

IN THE COURT OF COMMON PLEAS,  
HARRISON COUNTY, OHIO

SUNOCO PIPELINE LP  
PLAINTIFF,

Vs.

Case No. CVH 2015 0058

CAROL A. TETER, TRUSTEE,  
ET AL

DEFENDANTS.

- - -

APPEARANCES:

ON BEHALF OF PLAINTIFF:

Mr. Gregory Brunton  
Mr. Daniel Hyzak  
Mr. Bruce Moore  
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ON BEHALF OF DEFENDANTS:

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TRANSCRIPT OF PROCEEDINGS

March 4, 2016

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Transcript of proceedings of DEFENDANT'S MOTION TO  
STAY heard in the above styled case, in the Common Pleas  
Court, Harrison County, Ohio, before the Honorable T. Shawn  
Hervey, Judge.

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1                   THE COURT: We are on the record in case  
2 number CVH 2015-0058, captioned Sunoco Pipeline versus Carol  
3 Teter Revocable Living Trust, et al.

4                   Court would note for the record that we are  
5 here today on the Defendant's Motion for Stay of the  
6 injunction granted by this Court by Judgment Entry.

7                   Court will note for the record that the  
8 parties have met in chambers and we have discussed various  
9 preliminary matters prior to commencing this action. Court  
10 will also note that we did receive filings from the Plaintiff  
11 late yesterday -- late during the day of court yesterday and  
12 the Court, based upon its schedule, was not able to read the  
13 brief, however, we are satisfied that the brief can be  
14 considered after this hearing, and in fairness to the  
15 Defendant if the Defendant wishes to file a supplemental brief  
16 in response the Court will grant that as well.

17                   So, with that, the process that we will go  
18 through is we will hear argument from the Defendant since it  
19 is the Defendant's motion, then we will hear argument from the  
20 Plaintiff. We'll give each party an opportunity to respond to  
21 the other's testimony. It's the Court's intention to allow  
22 each party to supplement their arguments in fairness within  
23 seven days of this hearing. I don't want it to drag on. I  
24 certainly don't think that's in anybody's interest, but a  
25 quick response by the Court. This will be the number one

1 priority of the Court to get this case done unless a serious  
2 criminal action comes and statutorily I have to put my  
3 attention to that, but it will be number one on my civil  
4 docket because I understand what's at stake for each party in  
5 this case, and I certainly want to give this case my attention  
6 and a speedy decision.

7 So, with that, any opening statement by the  
8 Defendant?

9 MR. ANDERSEN: We'll waive opening argument  
10 if they do.

11 THE COURT: Very well. I'm going to start  
12 treating you guys like presidential candidates. I'm not going  
13 to give you options to do things.

14 MR. ANDERSEN: And you note I referenced them  
15 as opening arguments. And I think we should we just -- in my  
16 opinion we should go ahead with the hearing.

17 THE COURT: And I'm going to give you a  
18 chance to make an opening argument and if you want to make one  
19 you're more than welcome to. If you don't want to you're more  
20 than welcome to.

21 MR. ANDERSEN: I think Mr. Brunton is going  
22 to give one, so when in Rome --

23 Your Honor, as you properly stated we're  
24 here on a Motion to Stay filed by the Defendant. The only  
25 thing I want to address in the opening is that we believe that

1 the State Fire Marshal Curl case controls whether or not stay  
2 should be granted and we think that the only real issue here  
3 is of course the Court will balance some equities, but in the  
4 end it comes down to the bond.

5 THE COURT: So tell me about -- well, you're  
6 not testifying. Go ahead. I'll interrupt you later. I'm sorry.

7 MR. ANDERSEN: State ex rel v. Curl is a case  
8 from about 2000, the Ohio Supreme Court, and it is case number  
9 87 Ohio State 3rd, 568, and essentially it was a case  
10 regarding Rule 62 A, B and C which is the Civil Rules  
11 provisions regarding stay and has a really nice discussion  
12 that they're based on the Federal Civil Rules. And so in  
13 essence what the Court held there was that a state agency,  
14 under B, along with a private agency, under B, doesn't really  
15 have to prove any grounds for the stay. All they have to do is  
16 post a bond. The Court further held that under C a state  
17 agency is not required to post the bond so that a stay to the  
18 state agency is pretty much automatic without a bond.

19 There are several cases since then  
20 discussing it and I'd be happy to -- since the Court is going  
21 to allow us to supplementally brief this I'll be happy to do  
22 that. But it should be noted that in 2002 Justice Evelyn  
23 Lundberg Stratton wrote a dissent in Wallace versus Department  
24 of Commerce. It's 96 Ohio State 3rd, 266, paragraph 116, which  
25 very clearly discusses the difference between a state actor

1 and a private entity and basically makes it very clear that  
2 the holding in State ex rel Curl does provide that the stay is  
3 actually not automatic because it requires posting of a bond,  
4 but that the Court really doesn't need to consider any other  
5 factors. We need to make the request, the Court should figure  
6 out what the bond should be and then move on from there.

7 THE COURT: And I'll reserve my questions for  
8 when you have your case in chief. Is that your opening  
9 statement?

10 MR. ANDERSEN: The only other thing I would  
11 talk about, and again this is because of their brief which I  
12 know the Court hasn't read yet, but they do place a case from  
13 a while back where they actually make the argument that the  
14 stay -- that putting the pipeline in would not render our  
15 appeal moot because it's not voluntary because essentially  
16 there's a streamline -- there's a few cases out there that say  
17 that if the appealing party voluntarily complies with the  
18 judgment their appeal is moot. And so their argument is that  
19 -- this would clearly be involuntary because we fought them  
20 all the way through. But if you read the cases, Your Honor,  
21 and I would have the Court look at Roman Plumbing versus  
22 Cherevco, which is 2011, Ohio, 1991, it's an 11th District  
23 case. And I know it's not binding here but it gives about a  
24 dozen examples of when things are and when things aren't  
25 voluntary and involuntary and it's very, very confusing. And

1 so if my clients are out one morning drinking coffee watching  
2 Sunoco put a pipeline in I think they could argue that we  
3 voluntarily let them on the property. And so I believe that  
4 the involuntary/voluntary is an issue that's not decided and  
5 it really -- the Court should be very, very cautious in my  
6 opinion when deciding whether or not there's voluntariness or  
7 involuntariness regarding that issue. And I think that's all I  
8 have for my opening argument.

9 THE COURT: On behalf of Sunoco.

10 MR. BRUNTON: Thank you, Your Honor. I'll  
11 keep this brief because I know the Court's well aware of the  
12 history of this matter but there are a few specific points  
13 we'd like to make.

14 Your Honor, you're obviously in a court of  
15 equity situation today whether or not to grant a stay and so  
16 you're balancing obviously the harm and the irreparable harm  
17 of the parties as to what would be the outcome if you  
18 prevented or delayed construction of the pipeline. Or, on the  
19 other hand, if you allowed Sunoco to go forward with  
20 construction of the pipeline pending the Teter Trust appeal.  
21 And so to speak the risk to the Teter Trust is that Sunoco  
22 will build a pipeline across their property and we obviously  
23 do not think you'll get reversed at the Court of Appeals but  
24 if the Court of Appeals reversed and the Ohio Supreme Court  
25 ruled in favor of the Teter Trust eventually Sunoco would have



1 a pipeline across their property and the Teter Trust would  
2 have suffered so to speak, the harm of having a pipeline  
3 across their property that should never have been there in the  
4 first place. So that's essentially I think what the Court's  
5 balancing today in terms of a stay or no stay.

6 One quick comment. I don't think anyone is  
7 going to think that the Teter Trust is voluntarily allowing us  
8 to do this. I don't think the mootness argument or the  
9 argument that somehow the Court of Appeals will say, well  
10 there's a pipeline there now, you obviously agreed to it,  
11 Teter Trust. I mean I think we took care of that in the public  
12 record Judgment Entry that clearly says that all parties  
13 agreed they're not waiving their right to appeal and fight the  
14 issue and the order of condemnation. So I don't see that as  
15 frankly an issue that any party here has to worry about.

16 When the Court balances the factors -- what  
17 you're going to hear from us today is this. It's obviously a  
18 huge project and the numbers and the potential harm to Sunoco  
19 LP if this project is delayed and wrongfully delayed because  
20 we had the right to be there and you were correct, the numbers  
21 become staggering both as a matter of construction delay costs  
22 and as a matter of lost revenue to Sunoco. We always kind of  
23 say half jokingly but half frightened in the industry that  
24 this is not a pipeline. You can have hundreds and hundreds of  
25 miles of pipe but if you've got one gap on one property you

1 don't have a pipeline, you've got a three billion dollar asset  
2 sitting in the ground doing nothing. And the lost revenue from  
3 just even having all of this pipeline completed you're going  
4 to hear testimony today that it's over \$900,000.00 a day in  
5 lost revenue if they build three billion dollars worth of  
6 pipeline but they're not in service when they otherwise would  
7 be in service because we're at the Court of Appeals and then  
8 we're at the Ohio Supreme Court and we're out here one or two  
9 years waiting for this appeal process to start. It becomes a  
10 devastating effect on the company financially. Even just the  
11 construction costs become almost insanelly exorbitant just the  
12 way the construction industry is. The move around costs, Your  
13 Honor, are over \$300,000.00 a day just to move around the  
14 Teter Trust property one time. That's a \$300,000.00 cost to  
15 us. Then they've gotta figure out how to get back on line  
16 because they're supposed to be going down the easement, right?  
17 So if they have to move around the Teter Trust property  
18 they've gotta find another way to get on the route, either  
19 find some road or buy a new access road because now they can't  
20 go through a straight line down the easement. And the cost of  
21 that and the delay of that even if everything went well just  
22 becomes staggering. The standby charges, if these crews end up  
23 just standing by and not being able to do anything, the  
24 standby charges for this contractor, who is by the way, the  
25 company's name is Welded, they're an Ohio contractor who's

1 waiting to start on this project, is \$42,000.00 an hour, an  
2 hour, are the standby charges.

3 The final thing you're going to hear from us  
4 today is that while Sunoco has never been in the position of  
5 having to remove pipe because of a Court of Appeals decision  
6 Sunoco is in business of pipe and this is what they do. They  
7 put in pipe. If they have to remove it they remove it. If they  
8 have to change a route they change a route. If they have to  
9 repair it they dig it up, they take some of it away, they put  
10 new pipe back in. And they do this all the time. And so, the  
11 property -- if, in what we think is the very unlikely  
12 scenario, a pipe will go in and have to come out, that  
13 property will be reclaimed, that property will look pretty  
14 much exactly the way it did before, maybe not exactly but  
15 pretty much exactly. And to the extent that there was any  
16 damages resulting from that that is clearly something Sunoco  
17 has the financial ability to cure for the Teter Trust  
18 property.

19 And so when you think on balance the  
20 staggering amount of harm that could be done to Sunoco if two  
21 years from now this entire pipeline is built except here,  
22 compared to the potential harm to the Teter Trust that they  
23 have the inconvenience of the construction, admitted, the  
24 inconvenience of all of that, we recognize it. But we think  
25 when you weigh it we think that you should deny the motion to

1 stay, let the pipeline go through. And the equities in this  
2 really clearly favor Sunoco because it truly is irreparable to  
3 them if this pipeline is delayed for a year or two at the  
4 Court of Appeals.

5 THE COURT: Thank you.

6 It is now the opportunity for the Defendant  
7 to present argument and evidence for the Court's  
8 consideration.

9 I'll just say this at the outset. I think  
10 all the parties are familiar with me enough by now to know  
11 that I'll interrupt and ask questions. But I always like to  
12 put that preface out there so you're not surprised when I do  
13 it again.

14 And just so I can follow along I'm going to  
15 start with the Defendant and then I'm going to go to the  
16 Plaintiff, I want to talk a little bit about standard of  
17 review and I'm going to do my own research on that issue as  
18 well and I have, but it helps me to at least get the arguments  
19 of the parties on standard of review clear in my mind before I  
20 listen to the evidence because it's easier to apply them as we  
21 go along than after we go along.

22 So, Attorney Andersen, on behalf of the  
23 Defendants, just the process of this and then we talked about  
24 it a little bit in chambers and I think we all know where  
25 we're going but I want to place it on the record. The Court's

1 understanding is first on a motion for stay you have to ask  
2 for a motion to stay at the trial court level first, is that  
3 correct?

4 MR. ANDERSEN: That is correct.

5 THE COURT: And then if this Court would  
6 happen to rule not in your favor but in the Plaintiff's favor  
7 you do have the opportunity to again ask for a stay at the  
8 appellate court level, is that correct?

9 MR. ANDERSEN: It sounds correct, yes, Your  
10 Honor.

11 THE COURT: Very well.

12 And you talked a little bit about standard  
13 of review in your opening statement and you cited cases and I  
14 diligently wrote them down, and I am going to review those.  
15 The Court did just a little bit of research in the small time  
16 we had before we came back into court after we talked at our  
17 pretrial meeting. I looked at a case, and because I haven't  
18 looked at their brief yet and because I haven't looked at any  
19 of the cases that you just told me about, someone might've  
20 already cited this but I'm not aware, but this is the  
21 International Diamond Exchange Jewelers Incorporated versus  
22 the US Diamond and Gold Jewelers Incorporated. It's a Westlaw  
23 case number 13174 decided December 5th, 1991. It cites a  
24 United States Court of Appeals District of Columbia case. And  
25 what that basically held -- and why I liked this case is

1 because it talks about factors to consider when determining  
2 whether to grant a stay of an injunction pending appeal. And  
3 that sounds like where we're at today. And it has the  
4 following formula and it is, "Number one. Has the petitioner  
5 made a strong showing that it is likely to prevail on the  
6 merits of the appeal? Without such a substantial indication  
7 of probable success there would be no justification for the  
8 Court's intrusion into the ordinary process of administration  
9 and judicial review. Number two. Has the petitioner shown  
10 that without such relief it will be irreparably injured?  
11 Three, would the issuance of a stay substantially harm other  
12 parties interested in the proceedings? Four, where lies the  
13 public interest?"

14 And that cites a Virginia Petroleum Jobbers  
15 Association versus Federal Power Communications case, 259  
16 Federal 2nd, 921 at 925.

17 So, what's your feelings on that standard?

18 MR. ANDERSEN: Your Honor, it's an old case.  
19 It's a 1991 case. There is an Ohio Supreme Court case that's  
20 directly on point from 1999.

21 THE COURT: But did that case deal with  
22 injunctions?

23 MR. ANDERSEN: It did. It dealt with --

24 THE COURT: It dealt with stays.

25 MR. ANDERSEN: It did.

1 THE COURT: But not on a stay on an  
2 injunction.

3 MR. ANDERSEN: That's correct. And there are  
4 multiple stay requests since then that have been under the  
5 same -- I mean and we can cite those in our brief, but I mean  
6 the --

7 THE COURT: So tell me the difference between  
8 what I articulated and what you think the standard is.

9 MR. ANDERSEN: I think the standard is that  
10 the stay should be automatic if we post a bond. But it looks  
11 like courts, even though that looks like the standard, courts  
12 do a balancing of the equities. And honestly there isn't very  
13 good review of this because when the Court denies the stay  
14 usually the actors do what they're supposed to do and it  
15 renders the issue of whether or not the Court issued a stay  
16 moot. And it's really -- there's not much out there on it. But  
17 I think that in my opinion holding -- making it a requirement,  
18 or if it is a requirement that I have to convince a court that  
19 just ruled against us on an issue in December that I have a  
20 substantial likelihood of success on the merits is almost -- I  
21 mean it's a standard that I don't think anyone can ever meet.

22 THE COURT: And I don't think from this  
23 Court's purview, I don't think that's necessarily the  
24 determining factor. It's a factor. That's the way I read the  
25 court ruling. And I would say -- this is just a general

1 discussion but in a case where you're arguing to the trial  
2 court for a stay where the trial court has already issued a  
3 judgment entry I agree that it would be almost impossible for  
4 you to get the Court to change its mind after it's reviewed  
5 the evidence. But I think this also would be the standard of  
6 review at an appellate court who might see differently than  
7 this Court did based upon the facts there. But I think the  
8 Court would still have to look at, at least from my position,  
9 what I would have to look at is it's a balancing act of those  
10 four factors. Do you have a strong probability of success on  
11 your argument. That's one factor. The second factor which I  
12 think would probably be very important to me in this case, has  
13 the petitioner shown that without such relief it will be  
14 irreparably injured. And I think even if we go to your  
15 standard and even if the Court decides that is the correct  
16 standard, I think you've acknowledged that that's what courts  
17 are doing even under that balancing test on the equity look at  
18 it, is that correct?

19 MR. ANDERSEN: I don't disagree that courts  
20 are doing a balancing. I agree with Mr. Brunton's statement  
21 earlier that this is a court of equity as well. And I think  
22 the Judges are doing that. And I don't think you would be  
23 wrong in doing that.

24 THE COURT: And I think -- just let me put it  
25 bluntly. But for number one the fact that whether there's a



1 substantial showing of you prevailing on your ultimate appeal  
2 the next three issues you probably don't have a problem with  
3 any one, do you? You don't have a problem with has the  
4 petitioner shown that without such relief it will be  
5 irreparably injured. You don't have a problem with that, do  
6 you?

7 MR. ANDERSEN: No. And if the Court is  
8 reading -- so, just let me say if the Court is reading those  
9 four factors as a balancing with an "or."

10 THE COURT: I absolutely do.

11 MR. ANDERSEN: So, some courts who construed  
12 this incorrectly before the Ohio Supreme Court ruled on it did  
13 not construe those with an "or." They had to be an "and."

14 THE COURT: Yeah, I read it as this. That  
15 they are four factors to consider and I don't believe reading  
16 that as four factors to consider means they're four factors  
17 that absolutely have to be irrevocably proved. I think that  
18 it's a balancing test based upon -- I don't see it -- I don't  
19 read it as if you don't have one factor but you have the other  
20 three that you can't get a stay.

21 MR. ANDERSEN: And that's comforting, Your  
22 Honor.

23 THE COURT: All right.

24 I was going to jump in there. I think that's  
25 all the questions I have. Because I said I would do this I'm

1 going to jump over to this side real quick on the standard of  
2 review and then I'll let you keep on your flow. Go ahead.  
3 You've heard me. Now, go ahead.

4 MR. BRUNTON: From what I heard I think we  
5 agree with you. There's the four factors that you balance. So,  
6 in our view -- and I think this is pretty well established  
7 law, if a party has low likelihood of substantial -- or  
8 likelihood of success on the merits then their burden of  
9 irreparable harm goes way up.

10 THE COURT: Cause it's a balancing test.

11 MR. BRUNTON: It's a balancing test.

12 THE COURT: It's a balance test. But you  
13 could still prevail -- let me ask this. You could still  
14 prevail if you're weak on one and you're strong on the three  
15 others I don't believe that there's any bar from a court  
16 granting the stay just because you're weak on one area.

17 MR. BRUNTON: That's right. That's right. We  
18 think we're strong on all four obviously, Judge, but you're  
19 right. You could find a party -- and we've done one area and  
20 you can balance them and grant or not grant a stay but  
21 depending on how you balance it.

22 THE COURT: That's what makes sense to the  
23 Court. I don't want to jump to conclusions without reading the  
24 case law that both parties have provided the Court but I want  
25 to make it clear for the record because I think it's important

1 that you know that I'm listening to the testimony with that  
2 standard in mind. That I'm going to listen for those four  
3 factors. And if you want to tailor your arguments to fit those  
4 four factors I certainly don't -- I think you've already  
5 tailored them to that except for -- and you're all aware that  
6 I might listen to evidence on substantially likelihood of  
7 success, and I want to place on the record that I believe that  
8 in this Court's review this is in fact the formula that the  
9 Court uses to rule on this case then we're going to see it as  
10 four factors to consider and you don't have to prove each one  
11 of them or be ahead of the game on each one of them to get the  
12 stay. Okay. Very well.

13 With that, Mr. Andersen, you may proceed.

14 MR. ANDERSEN: Plaintiff will call John  
15 Lovejoy. Or Defendant, excuse me.

16 THE COURT: Defendant.

17 MR. ANDERSEN: I'm going first so it's habit.

18 THE COURT: Mr. Lovejoy, you can come  
19 forward. If you'll raise your right hand.

20 JOHN LOVEJOY, HAVING BEEN FIRST DULY SWORN  
21 BY THE COURT, TESTIFIED AS FOLLOWS:

22 THE COURT: Will you go ahead and say and  
23 spell your last -- say your name and spell your last name for  
24 the record.

25 THE WITNESS: John Kinder Lovejoy,

1 L-o-v-e-j-o-y.

2 THE COURT: Thank you, sir.

3 You may inquire.

4 MR. ANDERSEN: Did I miss the swearing in?

5 THE COURT: I believe you did.

6 MR. ANDERSEN: My apology. I wanted to make  
7 sure.

8 THE COURT: You're going to start making me  
9 question myself. I'm already working on what my rules are. Now  
10 don't make me question myself further. Go ahead.

11 DIRECT EXAMINATION

12 BY MR. ANDERSEN:

13 Q Mr. Lovejoy, you testified at the trial but let's go  
14 ahead and just one thing real quick. What is your capacity  
15 with the Trust?

16 A I'm the trustee in charge of oil and gas matters.

17 MR. ANDERSEN: Your Honor, may I approach?

18 THE COURT: You may. Does it need marked?

19 MR. ANDERSEN: I have actually marked them.

20 Copy for the Court.

21 Q Mr. Lovejoy, I've handed you what's been marked for  
22 identification purposes only as Exhibits A through L and Q  
23 through T. Would you take a moment and leaf through those?  
24 And what are those pictures of?

25 A These are the pictures of the areas of our farm that

1 will be impacted by the pipeline.

2 Q Are these true and accurate photos of that property?

3 A Yes.

4 Q As it exists today?

5 A Yes.

6 Q If you would just briefly discuss using the pictures as  
7 you need what you guys use this property for.

8 A Okay. Well, on Exhibit A it shows the field almost  
9 exactly where the pipeline right-of-way is going to go  
10 starting from looking at the picture from the left angles to  
11 the far right corner of the field, right through where the  
12 cattle are. We use this field in particular it's kind of our  
13 back yard. We spend a lot of time there. We've used these  
14 fields in different places of our property for hay  
15 production, for grazing, I'm a -- hobby is beekeeper that's  
16 kind of trying to turn it into a small business. I have all  
17 my beehives out in this field. And it's our recreation  
18 field. We do a lot of walking through there.

19 THE COURT: Mr. Lovejoy, if I could  
20 interrupt. I'm familiar with where you live. Is this to the  
21 right of your residence, the left of the residence or behind  
22 your residence?

23 THE WITNESS: This is -- are you familiar --

24 THE COURT: Coming from Cadiz towards Bethel  
25 Church.

1 THE WITNESS: If you continue past our house  
2 where the barns are the top of the hill that's the field  
3 that's behind our barns. Actually you can pull off a little  
4 side road and you'll have this exact view.

5 THE COURT: That helps me. Thank you.

6 A Moving on to B, this is a picture you see of our dog. We  
7 walk around the borders of the fields and --

8 THE COURT: Is this the same tree line that's  
9 in picture A?

10 A Yes. We're down where the herd of cattle is. We usually  
11 do one loop of the field, sometimes walk out in there. This  
12 was kind of -- well, it was very -- became very important to  
13 us shortly after we purchased the farm in the early 2000's.  
14 Carol had two bouts of cancer and had a long recovery period  
15 and this was her way of getting away from it all and kind of  
16 restoring herself. She loved this field. She walked with the  
17 dogs every day and it helped build her back up I think,  
18 physically because she was very weak, and spiritually. It  
19 meant a lot. It was a very peaceful area.

20 The picture is a little dark on C. You can see some dark  
21 spots there. We actually got some logs piled up there. We've  
22 also done a little logging there, not much. We still have a  
23 lot of trees that need to mature. But that is also about a  
24 third of our property is trees.

25 THE COURT: That's still that same field and

1 the same tree line.

2 THE WITNESS: That's the same field, same  
3 tree line.

4 A Exhibit D shows what would be the northwest corner of  
5 our property where the proposed pipeline will come. Will  
6 come on our property near the curve of that road and it will  
7 take out all the trees and the right-of-way will be running  
8 up along here and it will take out that entire swath of  
9 trees.

10 THE COURT: So it will take off the swath of  
11 trees on the left side of the road or the right side?

12 THE WITNESS: On the left side.

13 A Something we also do in these woods is we collect  
14 mushrooms in the Spring, the morels. Sometimes we have to  
15 beat people out there because everybody is sneaking around  
16 the woods in April looking for the mushrooms. But we get a  
17 lot of enjoyment out of them.

18 Exhibit F -- or is that E?

19 THE COURT: I think it's E.

20 A Okay. Shows again our hay field there. Hay has just been  
21 cut. We've done a lot of fertilizing and liming of the  
22 fields to build them back up. When we purchased the farm the  
23 soil was pretty worn out so we've worked at trying to  
24 restore it. And the pipeline would again take out some trees  
25 in the center of the picture, kind of at the farthest point

1 away.

2 THE COURT: So kind of at the apex of the  
3 picture in this area.

4 THE WITNESS: That's correct.

5 A F is a little waterfall. It's really one of the most  
6 peaceful places on the farm. It's near the center of the  
7 farm. If you flip back to A you see where the tree line is  
8 here, it's just down hill from that. And it's such a  
9 beautiful spot that we decided some day our ashes are going  
10 to be scattered there. Carol's mother's ashes are currently  
11 scattered there. I guess if you gotta spend eternity some  
12 place this spot is the place.

13 THE COURT: How close is that to where the  
14 proposed pipeline is?

15 THE WITNESS: From this waterfall to the edge  
16 of the right-of-way is approximately a hundred feet. It's  
17 fairly steep down hill.

18 A G again is -- it's looking down a right-of-way very  
19 similar to Exhibit A and we've replanted parts of this field  
20 with clover and alfalfa to up the hay production but also  
21 for my beehives so that the bees can have something to eat.  
22 They get most of their -- most of the flowers in the area  
23 are in this field.

24 Exhibit H shows actually from our driveway with a view  
25 towards the right-of-way. The right-of-way would just be



1 beyond that second stand of trees. This time of year you can  
2 see that area clearly. In this picture it's rather grown up.  
3 And also the same --

4 THE COURT: So your house would sit -- if I'm  
5 looking at H your house would sit over here.

6 THE WITNESS: If you're looking at H our  
7 house is directly behind me.

8 A I is a similar view. Big chunk of the right-of-way is  
9 visible from our house. We would see the construction all  
10 the time.

11 And J is again that field looking along the right-of-way.  
12 I will usually use my tractor and mow a swath of land so we  
13 can walk in there without wading through all the weeds and  
14 picking up ticks. Again that's a daily function for us.

15 K shows a similar view. You can see near the horizon on  
16 the far left there I built a small building. That's where I'm  
17 going to house my beehives and all my equipment there. I'm  
18 trying to ramp up production for that business. It will be --  
19 the pipeline will run between this building and this stand of  
20 trees.

21 L is looking across -- it's taken not far from where the  
22 previous pictures were taken. It's just looking in a different  
23 direction down hill just to show some of the flowers in the  
24 field that the bees use.

25 O is a picture -- I'm sorry, that's Q. Q is a picture

1 taken from the other end of the field, the far end of the  
2 field where we have been looking towards back up to where the  
3 other pictures were taken from.

4 R is a current right-of-way for a pipeline that was built  
5 across our farm a few years ago. Standing at our property line  
6 I'm looking towards my neighbors. And this is at the point  
7 where Sunoco's pipeline will cross our pipeline at the rear of  
8 our property.

9 THE COURT: And the gap in the trees, is that  
10 where the pipeline runs?

11 THE WITNESS: That is where the pipeline  
12 runs. The company that put the pipeline in they constructed it  
13 a little differently there. They didn't dig up the ground.  
14 They used a directional drilling unit because of the terrain.  
15 It's rugged and then at the bottom of the hill there's a  
16 swamp, a set of railroad tracks, a road, and they drilled  
17 under all that and come up to the top of the next hill.

18 A S shows again the right-of-way, the pipeline that was  
19 just built. The little flags were put there by the pipeline  
20 company to mark for Sunoco's purposes where their pipeline  
21 lay.

22 Q And John, just to interrupt, when was that done? When  
23 were the flags put in?

24 A In the last few weeks.

25 Q Have they ever done that before?

1 A No.

2 Q Go ahead.

3 A T is a close up of one of those little flags.

4 Q Thank you, Mr. Lovejoy.

5 Before we get into specifics about some of the things you  
6 mentioned there have you ever been around pipeline  
7 construction?

8 A Not before the pipeline that was built a few years ago,  
9 no.

10 Q So were you able to observe the process?

11 A Yes, firsthand. The right-of-way approached just a few  
12 hundred feet from our house.

13 Q Can you just briefly talk to us about what you  
14 experienced while that pipeline was being built?

15 A Sure. The first thing that was done after the surveying  
16 and everything early in the Spring the trees were cut down  
17 along the right-of-way where they had surveyed and then  
18 another crew would come in and then chop them up and they'd  
19 stack some of them up, some of the logs up for us, and then  
20 -- we wanted to use some of them for timber. And then they  
21 ground up the smaller branches and just disposed of them  
22 along the right-of-way.

23 Q So after they cut down the trees what did they do next?

24 A After the cleaned all that up then they come in with  
25 bulldozers and sculpted over the land. They filled in some

1 areas and leveled off other areas and re-sculpted the  
2 right-of-way where the pipeline was going to go.

3 Q What happened after that?

4 A Then they brought in a lot of big, I guess they call  
5 them track hoes, big tractor things with tractor treads with  
6 buckets and they dug a really big trench from one end of the  
7 right-of-way to the other.

8 Q And then what happened next?

9 A Well, at that point they stopped and they contacted us  
10 and asked for some additional work space. They drew up a  
11 document. It was about an acre or so. So, okay. When we gave  
12 it to them then they brought in a lot of equipment they  
13 brought in wooden mats that covered about the entire acre.  
14 They brought in a directional drilling unit that I mentioned  
15 before and it consisted of several large semi sized drilling  
16 rigs and all kinds of associated devices. And they used a  
17 lot of -- a substance called bentonite which is clay to line  
18 the whole width and had a water truck come through about  
19 every fifteen minutes. It was a pretty big operation. They  
20 drilled down as I mentioned before, down through the rugged  
21 ground, under the swamp, under the railroad tracks, the  
22 road, and then to the top of the next hill, about a half  
23 mile.

24 Q Where is -- talking about the directional drilling,  
25 where is Sunoco's pipeline in relation to where you're

1 talking about the directional drilling occurring?

2 A That is the place where the picture that I showed  
3 looking down the hill.

4 Q See if I can refer to it again.

5 A Exhibit R. That is actually the edge of the directional  
6 drilling rig unit was sitting within a few feet behind me  
7 and that's the direction they drilled down that  
8 right-of-way. And where Sunoco's crossed is crossing really  
9 is at that point.

10 Q Will they encounter the same obstacles as the prior  
11 pipeline?

12 A Yes.

13 Q So those are the railroad tracks right there, marshy  
14 swamp land, stuff like that.

15 A Looks like they'll cross at a different angle but  
16 they're essentially going across the same area.

17 Q So after they got done with that what did they do next?

18 A Then they started trucking in the pipe, big sections of  
19 pipe. I'm sure everybody's seen truck loads of those things  
20 being hauled around. They laid them out along the trench and  
21 got everything ready to be assembled.

22 Q What'd they do next?

23 A Welders came in and assembled the pipe into big long  
24 sections and other -- I don't even know how to describe  
25 equipment -- picked the whole welded length of pipe and then

1       lowered it down into the ground.

2       Q       Then after they put the pipe in what did they do?

3       A       Then they came in and used bulldozers and covered  
4       everything back up again. They leveled everything out,  
5       brought the top soil back in. They'd taken some of the top  
6       soil off, although the land was somewhat poor to begin with.  
7       That section had been strip mined. They covered up  
8       everything and then after a period of time they came in and  
9       seeded it and fertilized it and finished it off.

10      Q       And you mentioned strip mines. The proposed pipeline  
11      here, the proposed easement here, has that part of the  
12      property been strip mined?

13      A       No, it has not. It's a much better piece of land.

14      Q       So during this process were you able to use the easement  
15      area at all?

16      A       No.

17      Q       And would you have wanted to or can you just tell me --

18      A       Well, it was -- during the process it was a sea of mud  
19      because it rained a lot that year. You literally couldn't  
20      walk across it. When the trench was there you couldn't  
21      really cross the trench cause it went from one end of my  
22      property to the other. So I wouldn't have wanted to do  
23      anything on that right-of-way but I could not get to the  
24      other side of the right-of-way either which I guess I never  
25      anticipated. I didn't have an alternate way of getting to

1 the rest of my property.

2 Q And then given that, looking at the route of the Sunoco  
3 pipeline, is there anything on the other side of that  
4 easement that it will be difficult for you to get to?

5 A Yes. Starting with the new bee barn that I built there.  
6 About two thirds of the field used for hay production, we  
7 won't be able to get to that cause there is no alternate  
8 route to that. And beyond that my neighbor has a plot of  
9 land that he uses for hay production that's about 40 acres  
10 and he's landlocked because of railroad tracks and a steep  
11 bluff he has no way of getting to that property other than  
12 through mine. So I have about 30 acres of my property and  
13 about 40 acres of his property that will be inaccessible.

14 THE COURT: That's also the area where you  
15 guys took your walks?

16 THE WITNESS: Yes.

17 Q So you won't be able to use that area to walk the dogs.

18 A No.

19 Q And you won't be able to use that area for berry picking  
20 and mushroom picking or anything like that.

21 A No. Because of the contours of the terrain it's very  
22 difficult to get around that. I won't be able to get around  
23 the trench in any case.

24 Q One of the factors here today is the effect on third  
25 parties. Do you have any concerns about that?

1 A Well, yeah. I feel for my neighbor. I don't know what  
2 he's going to do. The people that --

3 MR. BRUNTON: Judge, I'm going to have to  
4 object to the extent he's speculating about his neighbor.

5 THE COURT: Well, I think the Court's already  
6 heard evidence that the neighbor's landlocked to the back 40  
7 acres of his property and I'm going to allow that because he  
8 would have personal knowledge of whether or not that's true.  
9 Any direct statements by the neighbor I would discount. But I  
10 think at least the portion concerning the access to the  
11 property I'm going to allow.

12 A Could you repeat the question?

13 Q Yes. Go ahead and talk about the concerns of access for  
14 third parties.

15 A Okay. Well, we do have a local farmer that makes that --  
16 produces that hay, Sheila Tipton. She's got a large herd of  
17 cattle. She leases our land for hay production. She also  
18 leases my neighbor's land. She also harvests the hay off  
19 that. She's got a lot of cattle. I've not figured out how --  
20 I'm going to talk to her about this because for one thing we  
21 did not know the timeline on this but she does depend on  
22 that hay to feed her cattle. So we're taking just about most  
23 of a 50 acre field and a 40 acre field that's been pretty  
24 productive because it has been good land. It will be an  
25 issue for her.



1 Q Are you worried about anything else?

2 A Yeah. I'm worried that while our case is under appeal  
3 that if this pipeline -- if the construction of the pipeline  
4 goes forward that somebody else may jump in and start  
5 another pipeline because we have 13 other pipeline projects  
6 that have been proposed for our property.

7 MR. BRUNTON: I need to object, Your Honor,  
8 as hearsay again.

9 THE COURT: If he has personal knowledge he  
10 can say. Have you been approached by 13 other people?

11 THE WITNESS: Yes. As a matter of fact one of  
12 them is represented by counsel here, Kinder Morgan Utopia  
13 line.

14 THE COURT: He can make the comment. Go  
15 ahead.

16 A We've had four by Kinder Morgan, two proposed Access  
17 Midstream, one Cardinal Gas Services, Mark West wanted a  
18 blanket right-of-way for our property. They would not tell  
19 us how many lines they wanted. And if we get a well pad  
20 we're going to have a pipeline for that or from a pipeline  
21 possibly that's draining our property. So we're looking at a  
22 fair amount here and it's -- our concern is not just this  
23 pipeline. I understand that's Sunoco's concern, is just this  
24 pipeline. We have a larger concern of trying to control what  
25 happens to our farm.

1 THE COURT: Your concern is that if you let  
2 one more pipeline in then you're going to let 10 or 11 more  
3 pipelines in potentially.

4 A Potentially. I've heard the term pipeline corridor and  
5 we did not volunteer to become a pipeline corridor. And if  
6 we have this many pipelines the usability of our farm will  
7 be eliminated for most practical purposes.

8 Q That's all I have, Your Honor. Thank you, Mr. Lovejoy.

9 THE COURT: Attorney Brunton.

10 MR. BRUNTON: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. BRUNTON:

13 Q Good morning, Mr. Lovejoy.

14 A Good morning.

15 Q I understand, you know, you've testified a lot this  
16 morning about the use of the surface of the property and put  
17 into evidence, or at least submitted photos of the property.  
18 And I'm taking from your testimony today that primarily the  
19 concern you have is your use of the surface of the property  
20 and the farm, is that right?

21 A Yes. We've worked hard to restore this farm to its  
22 current condition and it's 15 years of work and sweat into  
23 it, yes.

24 Q But in fairness you granted that pipeline easement to  
25 Enterprise Products line. The photos that you have from

1 Enterprise, you granted that easement voluntarily and sold  
2 Enterprise that easement, correct?

3 A Yes. Their circumstance was a little different. There  
4 was an existing pipeline there when we bought the farm. They  
5 owned that pipeline and right-of-way. So we thought it might  
6 be problematic saying no to them since they already had the  
7 right-of-way there. So we worked out an equitable agreement  
8 and installed the pipeline. We're not against the idea of  
9 pipelines. It's just that we wanted to have some control  
10 over that particular situation.

11 Q And in fairness wouldn't it be accurate to say that the  
12 location of that Atex pipeline across your property is  
13 actually closer to the residence than the Sunoco route?

14 A Yes, that was the location of the right-of-way.

15 Q You also voluntarily sold an oil and gas lease to  
16 Chesapeake, correct?

17 A That's correct.

18 Q And that oil/gas lease to Chesapeake contains all kinds  
19 of surface rights. Chesapeake can put a well pad on your  
20 surface, true?

21 A That's correct.

22 Q And that lease is in effect today, correct?

23 A That's correct.

24 Q Chesapeake can put pipelines across your property today  
25 as we sit here in this courtroom, correct?

1 A Yes.

2 Q They could put a whole gathering system of pipelines  
3 across your property today as opposed to the one pipeline  
4 Sunoco's potentially going to be putting across.

5 A I don't know if that's the case. I know they can put a  
6 gathering line from that well pad.

7 Q Okay. And there's really no restriction where Chesapeake  
8 can place that well pad; very few restrictions at least,  
9 would you agree?

10 A It has to be agreeable to us.

11 Q But your agreement can not be unreasonably withheld for  
12 well pads, correct?

13 A No, I can't say you can't put one on my property or you  
14 only can put it there.

15 Q During the Atex construction how long did that entire  
16 construction process take between the time Atex started  
17 cutting and trenching the property between the time they  
18 started backfilling it?

19 A They cut the trees in the middle of Winter, February,  
20 something like that, they came in and chopped everything up  
21 and stacked the logs probably March or April, late April  
22 they came out with bulldozers, had the pipeline in the  
23 ground probably by the end of August and they re-seeded on I  
24 believe it was Halloween.

25 Q So when -- my question specifically was what was the

1 period of time approximately between for example an open cut  
2 trench where you actually had the property trenched and you  
3 had kind of a hole so to speak or a trench for the pipeline,  
4 between that time frame and the time frame Atex started  
5 backfilling the trench and started reclaiming it?

6 A Probably they trenched it in -- I'm thinking that  
7 would've been early May and they backfilled it maybe the  
8 last week of August.

9 Q So you had several months of an open trench with the  
10 Atex construction?

11 A Yes.

12 Q And one of your concerns here today it sounds like is if  
13 there's open trench construction you have concerns about  
14 getting back and forth across that open trench during the  
15 construction. Is that what I understand one of your concerns  
16 to be today?

17 A Yes. It was difficult to get across it even by foot. You  
18 know, with a vehicle, impossible.

19 Q Would you disagree with me that Sunoco can provide  
20 crossing access across the pipeline easement even during  
21 construction so that there can be crossing back and forth  
22 over the trench during construction?

23 A I believe it's possible. Enterprise told me they would  
24 provide that. They did not.

25 Q So Enterprise promised it to you but they didn't do it.

1 A Yes.

2 Q And is it your concern that Sunoco might not be willing  
3 to do it? Is that one of your concerns today?

4 A Yeah, that would be my concern because from what I  
5 understand a lot of these companies use the same  
6 contractors.

7 Q But if there were testimony in this courtroom today that  
8 Sunoco could provide you access points would you have any  
9 reason to disagree with that?

10 A If you said you can and there's some follow through,  
11 yes, you could get around some of that, yes. I don't know  
12 where the road -- I don't know how you would do it. Steep  
13 banks are involved.

14 Q As your property sits today where the Atex pipeline is,  
15 I mean that's obviously an underground pipeline, correct?

16 A Yes.

17 Q Are you able to use the area over the Atex pipeline  
18 today?

19 A Yes.

20 Q You have no problem crossing it or farming it or  
21 anything like that.

22 A No.

23 Q You mentioned that you thought that maybe other pipeline  
24 companies might be interested in your property and that was  
25 a concern for you. Is it your testimony that you think the

1 Kinder Morgan Utopia project crosses your property?

2 A We were approached by representative of Kinder Morgan on  
3 the Utopia project. They told us -- we got to a point where  
4 we were negotiating a survey agreement and the agent called  
5 me up and said for now this section of the pipeline is  
6 suspended so we won't be doing it then. It was a time when  
7 the market just fell out and everything kind of came to a  
8 grinding halt.

9 Q So as far as you sit here today you would agree that  
10 right now no one from Kinder Morgan for the Utopia project  
11 is approaching you for an easement right now or for survey  
12 access.

13 A Yes.

14 Q When was the last time any company other than Sunoco  
15 attempted to purchase an easement from you, and Enterprise?  
16 Taking out Enterprise as well.

17 A Probably a little over a year ago, back when the market  
18 started turning down. Like I said, everything just kind of  
19 stopped.

20 Q So right now would it be fair to say right now no one is  
21 actively seeking an easement from the Teter Trust property  
22 except for Sunoco? Would that be a fair statement?

23 A That'd be a fair statement as far as I know.

24 MR. BRUNTON: Can I have one moment, Your  
25 Honor?

1 THE COURT: Certainly.

2 MR. BRUNTON: Nothing further, Your Honor.

3 Thank you.

4 THE COURT: Any further questions?

5 MR. ANDERSEN: Just one real quick one, Your  
6 Honor.

7 REDIRECT EXAMINATION

8 BY MR. ANDERSEN:

9 Q Mr. Brunton made a point to say that the Enterprise  
10 pipeline easement area you are able to use it now. Is it the  
11 same?

12 A No.

13 Q What's different?

14 A Well, there were some issues in reclaiming it. Their  
15 initial seeding didn't work. Bottom line all the top soil  
16 washed away. There's things growing there now but it's just  
17 to the power of fertilizer. The earth is stoney. It's not  
18 very good.

19 MR. ANDERSEN: That's all I have, Your Honor.

20 THE COURT: Mr. Brunton.

21 MR. BRUNTON: No, thank you, Your Honor.

22 THE COURT: Mr. Lovejoy, you may step down.

23 Attorney Andersen, you can make additional  
24 argument or you can save your argument till the end or you can  
25 provide additional witnesses.



1 MR. ANDERSEN: Your Honor, I know I promised  
2 one witness but I'm going to go ahead and call one of theirs.  
3 I'll call Harry Alexander as if on cross.

4 THE COURT: Mr. Alexander, you may come  
5 forward. Raise your right hand.

6 HARRY ALEXANDER, HAVING BEEN FIRST DULY  
7 SWORN BY THE COURT, TESTIFIED AS FOLLOWS:

8 THE COURT: Will you please state your name  
9 for the record?

10 THE WITNESS: Harry Joseph Alexander.

11 THE COURT: Attorney Andersen, you may  
12 inquire.

13 CROSS EXAMINATION

14 BY MR. ANDERSEN:

15 Q Mr. Alexander, we've done a deposition, you've met me  
16 before. The basic things I want to talk about real quick  
17 with you are --

18 THE COURT: Let's just do this real quick. I  
19 know we did it at the trial level but because we're in a  
20 separate hearing, Mr. Andersen, (sic. Alexander) how are you  
21 employed?

22 MR. ANDERSEN: I'm a lawyer.

23 THE COURT: Stop it.

24 How are you employed?

25 THE WITNESS: Sunoco Pipeline LP.

1 THE COURT: And what's your position?

2 THE WITNESS: Vice President of Business

3 Development.

4 THE COURT: And what's your relation to this  
5 pipeline project?

6 THE WITNESS: My team developed the project.

7 THE COURT: All right.

8 BY MR. ANDERSEN:

9 Q Are you an accountant?

10 A No.

11 Q Are you a valuation expert?

12 A In what regard, sir?

13 Q Do you hold any certifications in valuation?

14 A I'm an engineer.

15 Q You're an engineer. Okay. So, no.

16 A No.

17 Q Are you familiar -- and we talked about this at the  
18 hearing so I'll go real quick over it. You're familiar with  
19 Michael Hennigan.

20 A Yes.

21 Q You're familiar with the quarterly earnings calls that  
22 Sunoco does every I guess four times a year.

23 A Generally.

24 Q You testified at the trial that you usually sit in on  
25 those kind of hearings or those kind of calls?

1 A Not usually. Sometimes I do listen to them; sit in  
2 occasionally.

3 Q Are you aware that Mr. Hennigan gave a quarterly  
4 conference call on February 25th, 2016?

5 A Yes.

6 Q That would be the fourth quarter conference call -- be  
7 the fourth quarter of 2015, is that correct?

8 A I believe so. Last week some time I think it was.

9 Q Would you dispute that Mr. Hennigan stated in that  
10 conference call that "Our Mariner East 2 project which will  
11 add additional capacity of approximately 275,000 barrels per  
12 day continues to progress and our latest estimate for timing  
13 to obtain all necessary permits suggests a first half 2017  
14 start up." Would you dispute that statement?

15 A Not necessarily. I believe that's what he said.

16 Q And he also stated, "We haven't delayed for capital  
17 reasons as we would like to get it completed as soon as  
18 possible, but we certainly are benefiting indirectly from  
19 the capital timing." Do you dispute that he made that  
20 statement?

21 A I don't recall that statement but I wasn't there. I  
22 apologize. I haven't been through the entire transcript.

23 Q Now, when he says -- let's assume he said capital  
24 timing, do you know what that term means?

25 A Yeah, generally.

1 Q Can you describe it for the Court?

2 A Referring to I assume spending capital.

3 Q And when he says -- if he said that the capital timing  
4 isn't good right now, it's actually good that we're being  
5 delayed a little bit, what do you think he means there?

6 MR. BRUNTON: Objection, Your Honor. I think  
7 that for him to characterize that statement that way is not a  
8 characterization at least of the quote that he said. But the  
9 second thing is, Your Honor, I just have to object to this  
10 line of questioning. It's far afield from the four factors you  
11 have to consider and now he's asking Mr. Alexander to read the  
12 mind of another person at the company who made a statement  
13 that he's reading from a newspaper article.

14 MR. ANDERSEN: Actually this is the recorded  
15 transcript of the -- he actually admitted that the first one  
16 sounded accurate. He wouldn't dispute that he said it. And it  
17 actually goes to irreparable harm on their side.

18 THE COURT: And I get where you're going with  
19 it but I think the objection is paraphrasing Mr. Hennigan's  
20 words and then asking Mr. Alexander what they mean. So I think  
21 that the objection is correct, that you can't ask the  
22 questions that way, but I think you can ask the questions does  
23 your company -- are you aware if your company is following x,  
24 y or z formula, and then if you get an answer you don't like  
25 you can certainly use those statements to impeach the witness.

1 BY MR. ANDERSEN:

2 Q So you didn't dispute that he would've said the first  
3 half of 2017 start up. We got past that part. So for capital  
4 reasons why would a delay be good here?

5 A I don't know.

6 Q Okay. Would it be because the company would be able to  
7 use -- if, with the way the capital structure works, that  
8 when the market goes down the company's required to use debt  
9 instruments rather than equity to fund its projects?

10 A I really don't --

11 MR. BRUNTON: I'm going to object. He's  
12 already stated, Judge, he doesn't know why.

13 THE COURT: I'm going to allow the questions  
14 for now. If he continues to say I don't know I think it will  
15 be pretty clear and we'll move on. I think the answer was I  
16 don't know to that question.

17 THE WITNESS: I don't know.

18 BY MR. ANDERSEN:

19 Q Now, the pipeline runs from Scio, Ohio, say that five  
20 times fast, to Hopedale, then it hits is there eight  
21 terminals in Pennsylvania? One in West Virginia and eight in  
22 Pennsylvania? Does that sound right?

23 A A number of facilities.

24 Q Okay. Now, the committed shippers, would they be excited  
25 or -- I'm sorry, that's not the right way to put this. Is

1 your promise to the committed shippers that you'll ship  
2 their product from Scio to Hopedale?

3 A My promise -- well, the contracts --

4 MR. BRUNTON: Your Honor, I don't know if  
5 this needs to be placed under seal if we're getting into our  
6 shipping agreements, but it may make sense for this portion of  
7 the transcript to be indicated to be under seal because we're  
8 getting into our confidential shipping agreements.

9 THE COURT: Why don't we approach real quick.

10 - - -

11 (OFF THE RECORD)

12 - - -

13 BY MR. ANDERSEN:

14 Q Does Sunoco have all the required permits in  
15 Pennsylvania to build this pipeline?

16 A No.

17 Q Does Sunoco have all the required permits in Ohio to  
18 build this pipeline?

19 A I am not certain. I believe it's -- it's not my area of  
20 expertise so I apologize for not knowing. I believe we  
21 either have them all or anticipate having them all very  
22 soon, similar in Pennsylvania.

23 Q But you don't know when that's going to be.

24 A It's anticipated to be very soon is my understanding but  
25 I don't have direct knowledge.

1 Q So you don't know.

2 A I don't know.

3 THE COURT: I'm going to jump in real quick  
4 just for my knowledge and understanding. I think we covered  
5 this a little bit at trial but I just want to refresh my mind.  
6 The plan is to build it from Scio to Marcus Hook.

7 THE WITNESS: Correct. Well, I'm not --

8 THE COURT: Or is it to meet in the middle?  
9 Or do you know?

10 THE WITNESS: I'm not an expert on the  
11 construction. I apologize.

12 THE COURT: That's okay. I'm trying to  
13 refresh my memory. If you know I'm going to ask you but if you  
14 don't you don't have to answer.

15 THE WITNESS: I don't know for sure.

16 THE COURT: That's fine. That's a fair  
17 answer.

18 MR. BRUNTON: We have a witness here.

19 THE WITNESS: I'm the commercial guy.

20 THE COURT: No problem. I might've jumped the  
21 person I'm asking but if you have another witness that does  
22 I'll save that question for them.

23 Attorney Andersen, you may continue.

24 MR. ANDERSEN: I think that's all I have for  
25 this witness, Your Honor.

1 THE COURT: Very well.

2 You have direct?

3 MR. BRUNTON: Do you want me to do it now or  
4 should I wait? I can do it either way.

5 THE COURT: He's on the stand. Why don't we  
6 just jump in.

7 MR. ANDERSEN: I'm sorry, will this be  
8 supplemented for direct where I get a chance to cross him on  
9 the scope of direct?

10 THE COURT: We'll just do him all at once.  
11 You'll get another go round at him.

12 MR. ANDERSEN: Thank you, Your Honor.

13 THE COURT: I don't see the necessity of  
14 calling Mr. Alexander multiple times.

15 MR. BRUNTON: Your Honor, can I approach?

16 THE COURT: Yes.

17 - - -

18 OFF THE RECORD

19 - - -

20 THE COURT: We're going to take a five minute  
21 recess and we'll come right back.

22 - - -

23 RECESS

24 - - -

25 THE COURT: Back on the record in case number



1 CVH 2015-0058. Mr. Alexander is still on the witness stand and  
2 you may inquire.

3 MR. BRUNTON: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. BRUNTON:

6 Q Mr. Alexander, I'm just going to clean up a few little  
7 background questions. You've already testified as to your  
8 job title. Can you just remind us again and briefly  
9 summarize what your description is and your duties with  
10 regard to the Mariner project at issue in this case.

11 A I'm in charge with revenues associated with our business  
12 development, our pipeline business, project development,  
13 asset management, and new project development specifically,  
14 as well as tariff management, etcetera. So the revenue side  
15 of our business associated with petroleum products.

16 Q And when you say tariff management would that be kind of  
17 a fancy industry term of saying how much we get to charge  
18 people that ship?

19 A Yeah, I'm on the commercial side. The revenues fall  
20 under my watch.

21 Q With regard to the Mariner project, the Mariner 2 East  
22 project, what is the capacity of that project in terms of  
23 barrels per day?

24 A Approximately 275,000 barrels per day.

25 Q And what kind of capital investment is involved in the

1 Mariner 2 East project?

2 A I think we've been public that this is over a three  
3 billion dollar project.

4 Q And is Sunoco right now carrying those capital  
5 expenditures right now on the books?

6 A We are carrying significant capital expenditures  
7 associated with the project on the books.

8 Q The 275,000 barrels per day of capacity approximately  
9 how much of that capacity is already going to be utilized by  
10 committed firm shippers for the pipeline?

11 A The way our agreements work and the way the FERC works  
12 on this for transportation up to 90 percent of the capacity  
13 is contracted. Ten percent must remain available for  
14 uncommitted shippers.

15 Q And that 90 percent is contracted as you sit here today.

16 A Yes, approximately 90 percent.

17 Q Based upon -- let me ask a back up question first. Let's  
18 say the Court were to grant a stay in this case and the  
19 construction went along but we're a year down the road at  
20 the Court of Appeals and the pipeline's essentially  
21 constructed, everything is constructed but this portion  
22 across the Teter Trust property, how does that one failure  
23 to get across the Teter Trust property, how does that affect  
24 your ability to meet your contractual obligations with your  
25 shippers?

1 A My contractual obligations can't begin until the  
2 pipeline is a hundred percent constructed and ready for  
3 service.

4 Q Why is that?

5 A Because the FERC -- in layman's terms the FERC's main --  
6 one of their main principles is to ensure that all shippers  
7 are treated equitably. So I can't have contracts, outside of  
8 the fact that I have confidential contracts, but my  
9 contracts all have to start together.

10 Q You can't choose to start for shipper A and not start  
11 for shipper B.

12 A To your earlier point that's not a pipeline.

13 Q In terms of the barrels per day of this pipeline and the  
14 90 percent capacity what kind of revenue is going to be lost  
15 by Sunoco LP for the delay -- for any delay that this  
16 pipeline otherwise would be in service but is not in service  
17 because you're not across the Teter Trust property?

18 MR. ANDERSEN: Objection.

19 THE COURT: You have an objection?

20 MR. ANDERSEN: Lack of foundation. And he's  
21 requesting an opinion from a lay witness.

22 THE COURT: Response.

23 MR. BRUNTON: His entire job is to be in  
24 charge of tariffs and revenue stream and the economics  
25 associated with the process. I mean that's his entire job, is

1 to have negotiated these agreements and know the revenue  
2 coming from these agreements.

3 MR. ANDERSEN: Your Honor, he's going to be  
4 speculating as to -- he's not going to -- is he going to  
5 testify as an expert? That he's accounted for all the possible  
6 costs, all the possible complications? I mean there's a  
7 massive amount of data that's going to have to go into this  
8 number he's about to give.

9 THE COURT: Let's do it this way. Mr.  
10 Alexander is in charge of putting together the tariffs, the  
11 industry word, for the use of the pipeline so why don't we  
12 talk about what it would be -- and you're going to be able to  
13 cross examine him -- on a 275,000 barrels a day assuming we  
14 get that production, what would be the anticipated revenue off  
15 of that and then we can dissect it from there. But I believe  
16 he's qualified to testify for that even on a lay basis, not as  
17 an expert, because that's what his job is and that's what he  
18 would have knowledge to do.

19 MR. BRUNTON: I think I can clarify it with a  
20 few questions, Your Honor.

21 THE COURT: Very well.

22 MR. ANDERSEN: Your Honor, can you rule on my  
23 objection?

24 THE COURT: I'm going to overrule your  
25 objection.

1 BY MR. BRUNTON:

2 Q Hank, how would you go about simply -- explain to the  
3 Court how would you go about determining how much revenue  
4 stream is lost if the pipeline is not in service?

5 A As I said, we can't start the contracts until the  
6 pipeline is constructed and ready to handle all the volumes.  
7 The contracts with our various shippers allow for --  
8 actually are contracted for up to 90 percent of the firm  
9 capacity of this pipeline. So 10 percent of the pipeline  
10 capacity will remain an uncommitted capacity for walk-up  
11 shippers, the every day shipper, but the shippers who have  
12 signed up have agreed and contracted to use it. Those  
13 contracts can't start until the pipeline is complete and  
14 operational. And based on the 90 percent of the numbers we  
15 can back into the math and the tariff rate that we have set  
16 for this agreed upon with the shippers for this pipeline  
17 it's about \$933,000 a day.

18 Q And you get that by just taking 90 percent of 275,000  
19 gives you the number of barrels that otherwise are committed  
20 on the line.

21 A Yes.

22 Q And you can take that by the amount of money they're  
23 contractually obligated to pay you for those barrels.

24 A That is correct.

25 Q And that's your number of lost revenue.

1 A That is correct. If I may, you can back into a tariff  
2 number. I don't know that that tariff number is public yet  
3 because the pipeline hasn't been put in service. So it's  
4 confidential. But it's obviously better than trucking and  
5 railing.

6 Q Okay. When you say -- you're saying though the tariff  
7 rate is cheaper than what someone would pay if they --

8 A Half the price of rail and much, much less than trucking  
9 the product which is what they're kind of stuck with today.

10 Q As we sit here today is there any other property in the  
11 state of Ohio that you need to try to get across or get an  
12 easement or get an agreement with other than the Teter Trust  
13 property?

14 A Not to my knowledge.

15 Q Hank, could you explain to the Court what kind of  
16 reputational injury would Sunoco suffer if this entire  
17 pipeline were constructed except across the Teter Trust  
18 property and the pipeline couldn't operate because of that  
19 and otherwise didn't go in service in a timely fashion?

20 MR. ANDERSEN: Objection; calls for  
21 speculation.

22 THE COURT: Response.

23 MR. BRUNTON: He's in the industry of trying  
24 to sign up contracts, sign up shippers. He obviously would  
25 know, Judge, the reputational harm from the people in the

1 industry that he's dealing with all the time to try to make  
2 business deals with and how that would affect -- how this  
3 would affect their reputation in the industry.

4 MR. ANDERSEN: He's asking what other people  
5 would feel about Sunoco.

6 THE COURT: I understand. I'm going to  
7 sustain. I would allow a general question of his lay opinion  
8 of whether or not it would hurt their reputation but I don't  
9 think we can get into other people's minds.

10 MR. BRUNTON: Okay.

11 BY MR. BRUNTON:

12 Q Let me ask a different question, Hank. In your capacity  
13 as Vice President of business development is this something  
14 that business people raise with you outside of Sunoco?

15 MR. ANDERSEN: Objection; hearsay.

16 MR. BRUNTON: He asked for a foundation of  
17 reputational issues.

18 MR. ANDERSEN: He's asking for what other  
19 people have told him.

20 MR. BRUNTON: It's not offered for the truth  
21 of the matter asserted, Judge. It's just offered for what he  
22 perceives other people to feel concerned about with regard to  
23 potential delay.

24 THE COURT: And I don't want to micromanage  
25 the questioning, but I'm going to sustain the objection and

1 I'm going to suggest that the question be asked in his own lay  
2 opinion would the delay of the project affect Sunoco's  
3 standing with the community they're marketing to.

4 MR. BRUNTON: Can I say ditto?

5 THE COURT: You can.

6 BY MR. BRUNTON:

7 Q Go ahead and respond to the Judge's question.

8 A I'm required to have periodic update meetings with my  
9 contracted shippers so I have had direct conversations with  
10 my contracted shippers as to the progress on this project  
11 and they are very concerned about delays on this project.  
12 They are counting on this project coming online on time.

13 Q Let me ask the question in your lay opinion do you think  
14 Sunoco from your business experience suffer reputational  
15 harm --

16 A Yes.

17 Q -- if the pipeline is delayed?

18 A Yes.

19 Q Okay. If the pipeline project were delayed because this  
20 entire line were constructed except for across the Teter  
21 Trust property how would it impact third party shippers or  
22 shippers that are currently committed to your project?

23 MR. ANDERSEN: Objection; calls for  
24 speculation.

25 THE COURT: Response.



1 MR. BRUNTON: One of the factors the Court  
2 has to look at is harm to third parties. This goes directly to  
3 the harm third parties will face if Sunoco can not meet its  
4 contractual obligations to them and he has direct experience  
5 and understanding as to why the pipeline was to be constructed  
6 and what its attempting to service for these customers.

7 THE COURT: I'm going to allow the question  
8 and overrule the objection. I'm going to limit the answer to  
9 his lay opinion based upon his knowledge in the industry of  
10 what effect that would have on not a specific company or a  
11 specific profit but a generalization of what a delay would do  
12 to a shipper.

13 BY MR. BRUNTON:

14 Q Do you understand?

15 A I do.

16 Q Okay. Go ahead.

17 A I believe a delay will hurt the shippers. Based on my  
18 conversations directly with them they wish this pipeline  
19 were in service yesterday.

20 Q Hank, you were asked a question earlier about a quote  
21 from a meeting from a shareholder's meeting about I think  
22 the time frame was mentioned of April of 2017 in that  
23 question. Do you recall that question asked by Mr. Andersen?

24 A Something about first half. I don't specifically recall.  
25 I think Mr. Andersen mentioned a statement was made about an

1 in service date of first half or early 2017.

2 Q And that's what I want to clarify. The early 2017 is a  
3 reference to the in service date, right?

4 A Correct.

5 Q So in order to meet an in service date of early 2017  
6 when would construction have to begin?

7 A It has to begin effectively immediately.

8 MR. BRUNTON: Can I have one moment, Your  
9 Honor?

10 THE COURT: You may.

11 BY MR. BRUNTON:

12 Q Hank, for the third party shippers, some of the third  
13 party shippers committed to this project, are they  
14 connecting to the Mariner project, the Mariner project that  
15 will be constructed?

16 A Yes.

17 Q And are they spending their own money to connect to the  
18 Mariner project?

19 MR. ANDERSEN: Objection; calls for  
20 speculation.

21 THE COURT: If he has personal knowledge he  
22 can answer. Do you have personal knowledge?

23 THE WITNESS: Yes, I do.

24 THE COURT: I'm going to overrule the  
25 objection.

1 A Yes.

2 Q And so they would also be spending capital to connect to  
3 a project that might be delayed if we have one property that  
4 can't be crossed by the pipeline.

5 MR. ANDERSEN: Objection; calls for  
6 speculation.

7 THE COURT: Overruled.

8 A Correct, yes, they are spending capital as we speak.

9 MR. BRUNTON: Thank you, Your Honor. I don't  
10 think we have any other questions.

11 THE COURT: Very well.

12 You may cross examine.

13 MR. ANDERSEN: Thank you, Your Honor.

14 RECROSS EXAMINATION

15 BY MR. ANDERSEN:

16 Q You talked a lot about contractual obligations. Is there  
17 a date in any of these contracts where if you don't start  
18 construction of the pipeline you owe somebody else damages?

19 MR. BRUNTON: Your Honor, this gets --

20 THE COURT: Let's do this. I assume that if  
21 he answers this question you're going to say this should be  
22 sealed.

23 MR. BRUNTON: Yes.

24 THE COURT: So I'm going to issue this  
25 warning and I do know we have the press here. This testimony

1 will be sealed to the court. It may not be reported or  
2 published in the general public because it may contain a  
3 business or a trade secret.

4 MR. BRUNTON: Could we approach, Your Honor,  
5 on this?

6 THE COURT: You may.

7 - - -

8 SIDE BAR

9 - - -

10 MR. BRUNTON: (Inaudible).

11 THE COURT: I get why that question is  
12 asked and this is what I understand and  
13 Mr. Alexander, you tell me if I'm  
14 wrong -- too many damn A's.

15 Mr. Andersen, I think what he's trying  
16 to establish is whether or not there  
17 is a financial penalty or burden  
18 to Sunoco for not starting on time.

19 MR. ANDERSEN: Or never building.

20 THE COURT: Or never building. Is there  
21 an acceleration clause in the contract?  
22 You don't have this up by this date  
23 you get rebate or punished or something  
24 to that nature.

25 MR. BRUNTON: That's not an argument

1 we've even made. We've only spoken  
2 to what is the lost revenue  
3 if it doesn't start on time. And  
4 we're getting into what potential  
5 -- I mean we haven't raised  
6 that as an irreparable harm issue.  
7 And by the way, it's not even our  
8 burden.

9 THE COURT: I understand. I'm just  
10 trying to characterize it if that's  
11 what he's asking.

12 MR. ANDERSEN: That's what I'm asking.

13 THE COURT: All right. And your  
14 objection is that that would be  
15 irrelevant to irreparable harm  
16 if you're not saying then you're going  
17 to be irreparably harmed by it.

18 MR. BRUNTON: Yeah. We're not saying  
19 that we're going to owe anyone else  
20 money. We're saying we have a lost  
21 revenue stream. If he wants to ask  
22 about lost revenue stream I agree  
23 we've opened the door to that.  
24 We haven't opened the door to every  
25 provision in the contract (inaudible).

1 MR. ANDERSEN: (Inaudible).

2 MR. BRUNTON: No, I'm not proposing  
3 it as an exhibit. First of all, the  
4 TSA I think already is an exhibit  
5 (Inaudible). But no, the portion  
6 I was going to say was the contractual  
7 (inaudible).

8 MR. ANDERSEN: He's going to pick  
9 and choose what part of the contract  
10 he wants to talk about. (Inaudible).

11 THE COURT: Let me ask you this.  
12 If he's stipulating that that's not  
13 part of their irreparable harm that  
14 they're claiming what's the relevancy  
15 of getting into it?

16 MR. ANDERSEN: (Inaudible) that they  
17 would suffer absolutely no injury  
18 from a third party failure to start  
19 or even build the project then I  
20 (inaudible).

21 MR. BRUNTON: Let me talk to my client,  
22 okay, Your Honor?

23 THE COURT: Yes.

24 - - -

25 END SIDE BAR

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MR. BRUNTON: Should we approach again?

THE COURT: I think that would be fair.

- - -

SIDE BAR

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MR. BRUNTON: (Inaudible).

THE COURT: That's not part of your  
issue for -- your argument for  
irreparable harm, is that satisfactory?

MR. ANDERSEN: I'm sorry?

THE COURT: He's going to stipulate  
to that.

MR. ANDERSEN: There's two prongs.  
There's the lost revenue and there's  
(inaudible).

THE COURT: And then he's going to say  
that's not part of their argument.

MR. ANDERSEN: That's fine.

THE COURT: And I appreciate that.  
Let's keep it narrow, gentlemen, because  
I don't want to relitigate the case  
again or get into a hundred different  
issues. It's about whether or not  
there's irreparable harm. In my mind

1                   that's the big equity issue. So if  
2                   that's not a part of it we can move  
3                   on.

4                                 - - -

5   END SIDE BAR

6                                 - - -

7                   THE COURT: Court has held discussion with  
8                   the attorneys and I believe that we're going to have -- the  
9                   question is going to be withdrawn because there's going to be  
10                  a stipulation by the Plaintiff that third party accelerator or  
11                  damages clause for failure to ship timely is not part of the  
12                  Plaintiff's claim that they will be irreparably harmed. Is  
13                  that correct?

14                  MR. BRUNTON: Yes, Your Honor.

15                  THE COURT: And you will so stipulate?

16                  MR. BRUNTON: Yes, Your Honor.

17                  THE COURT: And the Defendant will withdraw  
18                  the question.

19                  MR. ANDERSEN: I will withdraw the question,  
20                  Your Honor.

21                  THE COURT: You may ask another question.

22                  BY MR. ANDERSEN:

23                  Q     Mr. Alexander, you've been very careful, you've used the  
24                  term revenue so the \$933,000.00 number, can you explain how  
25                  you got that?



1 A It's fairly simple math based on the tariff times the  
2 volume committed to the pipeline.

3 Q Okay. So that number does not include the cost  
4 associated with the revenue. That's just a revenue number.

5 A That is absolutely correct.

6 Q So this is just a revenue number.

7 A It's a revenue number.

8 Q So if the revenue is \$933,000.00 a day and it costs a  
9 million dollars a day to run it would there be any profits?

10 A Under that situation no.

11 Q And as we sit here today you have no idea what the costs  
12 will be on a daily basis.

13 A Yes, I do.

14 Q Did you bring -- go ahead.

15 A I generally run -- my team runs the economic model to  
16 understand if we're going to -- if we're going to go forward  
17 with a project it obviously has to be somewhat profitable.

18 Q Okay. So your best estimate now is that this is going to  
19 be profitable.

20 A That is correct.

21 Q But you can't see the future. Accurate?

22 A Accurate.

23 Q So all you've given us today is a profit number -- or  
24 you haven't given us a profit number. All you've given us  
25 today is a revenue number which doesn't include costs.

1 Accurate?

2 A Accurate.

3 Q Okay. And did you bring with you today any data or  
4 anything in support of your opinion that this is going to be  
5 the revenue?

6 A No, I did not.

7 Q All right.

8 So, earlier your attorney said -- Mr. Brunton said in his  
9 opening argument that a gap in the pipeline is bad, is that  
10 accurate? And I'm paraphrasing.

11 A Generally speaking from a construction standpoint that  
12 would be correct.

13 Q Okay.

14 A Or even an operations standpoint.

15 Q I know it sounds obvious. So a gap in the pipeline which  
16 would mean, you know, a gap is something in between two  
17 points, correct? We can agree on that?

18 A Yeah.

19 Q So a gap in -- let's see here -- name a county in  
20 Pennsylvania that this thing runs through, any county.

21 A Washington.

22 Q So a gap in the pipeline in Washington County would be  
23 bad. Accurate?

24 A Uh-huh, yes.

25 Q But you could still build the pipeline here from

1 Hopedale to Marcus Hook, correct?

2 A I don't understand your question, sir.

3 Q You could still build the pipeline from Hopedale to  
4 Marcus Hook without the Teter property, correct?

5 A I believe -- I don't construct the pipeline so I'll say  
6 that I don't know how the construction is set to schedule  
7 but based on where the property is, and I don't want to  
8 stipulate to how we're going to construct this pipeline.

9 Q I'm not asking you to. I'm asking you could you build  
10 the pipeline from Hopedale to Marcus Hook.

11 A I believe physically the Teter property is on the  
12 western side of Hopedale.

13 Q So your nine hundred dollar revenue number is that for  
14 the entire pipeline from Scio to Marcus Hook?

15 A That is for the entire pipeline.

16 Q So you don't have a number today as you sit here for the  
17 revenue number from Hopedale to Marcus Hook.

18 A I don't but as I've stated earlier we can't begin the  
19 contracts unless a hundred percent of the pipeline is  
20 constructed.

21 MR. ANDERSEN: Can I have a moment, Your  
22 Honor?

23 THE COURT: You may.

24 MR. ANDERSEN: That's all I have at this  
25 time, Your Honor.

1 THE COURT: Counsel come forward. Just one  
2 question.

3 - - -

4 SIDE BAR

5 - - -

6 THE COURT: I'm starting to get confused  
7 whether we talked about it in  
8 here or back there, but at some  
9 point did we not have a discussion  
10 about calculus about what it would  
11 take to move the line off of  
12 Mr. Lovejoy and Ms. Teter's  
13 property around it?

14 MR. BRUNTON: No, I think you're  
15 thinking of I mentioned this  
16 morning of a move around cost.  
17 In other words if we had to skip  
18 -- if the construction had to skip  
19 her property then continue  
20 building.

21 THE COURT: But that was in chambers,  
22 not on the record.

23 MR. BRUNTON: My next witness.

24 THE COURT: I just wanted to make  
25 sure. Thanks.

1 - - -

2 END SIDE BAR

3 - - -

4 THE COURT: Any further questions?

5 MR. BRUNTON: No, thank you, Your Honor.

6 THE COURT: Either party expect to recall  
7 this witness?

8 MR. BRUNTON: We do not.

9 THE COURT: You are excused. You can stay or  
10 go as you please.

11 Mr. Andersen, you may call your next  
12 witness.

13 MR. ANDERSEN: I think we're done. Reserve  
14 the right to put in our exhibits which we can do at the end if  
15 the Court would prefer.

16 THE COURT: Let's do it now. You want to get  
17 your exhibits in?

18 MR. ANDERSEN: We would please.

19 THE COURT: Any objection?

20 MR. BRUNTON: To those photos, no, Your  
21 Honor.

22 THE COURT: Those are in.

23 MR. ANDERSEN: Then that's all we have, Your  
24 Honor.

25 THE COURT: We'll hear next from Plaintiff.

1 MR. BRUNTON: Thank you, Your Honor. Since  
2 Mr. Alexander has already testified we only just have one more  
3 witness and it would be Mr. Matt Gordon.

4 MATTHEW GORDON, HAVING BEEN FIRST DULY SWORN  
5 BY THE COURT, TESTIFIED AS FOLLOWS:

6 THE COURT: Pull the microphones up to you,  
7 keep your voice up and if you will state your name and spell  
8 your last name.

9 THE WITNESS: My name is Matthew Gordon,  
10 G-o-r-d-o-n.

11 THE COURT: Attorney Brunton, you may  
12 inquire.

13 DIRECT EXAMINATION

14 BY MR. BRUNTON:

15 Q Matt, I know you've testified in this courtroom before  
16 in a previous hearing so I'm going to just lay a very brief  
17 foundation. Could you just explain for the record and for  
18 the Court again and remind the Court your title and position  
19 with Sunoco Pipeline LP and your job responsibilities.

20 A I'm a principal engineer for the company. That's my  
21 title. For the project I'm the overall project manager for  
22 the pipeline from Ohio all the way into the Marcus Hook  
23 facility including the design, permitting, construction and  
24 commissioning of the pipeline.

25 Q And what is your role -- how would you describe your

1 role with the pipeline project?

2 A As the project manager I oversee design teams where we  
3 lay out the route for the pipeline, we design the facilities  
4 for the above ground sites as well. I oversee the  
5 right-of-way teams who purchased the land for the easements  
6 and the fee parcels. I oversee the permitting teams who file  
7 the permits to the various agencies to get permits to  
8 construct the project. I negotiate the contracts for all  
9 those different entities including the contractors. Give  
10 reports to senior management about progress in all those  
11 different areas that we talked about earlier.

12 Q So your responsibilities include permitting.

13 A Yes, sir.

14 Q And your responsibilities also include essentially  
15 construction, would that be fair?

16 A Correct.

17 Q Okay. What is right now as you sit here today, what is  
18 the anticipated construction timeline for this project? When  
19 does Sunoco expect to be able to start and when is Sunoco  
20 expected to be able to be able to finish assuming there is  
21 no stay granted in this case across the Teter Trust  
22 property?

23 A In order to start construction we have to have permits  
24 and we have to have the land acquired. For this area we have  
25 received the permits for the earth disturbance to build the

1 pipeline across (inaudible) and we're waiting on a permit  
2 for water crossings.

3 THE COURT: Let me jump in because this is a  
4 question I wanted to ask the last witness and I think I got  
5 the right guy on now. Just for my knowledge.

6 As you anticipate construction on the  
7 pipeline now where are you going to start and where are you  
8 going to finish?

9 MR. BRUNTON: Your Honor, if you would let me  
10 I'll put an exhibit on the board for you that will help him  
11 explain it.

12 THE COURT: Okay. No problem. Let's get to  
13 that.

14 MR. BRUNTON: Okay. Could you please put up  
15 Exhibit A, Bruce?

16 And Judge, there's a notebook next to you if  
17 you would like to look at it in the notebook.

18 A Because it's a 300 -- I'm sorry -- should I answer or  
19 wait a minute?

20 THE COURT: Mr. Andersen, you have a notebook  
21 as well?

22 MR. ANDERSEN: I do.

23 BY MR. BRUNTON:

24 Q Matt, if I asked this question already I'm sorry but I'm  
25 going to ask it again. I'm just going to ask you to identify



1 what's been marked as Exhibit A for the record and explain  
2 to the Court what that is.

3 A This is overview map of the entire project that shows  
4 the different states, townships, counties that we cross, but  
5 it also shows how we've divided the project up into  
6 different construction segments. Because it's such a large  
7 project we look at the capabilities of individual  
8 contractors and from a timing standpoint we split the job up  
9 into approximately 50 mile segments, some plus or minus on  
10 the 50 miles. Divide it up -- if you're golfer it's more  
11 like a shotgun start. Each spread starts at the same time.

12 THE COURT: So you're trying to get it all to  
13 end at the same time so the pipeline comes --

14 A As reasonable as possible. Areas that have really  
15 difficult geography and may be a little bit shorter to give  
16 them chance to stay on pace with the areas that are flatter  
17 terrain.

18 Q Matt, I think you explained that really well but let me  
19 follow up with just a couple questions. So, just looking at  
20 this the coloring on this exhibit there's like it goes from  
21 -- the pipeline goes from being colored red to blue and then  
22 there's kind of green dots there and then it goes red to  
23 blue. Is it fair to say that the red and the blue and the  
24 red and blue connote where the different spreads start and  
25 stop?

1 A Yes. The red and blue as well as the break lines that  
2 denote the spread breaks that just shows you where the  
3 spreads -- each individual spread starts and stops.

4 THE COURT: I'm going to jump in. I think I  
5 got this but I want to make sure I got this.

6 So you got this pipeline going from Marcus  
7 Hook to Scio and you're going to break it up into  
8 approximately 50 mile segments and each different segment is  
9 going to have a different construction crew working on it and  
10 they're going to try to get the 50 mile segments to match up  
11 started and finished at the same time so the pipeline gets  
12 done quickly and it all comes on at the same time. So in other  
13 words, you're not going to start from one end and build it all  
14 the way to the other. You're going to build it in multiple  
15 places and then connect it all in at the same time.

16 THE WITNESS: Correct.

17 THE COURT: All right. I got it.

18 MR. BRUNTON: I couldn't have asked it any  
19 better than that, Your Honor. Thank you.

20 BY MR. BRUNTON:

21 Q So, Matt, let's just look at the very first construction  
22 spread on Exhibit A from Scio station then going east. Where  
23 does the Teter Trust fall into this first construction  
24 spread?

25 A There's a note on here that says mile post 10. Their

1 property is just west of the Hopedale station.

2 Q What would happen -- I mean what's going to happen if  
3 the construction starts -- let me back up first. With regard  
4 to your responsibilities as project manager when do you  
5 anticipate being able to get the permits to start  
6 construction?

7 A As I mentioned --

8 MR. ANDERSEN: Objection; calls for  
9 speculation.

10 THE COURT: And it calls for speculation  
11 because he doesn't know when the state would issue.

12 Response.

13 MR. BRUNTON: He is -- I think he would  
14 testify, I don't want to anticipate his testimony, but I think  
15 he would testify that he understands the state of the various  
16 approval processes and kind of where they are and where they  
17 anticipate they're going -- when they anticipate they're going  
18 to get them.

19 THE COURT: I'm going to withhold a ruling on  
20 the objection. Why don't you lay some foundation.

21 MR. BRUNTON: Okay.

22 BY MR. BRUNTON:

23 Q Matt, let's just first talk about Ohio. What is the  
24 status of the permits in Ohio in terms of submissions?

25 A As I mentioned earlier it's predominantly broken down

1 into earth disturbance permits and water crossing permits.  
2 We have the earth disturbance permits so everywhere there's  
3 not a water crossing I can build the pipeline today assuming  
4 I have the easement acquired.

5 Q Are there any water crossings across the Teter Trust  
6 property?

7 A I'd like to have a construction print handy to review. I  
8 don't know off the top of my head if there's a creek  
9 crossing sitting here today.

10 Q Fair enough. So right now as you stand here though in  
11 Ohio if there's not a creek you could build.

12 A Correct.

13 THE COURT: And the water permitting, have  
14 you done that in Ohio before?

15 THE WITNESS: Yes, sir.

16 THE COURT: And you have -- based upon your  
17 experience do you have a reasonable time frame that those  
18 usually take?

19 THE WITNESS: Yes, sir.

20 THE COURT: And what is that?

21 THE WITNESS: Typically a water crossing can  
22 take six months, sometimes nine months. There's a host of  
23 agencies that feed into it. Army Corps of Engineers is the  
24 only one that's left to make a response on the cultural  
25 significance of the project and any potential cultural

1 impacts.

2 THE COURT: So you've already started the --

3 THE WITNESS: They've made their  
4 determination and have committed to getting a formal response  
5 needed for the water crossing permits the end of this month.  
6 But again it's a government agency so I can't --

7 THE COURT: You don't know for certain but  
8 that's what you anticipate.

9 THE WITNESS: According to their  
10 correspondence with us, yes.

11 THE COURT: I'm going to overrule your  
12 objection and allow the testimony.

13 BY MR. BRUNTON:

14 Q So, Matt, please explain to the Court if the  
15 construction in the first section of construction, spread  
16 one, what has to happen or what is that construction going  
17 to have to do if construction starts Spring or Summer and  
18 they can't get across the Teter Trust property?

19 A So, within a spread we could have one or multiple crews  
20 working in a linear fashion.

21 THE COURT: We're looking at Exhibit B,  
22 right?

23 MR. BRUNTON: I haven't gotten there but you  
24 can, Your Honor.

25 THE COURT: I'm going to look at Exhibit B.

1 It breaks it down easier. That's a blown up part of --

2 MR. ANDERSEN: I'm going to object to Exhibit  
3 B as hearsay. There's no foundation how it was prepared, who  
4 prepared, anything like that, Your Honor, so with all due  
5 respect I think we should --

6 THE COURT: How about this one on the board?  
7 Are we okay with the diagram on the board?

8 MR. ANDERSEN: Absolutely.

9 THE COURT: All right. We're looking at the  
10 diagram on the board which is the first segment of -- or is  
11 the segment of construction that involves the Teter property,  
12 is that correct?

13 THE WITNESS: Yes.

14 THE COURT: All right. How are you going to  
15 start that project and how are you going to finish it?

16 THE WITNESS: We have crews like Mr. Lovejoy  
17 spoke about earlier for conventional construction. We've  
18 already surveyed out a good portion of the right-of-way and  
19 started cutting the trees down. And next, just like Mr.  
20 Lovejoy mentioned, we have to clear the right-of-way of the  
21 stumps, set the trees off to the side. If the property owner  
22 want to retain the timber we give them possession of the  
23 timber as well.

24 THE COURT: You start this at multiple  
25 starting points or do you start at one end and kind of go in a

1 linear fashion?

2 THE WITNESS: Actually the answer is both. So  
3 there's multiple -- there's a conventional trench and that  
4 goes in a linear fashion. There's crews that do drills under  
5 roads and rivers and streams and they can kind of jump around.

6 THE COURT: So primarily it would be at a  
7 linear fashion and the more extreme terrain circumstances you  
8 would have a dedicated crew going there and doing that  
9 sectional work.

10 THE WITNESS: Yes, sir.

11 THE COURT: And which direction are you going  
12 in that linear fashion? Are you starting from the Houston tank  
13 farm and going to the Scio station or you going from the Scio  
14 station to the Houston tank farm?

15 THE WITNESS: My plan is to start at the Ohio  
16 River and work west because of the current gap in the  
17 right-of-way to give us as much time as possible.

18 THE COURT: All right. So the Teter farm  
19 would be last.

20 THE WITNESS: No, scio station would be last.

21 THE COURT: But it would be -- on the range  
22 of things it would be the last --

23 THE WITNESS: Last 10 miles.

24 THE COURT: -- on that range that we see on  
25 that board the last 10 miles --

1 THE WITNESS: The last 20 percent, yes, sir.

2 THE COURT: All right.

3 BY MR. BRUNTON:

4 Q And Matt, maybe if -- you may have already explained  
5 this but the linear fashion for the construction of the pipe  
6 that you discussed when the crews come through what happens  
7 if they get to a point where they get a gap and they can't  
8 get on a property even though it's supposed to be along the  
9 pipeline route?

10 A Typically the construction width for a project with a  
11 pipe this size is wider than what we've attempted to -- or  
12 what we have acquired. So we have work areas and a travel  
13 lane for the equipment. We've narrowed it to the best of our  
14 ability to minimize environmental impacts. You're in a  
15 situation where the crew's out front and the equipment that  
16 gets in front has to stop and turn around and get back to  
17 the last access point to get back to a road. So the crews  
18 behind them have to wait for that crew to work on that  
19 section, turn around and come back before they can proceed  
20 into that section. So it bottle necks the progress and it  
21 destroys efficiencies to construction process and we  
22 negotiate with the contractor for a loss of that efficiency  
23 because they're all about making efficiency. That's how they  
24 make a profit. We negotiate a set fee to try to accommodate  
25 the cost of not having to stop production, wait for those



1 crews to back out and then they have to take trucks and  
2 physically move the equipment around that gap and go to the  
3 next side and now they have to work backwards to get to  
4 where the gap is on the other side and then again the crews  
5 have to wait while they finish that work in that direction  
6 as well. So it's almost like walking against the grain if  
7 you're in a crowded sidewalk picture, everyone is walking at  
8 you and you're trying to weave through the crowd. It slows  
9 production down. So there's a cost associated with that that  
10 we negotiate up front.

11 Q Matt, if I can draw your attention to this, let's say  
12 your construction -- first of all, how long does each spread  
13 -- I mean the spreads are all going to start at the same  
14 time. That's the plan, right? So how long does each spread  
15 take? Are we talking three months, six months? How long  
16 does it take to do a spread?

17 A There's a lot of factors that can affect the duration of  
18 construction, weather being one of the chief ones, and  
19 terrain being one of the other ones. But we try to plan it  
20 for them to be completed in eight months.

21 Q Eight months from start to finish.

22 A Yeah. Without significant -- barring any significant  
23 weather events.

24 THE COURT: And that same eight months  
25 because of the way you're doing this project would be the

1 total time for completion of the project?

2 THE WITNESS: Because all spreads are  
3 completed at the same time but then we actually -- we have  
4 some commissioning activities for the equipment -- to test the  
5 equipment after that fact. That's the construction time I'm  
6 talking about, the eight months.

7 THE COURT: The eight months is construction  
8 time but what's your online time?

9 THE WITNESS: It could be -- testing of a  
10 project this size could take an additional one to two months  
11 so probably I'd say 10 months barring no major set backs from  
12 weather, etcetera.

13 BY MR. BRUNTON:

14 Q So just to recap, so if as planned all the spreads  
15 started at roughly the same time you're looking at about an  
16 eight month time frame for each spread to finish and  
17 therefore the entire project could theoretically be  
18 constructed in about eight months. Is that a good summary?

19 A Yes.

20 Q And then you've got testing. Is that hydrostatic testing  
21 you're talking about?

22 A Other types of testing, electrical testing on stations  
23 not associated with the pipeline but needed to move the  
24 product through the pipeline.

25 THE COURT: And that's an additional two

1 months.

2 THE WITNESS: Yeah. We do perform electrical  
3 testing, communications testing. There is some hydrostatic  
4 testing as well.

5 THE COURT: You still have a month to go on  
6 on the permits in Ohio.

7 THE WITNESS: Approximately.

8 THE COURT: You have permits like that in  
9 Pennsylvania you gotta do yet?

10 THE WITNESS: Yes, there's a permit process  
11 in Pennsylvania as well.

12 THE COURT: Are you close to finishing that  
13 as well?

14 THE WITNESS: Our permits in Pennsylvania  
15 were filed at the same time and they're in varying stages of  
16 approval in Pennsylvania as well.

17 THE COURT: You're thinking maybe you'll get  
18 something back from Ohio in a month or so, right?

19 THE WITNESS: Yes, sir.

20 THE COURT: Are you thinking the same time in  
21 Pennsylvania or is it a little longer?

22 THE WITNESS: I believe it will be longer.

23 THE COURT: Do you have anticipation of how  
24 much longer?

25 THE WITNESS: It's tough for me to speculate

1 on when the agency's actually going to approve it.

2 THE COURT: What's your best guess?

3 THE WITNESS: We were planning -- I've been  
4 planning to start construction April. I think currently it's  
5 probably closer to Summer for the Pennsylvania portion.

6 THE COURT: Thank you.

7 BY MR. BRUNTON:

8 Q So if you started construction in the Summer it would be  
9 finished eight months approximately with no major set backs  
10 and then two months after that in service.

11 A Yes, sir.

12 Q So if all of this were happening but once the  
13 construction crews got to the Teter Trust property -- well,  
14 let me ask a simple question first. You mentioned before  
15 that the contracts, because of efficiencies, the contracts  
16 have set move around costs.

17 A Correct.

18 Q That Sunoco must pay.

19 A Yes. I negotiate them up front with the contracts.

20 Q Okay. And the contractor in this case is who?

21 A Welded Construction out of Ohio.

22 Q And just to move around the Teter Trust property what  
23 would Sunoco have to pay for that?

24 MR. ANDERSEN: Objection. This also calls for  
25 speculation.

1 MR. BRUNTON: He's negotiated the contract.

2 MR. ANDERSEN: He didn't testify to that.

3 THE WITNESS: I did actually testify to that.  
4 I did negotiate the contract.

5 MR. ANDERSEN: So these are built in -- I'm  
6 sorry -- these are built into the contract. They've agreed  
7 this is how much it's going to cost to move. And that's the  
8 cost for the contractor --

9 THE WITNESS: That they charge --

10 MR. ANDERSEN: They have to pay the  
11 contractor to move it.

12 THE COURT: This is move around cost for the  
13 contract.

14 MR. ANDERSEN: Okay. Thank you. I'm sorry.

15 THE COURT: No problem.

16 BY MR. BRUNTON:

17 Q And how much is that approximately?

18 A I'd prefer to look at the exhibit with the contract  
19 document --

20 Q Is there a document there that would refresh your  
21 memory?

22 A Yes, sir.

23 Q Is that Exhibit B?

24 A Yes, Exhibit B is an excerpt from the contract that I  
25 negotiated. Each crew has a specific negotiated price up

1 front for the cost to go around the property and come back  
2 at a future date to finish construction on that property.

3 Q And is that set forth on Exhibit B and we could add  
4 those up?

5 A Correct. So every crew on that list basically has to  
6 wait for the crew in front of them to stop, turn around,  
7 then they have to bring in trucks to move their equipment  
8 around and we negotiate that price for that loss of  
9 efficiency for the contractor up front.

10 THE COURT: And listed in 2.208 (inaudible)  
11 are those costs.

12 THE WITNESS: Correct.

13 BY MR. BRUNTON:

14 Q Let's say you come to the Teter Trust property and you  
15 have to move around it, you've gotta pay that cost you just  
16 described, then what happens if there are further delays and  
17 you have crews that are now just standing around because  
18 they can't either get onto the property because they don't  
19 have access to other property or they've done all the work  
20 that they can do without getting back on the Teter Trust  
21 property, what happens if they just end up standing around?

22 A So when I negotiate the contracts that's a concern for  
23 the contractor that we address in the contract for anything  
24 that I control including open access to the right-of-way. If  
25 I can not provide that to them for a property and they have

1 no other area left to build that I can move them to then I  
2 have to put the crews on what's negotiated as standby time  
3 for all the crews that are affected.

4 Q And did you also negotiate that portion of the contract?

5 A I did.

6 Q And if we could go to the next page of Exhibit B.

7 THE COURT: This is A through K of the per  
8 hour fee standby?

9 THE WITNESS: Correct. So for every hour that  
10 they can't work there's a fee for each crew that can not work  
11 and then the contract also stipulates the contract is based on  
12 six 10 hour days per week.

13 Q So if we add that up --

14 A So it's minimum 10 hours of these charges per day for  
15 every day that I can not allow them access on the property  
16 again assuming I have nowhere else I can put them to work on  
17 this contracted spread.

18 Q So if a contractor is standing around just the simple  
19 math is we would add all that up and if it adds up to  
20 approximately \$43,000.00, a little bit less than \$43,000.00,  
21 that's a per hour charge.

22 A Correct.

23 Q Times a 10 hour day that's almost \$430,000.00 per day of  
24 standby cost to Sunoco if they end up standing around.

25 A That's correct.

1 Q Matt, in your capacity with Sunoco are you familiar with  
2 how Sunoco goes about its construction as well as its  
3 reclamation activities for either the installation of  
4 pipeline or the replacement or the removal of pipeline?

5 A Yes. In my 10 years with the company I've worked on  
6 maintenance, replacement and construction of new assets for  
7 -- sorry -- maintenance, construction of existing assets and  
8 replacement and construction of new assets as well.

9 Q You heard Mr. Lovejoy testify about some of his concerns  
10 about the construction process and do you recall him  
11 specifically mentioning the concern about if I have this  
12 open trench I may not be able to access certain parts of my  
13 property? Do you recall that?

14 A Yes, I recall that.

15 Q Okay. Does Sunoco have standard techniques by which they  
16 can allow landowners like Mr. Lovejoy to get access back and  
17 forth over the construction area?

18 A Yes.

19 Q Explain to the Court how that works.

20 A Like Mr. Lovejoy was testifying the contractors put down  
21 timber mats to have a stable work surface when they're out  
22 there working. The timber mats come in varying lengths so we  
23 can get mats --

24 THE COURT: Timber mats -- do they look like  
25 a bridge?



1 THE WITNESS: Exactly.

2 THE COURT: I'm familiar with them.

3 THE WITNESS: And we will actually mat across  
4 the right-of-way areas that the property owner deems they need  
5 for crossings.

6 THE COURT: (Inaudible) heavy equipment like  
7 farm equipment?

8 THE WITNESS: Yes. Our construction equipment  
9 is significantly heavier than standard farm equipment.

10 THE COURT: And that's what you use to move  
11 over.

12 THE WITNESS: And we can stack it up and add  
13 more mats to make them disperse the loads.

14 BY MR. BRUNTON:

15 Q And if Mr. Lovejoy needed those would Sunoco provide  
16 those for him?

17 A Yes.

18 Q What could Mr. Lovejoy reasonably expect, understanding  
19 construction is never perfect, but what would be the time  
20 frame in terms of crews coming across the Teter Trust  
21 property, when would construction start approximately, when  
22 it would finish and how often would folks be there working  
23 on this property?

24 A From his previous testimony from a micro level when I  
25 look at the crew progress they can make one to 2,000 feet of

1 progress in a day. So they could be across the property  
2 literally active work time in a few weeks, less than a  
3 month, but when you look at it on a micro level and you're  
4 the property owner those crews aren't coming through on the  
5 same day. They're staggered. So the process can take a  
6 couple months to complete. And in this case on their  
7 property there's also a road crossing that we have to bore  
8 under the road so those crews would be a separate strike  
9 team that could come in at a different time and do that road  
10 crossing as well. But it would still technically impact his  
11 property cause they're working from either side of the road.

12 THE COURT: Two to three months ball park?

13 THE WITNESS: That's a definite possibility.  
14 We think we can get across faster but it's definitely  
15 possible. And then that doesn't include restoration. As Mr.  
16 Lovejoy testified earlier we look to figure out what type of  
17 soils there are and plant grass seeds and straw, but depending  
18 on the time of the year if it's late Fall, early Winter the  
19 seed may not come up as well as he likes. We may have to come  
20 back and re-seed in the Spring.

21 BY MR. BRUNTON:

22 Q Matt, I'd like to draw your attention to Exhibits C, D  
23 and E in the notebook. I guess I should say Exhibit C-1 and  
24 C-2 and then there's D-1 and D-2 and D-3 and D-4 and then  
25 there's E-1 through E-4. Why don't we start with Exhibit C

1 first. We got color on the screen but the copies are black  
2 and white. Can you explain to the Court what's being  
3 depicted here in Exhibit C-1 through C-2?

4 A C-1 is an existing pipeline right-of-way where we  
5 recently had construction activity. There was an existing  
6 pipeline in that corridor but we came through and did  
7 construction in the existing corridor. This is the before  
8 photo showing the existing right-of-way prior to  
9 construction of the additional pipe.

10 Q Okay. So would that be a pretty typical photo of what a  
11 pipeline right-of-way might look like, or at least that  
12 pipeline right-of-way looks like post construction  
13 reclamation?

14 A Yes.

15 Q And C-2?

16 A C-2 was an after photo that was taken after construction  
17 process was completed and the property was allowed to revert  
18 back to its previous state. So after restoration is  
19 complete.

20 Q And then Matt, if you could let's look at D-1 through  
21 D-4, can you describe for the Court what is depicted in  
22 photograph D-1?

23 A D-1 is a maintenance excavation for an existing pipeline  
24 where they were doing some work on that pipe. We send  
25 devices through our pipe periodically to inspect the pipe

1 and we have to make repairs to it. So this is just a crew  
2 out there doing a repair on an existing pipeline.

3 Q And Exhibit D-2.

4 A Just more photos of the same work site.

5 Q Do these photos kind of typically describe what it might  
6 look like for construction across for a pipeline  
7 right-of-way?

8 A It's fairly typical. In this case there's an existing  
9 pipe in there already so this is similar, not identical  
10 cause the process starts with the pipe outside of the ditch  
11 and we put it into the ditch. But it's typical.

12 THE COURT: So when you're doing the actual  
13 project the land would be tore up like it's on that property  
14 but you would also have the pipe that you're going to lay laid  
15 out along the side ready to put in the trench.

16 THE WITNESS: Correct. And typically we'll  
17 use timber mats as well.

18 BY MR. BRUNTON:

19 Q And let's real quickly run through Exhibits D-3 and D-4  
20 and just identify those and tell the Court what those  
21 depict.

22 A Again similar photos of the same construction site, show  
23 the construction rock entrance coming off the road, OSHA  
24 safety fence on the excavation. The pile that you see of  
25 dirt off to the side is the dirt they excavated to do the

1 work on the pipe and staged near by. They're just different  
2 vantage points of the same work.

3 Q And then let's look at Exhibit E photos and just to  
4 provide some context are the Exhibit E photos are these from  
5 the same property that we just looked at for Exhibit D?

6 A Yes.

7 Q So we're kind of seeing before and after of the photos.  
8 The process kind of while the sausage is being made so to  
9 speak, and now we're seeing in Exhibit E, what are we seeing  
10 in Exhibit E?

11 A Correct. So after the work is completed when you're no  
12 longer going to disturb the dirt, and it depends on each  
13 day, but within three to 10 days and some townships have  
14 restrictions as well, you have to rake, seed, straw the soil  
15 to stabilize it immediately.

16 THE COURT: This wouldn't be your total  
17 reclamation project. This would be your clean up after you put  
18 the pipe in.

19 THE WITNESS: Correct. So you have to wait  
20 for the grass to come up. And then sometimes the property  
21 owners will negotiate specific requirements that they want for  
22 the landscaping.

23 BY MR. BRUNTON:

24 Q Matt, while the pipeline -- or after the pipeline is  
25 constructed and reclamation is complete can the Teter Trust

1 or for that matter any landowner that is crossed by the  
2 pipeline, can they still use the surface over the pipeline?

3 A They can use the surface with the limitation that they  
4 can't build a permanent structure over top of an easement.

5 Q So they can't build a house on it or a garage on the 50  
6 foot easement, right?

7 A Correct.

8 Q Can they farm on it?

9 A Yes.

10 Q Can they cross their equipment back and forth on it?

11 A Yes.

12 Q Can they hunt on it?

13 A Yes.

14 Q Can they hike on it?

15 A Yes.

16 Q Other than a permanent structure are there any -- can  
17 they even put underground utilities underneath across the  
18 pipeline and cross your pipeline with underground utilities  
19 if they say hey, I'd like to bring electrical and come  
20 underneath your pipeline?

21 A Yes.

22 MR. BRUNTON: Could I have one second, Your  
23 Honor?

24 THE COURT: You may.

25 BY MR. BRUNTON:

1 Q Matt, you said earlier in your testimony that the plan  
2 when we were looking at the spread, the construction  
3 spreads, the plan for spread one was to actually go west to  
4 east instead of east to west, correct?

5 A Spread one we're going to start at the Ohio River and  
6 work east to west and then we'll have to finish up some  
7 segments.

8 Q Why are you starting there though as opposed to starting  
9 at the furthest west point?

10 A Because we have a gap with this property so we're trying  
11 to give it as much time for --

12 Q It's this property though. The gap you're talking about  
13 is the Teter Trust property.

14 A Yes.

15 Q So you're already trying to change your construction  
16 process because of this issue.

17 A Yes.

18 Q Okay. Matt, if Sunoco were to be able to construct the  
19 pipeline while this litigation and the appeal is pending and  
20 if later it was determined -- obviously I know you hope it's  
21 not determined, but if it was later determined by a Court of  
22 Appeals or the Ohio Supreme Court that Sunoco did not have  
23 the right to construct and operate that pipeline there would  
24 Sunoco remove the pipeline and reclaim the Teter Trust  
25 property?

1 A Yes, we could.

2 Q You would have no choice, right?

3 A Right.

4 Q Without their agreement otherwise, right?

5 A I'll let interpretation of the law to you but my lay  
6 person opinion is yes.

7 Q Okay.

8 MR. BRUNTON: I don't have any other  
9 questions, Your Honor.

10 THE COURT: Attorney Andersen.

11 CROSS EXAMINATION

12 BY MR. ANDERSEN:

13 Q Mr. Gordon, I've kind of built myself a little fort so  
14 I'm not going to stand up if that's okay. I don't mean you  
15 any disrespect. You talked about the permitting a little  
16 bit. So we never really got to Pennsylvania but in Ohio  
17 you've got your earth something permit?

18 A Earth disturbance permits.

19 Q Earth disturbance permits. But you don't have your water  
20 permits yet.

21 A Water crossing permits, correct.

22 Q And your best guess is that those should be coming  
23 within about a month.

24 A The end of this month, yes, sir.

25 Q Okay. Does Pennsylvania have the same types of permits?



1 A Very similar, yes, same types.

2 Q Do you have all the permits required in Pennsylvania?

3 A No.

4 Q What permits are you missing in Pennsylvania?

5 A In Pennsylvania we still require some earth disturbance  
6 permits and some water crossing permits.

7 Q So you're missing the water crossing and the earth  
8 permits in Pennsylvania.

9 A Correct.

10 Q I'm aware of a letter dated January 29th, 2016 from the  
11 Pennsylvania Department of Environmental Protection. Did you  
12 receive that letter?

13 A I'm sure we did, yes.

14 Q In it -- and if you don't remember don't answer the  
15 question.

16 A I don't remember the specific letter.

17 Q Okay. Have you reapplied? They let you know there were  
18 some issues with your request. Have you guys reapplied yet?

19 A When you say reapply you mean they asked us to respond  
20 to comments. We've had to respond to comments.

21 Q You have respond to comments.

22 A Yes, sir.

23 Q Have you worked with the Pennsylvania Department of  
24 Environmental Protection before?

25 A Yes.

1 Q What's your best estimate on the timeline for them  
2 granting both your permits?

3 A For the Pennsylvania portion of the project?

4 Q Uh-huh.

5 A I think it's reasonable to expect the permits could be  
6 issued this Summer.

7 Q Now, this leads me to the question that I tried to ask  
8 Mr. Alexander before but he's not the right guy so I'm  
9 hoping you're the right guy. Can you build this pipeline  
10 from Hopedale to Marcus Hook?

11 A Can I physically build it?

12 Q Can you physically build the pipeline from Hopedale to  
13 Marcus Hook?

14 A Yes.

15 Q Is it your understanding that you won't build the  
16 pipeline?

17 A We need permits to build the pipeline.

18 Q If you have all the permits and you can't get the Teter  
19 Trust property would you still build the pipeline from  
20 Hopedale to Marcus Hook?

21 A I can build the pipeline anywhere that I have the  
22 property and the land acquired, yes.

23 Q Now, going from your -- I'm just trying to do the math  
24 in my head. So we're going to start -- go ahead and go to --  
25 I guess it's Plaintiff's Exhibit A since we continue to

1       insist on labeling our exhibits with letters. So we're  
2       looking at Plaintiff's Exhibit A and we start -- we're going  
3       to start at the top here and we're going to talk about PPP  
4       spread one. Okay?

5       A     Sure.

6       Q     So, was it your testimony earlier that you're going to  
7       start to the right and go to the left?

8       A     For OPP spread one, yes.

9       Q     So Teter Trust property is at OPP one spread.

10      A     Correct.

11                       THE COURT: We're talking the top one?

12                       MR. ANDERSEN: Yes.

13                       THE COURT: Here's what the Court understood  
14      the testimony to be. We're going to start where the Ohio River  
15      is and we're going to go from left to right and then we're  
16      going to come back to this last section and finish it after  
17      and when this issue that we're dealing with today is over. Is  
18      that correct?

19                       THE WITNESS: That's what I said, yes, sir.

20      BY MR. ANDERSEN:

21      Q     So what you're actually going to do is you're going to  
22      start -- and I can't see the Ohio River but I assume it's  
23      around mile marker 30.

24      A     Yes, right around 30.

25      Q     So you're going to start your pipeline there.

1 A Uh-huh.

2 Q And you're going to move to the left but you're not  
3 going to move east at all yet. You're going to finish it off  
4 to the west and then move to the east.

5 A There is some latitude for the contractor to have  
6 additional crews to work the eastern half at the same time.  
7 So they can sub-divide the spread and work both directions  
8 simultaneously.

9 Q And so from the Ohio River to Scio station you said it's  
10 going to take about eight months?

11 A From Scio River to Houston it's going to take eight  
12 months.

13 Q So it's going to take about four months to go from Scio  
14 to the Ohio River.

15 A Approximately.

16 Q And if you start at the Ohio River we are -- our  
17 property or this property we're talking about is 20 miles  
18 in, is that correct, from the Ohio River?

19 A Heading from east to west approximately 20, little less  
20 than that.

21 Q So it's about would you say three months before you get  
22 to the Teter property from the date you start at the Ohio  
23 River?

24 A Well remember I mentioned before that the crews are  
25 spread out and staggered so the four months is for the last

1 crew to kind of get across the finish line. So the first  
2 couple crews could arrive well before that. They could be  
3 there in a month or two. And obviously you've seen the crews  
4 come through. You mentioned before you saw some survey  
5 markers. We've been clearing trees already.

6 Q What I'm getting at is that the project is probably in  
7 your estimation not going to start till Summer. It's going  
8 to take you a month or two to get to our property. That puts  
9 us into what, July? August?

10 A That's possible, yeah.

11 Q Now, are you familiar with the Sunoco easement in this  
12 case?

13 A We don't have an easement on the Teter property. Well  
14 through the condemnation I assume.

15 Q Are you familiar with the actual written document that  
16 you guys --

17 A Our standard easement --

18 Q Well, it is the easement against the property.

19 A Our standard easement language you're referencing.

20 Q It is exactly your standard easement I think.

21 A I'm familiar with it, yes, sir.

22 Q Okay. Are you familiar with the easement in this case?

23 A If it's similar to our standard then yes.

24 Q Does it require you to put a bridge over a trench?

25 A Typically that's not a requirement. That's something we

1 negotiate with the landowner.

2 Q So there's not like a 1-800 number on there where my  
3 clients can call and get a bridge over a trench?

4 A We try to negotiate with every property owner and find  
5 out what what their specific concerns are. For example Mr.  
6 Lovejoy mentioned they have cattle they graze. That concern  
7 may be I want cattle fence. We negotiate that up front and  
8 we'll put that fence in.

9 Q But as we sit here today your knowledge of the easement  
10 we have does it say --

11 A There's nothing -- in my knowledge there's nothing black  
12 and white that says we will put a bridge at a certain point  
13 on the easement today.

14 Q So as you sit here today you can't guarantee it.

15 A We can make an agreement for that.

16 Q But you can't guarantee it under the easement.

17 A Under the existing easement you're saying as it's stated  
18 today.

19 Q Okay. I want to go ahead and go to -- I guess let's go  
20 through Exhibit C-1 which I guess is Plaintiff's Exhibit  
21 C-1. That's a before photo?

22 A Yes.

23 Q And these people already have a pipeline, is that  
24 correct?

25 A Yes.

1 Q So then in D-1 that is you -- is that Sunoco removing  
2 the pipeline?

3 A D-1 is a separate parcel but they're performing  
4 maintenance on the pipeline.

5 THE COURT: Repair on an existing pipeline.  
6 Is that correct?

7 THE WITNESS: Yes.

8 Q So this is a pipeline that was already buried and then  
9 dug back up and then it's going to be buried again.

10 A It was, yes.

11 Q Do you know from the time that you guys laid this  
12 pipeline to the day it was dug up to the day it was  
13 reclaimed or whatever you call it do you know how long or  
14 the timing on that project?

15 A The duration you're saying?

16 Q Yes.

17 A A dig of this size typically takes anywhere from two  
18 weeks to a month. It's a smaller crew.

19 THE COURT: So the project at the Teter  
20 property being that it's a larger land mass would take longer.

21 THE WITNESS: Not necessarily because we're  
22 using bigger crews and bigger equipment. They're moving in a  
23 different fashion. This is a small isolated dig.

24 THE COURT: You testified earlier that you  
25 thought anywhere from one and a half to almost three months

1 depending on weather and variables.

2 THE WITNESS: Because of the spacing of the  
3 crews, yes, sir.

4 BY MR. ANDERSEN:

5 Q And then so let's go ahead -- so D-1, that looks pretty  
6 muddy and we don't know how long this project took? This  
7 particular one.

8 A I don't have the duration off the top of my head.  
9 Probably about two to four weeks.

10 Q Two to four weeks. Okay. And again this was a pipeline  
11 that was dug up after you put it in and it was going to be  
12 put back under, is that correct?

13 A Yes, sir.

14 Q Does this one have a pig launcher?

15 A There's a temporary launcher that they put in as well.

16 Q So when you guys reclaim this one you didn't leave that  
17 launcher in there?

18 A See the valve off to the side? The valve was hanging  
19 there. So it's a removal of the valve as well.

20 Q Let's go ahead and go to E-1. This is where I'm a little  
21 bit confused. Is E-1 the finished C-1 project? Or is E-1 --  
22 I mean what project is E-1 finished product of?

23 A E-1 is associated -- it's what the right-of-way looks  
24 like after everything was removed and the dirt was put back  
25 into place and the ground was seeded and strawed.



1 Q I guess what I'm asking is C-1, D-1 and E-1 aren't all  
2 the same project, is that accurate?

3 A Oh, I'm sorry. Let me go back. C is not the same, no,  
4 sir. C is from a different project.

5 Q So E-1 -- would you call that fully reclaimed?

6 A Fully reclaimed? No, the grass hasn't sprouted yet.  
7 We're not done there.

8 Q Did you bring any pictures showing the pretty green  
9 grass or anything?

10 A I did not. I don't know if the team has them.

11 THE COURT: E-1 -- my recollection from the  
12 testimony of E-1 just so I keep this straight is we're done  
13 with the project, we put the dirt back, we strawed and seeded  
14 it and we're going to come back and check in a few months and  
15 see how the grass comes up and if there's any other additional  
16 concerns. Is that what that picture is?

17 THE WITNESS: Yes. And we're required to  
18 continue to maintain it up until the point there's at least a  
19 minimum 70 percent attenuation of the ground cover being grass  
20 in this case, vegetation. Some property owners choose to do  
21 that themselves and we compensate them for that as well.

22 THE COURT: So you're saying if a property  
23 owner would like to put in his own grass and his own type of  
24 grass, say you use a certain company that uses grass that the  
25 landowner's not happy with you're saying that the company will

1 let the landowner pick his own grass and you'll just reimburse  
2 them?

3 THE WITNESS: While we're negotiating for the  
4 work. In this case whether it's a new easement or for work on  
5 an existing easement we'll identify what their needs are. Now  
6 we still have to put grass seed down within the three to 10  
7 days depending on the township and the county and the state.  
8 But the landowner may not want the grass that we have to use.  
9 We usually use a fast growing mix in a lot of cases. So if  
10 they want to put something else down then there's a  
11 compensation negotiation for the damage for them to go out and  
12 hire a local contractor, not pipeline company, to do the  
13 landscaping. Could be grass, it could be some shrubs, flowers  
14 that have to be replaced.

15 THE COURT: That's something you've done in  
16 the past.

17 THE WITNESS: Absolutely, yes, sir.

18 BY MR. ANDERSEN:

19 Q And then you talked about you helped negotiate the  
20 Welded contract.

21 A The construction contract, yes.

22 Q When does it start? When does that contract start?

23 A The contract has a three tiered notice to proceed  
24 structure. We issued a purchase order already and the  
25 contractor has already established a lay down yard and like

1 a headquarters for construction. So technically it has  
2 started.

3 Q Is there any penalty if you stop right now with  
4 construction?

5 A If we stop construction and they're actively moving  
6 equipment with our current notice to proceed it's up through  
7 tree clearing. So if we were to stop them from tree  
8 clearing yes, they can charge us standby for their tree  
9 clearing crews. But we haven't actively started full  
10 construction giving notice to proceed to move equipment. So  
11 at this point, no for that.

12 Q So if they were anticipating a huge profit margin for  
13 the entire project and you quit tomorrow you'd have some  
14 fees associated but you wouldn't owe the entire amount of  
15 the contract.

16 A Correct.

17 MR. ANDERSEN: May I have a moment, Your  
18 Honor?

19 THE COURT: You may.

20 BY MR. ANDERSEN:

21 Q You have some familiarity with the easements that we  
22 have in place today. Is it your understanding that the  
23 Teter's can move heavy equipment across that easement  
24 without your permission?

25 MR. BRUNTON: I just have to object to -- we

1 don't have an easement with them. We obviously have not been  
2 able to get an easement. So I don't know if I understand the  
3 question.

4 MR. ANDERSEN: I can rephrase.

5 Q You're familiar with the easement that is proposed here,  
6 correct?

7 A Yes.

8 Q Is it your understanding that it allows the Teter's to  
9 drive heavy equipment over it without Sunoco's permission?

10 A It depends on what you define as heavy equipment. So for  
11 example Chesapeake contacted us to lay out their well pad on  
12 the Teter property and showed us where their well pad and  
13 their construction entrance for the well pad was going to  
14 be, so that section of the pipeline we insured that with  
15 their load calc's that we were sufficient depth and pipe  
16 wall thickness to allow them to bring their well drilling  
17 equipment onto the Teter's property. We know that the  
18 pipeline is sufficient depth and wall thickness to handle  
19 highway loads and farm equipment. Absolutely. If there was  
20 something above and beyond highway loads and farm equipment  
21 we'd expect them to follow the one call process to cross the  
22 easement and then we can work with them for a means to cross  
23 the easement with heavier equipment. And that's usually  
24 state regulatory driven.

25 Q I have an understanding of your role at Sunoco but I'm

1 just going to ask some questions and if you don't know tell  
2 me you don't know.

3 A Yes, sir.

4 Q Do you have any understanding as to this \$933,000.00  
5 revenue number?

6 A I'm not in the commercial side.

7 Q Do you have any understanding as to the cost associated  
8 with generating that \$933,000.00 revenue?

9 A As far as what Hank testified earlier with multiplying  
10 the tariff to find the volume through the pipe that  
11 calculation is pretty straight forward.

12 Q So you understand the revenue calculation but you don't  
13 have any understanding of costs. You don't know of any costs  
14 calculation that you can present here today to the Court.

15 A Calculation for what, sir?

16 Q The costs per day to run that pipeline.

17 A I could generally describe what the costs are but I  
18 don't have a calculation to present you.

19 Q And then I also asked Mr. Alexander this and I'm going  
20 to ask you. Will Sunoco build this pipeline from Marcus Hook  
21 to Hopedale if it can't build all the way to Scio?

22 A I don't know that I can answer that question to be  
23 honest with you.

24 Q Thank you. That's all I have.

25 THE COURT: Any redirect?

1 MR. BRUNTON: No, Your Honor.

2 THE COURT: You may step down.

3 And you promised me that was your last  
4 witness?

5 MR. BRUNTON: It is, Your Honor.

6 There is one point of confusion I think from  
7 just listening to Mr. Andersen's question about will you build  
8 just from Hopedale to Marcus Hook and I don't know if the  
9 Court's confused by Hank's testimony as well on this and so I  
10 honestly I'm tempted that maybe I need to recall Hank to  
11 explain why that can't happen. I thought it was clear but I --

12 THE COURT: I'm pretty clear. I don't need  
13 further testimony. I mean it's your case. If you want to put  
14 him on, put him on. But I think the Court understands where  
15 we're at.

16 MR. BRUNTON: Then I don't have anyone else,  
17 Your Honor.

18 THE COURT: Since we are going to allow  
19 briefs within a week I don't really see the necessity for  
20 closing argument but I've done it so far to my detriment but  
21 I'm going to offer the ability to give a closing argument but  
22 I'm probably going to rely on testimony and whatever briefs.

23 MR. BRUNTON: I'll waive.

24 MR. ANDERSEN: As a courtesy we never pushed  
25 your exhibits.

1 MR. BRUNTON: Yeah, we need to admit our  
2 exhibits.

3 MR. ANDERSEN: We have no objection to them.

4 THE COURT: They're going to be admitted.

5 MR. ANDERSEN: And we would also waive  
6 closing argument.

7 THE COURT: Very well. Once again I thank the  
8 parties. I thank you for putting on a hearing and doing an  
9 excellent job with it. It is obvious that there are points to  
10 be made on both sides concerning the stay and just like we did  
11 with the judgment entry in this case we're not going to make a  
12 snap decision from the bench today. We have information to  
13 look over and consider. And we're going to allow the parties  
14 to supplement their argument for stay. All supplements will be  
15 due by the close of business on March 11th, 2016. The Court  
16 does not anticipate taking very long at all to get a decision  
17 out on this matter so this case can keep moving forward to the  
18 Court of Appeals.

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## CERTIFICATE

STATE OF OHIO,

COUNTY OF HARRISON, SS:

I, Rebecca L. Wood, Court Transcriptionist,  
Common Pleas Court, Harrison County, Ohio, duly appointed and  
qualified, do hereby certify that the foregoing, consisting of  
112 pages, is a true and accurate transcript as transcribed by  
me from a digital recording of the DEFENDANT'S MOTION TO STAY  
heard March 4, 2016, before the Honorable T. Shawn Hervey,  
Judge.

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Rebecca L. Wood,  
Court Transcriptionist  
Common Pleas Court,  
Harrison County, Ohio



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