IN THE SUPREME COURT OF OHIO

SUNOCO PIPELINE L.P.,	:	**Case No. 2016-1486**
	:	
Plaintiff-Appellee,	:	
	:	**On Appeal from the Harrison**
v.	:	**County Court of Appeals,**
	:	**Seventh Appellate District**
CAROL A. TETER, TRUSTEE,	:	
	:	**Court of Appeals Case Nos.**
Defendant-Appellant.	:	**16HA0002 and 16HA0005**

MEMORANDUM OF PLAINTIFF-APPELLEE SUNOCO PIPELINE L.P. IN OPPOSITION TO JURISDICTION

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THIS APPEAL PRESENTS NO QUESTIONS OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE SUBSTANTIAL CONSTITUTIONAL QUESTIONS

There is nothing new, unique, or disconcerting about the exercise of eminent domain by private pipeline companies. Nor is the applicable law unsettled. The right of private companies to exercise eminent domain to construct petroleum pipelines has been enshrined in Ohio statutory law since 1868. This Court recognized the importance of the grant of eminent domain authority to private pipeline companies more than 100 years ago in *Langabaugh v. Anderson*, 68 Ohio St. 131, 140-41, 67 N.E. 286 (1903).

This grant of authority is neither unbridled nor unregulated. Pipeline projects are highly regulated at the local, state, and federal level, with multiple agencies involved in oversight, including the U.S. Environmental Protection Agency, the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA"), the Army Corps of Engineers, and the Federal Energy Regulatory Commission ("FERC"). The fact that the pipeline is not also regulated by the Ohio Power Siting Board ("OPSB") is by no means unique to petroleum pipelines. Numerous projects facilitated by eminent domain – including electric distribution lines and electric transmission lines less than 125 kV – also are not regulated by the OPSB. The decision to exempt a project from OPSB oversight is a specific legislative decision. For projects under OPSB jurisdiction, the legislature left it for the OPSB to determine whether a project is necessary to serve a public purpose, for eminent domain purposes. Where there is no OPSB jurisdiction, that review falls instead to the courts, as it did here. Due-process review is not lacking or insufficient, it is merely different.

Nor are the legal issues presented here unique or unsettled. As to Appellant's first proposition of law – the meaning of the term "petroleum" – four Ohio courts of

appeals have now considered the issue and all have reached the same result. Their holdings are supported by the overwhelming weight of definitional authority on the subject. If the meaning of "petroleum" is to be significantly narrowed, as Appellant urges, the change should be made by the legislature, not by this Court – particularly given the scientific complexity of evaluating and parsing out all the various types of molecules and chemical components which might, or might not, fall under the "petroleum" umbrella at different stages of processing and refinement. The General Assembly recently removed natural gas liquids ("NGLs") pipelines from OPSB jurisdiction, making it apparent that the legislature knows how to carve-out NGLs from a statute's coverage when it wants to do so. It has thus far declined to do so in the eminent domain statute, and the Court should not legislate that result.

As to the issues raised in Appellant's second and third propositions of law – the meaning of "necessary" and "public use" – the law is equally settled. Neither of the jurisdictional briefs identifies any split of authority amongst Ohio's courts of appeals on either issue. Nor are the questions of a specific project's necessity and public use susceptible to broad pronouncements or overarching rules. These are project-specific, fact-specific inquiries, best left to the determination of trial courts, with appellate supervision.

STATEMENT OF THE CASE AND FACTS

Appellee Sunoco Pipeline L.P. ("Sunoco") is building a $3 billion dollar interstate pipeline designed to carry propane and butane from the Utica shale-rich area of eastern Ohio across West Virginia, Pennsylvania and into Delaware. The pipeline is essential because without this added infrastructure, Ohio's petroleum is "trapped" in the State and cannot get to market. Appellant's property stands as the sole obstacle to the timely

completion of the pipeline in Eastern Ohio, as Sunoco has reached agreement with every other Ohio landowner along the pipeline's route.

The lower courts, after an extensive evidentiary hearing, were in full agreement that Sunoco had the authority to appropriate an easement across the Teter Trust property for this pipeline. They agreed that propane and butane, as natural gas liquids, are petroleum within the scope of R.C. 1723.01, et seq., that the pipeline constituted a "public use," and that Sunoco had established the "necessity" for the pipeline.

RESPONSES TO APPELLANT'S PROPOSITIONS OF LAW

Response to Proposition of Law No. 1: The lower courts' interpretation of "petroleum" is reasonable and in accordance with law.

Ohio's courts of appeals first considered the breadth of the term "petroleum" in the current version of Ohio's eminent domain statute 15 years ago, in a pair of decisions by the Fourth and Fifth Appellate Districts. *Ohio River Pipe Line, L.L.C. v. Henley*, 144 Ohio App.3d 703, 761 N.E.2d 640 (5th Dist. 2001); *Ohio River Pipe Line, LLC v. Gutheil*, 144 Ohio App.3d 694, 761 N.E.2d 633 (4th Dist. 2001). In both cases, the courts were called upon to determine whether refined petroleum products like gasoline, diesel fuel, kerosene, and jet fuel constituted "petroleum." Neither court had difficulty concluding that the definition of "petroleum" included refined petroleum products.

The *Henley* and *Gutheil* courts both recognized that this Court's jurisprudence supported their reasonable interpretation of "petroleum." In *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 247, 374 N.E.2d 146 (1978), this Court held that the generic terms "oil" and "gas" in turn-of-the-century pipeline easements included the very same products at issue in this case – propane and butane. Although the *Alexander* Court did not wrestle with the specific term "petroleum," the Court's rationale remains instructive,

given the overlapping use of the words oil and petroleum in the industry and in many statutes, including the eminent domain statute at issue in this case:

> It is clear that at the time of the execution of the 1911 right-of-way agreement, the words "oil" and "gas" included products in both the refined and natural states. A restriction of these terms could easily have been achieved by use of a qualifying adjective such as "crude" or "natural." Because the parties executing this agreement did not choose to qualify the terms of "oil" and "gas," we must therefore assume that they intended no restrictive meaning.

Id. at 248. The same rationale applies here. Had the legislature intended to limit the definition of "petroleum" to specific petroleum products or to petroleum in only its naturally occurring states, it could have done so simply by adding a qualifying adjective like "crude" or "natural." It did not.

These reasonable judicial interpretations of the broad terms "petroleum" and "oil" led to the two most recent appellate decisions on the narrower issue presented here – whether NGLs, such as propane and butane, constitute "petroleum." Both the Seventh District below, and the Fifth District in *Kinder Morgan Cochin LLC v. Simonson*, 5th Dist. Ashland No. 15 COA 044, 2016-Ohio-4647, concluded that they do.

Thus, in the six decades since R.C. 1723.01 was enacted, and in the more than one hundred years since the term "petroleum" was first used in Ohio's eminent domain statute, not a single appellate court in this State has adopted the narrow construction advanced by Appellant. The definitional authority on this issue makes clear why that is the case. First, the only testimony from witnesses working in the oil and gas industry supported the proposition that "petroleum" has a broad meaning within the industry that includes NGLs. *See* R.C. 1.42 (requiring words that have acquired a technical or particular meaning to be construed as such). The interpretation adopted by the lower courts is also supported by other sections of the Revised Code, as well as the federal

government – including the federal agency tasked with primary regulatory authority over this pipeline, PHMSA. *See, e.g.*, 49 C.F.R. 195.2 ("Petroleum means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas."); U.S. Energy Information Administration, Independent Statistics & Analysis, Glossary (defining "petroleum" as a "broadly defined class of liquid hydrocarbon mixtures. Included are crude oil, lease condensate, unfinished oils, refined products obtained from the processing of crude oil, and natural gas plant liquids.");[1] R.C. 3746.01(L) ("'Petroleum means oil or petroleum of any kind and in any form, including, without limitation, * * * natural gas liquids * * * .").

Ignoring all this authority, Appellant principally hangs her hat on a single definition from an 1890 version of the *American Dictionary of the English Language*, and argues that this Court is restricted to the meaning of the word that existed at the time of the statute's passage. There are several problems with this argument.

First, this Court recognizes the need to consider technical advancements in defining terms under the eminent domain statute. *See, e.g., Ohio Power Co. v. Deist*, 154 Ohio St. 473, 481, 96 N.E.2d 771 (1951) (evaluating the eminent domain authority of an electric utility and observing, "the courts have recognized the propriety of placing a reasonable construction upon statutes authorizing condemnation of private land. This is particularly true when public utilities face practical problems which are the result of mechanical and scientific progress.").

Second, this is not an instance in which a defined term is being expanded. Propane and butane are indisputably components of petroleum. Both Appellant and her expert appear to acknowledge that the wet gas from which butane and propane are

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[1] *Available at* https://perma.cc/8K5E-7CFR (last visited Dec. 13, 2016).

extracted qualifies as "petroleum." (Opinion, at 5, ¶ 20.) Sunoco is not seeking an expansion of the meaning of petroleum, but rather a common sense recognition that petroleum does not become something else when separated into its useful components.

Third, the solitary definition proffered by Appellant predates the enactment of R.C. 1723.01 by *sixty-three years, and the addition of the phrase "petroleum" to R.C. 1723.08 by over one-hundred years.* It is therefore not a contemporary source and sheds no light whatsoever on what the legislature understood the term "petroleum" to mean when it enacted R.C. 1723.01 in 1953, or when it revised R.C. 1723.08 in 1991 to substitute the word "petroleum" for "oils" (a time when the legislature would have presumably been familiar with propane and butane as forms of petroleum). Appellant is forced to reach back to this aged definition because her prior reliance on the more contemporaneous definition of "petroleum" in the 1947 version of Webster's New International Dictionary was soundly discredited by the Court of Appeals' conclusion that the 1947 Webster definition actually supported the meaning of petroleum advanced by Sunoco. (Opinion, 13-14, ¶¶ 49-53.)

There are two other reasons why this Court should decline to delve into the meaning of petroleum. First, Appellant's attempt to dissect the technical meaning of petroleum is unworkable and impractical. There is a wide spectrum of both crude and processed hydrocarbons that arguably fall within the meaning of "petroleum." Precisely identifying the substances that do and do not qualify as "petroleum" is a fact-specific inquiry. Both parties presented extensive technical and scientific testimony in the trial court on the nature of the substances at issue. Although this Court may pass upon the narrow question of whether refined, purity-grade propane and butane qualify as petroleum, such a ruling is unlikely to provide much guidance on whether *other*

compositions and mixtures of petroleum qualify. Instead, the Court's opinion is likely to create uncertainty about the eminent domain authority of every kind of petroleum pipeline based on the chemical makeup, level of processing, and refinement of the petroleum substance(s) it carries.

Second, this is a matter that is more suitable for legislative action. The General Assembly is certainly familiar with NGLs, as it recently removed NGL pipelines from OPSB regulation with the passage of Amended Substitute Senate Bill No. 315 in 2011. *See* R.C. 4906.01(B)(2)(g). It therefore knows how to remove NGLs from the purview of a statute when it determines such exemption is necessary or reasonable. In fact, it had a perfect opportunity to do so in 2007 when the General Assembly significantly overhauled other parts of the eminent domain statute in response to this Court's decision in *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115 (2006).

Response to Proposition of Law No. 2: The issue of public use is a project-specific and fact-specific inquiry already guided by long-standing legal principles.

Appellant's Second Proposition of Law does not identify any questions of public or great general interest and fails to identify any significant legal issue requiring the Court's review. No appellate split of authority is identified. Nor is additional legal guidance sought or a new rule of law requested. In fact, the only precedent mentioned in Appellant's brief on this proposition of law is *Norwood*, and the only argument proffered is that the lower courts did not properly apply *Norwood*'s guidance in concluding that this particular pipeline serves a public use. Appellant merely takes issue with the courts' application of settled, existing law to the particular facts of this case.

This sort of factual analysis is not the type of matter well suited to this Court's review. Even if this Court found the lower courts' public-use finding troublesome, it would be difficult to provide guidance to the bench and bar on the public-use inquiry that would extend beyond these specific facts and these parties. That is because even in the very narrow context of the public use served by petroleum products pipelines, every pipeline is different. Among the facts that vary by project and may be relevant to the public-use inquiry are the products to be transported, the pipeline's beginning and ending points (and whether the pipeline is shipping products from the state, into the state, or through the state), the intended use of the products, the types of companies carrying the product, and whether and how the pipeline is open to the public, among others.

Because Sunoco has already reached agreement with every other Ohio landowner on this project, there is only one member of the public impacted by this Court's examination of the necessity and public use of this particular pipeline – Appellant. Typically, this Court avoids the discretionary review of cases of interest primarily to the parties. *Williamson v. Rubich*, 171 Ohio St. 253, 168 N.E.2d 876 (1960). Appellant and Amici support their public-interest argument by referencing "hundreds" of recently filed eminent domain cases, and the large Utopia pipeline, whose eminent domain authority is currently being challenged in several counties. But that is an entirely different pipeline and project, and the public-use analysis will be very different. The Court's discretionary review resources will be better deployed, if at all, when review will affect hundreds of parties, not just one isolated appellant.

Moreover, Appellant's and Amici's fact-specific complaints about the lower courts' public-use determinations are unfounded. First, contrary to Appellant and

Amici's argument, *Norwood* does not prohibit consideration of economic benefits. Instead, *Norwood* recognized that "economic factors may be considered in determining whether private property may be appropriated," but held that economic benefits cannot be the *sole* benefit. *City of Norwood*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, paragraph one of the syllabus. Even the most fundamental public projects have obvious, and often significant, economic benefits. For example, gasoline pipelines bring profits to pipeline owners and shippers, bring jobs along the pipeline route and provide an economic boost to the economy generally. Even as to the public served by the pipeline, the benefit is significantly economic in nature, as the pipeline increases the supply of gasoline, thereby lowering the cost of the product to consumers.

Moreover, although only a single public use is necessary to support the use of eminent domain, this project will provide many public benefits. Appellant's and Amici's briefs ignored or minimized most of these benefits, which include:

- Supply of propane to heat homes and businesses (one of the shippers is a residential petroleum distribution company);
- Supply of butane, used by consumers as lighter fluid and also blended with gasoline to ensure that cars are able to run in cold weather;
- Supply of propane and butane for manufacturing purposes, which are refined to create synthetic products for the public (from water bottles to dashboards); and
- Enhancing public safety. The pipeline will transport up to 273,000 barrels/day of petroleum product which would otherwise be transported on our roads and railways. *Senate Concurrent Resolution No. 7*, 130th General Assembly, enrolled April 17, 2013 (recognizing that pipelines are 100 times safer than transport by truck and 40 times safer than transport by train).[2]

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[2] *Available at* https://perma.cc/J8T2-MHUQ.

The pipeline will also serve a public use in the most literal sense of the term. As a FERC-regulated common carrier, the pipeline will be open to any members of the public who wish to transport product through it. *See Sunoco Pipeline L.P.*, 149 FERC ¶ 61, 191, Docket No. OR 14-40-000, ¶¶ 30-31 (Dec. 1, 2014).[3] The pipeline thus functions as a publicly available "toll road" for petroleum.

Second, Appellant and Amici claim that many of the proffered benefits are speculative, in violation of *Norwood*. To make their argument, they pick and choose quotes from the trial transcript (further evidence of the fact-based nature of their Proposition of Law) and claim that the benefits are mere possibilities. But there is nothing at all uncertain about these uses or benefits. The benefits are as certain as those flowing from other fundamental eminent domain projects, like roads, power lines, and natural gas lines. The only speculative component of these benefits is not *whether* they will accrue, but rather the exact nature, timing, and extent of those benefits. But that does not render them speculative under *Norwood*. If it did, nearly every recognized use of eminent domain would be subject to attack on this ground.

Norwood's concern about speculative use was focused on a different matter entirely. In *Norwood*, the Court took issue with the City's decision to exercise eminent domain to take homes in an area that the City determined "may" deteriorate in the future. *City of Norwood*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, at ¶ 8. Thus, the City was not exercising eminent domain to take currently blighted property, but was instead taking property based on speculation as to its *future* condition. As the Court recognized, it is fundamental to eminent domain law that a condemning authority may not take property now for speculative future uses. *Id.* at ¶¶ 100-103. The

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3 *Available for download at* https://perma.cc/8VR2-5TVA.

speculative concern raised in *Norwood* thus dealt with the need for the project itself, rather than the ability of the project owner to predict with precision the extent and nature of every future public benefit that would flow from the project. The issues in *Norwood* bear no resemblance to the facts of this case.

Finally, Appellant attacks the lower courts' public-use findings because the petroleum is not being transported directly to the public. As with the foregoing assertions, the invalidity of this argument is best demonstrated by comparison to other fundamental public uses. Electric transmission lines do not deliver electricity directly to the public. Nor do oil pipelines or natural gas transmission pipelines. In all of these circumstances, products must move through additional channels of distribution and commerce before ever reaching the public. The lack of direct delivery to the public in no way undermines the project's public benefit.

Response to Proposition of Law No. 3: Necessity is a project-specific and fact-specific inquiry that is aptly guided by the "reasonably convenient or useful" standard.[4]

Appellant's Third Proposition of Law suffers from many of the same defects as her second proposition. Namely, the issue of "necessity," like "public use," is principally a fact-based question to be decided on a project-by-project basis. Here again, Appellant principally quarrels with the way the lower courts applied settled law to the facts of this particular project, although she also questions the standard commonly used by the courts to evaluate necessity.

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[4] Appellant attempts to back-door an argument that R.C. 163.09(B) is unconstitutional because it does not require necessity to be proven by clear and convincing evidence, but the Court of Appeals properly held that Appellant waived this argument. (Opinion, 78, ¶101).

Ohio's courts have uniformly used the "reasonably convenient or useful" standard for decades. *E.g., Bd. of Trustees of Sinclair Community College Dist. v. Farra*, 2d Dist. Montgomery No. 22886, 2010-Ohio-568, ¶ 37; *Media One v. Manor Park Apts., Ltd.*, 11th Dist. Lake Nos. 99-L-116, 99-L-117, 2000-L-045, & 2000-L-046, 2000 Ohio App. LEXIS 4791, *13 (Oct. 13, 2000); *Pepper Pike v. Hirschauer*, 8th Dist. Cuyahoga Nos. 56963, 56964, 56965, 57667, 1990 Ohio App. LEXIS 297, *7 (Feb. 1, 1990). To Sunoco's knowledge, no Ohio court has questioned this standard, and Appellant offers no valid reason for this Court to disturb it. Indeed, this Court has previously rejected appeals from multiple cases involving the necessity issue. *E.g., State Rd. Assocs. v. City of Cuyahoga Falls*, 9th Dist. Summit No. 24362, 2009-Ohio-2859, *appeal not allowed*, 123 Ohio St.3d 1472, 2009-Ohio-5704, 915 N.E.2d 1254 (declining to review determination that shopping center tenant failed to adequately challenge necessity of City's appropriation intended to eliminate blight); *City of Toledo v. Kim's Auto & Truck Serv.*, 6th Dist. Lucas No. L-02-1318, 2003-Ohio-5604, *appeal not allowed*, 101 Ohio St.3d 1469, 2004-Ohio-819, 804 N.E.2d 42 (declining to review court of appeals' determination that this Court has taken a "broad view" of the term "public use" and that a deferential standard applies to City's necessity determination for urban renewal projects to alleviate slum & blight).

The reasonably convenient or useful standard is perfectly suited to the necessity determination in eminent domain cases and in no way renders the statutory requirement a "nullity," as Appellant claims. The standard does not create any absolute or irrebutable presumption of necessity and any entity's initial determination by resolution that its project is necessary (whether that entity is a private pipeline company, a public utility, or the government) remains subject to challenge in court. The

fact that an entity passes a resolution under the statute declaring the necessity of a particular project does not make it so – it is for the courts to decide. R.C. 163.09.

The heightened standard that Appellant and Amici appear to advance as a substitute would eviscerate the exercise of eminent domain not only by private pipeline companies, but by public entities as well. As Ohio courts have recognized, in eminent domain cases, necessity "cannot be limited to an absolute physical necessity," and a "contention that some other location or configuration might have served the same purpose is not a valid objection regarding whether the appropriation is necessary." *Bd. of Trustees of Sinclair Community College Dist.*, 2010-Ohio-568, ¶ 37; *Eschtruth Inv. Co., LLC v. City of Amherst*, 9th Dist. Lorain No. 10CA009870, 2011-Ohio-3251, ¶10. It is the rare project indeed that is an absolute necessity, as even the most vital government projects can always be met by the objection that the public goal to be served might be accomplished in some other fashion, at some other time, or in some modified manner. And whether it is a road, a power line, a pipeline, or some other facility, there is always another possible path, route, or location.

Amici also make much of the fact that this pipeline is not sited or regulated by the OPSB. They argue that the lack of this particular government oversight makes private petroleum pipelines uniquely dangerous to individual liberties and property rights. Nothing could be further from the truth. While the OPSB does not site or regulate NGL pipelines, it is not true that these pipelines are unregulated or even lightly regulated. Nearly every aspect of the pipeline is regulated by federal, state, and local agencies and authorities, including PHMSA, FERC, Army Corps of Engineers, U.S. Fish and Wildlife Service, Ohio State Historic Preservation Office, Ohio Department of Agriculture, Ohio

Environmental Protection Agency, and local agencies and authorities (like county commissioners, county engineers, and township trustees).

The lack of OPSB authority over NGL pipelines is by no means unique in the eminent domain context. Numerous other projects that unquestionably serve the public and possess eminent domain authority also do not pass through OPSB review, including public utility electric distribution lines, as well as transmission lines under 125kV. R.C. 4906.01(B)(1)(b) & (B)(2)(c). The lack of OPSB oversight actually *increases* rather than *diminishes* the authority of Ohio courts over these projects, because the General Assembly provided in R.C. 163.09 that approval of a project by a state or federal regulatory authority creates an "*irrebutable* presumption of the necessity." R.C. 163.09(B)(1)(c) (emphasis added). By contrast, if the project has not gone through OPSB review, and the common carrier or public utility is merely relying on its own resolution to support necessity, the presumption is merely "rebuttable." R.C. 163.09(B)(1)(b). Thus, courts have far greater authority to declare a non-OPSB regulated project unnecessary than they do an OPSB-approved project.[5]

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5 Although the OPSB did not evaluate the necessity of this pipeline, the FERC did, and it found the pipeline necessary to relieve the glut of NGLs and meet the demand for their transportation. *Sunoco Pipeline L.P.*, 149 FERC ¶ 61, 191, Docket No. OR 14-40-000, ¶¶ 30-31 (Dec. 1, 2014).

Response to Proposition of Law No. 4: A trial court has discretion to grant or deny a stay of judgment where a private party seeking the stay cannot give an adequate supersedeas bond.[6]

The Fourth Proposition of Law articulates an inaccurate rule of law that is at odds with Civil Rule 62(B), which allows for stays pending appeal from a trial court's judgment in favor of a private party only "by giving an adequate supersedeas bond * * * approved by the court." Absent satisfaction of this condition, there is no "entitlement" to a stay. Thus, where a private party cannot give an adequate bond, the decision to nevertheless grant a stay rests in the sound discretion of the trial court. This Court and the General Assembly both recognize that a judgment allowing the appropriation of private property likely falls in the category for which the giving of a supersedeas bond is an impractical alternative. *See City of Norwood*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, at ¶ 118; R.C. 163.19. The factors a court may consider in exercising its discretion are those set forth in the traditional balancing test for injunctive relief. *See Nken v. Holder*, 556 U.S. 418, 433-35, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009). Indeed, Appellant conceded this point in the trial court.[7]

CONCLUSION

For the foregoing reasons, Appellee Sunoco Pipeline L.P. respectfully requests that this Court decline jurisdiction over this matter.

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[6] The Court may properly reject the Fourth Proposition of Law solely on the grounds that it is not supported by "[a] brief and concise argument" as required by S.Ct.Prac.R. 7.02(C). Presumably seeking to circumvent the page limitation imposed by S.Ct.Prac.R. 7.02(B), Appellant merely refers the Court to its prior request for this Court to stay the appellate court's judgment, which is a different issue altogether.

[7] *See* Defendant Teter's Closing Argument on Motion to Stay (March 11, 2016) ("At the Hearing, the Court indicated, and counsel for all parties conceded, that the proper method for determining whether a stay may be issued in a situation like the one at bar is to utilize a four part balancing test much like the test for obtaining an injunction.") (Available at https://perma.cc/MVX2-528T).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Memorandum of Plaintiff-Appellee Sunoco Pipeline L.P. in Opposition to Jurisdiction was served by First-Class U.S. Mail or hand delivery upon counsel for parties to this proceeding, identified below, this 14th day of December, 2016.

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