IN THE SUPREME COURT OF OHIO

Sunoco Pipeline L.P.	:	
	:	**Case No. 2016-1486**
Plaintiff-Appellee,	:	
	:	**On Appeal from the Harrison County**
vs.	:	**Court of Appeals, Seventh Appellate**
	:	**District**
Carol A. Teter, Trustee, et al.	:	
	:	**Court of Appeals Case Nos.**
Defendant-Appellants, *et al.*	:	**16 HA 0002 and 16 HA 0005**
	:	

APPELLANT'S MEMORANDUM IN OPPOSITION TO APPELLEE'S SUGGESTION OF MOOTNESS AND MOTION TO DISMISS

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I. INTRODUCTION.

Defendant-Appellant Carol A. Teter, Trustee of the Carol A. Teter Revocable Living Trust ("Teter"), respectfully submits the following Memorandum in Opposition to Plaintiff-Appellee Sunoco Pipeline L.P.'s ("Sunoco") Suggestion of Mootness and Motion to Dismiss ("Motion to Dismiss") filed July 24, 2017.

In this case, the trial court granted Sunoco's Petition for Appropriation, which had the effect of making Sunoco the legal owner of two permanent pipeline easements across Teter's farm. (R. for Case # CV 20150058 at 21, Amended Petition for Appropriation; 62, 12/14/2015 Entry Granting Petition.) Sunoco's possession of the pipeline easements is only contingent upon the payment of the agreed compensation therefor. While Sunoco now claims it no longer needs the easements, there is nothing in the easements' terms that prevents Sunoco from paying the compensation, taking possession of the easements, and building another pipeline across Teter's farm. (R. for Case # CV 20150058 at 21, Ex. B, Permanent Easement Agreement.) Accordingly, the trial court's judgment granting Sunoco the right to appropriate the easements upon payment of the agreed compensation continues to cloud the title to Teter's farm, and, as a result, there remains an actual controversy for this court to decide.

Furthermore, even if this case would otherwise be considered moot, which it is not, this court should proceed to hear this appeal because "there remains a debatable constitutional question to resolve [and this case] is one of great public * * * interest." *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28, 505 N.E. 966, paragraph one of syllabus (1987). By accepting Teter's discretionary appeal, a majority of this court has already determined that Teter's First Proposition of Law – "The term "petroleum" does not include the finished product

natural gas liquids propane and butane for purposes of R.C. Chap. 1723" – presents a substantial constitutional question and/or involves a question of great public interest.

For these reasons and the other reasons set forth below, this court should deny Sunoco's Motion to Dismiss and should proceed to hear this appeal.

II. FACTS AND PROCEDURAL BACKGROUND.

The dispute between Teter and Sunoco relates to Sunoco's proposed construction of its Mariner East Phase 2 Pipeline ("Mariner East 2") across Teter's farm and dates back to at least February 2014, when Sunoco requested permission to access Teter's farm to perform a survey. Rather than exploring alternate routes for the Mariner East 2 at that time, Sunoco proceeded to file suit against Teter to gain access to the farm for a survey. (Compl. for Inj. Relief, attached as Ex. 1.) After the trial court denied Sunoco's motion for a temporary restraining order, the parties reached an agreement to allow Sunoco to perform the survey. (Judg. Entry, attached as Ex. 2.)

After Sunoco completed its survey, it notified Teter in a letter dated March 6, 2015, that it had "determined that it will be *necessary* to route the [Mariner East 2] across a portion of [Teter's farm]." (Emphasis added.) (R. for Case # CV 20150034 at 1, Compl., Ex. B, Mar. 6, 2015 Ltr.) In no uncertain terms, Sunoco's letter to Teter states that it "has the ability under Ohio law to acquire the *necessary* easements by eminent domain" and that if Teter does not agree to sell the easements within 10 days of receipt of the letter, it "will transfer the matter to legal counsel to begin eminent domain proceedings to ensure acquisition of the *necessary* easements." (Emphasis added.) (*Id*.)

Facing the immediate threat of an eminent domain lawsuit, Teter took action to protect its constitutional property rights by filing a complaint for declaratory judgment wherein it asked the trial court to declare, in part, that Sunoco does not have eminent domain authority under R.C.

Chap. 1723 because the statute does not authorize the appropriation of land for natural gas liquids pipelines. (R. for Case # CV 20150034 at 1, Compl., ¶¶ 28-38; prayer for relief ¶¶ a, b.)

Sunoco soon responded by filing a complaint for appropriation, wherein it asked the trial court to authorize it to appropriate two permanent pipeline easements from Teter for the Mariner East 2, which it described as "a new interstate pipeline system, consisting of *a* 16-inch or larger pipeline, with a total capacity of 275,000 barrel per day[.]" (Emphasis added.) (R. for Case # CV 20150058 at 21, Amended Petition for Appropriation, ¶¶ 7, 30-24, prayer for relief.)

The trial court consolidated Teter's declaratory judgment action and Sunoco's appropriation action and the cases proceeded to trial as one in the same. (R. for Case # CV 20150034 at 13; R. for Case # CV 20150058 at 43, Agreed Entry to Consolidate.)

At the trial of this matter, the trial court and Teter questioned Sunoco's Vice President of Business Development, Harry (Hank) Alexander, about Sunoco's efforts to develop an alternate route for the Mariner East 2 that would not cross Teter's farm. Mr. Alexander testified that he "believe[d] [Sunoco had] looked at every other option" and that it was not feasible to bypass Teter's farm because it would require negotiations with "many" property owners. However, when Teter questioned Mr. Alexander further about the number of property owners Sunoco would need to acquire easements from to bypass its farm, he testified he was "not sure." (Tr. 46:16 – 47, 48:10-25; 53:3 – 54:1.) We now know that Mr. Alexander's testimony about it being impractical to route the Mariner East 2 around Teter's farm was incorrect and that it was not "necessary" for Sunoco to acquire the requested easements from Teter as Sunoco has been able to acquire alternative easements from neighboring property owners voluntarily and to complete the construction of the Mariner East 2 without crossing Teter's farm. (Mot. to Dismiss, 1-2.)

Following the trial, the trial court granted Sunoco's Petition for Appropriation based on the following findings: (1) "propane and butane meet the statutory definition of petroleum under Ohio [eminent domain] law"; (2) Sunoco is a "common carrier" under R.C. 1723.01 and 1723.08; and (3) the Pipeline is "necessary" and will serve a "public use." R. for Case # CV 20150058 at 62, 12/14/2015 Entry Granting Petition.) The court of appeals affirmed the trial court's decision that Sunoco had the right to appropriate the easements based on the same three holdings. (R. for Case # CA 20160005 at 34; 7th Dist. Decision.)

The effect of the trial court's judgment is to give Sunoco the absolute right to appropriate the easements it requested in its Petition for Appropriation, contingent only upon paying the agreed upon compensation.

While Sunoco's Petition for Appropriation purports to only seek the trial court to grant it the right to appropriate easements across Teter's farm for the Mariner East 2 that Sunoco now says is complete, the actual terms of the easements Sunoco attached to its complaint and that the trial court gave Sunoco the right to appropriate, are *not* limited to the Mariner East 2, but rather, are far broader. (R. for Case # CV 20150058 at 21, Ex. B, Permanent Easement Agreement.) Specifically, the Permanent Easement Agreement Sunoco asked the trial court to grant, and that the trial court did in fact grant to Sunoco, provides in relevant part, as follows:

> - [Teter] hereby does forever GRANT, BARGAIN, SELL and CONVEY unto [Sunoco] a non-exclusive fifty foot (50') wide free and unobstructed easement in order to construct, operate and maintain *a pipeline or pipelines*, not to exceed twenty-four inches (24") in nominal pipe diameter[.] (*Id*., Ex. B, P. 1, ¶ 1.)
>
> - The right to use the Easements shall belong to [Sunoco] * * * for the purposes of establishing, laying, constructing * * *, operating [etc.], *one or more additional pipeline(s), for the transportation of oil, oil products, petroleum, natural gas, natural gas liquids, hydrocarbon liquids, and the products thereof*, together with above- and below-ground appurtenances as

may be necessary or desirable for the operation of the Pipeline(s). (*Id*., Ex. B, P. 2, ¶ 1.)

- [Teter] further covenants and agrees, as a covenant running with the land, that [Sunoco] shall have the right at any time, and from time to time, to construct, lay, maintain, operate [etc.] *one or more additional pipelines* over, under, and through the Property, upon payment of the same amount paid for the Permanent Easement[.] (*Id*., Ex. B, P. 2, ¶ 2.)

(Emphasis in caps in original; emphasis in *italics* added.)

Sunoco is currently planning to build at least one more finished product natural gas liquids pipeline along the same or a similar route to the Mariner East 2. *See* Transcript from Sunoco Logistics Partners LP Fourth Quarter 2016 Earnings Call, available at https://seekingalpha.com/article/4048648-sunoco-logistics-partners-lp-sxl-q4-2016-results-earnings-call-transcript? (accessed 7/31/2017) ("[T]his project has been permitted for two pipes and we are moving forward on that basis"); *see also Sunoco Says Third Mariner East Pipeline is a Go*, NGI's Shale Daily (Feb. 23, 2017), available at http://www.naturalgasintel.com/articles/109519-sunoco-says-third-mariner-east-pipeline-is-a-go (accessed 7/31/2017). Accordingly, this court must recognize that Sunoco's completion of the Mariner East 2 does not terminate this controversy, as the very terms of the easements Sunoco was awarded by the trial court authorize it to construct additional pipelines across Teter's farm.

III. LAW & ARGUMENT.

A. THIS COURT SHOULD DENY SUNOCO'S MOTION TO DISMISS BECAUSE THE TERMS OF THE EASEMENTS PERMIT SUNOCO TO BUILD ADDITIONAL PIPELINES, AND, THEREFORE, THERE REMAINS AN ACTUAL CONTROVERSY BETWEEN THE PARTIES.

Sunoco's Motion to Dismiss claims Teter's appeal is moot and should be dismissed because Sunoco obtained easements from the neighboring property owners and recently completed construction of the Mariner East 2 along an alternate route that circumvents Teter's

farm. (Mot. to Dismiss, 1.) It goes on to claim that "[n]o part of [Teter's] property is or will be used by the new route of the Mariner [East 2] Pipeline, and Sunoco no longer needs to use any portion of [Teter's] property for any of its operations." (Affidavit of Matthew Gordon, ¶ 5, attached to Mot. to Dismiss as Ex. A.)

While it may be true that Sunoco has completed construction of the Mariner East 2 along an alternate route, it is equally true that Sunoco has not taken any action to vacate the trial court's judgment that granted its request to appropriate the easements from Teter's farm in the first place. (R. for Case # CV 20150058 at 44, 12/14/2015 Entry Granting Petition.) The trial court's judgment has the effect of giving Sunoco ownership of the easements, subject only to paying just compensation to Teter. Furthermore, the parties have stipulated to the amount of just compensation for the easements and the confidential sum Sunoco is required to pay to perfect its ownership interest in the easements was journalized by the trial court in a final appealable order.[1] (R. for Case # CV 20150058 at 76, 2/16/2016 Judg. Entry.)

As explained above, the terms of the easements the trial court granted to Sunoco are not limited to the construction and operation of the Mariner East 2 that Sunoco has now completed. Rather, *the terms of the easements expressly permit Sunoco to construct "one or more additional pipeline(s), for the transportation of oil, oil products, crude petroleum, natural gas, natural gas liquids, hydrocarbon liquids, and the products thereof" "upon payment of the same amount paid for the Permanent Easement*[.]" (Emphasis added.) (R. for Case # CV 20150058 at 21, Ex. B, Permanent Easement Agreement, P. 2, ¶¶ 1 and 2.) Furthermore, Sunoco is already planning to build another pipeline along the same or a similar route to the Mariner East 2 and there is nothing

[1] The Agreed Judgment Entry preserves Teter's right to appeal the underlying judgment that authorized Sunoco to appropriate the easements.

in the terms of the easements that prevents Sunoco from routing the next pipeline it builds, or any pipelines it chooses to build in the future, across Teter's farm.

Accordingly, the trial court's judgment authorizing Sunoco to appropriate the easements from the Teter farm continues to cloud the title to Teter's farm and there remains an actual controversy between the parties for this court to decide. The only thing that will resolve the controversy is a judgment by this court that reverses the lower courts' decisions and finds that Sunoco has no right to appropriate the easements from Teter's farm for purposes of constructing its Mariner East 2 or any future pipelines it may choose to install through the easements as permitted by their terms.

Therefore, this appeal is not moot and this court should deny Sunoco's Motion to Dismiss and should hear this appeal.

B. EVEN IF THIS COURT DETERMINES THAT AN ACTUAL CONTROVERSY NO LONGER EXISTS BETWEEN THE PARTIES, IT SHOULD DENY SUNOCO'S MOTION TO DISMISS BECAUSE THIS APPEAL PRESENTS A DEBATABLE CONSTITUTIONAL QUESTION OF GREAT PUBLIC INTEREST THAT IS CAPABLE OF REPITITION, YET EVADING REVIEW.

1. The mootness doctrine and its exceptions.

The mootness doctrine generally provides that courts will dismiss a case if the controversy between the parties has been terminated by the occurrence of an event, without any fault of the defendant, which renders it impossible for the court to grant the plaintiff the relief they have requested. *Miner v. Witt*, 82 Ohio St. 237, 237, 92 N.E. 21 (1910), quoting *Mills v. Green*, 159 U.S. 561, 653, 16 S.Ct. 132 (1895). As Sunoco properly explains, there are two well-settled exceptions to the mootness doctrine. (Mot. to Dismiss, 3-6.)

The first exception to the mootness doctrine applies when, as here, the issue pending appeal presents "a debatable constitutional question to resolve, or where the matter appealed is

one of great public or general interest." *Franchise Developers*, 30 Ohio St.3d 28, paragraph 1 of syllabus. While it does not appear that this court has ever set forth a specific test for determining whether an appeal contains a debatable constitutional question or question of great public or general interest, the standard is nearly identical to the standard this court uses to determine whether or not to accept jurisdictional appeals in civil cases; namely, whether the case presents a "substantial constitutional question" or a question of "great public or general interest." Ohio Constitution, Art. IV, Sections 2(B)(2)(a)(iii) and 2(B)(2)(e); S.Ct.Prac.R. 5.02(A)(1) and (A)(3).

The second exception to the mootness doctrine applies when the act complained of is "capable of repetition, yet evading review." *State ex. rel. Cincinnati Enquirer v. Dept. of Pub. Safety*, 148 Ohio St. 433, 2016-Ohio-7987, 71 N.E.3d 258, ¶ 29. (Citations omitted.) "This exception applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cession or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject the same action." *Id*. (Internal quotations omitted.)

Both of the exceptions to the mootness doctrine are particularly applicable to appeals that are pending before this court because "[this court] is the primary judicial policymaker." *James A. Keller, Inc. v. Flaherty*, 74 Ohio App.3d 788, 792, 600 N.E.2d 736 (10th Dist. 1991). Indeed, this court's jurisprudence provides examples where it has heard appeals that otherwise would have been considered moot, which, at least arguably, presented less significant constitutional questions and/or issues that had a lesser degree of public interest than the question presented by the instant appeal; namely, whether a private pipeline company can rely on a 149-year-old statute that authorizes the appropriation of land for "petroleum" pipelines to take land for pipelines that will transport finished product natural gas liquids, or any substance that can be derived from

fossil fuel deposits for that matter, that best fit the pipeline company's private corporate interests. *See*, *e.g*., *Franchise Developers*, 30 Ohio St.3d 28 (authority of legislative bodies to promulgate zoning regulations for aesthetic reasons); *In re Suspension of Huffman*, 47 Ohio St.3d 12, 546 N.E.2d 1308 (1989) (authority of school board to establish a rule which allows school administrators to suspend students for being under the influence of alcohol while attending school or a school activity); *Steele v*. *Hamilton Cty*. *Comm*. *Mental Health Bd*., 90 Ohio St.3d 176, N. 8, 736 N.E.2d (2005) (forced medication of committed mentally ill patient); *Cincinnati Enquirer*, 148 Ohio St. 433, ¶ 29 (public records request for dash-cam videos).

Therefore, as explained more fully below, even if this court were to determine that this case would otherwise be moot due to Sunoco's reroute, it should still hear this appeal because it presents a debatable constitutional question of great public interest that is capable of repetition, yet evading review.

2. <u>The meaning of the term "petroleum" for purposes of R.C. Chap. 1723 is a debatable constitutional question of great public interest, and, therefore, this court should deny Sunoco's Motion to Dismiss and should hear this appeal</u>.

In its Motion to Dismiss, Sunoco attempts to argue that this case does not present an issue of great pubic interest by wrongly asserting that any holding this court issues would only apply to pipelines that are designed to transport the finished product natural gas liquids propane and butane. (Mot. to Dismiss, 5.) While it is true that the issue this court has accepted for review is whether the term "petroleum" includes the finished product natural gas liquids propane and butane, in order for this court to decide that issue, it will necessarily have to define the term "petroleum" for purposes of R.C. Chap. 1723. Thus, this court's holding will affect a much larger subset of pipelines than Sunoco claims; namely, any pipeline that is designed to transport a petroleum by-product, of which there are literally millions.

Furthermore, it is not an exaggeration to say that Sunoco and other similar pipeline companies have used the threat of eminent domain as a sword against thousands of Ohio landowners in the last several years due to the pipeline "boom" that has resulted from the advances in the oil and gas extraction technology that have allowed for the expansion of the oil and gas industry in Eastern Ohio. In its Motion to Dismiss, Sunoco makes much of the fact that Teter is the last landowner that is contesting Sunoco's right to use eminent domain and claims that because of this, the case is not one of great public interest. (Mot. to Dismiss, 2, 3.) However, the opposite is true, as the fact that Teter is the last "man" standing only shows that most landowners don't have the necessary resources to litigate a case like this all the way to this court.

In 2001, this court accepted jurisdictional appeals in two cases the presented a substantially similar issue to the issue presented herein; namely, whether the term "petroleum" included the petroleum by-products kerosene, gasoline, jet fuel and diesel fuel for purposes of R.C. Chap. 1723. In both cases, the trial court held that the term "petroleum" did not include petroleum by-products, and upon appeal, the Fourth and Fifth District Courts of Appeals reversed. *Ohio River Pipe Line, LLC v. Henley*, 144 Ohio App.3d 703, 761 N.E.2d 640 (5th Dist. 2001); *Ohio River Pipe Line, LLC v. Gutheil*, 144 Ohio App.3d 694, 761 N.E.2d 633 (4th Dist. 2001). To accept the landowners' appeals, a majority of the justices at the time necessarily concluded that the appeals presented "substantial constitutional questions" and/or "questions of great public or general interest." Ohio Constitution, Art. IV, Sections 2(B)(2)(a)(iii) and 2(B)(2)(e); S.Ct.Prac.R. 5.02(A)(1) and (A)(3). However, this court was deprived of the opportunity to resolve these appeals because both cases settled. *Ohio River Pipe Line, LLC v. Henley*, 94 Ohio St.3d 1403, 2001-Ohio-6977 (Entry granting joint application for dismissal of appeal); *Ohio River Pipe Line, LLC v. Gutheil*, 94 Ohio St.3d 1403, 2001-Ohio-6977 (same).

While the settlements were confidential, one can reasonably assume that after this court accepted jurisdiction of the appeals, the pipeline company offered the landowners a sum they could not refuse to prevent this court from overturning the favorable precedent, which Sunoco and the lower courts' relied upon extensively in this case.

In light of the increase in pipeline construction in Ohio, it is not surprising that when this appeal reached this court and provided another opportunity for this court to define the term "petroleum" for purposes of R.C. Chap. 1723, a majority of this court's honorable justices again found that the issue presented a "substantial constitutional question" and/or involved issues of "great public or general interest" and accepted the appeal.[2] Ohio Constitution, Art. IV, Sections 2(B)(2)(a)(iii) and 2(B)(2)(e); S.Ct.Prac.R. 5.02(A)(1) and (A)(3). Even more telling is the fact that both the court of appeals and this court stayed the execution of the trial court's judgment to permit full review of the important questions that are presented by this appeal. (R. for Case # CA 20160005 at 18, 4/28/2016 7th Dist. Entry Granting Stay; Doc. 10/14/2016, S.C. Entry Granting Stay.)

The fact the Sunoco finally chose to route its Mariner East 2 around Teter's farm, which it could and should have done over three years ago when Teter informed it that it did not want

[2] In its Motion to Dismiss, Sunoco attempts to argue that the fact that this court did not accept the landowner's appeal in *Kinder Morgan Cochin, LLC. v. Simonson*, Case No. 2016-1166, Jan. 25, 2017 Case Announcements, 2017-Ohio-261, shows that that the issue presented by this appeal "is not one that is likely to evade the Court's review, and the Court's decision to decline jurisdiction further suggests that the issue also is not necessarily one of public or great general interest." (Mot. to Dismiss, 6-7.) *Simonson* was an appeal from a trial court order granting Kinder Morgan the right to *survey* the landowner's property, not to appropriate it. As such, the case had a limited record and was not an appropriate case for this court to accept for review. In contrast, this case involves an appeal of an order authorizing the *appropriation* of private property and contains an extensive record following a full trial on the merits. Accordingly, it was entirely rational for this court to decline review in the *Simonson* case and to accept review in this case, and no inferences can or should be drawn from this court's decision to decline the *Simonson* appeal.

the pipeline to cross its property, in no way changes the importance of the issues presented by this appeal. Teter has refused give up on this appeal for the benefit of all Ohioans and Sunoco should not be able to avoid this court's review of the appeal by merely routing the Mariner East 2 around Teter's farm at this late date. Therefore, this court should find, as it did when it decided to accept this appeal, that the issue of whether the finished product natural gas liquids propane and butane (and, necessarily, other similar crude oil by-products) fall within the definition of the term "petroleum" for purposes of R.C. Chap. 1723 is a debatable constitutional question of great public interest that warrants the court hearing this appeal even if it would otherwise be considered moot.

3. <u>This court should deny Sunoco's Motion to Dismiss and hear this appeal because the inherent unequal bargaining power between pipeline companies and landowners, coupled with the pipeline companies' practice of routing pipelines around objecting landowners, makes the issue before this court capable of repetition, yet evading review</u>.

As explained above, the second exception to the mootness doctrine applies when the act complained of is "capable of repetition, yet evading review." *Cincinnati Enquirer*, 148 Ohio St. 433, ¶ 29. (Citations omitted.) While this court has stated that the exception is only applicable when "there is a reasonable expectation that the same complaining party will be subject to the same action[,]" in *Cincinnati Enquirer*, this court applied the exception where it found that it could "reasonably expect the Enquirer *and other media outlets* to continue to request dash-cam recordings and law-enforcement agencies to continue to withhold them." (Emphasis added.) *Id*.

While Teter cannot say with certainty that another pipeline company will attempt to appropriate an easement from its farm, it is more than a remote possibility given the proximity of the farm to the natural gas liquids processing and storage plants and enormous increase in pipeline construction due to the shale boom in Eastern Ohio. Moreover, *it is an absolute*

certainty that if this court dismisses this case, other similarly situated landowners will face threats of eminent domain from Sunoco and/or similar pipeline companies in the future.

When faced with a case where a private pipeline company chose to reroute a pipeline around the property of a landowner who objected to the company's eminent domain authority, the courts in our neighboring state of Kentucky recently held that the threat of eminent domain by private pipeline companies creates an issue that is "capable of repetition, yet evading review." *Kentuckians United to Restrain Eminent Domain, Inc. v. Bluegrass Pipeline Co.*, 2014 WL 10246980, *4 (Ky.Cir.Ct. Mar. 25, 2014) (affirmed by *Bluegrass Pipeline Co., LLC v. Kentuckians United to Restrain Eminent Domain, Inc.*, 478 S.W.3d 386 (Ky. App. 2015); discretionary appeal not accepted by *Bluegrass Pipeline Co., LLC v. Kentuckians United to Restrain Eminent Domain, Inc.*, No. 2015-SC-000330-D (Ky. Feb. 10, 2016) (The "*KURED* case"). In KURED, a non-profit organization filed a declaratory judgment action on behalf of its members against Bluegrass Pipeline Co. ("Bluegrass"). Much like the instant case, Bluegrass approached a landowner, Penny Greathouse, about surveying and obtaining an easement for a pipeline on her property and threatened to use eminent domain if she did not cooperate. *Id.* at * 1, 4. Ms. Greathouse, through the non-profit organization *KURED*, took action to protect her constitutional property rights by filing a declaratory judgment action asking the court to declare that the Bluegrass did not have the power to use eminent domain for its natural gas liquids pipeline. *Id.* at * 1. Bluegrass attempted to argue that the plaintiff's complaint did not present a justiciable controversy because it had no present intent to acquire a pipeline easement from Ms. Greathouse. *Id.* at * 4. The Kentucky trial court rejected Bluegrass' argument and stated as follows:

> Bluegrass has claimed it has no present intent to acquire an easement from Ms. Greathouse, but that does not protect her in the future if Bluegrass decides to re-

> route, nor does it dispel a landowner's justifiable uncertainty regarding the costs of defending a condemnation action. Property owners and taxpayers in general have a right to determine whether Bluegrass' claim [of eminent domain authority] is valid because not only does it affect their bargaining position, but it affects their legitimate interests and substantive rights as citizens when a private company seeks to exercise the sovereign power of condemnation.
>
> A declaration of rights is necessary to determine whether Bluegrass has the right to condemn so that Ms. Greathouse *and other landowners*, who are within the ever changing present and future pathway of the proposed pipeline, can make informed decisions considering all factors when negotiating and deciding whether to grant an easement to Bluegrass *and other private entities*. Moreover, *the dispute is capable of repetition, but could still evade judicial review* if Bluegrass continues its policy of asserting the right to condemn, while altering the course of the pipeline when landowners question its condemnation authority. This admitted tactic of Bluegrass allows it to vastly increase its bargaining power over landowners without means to question or contest the asserted right of condemnation. *Accordingly, the controversy is capable of repetition yet evading review*.
>
> * * *
>
> The dispute between citizens acting through their non-profit corporation, and Bluegrass, a private for-profit corporation that seeks to negotiate with landowners from the powerful position of a sovereign authority with the power to condemn property, is exactly the kind of controversy which should be resolved though the rule of law in a declaratory judgment.
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> * * *
>
> Landowners who do not wish to sell, but who may be unable to finance a legal challenge, are entitled to know that the law does not support Bluegrass' assertion of the power of eminent domain.

(Emphasis added.) *Id*. at *4-5, 8. *See also Bluegrass*, 478 S.W.3d at 390 (affirming trial court ruling on justiciability).

In conclusion, this case presents an opportunity for this court to resolve the uncertainties regarding the meaning of "petroleum" for purposes of R.C. Chap. 1723 and to level (or, at least, clarify) the playing field between the pipeline companies and the landowners, which is without doubt a question of great public interest, and is an issue that is capable of repetition, yet evading

review. The reasoning employed by Kentucky courts in the *KURED* case above should be followed by this court to hear this appeal, even if this court determines it would otherwise be moot. Ohio's citizens have a right to know whether private pipeline companies' threats to use eminent domain to build these finished product natural gas liquids pipelines have a basis in Ohio law. Simply put, the fact that Sunoco finally developed an alternate route for the Mariner East 2 to circumvent the Teter's property after more than two years of litigation does not change the importance of this appeal.

IV. CONCLUSION.

Sunoco's decision to reroute the Mariner East 2 around Teter's farm does not moot this appeal because the terms of the easements the trial court granted to Sunoco give it the right to construct additional pipelines through the easements. Furthermore, even if this case would otherwise be moot, the question of whether a private enterprise like Sunoco has the right to appropriate property for pipelines that are designed to transport finished product natural gas liquids and similar by-products under the guise that such substances fall within meaning of the undefined term "petroleum" for purposes of R.C. Chap. 1723 is a debatable constitutional question of great public importance that is capable of repetition, yet evading review. Accordingly, Teter respectfully requests this court to deny Sunoco's Motion to Dismiss and to hear this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing document was served upon the following by email on August 3, 2017.

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IN THE COMMON PLEAS COURT OF HARRISON COUNTY, OHIO

Sunoco Pipeline L.P. 1818 Market Street – Suite 1500 Philadelphia, Pennsylvania 19103, Plaintiff,	:	
vs.	:	Case No.:
Carol A. Teter Revocable Living Trust c/o Carol A. Teter, Trustee 85799 Bakers Ridge Road Jewett, Ohio 43986 Defendant.	:	Judge T. Shawn Hervey

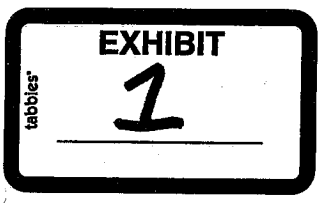
VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff, Sunoco Pipeline L.P. ("Sunoco"), is a Texas limited partnership, registered to do business and in good standing under the laws of the State of Ohio, in the business of acquiring, owning, and operating a diverse mix of crude oil and refined petroleum products pipelines, terminal and storage facilities, and crude oil acquisition and marketing assets for the public welfare and good.

2. Sunoco has eminent domain power under Ohio Revised Code ("ORC") § 1723.01 because it is organized for the purpose of, and is engaged in the business of, transporting, storing, and/or transmitting petroleum and/or natural gas though tubing, pipes, or conduits.

3. Because Sunoco is authorized to appropriate property in Ohio, it is an agency authorized to take property for public use under the eminent domain law, Chapter 163 of the ORC.

4. Defendant, Carol A. Teter Revocable Living Trust, owns parcels of real property identified as Tax Parcel ID # 13-0000005.00 and 0000005.002 in Harrison County, Ohio, which



is more fully described in the deed attached hereto and incorporated herein as Exhibit 1 (referred to as the "Property").

5. Jurisdiction and venue is proper in this Court because Defendant and the Property involved in this action are located in Harrison County and the events giving rise to this Complaint occurred in Harrison County.

6. This dispute arises from Sunoco's attempt to exercise its right to survey and inspect the Property for the construction of an interstate pipeline known as the Pennsylvania Pipeline Project (the "Project").

7. The Project will be an underground pipeline to transport Natural Gas Liquids, a refined petroleum and natural gas product, from shale gas fractionation and processing facilities in Ohio and other states to markets and facilities on the east coast of the United States.

8. The Project will be operated as a common carrier pipeline under an open season offering that will allow anyone to purchase capacity in the line.

9. Sunoco has made a considerable investment in Project and Sunoco, its customers, and the public will be irreparably harmed if the Project is delayed or prevented.

10. As an authorized agency to appropriate private property, Sunoco has the right under ORC § 163.03 to enter onto private property for the purpose of making such surveys, soundings, drillings, appraisals, and examinations (the "Survey") as are necessary or proper to determine the suitability of the property for the Project.

11. In order to determine the suitability of the Property for the Project, it is necessary for Sunoco to access and enter onto the Property for the purpose of making a Survey, which Survey is minimally invasive and Sunoco will repair and compensate any damage to the Property as a result of the Survey.

12. Sunoco has attempted to secure Defendant's consent and permission to enter the Property for the Survey, but, to date, Defendant has wrongfully failed and refused to allow Sunoco to access the Property to conduct the Survey.

13. Without a Court order, Sunoco reasonably believes that any further attempt by it to exercise its rights to conduct the Survey may result in confrontation or other possible breaches of the peace.

14. Sunoco has fully complied with the notice requirements and all other requirements as set forth in ORC § 163.03 to conduct the Survey.

15. Defendant has wrongfully prevented Sunoco from entry and refused Sunoco access to the Property for the Survey.

16. Because Sunoco has a clear statutory right to enter the Property to conduct the Survey, it has a strong likelihood of success in this action.

17. If injunctive relief is not granted, Sunoco and the public to be served by this pipeline will suffer irreparable harm because, among other things, the Project will be prevented or delayed, thereby impairing its goodwill, and causing Sunoco to incur significant and unpredictable costs and expenses associated with rerouting the Project, all of which may be difficult or impossible to accurately quantify and, if quantifiable, are likely to be so great that Defendant will not have the means to pay and make Sunoco whole.

18. Issuance of injunctive relief in this case will not cause substantial harm to others and the requested injunctive relief is in the public interest.

19. Sunoco has no adequate remedy at law to compensate it for the Defendant's refusal to allow it to exercise its rights and is entitled to an order from this Court ordering the Defendant to allow Sunoco to Survey the Property.

WHEREFORE, Plaintiff asks this Court to:

A. Issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendant's and Defendant's successors and assigns, from denying, refusing, or interfering with Sunoco's right to enter upon and otherwise access the Property for the purpose of making such surveys, soundings, drillings, appraisals, and examinations as are necessary or proper to determine the suitability of the Property for the Project; and

B. Grant Plaintiff all other relief that this Court deems just and equitable.

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Attorneys for Plaintiff,
Sunoco Pipeline L.P.

VERIFICATION

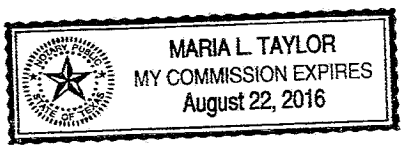
The undersigned, Karl E. Williamson, being duly cautioned and sworn hereby states that he is the Chief Right-of-Way Agent for Plaintiff, Sunoco Pipeline L.P., that he has read the foregoing Verified Complaint for Injunctive Relief, and that the allegations set forth in the foregoing Verified Complaint are true and accurate to the best of his knowledge and belief.

Sunoco Pipeline L.P.

By: _____
Karl E. Williamson

State of Texas :
: S.S.
County of Fort Bend :

Sworn to and signed before me, a Notary Public, on this 19th day of February, 2014.



_____
Notary Public

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CLERK OF COURTS
HARRISON COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION

SUNOCO PIPELINE L.P.,
Plaintiff,

Case No. CVH-2014-0023

vs.

Carol A. Teter Revocable Living Trust
Defendants.

JUDGMENT ENTRY

This matter came before the Court upon Plaintiff's Motion For Temporary Restraining Order pursuant to Civ. R. 65(A). Plaintiff has moved the Court to issue the temporary restraining order without written or oral notice to the Defendants.

Civ. R. 65(A) establishes the criteria which the Plaintiff may be granted a temporary restraining order without notice to the adverse party and prior to hearing. The first criteria required a finding that; "it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition."

The Court finds that Plaintiff cannot show an immediate injury, loss or damage prior to the adverse party being heard in opposition. The Plaintiff wants to survey land for a pipeline. The ability of Plaintiff to enter Defendants land and conduct said survey will not cause immediate and irreparable harm by being delayed seven (7) days to provide due process to the Defendants. The pipeline is not currently in construction and the Defendants due process rights outweigh the Plaintiff's claims for exigency.

EXHIBIT
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The Court finds it proper to hold a hearing on Plaintiff's Motion For Temporary Restraining Order and provide notice to Defendants of said hearing.

WHEREFORE, it is the ORDER of the Court that:

1) Plaintiff's Motion For Temporary Restraining Order Without Notice To Defendant is denied.

2) A **Evidentiary Hearing** on Plaintiff's Motion For Temporary Restraining Order shall be held on **March 6, 2014 at 1:30 p.m.**

3) Defendants shall be served notice of said hearing by personal service.

SO ORDERED.

T. Shawn Hervey, Judge

Stamped copies faxed to:
Attorney Brian L. Buzby
Carol A. Teter Revocable Living Trust
c/o Carol A. Teter