

2016 WL 3755774

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**Commonwealth** Court of Pennsylvania.

In re: Condemnation by **SUNOCO PIPELINE**,  
L.P. of Permanent and Temporary Rights of  
Way for the Transportation of Ethane, Propane,  
Liquid Petroleum Gas, and other Petroleum  
Products in the Township of North Middleton,  
Cumberland County, Pennsylvania, over the  
Lands of R. Scott Martin and Pamela S. Martin.  
Appeal of: R. Scott Martin and Pamela S. Martin.

In re: Condemnation by **Sunoco** Pipeline, L.P.  
of Permanent and Temporary Rights of Way  
for the Transportation of Ethane, Propane,  
Liquid Petroleum Gas, and other Petroleum  
Products in the Township of North Middleton,  
Cumberland County, Pennsylvania, over the Lands  
of Douglas M. Fitzgerald and Lyndsey M. Fitzgerald.  
Appeal of: Douglas M. Fitzgerald  
and Lyndsey M. Fitzgerald.

In re: Condemnation by **Sunoco** Pipeline, L.P.  
of Permanent and Temporary Rights of Way  
for the Transportation of Ethane, Propane,  
Liquid Petroleum Gas, and other Petroleum  
Products in the Township of North Middleton,  
Cumberland County, Pennsylvania, over the  
Lands of Harvey A. Nickey and Anna M. Nickey.  
Appeal of: Harvey A. Nickey and Anna M. Nickey.

Nos. 1979 C.D.2015, 1980 C.D.2015, 1981 C.D.2015.

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Argued March 9, 2016.

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Decided July 14, 2016.

**Synopsis**

**Background:** Pipeline service operator sought to condemn property, and condemnees filed objections. The Court of Common Pleas, Cumberland County, overruled the objections. Condemnees appealed.

**Holdings:** The **Commonwealth** Court, Nos. 1979 C.D. 2015, 1980 C.D. 2015, 1981 C.D. 2015, Cohn Jubelirer, J., held that:

- [1] collateral estoppel did not bar action;
- [2] operator was public utility corporation empowered to exercise eminent domain;
- [3] operator had power to condemn property for construction of pipeline; and
- [4] there was no basis for the Court of Common Pleas to review the Public Utility Commission's (PUC) determination of public need.

Affirmed.

Brobson, J., filed dissenting opinion.

McCullough, J., filed dissenting opinion.



the withdrawal of such objection on the record on November 6, 2015.<sup>2</sup> All remaining Preliminary Objections at Control No. 15091569 are **OVERRULED**.

It is **FURTHER ORDERED** and **DECREED** that this matter is **STAYED** pending appeal.

Finally, it is **DECREED**:

The Court expressly determines, pursuant to the provisions of 42 Pa. C.S. § 702(b), that this Order involves controlling questions of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from this Order may materially advance the ultimate termination of the matter.

**BY THE COURT:**

  
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Carpenter, J.

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<sup>2</sup> NT. 11/6/2015 at 11:9-21.