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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 CLEAN AIR COUNCIL**

Dear Secretary Chiavetta:

Attached for electronic filing with the Commission is Sunoco Pipeline L.P.'s Answer Opposing Petition to Intervene of Clean Air Council 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,

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Counsel for Sunoco Pipeline L.P.

WES/das
Enclosure

cc: Hon. Elizabeth H. Barnes (Electronic 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.	:		

**SUNOCO PIPELINE L.P.'S ANSWER
OPPOSING PETITION TO INTERVENE
OF CLEAN AIR COUNCIL**

Pursuant to 52 Pa. Code § 5.66,¹ Sunoco Pipeline L.P. (SPLP) submits this Answer Opposing Clean Air Council's (CAC) September 24, 2018² Petition to Intervene in this proceeding because CAC lacks standing to be granted intervenor status in this matter and CAC has not shown its interests are not adequately represented by Complainant.

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").

² 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.

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.

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

Petitioner cannot show, as it is required to, a direct, immediate and substantial interest. Petitioner does not have a sufficient interest as its purpose and mission as an environmentally focused organization is unrelated to the PUC's jurisdiction and the allegations in its petition show that CAC lacks a direct and immediate interest in the pipeline safety concerns that form the basis of the Complaint. *See* Petition Paragraph 9. Further, Petitioner's claim that it has previously litigated before this Commission and before similar agencies in other states cannot be a basis for CAC's intervention into the instant complaint. *See* Petition Paragraphs 10-11. Standing requires a direct, immediate and substantial interest in the current proceeding, not simply finger-pointing to other, unrelated matters where CAC was granted intervenor status. *Id. See also* 52 PA. Code § 5.72(a). Standing to intervene is a legal test with standards, not a test of comparison.

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 its interests are direct or immediate, and simply restates a summary of 52 Pa. Code § 5.72(a) and claims it meets the standards. *See* Petition Paragraphs 7-8. Petitioner then goes on to allege that it “has worked for decades to protect Pennsylvanians’ right to a clean environment. The Commission’s resolution of Andover’s claims, which involved the threat of a hazardous liquids leak, will have a direct impact on the ability of CAC to achieve its organizational goals.” Petition Paragraph 9. However, the issues regarding “a clean environment” and CAC’s organizational goals with respect to the Mariner East Pipelines, are outside the jurisdiction of the PUC. It is axiomatic that the Commission, as a creature of the legislature, has only those powers conferred upon it by statute. *See Feingold v. Bell*, 477 Pa. 1, 282

A. 2d 791 (1977). The PUC only has jurisdiction over public utilities under the definition of “public utility” in 66 Pa. C.S.A. § 102 which, relevant to SPLP, is “Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.” 66 Pa. C.S.A. § 102. Further, the PUC’s primary purpose to regulate public utilities is defined under 66 Pa. C.S.A. § 1501. Nowhere in the PUC’s operative statutes does the legislature grant the PUC enforcement power “to protect Pennsylvanians’ right to a clean environment.” *See* Petition Paragraph 9. CAC’s concerns and interests are not under the PUC’s jurisdiction, and thus CAC lacks standing on the basis of its environmental concerns which involve the threat of a hazardous liquids leak. *Id.* To the extent that the Petitioner raises unsupported allegations of concern for highly volatile liquid pipelines generally or opinions as to SPLP’s operations, Petitioner must show a direct interest, that is CAC “must show causation of the harm by the matter of which he or she complains,” but CAC has failed to do so. *See In Re Peco Energy Co.*, A-110550F0160, 2005 WL 1959191, at *2–6 (July 18, 2005).

Also, Petitioner does not allege how its members in Andover are immediately or directly affected to grant standing. In fact, CAC does not state a harm or impact that its’ members face aside from a generic unsupported opinion that “the Mariner East Pipeline Project is not safe and poses a danger to the public and the environment” and general statements of a “threat of a hazardous liquids leak.” *See* Petition Paragraphs 5 and 9. Petitioner further makes the broad statement that it “has members in Andover, the townships surrounding Andover, and along the entire Mariner East route” without identifying how these particular members are adversely impacted or how their concerns are related to the underlying Complaint. *See* Petition Paragraph 12. Petitioner here has failed to allege a causal relationship between its 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, its interest is necessarily not substantial. A substantial interest means an interest greater than that of all citizens in compliance 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 under the very allegations put forth by CAC in its petition. 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. Further, on the basis that "*CAC has members in Andover*," that, by definition, shows that those member's interests are already adequately represented in this proceeding. *See* Petition Paragraph 12 (emphasis added). Indeed, CAC's interest on the basis of its members live in Andover Homeowner's Association is already adequately represented by the Complainant, Andover Homeowner's Association, who represents *these same members on a direct basis*. Andover's representation of the interests of its property owners certainly indicates adequate representation and outweigh interests based on mere membership in an environmental organization

alone. Further, duplicative representation of the same interests is not sufficient to grant standing and show that CAC's interests are adequately represented in this proceeding. *See* 52 Pa. Code 5.72. Finally, Petitioner does not specifically allege, as it is required to do, why its interests are not adequately represented by the Complainant. The Complainant already adequately represents Petitioner and its' members interests in the issues raised in the Complaint and the Petition should be denied.

SPLP notes that if Petitioner is nonetheless granted intervenor status and this matter is not consolidated with the *Flynn et al* matter, 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 the Clean Air Council's Petition to Intervene be denied.

Respectfully submitted,



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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:

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