**CASE NOTE: *IN RE: CONDEMNATION BY SUNOCO PIPELINE, L.P.[[1]](#footnote-1)***

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**INTRODUCTION**

*In Re: Condemnation by Sunoco Pipeline, L.P.* (“*Sunoco I*”) arose out of three Declarations of Takings[[2]](#footnote-2) filed by Sunoco on July 21, 2015, seeking to condemn land through the power of eminent domain in order to expand its Mariner East 2 Pipeline (ME2) through Pennsylvania (PA).[[3]](#footnote-3) Sunoco announced its plans to construct the 350 mile pipeline in November 2014.[[4]](#footnote-4) After several delays, ME2 began service on Saturday, December 29, 2018.[[5]](#footnote-5) The pipeline spans from Scio, Ohio across 17 counties in Pennsylvania, ultimately terminating at the Marcus Hook Industrial Complex (MHIC) in Delaware County, PA.[[6]](#footnote-6) ME2 carries natural gas liquids (NGLs) from the Marcellus Shale fields in Ohio and western Pennsylvania to their ultimate destination at MHIC.[[7]](#footnote-7) The NGLs will ultimately be shipped overseas to create plastic products.[[8]](#footnote-8)

At first, Sunoco only intended for the pipeline to function in an interstate capacity and it did not have plans for service within PA.[[9]](#footnote-9) In its initial phase, Sunoco obtained approval from the Federal Regulatory Energy Commission (FERC) and began to acquire lands for construction of the pipeline, some of these lands were acquired through eminent domain.[[10]](#footnote-10) In February of 2014, Sunoco’s plans were disrupted when a York County Court determined that Sunoco could not use eminent domain to acquire lands in PA because the ME2 project was not a PA public utility and therefore had no authority to exercise eminent domain within the state.[[11]](#footnote-11) In response to this ruling, Sunoco revised its plans for ME2 to include on and offloading ramps within PA and applied to the PA Public Utility Commission (PUC) for a Certificate of Public Convenience (CPC) in order to become authorized as a PA public utility with eminent domain power.[[12]](#footnote-12) On October 29, 2014, the PUC issued an order stating that Sunoco’s ME2 pipeline expansion was a valid extension of its existing service in PA and issued Sunoco its first CPC. This Order qualified Sunoco as a PA public utility and authorized eminent domain power.[[13]](#footnote-13) Sunoco applied for and was granted additional CPCs for continued expansion across PA.[[14]](#footnote-14)

Three sets of affected landowners in Cumberland County, the Martins, the Fitzgeralds, and the Nickeys, (Condemnees) jointly contested[[15]](#footnote-15) Sunoco’s attempts to condemn permanent, non-exclusive easements[[16]](#footnote-16) and temporary workspace easements for its ME2 pipeline on each of their respective properties by filing timely Preliminary Objections to Sunoco’s Declaration of Takings over their property in the Cumberland County Court of Common Pleas.[[17]](#footnote-17)

**REPORTING**

1. **Background of Appeal**

Condemnees presented seven arguments in their Preliminary Objections.[[18]](#footnote-18) (1) The ME2 was an *inter*state pipeline, not an *intra*state pipeline.[[19]](#footnote-19) (2) Because it was not an intrastate pipeline, it could not be defined as a state public utility under the regulation of the PUC, therefore FERC had sole jurisdiction over its actions.[[20]](#footnote-20) (3) Sunoco’s corporate resolution[[21]](#footnote-21) only authorized eminent domain for interstate pipelines.[[22]](#footnote-22) (4) Regardless, Sunoco lacked the FERC certificate necessary to exercise eminent domain.[[23]](#footnote-23) (5) The ME2 pipeline was actually two pipelines, and FERC only approved one.[[24]](#footnote-24) (6) The York County Court of Common Pleas, in *Sunoco Pipeline, L.P. v. Loper*, previously held that Sunoco was a purely interstate pipeline− with no eminent domain power as a public utility.[[25]](#footnote-25) Therefore, under the doctrine of collateral estoppel, Sunoco was barred from re-litigating the issue.[[26]](#footnote-26) (7) Finally, the payment Sunoco offered them for the easements was insufficient.[[27]](#footnote-27)

Sunoco responded with seven counterarguments.[[28]](#footnote-28) (1) While Sunoco had FERC authorization for ME2, it was also authorized by PUC to provide intrastate service as a public utility.[[29]](#footnote-29) (2) The corporate resolution submitted with the Declarations of Taking, supporting the necessity of the takings, was not flawed.[[30]](#footnote-30) (3) The ME2 was both an interstate and an intrastate pipeline simultaneously regulated by both FERC and PUC.[[31]](#footnote-31) (4) FERC’s regulation of ME2’s interstate trade had no bearing on PUC’s designation of ME2 as a public utility with state-sanctioned eminent domain power.[[32]](#footnote-32) (5) According to PA law, a certificate from FERC could be sufficient to authorize eminent domain power in PA, notwithstanding PUC authorization.[[33]](#footnote-33) (6) PUC granted a CPC to ME2 due to the installation of on and offloading docks along the pipeline within PA; and the CPC authorized eminent domain power, which changed the facts such that the *Loper* case was rendered inapposite.[[34]](#footnote-34) (7) And the bonds posted were adequate.[[35]](#footnote-35)

On September 29, 2015, after arguments, the Cumberland County Court of Common Pleas issued an Order collectively overruling Condemnees’ Preliminary Objections in favor of Sunoco.[[36]](#footnote-36) Condemnees jointly appealed to the PA Commonwealth Court (the Court).[[37]](#footnote-37) Following Condemnees’ filing of a Concise Statement of Errors pursuant to Rule 1925(b) of the PA Appellate Rules of Procedure, the Court of Common Pleas issued its Opinion on December 22, 2015, supporting its September 29, 2015 Order.[[38]](#footnote-38) Relevant on appeal was the Court of Common Pleas’ determination that Sunoco was both an intrastate and interstate pipeline, subject to the regulation of both FERC and PUC.[[39]](#footnote-39) It also held that this dual nature did not limit its status as a state public utility with eminent domain power.[[40]](#footnote-40) The Court of Common Pleas also rejected Condemnee’s collateral estoppel argument on the grounds that the facts had changed such that the doctrine was inapplicable.[[41]](#footnote-41) Condemnees’ other arguments were also rejected.[[42]](#footnote-42)

Condemnees assigned error to the Order issued by the Court of Common Pleas on four main grounds. First, they renewed their argument that the *Loper* case,[[43]](#footnote-43) which ruled that the pipeline was purely interstate and offered no intrastate services estopped Sunoco from again asserting the power of eminent domain for ME2 in this case.[[44]](#footnote-44) Second, in the alternative, they argued that even in light of the changed circumstances since the *Loper* decision, the pipeline still functioned as purely interstate and could not be granted eminent domain power by PUC; and additionally as a NGL pipeline,[[45]](#footnote-45) ME2 could not be granted eminent domain by FERC.[[46]](#footnote-46) Third, Condemnees argued that ME2 did not provide a service regulated by PUC.[[47]](#footnote-47) Condemnees’ fourth and final challenge was that PUC’s determination that the pipeline was a public utility necessary for a demonstrated public need should have been subject to review in a Court of Common Pleas exercising equity jurisdiction[[48]](#footnote-48) before condemnation proceedings were permitted.[[49]](#footnote-49) Condemnees relied on the public purpose test, established by the PA Supreme Court, which stated that “a taking will be seen as having a public purpose only where the public is to be the primary and paramount beneficiary of its exercise.”[[50]](#footnote-50)

The Court’s appellate review of the Order overruling Condemnees’ Preliminary Objections relied on findings of fact made by the Cumberland County Court of Common Pleas.[[51]](#footnote-51) “Findings of fact are made on the basis of evidentiary hearings, usually involving credibility determinations, and are reviewed deferentially under the clearly erroneous standard.”[[52]](#footnote-52) Under the clear error standard, a reviewing court cannot reverse absent firm conviction that the court of common pleas committed a clear error of judgment in the conclusion it reached upon weighing the relevant factors of the law against the facts.[[53]](#footnote-53) The Court ultimately found that the Court of Common Pleas did not commit clear error in overruling the Preliminary Objections.[[54]](#footnote-54) Each of the Condemnees’ arguments were addressed by the Court in detail.[[55]](#footnote-55) Judge Renée Cohn Jubelierer delivered the majority opinion.[[56]](#footnote-56)

1. **Intrastate vs. Interstate Determination**

Condemnees asserted three arguments to prove Sunoco was not an intrastate utility eligible to exercise the eminent domain authority of PUC:[[57]](#footnote-57) First, because Sunoco’s pipeline crossed state lines, it could not be considered intrastate, and since PUC was not authorized to regulate interstate commerce, it could not authorize Sunoco to use eminent domain, or any other power, because ME2 was beyond the scope of PUC regulation once it crossed state lines.[[58]](#footnote-58) Second, because Sunoco was a common carrier[[59]](#footnote-59) under The Interstate Commerce Act (ICA), and obtained FERC approval to transport NGLs across state lines from Ohio and West Virginia to the MHIC in PA, ME2 was an interstate pipeline subject to FERC regulation, and Sunoco had not obtained a CPC from FERC, which Condemnees argued was required in order for Sunoco to exercise eminent domain.[[60]](#footnote-60)Third, Condemnees disagreed that the on and offloading of products within PA satisfied the requirements to be sufficiently a part of intrastate commerce.[[61]](#footnote-61)

1. Whether PUC or FERC Has Jurisdiction Over ME2

In addressing Condemnees’ first argument, the Court began by explaining the source of FERC and PUC authority over regulation of public utilities operating within PA.[[62]](#footnote-62) The Public Utility Code, 66 Pa. C.S.A. §§ 101-3316 (The Code) gives jurisdiction to PUC to certify and regulate public utilities operating within PA.[[63]](#footnote-63) ICA and the Natural Gas Act (NGA), together give jurisdiction to FERC to certify and regulate public utilities engaged in interstate commerce throughout multiple states.[[64]](#footnote-64) The Court stated that, in general, pipelines owned by a corporation, like Sunoco, qualify as a public utility in PA,[[65]](#footnote-65) and cited the Code definition of a public utility as persons or corporations that own or operate facilities in PA for: ‘‘transporting or conveying . . . petroleum products[[66]](#footnote-66) . . . for the public for compensation.’’ [[67]](#footnote-67) However, the Court rejected the argument that PUC’s jurisdiction ceased to reach a pipeline transporting product beyond state lines, leaving it solely to FERC regulation.[[68]](#footnote-68)

The Court confronted the issue of potentially comingling inter/intra state commerce, within one physical pipeline.[[69]](#footnote-69) The Court specified that it is the shipments, products, and services, transported through the pipelines that are regulated by these agencies, not the physical location of the pipelines themselves.[[70]](#footnote-70) The Court stated that FERC regulated a pipelines’ *inter*state transport/commerce (what passes through the state), while the PUC regulated purely *intra*state transport/commerce (what is staying within state borders) and that “jurisdiction was not mutually exclusive.”[[71]](#footnote-71) Whether a pipeline that crossed state lines was regulated by FERC or by the PUC was dependent on “the fixed and persistent intent of the shipper” on a transactional basis.[[72]](#footnote-72) However, the Commonwealth Court also pointed out that a pipeline “simply being subject to PUC [or FERC] regulation is insufficient for an entity to [automatically] have the power of eminent domain”, there must be an agency determination of public need, signaled by the issuance of a CPC.[[73]](#footnote-73)

The Court explained that eminent domain authority over PA lands is derived from The Business Corporation Law of 1988 (BCL) 15 Pa. C.S.A. §§ 1101-9507.[[74]](#footnote-74) BCL terms a corporate owned public utility a “public utility corporation” and defines this term in § 1103 as “any domestic or foreign corporation for profit that is . . . subject to regulation as a public utility by [PUC] or an officer or agency of the United States,” such as FERC[[75]](#footnote-75) The Court noted BCL’s specific attention to pipeline activity in § 1511(a)(2), which states one lawful purpose for an eminent domain taking is “[t]he transportation of [natural gas or petroleum products] for the public.”[[76]](#footnote-76) In order for a public utility corporation to exercise eminent domain over PA lands under the BCL, a CPC from the PUC is still necessary.[[77]](#footnote-77)

Section 1104 of The Code requires public utilities to obtain a CPC from the PUC to exercise eminent domain power.[[78]](#footnote-78) PUC (and FERC[[79]](#footnote-79)) have discretion to issue an order granting a CPC to a public utility corporation upon application.[[80]](#footnote-80) Requirements for obtaining a CPC from PUC are laid out in § 1103(a) of The Code and state that a CPC will only be granted when a proposed service is “necessary or proper for the service, accommodation, convenience, or safety of the public.”[[81]](#footnote-81)

After explanation of the relevant law, the Court stated agreement with the Cumberland County Common Pleas Court ruling that ME2, was both an interstate and intrastate pipeline, regulated by both FERC and the PUC, because Sunoco asserted that it intended to provide both loading and offloading of petroleum products within PA, in addition to its interstate shipments to MHIC.[[82]](#footnote-82) The Court held that the Court of Common Pleas’ record established that product placed in the pipeline would be removed at several on and off-loading points within PA.[[83]](#footnote-83) Because the PUC had jurisdiction over ME2 as an intrastate pipeline due to in-state service, the CPC it issued was valid, and eminent domain authority could be conferred through the BCL.[[84]](#footnote-84)

1. Whether an Additional CPC from FERC is Required

As to whether a CPC issued by FERC was also required, the Court found that while it was accurate that Sunoco was an interstate “common carrier” regulated by FERC[[85]](#footnote-85) and that a CPC issued by FERC (rather than the PUC) would typically be required to authorize eminent domain takings by an interstate pipeline, FERC actually lacked jurisdiction to issue a CPC for ME2.[[86]](#footnote-86) The Court agreed with the Court of Common Pleas that the Natural Gas Act (NGA), 15 U.S.C.A. § 717a(6), granted “FERC exclusive jurisdiction over the transportation and sale of *natural gas* in interstate commerce for resale” but distinguished ME2 because it carried *natural gas* *liquids*, rather than natural gas.[[87]](#footnote-87)

Because of this distinction, the Court found that while ME2’s interstate activity was subject to FERC regulation generally, FERC could not issue a CPC because it did not have jurisdiction over the “siting” of NGL pipelines.[[88]](#footnote-88) In other words, FERC had no authority over the *physical* *location* of an NGL pipeline itself and had only the right to regulate commerce flowing through it.[[89]](#footnote-89) Thus, FERC had no power to authorize condemnation of land for an NGL pipeline because FERC only had authority to authorize condemnation for an NG pipeline. In the absence of federal authority, the power transferred to state agencies; thus, the PUC was the only proper agency to issue the CPC here.[[90]](#footnote-90)

1. Whether the Addition of Intrastate On and Off-Loading Ramps is Sufficiently Intrastate Service

In support of the holding that Sunoco was both an intrastate and interstate pipeline, the Court pointed to evidence in the Court of Common Pleas’ record that “pipeline service operators in PA, such as Sunoco, could be, and frequently were, simultaneously regulated by both” FERC and the PUC.[[91]](#footnote-91) Sunoco’s pre-ME2 history of operating under regulation by both agencies was one such example.[[92]](#footnote-92) In 2002, Sunoco Pipeline, L.P. received approval from the PUC to purchase two pre-existing pipelines in PA, also known as Mariner East 1 (ME1).[[93]](#footnote-93) These pipelines were issued CPCs in 1930 and 1931, respectively, granting Sunoco public utility status and eminent domain authority in PA for territory applicable to the existing lines.[[94]](#footnote-94) From 2002 to 2014, the PUC regulated Sunoco’s intrastate activity on these lines, while FERC regulated interstate commerce traveling through the pipelines to other states.

During Winter 2013-2014, Sunoco obtained FERC approval and began plans to build ME2, which was to be a 351-mile pipeline through West Virginia, Ohio, and PA, to ultimately terminate at MHIC in Delaware County, PA.[[95]](#footnote-95) At this time, Sunoco admittedly did not plan to prioritize intrastate service on the new line and did not seek PUC approval.[[96]](#footnote-96) Instead, the goal was to connect multiple facilities across state lines in order to increase international shipping orders of natural gas liquids from the MHIC.[[97]](#footnote-97)

After Sunoco filed Declarations of Taking for the new project, claiming FERC provided it with pre-existing eminent domain authority that applied to new construction, the Declarations were challenged by landowners in the York County Court of Common Pleas in *Sunoco Pipeline, L.P. v Loper*, 2013-SU-4518-05 (C.P. York, February 24, 2014) (*reaffirmed* March 25, 2014).[[98]](#footnote-98) In that case, a York County Judge ruled in February 2014 that the proposed pipeline was purely for interstate commerce and FERC authorization did not apply to the new construction.[[99]](#footnote-99) At that time, there were no planned on and off loading docks within PA, and Sunoco had not even applied to gain public utility status for ME2 from the PUC; therefore, the court would not permit Sunoco to condemn land for ME2’s expansion because the public use requirement was not met.[[100]](#footnote-100)

However, the Court pointed out that while the on and offloading docks had not been planned in the prior York County case and PUC approval had not been issued in the prior case, the Declarations of Taking at issue here attached the PUC’s Order issuing a CPC to Sunoco that authorized the use of eminent domain over Condemnee’s land.[[101]](#footnote-101) The Court cited the PUC Order from the Court of Common Pleas record, which stated, “The second phase, sometimes referred to as [ME2] will increase the takeaway capacity of natural gas from the Marcellus Shale and will enable Sunoco to provide additional on-loading and off-loading points within PA for both intrastate and interstate propane shipments.”[[102]](#footnote-102)

The Court, based on review of the Declaration of Taking and the PUC order, concluded that “the record established that expanded service to be provided by [ME2] will involve both interstate service (subject to FERC regulation) and intrastate service (subject to PUC regulation) and that the common pleas did not err when it overruled Condemnee’s Preliminary Objections.”[[103]](#footnote-103)

1. **Collateral Estoppel**

Condemnees argued that the York County decision in *Loper* precluded Sunoco from renewing its arguments that ME2 served a public use for Pennsylvanians.[[104]](#footnote-104) Under the doctrine of collateral estoppel, “a party is barred from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one.”[[105]](#footnote-105) Though the Condemnees were not the same as those in the *Loper* case, they argued that the legal issues had already been decided in their favor− namely that ME2 was not an intrastate pipeline and, therefore, not able to condemn property through eminent domain.[[106]](#footnote-106)

However the Court again noted that following *Loper*, Sunoco applied for and received PUC public utility status after it officially revised the intent of ME2 to include intrastate service by “increas[ing] the supply of propane in markets with a demand for these resources [. . .] [and] ensuring that PA citizens enjoy access to propane heating fuel.”[[107]](#footnote-107) Sunoco argued that since the ruling, expansion plans for the ME2 pipeline had become consistent with an intrastate public utility due to: (1) the addition of on and off-loading points for shipping propane within PA, an addition that Sunoco attributed to unanticipated demand for propane after shortages in rural PA the previous winter and (2) an additional 275,000 barrel-per-day capacity to transport NGLs[[108]](#footnote-108) from Marcellus and Utica Shales to locations *local*, domestic, and international.[[109]](#footnote-109)

In evaluating the collateral estoppel argument, the court stated there were four required elements:

1. the [legal] issue or issue of fact previously determined in a prior action are the same (no requirement that the cause of action be the same); (2) the previous judgment is final on the merits; (3) the party against whom the decision is invoked is identical to the party in the prior action; and (4) the party against whom estoppel is invoked had full and fair opportunity to litigate the issue.[[110]](#footnote-110)

The Court readily dismissed the collateral estoppel argument, stopping at element one. The Court agreed with the Court of Common Pleas that the legal and factual issues decided in *Loper* were different.[[111]](#footnote-111) In *Loper*, the question was whether Sunoco met the definition of a public utility corporation permitted to exercise eminent domain power by virtue of FERC’s regulation of interstate services alone, absent PUC regulation.[[112]](#footnote-112) The court stated that the issue here was different because by the time *Sunoco I* was argued, Sunoco had sought and obtained PUC approval as an intrastate public utility and had obtained the required CPC.[[113]](#footnote-113)

1. **PUC Jurisdiction Over ME2 Services**

Condemnees’ third argument was that the services rendered by ME2 did not fall under the regulation by PUC.[[114]](#footnote-114) This argument was two-fold: (1) Orders issued by the PUC that granted CPCs to Sunoco did not cover ME2 services and (2) the CPC issued by the PUC was not for ME2 because it provided interstate service and the PUC could only regulate intrastate service.[[115]](#footnote-115) The basis for the arguments was that the CPCs issued by the PUC were in fact for the expansion of the pre-existing ME1 service, comprised of the former Sun Pipe Line Company and the Atlantic Pipeline Corporation, not for the new construction of ME2.[[116]](#footnote-116) ME1 was an exclusively intrastate series of pipelines.[[117]](#footnote-117)

The Court found that the Orders issued by the PUC authorized both expansion of the ME1 and new construction of ME2 interstate service across 17 counties, from Washington County to Delaware County.[[118]](#footnote-118) A PUC Order issued October 29, 2014 stated that the authority granted to Sunoco was “not limited to a specific pipe or set of pipes, but rather included both the upgrading of current facilities and the expansion of existing capacity.”[[119]](#footnote-119) The Commonwealth Court found this language to be evidence that the PUC Orders that issued CPCs to Sunoco, conferring eminent domain power, covered both expansion of ME1 intrastate service and the construction of new a ME2 pipeline for both interstate and intrastate service.[[120]](#footnote-120)

1. **Public Use Requirement**

Condemnees’ final argument on appeal was that in order for a CPC to be issued there must have been demonstrable public need for the service.[[121]](#footnote-121) They contended that it was the duty of the Court of Common Pleas, the court with jurisdiction to hear Preliminary Objections to Declarations of Takings, to evaluate whether the need asserted by the PUC was truly widespread and significant enough for a grant of eminent domain power.[[122]](#footnote-122) Condemnees’ proposition was supported by PA Supreme Court precedent that had been recently reaffirmed in *Middletown Township v. Lands of Stone*, 939 A.2d 331 (Pa. 2007).[[123]](#footnote-123) The Court in *Middletown* held that a “taking [would] be seen as having a public purpose only where the public [was] to be the primary and paramount beneficiary of its exercise.”[[124]](#footnote-124) The PA Supreme Court contrasted a primary and paramount benefit to one post hoc and pretextual.[[125]](#footnote-125)

In evaluating this argument, the Court re-examined the statutes governing the authorization of eminent domain takings for public utility corporations.[[126]](#footnote-126) Section 1104 of The Code requires public utilities to obtain a CPC to exercise eminent domain power.[[127]](#footnote-127) The Code authorizes the PUC to grant CPCs to public utility corporations.[[128]](#footnote-128) The requirements for obtaining a CPC from the PUC are laid out in § 1103(a) of the Code, which states that a CPC would only be granted when a proposed service was “necessary or proper for the service, accommodation, convenience, or safety of the public.”[[129]](#footnote-129)

The PUC, in an effort to protect its statutory discretion, filed an Amicus Brief which asserted that allowing courts to review administrative determinations, like issuing a CPC to a public utility corporation, would result in constant interruptions that would ultimately raise questions about the line between agency determinations and judicial determinations, which would be inconsistent with legislative intent.[[130]](#footnote-130) The Commonwealth Court agreed, going so far as to state that permitting Common Pleas Courts to review public necessity determinations made by the PUC would plunge the administrative system of PA into “chaos.”[[131]](#footnote-131)

The Court held that PA’s Eminent Domain Code (EDC), 26 Pa. C.S.A. §§ 101–1106 did not allow common pleas courts to review determinations of public necessity made by PUC in granting CPCs to public utility corporations.[[132]](#footnote-132) It was enough for the Court that The Code required applicants for a CPC to demonstrate a public need for a proposed service to the PUC in the initial application.[[133]](#footnote-133) The court asserted that in this case, the PUC had followed its statutory mandate and evaluated the issues within its purview, ultimately determining a public need based on propane shortages and other factors, including “enhanced delivery options for the transport of natural gas liquids” within PA.[[134]](#footnote-134)

The Court rejected any application of a retrospective public purpose test in *Sunoco I*, making a distinction between “cases involv[ing] appellate review of PUC decisions related to public need for a particular service” and “court decisions involving eminent domain.”[[135]](#footnote-135) The Court held that the issue here was the latter, an appeal of a lower court decision involving eminent domain, not an appellate review of a PUC decision itself.[[136]](#footnote-136) The Commonwealth Court ultimately held that “there [was] no basis for a common pleas court to review a PUC determination of public need.”[[137]](#footnote-137) In support of this proposition, the Commonwealth Court cited the PA Judicial Code at 42 Pa. C.S.A. § 763,which places review of PUC decisions solely within the jurisdiction of the Commonwealth Court. [[138]](#footnote-138) The Court went on to assert that a CPC issued by the PUC is “prima facie evidence that the PUC [had] determined that the holder [was] clothed with the eminent domain power.”[[139]](#footnote-139) The Court asserted that a determination of public need by the PUC created a presumption that, unless rebutted, would be sufficient to prove that the utility was a public necessity.[[140]](#footnote-140) The Court held that once the “necessary and proper” determination was made by the PUC, a Court of Common Pleas’ authority was limited only to determining the “scope, validity and damages” of a taking in equity jurisdiction.[[141]](#footnote-141)

The Court cited *Chester County Water Authority. v. Public Utility Comm’n*, 868 A.2d 384, 386 (Pa. 2005)[[142]](#footnote-142) as an example of a case properly involving appellate review of a PUC decision related to public need, indicating that an CPC applicant could have standing to challenge an unfavorable PUC determination.[[143]](#footnote-143) The Court highlighted that in that type of case “the applicant must demonstrate a public need or demand for the proposed service” to the PUC and an appeal from an administrative order would properly be before the Court for review of public need.[[144]](#footnote-144)

1. **Dissenting** **Opinion by Judge Brobson**

Judge Brobson issued the first dissenting opinion in this case.[[145]](#footnote-145) He began by citing the special importance property rights hold in PA jurisprudence and stated “eminent domain is a privilege conferred by the General Assembly, while property ownership is a right of our citizens protected by the United States Constitution and the PA Constitution;” he held the right was supreme over the privilege.[[146]](#footnote-146) Judge Brobson illustrated the long history of strict construction of public purpose in eminent domain cases; he began by citing at length from *Lance’s Appeal*, 55 Pa. 16, 25-26 (1866), one of the first eminent domain cases decided in PA.[[147]](#footnote-147) The case stood for the proposition that “[t]he exercise of the right of eminent domain is necessarily in derogation of a private right, and the rule in that case is, that the authority is to be strictly construed.”[[148]](#footnote-148) Judge Brobson broke with the majority’s position[[149]](#footnote-149) and stated instead that the Commonwealth Court, as the court of original appellate jurisdiction, must review all of Appellants’ arguments before affirming any taking of private property.[[150]](#footnote-150)

Though Judge Brobson agreed that the BCL provided legislative authority for the taking in this case, he urged a closer look at the language of the statute, highlighting that the “principal purpose” for a taking under the BCL must be “reasonably necessary or appropriate for the accomplishment” of a purpose “for the public.”[[151]](#footnote-151) The dissent departed from the majority’s analysis, which focused on the fact that a pipeline fell within the enumerated purposes provided by the BCL, rather than the public need aspect.[[152]](#footnote-152) Judge Brobson cited the Statutory Construction Act (SCA) of 1972, 1 Pa. C.S.A. §§ 1501 et. seq., and highlighted § 1921(a), which states: “every statute shall be construed, if possible, to give effect to all its provisions.” Analysis of the BCL alongside the SCA laid the statutory foundation for his argument that the intent of the General Assembly was “clear and unambiguous,” in that the “principal purpose” of a public utility corporation is to be “for the public.”[[153]](#footnote-153)

Judge Brobson further supported this conclusion with citations to the Declaration of Rights in the PA Constitution, specifically Article I, § 10, regarding private property rights, and Article X, § 4, which addresses eminent domain.[[154]](#footnote-154) Judge Brobson explained that these constitutional provisions, in conjunction with the BCL, created a three-prong test for the lawful exercise of eminent domain in PA.[[155]](#footnote-155) Article I, § 10 reads in pertinent part, “private property [shall not] be taken or applied to *public use*, without authority of law and without just compensation.”[[156]](#footnote-156) Article X, § 4 states similarly that the power of eminent domain is recognized only “with respect to the taking of private property for *public use*.”[[157]](#footnote-157) Judge Brobson’s three-prong test for an eminent domain taking required: (1) authority of law, (2) just compensation, and (3) demonstration of public use.[[158]](#footnote-158)

While Judge Brobson acknowledged that many courts often interchange public use with a public purpose, citing critics of *Kelo v. City of New London*, 545 U.S. 469 (2005).[[159]](#footnote-159) Judge Brobson contended the distinction is without a difference in PA law because the PA Supreme Court has historically applied a strict construction of both “public use” and “public purpose” in favor of property-owners.[[160]](#footnote-160) He further articulated this point, stating that even after *Kelo*, the PA Supreme Court maintained strict construction of public use arguments.[[161]](#footnote-161) In *Middletown Township* *v. Lands of Stone*, 939 A.2d 331 (Pa. 2007), the PA Supreme Court held that a township could not condemn private farm land for recreational purposes because the township’s plan for the land was not sufficiently definite to show a true public purpose.[[162]](#footnote-162) Judge Brobson cited the *Middletown* court’s requirement that a taking “will be seen as having a public purpose only where the public is to be the *primary and paramount beneficiary*.”[[163]](#footnote-163) The PA Supreme Court stated that a proposed purpose could not be “post-hoc or pretextual.”[[164]](#footnote-164)

Judge Brobson also noted that even the Justices who sided with the majority in the *Kelo* opinion required a carefully developed plan that effectuated the reason for the taking.[[165]](#footnote-165) Judge Brobson invoked the *Middletown* court’s warning that it could not “be sufficient to merely wave the scepter under the nose of a property owner and demand that he forfeit his land for the sake of the public.”[[166]](#footnote-166)

Judge Brobson further demonstrated the strength of PA precedent favoring property owners in citing the PA Supreme Court’s most recent decision on eminent domain, *In re Opening a Private Road (O’Reilly)*, 5 A.3d 246 (Pa. 2010).[[167]](#footnote-167) Judge Brobson pointed out that the *O’Reilly* court reinforced the standard for public use articulated in *Middletown*, finding that the Commonwealth Court had applied the incorrect standard when it cited several public policy reasons for exercising eminent domain.[[168]](#footnote-168) That case was remanded with instructions to the Commonwealth Court to apply the correct standard: “the test require[d] that ‘the public must be the primary and paramount beneficiary of the taking.’”[[169]](#footnote-169)

After surveying the precedential cases and established tests in PA eminent domain law, Judge Brobson analyzed the facts of this case.[[170]](#footnote-170) He noted that Sunoco had been denied eminent domain power in February 2014, when it presented the same plan for the ME2 pipeline to a York County Court in *Loper,* which took placeonly two years prior to the ruling in the present case.[[171]](#footnote-171) He noted that in *Loper*, Sunoco indicated that the sole purpose of the pipeline was interstate transportation of NGLs and conceded that it had not applied for a CPC issued by the PUC.[[172]](#footnote-172) Judge Brobson noted that by May 2014, Sunoco had applied for two applications for a CPC, citing a harsh winter in 2013-2014 that increased intrastate demand for NGL products.[[173]](#footnote-173) Another CPC application was filed by Sunoco in June 2014.[[174]](#footnote-174) All of Sunoco’s applications for CPCs were granted by the PUC.[[175]](#footnote-175) Judge Brobson suggested that this background raised skepticism that the “true purpose” for adding intrastate service to the pipeline was “for the public.”[[176]](#footnote-176)

Further considering the facts of the case, Judge Brobson examined a transcript of a cross examination of Sunoco’s Assistant General Counsel regarding the timeline in which Sunoco began to apply to the PUC for CPCs.[[177]](#footnote-177) During questioning, the witness admitted that a brief filed in York County on behalf of Sunoco indicated PUC had no authority over ME2 because it was solely an interstate pipeline, he claimed that intrastate service was added due to a “polar vortex,” and he stated that ME2 was still intended to serve as an interstate pipeline.[[178]](#footnote-178) Judge Brobson summarized the Condemnees’ lay position based on the purpose of ME2, which had not been altered and was “predominately, if not exclusively an interstate endeavor, intended to benefit not the Pennsylvanians who require propane to heat their homes,” but Sunoco and its customers.[[179]](#footnote-179)

Judge Brobson then summarized the Condemnees’ two underlying legal arguments: First that Sunoco attempted to obtain eminent domain power to avoid paying fair prices for property rights, despite the fact that it remained an interstate pipeline, hence eminent domain power under the BCL should not be available; and second, the addition of new on and off ramps for interstate service was a “ploy” to obtain eminent domain power.[[180]](#footnote-180) Judge Brobson stated that while Condemnees’ arguments are mostly concerned with showing that the pipeline was interstate *not* intrastate, the black and white treatment made by the arguments could also be read to state that the pipeline was not intrastate *enough* to clothe it with eminent domain power.[[181]](#footnote-181)

Judge Brobson concluded that the majority’s holding that PUC determinations are prima facie evidence of public need was an inadequate answer to the legal question of whether the “public is to be the primary and paramount beneficiary.”[[182]](#footnote-182) He advised that if courts allowed private corporations to take land through the eminent domain power, there must be “substantial and rational proof” that the stated purpose was the true purpose, not “some post-hoc, retroactive, or pre-textual justification to secure land.”[[183]](#footnote-183) Judge Brobson would have remanded this case to the trial court for a re-evaluation of the facts under the correct legal standard.[[184]](#footnote-184)

1. **Dissenting Opinion by Judge McCullough**

Judge Patricia A. McCullough also filed a dissenting opinion in this case.[[185]](#footnote-185) Judge McCullough opined that Sunoco avoided the collateral estoppel effect of *Loper* through the pretextual addition of negligible intrastate service in order to obtain property for its exclusive benefit.[[186]](#footnote-186) She noted that rather than appeal *Loper*, Sunoco instead immediately sought to reinstate intrastate service it had previously abandoned, then followed up with additional petitions to the PUC, arguing that changed circumstances had created a new need for intrastate service.[[187]](#footnote-187) Judge McCullough reasoned that, especially at the preliminary hearing stage, bald assertions that intrastate on and off ramps met the public use requirement were insufficient to counter Sunoco’s admission in *Loper* that ME2 was to be purely interstate.[[188]](#footnote-188) She asserted that Sunoco’s “procedural posturing” was a violation of the “spirit, if not the letter of § 1104 of the Code.”[[189]](#footnote-189) Judge McCullough further stated that all of the cases supporting the majority were distinguishable because private property rights were not at stake there.[[190]](#footnote-190) Her conclusion expressed “fear” that the majority opinion “gravely undermine[d]” private ownership of property as a fundamental right.[[191]](#footnote-191)

1. **Appeal to Supreme Court**

Following the ruling, on December 29, 2016, Condemnees’ appeal to the Supreme Court of PA was denied.[[192]](#footnote-192)

**HISTORY**

The United States Constitution and the PA Constitution place property rights paramount among the rights of individuals.[[193]](#footnote-193) The PA Constitution states in Article I, § 1: Inherent Rights of Mankind, “All men are born equally free and independent, and have certain inherent and indefeasible rights, among which of those are [. . .] acquiring, possessing, and protecting property [. . .]”[[194]](#footnote-194) Both the U.S. Constitution and the PA Constitution include Takings Clauses,[[195]](#footnote-195) which prevent private property from being taken without a lawful process and just compensation. During the drafting of the Bill of Rights, James Madison proposed the Public Use Clause of the Fifth Amendment fearing “that the government’s power to take property, if left unrestricted could jeopardize private property rights.”[[196]](#footnote-196) These extensive protections demonstrate the importance of property rights in American society.[[197]](#footnote-197)

1. **Sunoco Pipeline Background**

The Mariner East pipelines are a series of underground NGL pipelines under construction in PA by Sunoco Pipeline, LP.[[198]](#footnote-198) The pipelines will facilitate the transfer of NGLs from the Utica Shale and Marcellus Shale Formations to ports on the eastern seaboard, namely Sunoco’s MHIC in Delaware County, PA, where ethane, butane, pentane, and propane mix will be shipped to Scotland for plastics production.[[199]](#footnote-199) Sunoco Pipeline, LP has two Mariner East Projects within PA.[[200]](#footnote-200) The first, ME1, was completed in 2014.[[201]](#footnote-201) ME1 transports liquid propane and ethane from western PA approximately 300 miles east to the MHIC in Marcus Hook, PA.[[202]](#footnote-202) Sunoco began constructing ME1 in 2002 when it purchased two pre-existing pipelines in PA, the Sun Pipe Line Company and the Atlantic Pipeline Corporation.[[203]](#footnote-203) These pipelines were issued CPCs in 1930 and 1931, respectively, granting Sunoco public utility status through the PUC and thus eminent domain authority in PA for the territory applicable to the existing lines and their expansion.[[204]](#footnote-204) From 2002 to 2014, Sunoco expanded these lines eastward across PA with CPCs issued by the PUC.[[205]](#footnote-205)

During winter of 2013-2014, Sunoco obtained federal approval to begin planning ME2, a 351-mile pipeline which runs through West Virginia, Ohio, and PA and would ultimately terminate at MHIC in Delaware County, PA.[[206]](#footnote-206) Sunoco begun construction of ME2 in 2014.[[207]](#footnote-207) ME2 consists of two pipelines, one twenty inches in diameter and one sixteen inches in diameter.[[208]](#footnote-208) The twenty inch pipeline is scheduled for completion by the end of 2018, and the 16-inch pipeline is scheduled for completion in 2019.[[209]](#footnote-209) The construction of the pipelines generated considerable controversy in PA and resulted in many lawsuits brought by landowners seeking to stop Sunoco from obtaining private property through the use of eminent domain,[[210]](#footnote-210) environmental groups seeking to prevent drilling fluid spills,[[211]](#footnote-211) municipalities seeking to halt construction through zoning ordinances,[[212]](#footnote-212) and constitutional challenges to the construction of the pipeline.[[213]](#footnote-213)

In *Sunoco I*, the Commonwealth Court of PA held that Sunoco was properly designated as a public utility by PUC.[[214]](#footnote-214) PUC “determined that there [was] a public need for the proposed service,” transportation of natural gas liquids or NGLs, and that Sunoco was “clothed with the eminent domain power.”[[215]](#footnote-215) The court held that the PUC’s determination that Sunoco’s addition of on and off-loading ramps to the ME2 within PA, which had the “potential” to address Pennsylvanian’s propane needs in harsh winters, was sufficient evidence that the pipeline was “necessary or proper for the service, accommodation, convenience, or safety of the public.”[[216]](#footnote-216)

1. **Statutes and Regulatory Agencies.**
2. The Pennsylvania Public Utility Code

The Code was enacted on July 1, 1978 at P.L. 598, No. 116 § 1.[[217]](#footnote-217) The modern Code developed from The Public Service Company Law of 1913 and The Public Utility Law of 1937.[[218]](#footnote-218) The evolution of The Code addressed the growing number and types of public utility companies from railroads to internet providers.[[219]](#footnote-219) The Code as enacted in 1978 became the primary source of the PUC’s power and authority.[[220]](#footnote-220) The PUC is the regulatory agency that oversees the actions of all public utilities.[[221]](#footnote-221) Section 102 of The Code defines “public utility,” and pipelines operated by private for-profit corporations, such as those operated by Sunoco, are a public utility under the Code.[[222]](#footnote-222) Sunoco, L.P. qualifies as a public utility under the following Section 102 definition:

1. Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
2. Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

\* \* \*

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.[[223]](#footnote-223)

Therefore, Sunoco, L.P. and its pipeline construction, subject to the Court’s ruling that it is an intrastate service, is regulated by the PUC.

The Code governs the issuance of Certificates of Public Convenience (CPC) issued by the PUC.[[224]](#footnote-224) A CPC is required for a variety of actions by a public utility,[[225]](#footnote-225) most relevant here is the exercise of eminent domain power. A public utility must apply for and obtain a CPC in order to “begin to offer, render, furnish or supply within [PA] service of a different nature or to a different territory than that authorized by: (i) A certificate of public convenience granted under [the Code] or under the former provisions of the act of July 26, 1913 (P.L. 1374, No. 854), known as ‘The Public Service Company Law,’ or the act of May 28, 1937 (P.L. 1053, No. 286), known as the ‘Public Utility Law.’”[[226]](#footnote-226)

Therefore, a public utility, such as Sunoco, which seeks to begin service, expand service, or change the kind of service offered must first apply for an obtain a CPC.[[227]](#footnote-227) However, the CPC does not confer eminent domain power automatically, it authorizes the start, expansion, or change of service, and is a pre-requisite for eminent domain as stated in Section 1104.[[228]](#footnote-228) The CPC serves as authorization for the intended action of a public utility by the PUC, and if eminent domain power is sought in order to begin, expand, or change the nature of a service, the CPC itself does not confer that power.[[229]](#footnote-229) Section 1104 is a restriction, not a grant.[[230]](#footnote-230) Section 1104 states that all domestic or foreign public utilities authorized to do business in PA must obtain a CPC from the PUC *before* exercising the power of eminent domain.[[231]](#footnote-231) The BCL, discussed below, actually confers eminent domain authority.[[232]](#footnote-232)

Section 1103 of the Code sets forth the procedures for obtaining a CPC.[[233]](#footnote-233) Applications for a CPC must be made in writing and the Code authorizes the PUC to set forth additional requirements for the issuance of a CPC.[[234]](#footnote-234) An application for a CPC is a pleading filed before the PUC and includes information such as a description of existing operations, a project summary, a description of the proposed facilities, market support information, tariff rates, and a statement of public convenience and necessity.[[235]](#footnote-235) By statute, the PUC can only grant a CPC to a public utility if the proposed service or facility “is necessary or proper for the service, accommodation, convenience, or safety of the public.”[[236]](#footnote-236)

Once the application for a CPC is submitted, the PUC may hold a public hearing reviewing the application before making a determination.[[237]](#footnote-237) Decisions rendered by the PUC are appealable under Title 2, Chapter 7 of the PA Consolidated Statutes.[[238]](#footnote-238) The PA Commonwealth Court[[239]](#footnote-239) has exclusive jurisdiction over appeals from final orders of the PUC and other government agencies.[[240]](#footnote-240) Appeals from decisions of the Commonwealth Court are selectively taken by the PA Supreme Court.[[241]](#footnote-241) If the PUC does grant a CPC to a public utility, that public utility is eligible to exercise eminent domain under the BCL.[[242]](#footnote-242) The procedures for exercising that power are governed by the PA Eminent Domain Code (EDC).[[243]](#footnote-243)

1. The Pennsylvania Public Utility Commission

The PUC was established by an Act of the PA General Assembly on March 31, 1937 at P.L.160, No. 43 as an independent regulatory agency.[[244]](#footnote-244) Prior to the establishment of the PUC, the commission existed as the Pennsylvania State Railroad Commission, created in 1907, which was Pennsylvania’s first public utility regulatory agency.[[245]](#footnote-245) The PA State Railroad Commission held jurisdiction over railroad, streetcar, and telegraph corporations.[[246]](#footnote-246) In 1913, the Railroad Commission was abolished and replaced with a seven-member PA Public Service Commission (PSC).[[247]](#footnote-247) The PSC was given authority to regulate *all* public utilities.[[248]](#footnote-248) In 1937, the PSC was replaced with PUC, the present regulatory agency.[[249]](#footnote-249) PUC was continued with the passage of The Code in 1978.

PUC’s powers are derived from the Code.[[250]](#footnote-250) Section 301 of the Code sets forth rules for the establishment, members, and qualifications of members, and election of a chairman.[[251]](#footnote-251) PUC consists of five members who are appointed by the Governor with consent of a Senate majority.[[252]](#footnote-252) PUC Commissioners are appointed for a term of no more than five years.[[253]](#footnote-253) Commissioners are not permitted to maintain any official relation to a public utility or hold any other political office.[[254]](#footnote-254) Commissioners are also required to devote full time employment to the PUC and are not permitted to engage in other employment. The Chairman of the PUC is appointed by the Governor from the pool of current commissioners.[[255]](#footnote-255)

The Code also created the office of administrative law judge within the PUC.[[256]](#footnote-256) PUC administrative law judges must be attorneys in good standing before the PA Supreme Court and have at least three years of practice before administrative agencies.[[257]](#footnote-257) A chief administrative law judge assigns judges to PUC hearings.[[258]](#footnote-258) Hearings regarding applications for CPCs are heard before the administrative law judges, though they can be appealed to the five-member PUC itself.[[259]](#footnote-259) Section 316 of the Code addresses the effect of a PUC action, stating:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, *unless set aside, annulled or modified on judicial review.*[[260]](#footnote-260)

Appeals from PUC orders are handled as described above.[[261]](#footnote-261)

1. The Pennsylvania Business Corporation Law of 1988

The BCL is the statute that confers the power of eminent domain upon a public utility. Section 102 of the Code defines “public utility,”[[262]](#footnote-262) while Section 1103 of the BCL uses a different term, defining a “public utility corporation.”[[263]](#footnote-263) The Committee Comments from 1990 explain the term:

The definition of “public utility corporation” in 15 Pa. C.S. § 1103 is intended to preserve the availability of this section in the event of deregulation. For example, if the Federal Communications Commission deregulates interexchange service, facilities for such service would still be entitled to the benefits of this section. (Committee Comment 1990).[[264]](#footnote-264)

Section 1103 defines a public utility corporation as:

Any domestic or foreign corporation for profit that:

1. is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States .[[265]](#footnote-265)

Under Section 1103, a corporation would also qualify as a public utility corporation if another regulatory agency, such as the Federal Energy Regulatory Commission, has qualified it as a public utility.[[266]](#footnote-266) Thus, Sunoco, L.P. falls within the scope of the BCL because, as noted above, it meets the definition of public utility set forth by The Code.[[267]](#footnote-267)

Section 1511 of the BCL addresses the power of eminent domain and defines which public utility corporations qualify to exercise the power.[[268]](#footnote-268) Section 1511 reads as follows:

1. General rule: A public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute, have the right to take, occupy and condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes:

\* \* \*

(2) The transportation of artificial or natural gas, electricity, petroleum, or petroleum products, or water, or any combination of such substances for the public.

(3) The production, generation, manufacture, transmission, storage, distribution, or furnishing of natural or artificial gas, electricity, steam, air conditioning, or refrigerating service, or any combination thereof to or for the public.[[269]](#footnote-269)

Section 1511 is the foundation for a corporation’s ability to exercise eminent domain power to condemn property for its use.[[270]](#footnote-270) The corporation first must meet the definition of a public utility under the Code.[[271]](#footnote-271) Next, it must apply for a CPC from the PUC, seeking approval to begin, expand, or change its existing services.[[272]](#footnote-272) When a CPC is issued, the corporation is *eligible* to exercise eminent domain through the BCL if the corporation falls within the principal purposes defined by the BCL in Section 1511(a).[[273]](#footnote-273)

While the corporation may be eligible, the BCL requires PUC approval before the power of eminent domain can actually be exercised.[[274]](#footnote-274) Section 1511(c) of the BCL states that eminent domain power can be exercised:

only after the [PUC], upon application of the public utility corporation, has found and determined, after notice and opportunity for hearing, that the service to be furnished by the corporation through the exercise of those powers is necessary or proper for the service, accommodation, convenience or safety of the public.[[275]](#footnote-275)

If the corporation seeking eminent domain power has already been designated a public utility by the PUC and obtained a CPC, a second public hearing for approval to condemn would not be required.[[276]](#footnote-276) Therefore, an application for a CPC is essentially an application for eminent domain authority under the BCL, and once the PUC determines that a service is “necessary or proper for the service, accommodation, convenience or safety of the public,” § 1511(c) is satisfied.[[277]](#footnote-277)

The grant of a CPC under the Code can seem to be the apparent source of eminent domain power, but the statutory authority to condemn property legally comes from the BCL.[[278]](#footnote-278) If a corporation’s plans were not previously authorized by the PUC, for instance because it is regulated by another“officer or agency of the United States”[[279]](#footnote-279) (like FERC), then the corporation may meet the definition of a public utility corporation under the BCL, but be unable to obtain eminent domain authority in PA under the BCL until obtaining approval from the PUC.[[280]](#footnote-280) Such a public utility corporation would either need to obtain a CPC from FERC or apply for a CPC from the PUC, the former requiring proof of an intrastate public use.[[281]](#footnote-281)

Section 1511(c) of the BCL also gives the PUC exclusive jurisdiction to review applications for eminent domain authority.[[282]](#footnote-282) No court is permitted to hear a challenge to the PUC’s jurisdiction to condemn property through the BCL.[[283]](#footnote-283) Any challenge to a PUC determination must be appealed directly to the Commonwealth Court.[[284]](#footnote-284) The court ruled in *Sunoco I* that a grant of a CPC to a public utility corporation is prima facie evidence that there was a public need for the service.[[285]](#footnote-285) Once the corporation is authorized by the PUC through the BCL, the Eminent Domain Code governs the procedural aspects of a taking.[[286]](#footnote-286)

The Eminent Domain Code

The EDC “provides the complete and exclusive procedures and laws that govern all condemnations of property for public purposes and resulting assessment of damages.”[[287]](#footnote-287) Chapter 3 of The EDC governs the procedure to condemn property.[[288]](#footnote-288) Section 301 determines the venue of a condemnation proceeding.[[289]](#footnote-289) Proceedings are to be brought in the county where the property is located, if the property spans over more than one county, the proceedings can be brought in any one of those counties;[[290]](#footnote-290) however, once a proceeding commences, the chosen venue must remain the same for future proceedings.[[291]](#footnote-291)

A condemnation proceeding is commenced when a Declaration of Taking is filed in the Court of Common Pleas in the correct venue.[[292]](#footnote-292) Title to the property at issue passes to the condemnor on the date of the filing.[[293]](#footnote-293) On the same date that the Declaration of Taking is filed with the court, a Notice of the Declaration of Taking must be filed with the recorder of deeds in the county where the property is located.[[294]](#footnote-294)

A Declaration of Taking must contain eight items, enumerated in Section 302(b)(1-8). Those requirements are (1) the name and address of the condemnor; (2) reference to the statute authorizing the taking; (3) reference to the corporate action that authorized the taking; (4) description of the purpose for condemnation; (5) description of the property; (6) nature of title acquired; (7) a statement of the plan for the property; and (8) a statement of how just compensation was made.[[295]](#footnote-295) When the Declaration of Taking is filed, it must also include bond, which represents payment to the owner of the property whose interests are condemned.[[296]](#footnote-296)

Once the Declaration of Taking is filed with the court and the bond is paid, the condemnor must notify the condemnee in writing within thirty days.[[297]](#footnote-297) In addition to the contents required for the Declaration of Taking, the written notice must also contain the caption of the case, the date it was filed, and its docket number.[[298]](#footnote-298) In addition, the notice must contain a statement informing the condemnee that they have the right to challenge the power of the condemnor to exercise eminent domain and/or the sufficiency of the bond.[[299]](#footnote-299) In order to challenge the taking, the condemnee must file preliminary objections no more than thirty days after receiving the notice.[[300]](#footnote-300)

Preliminary Objections are limited to (1) the power of the condemnor to take the property, (2) the sufficiency of the bond offered, (3) an element of the declaration of taking, and (4) some other procedure followed by the condemnor.[[301]](#footnote-301) Multiple grounds, even if inconsistent, can be asserted within the Preliminary Objections.[[302]](#footnote-302) The Court of Common Pleas then rules “as justice shall require.”[[303]](#footnote-303) The Court of Common Pleas may re-vest title within the condemnee, award additional damages for insufficient bond, or overrule the objections and dismiss the challenge.”[[304]](#footnote-304) *Sunoco I* was an appeal to the Commonwealth Court from an Order of the Court of Common Pleas of Cumberland County overruling the condemnees’ preliminary objections.[[305]](#footnote-305)

1. **History of Case Law**

Prior to the ruling by the Commonwealth Court in *Sunoco I*, the PA Supreme Court’s position on eminent domain was that:

[It] [could] not be sufficient to merely wave the proper statutory language like a scepter under the nose of the property owner and demand that he forfeit his land for the sake of the public. Rather, there must [have been] some substantial and rational proof by way of an intelligent plan that demonstrate[d] informed judgment [and proved] that an authorized public purpose [was] the true goal of the taking.[[306]](#footnote-306)

While this language came from the last PA Supreme Court case prior to the *Sunoco I* ruling,[[307]](#footnote-307) the case law in this area dates back more than 150 years and had been mostly consistent in the view that if private land were taken through eminent domain, the purpose for the taking must have been for the public benefit.[[308]](#footnote-308)

One of the first cases to rule on the validity of an eminent domain taking in PA was decided in 1867 in *Appeal of Lance*.[[309]](#footnote-309) The PA Supreme Court took a strong stance on property rights, holding that the “exercise of the right of eminent domain is in derogation of private right, and the authority must be strictly construed. What is not granted is not to be exercised.”[[310]](#footnote-310)

In 1917, the Superior Court of PA was tasked with interpreting a decision by the PSC[[311]](#footnote-311) in *Pottsville Union Traction Co. v. Pub. Serv. Comm’n.*, 67 Pa. Super. 301 (1917).[[312]](#footnote-312) This case did not involve a challenge to an eminent domain taking but to a determination by the PSC. The Court explained that the PSC’s purpose was to act in the best interests of the public, regardless of the interests of an existing public service corporation.[[313]](#footnote-313) In that regard, the PSC was in its rights to authorize an additional utility serving the same ends as an existing one, in this case, transportation, where the evidence supported such a determination.[[314]](#footnote-314) The Superior Court held: “The primary object of the public service laws [was] not to establish a monopoly, or to guarantee the security of investment to public service corporations, but first and at all times in the just exercise of its powers, to serve the interest of the public.”[[315]](#footnote-315)

In 1952, the PA Supreme Court invoked *Lance’s Appeal* and further enforced strict construction of the scope of an eminent domain taking.[[316]](#footnote-316) That case, *Winger v. Aires*,[[317]](#footnote-317) the Court solemnly described the consequences of an unchecked eminent domain power:

There is no authority under our form of government that is unlimited. The genius of our democracy springs from the bedrock foundation on which rests the proposition that office is held by no one whose orders, commands, or directives are not subject to review. The power of eminent domain, next to that of conscription of man power for war, is the most awesome grant of power under the law of the land.[[318]](#footnote-318)

The PA Supreme Court held in this case that a taking must be narrowly tailored only to the true public need and nothing further, “[o]therwise it would be a fraud on the owner, and an abuse of power.”[[319]](#footnote-319) Stated differently, the would-be-condemner of private lands must demonstrate through a clear plan that there is a strong public interest and that the proposed scope of a taking is reasonable for that purpose.[[320]](#footnote-320)

In 1970, the PA Supreme Court determined in *In Re: Bruce Ave*, that the question of public interest was a factual matter to be determined at trial court proceedings.[[321]](#footnote-321) While the court decided other issues in the case, it remanded to the trial court the question of whether there was a public need for the taking, noting an absence of testimony in the record:

It is impossible to know upon what facts the court below based its conclusion that the taking was for a public purpose as no hearing was ever held and no testimony taken. Therefore, the record must be remanded for a hearing at which appellant may attempt to prove that this taking is not for a public purpose.[[322]](#footnote-322)

Though the PA Supreme Court did not decide whether there was a public purpose here (due to lack of an evidentiary record), it specified that “the power of eminent domain may not be employed unless the public is to be the primary and paramount beneficiary of its exercise.”[[323]](#footnote-323) While in this case, it was the City of Philadelphia, not the PUC determining public need,[[324]](#footnote-324) the direction to appellant to “prove” on remand that there was no public purpose indicated the court’s view that a determination of public purpose was not prima facie evidence of a public purpose, rather a *primary* public benefit must be established with proof.[[325]](#footnote-325)

In 1985, in the case of *Fairview Water Co. v. Pub. Utility Comm’n*, the PA Supreme Court explored the power of the PUC to condemn property and the remedies available to a condemnee when subject to a public necessity taking authorized by the PUC.[[326]](#footnote-326) The issue before the PA Supreme Court was whether and in what venue a condemnee may “challenge the legality of a taking” when a public utility attempts to take land through eminent domain after the PUC has determined property is necessary for the utility service.”[[327]](#footnote-327) This case established that after the PUC had made a determination that a taking was necessary for public use, the land owner could challenge both the scope *and the validity* of the taking.[[328]](#footnote-328)

The PA Supreme Court in *Fairview* first defined the role of the PUC stating that: “the statute is clear and unambiguous in setting forth the scope of the [public necessity] hearing under [15 P.S.A. § 1322(C)]. That subsection of the general section regarding eminent domain relates solely to a necessity of service determination.”[[329]](#footnote-329) In other words, the PA Supreme Court held that the PUC cannot serve as judge and executioner; the PUC can determine a public need, but that determination does not preclude a finding that the taking is invalid.[[330]](#footnote-330) The determination of public need is a factual determination reviewable by a Court of Common Pleas exercising equity jurisdiction to determine whether a taking is valid in light of the purpose.[[331]](#footnote-331) In *Fairview,* the PA Supreme Court’s ruling specifically noted its position that the legislature did not grant the PUC cart blanche eminent domain authority in The Code but instead restricted its authority to regulation of costs and service provided to the public.[[332]](#footnote-332) The court pointed out that eminent domain power is distinctively missing from the enumerated powers granted to the PUC in the Public Utility Code.[[333]](#footnote-333)

The ruling in *Chester County Water Authority* *v. Pennsylvania Public Utility Commission*, 868 A.2d 384 (Pa. 2005)[[334]](#footnote-334) restored some of the PUC’s independent power by ruling that “considerable deference” was due to the [PUC]’s administrative expertise in deciding” what weight to give certain evidence in the public utility approval process—namely in the public use determination hearing.[[335]](#footnote-335) The PA Supreme Court in *Chester County Water Authority* held that the PUC was not required to hold a public hearing regarding its necessity determination, stating that “due process is a flexible concept” that is fact specific[[336]](#footnote-336) and that a public hearing is only required where there are disputes over material facts.[[337]](#footnote-337)

This deference regarding the PUC hearing to determine necessity did not overrule any principle established in *Fairview* regarding the Court of Common Plea’s jurisdiction over the ultimate scope and validity of a taking. Indeed, in *Chester County Water Authority*, the PA Supreme Court’s holding only applied to what type of necessity hearing the PUC is constitutionally required to hold (public or not) before making a determination of public necessity and granting a CPC.

In *Middletown Township. v. Lands of Stone*, decided in 2007, the PA Supreme Court sought to define what constituted public need for an eminent domain taking.[[338]](#footnote-338) The PA Supreme Court cited *In Re: Bruce Ave.* and held that “a taking will be seen as having a public purpose only where the public is to be the *primary and paramount beneficiary* of its exercise.”[[339]](#footnote-339) In supporting its decision, PA Supreme Court aligned its rationale with that of the United States Supreme Court’s ruling in Kelo v. City of New London, 545 U.S. 469, 478 (2005), stating “the United States Supreme Court placed great weight upon the existence of a ‘carefully considered’ development plan in order to rule that the taking [ . . . ] was not pretextual, but for a proper purpose.”[[340]](#footnote-340)

On this point, the court also cited its earlier ruling in *Winger*, regarding the requirement that a taking have a narrow scope, not surpassing the actual public need.[[341]](#footnote-341) In its closing remarks, the court stated that “[a]nything less [than these requirements] would make an empty shell of our public use requirements.”[[342]](#footnote-342)

Several years later, the PA Supreme Court decided *In Re: Private Road for Benefit of O’Reilly,* 5 A.3d 246 (Pa. 2010).[[343]](#footnote-343) The PA Supreme Court stood by its holding in *Middletown*, and reiterated the importance of establishing a primary and paramount public benefit. In *In Re: Private Road*, the case came to the PA Supreme Court on appeal from a ruling by the Commonwealth Court that considered only some public benefit sufficient for a taking.[[344]](#footnote-344) The PA Supreme Court, commenting on the Commonwealth Court’s ruling stated: “While [the determination by the court] indicates at least an indirect benefit to the public, there is no attempt to confirm that the public is the primary and paramount beneficiary.”[[345]](#footnote-345) In other words, a bald benefit will not suffice for eminent domain takings, as stated in the previous cases, there must be sufficient proof that the purpose and scope of the taking are for a definite public benefit.[[346]](#footnote-346) Because the Commonwealth Court failed to use the correct standard, the case was remanded for further review consistent with a primary purpose standard.[[347]](#footnote-347)

**ANALYSIS**

*Sunoco I* was wrongly decided. The Commonwealth Court’s ruling in *Sunoco* *I* is not consistent with the precedent in this area of law. While the majority opinion thoroughly examined the interrelated statutes governing eminent domain and closely tracked the regulatory background of the pipeline, the opinion did not cite to any cases related to eminent domain takings of private land and essentially disregarded over a century of precedent applying strict scrutiny to the public use requirement for eminent domain takings. The dissenting opinions in this case correctly applied the public use standard established by precedent: that a taking can only be valid where there is a showing that the “public is the primary and paramount beneficiary” of the taking. This is unambiguously the correct standard to apply in *Sunoco I*, yet it is absent from the majority opinion.

*Sunoco I* should have been remanded to the Court of Common Pleas with direction to apply this standard. As Judge Brobson stated in his dissent, on remand, “Sunoco [would have had to] convince the trial court, through ‘some substantial and rational proof,’ that providing PUC-authorized service, ‘[was] the true goal’” of taking Condemnees’ land.[[348]](#footnote-348) Only after the trial court’s ruling would the Commonwealth Court be able properly conduct appellate review on the legal issue of whether the taking was truly for a public purpose, based on the factual findings and legal conclusions below.[[349]](#footnote-349) In *Sunoco I*, the majority eschewed the precedential standard for a public use determination, instead it made PUC determination the conclusive factor and all but revoked appellate review of public purpose where a PUC determination was made.[[350]](#footnote-350)

The problem with the Condemnees’ case here seemed to be fixation on argument that ME2 was solely an interstate pipeline. Three out of four of Condemnees’ arguments centered on this objective legal conclusion in some way, arguments which were soundly rejected by the Commonwealth Court. After evaluation of the law and the facts in this case, that legal argument is weak at best, because the statutes clearly establish the procedure for public utility status and eminent domain power in favor of Sunoco. At the time the Declarations of Taking were filed in this case, Sunoco had obtained legal status as a PA public utility corporation cloaked with eminent domain power for the ME2 project through the PUC orders that issued Sunoco CPCs.[[351]](#footnote-351) Although, as Judge McCullough pointed out in her dissenting opinion, the facts strongly imply that the actions Sunoco took following *Loper* to obtain legal status “were [an endeavor] to avoid what [would have been] the collateral estoppel effect of a decision adverse to its interests,” Sunoco’s lawyers were successful in that endeavor. Once the PUC granted the requisite authority through the issuance of CPCs, Sunoco was legally cloaked with state eminent domain power under the BCL.[[352]](#footnote-352)

The majority’s holding on Condemnees’ first three legal arguments: (1) that collateral estoppel did not bar the taking; (2) that the pipeline was both interstate and intrastate; and (3) that the PUC had authority to regulate ME2 due to its intrastate operations, were all well-reasoned and correct applications of the law, but only if the PUC determination of public use is taken at face value. Collateral estoppel cannot apply because in the *Loper* case, Sunoco did not have a CPC from the PUC and therefore, the facts and issues were inapposite.[[353]](#footnote-353) Because Sunoco added the on and offloading ramps for intrastate service and obtained a CPC from the PUC for the ME2 construction, Sunoco was deemed an intrastate public utility and thus an intrastate pipeline.[[354]](#footnote-354) Finally, because of the intrastate services added to the pipeline, those intrastate services did fall under the regulatory authority of the PUC.[[355]](#footnote-355)

However, the failure of the first three arguments does not defeat Condemnee’s final argument regarding public purpose. And in fact, the final argument could invalidate the PUC determination, and therefore bolster arguments that the pipeline was solely interstate. However, the Court failed to engage at all with the legal issue of whether there was a sufficiently public purpose, ruling that PUC determination was “prima facie evidence” that the requirement was met, even though Condemnees had offered some evidence to rebut such a presumption.[[356]](#footnote-356) This issue should have been decided first, and its holding used to evaluate Condemnee’s other arguments.

The holding in *Sunoco I* raises three important questions related to the public use determination. First, what role should the precedential cases play in eminent domain lawsuits where a public purpose determination has been made by the PUC? Second, if the PUC determination of public use cannot be challenged by the landowners affected by the taking, when can PUC determinations be challenged? Third and most importantly, if landowners cannot challenge public use determination, then what recourse do they have to challenge the condemnation of their land when there is not a procedural deficiency in the Declaration of Taking?

1. **Application of Precedent**

Contrary to the statement by the Commonwealth Court in *Sunoco* I, there is no difference between cases involving appellate review of PUC decisions related to public need for a particular service, and court decisions involving eminent domain where the taking involves private property.[[357]](#footnote-357) In both cases, private property is being appropriated for a public purpose and that purpose should be subject to the strict scrutiny required by precedent[[358]](#footnote-358). In both cases, the precedential standard for determining public purpose should be applied—that the public must be the “primary and paramount beneficiary of the taking.”[[359]](#footnote-359) This standard, or the true purpose test, has been consistently applied in eminent domain cases involving condemnation of private land, most recently in the 2010 case *O’Reilly*;[[360]](#footnote-360) the *Sunoco* *I* decision represents a stark departure from the application of the test. The majority in *Sunoco I* held that PUC’s determination that a utility’s proposed service is “necessary or proper for the service, accommodation, convenience or safety of the public” is prima facie evidence that there was a public purpose sufficient to confer eminent domain power. This was directly contrary to the requirement established in *O’Reilly*, that there must be an “attempt [by the court] to confirm that the public is the primary and paramount beneficiary” before private land can be condemned through eminent domain.[[361]](#footnote-361)

In *Sunoco I,* there was no attempt by the Court to confirm that the public was the primary and paramount beneficiary of the pipeline. While the Court cited PUC Orders that repeated Sunoco’s statements of public benefit, there was no analysis of whether that benefit was the true purpose of the pipeline.[[362]](#footnote-362) In fact, the only benefits cited were vague references to increased access to propane fuel, apparently needed in light of a harsh winter, and “more economic transportation alternatives” for shippers.[[363]](#footnote-363) In *O’Reilly*, the PA Supreme Court rejected the Commonwealth Court’s ruling that general public policy considerations regarding the most economical use of land satisfied the public use requirement.[[364]](#footnote-364) If the PA Supreme Court rejected a public purpose argument based on broad public policy, then it should seem likely that it would also reject an argument based on the similarly vague statements of benefit noted in *Sunoco I*.

The main reason for the strict construction of true public purpose is to protect property owners from government agencies and large companies interested in obtaining bargain priced land through legal maneuvering. In *O’Reilly*, the PA Supreme Court stated that it was the duty of the court to ensure that “the taking of [Condemnees’] property should be closely reasoned” to prevent violations of private property rights.[[365]](#footnote-365) In *Sunoco I* the majority allows Sunoco to circumvent the intent of the law to violate the Condemnee’s property rights for their commercial gain. The dissent recognizes this, but the majority, in its refusal to make any inquiry beyond accepting the PUC Orders, turns a blind eye to the fundamental concern of eminent domain cases. Judge Brobson noted in his dissent that:

although the legal issue is not as clearly articulated as [he] would [have hoped] (or even expect[ed]) it to be, the concern of [Condemnees] is plain [. . .] that Sunoco engaged in an array of activities attempting to obtain state eminent domain power to reduce the cost of purchasing property rights, but that ME2 [was] still a matter of interstate commerce.[[366]](#footnote-366)

Additionally, Judge McCullough repeats the same concern in her dissent, noting that “Sunoco would have this Court confer [eminent domain] power upon it on the basis of vague, non-specific language in a PUC order [ . . ] which was entered as part of Sunoco’s post-*Loper* procedural posturing.”[[367]](#footnote-367)

The majority’s holding that the precedential standard for evaluating public purpose is not applicable where a PUC determination of public need has been made strips property owners of their rights to challenge condemnations and emboldens those who would seek eminent domain authority.

1. **Review of PUC Determinations of Public Purpose**

The decision in *Sunoco I* raises troubling questions about when a PUC determination is subject to review. What if the PUC is wrong, how can the presumption that the PUC is right be rebutted? Who has standing to challenge a public use determination if not those deprived of their land by virtue of such a determination? What standard does the PUC use in determining public need and is it as stringent a standard as the true purpose test developed in PA jurisprudence? What if the agency becomes corrupt?

The Commonwealth Court held that: “There is no basis for a common pleas court to review a PUC determination of public need.”[[368]](#footnote-368) Further, the Commonwealth Court stated: “A CPC issued by the PUC is prima facie evidence that PUC has determined that there is a public need for the proposed service and that the holder is clothed with the eminent domain power.”[[369]](#footnote-369) This is a curious argument. It is no wonder that when the PUC issues a CPC— a certificate that statutorily requires that a proposed service be necessary or proper for the service, accommodation, convenience, or safety of the public” [[370]](#footnote-370) —that the PUC decided there was a public need. To say otherwise would not make sense, if the PUC had not decided there was a public need, then the CPC could not be issued by the agency at all. To put it otherwise, the Commonwealth Court majority’s argument here essentially reads: the agency’s determination is prima facie evidence that the agency made said determination. This is circular reasoning.

Unless there is some procedural deficiency in a Declaration of Taking, such as insufficient bond, an error in the description of the property, or the interest sought to be condemned, etc., it seems that once a corporation has obtained a CPC from the PUC for a proposed development, the only colorable argument available to condemnees is to dispute the PUC’s determination that the public use requirement was met.[[371]](#footnote-371) However, under the precedent set by the Court in *Sunoco I*, this argument is rendered void.

Once a PUC determination is made, there must be a judicial check on that executive power. The Commonwealth Court asserts that it alone has jurisdiction to review PUC determinations, citing 42 Pa. C.S. § 763. [[372]](#footnote-372) Section 763 states that the Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of government agencies including the PUC.[[373]](#footnote-373) The Condemnees in *Sunoco I* did not appeal a final order of the PUC, therefore, the Commonwealth Court states that it cannot review the public need determination of the PUC.[[374]](#footnote-374) Furthermore, it also states that because it has exclusive jurisdiction, the Court of Common Pleas cannot review the public need determination either—because that determination is a final order of a government agency.[[375]](#footnote-375) This jurisdictional assertion is misguided, taking jurisdiction to hear the public purpose challenge out of the hands of either court.

Condemnation proceedings are governed by Chapter 3 of the EDC, which states that the proper venue for a condemnation proceeding is the court of common pleas in which the property is located. [[376]](#footnote-376) In that case, Condemnees should be able to argue before that court that Sunoco does not have the power to condemn because there is no demonstrated public need, regardless of the PUC ruling. In order to reach a result “as justice shall require” the court must evaluate the powerof the condemnor. In the case of a public utility corporation, the power or right of the condemnor to condemn is conferred by the PUC’s issuance of a CPC. Therefore, it is essential that this power to condemn be subject to review.

If the Court of Common Pleas is barred from examining the facts supporting a PUC determination, on what grounds would the court be able to rule that the condemner’s power to take is invalid and consequently re-vest title in the condemnee when the public utility has obtained the PUC’s endorsement? In *Sunoco I*, the Commonwealth Court addressed the issue of a Court of Common Pleas’ jurisdiction stating that “it is left to common pleas to evaluate [only] the scope and validity of the [taking], but not the public need.”[[377]](#footnote-377) It is clear what is meant by scope—the public utility corporation will not be permitted to take more than it needs. However, determining validity of a taking would necessarily require review of whether the purpose of the taking itself is valid in cases where that purpose is challenged. As it stands now, the ruling in *Sunoco I* is at odds with the EDC in barring the Court from considering the validity of a PUC Order, which is one of the challenges to a taking authorized by the EDC. [[378]](#footnote-378)

The public purpose requirement is a legal standard independent of a PUC ruling, established by statute in The Code and BCL, and by PA eminent domain caselaw.[[379]](#footnote-379) While a PUC determination might be a factor in a court’s evaluation of public purpose, it should not be a dispositive factor barring litigation. A PUC Order should not displace well-established jurisprudence and the protections afforded by the PA Constitution.[[380]](#footnote-380) It is unclear what standard the PUC uses to make its determinations, but that test is surely not as stringent as that required by the PA Supreme Court.[[381]](#footnote-381) The Court in *Sunoco I* does not even consider this question and vacantly accepts the PUC determination at face value.

Furthermore, a Court of Common Pleas reviewing a PUC determination on equity grounds would not revoke the jurisdiction or powers of the PUC provided by the legislature, as the PUC and Commonwealth Court feared, it would act as a check on that power.[[382]](#footnote-382) Once more, permitting Common Pleas review in equity is not in conflict with 42 Pa. C.S. § 763, reserving review of agency decision for the Commonwealth Court, because Preliminary Objections by landowners are not an appeal from a final order of the PUC.[[383]](#footnote-383) Furthermore, allowing review by the Court of Common Pleas provides a necessary check on a government regulatory agency exercising executive power in cases where a PUC order is not directly on appeal. Without oversight, the potential for conflicts of interest or corruption increase and there is no recourse to curb these problems. In a Report of the Public Accountability Initiative published in June 2018, potential conflicts of interest within the PUC were explored.[[384]](#footnote-384) Though the report describes members of the commission who were appointed after the events in *Sunoco* *I*, it demonstrates the need for a check on power. Condemnees should have the right challenge PUC authority in challenging a Declaration of Taking.

1. **Recourse for Condemnees**

If this holding stands, then it follows that every single challenge by a condemnee would be dead on arrival if the crux of the argument was that the service offered by the public utility corporation was not for the primary and paramount benefit of the public. And that has been the result for a line of cases brought by other condemnees following *Sunoco I.*[[385]](#footnote-385) Condemnees have no remedy if the PUC has passed judgment. The Eminent Domain Code provides that the Court of Common Pleas reach a result as justice requires; tying the hands of the court to review any public need frustrates that goal.

The majority’s holding in this case begs the question: If private property owners facing condemnation cannot challenge a taking based on a PUC determination that a corporation’s proposed service is “necessary or proper for the service, accommodation, convenience, or safety of the public” [[386]](#footnote-386) then who can? As Judge McCullough’s dissent points out, “the cases cited by the majority to analogize this case to other instances of concurrent interstate and intrastate activity by business entities are clearly distinguishable in that none of the cases so cited involved the exercise of eminent domain powers to take private property.”[[387]](#footnote-387)

Therefore, according to the Commonwealth Court, it seems that the only way to appeal a decision of the PUC is directly to the Commonwealth Court, presenting procedural problems of standing. Aside from that is the more obvious practical problem of foreseeability. Condemnees cannot foresee that a hearing in some administrative law court will ultimately affect their property rights. In fact, they will not know the effect of a PUC determination until thirty days after a Declaration of Taking has been filed and the automatic process of title transfer has already begun. The only recourse is to file Preliminary Objections. Subject to the holding in *Sunoco I,* the Court of Common Pleas will rule the taking cannot be challenged because the Courts of Common Pleas do not have the authority to review this issue. Furthermore, the remedy cannot be to sue the PUC directly, such as when a municipality takes land, because the Eminent Domain Code “provides a complete and exclusive procedure and law to govern all condemnations of property for public purposes and the assessment of damages.”[[388]](#footnote-388)

The majority opinion erased fundamental rights of property owners to challenge a taking of their private property by vesting in the PUC the sole power to determine public need without any requirement to show the true purpose of a taking is for the public and without any check on that power. The majority’s holding essentially dismisses the precedent’s rule that “the public must be the primary and paramount beneficiary of the taking.”[[389]](#footnote-389)

While Sunoco satisfied all of the individual procedures in order to get the authority to exercise eminent domain in the first place, it is still the larger role of a court to determine if the sum of the actions taken by a party violate the law. The facts in this case showed that the primary purpose of Sunoco’s ME2 pipeline was to serve as an interstate pipeline to transport product across three states to its Marcellus Hook Industrial Complex for international shipment.[[390]](#footnote-390) When Sunoco was stopped from taking land by a York County Court because there was no in-state component to their plan, they engaged in what Judge McCullough described as “procedural posturing” through a “dizzying array of procedural moves and reversal of course as to its business plans in Pennsylvania” in order to appropriate large portions of condemnees land for less than market value.[[391]](#footnote-391)

All Sunoco did to obtain PUC approval was add 10 intrastate points on the 350 mile-long pipeline[[392]](#footnote-392) to their proposal. This seems to have been done only with the intent to circumvent the law, but Condemnees were barred from asserting that argument when they were barred from challenging public purpose. The Commonwealth Court engaged in no analysis of what actual benefits these additions would confer upon Pennsylvanians, and the orders issued by the PUC are nothing but vague statements of benefit. This standard erodes the rights of property owners

**CONCLUSION**

In *Sunoco I* and the cases that followed, petitions for allowance of appeal were denied.[[393]](#footnote-393) A challenge to eminent domain takings by Sunoco, based on PUC orders, have not reached the PA Supreme Court level. It is unclear why the Supreme Court has decided not to hear these challenges, but at this time, the Commonwealth Court’s ruling in *Sunoco I* is the state of the law. The protections afforded private property owners by the true public purpose test, set forth in *O’Reilly* and the cases that came before it, are ostensibly inapplicable where the PUC has made a determination of public need and issues a CPC.

Furthermore, it is unclear when a PUC determination can be challenged outside of a direct appeal from a PUC administrative order. By holding that the Commonwealth Court has sole jurisdiction to review PUC determinations of public purpose, and preventing a Court of Common Pleas from reviewing said determinations in a challenge to a Declaration of Taking by a pubic utility, it seems the Commonwealth Court has created a system in which PUC determinations of public need will go unchallenged where scrutiny is most wanting—in the condemnation of private property.

As the oil and gas industry expands, it will be interesting to see whether any future challenges are successful in reaching the PA Supreme Court.

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2. A Declaration of Taking is a document that is filed with the Court and notifies the property owner, the condemnee, of the identity of the condemnor, the statute under which the condemnation is authorized, a reference to the corporate resolution that authorized the condemnation, a description of the purpose of the taking, a description of the property condemned, a statement of the nature of the title acquired, and a statement regarding how just compensation will be made. 26 Pa. C.S.A. § 302: Declaration of Taking. [↑](#footnote-ref-2)
3. *In Re: Condemnation by Sunoco Pipeline, L.P.*, 143 A.3d 1000 (Pa. Cmwlth. 2016), *petition for allowance of appeal denied,* 164 A.3d 485 (Table) (Pa. 2016) (“*Sunoco I*”). [↑](#footnote-ref-3)
4. Scott Blanchard, *Mariner East 2 Pipeline Is Up and Running, Sunoco Says,* State Impact Pennsylvania, https://stateimpact.npr.org/pennsylvania/2018/12/29/mariner-east-2-pipeline-is-up-and-running-sunoco-says/ (Dec. 29, 2018). [↑](#footnote-ref-4)
5. *See supra*, note 4. [↑](#footnote-ref-5)
6. *See supra*, note 4. [↑](#footnote-ref-6)
7. *See supra, note 4.* [↑](#footnote-ref-7)
8. *See supra*, note 4. [↑](#footnote-ref-8)
9. *Sunoco I*, 143 A. 3d. at 1027. [↑](#footnote-ref-9)
10. *Id*. at 1014. [↑](#footnote-ref-10)
11. *Sunoco Pipeline, L.P. v Loper*, 2013-SU-4518-05 (C.P. York, February 24, 2014). [↑](#footnote-ref-11)
12. *Sunoco I*, 143 A.3d at 1017. [↑](#footnote-ref-12)
13. *Id.* at 1017-18. [↑](#footnote-ref-13)
14. *Id*. [↑](#footnote-ref-14)
15. The condemnees were represented by the same lawyer and raised identical Preliminary Objections to the takings. *Id*. [↑](#footnote-ref-15)
16. A non-exclusive easement is “an easement allowing the servient landowner to share in the benefit of the easement.” *Common Easement*, Black’s Law Dictionary (10th ed. 2014). Here, the purpose of the easement was to allow the pipeline to run beneath the property permanently. [↑](#footnote-ref-16)
17. *Sunoco I*, 143 A.3d at 1011(describing the parcels of land that Sunoco sought to condemn for easements). [↑](#footnote-ref-17)
18. *Id.* at 1011. [↑](#footnote-ref-18)
19. *Id*. [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. “Before a public agency [or public utility corporation] can exercise the power of eminent domain, it must adopt a resolution of necessity making certain findings in support of the taking of property.  The resolution defines the scope of the agency’s acquisition, and the agency is typically prevented from contradicting the terms of the resolution in the eminent domain action.” Brad Kuhn, *Determining Scope or Resolution of Necessity in Eminent Domain Actions*, Court Decisions: California Eminent Domain Report (November 18, 2011), https://www.californiaeminentdomainreport.com/2011/11/articles/court-decisions/determining-scope-of-resolution-of-necessity-in-eminent-domain-actions/. [↑](#footnote-ref-21)
22. *Sunoco I*, 143 A.3d at 1011*.*  [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. It is likely that the condemnees were referring to the Mariner East 1 (ME1), an existing pipeline from which ME2 was to expand, as part of this project. [↑](#footnote-ref-24)
25. *Sunoco I*, 143 A.3d*.* at 1011 (referring to *Sunoco Pipeline, L.P. v Loper*, 2013-SU-4518-05 (C.P. York, February 24, 2014) (*reaffirmed* March 25, 2014)). [↑](#footnote-ref-25)
26. *Sunoco I*, 143 A.3d*.* at 1011*.*  [↑](#footnote-ref-26)
27. *Id.* The payment is called “bond” and is governed by the Pennsylvania Eminent Domain Code, 26. Pa. C.S.A. § 303(a). The bond is filed with the Declaration of Taking. *Id.* The condemnee can file Preliminary Objections challenging the sufficiency of the bond and the court may order additional payments. §303 (c). *See* *also* note 1. [↑](#footnote-ref-27)
28. *Sunoco I*, 143 A.3d*.* at 1011-1012. [↑](#footnote-ref-28)
29. *Id.* at 1011. [↑](#footnote-ref-29)
30. *Id.*  [↑](#footnote-ref-30)
31. *Id.* at 1012. [↑](#footnote-ref-31)
32. *Id.* [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. *Id*. at 1002. [↑](#footnote-ref-36)
37. *Id.* at 1011. [↑](#footnote-ref-37)
38. *Id.* at 1013. [↑](#footnote-ref-38)
39. *Id.* [↑](#footnote-ref-39)
40. *Id.* [↑](#footnote-ref-40)
41. *Id.* [↑](#footnote-ref-41)
42. *Id.* at 1013, 1014. [↑](#footnote-ref-42)
43. *Sunoco Pipeline, L.P. v Loper*, 2013-SU-4518-05 (C.P. York, February 24, 2014) (*reaffirmed* March 25, 2014). [↑](#footnote-ref-43)
44. *Sunoco I,* 143 A.3d at 1014. [↑](#footnote-ref-44)
45. Rather than as a strictly natural gas pipeline. [↑](#footnote-ref-45)
46. *Sunoco I,* 143 A.3d at 1015. [↑](#footnote-ref-46)
47. *Id*. at 1016. [↑](#footnote-ref-47)
48. “[T]he term equity jurisdiction does not refer to jurisdiction in the sense of the power conferred by the sovereign on the court over specified subject-matters or to jurisdiction over the res or the persons of the parties in a particular proceeding but refers rather to the merits. The want of equity jurisdiction does not mean that the court has no power to act, but that it should not act, as on the ground, for example, that there is an adequate remedy at law.” William Q. de Funiak, *Handbook of Modern Equity* 38 (2d ed. 1956). [↑](#footnote-ref-48)
49. *Sunoco I,* 143 A.3d at 1017. [↑](#footnote-ref-49)
50. *Middletown Township v. Lands of Stone*, 939 A.2d 331 (Pa. 2007) (quoting *In re: Bruce Ave.*, 266 A.2d 96, 99 (Pa. 1970) (internal quotation marks omitted)). [↑](#footnote-ref-50)
51. *Id*. at 1012 (noting that at the hearing on the Preliminary Objections, both Condemnees and Sunoco “offered testimony and entered exhibits into the record”). [↑](#footnote-ref-51)
52. *Rand v. Rowland*, 154 F.3d 952, 957 n.4 (9th Cir. 1998) (en banc). [↑](#footnote-ref-52)
53. *Sunoco I*  at 1003, 1020. [↑](#footnote-ref-53)
54. *Id*. [↑](#footnote-ref-54)
55. *Id.* at 1014-1018. [↑](#footnote-ref-55)
56. *Id.* at 1000. [↑](#footnote-ref-56)
57. *Id.* at 1015. [↑](#footnote-ref-57)
58. *Id.* [↑](#footnote-ref-58)
59. “A common carrier is a business or agency that is available to the public for transportation of persons, goods, or messages.” *Common Carrier*, Merriam Webster’s Collegiate Dictionary (11th ed. 2003). Common carriers offer services to the general public under license or authority provided by a regulatory body, either a federal regulatory body, such as FERC, or a state regulatory body, such as the PUC. [↑](#footnote-ref-59)
60. *Sunoco I* at 1015*.* [↑](#footnote-ref-60)
61. *Id.* [↑](#footnote-ref-61)
62. *Id.* [↑](#footnote-ref-62)
63. *Id.* at 1003, n.4. [↑](#footnote-ref-63)
64. *Id.* at 1004, n.5 (citing 42 U.S.C. § 7155; and § 7172(b) of the NGA, that transferred authority to regulate pipeline transportation of oil to FERC; and further citing 49 U.S.C. § 60502 of the ICA, conferring jurisdiction over rates for the transportation of oil by pipelines to FERC). [↑](#footnote-ref-64)
65. *Id.* at 1004, n.5 and n.6. [↑](#footnote-ref-65)
66. “The definition of ‘petroleum products’ is interpreted broadly by the PUC.” *Id*. at 1010. [↑](#footnote-ref-66)
67. *Id.* at 1025, n.9 (emphasis added). Likewise, the [NGA] 15 U.S.C. § 717a(6) grants FERC “exclusive jurisdiction over the transportation and sale of natural gas [by corporate entities] in interstate commerce for resale” because “the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest." [↑](#footnote-ref-67)
68. *Id*. at 1005. [↑](#footnote-ref-68)
69. *Id*. at 1004. [↑](#footnote-ref-69)
70. *Id.* at 1004 (emphasis added). [↑](#footnote-ref-70)
71. *Id.* at 1004 (emphasis added). [↑](#footnote-ref-71)
72. *Id.* at 1005 (quoting *Amoco Pipeline*, *Co.*, 62 F.E.R.C. ¶ 61119, at 61803-61804, 1993 WL 25751, at \*4 (Feb. 8, 1993) (finding comingling of oil streams was not a factor in jurisdiction of regulatory agencies). [↑](#footnote-ref-72)
73. *Id*. at 1003. [↑](#footnote-ref-73)
74. *Id.* at 1003. [↑](#footnote-ref-74)
75. *Id.* (alteration in original). [↑](#footnote-ref-75)
76. *Id.* at 1003, n.2. [↑](#footnote-ref-76)
77. *Id*. (citing 15 Pa. C.S.A. §1511(c)). Also note that if FERC is the regulating agency, then eminent domain authority is derived not from the BCl, which is a state law, but pursuant to the NGA. 15 U.S.C. § 717(f)(h), grants the right of eminent domain for construction of pipelines. [↑](#footnote-ref-77)
78. *Id.* at 1004, n.4 (reprinting §1104 “Certain appropriations by right of eminent domain prohibited.). [↑](#footnote-ref-78)
79. Note that where FERC regulation governs an interstate utility, the Natural Gas Act (NGA), 15 U.S. Code § 717, similarly requires a public utility corporation to obtain a CPC from FERC to exercise eminent domain powers over state land. [↑](#footnote-ref-79)
80. *Id.* at 1003. [↑](#footnote-ref-80)
81. *Id.* at 1019 (quoting, *Chester Park Water Auth. v. Public Utility Comm’n,* 868 A.2d 384, 386 (2005). [↑](#footnote-ref-81)
82. *Id.* [↑](#footnote-ref-82)
83. *Id* at 1016. [↑](#footnote-ref-83)
84. *Id.* [↑](#footnote-ref-84)
85. FERC regulates the transmission and sale of natural gas for resale in *interstate* commerce. Federal Energy Regulatory Commission, *What FERC Does,* https://ferc.gov/about/ferc-does.asp (last visited November 30, 2018) (emphasis added). [↑](#footnote-ref-85)
86. *Sunoco I* at 1015. [↑](#footnote-ref-86)
87. *Id*. at 1013. [↑](#footnote-ref-87)
88. *Id.* [↑](#footnote-ref-88)
89. *Id.* [↑](#footnote-ref-89)
90. *Id.* [↑](#footnote-ref-90)
91. *Sunoco I* 143 A.3d at 1005. [↑](#footnote-ref-91)
92. *Id.* at 1006. [↑](#footnote-ref-92)
93. *Id.* [↑](#footnote-ref-93)
94. *Id*. [↑](#footnote-ref-94)
95. *Id.* at 1008, 1021. [↑](#footnote-ref-95)
96. *Id.* at 1009 (noting that at the time of initial expansion, Sunoco had not sought PUC approval for intrastate service). [↑](#footnote-ref-96)
97. *Id.* at 1009. [↑](#footnote-ref-97)
98. *Id*. at 1014. [↑](#footnote-ref-98)
99. *Sunoco Pipeline, L.P. v Loper*, 2013-SU-4518-05 (C.P. York, February 24, 2014) (*reaffirmed* March 25, 2014). [↑](#footnote-ref-99)
100. *Id.* at 1014. [↑](#footnote-ref-100)
101. *Id*. [↑](#footnote-ref-101)
102. *Id.* [↑](#footnote-ref-102)
103. *Id*. at 1015. [↑](#footnote-ref-103)
104. *Id.* [↑](#footnote-ref-104)
105. *Collateral Estoppel*, Black’s Law Dictionary (10th ed. 2014). [↑](#footnote-ref-105)
106. *Id*. at 1014. [↑](#footnote-ref-106)
107. *Sunoco I*, 143 A.3d at 1009 (noting that Sunoco explained the change of intent was due to a polar vortex in the 2013-14 winter season, resulting in propane shortages that produced an increased shipper demand for intrastate shipments). [↑](#footnote-ref-107)
108. *Id.* at n.9 (noting that NGLs such as ethane is used to produce ethylene, which is then turned into plastics). [↑](#footnote-ref-108)
109. *Id..* By October 2014, nearly a year after the York case and a year before the present case, Sunoco’s PUC certified territory had expanded through 17 counties. [↑](#footnote-ref-109)
110. *Id.* at 1014. [↑](#footnote-ref-110)
111. *Id*. at 1015. [↑](#footnote-ref-111)
112. *Id*. [↑](#footnote-ref-112)
113. *Id*. [↑](#footnote-ref-113)
114. *Id*. at 1016. [↑](#footnote-ref-114)
115. *Id.* [↑](#footnote-ref-115)
116. *Id.* [↑](#footnote-ref-116)
117. *Id.* at 1006. [↑](#footnote-ref-117)
118. *Id*. [↑](#footnote-ref-118)
119. *Id*. at 1017. [↑](#footnote-ref-119)
120. *Id*. [↑](#footnote-ref-120)
121. *Id.* [↑](#footnote-ref-121)
122. *Id.* [↑](#footnote-ref-122)
123. *Id.* at 1023. [↑](#footnote-ref-123)
124. *Id.* at 1023. [↑](#footnote-ref-124)
125. *Id.* [↑](#footnote-ref-125)
126. *Id*. at 1017. [↑](#footnote-ref-126)
127. *Id.* at 1004, n.4 (reprinting §1104 “Certain appropriations by right of eminent domain prohibited). [↑](#footnote-ref-127)
128. *Id.* at 1003. [↑](#footnote-ref-128)
129. *Id.* at 1019 (quoting, *Chester Park Water Auth. v. Public Utility Comm’n,* 868 A.2d 384, 386 (2005) (emphasis in original). [↑](#footnote-ref-129)
130. *Id.* [↑](#footnote-ref-130)
131. *Id*. at 1018. [↑](#footnote-ref-131)
132. Alexander F. Beale, *Get Off My Lawn! A Critical Analysis of In Re Sunoco Pipeline and Its Impact on Eminent Domain in Pennsylvania*, 27 Widener Cmmw. L. Rev. 287 (2018); *Sunoco I* at 1019. [↑](#footnote-ref-132)
133. *Id.;* 66 Pa. C.S.A. §1003(a). [↑](#footnote-ref-133)
134. *Sunoco I,* 143 A.3d at 1019. [↑](#footnote-ref-134)
135. *Sunoco I* at 1019, n. 22 (noting “none of the cases cited [by condemnees] support the proposition that common pleas may review a public utility’s CPC in an eminent domain context”). [↑](#footnote-ref-135)
136. *Id.* at 1019. [↑](#footnote-ref-136)
137. *Id*. at 1019. [↑](#footnote-ref-137)
138. “(a) General rule. Except as provided in subsection (c), the Commonwealth Court shall have exclusive jurisdiction of appeals from final orders of government agencies in the following cases: (1) All appeals from Commonwealth agencies under Subchapter A of Chapter 7 of Title 2 (relating to judicial review of Commonwealth agency action) or otherwise and including appeals from the Board of Claims, the Environmental Hearing Board, *the Pennsylvania Public Utility Commission*, the Unemployment Compensation Board of Review and from any other Commonwealth agency having Statewide jurisdiction.” 42 Pa. C.S.A. § 763(a)(1) (emphasis added). [↑](#footnote-ref-138)
139. *Id*. at 1018. [↑](#footnote-ref-139)
140. *Id.*  [↑](#footnote-ref-140)
141. *Id.* at 1019 (citing *Fairview Water Co. v. Public Utility Commission*, 502 A.2d 162, 167 (1985)). [↑](#footnote-ref-141)
142. In this case, the municipal water authority of Chester County sought review of a decision by Public Utility Commission (PUC) that granted certificate of public convenience to a private water company to supply water service to the site of a new residential development. The municipal water authority argued that the PUC was required to hold a public hearing before issuing a CPC, which it did not. The Commonwealth Court, vacated the PUC order and the private water company appealed. The PA Supreme Court, held that: (1) PUC was not required to conduct hearing on every application for certificate of public convenience, and (2) PUC did not abuse discretion in declining to conduct hearing. [↑](#footnote-ref-142)
143. *Id*. (citing *Chester County Water Authority. v. Public Utility Comm’n*, 868 A.2d 384, 386 (2005)). [↑](#footnote-ref-143)
144. *Id.* at 1019 (emphasis in original). [↑](#footnote-ref-144)
145. *Id*. at 1020. [↑](#footnote-ref-145)
146. *Id*. [↑](#footnote-ref-146)
147. *Id.* at 1020. [↑](#footnote-ref-147)
148. *Id.* [↑](#footnote-ref-148)
149. *Id*. at 1019, n. 22 (noting “none of the cases cited [by condemnees] support the proposition that common pleas may review a public utility’s CPC in an eminent domain context”). [↑](#footnote-ref-149)
150. *Id.* at 1020. [↑](#footnote-ref-150)
151. *Id*. at 1021. [↑](#footnote-ref-151)
152. *Id.* at 1004, n.6. [↑](#footnote-ref-152)
153. *Id*. at 1021. [↑](#footnote-ref-153)
154. *Id*. at 1022. [↑](#footnote-ref-154)
155. *Id*. [↑](#footnote-ref-155)
156. *Id.* at 1022 (emphasis in original). [↑](#footnote-ref-156)
157. *Id*. (emphasis in original). [↑](#footnote-ref-157)
158. *Id*. (Noting that critics of *Kelo* argue that the Supreme Court majority “open[ed] the door” for virtually any kind of public purpose argument.) [↑](#footnote-ref-158)
159. *Id*. (holding that private property could be taken through eminent domain in furtherance of an economic development plan by a private entity). [↑](#footnote-ref-159)
160. *Id*. [↑](#footnote-ref-160)
161. *Id.* [↑](#footnote-ref-161)
162. *Id*. at 1023 (citing *Middletown Township* *v. Lands of Stone*, 939 A.2d 331 (Pa. 2007)). [↑](#footnote-ref-162)
163. *Id*. (emphasis added). [↑](#footnote-ref-163)
164. *Id*. (emphasis added). [↑](#footnote-ref-164)
165. *Id*. [↑](#footnote-ref-165)
166. *Id*. at 1024. [↑](#footnote-ref-166)
167. *Id*. [↑](#footnote-ref-167)
168. *Id*. (The Commonwealth Court considered public gains in opening “inaccessible swaths of land” that would otherwise “remain fallow and unproductive” to farming, and other industries, as well as contributions to the tax base and adding roads to the public road system of Pennsylvania). [↑](#footnote-ref-168)
169. *Id*. at 1025 (*O’Reilly,* 5 A.3d at 258 (citing *Middletown Township* v. *Lands of Stone*, 939 A.2d at 337)). [↑](#footnote-ref-169)
170. *Id*. [↑](#footnote-ref-170)
171. *Id.* [↑](#footnote-ref-171)
172. *Id*. [↑](#footnote-ref-172)
173. *Id*. at 1026. [↑](#footnote-ref-173)
174. *Id.* [↑](#footnote-ref-174)
175. *Id*. [↑](#footnote-ref-175)
176. *Id*. at 1027. [↑](#footnote-ref-176)
177. *Id.* [↑](#footnote-ref-177)
178. *Id.* [↑](#footnote-ref-178)
179. *Id*. [↑](#footnote-ref-179)
180. *Id*. [↑](#footnote-ref-180)
181. *Id.* [↑](#footnote-ref-181)
182. *Id.* at 1028. [↑](#footnote-ref-182)
183. *Id*. at 1029. [↑](#footnote-ref-183)
184. *Id*. [↑](#footnote-ref-184)
185. *Id*. at 1000. [↑](#footnote-ref-185)
186. *Id*. at 1029. [↑](#footnote-ref-186)
187. *Id*. at 1030. [↑](#footnote-ref-187)
188. *Id*. [↑](#footnote-ref-188)
189. *Id*. [↑](#footnote-ref-189)
190. *Id.* [↑](#footnote-ref-190)
191. *Id.* [↑](#footnote-ref-191)
192. *In Re: Condemnation by Sunoco Pipeline, L.P.*, 164 A.3d 485 (Table) (Pa. 2016). [↑](#footnote-ref-192)
193. U.S. Const. amend. V; Pa. Const. art. I, § 1; Pa. Const., art. X, § 4. [↑](#footnote-ref-193)
194. Pa. Const. art. I, § 1. [↑](#footnote-ref-194)
195. U.S. Const. amend. V; Pa. Const. art. I, §10. [↑](#footnote-ref-195)
196. Daniel B. Kelly, *The “Public Use Requirement in Eminent Domain Law: A Rationale Based on Secret Purchases and Private Influence*, 92 Cornell L. Rev. 1, 9 (2006). [↑](#footnote-ref-196)
197. *Sunoco I,* 143 A.3d. at 1020. [↑](#footnote-ref-197)
198. John Hurdle, *Ten Things You Need To Know About Mariner East 2*, https://stateimpact.npr.org/pennsylvania/2017/12/26/top-10-things-you-need-to-know-about-mariner-east-2/, (last visited November 30, 2018). [↑](#footnote-ref-198)
199. Jon Hurdle, *‘Regulatory Issues’ Delay Opening of Sunoco’s Mariner East 2 Pipeline*, State Impact Pennsylvania, https://stateimpact.npr.org/pennsylvania/2018/10/01/regulatory-issues-delay-opening-of-sunocos-mariner-east-2-pipeline/ (last visited November 30, 2018). [↑](#footnote-ref-199)
200. Sunoco Pipeline, L.P., Mariner East Projects-FAQ, Mariner Pipeline Facts, https://marinerpipelinefacts.com/wp-content/uploads/2018/11/sp\_ME\_FAQ\_7.pdf, (last visited November 30, 2018). [↑](#footnote-ref-200)
201. *Id.* [↑](#footnote-ref-201)
202. *Id.* [↑](#footnote-ref-202)
203. *Id.* [↑](#footnote-ref-203)
204. *Id*. [↑](#footnote-ref-204)
205. *Id.* [↑](#footnote-ref-205)
206. *Sunoco I* 143 A.3d at 1008, 1021. [↑](#footnote-ref-206)
207. *See* supra, n. 7, Sunoco Pipeline, L.P., Mariner East Projects-FAQ, Mariner Pipeline Facts. [↑](#footnote-ref-207)
208. *Id.* [↑](#footnote-ref-208)
209. *Id.* [↑](#footnote-ref-209)
210. “About a dozen eminent domain plaintiffs await a decision by the PA Supreme Court on whether it will hear the cases; attorneys are hoping the court will consolidate the cases.” Jon Hurdle, *Ten Things You Need to Know About Mariner East 2*, State Impact Pennsylvania (February 28, 2018), https://stateimpact.npr.org/pennsylvania/2017/12/26/top-10-things-you-need-to-know-about-mariner-east-2/. [↑](#footnote-ref-210)
211. Don Hopey, *More Lawsuits Flow Against Mariner East Construction*, Pittsburgh Post-Gazette (February 28, 2018), https://www.postgazette.com/news/environment/2018/02/28/Pipeline-lawsuits-flow-Sunoco-Marcellus-Utica-shale-gas/stories/201802280220 (reporting on lawsuits filed by lean Air Council, the Delaware Riverkeeper Network and Mountain Watershed Association). [↑](#footnote-ref-211)
212. Justin H. Werner, *Pa High Court Rejects Appeals in Pipelines Zoning Case*s, The Legal Intelligencer (September 20, 2018) (discussing the case of *Delaware Riverkeeper Network v. Sunoco Pipeline*, 2018 Pa. Commw. LEXIS 74, 2018 WL 943041, No. 952 C.D. 2017 (Pa. Commw. Ct. Feb. 20, 2018) (wherein Pennsylvania’s Commonwealth Court affirmed a trial court’s decision rejecting a challenge to construction of ME2 wherein a township enacted an ordinance in 2014 regulating location and setback requirements for liquid natural gas facilities, requiring conditional use permits not permitting the facilities in residential districts). [↑](#footnote-ref-212)
213. Frank L. Tamulonis & Stephen Zumbrum, *Pipeline Update: Pennsylvania Commonwealth Court Allows Environmental Rights Amendment Challenge to Sunoco Pipeline’s Mariner East Project to Proceed*, Blank Rome: Energy and Environmental Trends Watch Blog (May 8, 2018), https://energytrendswatch.com/2018/05/08/pipeline-update-pennsylvania-commonwealth-court-allows-environmental-rights-amendment-challenge-to-sunoco-pipelines-mariner-east-project-to-proceed/. [↑](#footnote-ref-213)
214. *Sunoco* I, 143 A.3d at 1017. [↑](#footnote-ref-214)
215. *Id.* [↑](#footnote-ref-215)
216. *Id.* at 1019 (quoting, *Chester Park Water Auth. v. Public Utility Comm’n,* 868 A.2d 384, 386 (2005) (emphasis in original); and (citing 66 Pa. C.S.A. § § 1103(a)). [↑](#footnote-ref-216)
217. 66 Pa. C.S.A. § 301. [↑](#footnote-ref-217)
218. A History of the Pennsylvania Public Utility Commission 1937-2012, PA Public Utility Commission, 2012. http://www.puc.pa.gov/about\_puc/history.aspx. [↑](#footnote-ref-218)
219. A History of the Pennsylvania Public Utility Commission, 1937-2012. [↑](#footnote-ref-219)
220. 66 Pa. C.S.A. § 301. [↑](#footnote-ref-220)
221. 15 Pa. C.S.A. § 501. [↑](#footnote-ref-221)
222. *Id*. §102. [↑](#footnote-ref-222)
223. *Id.* [↑](#footnote-ref-223)
224. *Id*. § 1101-1124. [↑](#footnote-ref-224)
225. Section 1102 of the Code is an enumeration of acts by a public utility that require a CPC. *Id* §1102. [↑](#footnote-ref-225)
226. 66 Pa.C.S.A. § 1102(a)(1)(i) [↑](#footnote-ref-226)
227. *Id*. [↑](#footnote-ref-227)
228. *Id*. § 1104 [↑](#footnote-ref-228)
229. *Id*. [↑](#footnote-ref-229)
230. *Id*. [↑](#footnote-ref-230)
231. *Id.* § [↑](#footnote-ref-231)
232. 15 Pa. C.S.A. § 1511. [↑](#footnote-ref-232)
233. *Id*. § 1103. [↑](#footnote-ref-233)
234. *Id.* § 1103(a) [↑](#footnote-ref-234)
235. 701(C) Natural Gas Certificate Application, In the Matter of Transcontinental Pipeline Company, LLC, (Docket No. CPC17-) (Mar. 27, 2017), http://northeastsupplyenhancement.com/wp-content/uploads/2017/05/7c-Natural-Gas-Certificate-Application.pdf. [↑](#footnote-ref-235)
236. 15 Pa. C.S.A. § 1103(a). [↑](#footnote-ref-236)
237. *Id*. § 1103(b). [↑](#footnote-ref-237)
238. 2 Pa. C.S.A. § 702. [↑](#footnote-ref-238)
239. The Commonwealth Court was created by the Pennsylvania Constitution of 1968. It is a specialty appellate court that primarily deals with matters involving state and local governments and regulatory agencies, such as the PUC. Learn: Commonwealth Court, The Unified Judicial District of Pennsylvania, http://www.pacourts.us/learn/ (last visited Nov. 30, 2018). [↑](#footnote-ref-239)
240. 42 Pa. C.S.A. § 763(a)(1). [↑](#footnote-ref-240)
241. 210 Pa. Code Rule 1101. [↑](#footnote-ref-241)
242. 66 Pa. C.S.A*.* § 1104. [↑](#footnote-ref-242)
243. 26 Pa. C.S. §§ 101- 1106. [↑](#footnote-ref-243)
244. 66 Pa. C.S.A. §301(a). [↑](#footnote-ref-244)
245. A History of the Pennsylvania Public Utility Commission 1937-2012, PA Public Utility Commission, 2012. http://www.puc.pa.gov/about\_puc/history.aspx. [↑](#footnote-ref-245)
246. *Id.* [↑](#footnote-ref-246)
247. *Id.* [↑](#footnote-ref-247)
248. *Id.* [↑](#footnote-ref-248)
249. *Id.* [↑](#footnote-ref-249)
250. 66 Pa. C.S.A. §301. [↑](#footnote-ref-250)
251. *Id.* [↑](#footnote-ref-251)
252. *Id.* § 301(a). [↑](#footnote-ref-252)
253. *Id.* [↑](#footnote-ref-253)
254. *Id*. § 301 (b). [↑](#footnote-ref-254)
255. *Id.* § 301 (c). [↑](#footnote-ref-255)
256. *Id.* § 304(a). [↑](#footnote-ref-256)
257. *Id*. § 304(b) [↑](#footnote-ref-257)
258. *Id.* [↑](#footnote-ref-258)
259. *Id.* [↑](#footnote-ref-259)
260. 66 Pa. C.S.A. § 316 (emphasis added). [↑](#footnote-ref-260)
261. The Commonwealth Court has exclusive jurisdiction over appeals from the PUC pursuant to 2 Pa. C.S.A. § 702. [↑](#footnote-ref-261)
262. 66 Pa. C.S.A. §102. [↑](#footnote-ref-262)
263. 15 Pa. C.S.A. §1103. [↑](#footnote-ref-263)
264. *Id.* § 1511 (Committee Comment, 1990). [↑](#footnote-ref-264)
265. *Id.* §1103 (emphasis added). [↑](#footnote-ref-265)
266. *Id*. [↑](#footnote-ref-266)
267. *Id.* [↑](#footnote-ref-267)
268. *Id*. § 1511(a). [↑](#footnote-ref-268)
269. *Id.* § 1511(a)(2,3). [↑](#footnote-ref-269)
270. *Id*. [↑](#footnote-ref-270)
271. 66 Pa. C.S.A. § 102. [↑](#footnote-ref-271)
272. 66 Pa. C.S.A. § 1103. [↑](#footnote-ref-272)
273. 15 Pa. C.S.A. § 1511 (emphasis added). [↑](#footnote-ref-273)
274. 15 Pa. C.S.A. § 1511(c). [↑](#footnote-ref-274)
275. *Id*. [↑](#footnote-ref-275)
276. *Id*. [↑](#footnote-ref-276)
277. *Id*. [↑](#footnote-ref-277)
278. *Id*. § 1511(a). [↑](#footnote-ref-278)
279. *Id*. § 1103. [↑](#footnote-ref-279)
280. *Id.* § 1511(c). [↑](#footnote-ref-280)
281. 15 Pa. C.S.A. § 1511(c) requires PUC approval for eminent domain power within PA for intrastate public utilities. 15 U.S.C. § 717(f)(h), grants the right of eminent domain for construction of pipelines at the federal level through FERC.. [↑](#footnote-ref-281)
282. *Id*. [↑](#footnote-ref-282)
283. *Id*. [↑](#footnote-ref-283)
284. 42 Pa. C.S.A. § 763(a)(1). [↑](#footnote-ref-284)
285. *Sunoco I,* 143 A.3d at 1018. [↑](#footnote-ref-285)
286. 26 Pa. C.S. §§ 101- 1106. [↑](#footnote-ref-286)
287. *Id.* § 102. [↑](#footnote-ref-287)
288. *Id.* §§ 301-310. [↑](#footnote-ref-288)
289. *Id.* § 301. [↑](#footnote-ref-289)
290. *Id.* § 301(a). [↑](#footnote-ref-290)
291. *Id.* § 301(b). [↑](#footnote-ref-291)
292. *Id*. § 302(a)(1). [↑](#footnote-ref-292)
293. *Id.* § 302(a)(2). [↑](#footnote-ref-293)
294. *Id*. § 304(a)(1). [↑](#footnote-ref-294)
295. *Id*. [↑](#footnote-ref-295)
296. *Id*. § 303(a). [↑](#footnote-ref-296)
297. *Id*. § 305(a). [↑](#footnote-ref-297)
298. *Id*. § 305(c). [↑](#footnote-ref-298)
299. *Id*. § 305(c). [↑](#footnote-ref-299)
300. *Id*. § 305(c)(13). [↑](#footnote-ref-300)
301. *Id*. § 306. [↑](#footnote-ref-301)
302. *Id*. § 306(d). [↑](#footnote-ref-302)
303. *Id.* § 306(f). [↑](#footnote-ref-303)
304. *Id*. [↑](#footnote-ref-304)
305. *Sunoco I,* 143 A.3d at 1011. [↑](#footnote-ref-305)
306. *Middletown Township v. Lands of Stone*, 993 A.2d at 340. [↑](#footnote-ref-306)
307. *Id*. [↑](#footnote-ref-307)
308. *Appeal of Lance*, 55 Pa. 16 (1867) (stating that if a taking were not for the public interest the exercise of eminent domain power would be confiscation and usurpation). [↑](#footnote-ref-308)
309. This case involved a right of way for a railroad over private property. *Id.* at 16. The railroad company exceeded the scope of its twenty-foot right of way in constructing additional structures and mounding debris. *Id*. The railroad subsequently became disused and the original owner sought to reclaim the land. *Id.* [↑](#footnote-ref-309)
310. *Id.* at 16-17 (strictly construing the purpose and scope of a twenty-foot easement for a railroad over private property). [↑](#footnote-ref-310)
311. *A History of the Pennsylvania Public Utility Commission*. Pennsylvania Public Utility Commission, http://www.puc.state.pa.us/about\_puc/history.aspx (last visited Nov. 9, 2018). [↑](#footnote-ref-311)
312. The case regarded the Public Service Commission’s grant of a Certificate of Public Convenience for the operation of two autobuses; it was opposed by a street railway company, which asserted that it already provided adequate service, thus the autobus was not necessary for the public. *Pottsville Union Traction Co.*, 67 Pa. Super. at 302. [↑](#footnote-ref-312)
313. *Id.*  [↑](#footnote-ref-313)
314. *Id.* at 301 (holding the evidence in this case showed that there was a need for additional transportation). [↑](#footnote-ref-314)
315. *Id*. at 302. [↑](#footnote-ref-315)
316. *Winger v. Aires*, 39 A.2d 521 (1952). [↑](#footnote-ref-316)
317. In this case, a school district sought to condemn a 55-acre farm for the construction of a new school building. No definite plans had been made to use the whole property and there was evidence that the school district intended to obtain the whole property, build on a portion and sell off the rest of the land at a profit to the school district. *Winger*, 371 Pa. at 245. [↑](#footnote-ref-317)
318. *Id*. at 244. [↑](#footnote-ref-318)
319. *Id*. at 247. [↑](#footnote-ref-319)
320. *Id.* [↑](#footnote-ref-320)
321. *In Re: Bruce Ave.*, 266 A.2d 96 (1970). [↑](#footnote-ref-321)
322. *Id*. at 99. [↑](#footnote-ref-322)
323. *Id.* (*citation omitted).*  [↑](#footnote-ref-323)
324. *Id*. at 97. [↑](#footnote-ref-324)
325. *Id*. at 99. [↑](#footnote-ref-325)
326. *Fairview Water Co. v. Pub. Utility Comm’n.*, 502 A.2d 162 (Pa. 1985). [↑](#footnote-ref-326)
327. *Id.* at 164. [↑](#footnote-ref-327)
328. *Id.* [↑](#footnote-ref-328)
329. *Id*. at 165. [↑](#footnote-ref-329)
330. *Id.* at 167 (holding that the PUC *does not have jurisdiction to determine the scope and validity of an easement*. Once there has been a determination by the PUC that the proposed service is necessary and proper, the issues of scope and validity and damages must be determined by a Court of Common Pleas exercising equity jurisdiction. To hold otherwise would result in granting a power to the PUC which the legislature has decided in its wisdom to withhold) (emphasis added). [↑](#footnote-ref-330)
331. *Id.* [↑](#footnote-ref-331)
332. *Id.* at 166. [↑](#footnote-ref-332)
333. *Id.* [↑](#footnote-ref-333)
334. In this case a municipality sought review of a decision by the PUC to grant a CPC to a private water company to supply water to a new residential development. The municipality sought to thwart the private company’s business to its own favor. *Chester County Water Authority*, 868 A.2d*.* at 385-386. [↑](#footnote-ref-334)
335. *Id*. at 392. [↑](#footnote-ref-335)
336. *Id*. at 391. [↑](#footnote-ref-336)
337. *Id*. at 392. [↑](#footnote-ref-337)
338. A township filed a Declaration of Taking to preserve the land of a family farm for recreational purposes, seeking to protect the land from development. The farm owner appealed the taking. 939 A.2d. at 333. [↑](#footnote-ref-338)
339. *Id*. at 337; In Re: Bruce Ave., 438 Pa. 498, 505 (1970) (emphasis added). [↑](#footnote-ref-339)
340. *Middletown*, 939 A.2d at 338 (internal citation omitted). [↑](#footnote-ref-340)
341. *Winger*, 371 Pa. at 247. [↑](#footnote-ref-341)
342. *Middletown*, 939 A.2d at 339. [↑](#footnote-ref-342)
343. *In Re: Private Road for Benefit of O’Reilly,* 5 A.3d 246 (Pa. 2010). The issue in this case was whether the Private Road Act permitted the owner of a landlocked property to petition the Court of Common Pleas to appoint a board of reviewers to assess whether an easement over private land was necessary to connect the landlocked property with the nearest public roadway. If a need was determined, the road would be built over the objections of the non-landlocked property in exchange for damages. *Id*. at 248. [↑](#footnote-ref-343)
344. *Id*. at 258. [↑](#footnote-ref-344)
345. *Id.* The Commonwealth Court’s public benefit rationale was quoted in the case as follows: “Although the private property owner who petitioned for the private road certainly gains from the opening of the road, the public gains because otherwise inaccessible swaths of land in Pennsylvania would remain fallow and unproductive, whether to farm, timber or log for residences, making that land virtually worthless and not contributing to commerce or the tax base of this Commonwealth. All of this, plus the fact that private roads are considered part of the road system of Pennsylvania, equate with the conclusion that a public purpose is served by the Private Road Act provisions that allow for the taking of property of another for a private road to give access to landlocked property.” [↑](#footnote-ref-345)
346. *Id*. [↑](#footnote-ref-346)
347. *Id.* at 259. [↑](#footnote-ref-347)
348. *Sunoco I*, 143 A.3d at 1028 (Brobson, J., dissenting). [↑](#footnote-ref-348)
349. *Id*. [↑](#footnote-ref-349)
350. *Id*. at 1018. [↑](#footnote-ref-350)
351. *Id*. at 1014 (citing the PUC Order granting the CPC, which was attached to the Declaration of Taking) [↑](#footnote-ref-351)
352. *Id* at 1020. [↑](#footnote-ref-352)
353. *Id*. at 1014. [↑](#footnote-ref-353)
354. *Id*. at 1016. [↑](#footnote-ref-354)
355. *Id*. at 1017. [↑](#footnote-ref-355)
356. *Id*. at 1018. [↑](#footnote-ref-356)
357. *Sunoco I*, 143 A 3d. at 1019, n. 22. [↑](#footnote-ref-357)
358. Dating back to 1866, the PA Supreme Court has required strict scrutiny in eminent domain takings. In *Lance’s Appeal*, 55 Pa. 16, 25-26, the PA Supreme Court held that “The exercise of the right of eminent domain, whether directly by the state or its authorized grantee, is necessarily a derogation of private right, and the rule in that case is that the authority is to be strictly construed[.].” [↑](#footnote-ref-358)
359. *O’Reilly*, 5 A.3d at 258. [↑](#footnote-ref-359)
360. *See* “History” section above, detailing the list of cases that use this standard. [↑](#footnote-ref-360)
361. *O’Reilly*, 5 A.3d at 258. [↑](#footnote-ref-361)
362. *Id*. at 1019 (citing the PUC Order of July 24, 2014 stating the public benefit as “ensuring that Pennsylvania’s citizens enjoy access to propane heating fuel”). [↑](#footnote-ref-362)
363. *Id*. [↑](#footnote-ref-363)
364. *See supra*, note 344 (explaining the rationale of the Commonwealth Court in *O’Reilly).*  [↑](#footnote-ref-364)
365. *O’Reilly*, 5 A. 3d at 258-259. [↑](#footnote-ref-365)
366. *Id.*, 143 A.3d at 1027 (Brobson, J., dissenting). [↑](#footnote-ref-366)
367. *Id*. at 1029 (McCullough, J., dissenting). [↑](#footnote-ref-367)
368. *Sunoco* *I*, 143 A. 3d at 1019. [↑](#footnote-ref-368)
369. *Id.* at 1018. [↑](#footnote-ref-369)
370. 66 Pa. C.S.A. § 1103(a); 15 Pa. C.S.A. § 1103(a). [↑](#footnote-ref-370)
371. This is unless there is some defect in the procedural steps defined by the Eminent Domain Code, such as a defect in the Declaration of Taking or the notice to the condemnee. Even then, the Eminent Domain Code states that the “court may allow amendment or direct the filing of a more specific declaration of taking.” 26 Pa.C.S.A. § 306(f)(3). [↑](#footnote-ref-371)
372. 42 Pa. C.S.A. § 763(a)(1) (emphasis added). [↑](#footnote-ref-372)
373. *Id*. [↑](#footnote-ref-373)
374. *Sunoco I*, 143 A.3d at 1019. [↑](#footnote-ref-374)
375. *Id*. [↑](#footnote-ref-375)
376. 26 Pa. C.S.A. § 304(a). [↑](#footnote-ref-376)
377. *Sunoco I*, 143 A.3d at 1019. [↑](#footnote-ref-377)
378. 26 Pa. C.S.A. § 306(a)(3)(i) (stating condemnees can challenge the “power or right of the condemnor to appropriate the condemned property unless it has been previously adjudicated.” The power/right of the condemner comes from the PUC Order). [↑](#footnote-ref-378)
379. The Code and the BCL both contain public use requirements. [↑](#footnote-ref-379)
380. Pa Const., art. I, §10, art. X § 4 specifically protect private property rights. [↑](#footnote-ref-380)
381. Alexander F. Beale, *Get Off My Lawn! A Critical Analysis of In Re Sunoco Pipeline and Its Impact on Eminent Domain in Pennsylvania*, 27 Widener L.Rev. 287, 299-300 (2018) (noting the fact that the standard used by the PUC is not discussed by the majority and is likely not as stringent as that of the PA Supreme Court). [↑](#footnote-ref-381)
382. *Sunoco I*, 143 A.3d at 1017 (citing PUC’s Amicus Brief and concerns over limiting jurisdiction). [↑](#footnote-ref-382)
383. [↑](#footnote-ref-383)
384. *As Decision on Mariner East Project Looms, Pennsylvania Public Utilities Commission Ties to Project Owner Sunoco and Other Fossil Fuel Interests Present Possible Conflicts.* Public Accountability Initiative (June 2018), https://public-accountability.org/report/as-decision-on-mariner-east-project-looms-pennsylvania-public-utilities-commission-ties-to-project-owner-sunoco-other-fossil-fuel-interests-present-possible-conflicts/ (reporting that two commissioners former law firms either currently or previously represented Sunoco before the PUC; one commissioner who was a former oil and gas lobbyist; another commissioner who was a former executive at a major fracking corporation; ultimately concluding that the PUC is currently dominated by commissioners with ties to the fracking industry). [↑](#footnote-ref-384)
385. *In Re: Condemnation by Sunoco Pipeline, L.P.*, No. 220 C.D., 2016 WL 2062219 (Pa. Cmwlth. May 15, 2017), *petition for allowance of appeal denied,* 186 A.3d 941(Table) (Pa. 2018) (Appeal of Stephen Gerhart and Ellen S. Gerhart); *In Re: Condemnation by Sunoco Pipeline, L.P.*, No. 565 C.D., 2017 WL 2291693 (Pa. Cmwlth. May 24, 2017) *petition for allowance of appeal denied,* 179 A.3d 453 (Table) (Pa. 2018) (Appeal of Homes for America, Inc.); *In Re: Condemnation by Sunoco Pipeline, L.P.*, No. 1306 C.D., 2016 WL 2303666 (Pa. Cmwlth. May 26, 2017, *petition for allowance of appeal denied*, 186 A.3d 941(Table) (Pa. 2018) (Appeal of Rolfe W. Blume and Doris J. Blume); and *In Re: Condemnation by Sunoco Pipeline, L.P.*, No. 2030 C.D., 2017 WL 2805860 (Pa. Cmwlth. June 29, 2017) *petition for allowance of appeal denied,* 179 A.3d 453 (Table)(Pa. 2018) (Appeal of Patricia A. Perkins and Thomas V. Perkins) (All of these appeals to the Commonwealth Court were denied). [↑](#footnote-ref-385)
386. 15 Pa. C.S.A. § 1103(a). [↑](#footnote-ref-386)
387. *Sunoco I*, 143 A.3d at1029 (McCullough, J., dissenting). [↑](#footnote-ref-387)
388. 26 Pa. C.S.A*.* § 102. [↑](#footnote-ref-388)
389. *O’Reilly*, 5 A. 3d at 258 (Pa. 2010). [↑](#footnote-ref-389)
390. *See supra*, note 197 regarding the interstate plan for ME2. [↑](#footnote-ref-390)
391. *Sunoco I*, 143 A.3d at 1029 (McCullough, J., dissenting). [↑](#footnote-ref-391)
392. See this link for a map of the off-loading points in PA: https://marinerpipelinefacts.com/wp-content/uploads/2018/01/SP-mariner-east-pipeline-map-010218.pdf [↑](#footnote-ref-392)
393. *See supra*, note 388, listing the other cases that challenged eminent domain takings by Sunoco following the ruling in *Sunoco I.*  [↑](#footnote-ref-393)