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Pennsylvania Law Applied in NGA Eminent Domain Proceeding

A recent ruling from a divided three (3) judge panel for the United States Court of Appeals for the Third Circuit rejected the notion that Pennsylvania law was not applicable in determining just compensation in eminent domain proceedings involving private entities under the Natural Gas Act (“NGA”), 15 U.S.C. §§ 717-717z. In 1938, Congress enacted the NGA, which allows gas companies to acquire private property by eminent domain to construct, operate, and maintain natural gas pipelines once a Federal Energy Regulatory Commission certificate of public convenience and necessity is obtained and an attempt to purchase the property is unsuccessful.

In *Tenn. Gas Pipeline Co., LLC v. Permanent Easement for 7.053 Acres*, No. 17-3700, 2019 U.S. App. LEXIS 21901 (3d Cir. July 23, 2019), Tennessee Gas Pipeline Co., LLC (“Tennessee Gas”) sought to obtain an easement over a 975-acre tract of land situated in Pike County, Pennsylvania, owned by King Arthur Estates LP to construct a natural gas pipeline; however, the parties were unable to agree on compensation for the condemnation. The District Court found that, although eminent domain proceedings under the NGA are required to comply with state law, it is federal law that determines just compensation. This interpretation resulted in consequential damages of approximately one million dollars being at issue on appeal.

The question presented to the Third Circuit on appeal was “whether state law or federal law governs the substantive determination of just compensation in condemnation actions brought by private entities under the NGA,” which is silent regarding the applicability of state law in condemnation proceedings. The Court ultimately sided with the landowner opting to incorporate state law as the federal standard, rather than to fashion a uniform federal rule, as federal law did not supply a rule on this precise issue.

In determining whether to incorporate Pennsylvania law, the Court relied on the factors set forth in *United States v. Kimbell Foods*, 440 U.S. 715 (1979), which reflects a presumption in favor of state law, being whether: “(i) fashioning a nationally uniform rule is unnecessary, (ii) incorporating state law does not frustrate the NGA’s objectives, and (iii) application of a uniform federal rule would upset commercial relationships.” Here, the Court determined that each of the foregoing factors weighed in favor of incorporating state law as the federal standard, rationalizing that since the United States was not a regular party to NGA condemnation proceedings the federal interest in a uniform rule was relatively weak.

Judge Chagares penned the dissent arguing *United States v. Miller*, 317 U.S. 369 (1943), which sets forth that just compensation, generally, is the fair market value on the date of appropriation, should apply as Tennessee Gas’s ability to condemn the subject property was an extension of the federal government’s eminent domain power.

For a copy of the *Tenn. Gas* decision or information regarding eminent domain proceedings, please contact the Oil and Gas Group at Dickie, McCamey & Chilcote, P.C.



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