

Judge Upholds Pennsylvania PUC Decision Granting Eminent Domain for Pipeline Facility

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Federal law does not preempt a liquids-pipeline company's right to exercise eminent domain under Pennsylvania law. A Cumberland County, Pennsylvania judge recently held that Sunoco Logistics L.P. may act as a public utility, granting Sunoco the power of eminent domain under state law. The non-precedential decision supports an earlier ruling by the Pennsylvania Public Utility Commission (PA PUC), which held Sunoco's Mariner East pipeline to be a public utility project able to bypass local zoning restrictions. The decision signals that a pipeline facility that is both interstate and intrastate is within the definition of "public utility corporation" under Pennsylvania law.

Rejecting the landowners' argument that the federal Natural Gas Act preempts state eminent domain power, Judge Edward Guido determined that the Mariner East II Pipeline would provide intrastate services subjecting it to regulation by the PA PUC. Judge Guido explained that the Mariner East II will provide "both loading and offloading of ethane, propane, liquid petroleum gas and other petroleum products within the Commonwealth," providing an "intrastate service" regulated by the PA PUC. As such, Mariner East II, which also possesses an interstate service, may be regulated by both the Federal Energy Regulatory Commission and the PA PUC. Simply stated, "federal preemption is not at issue."

The case is ***In re: Condemnation by Sunoco Pipeline L.P.***, Docket Nos. 2015-4052, 4053, 4055 (Cumberland Cnty. Ct. Common Pleas September 29, 2015)

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