

Bond Case Briefs

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Reed Smith: Pa. Gas Utility May Use Eminent Domain to Supply Private Power Plant.

A Lycoming County, Pennsylvania, judge recently authorized a natural gas public utility to use its eminent domain power in condemning easements for the construction and maintenance of a pipeline to supply gas to a private power plant. The owners of the property subject to the easements had protested the condemnation, arguing that the taking was for private instead of public use. The court considered the extent of the public and private contacts with the project, as well as the potential public benefit, and ultimately determined that the condemnation sufficiently fell within the public utility exemption to Pennsylvania's Property Rights Protection Act (PRPA).

After a court order approving the condemnation requested by UGI Penn Natural Gas, Inc. (UGI) in late August, the property owners filed an Answer and Action in Equity, challenging the condemnation on the grounds of (1) inadequate bond, (2) taking more than is required for the purpose intended, and (3) condemning for a private enterprise as opposed to a public use. In addressing the property owners' objections, the court focused primarily on the issue of whether condemnation is appropriate where the pipeline at issue will be constructed to service a private business. The court acknowledged that the PRPA prohibits the use of eminent domain power to take private property for use in private enterprise, but found that as a regulated public utility, UGI falls within a limited class of condemners "permitted to use the eminent domain power to provide public services in tandem with benefits to a private enterprise."

The court emphasized the limited private contacts with the project, pointing out that UGI was the "sole owner of the easements and the operator of the pipeline," and stating the private power plant will not "own, operate or control the condemned property in any way." The court also characterized the condemnation as incidental to the services the gas utility is authorized to provide, indicating UGI is the chosen supplier of natural gas to customers at the location of the power plant. Finally, the court acknowledged the public benefit of the proposed pipeline, noting the power plant will use the natural gas it receives "to generate enough energy to power approximately 1 million homes."

Judge Richard Gray issued the decision on November 7, 2014. The case is *In re Condemnation of Temporary Construction Easement Across Lands of Curtis R. Lauchle and Terri L. Lauchle*, case numbers 14-02219, 14-01790, and 14-01791, in the Lycoming County Court of Common Pleas.

Last Updated: November 22 2014

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