is

unnecessary where persons may file comments without the need for intervenor status. Allowing is a waste of time and resources of the Commission and its bureaus, the parties, and would be intervenors.

IV. CONCLUSION

WHEREFORE Sunoco Pipeline L.P. respectfully requests Upper Uwchlan Township'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: July 1, 2019

Attorneys for Respondent Sunoco Pipeline L.P.

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SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the persons, 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
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
stwimer@pa.gov
mwindler@pa.gov

David J. Brooman, Esquire
Richard C. Sokorai, Esquire
Mark R. Fischer, Jr., Esquire
High Swartz LLP
40 East Airy Street
Norristown, PA 19404
dbrooman@highswartz.com
rsokorai@highswartz.com
mfischer@highswartz.com

*Counsel for West Goshen Township and Upper
Uwchlan Township*

Michael P. Pierce, Esquire
Pierce & Hughes, P.C.
17 Veterans Square
P.O. Box 604
Media, PA 19063
Mppierce@pierceandhughes.com

Counsel for Edgmont Township

Josh Maxwell
Mayor of Downingtown
4 W. Lancaster Avenue
Downingtown, PA 19335
jmaxwell@downingtowntown.org

Pro Se Intervenor

Michael S. Bomstein, Esquire
Pinnola & Bomstein
Suite 2126 Land Title Building
100 South Broad Street
Philadelphia, PA 19110
Mbomstein@gmail.com

Counsel for Flynn Et. al.

Vincent M. Pompo, Esquire
Alex J. Baumler, Esquire
Lamb McErlane, PC
24 East Market St., Box 565
West Chester, PA 19382-0565
vpompo@lambmcerlane.com
abaumler@lambmcerlane.com

Counsel for West Whiteland Township

Thomas Casey
1113 Windsor Drive
West Chester, PA 19380
tcaseylegal@gmail.com

Pro Se Intervenor

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SECRETARY'S BUREAU

Thomas J. Sniscak

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

Dated: July 1, 2019