

Rover Pipeline Files Mass Condemnation Actions in Ohio



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On February 2, 2017, the Federal Energy Regulatory Commission (“FERC”) issued a Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act approving the Rover Pipeline Project and enabling the project sponsor, Rover Pipeline LLC (“Rover”), to begin filing condemnation actions against landowners in the pipeline route. More than two years ago, Rover, a subsidiary of Energy Transfer Partners, L.P., publicly announced its intent to build a 713 miles interstate pipeline system spanning over four states, including Ohio.

The Rover Pipeline system, as proposed, consists of up to two parallel 42-inch high-pressure lines capable of transporting 3.25 billion cubic feet of natural gas per day from the Utica Shale basin in Ohio, West Virginia and Pennsylvania to market in Ontario, Canada. In order to build this project within the next year, however, Rover has to fell trees on the pipeline route before March 31, 2017, in order to avoid harming two protected species of bats along the pipeline route. Unless Rover is able to do so, construction of the pipeline project would be delayed for an additional year.

Issuance of the Section 7(c) Certificate proved a critical step in this process since it is the issuance of a Section 7(c) Certificate that enables a pipeline company to begin condemning landowners who are unwilling to sign an easement voluntarily. Not surprisingly, on February 3, 2017, the day after the Section 7(c) Certificate was issued, Rover filed three mass condemnation actions in Ohio federal courts naming nearly a thousand different defendants. These actions, two in the Northern District of Ohio and one in the Southern District of Ohio, not only seek to obtain a permanent easement over the property in question, they also seek immediate possession of the property in order for Rover to meet its tree clearing deadline.

While Rover has received the Section 7(c) Certificate which enables the condemnation of the landowner’s property, the battle for compensation is not over. These defendants, many of whom balked at the low offers made by Rover, still have an opportunity to obtain additional compensation by either forcing Rover to settle in order to meet its March 31 tree-clearing deadline or by fighting Rover over the issue of adequate compensation and damages in court.

While Rover has refused to pay the normal compensation typically offered by companies in Ohio for pipeline easements, a failure to obtain immediate access to the property may still bring Rover back to the bargaining table. For Rover, a company with hundreds of unsigned landowners remaining in Ohio alone, failing to obtain immediate access in any of these three cases will almost certainly result in a delay of up to a year in the pipeline construction schedule, including a resulting financial loss. As the current hearing dates for Rover’s motions for immediate possession fall, quite literally, the day before Rover claims it must begin clearing trees, any delay in obtaining these orders could quickly bring Rover back to the settlement table with larger offers.

Even if Rover is not willing to pay to avoid a delay, landowners can still litigate over the issue of damages. It is axiomatic under the American Legal System that property cannot be taken without providing just compensation determined by a court. In other words, Rover cannot tell landowners what they have to take, only a court can make that determination. Valuation hearings, however, are one of the most complicated aspects of litigation involving not only competing expert opinions on valuation but significant evidentiary issues as well. It is important for the landowner to have counsel experienced in this area of litigation.

Regardless of how Ohio landowners decide to proceed, it is imperative that they make their determination immediately. Due to the expedited schedule and complexity of this litigation, landowners who have been named in these actions have days, not weeks, to begin defending their rights. Any landowners who fail to do so will face what Rover has been threatening all along, taking the amount of money Rover thinks is “just compensation” for Rover’s pipeline easement. Thus, it is critical that landowners seek counsel from law firms with not only experienced oil and gas attorneys but also lawyers with expertise in handling eminent domain cases, such as the Rover Pipeline litigation.

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