

Natural Gas Pipeline/Natural Gas Act: Federal District Court Addresses Condemnation Issue



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

04/28/2020

The United States District Court (Eastern District Pennsylvania) (“Court”) addressed in an April 23rd memorandum opinion an issue arising out of a natural gas pipeline’s proposed condemnation of certain property. See *Adelphia Gateway, LLC v. Temporary Easement for 0.065 Acres in City of Chester, Delaware County, Pennsylvania*, 2020 WL 1955594.

The Court addressed whether the pipeline should be granted a partial summary judgment on:

- the issue of its substantive right to condemn the rights-of-way
- the right to obtain a preliminary injunction providing possession of the rights-of-way

Adelphia Gateway, LLC obtained a certificate of public convenience and necessity for a project to purchase, construct and operate proposed natural gas pipelines. The facilities are to be constructed and operated in Delaware and Pennsylvania.

The FERC Order authorized Adelphia to construct and operate two 16-inch diameter laterals, two compressor stations, five meter and regulator stations, seven blowdown assembly valves, two mainline valves, two tap valves, and four pig launcher and receiver facilities. Also authorized was Adelphia’s request to repurpose an existing pipeline system.

To construct the pipeline Adelphia required certain rights-of-way. These are stated to be within the scope of the FERC Order.

The company unsuccessfully attempted to purchase each of the rights-of-way for at least \$3,000 a piece from defendants. They rejected or otherwise did not accept the company’s offers. Adelphia, therefore, sought an order of condemnation from the Court on the basis that it had the substantive right to condemn the rights-of-way as well as a preliminary injunction granting possession as requested.

Adelphia filed a complaint in the Court and served notice of condemnation on the defendants. The Court indicates that an answer was not filed. As a result, the defendants were deemed to have waived all objections and defenses to the company’s condemnation of the rights-of-way at issue. Further, no opposition to a motion for partial summary judgment on the issue of substantive right to condemn the rights-of-way was filed.

The Court addressed the motion for summary judgment. It first noted that the company meets the three requirements under the Natural Gas Act (“NGA”) to acquire property by eminent domain. The NGA provides:

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts.

The Court stated that Adelphia could acquire the property by eminent domain under Section 717f(h) of the NGA because:

1. It holds a certificate of public convenience and necessity from the FERC
2. Is unable to acquire the right-of-way through negotiation with the landowner
3. The amount claimed by the owner of the property exceeds \$3,000

Each of these requirements were deemed to be satisfied.

Consequently, the Court then addressed whether a preliminary injunction should be granted. It considered whether Adelphia demonstrated:

1. Reasonable probability of success on the merits
2. It will suffer irreparable injury if the preliminary injunction is denied
3. The landowners will not suffer greater harm
4. Granting the preliminary injunction is in the public interest

The Court found that each of these criteria were satisfied.

Adelphia, therefore, asked the Court to include an enforcement mechanism to ensure compliance with the Order granting access to and possession of the rights-of-way. It argued that the Court had the power to enter an Order designed to coerce compliance with its terms and that the Third Circuit Court of Appeals had included such enforcement mechanisms when granted preliminary injunctions in pipeline-related condemnations.

The Court agreed, stating that:

Given the Court's inherent power and the unopposed nature of Adelphia's request, the Court will include an enforcement mechanism in its accompanying Order.

A copy of the decision can be downloaded [here](#).