



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

October 9, 2019

**VIA ELECTRONIC FILING**

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

Re: Andover Homeowner Association v. Sunoco Pipeline L.P.; Docket No. C-2018-3003605; **SUNOCO PIPELINE L.P.'S ANSWER OPPOSING PETITION TO INTERVENE OF ROSEMARY FULLER**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Answer Opposing Petition to Intervene of Rosemary Fuller in the above-referenced proceeding. Because this document does not contain new averments of fact, it does not require a verification.

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: Hon. Elizabeth H. Barnes (Electronic [ebarnes@pa.gov](mailto:ebarnes@pa.gov) and first class mail)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANDOVER HOMEOWNER'S ASSOCIATION	:		
	:		
Complainant,	:		
	:		
v.	:	Docket No.	C-2018-3003605
	:		
SUNOCO PIPELINE L.P.,	:		
	:		
Respondent.	:		

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**SUNOCO PIPELINE L.P.'S ANSWER  
OPPOSING PETITION TO INTERVENE  
OF ROSEMARY FULLER**

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Pursuant to 52 Pa. Code § 5.66,<sup>1</sup> Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing Rosemary Fuller's, September 23, 2018<sup>2</sup> *pro se*<sup>3</sup> Petition to Intervene in this proceeding because: Ms. Fuller lacks standing to be granted intervenor status in this matter; she has not shown that her interests are not adequately represented; her intervention here is not in the public interest as she is already a named Complainant in the *Flynn et al* Complaint Proceeding<sup>4</sup> where she is represented by counsel; and SPLP is seeking to consolidate this proceeding with the *Flynn et al*

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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").

<sup>2</sup> On September 27, 2018 the Commonwealth Court stayed proceedings in this matter. Thus, SPLP's answer in opposition to the Petition was stayed. After the Commonwealth Court ordered the Commission to dismiss State Senator Dinniman's Complaint, which was consolidated with Andover's Complaint, the Commission entered an order on September 19, 2019 that dismissed the *Dinniman* complaint and bifurcated the consolidated docket. SPLP has filed this Answer within 20 days of that Commission Order.

<sup>3</sup> Ms. Fuller is one of the seven complainants in the *Flynn et al* proceeding, where she is represented by counsel.

<sup>4</sup> Meghan Flynn et al., Docket Nos. C-2018-3006116 & P-2018-3006117 (consolidated); Melissa DiBernardino, Docket No. C-2018-3005025 (consolidated); Rebecca Britton, Docket No. C-2019-3006898 (consolidated); Laura Obenski, Docket No. C-2019-3006905 (consolidated)

proceeding due to the nearly identical nexus of law and fact alleged, and thus intervention here will be moot upon consolidation.

**I. ARGUMENT**

**A. Legal Standard**

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. Petitioner here does not meet the first or second factors of this standard. Likewise, Petitioner fails to assert that her intervention would be in the public interest. In fact, such intervention is not in the public interest as Petitioner is already a named Complainant in the *Flynn et al* proceeding where she is represented by counsel on similar, if not identical issues.

B. Petitioner’s interest is not direct, immediate, or substantial

Petitioner cannot show, as she is required to, a direct, immediate and substantial interest. Petitioner does not have a sufficient interest as her allegations of the rights under both the United States and Pennsylvania Constitutions and generalized concerns over NGL pipelines are insufficient to show a direct, immediate, or substantial interest to grant standing in this matter. *See* Petition Paragraphs 2-4. Further, Petitioner alleges, without support, that the factual circumstances that underlie Andover’s “safety complaint” also apply throughout the 9<sup>th</sup> Senatorial District of Pennsylvania. *See* Petition Paragraph 1. It does not.

Petitioner cannot show any aggrievement that bears a close causal connection to this proceeding that is distinguishable from the interest of the general public in compliance with the law. “[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).

First, Petitioner here fails to allege how her interests are direct or immediate, and simply restates a summary of 52 Pa. Code § 5.72(a). *See* Petition Paragraph 4(b). Petitioner alleges various rights under the United States and Pennsylvania Constitutions, but does not tie either of these broad statements to a direct or immediate interest that Petitioner has in *this* proceeding. *See* Petition Paragraph 4(a). Alleging rights, with no explanation as to how they are impacted or how they give Petitioner a direct or immediate interest in the underlying complaint is insufficient to grant standing. Further, to the extent that Petitioner is seeking to assert the interests of the 9<sup>th</sup> senatorial

district, Petitioner does not have standing to assert the rights of others, and thus those allegations cannot serve as the basis for Petitioner to have an interest in this proceeding. *See, e.g., See 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) (Barnes, J.). To the extent that the Petitioner raises allegations of concern to highly volatile liquid pipelines generally, Petitioner must show a direct interest, that is she “must show causation of the harm by the matter of which he or she complains,” but she has failed to do so. *See In Re Peco Energy Co.*, A-110550F0160, 2005 WL 1959191, at \*2–6 (July 18, 2005).

Finally, the Complaint arises under the geographic scope of the Complainant’s Homeowner Association, located in Thornbury Township, Delaware County. Petitioner is a resident Middletown Township, Delaware County. Simply put, Petitioner here has failed to allege a causal relationship between her Petition and the underlying Complaint, and thus fails to meet either the immediacy or directness requirements to fulfill standing in a petition to intervene. *See 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)).

Since Petitioner cannot show a direct or immediate interest, her interest is necessarily not substantial. A substantial interest means an interest greater than that of all citizens in having others comply with the law. Since there is no causal connection between Petitioner and the underlying Complaint, Petitioner is left with solely a general interest in compliance with regulations, an interest that all citizens share. Accordingly, Petitioner has not shown an interest adequate to fulfill standing requirements to intervene.

C. Petitioner's interests are adequately represented by the Complainant in this proceeding.

Assuming, *arguendo*, that Petitioner could show an interest, that interest is more than adequately represented by Complainant. Complainant already raises concerns for safety and for concerns over the Mariner East right-of-way. Therefore, any concerns raised by petitioner on the same issues are adequately represented by Complainant. Finally, Petitioner does not specifically allege, as she is required to do, why her interests are not adequately represented by the Complainant. The Complainant already adequately represents Petitioner's interests in the issues raised in the Complaint and the Petition should be denied.

D. Petitioner's participation is not in the public interest as she is a named Complainant in the *Flynn et al* proceeding which filing post-dates the instant Complaint

Allowing intervention of Petitioner is not in the public interest because after the filing of her *pro se* Petition to Intervene in this matter, Petitioner jointly filed an Emergency Petition and Formal Complaint with the Commission at the *Flynn et al* proceeding, Docket Nos. C-2018-3006116 & P-2018-3006117, where she is represented by counsel. There is no doubt that judicial efficiency and competency before this Commission is best served by represented parties. Allowing Petitioner's *pro se* intervention here does not serve the public interest and could unnecessarily extend the proceeding beyond what is necessary to resolve the underlying Complaint. Further, as discussed below, due to the nearly identical nexus of law and fact, SPLP will be filing a motion to consolidate the instant matter with the *Flynn et al* proceeding. Should consolidation be granted by Your Honor, the public interest and judicial efficiency demands that Petitioner's Intervention here is not in the public interest.

E. Should Your Honor grant SPLP's Motion to Consolidate the instant matter and the Flynn et al proceeding, Petitioner's intervention is moot.

Due to the commonality of fact and law between the cases, SPLP is seeking to consolidate this proceeding with the *Flynn et al* proceeding due to the nearly identical nexus of law and fact alleged, and thus intervention here will be moot upon consolidation.

SPLP notes that if Petitioner is nonetheless granted intervenor status and this matter is not consolidated with the *Flynn et al* proceeding, 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.”). Even if intervention is allowed, Petitioner cannot pursue issues beyond the scope of the Complaint.



WHEREFORE, Sunoco Pipeline L.P. requests Rosemary Fuller's *pro se* Petition to Intervene be denied.

Respectfully submitted,



Thomas J. Sniscak, Esq. (PA ID No. 33891)  
Kevin J. McKeon, Esq. (PA ID No. 30428)  
Whitney E. Snyder, Esq. (PA ID No. 316625)  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Tel: (717) 236-1300  
tjsniscak@hmslegal.com  
kjmckeon@hmslegal.com  
wesnyder@hmslegal.com

Robert D. Fox, Esq. (PA ID No. 44322)  
Neil S. Witkes, Esq. (PA ID No. 37653)  
Diana A. Silva, Esq. (PA ID No. 311083)  
MANKO, GOLD, KATCHER & FOX, LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004  
Tel: (484) 430-5700  
rfox@mankogold.com  
nwitkes@mankogold.com  
dsilva@mankogold.com

*Attorneys for Respondent Sunoco Pipeline L.P.*

Dated: October 9, 2019

**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 and served on the following:

**BY ELECTRONIC SERVICE**

Rich Raiders, Esquire  
Raiders Law  
606 North 5<sup>th</sup> Street  
Reading, PA 19601  
[rich@raiderslaw.com](mailto:rich@raiderslaw.com)

Melissa DiBernardino  
1602 Old Orchard Lane  
West Chester, PA 19380  
[lissdibernardino@gmail.com](mailto:lissdibernardino@gmail.com)

*Counsel for Andover Homeowner's  
Association, Inc.*

*Pro se*

Joseph Otis Minott, Esquire  
Alexander G. Bomstein, Esquire  
Ernest Logan Welde, Esquire  
Kathryn L. Urbanowicz, Esquire  
Clean Air Council  
135 South 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103  
[Joe\\_minott@cleanair.org](mailto:Joe_minott@cleanair.org)  
[abomstein@cleanair.org](mailto:abomstein@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
[kurbanowicz@cleanair.org](mailto:kurbanowicz@cleanair.org)

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

*Counsel for East Goshen Township*

**BY FIRST CLASS MAIL**

Rosemary Fuller  
226 Valley Road  
Media, PA 19063



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

Dated: October 9, 2019