

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TEXAS EASTERN TRANSMISSION, LP	:	
	:	Case No.
Plaintiff,	:	
	:	
v.	:	Judge
	:	
3.2 ACRES ± PERMANENT EASEMENT,	:	Magistrate Judge
AND 4.2 ACRES ± TEMPORARY EASEMENT :	:	
OF LAND IN COLERAIN TOWNSHIP,	:	
BELMONT COUNTY, OHIO, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**PLAINTIFF TEXAS EASTERN TRANSMISSION, LP'S
MOTION FOR CONDEMNATION ORDER, AND TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION FOR
IMMEDIATE POSSESSION**

Plaintiff Texas Eastern Transmission, LP (“Texas Eastern”), by and through counsel, moves the Court, pursuant to the Natural Gas Act, 15 U.S.C. § 717 *et seq.* and Rule 65(a) and (b) of the Federal Rules of Civil Procedure, for (i) an order that Texas Eastern is authorized to condemn the property interests identified in Plaintiff’s Complaint for Condemnation and Immediate Possession of Pipeline Easements, and (ii) a temporary restraining order and preliminary injunction for immediate possession of such property interests. Upon the granting of immediate possession and pursuant to Federal Rule of Civil Procedure 65(c), Texas Eastern shall provide security through a bond as ordered by the Court. A memorandum in support of this motion is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Texas Eastern has approval from the Federal Energy Regulatory Commission (“FERC”) to construct a natural gas pipeline and related facilities known as the OPEN Project, and to put it in service by November 1, 2015. Under the Natural Gas Act, 15 U.S.C. § 717 *et seq.* (“NGA”), Texas Eastern has the authority to condemn certain properties in Belmont, Carroll, Columbiana, Jefferson and Monroe Counties that are affected by the pipeline project. The OPEN Project is expected to bring some \$426 million in total economic output to the five county area.

Texas Eastern’s request for immediate possession is extremely urgent due to several tight deadlines that it must meet in order to comply with the authority granted to it by FERC and to put the OPEN Project in-service by November 1, 2015. Specifically, Texas Eastern must have access to Defendant-Properties *by January 12, 2015* in order commence tree-clearing activities. Such tree-clearing activities are the first in successive deadlines for the construction of the pipeline, which construction will ultimately end with the transportation of natural gas through the pipeline no later than November 1, 2015.

II. BACKGROUND FACTS

A. **Texas Eastern is an interstate natural gas pipeline company regulated by FERC.**

Texas Eastern is a Delaware limited partnership with its principal place of business in Houston, Texas. Texas Eastern is an interstate natural gas transmission company organized for purposes including transporting natural gas through pipes. (Martin Aff., attached hereto as Exhibit 1, at ¶ 4–5; Petkovich Aff., attached hereto as Exhibit 2, at ¶ 4–5.)

On January 31, 2014, Texas Eastern filed an application seeking approval from FERC for the Ohio Pipeline Energy Network Project (the “OPEN Project”). (Martin Aff. at ¶ 9.) Texas

Eastern's application requested that FERC issue a Certificate of Public Convenience and Necessity to install, construct, own, operate and maintain certain pipeline facilities as more particularly described below.

B. The FERC Certificate authorizes Texas Eastern to construct and operate the OPEN Project.

Under the NGA, FERC must authorize any natural gas company's construction or extension of any pipeline facility and determine if the pipeline project is in the public convenience and necessity. 15 U.S.C. § 717f(c); *ANR Pipeline Co. v. Schneidewind*, 801 F.2d 228, 234 (6th Cir. 1986), *aff'd* 485 U.S. 293 (1988). As set forth in its FERC application, Texas Eastern intends to construct, operate and maintain approximately 75.8 miles of new 30-inch diameter mainline pipeline and associated pipeline support facilities that will traverse through the Ohio counties of Monroe, Belmont, Jefferson, Carroll and Columbiana, with a terminus at Kensington, Ohio in Columbiana County. (Martin Aff. at ¶¶ 7, 14.) The OPEN Project also includes the construction of two new 9,400 horsepower gas turbine compressor units at a new compressor station near Colerain Township, Belmont County, Ohio, piping modifications at existing compressor stations in Ohio, Kentucky, Mississippi, and Louisiana, and certain other facility modifications to accommodate bidirectional flow along Texas Eastern's system. (*Id.* at ¶ 7.) A map of the OPEN Project in Ohio is attached to the Complaint as Exhibit C. (*Id.*)

For authorization to construct and operate the OPEN Project, Texas Eastern filed the FERC application under § 717f(c) of the NGA. (*See id.* at ¶ 9.) On December 2, 2014, FERC issued a Certificate of Public Convenience and Necessity ("FERC Certificate") to Texas Eastern for the OPEN Project in Docket No. CP14-68-000. (FERC Cert., 149 FERC ¶ 61,198 [Dec. 2, 2014]; attached as Exhibit B to Complaint.) Through the FERC Certificate, FERC expressly

authorized Texas Eastern to construct and operate the OPEN Project as necessary and convenient for the public use under the NGA. (*Id.* at ¶ 19.)

C. Texas Eastern must complete the OPEN Project by November 1, 2015 and transport four shippers' natural gas through the pipeline upon completion.

Pursuant to the FERC application as approved by FERC, and in accordance with contractual obligations, the in-service date for the OPEN Project is November 1, 2015. (Petkovich Aff. at ¶ 12.) Based on the November 1, 2015 in-service date, Texas Eastern has entered into precedent agreements with (i) Chesapeake Energy Marketing, Inc., (ii) CNX Gas Company LLC, (iii) Rice Drilling B LLC, and (iv) Total Gas & Power North America, Inc. (collectively, the “Shippers”) for long-term firm natural gas transportation service on the OPEN Project. (*Id.* at ¶¶ 13, 16.) Under the precedent agreements, Texas Eastern is obligated to proceed with due diligence to complete and place the OPEN Project into service by November 1, 2015 which, in turn, will ensure that pipeline capacity exists to transport the Shipper's production. (*Id.* at ¶ 16.) The Shippers are major producers in the Utica and Marcellus Shale production areas. (*Id.* at ¶ 14.)

D. To construct the OPEN Project, Texas Eastern must acquire the Easement Interests from affected landowners, including the Defendants.

In order to construct, operate and maintain the OPEN Project in accordance with the public interest, convenience, and safety—and in furtherance of the authority set forth in the FERC Certificate—Texas Eastern must acquire pipeline right-of-way easements from the affected landowners along the route of the OPEN Project. (Martin Aff. at ¶ 12; Savage Aff., attached hereto as Exhibit 3, at ¶ 8.) Texas Eastern has surveyed and selected the location and route for the OPEN Project and the required easement interests in accordance with sound environmental and engineering principles and practices adopted in the interest of the

environment, safety and the necessity of the public. (Martin Aff. at ¶ 13.) Defendants' properties are within the scope of the FERC Certificate. (*Id.* at ¶ 15.)

In accordance with the authority granted to it by FERC, and in order to construct, operate and maintain the OPEN Project in a manner conducive to the public interest, convenience, necessity and safety, Texas Eastern must acquire pipeline easements across the Defendants' properties, which generally include: (i) a fifty-foot (50-foot) wide permanent right-of-way to place, operate, and maintain the 30-inch diameter pipeline; (ii) an additional one-hundred-foot (100-foot) wide temporary construction right-of-way for to construct the OPEN Project; and (iii) all rights of ingress, egress, and reasonable access necessary to protect, repair, upkeep, and maintain the OPEN Project and the rights-of-way (collectively, the "Easement Interests"). (Savage Aff. at ¶ 8). The Defendant-Properties and Easement Interests needed are set forth in Exhibit A to the Complaint.

E. Despite negotiating with many Defendants, and diligently taking significant steps to engage in negotiations with all Defendants, Texas Eastern has been unsuccessful in acquiring all necessary Easement Interests by contract and, thus, is entitled to exercise its right of eminent domain under the Natural Gas Act.

By negotiating with the affected property owners, Texas Eastern has been able to acquire the majority of the easements and rights-of-way required for the OPEN Project. (Savage Aff. at ¶ 17.) Texas Eastern has diligently taken significant steps to engage in negotiations with Defendant landowners, in an attempt to purchase amicably the Easement Interests necessary for the OPEN Project.¹ (*See* Savage Aff. at ¶¶ 9-15, 18-23.) Yet, despite Texas Eastern's efforts to acquire the easements from Defendants for over one year, Texas Eastern has been unable to acquire by contract, and/or has been unable to agree with the Defendant landowners as to the

¹ Texas Eastern's negotiations and attempts to negotiate are set forth in detail in Part III.A.3 below.

compensation to be paid for, the necessary rights-of-way. (*Id.* at ¶ 23.) Each of the Defendant landowners has either rejected Texas Eastern’s offers or has failed to respond to Texas Eastern’s attempts to contact them. (*Id.*)

Accordingly, Texas Eastern must initiate this condemnation action under the NGA, 15 U.S.C. § 717f(h), to obtain the necessary Easement Interests in order to meet construction deadlines and the FERC-approved in-service date of November 1, 2015.

III. LAW AND ARGUMENT

A. Texas Eastern has condemnation authority under the Natural Gas Act.

The NGA states that “[f]ederal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary for the public interest.” 15 U.S.C. § 717(a). The NGA establishes a comprehensive federal regulatory scheme for the transportation or sale of natural gas in interstate commerce. 15 U.S.C. § 717(b). Consequently, natural gas companies are under the exclusive jurisdiction of FERC and may not undertake the construction or operation of any pipeline facilities unless FERC has issued a certificate that authorizes such acts or operations. *See Islander E. Pipeline Co, LLC v. Conn. Dept. of Environ’l Protection*, 467 F.3d 295, 299 (2nd Cir. 2006), citing 15 U.S.C. § 717f(c)(1)(A).

Once the FERC certificate is issued, the pipeline company has the right to acquire any portion of the necessary rights of way by eminent domain when the certificate holder cannot obtain permission through negotiations with the property owner. *See Am. Energy Corp. v. Rockies Express Pipeline LLC*, 622 F.3d 602, 604 (6th Cir. 2010), citing 15 U.S.C. § 717f(h). Indeed, a pipeline company’s “acquisition of a FERC certificate cloaks it with the federal power of eminent domain pursuant to 15 U.S.C. § 717f(h).” *USG Pipeline Co. v. 1.74 Acres in Marion County, Tennessee*, 1 F. Supp. 2d 816, 825 (E.D. Tenn. 1998).

Under the NGA, a gas pipeline company is entitled to an order of taking or condemnation under § 717f(h) when it satisfies three conditions: (1) a FERC certificate authorizes the construction of the pipeline; (2) the use of a particular parcel of land is necessary to comply with the certificate; and (3) the pipeline company has been unable to agree with the owner of the property on the amount of compensation to be paid. 15 U.S.C. § 717f(h); *see Transwestern Pipeline Co. v. 17.19 Acres*, 550 F.3d 770, 776 (9th Cir. 2008); *Millennium Pipeline Co., LLC v. Certain Permanent and Temporary Easements*, 777 F. Supp. 2d 475, 479 (W.D.N.Y. 2011); *Perryville Gas Storage LLC v. 40 Acres of Land*, 2011 WL 4943318, at *2 (W.D. La., Oct. 17, 2011); *Tenn. Gas Pipeline Co. v. Mass. Bay Transp. Auth.*, 2 F. Supp. 2d 106, 110 (D. Mass. 1998) (granting natural gas company's motion to confirm condemnation of easements when it satisfied the three conditions). As set forth below, Texas Eastern satisfies all three requirements and, thus, is substantively entitled to condemn Defendant-Properties.

1. Texas Eastern possesses a FERC Certificate that authorizes the OPEN Project.

FERC issued Texas Eastern its FERC Certificate on December 2, 2014. (Petkovich Aff. at ¶ 11; Ex. B to Complaint.) Texas Eastern accepted the Certificate on December 5, 2014. (Petkovich Aff. at ¶ 11.) Thus, Texas Eastern undisputedly possesses the authority to construct the OPEN Project.

2. Condemning the Easement Interests is required to comply with the FERC Certificate.

Condemning the Easement Interests is necessary in order for Texas Eastern to comply with the FERC Certificate. "Congress determined [that] 'the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.'" *USG Pipeline*, 1 F. Supp.

2d at 818, quoting 15 U.S.C. § 717(a). Thus, Congress “delegated the FERC regulatory authority over natural gas and natural gas companies.” *Id.*, citing 15 U.S.C. § 717.

Following due proceedings on Texas Eastern’s FERC application, FERC, exercising its regulatory authority, determined that the OPEN Project will serve a public and necessary purpose and concluded that the public convenience and necessity *requires* approval of Texas Eastern’s proposal. (*See* FERC Cert. at ¶ 19.) Indeed, FERC has approved the OPEN Project, including its size, the location of the Easement Interests and critical issues concerning the construction and operation of the OPEN Project and, thus, has determined that the OPEN Project is in the public interest. (*See generally*, FERC Cert.) As set forth above, the properties affected by the OPEN Project, including Defendants’ Properties, are within the scope of the FERC Certificate. (Martin Aff. at ¶ 15.) In furtherance of the authority granted to it by FERC, Texas Eastern must acquire the Easement Interests from the affected landowners. (*Id.* at ¶ 12.)

The OPEN Project’s public and necessary purpose will be thwarted if the pipeline is not constructed on the timeline submitted to and approved by FERC. And, Texas Eastern cannot build the approved OPEN Project without condemning the Easement Interests. (*Id.*) Thus, condemnation is necessary for Texas Eastern to comply with the FERC Certificate in accordance with the OPEN Project’s public and necessary purpose.

3. Texas Eastern has been unable to agree with the Defendants as to the acquisition of and/or compensation for the Easement Interests.

Texas Eastern has been unable to acquire by contract, and/or has been unable to agree with the Defendant landowners as to the compensation to be paid for, the necessary rights-of-way. (Savage Aff. at ¶ 23.) The law dictates that this inability to agree gives Texas Eastern the authority to acquire the Easement Interests through this condemnation action. 15 U.S.C. 717f(h).

Notably, the NGA does not require Texas Eastern to enter into protracted negotiations with a property owner. Neither Fed. R. Civ. P. 71.1 nor the NGA requires Texas Eastern to exhaust negotiations before filing for condemnation. In fact, the weight of federal authority provides that the NGA does not even require a gas pipeline company to have negotiated in good faith before acquiring land through eminent domain. *See, e.g., Maritimes & Ne. Pipeline, LLC v. Decoulos*, 146 Fed. Appx. 495, 496 (1st Cir. 2005) (holding plain language of NGA imposes no obligation to negotiate in good faith); *Alliance Pipeline L.P. v. 4.360 Acres of Land*, 746 F.3d 362, 367 (8th Cir. 2014) (noting “[t]he Natural Gas Act itself does not mention good-faith negotiation” and holding pipeline company satisfied the NGA’s “unable to agree with the owner” provision); *Kansas Pipeline Co. v. 200 Foot by 250 Foot Piece of Land*, 210 F. Supp. 2d 1253, 1257 (D. Kan. 2002) (holding plain language of NGA renders no good faith requirement, only rejected offer to purchase); *N. Natural Gas Co. v. Approximately 9117.53 Acres*, 781 F. Supp. 2d 1155, 1161 (D. Kan. 2011) (“[T]he plain language of the statute contains no requirement of ‘good faith’ negotiations . . . the authority of a condemnor under the NGA therefore does not depend upon such a showing. The statutory requirement is satisfied upon a showing by the condemnor that it has been unable to agree with the owner on the amount of compensation.”); *Guardian Pipeline, L.L.C. v. 529.42 Acres of Land*, 210 F. Supp. 2d 971, 973 (N.D. Ill. 2002) (holding that neither the NGA nor Fed. R. Civ. P. 71.1 contain a good faith requirement); *Steckman Ridge GP, LLC v. An Exclusive Natural Gas Storage Easement Beneath 11.078 Acres*, No. 08-168, 2008 U.S. Dist. LEXIS 71302, at *13 n.3 (W.D. Pa. 2008) (noting that courts that have imposed a good-faith requirement “gave no explanation why they adopted such a requirement,” that in none of the cases imposing such a requirement did the courts refuse to authorize condemnation on the ground that the FERC certificate holder had failed to negotiate

in good faith, and concluding that “[t]he plain language of the NGA does not impose an obligation on a holder of a FERC certificate to negotiate in good faith before acquiring land by exercise of eminent domain”) (citations omitted); *Guardian Pipeline, L.L.C. v. 295.45 Acres of Land*, No. 08-C-28, 2008 U.S. Dist. LEXIS 35818, at *14 (E.D. Wis. 2008) (collecting cases and concluding that the NGA does not obligate the condemnor to negotiate in good faith).

A pipeline company shows that it “cannot acquire by contract, or is unable to agree with the owner of property,” for purposes of § 717f(h) if it demonstrates that it attempted to acquire the property rights from the landowner by agreement or contract prior to commencing condemnation proceedings. *See Alliance Pipeline*, 746 F.3d at 367 (8th Cir. 2014); *Millennium Pipeline Co., LLC v. Certain Permanent and Temporary Easements*, 777 F. Supp. 2d 745, 483 (W.D.N.Y. 2011); *Transcon. Gas Pipeline Co. v. 118 Acres of Land*, 745 F. Supp. 366, 369 (E.D. La. 1990).

Texas Eastern has far exceeded its obligation to attempt to acquire the Easement Interests from Defendants, short of filing eminent domain, under any applicable standard. Texas Eastern has been communicating with affected landowners and engaged in efforts to acquire the Easement Interests required for the OPEN Project for over two-and-one-half years (the “Land Acquisition Activities”). (Savage Aff. at ¶¶ 9-15.)

Texas Eastern’s Land Acquisition Activities have included, among other things: (i) searching land title records to ascertain the owners of the Easement Interests (Savage Aff. at ¶ 10); (ii) attending and participating in informational open houses and meetings in the area, including in Bellaire, Steubenville, St. Clairsville, Hanoverton, and Bloomingdale, Ohio (*id.* at ¶ 11); (iii) directly contacting and attempting to make direct contact with landowners (including Defendants), through telephone calls, personal meetings, and/or written

correspondence, in order to describe the OPEN Project and the Easement Interests required by Texas Eastern (*id.* at ¶¶ 11, 13); and (iv) negotiating and entering into easement agreements with the majority of the affected landowners, including negotiating pricing terms and revising the easement agreement to meet the requests of certain landowners (*id.* at ¶¶ 11–12).

The first landowner reached agreement with Texas Eastern on acquisition and compensation for the respective easement interest(s) on August 29, 2013. (*Id.* at ¶ 16.) Since then, Texas Eastern has been successful in entering into easement agreements with a majority of the landowners on a majority of the properties affected by the OPEN Project. (*Id.* at ¶ 17.) For those properties it was not successful in acquiring by contract, Texas Eastern has arranged for and appraised all such unacquired properties. (*Id.* at ¶ 18.) Each of Defendants' properties has been appraised by an independent appraiser licensed in the state of Ohio, who has determined the value of each of the Easement Interests required for the OPEN Project. (*Id.*)

Texas Eastern's final attempt to acquire the Defendants' Easement Interests by agreement occurred almost immediately after Texas Eastern's FERC Certificate was issued on December 2, 2014, by way of final offer letters sent to each Defendant landowner between December 4 and December 12, 2014. (*Id.* at ¶ 20.) Texas Eastern's final offer letters extended offers well in excess of the appraised value of the respective property interests to be acquired. (*Id.* at ¶ 21.) For every Defendant property, Texas Eastern has offered at least \$10,000.00 as compensation, but such offers have either been rejected by Defendants or Defendants have failed to respond to Texas Eastern's offer. (*Id.* at ¶ 19.) The final offer letters to Defendants also stated that the FERC Certificate has now been issued and that, as a result, Texas Eastern possesses the authority to obtain the respective Easement Interests by way of a condemnation action. (*Id.* at ¶ 22.) Each of the Defendant-landowners has either rejected Texas Eastern's

offers or has failed to respond them. (*Id.* at ¶¶ 19, 23.)

In sum, despite its diligent efforts, Texas Eastern has been unable to acquire the necessary rights-of-way by agreement. (*Id.* at ¶ 23.)

B. In a condemnation proceeding under the Natural Gas Act, this Court has authority to grant Texas Eastern immediate possession of the Easement Interests.

A federal court has “inherent power under its equitable jurisdiction to order immediate possession” of private property to a pipeline company that possesses a FERC certificate. *USG Pipeline Co. v. 1.74 Acres in Marion Cnty., Tennessee*, 1 F. Supp. 2d 816, 825 (E.D. Tenn. 1998) (granting pipeline company’s motion for immediate possession under “the exercise of [the Court’s] inherent power where “plaintiff’s . . . immediate possession was necessary to meet its construction deadline and to maintain its budget”), citing *N. Border Pipeline Co. v. 127.79 Acres of Land*, 520 F. Supp. 170 (D.N.D. 1981). This Court itself has stated that it “agrees with those numerous courts that have concluded that a plaintiff can obtain immediate possession in cases such as this litigation[.]” *Rockies Express Pipeline, LLC v. 4.895 Acres of Land*, 2008 U.S. Dist. LEXIS 115885, *17 (S.D. Ohio 2008) (Frost, J.).

Indeed, courts in nearly every federal circuit have recognized that they have authority to grant immediate possession of property to natural gas pipeline companies seeking condemnation under the Natural Gas Act. This includes, but is not limited to, courts in:

- The First Circuit, *see, e.g., Tennessee Gas Pipeline Co. v. New England Power, C.T.L.*, 6 F. Supp. 2d 102, 104 (D. Mass. 1998) (“the district court does have the equitable power to grant immediate entry and possession where such relief is essential to the pipeline construction schedule”); *Maritimes & N.E. Pipeline, LLC v. 6.85 Acres of Land*, 537 F. Supp. 2d 223, 225 (D. Me. 2008) (granting pipeline company’s request for immediate possession of property under preliminary injunction analysis);

- The Second Circuit, *see, e.g., Nat'l Fuel Gas Supply Corp. v. 138 Acres of Land in the Vill. of Springville*, 84 F. Supp. 2d 405, 416 (W.D.N.Y. 2000) (recognizing that “a district court, by its inherent equitable power, may grant a utility company immediate possession of subject property” but declining to exercise such power because the company “conceded . . . that neither [it] nor its customers would face irreparable injury”);
- The Third Circuit, *see, e.g., Steckman Ridge GP, LLC v. Exclusive Natural Gas Storage Easement Beneath 11.078 Acres*, 2008 U.S. Dist. LEXIS 71302, *44–57 (W.D. Pa. 2008) (concluding that the pipeline company established equitable interest in the properties through its FERC certificate, and determining that immediate possession was justified after applying the Fed. R. Civ. P. 65 preliminary injunction standard);
- The Fourth Circuit, *see, e.g., E. Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 831 (4th Cir. 2004) (establishing “the Sage approach” to NGA condemnation proceedings: “[i]n sum, we hold that once a district court determines that a gas company has the substantive right to condemn property under the NGA, the court may use its equitable power to grant the remedy of immediate possession through the issuance of a preliminary injunction.”);
- The Fifth Circuit, *see, e.g., Gulf S. Pipeline Co., LP v. 0.27 Acre in George Cnty.*, 2014 U.S. Dist. LEXIS 21154, *7 (S.D. Miss. 2014) (“Numerous other federal district courts have held that if the standard for injunctive relief is satisfied in favor of granting the relief, pipeline companies with the authority of eminent domain under the Natural Gas Act may be granted immediate access to property to be condemned—prior to the trial on compensation—to begin construction of a pipeline.”);

- The Sixth Circuit, *see, e.g., Rockies Express Pipeline, LLC*, supra at *17, cited with approval in *N. Natural Gas Co. v. Approximately 9117.53 Acres in Pratt, Kingman, & Reno Counties*, 2012 U.S. Dist. LEXIS 34388, *47 (D. Kan. 2012);
- The Seventh Circuit, *see, e.g., N. Border Pipeline Co. v. 64.111 Acres of Land*, 125 F. Supp. 2d 299, 301 (N.D. Ill. 2000) (finding immediate possession proper when a condemnation order has been entered and preliminary injunction standards have been satisfied);
- The Eighth Circuit, *see, e.g., Alliance Pipeline L.P. v. 4.360 Acres of Land*, 746 F.3d 362, 369 (8th Cir. 2014) (applying injunctive relief factors and affirming district court’s holding that pipeline company was entitled to immediate use and possession under the NGA);
- The Ninth Circuit, *see, e.g., Transwestern Pipeline Co., LLC v. 17.19 Acres*, 550 F.3d 770, 777–778 (9th Cir. 2008) (“[T]he district court may use its equitable powers to grant possession to the holder of a FERC certificate if the gas company is able to meet the standard for issuing a preliminary injunction.”); *Kern River Gas Transmission Co. v. Clark Cnty.*, 757 F. Supp. 1110, 1116 (D. Nev. 1990) (granting motion for immediate occupancy “in order [for pipeline company] to meet complex contractual and logistical obligations to its customers and suppliers”); *Nw. Pipeline Corp. v. 20’ by 1,430’ Pipeline Right-of-Way*, 197 F. Supp. 2d 1241, 1245 (E.D. Wash. 2002) (“Where there is no dispute about the validity of [the gas company’s] actual right to the easement, denying authority to grant immediate possession would produce an absurd result.”);
- The Tenth Circuit, *see, e.g., N. Natural Gas Co. v. Approximately 9117.53 Acres in Pratt, Kingman, & Reno Counties*, 2012 U.S. Dist. LEXIS 34388, *39 (D. Kan. 2012) (“[T]he court should follow the reasoning of *Sage* [361 F.3d 808, 831 (4th Cir. 2004)]. The court finds that it has the authority to consider Northern’s motion for a preliminary injunction for immediate

access.”); *Humphries v. Williams Natural Gas Co.*, 48 F. Supp. 2d 1276, 1280 (D. Kan. 1999) (“[I]t is apparently well settled that the district court does have the equitable power to grant immediate entry and possession [under the NGA].”);

- The Eleventh Circuit (recognizing the right to immediate possession in NGA-related condemnation actions, although holding, in that case, that eminent domain authority was not based on the NGA). *United States v. 74.57 Acres*, 2012 U.S. Dist. LEXIS 51441 (S.D. Ala. 2012).

As these cases and many others demonstrate, a district court possesses unequivocal authority to grant immediate possession of property to natural gas pipeline companies seeking condemnation under the Natural Gas Act.

C. Under this Court’s equitable power to grant injunctive relief, Texas Eastern meets the standards necessary to be granted immediate possession of the Easement Interests.

As this Court has aptly noted, a request for immediate possession of pipeline interests must be reviewed under the traditional test employed for both temporary restraining orders and preliminary injunctions. *See Rockies Express*, 2008 U.S. Dist. LEXIS 115885, at *17 (S.D. Ohio 2008) (Frost, J.). In considering a motion for a preliminary injunction, the district court must consider and balance four factors: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction. *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 432 (6th Cir. 2004) (citation omitted).

1. Texas Eastern will suffer irreparable injury without the injunction.

Texas Eastern must be granted immediate possession of the Easement Interests or it will be unable to meet the November 1, 2015 in-service date. (Martin Aff. at ¶¶ 16, 22, 23, 29; Petkovich Aff. at ¶ 17; Savage Aff. at ¶ 25.) If it is unable to meet the November 1, 2015 in-service date, Texas Eastern will suffer significant, irreparable injury.

a. Texas Eastern must complete all tree-clearing by March 31, 2015 and, accordingly, it must commence these activities on January 12, 2015.

Construction of the OPEN Project involves a significant effort that requires the careful coordination of multiple teams performing various stages of work on a rolling basis throughout the length of the 75.8-mile pipeline. (Martin Aff. at ¶ 16.) Timing is critical, and the project schedule must be maintained in order to meet the in-service date of November 1, 2015. (*Id.*) Mobilization for full construction of the OPEN Project is scheduled to begin in February 2015, but prior to any actual pipeline construction activities, Texas Eastern must engage in tree clearing along the pipeline route. (*Id.* at ¶ 17.)

Environmental surveys confirmed that a significant portion of the OPEN Project will be located in known northern long-eared bat habitat. (*Id.* at ¶ 18.) To minimize potential impacts to this habitat, Texas Eastern has agreed, and now is mandated as part of its FERC Certificate, to conduct all tree clearing activities between the time period October 1 through March 31. (*Id.*; see, also, FERC Cert. at ¶ 39.) This means that all tree clearing activity must occur and be completed no later than March 31, 2015. (Martin Aff. at ¶ 18.) Texas Eastern will possess all the requisite permitting and/or other applicable regulatory permission to commence tree-clearing by January 12, 2015. (*Id.* at ¶ 19.)

If Texas Eastern is unable to begin tree-clearing immediately and complete the tree-clearing by March 31, 2015, it will not be able to commence or re-commence tree-clearing until

October 1, 2015. (*Id.* at ¶ 23.) If this occurs, it will be impossible for Texas Eastern to meet the November 1, 2015 in-service date. (*Id.*) In fact, Texas Eastern would not be able to put the OPEN Project into service until September 1, 2016—nearly one year late. *See id.*

Thus, Texas Eastern requires possession of the Easement Interests—by January 12, 2015—to commence the tree-clearing activities in time to complete it by March 31, 2015. In addition, and as will be set forth in more detail below, the inability to commence tree-clearing activities on January 12, 2015 will result in significant penalties against Texas Eastern.

b. To fulfill its contractual obligations with four major Utica and Marcellus Shale producers to transport natural gas, Texas Eastern must be granted immediate possession.

Pipeline companies that face “irreparable harm such as increased construction costs and losses from its breach of gas supply contracts” are entitled to preliminary injunctive relief in the form of “immediate possession.” *E. Tennessee Natural Gas Co. v. Sage*, 361 F.3d 808, 830 (4th Cir. 2004) (applying four-part test and affirming district court’s order of preliminary injunction); *see Tennessee Gas Pipeline, L.L.C. v. 1.693 Acres of Land*, 2013 U.S. Dist. LEXIS 8371, 8–9 (D.N.J. 2013) (“Tennessee Gas will be irreparably harmed . . . Tennessee Gas’s contracts with natural gas shippers are based on an in-service date of November 1, 2013. To meet its deadline, Tennessee Gas’s workers need immediate access[.]”).

As noted above, Texas Eastern has entered into precedent agreements with the Shippers, four major Utica and Marcellus Shale producers, to provide firm natural gas transportation service through the OPEN Project. (Petkovich Aff. at ¶ 13.) The Shippers require the firm capacity that will be created by the OPEN Project to ensure the pipeline capacity exists to transport their production as it comes on line. (*Id.* at ¶ 14.) The Shippers have agreed to pay certain negotiated rates per the precedent agreements and under the General Terms and Conditions of Texas Eastern’s FERC Gas Tariff/Volume No. 1. (*Id.* at ¶ 15.) Pursuant to these

agreements, Texas Eastern is obligated to proceed with due diligence to complete and place the OPEN Project into service by November 1, 2015 which, in turn, will ensure that pipeline capacity exists to transport the Shippers' Utica and Marcellus gas production. (*Id.* at ¶ 16.) According to one of the Shippers, Chesapeake Energy Marketing, Inc. ("CEMI"), the Shippers' need for this pipeline capacity is "immediate":

CEMI and other shippers have an immediate need for this capacity to enable their increasing volumes of natural gas production to reach markets. CEMI and others have invested hundreds of millions of dollars in the exploration and development of natural gas production, including reserves that can be served by the OPEN Project. It is essential that pipeline facilities are placed into service to enable this new production to reach major natural gas markets. In addition, the OPEN Project facilities will provide benefits to all markets served by Texas Eastern, because they will improve the security, flexibility and reliability of the Texas Eastern system.

In the Matter of Texas Eastern Transmission, LP, FERC Docket No. CP14-68-000, Motion to Intervene and Statement of Support of Chesapeake Energy Marketing, Inc. (filed March 6, 2014), ¶ 4.

Failure to meet the in-service date will cause Texas Eastern to be unable to meet its commitment to its customers, resulting in significant loss of revenue. (Petkovich Aff. at ¶ 18.) Specifically, Texas Eastern would suffer lost revenue in amounts exceeding \$7 million *per month* for each month past November 1, 2015 that the OPEN Project is not in service. (*Id.*) According to the OPEN Project's Principal Project Manager, Steve Martin, if the construction of the OPEN Project is delayed until October 1, 2015 (due to the inability to complete tree clearing by March 31, 2015), then the OPEN Project would not be in service until September 2016. (*Id.* at ¶ 19; Martin Aff. at ¶ 23.) This would result in lost revenue to Texas Eastern of over \$75 million. (Petkovich Aff. at ¶ 19.)

Immediate possession of the Easement Interests is necessary for the OPEN Project to be in service by the FERC-approved in-service date of November 1, 2015. (*Id.* at ¶ 17; Martin Aff.

at ¶¶ 16, 22, 23, 29; Savage Aff. at ¶ 25.) Because Texas Eastern will face irreparable injury if the OPEN Project is delayed, it should be granted immediate possession of the Easement Interests.

c. Immediate access to all of the Easement Interests is critical to sequence pipeline construction operations and to avoid wasteful “move around” expenses.

A gas pipeline company is entitled to immediate possession of property under the NGA when such preliminary injunctive relief is essential to the pipeline construction schedule. *See Tennessee Gas Pipeline Co. v. New England Power, C.T.L.*, 6 F. Supp. 2d 102, 104 (D. Mass. 1998) (“the district court does have the equitable power to grant immediate entry and possession where such relief is essential to the pipeline construction schedule”); *Kern River Gas Transmission Co. v. Clark Cnty.*, 757 F. Supp. 1110, 1116 (D. Nev. 1990) (granting motion for immediate occupancy “in order [for pipeline company] to meet complex contractual and logistical obligations to its customers and suppliers”).

The OPEN Project is an approximate \$468.5 million investment by Texas Eastern. (Petkovich Aff. at ¶ 9.) Construction of the OPEN Project is divided into three construction spreads or areas. (Martin Aff. at ¶ 24.) The construction of the project in these three areas will occur simultaneously between the months of January through October 2015, with multiple construction crews and equipment performing different functions in each area. (*Id.*) Sequential construction activities include tree felling, clearing, grading, ditching, stringing, welding, lowering in, backfilling, restoration, and testing. (*Id.*) Construction also entails the complex coordination of construction activities controlled by two general contractors and performed by multiple subcontractors. (*Id.* at ¶ 25.) The coordination of activities is significantly impacted by any “no work” periods such as the tree-clearing activities, which may not be performed after March 31, 2015. (*Id.*) Construction is also significantly impacted when certain “no access”

parcels exist—that is, where entry is denied due to inability to acquire the necessary easements. (*Id.*) Construction has been planned so that there will not be conflicting activities occurring at any location along the FERC-approved route. (*Id.*) Accordingly, there are critical “start” dates for all construction activities. (*Id.*)

Once construction commences, Texas Eastern will be liable for any delays that occur if a contractor is unable to access a property in sequential order. (*Id.* at ¶ 27.) In that event, Texas Eastern could be liable for delay costs that are estimated to exceed \$400,000 *per day*. (*Id.*) Additionally, if the sequenced work schedule is disrupted by a bottleneck that occurs at a “no access” property, then the only alternative is to “skip” that property and move the crews and equipment to the next accessible property. (*Id.*) That will require the crew to return to the skipped properties at a later date. (*Id.*) The “move around” costs for skipped properties will exceed \$575,000 for each skipped property. (*Id.*)

Thus, it is critical that Texas Eastern be able to provide the contractors with access to all affected properties, including Defendants’ Properties, for pre-installation and construction work along the route of the OPEN Project. (*Id.* at ¶ 29.) Without immediate access to Defendants’ Properties, Texas Eastern’s ability to complete construction of the OPEN Project by November 1, 2015 will be severely and, likely, irreparably jeopardized. (*Id.*)

As set forth above, Texas Eastern must meet “complex contractual and logistical obligations[.]” *See Kern River*, 757 F. Supp. at 1116. Granting immediate possession of the Easement Interests “is essential to the pipeline construction schedule[.]” *See Tennessee Gas*, 6 F. Supp. 2d at 104. For this additional reason, Texas Eastern will suffer irreparable harm if it is not granted immediate possession of the Easement Interests.

d. Texas Eastern must commence tree-clearing and construction operations on January 12, 2015 to fulfill the construction schedule and to avoid significant monetary penalties.

If a gas pipeline company has entered into a binding commitment with a pipeline construction company to timely construct and place the pipeline in service, a district court may grant immediate possession of the entirety of the easements required to commence and complete the construction work. *See Gulf Crossing Pipeline Co. LLC v. 25 Acre Tract of Land*, 2013 U.S. Dist. LEXIS 182424, *10–11 (E.D. Tex. 2013) (“Gulf Crossing has entered into a binding commitment . . . to build the Pipeline, with construction scheduled to commence . . . February 1, 2014, and natural gas to be delivered . . . by June 14, 2014. * * * In order to timely construct and place the Pipeline in service . . . Gulf Crossing must acquire the permanent easement, temporary workspaces, and permanent access corridor[.]”); *Gulf Crossing Pipeline Co. LLC v. Various Acres of Land*, 2008 U.S. Dist. LEXIS 59495 (W.D. La. 2008) (“Without immediate possession, Gulf Crossing would face irreparable harm, including escalating construction delay penalties under its contracts with the Constructors[.]”).

According to the OPEN Project construction schedule, the mobilization date to commence tree-clearing is January 12, 2015, and the first trees are to be felled on January 19, 2015. (Martin Aff. at ¶ 20.) The tree-clearing construction contracts call for significant penalties for project delays as short as one week. (*Id.* at ¶ 21.) For example, if tree-felling has not commenced by January 26, 2015, Texas Eastern will incur costs of \$228,000. (*Id.*) The costs grow larger for any additional delays—and will exceed \$1,130,000 if tree-felling does not start by February 23, 2015. (*Id.*)

In order to (i) meet the November 1, 2015 in-service date, (ii) timely begin actual construction of the pipeline in April 2015, (iii) comply with the terms of its tree-clearing agreements, and (iv) comply with the environmental “no tree-clearing mandate,” Texas Eastern

must begin tree clearing on January 12, 2015, in order to complete the same no later than March 31, 2015. (*Id.* at ¶ 22.)

e. Delay of the in-service date would injure Texas Eastern’s good reputation in the marketplace.

This Court has held that injuries to “plaintiff’s business reputation and goodwill” can be “the sort of injury that warrants the issuance of a preliminary injunction because the actual loss is impossible to compute.” *Compuserve Inc. v. Cyber Promotions*, 962 F. Supp. 1015, 1027–1028 (S.D. Ohio 1997) (citing *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 [6th Cir. 1992]).

If the OPEN Project is placed into service after November 1, 2015, it will negatively affect the reputation of Texas Eastern’s parent company, Spectra Energy Partners, LP (“Spectra”), in the natural gas marketplace. (Petkovich Aff. at ¶ 20.) Indeed, Spectra’s reputation is largely tied to its ability to execute projects on time for its customers. (*Id.*) A delayed in-service will make it more difficult for Spectra to earn future business and enter into deals with customers for future projects. (*Id.*) For example, Spectra is currently negotiating several billion dollars of capital project expansions, and its credibility and trust in the marketplace is a key differentiator for its success. (*Id.*)

Thus, any delay of the November 1, 2015 in-service date will cause Texas Eastern injury to its business reputation and goodwill.

f. Summary.

For all the foregoing reasons, Texas Eastern will suffer irreparable injury if its motion for immediate possession is not granted.

2. Texas Eastern has an overwhelming likelihood of success on the merits.

As set forth above, Texas Eastern has satisfied the procedural and jurisdictional requirements of the NGA and Fed. R. Civ. P. 71.1. It possesses a FERC Certificate that

authorizes the construction of the OPEN Project, and the Easement Interests sought here are within the scope of the FERC Certificate. Texas Eastern has been unable to acquire by contract, and/or has been unable to agree with the Defendant landowners as to the compensation to be paid for, the necessary rights-of-way.

Texas Eastern clearly has the authority to acquire the Easement Interests through these proceedings. *See* 15 U.S.C. § 717f(h); *Am. Energy Corp. v. Rockies Express Pipeline LLC*, 622 F.3d 602, 604 (6th Cir. 2010) (“A FERC certificate grants the holder the right to acquire any portion of the necessary right of way by eminent domain when the certificate holder cannot obtain permission through negotiations with the property owner.”) (citing 15 U.S.C. § 717f(h); *USG Pipeline Co. v. 1.74 Acres in Marion Cnty., Tennessee*, 1 F. Supp. 2d 816, 825 (E.D. Tenn. 1998) (holding pipeline company’s “acquisition of a FERC certificate cloaks it with the federal power of eminent domain pursuant to 15 U.S.C. § 717f(h)”)).

Because Texas Eastern possesses clear authority to condemn the Easement Interests here, it has an overwhelming likelihood of success on the merits of this condemnation action.

3. Issuing the injunction would not cause substantial harm to others.

This Court has held that when “issuance of an injunction would not present substantial harm to others, but would in fact serve the public interest in that it would aid in ensuring that the FERC-approved pipeline deadline is not delayed beyond the already adjusted target date,” injunction relief is warranted. *See Rockies Express Pipeline, LLC v. 4.895 Acres of Land*, 2008 U.S. Dist. LEXIS 115885, *21–22 (S.D. Ohio 2008), citing *Gulf Crossing Pipeline Co., LLC v. 7.50 Acres*, 2008 U.S. Dist. LEXIS 53737, *3-4 (E.D. Tex. 2008). Granting Texas Eastern immediate possession of the Easement Interests would not cause substantial harm to others for three important reasons.

First and foremost, Defendant-landowners are entitled to just compensation for the value of the Easement Interests, and Texas Eastern will compensate them accordingly. Such just compensation, combined with all the other mechanisms in the FERC approval process that protect affected landowners, eliminates any substantial harm Defendants would suffer or may claim to suffer.

Second, it is in the public interest to ensure that the November 1, 2015 in-service date is met without delay. Delays to Texas Eastern's possession of the property will result in delays to tree clearing operations, pipeline construction operations and, ultimately, a delay to the date the pipeline can be put into use. (Martin Aff. at ¶¶ 22-23.) None of these delays serve the public interest.

Third, upon being granted immediate possession, Texas Eastern will pay an appropriate bond to the Court to ensure Defendants' interests are protected. Any detriment Defendant-landowners' may incur is easily compensated.

For these reasons, issuing Texas Eastern a preliminary injunction for immediate possession of the Easement Interests would not cause substantial harm to others.

4. Texas Eastern's immediate possession of the Easement Interests serves the public interest.

Denying a pipeline company's motion for immediate possession can lead to delays in the pipeline project, which adversely affects the public interest when FERC has already approved the pipeline project. *See, e.g., Gulf Crossing Pipeline Co. LLC v. Various Acres of Land*, 2008 U.S. Dist. LEXIS 59495, *21-28 (W.D. La. 2008) (holding injunctive relief to pipeline company "does not disserve the public interest"); *Se. Supply Header LLC v. 180 Acres in George Cnty., Mississippi*, 2008 U.S. Dist. LEXIS 9989, *8 (S.D. Miss. 2008) (finding irreparable harm to the public at large, public utility providers, and the condemnor if project was not completed timely);

Tennessee Gas Pipeline Co. v. New England Power, 6 F. Supp. 2d 102, 104 (D. Mass. 1998) (same); *E. Tennessee Natural Gas, LLC v. 1.28 Acres in Smyth Cnty., Virginia*, 2006 U.S. Dist. LEXIS 24450, *13 (W.D. Va. 2006) (same); *E. Tennessee Natural Gas, LLC v. 3.62 Acres in Tazewell Cnty., Virginia*, 2006 U.S. Dist. LEXIS 31136, *14 (W.D. Va. 2006) (same)). In *Gulf Crossing*, the Court stated:

The Court finds that the expeditious completion of the Pipeline is in the public interest because it is consistent with the rationale and basis for FERC's certificate of public convenience and necessity. Moreover, the Court finds that the Pipeline, if timely constructed, will increase the overall supply of natural gas available for distribution to the public . . . Finally, the Court finds that granting immediate possession of the property rights at issue to Gulf Crossing will further the public interest in that it will aid in ensuring that the FERC-approved Pipeline will not be delayed.

Id. at *25–27.

Granting Texas Eastern's motion for immediate possession serves the public interest for at least three important reasons.

First, the OPEN Project is approved by FERC and according to FERC, “[b]ased on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7, that the public convenience and necessity requires approval of Texas Eastern's proposal[.]” (FERC Cert. at ¶ 19.) Thus, the OPEN Project serves the public interest. *Id.* If Texas Eastern does not secure immediate possession of the Easement Interests, however, the OPEN Project will likely not be completed timely, resulting in delay to the November 1, 2015 in-service date approved by FERC. (Martin Aff. at ¶¶ 16, 22, 23, 29; Petkovich Aff. at ¶ 17; Savage Aff. at ¶ 25), which adversely affects the public at large. *See Gulf Crossing*, 2008 U.S. Dist. LEXIS 59495, *21–28 (collecting cases).

Second, the OPEN Project is in the best interests of natural gas consumers. The OPEN Project will improve the flexibility and reliability of service on the overall pipeline grid by providing the Texas Eastern system with direct access, for the first time, to the rapidly growing Utica Shale production, as well as increasing access for Gulf Coast and Southeast markets to both Utica Shale and Marcellus Shale production. (Petkovich Aff. at ¶ 21.) In addition to providing access to major natural gas markets for the Shippers, the OPEN Project will promote increased commodity price competition and reduce price volatility. (*Id.* at ¶ 22.) Because the OPEN Project will increase diversity of supply, enhance the ability of markets along the system to better manage price volatility, and provide additional security and reliability of service on the Texas Eastern system, delay of the OPEN Project will also negatively impact numerous other third parties, including other shippers, various natural gas markets along the pipeline system and consumers. (*Id.* at ¶ 23.)

Third, delays in construction of the OPEN Project will defer the creation of some 3,107 jobs, including 3,078 jobs during the 2015 construction phase. OHIO STATE UNIVERSITY, JOHN GLENN SCHOOL OF PUBLIC AFFAIRS, *Economic Impacts to Ohio of the Spectra Energy Ohio Pipeline Energy Network (OPEN) Project, 2012–2016* (Sept. 2013) (the “OSU Study”). (Martin Aff. at 30 and Ex. A thereto.) The OPEN Project will yield \$140 million in labor income, \$187 million in value-added to Ohio’s gross domestic product, and \$426 million in total economic output to Belmont, Carroll, Columbiana, Jefferson and Monroe Counties. (OSU Study at 3, 15.) Indeed, the John Glenn School of Public Affairs at The Ohio State University concluded that:

The OPEN Project will provide a major economic boost to the five-county region and Ohio economies. The recent economic downturn affected the area badly, leading to stagnant or falling employment levels, high unemployment and declining revenues at the state and county levels. By generating jobs, income, and economic output, it will help reverse the impact of the recent recession . . . After short-term economic impact associated with initial construction, additional

contributions will be made to the various sectors that comprise the regional economy for years to come.

Id. at 19. But these economic benefits will not be realized on the anticipated timeline if the OPEN Project is delayed. (*See* Martin Aff. at ¶ 32.) The public interest is undoubtedly served by promptly “rever[sing] the impact of the recent recession” in this area by expediting the significant job generation, income, economic output and taxes that the OPEN Project will create.

For these additional reasons, the Court should grant Texas Eastern’s motion for immediate possession.

IV. CONCLUSION

Texas Eastern has the authority under the NGA to condemn the unacquired Easement Interests needed for the OPEN Project. It is critical that Texas Eastern access the Easement Interests by January 12, 2015, or it will be irreparably and significantly harmed.

For all of the foregoing reasons, Texas Eastern respectfully requests that this Court grant its Motion for Immediate Possession and issue a temporary restraining order and/or preliminary injunction, so that Texas Eastern can commence construction activities, including but not limited to tree clearing, by January 12, 2015.

Respectfully submitted,

/s/ Jennifer A. Flint

James J. Hughes (0036754)

Jennifer A. Flint (0059587)

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Counsel for Plaintiff, Texas Eastern Transmission, LP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the preceding Motion for, and Memorandum in Support of, Immediate Possession was electronically filed through the Court's ECF system and was personally served on Defendants and, as applicable, counsel for Defendants, as set forth in the attached Affidavit and Local Rule 65.1(b) Certification, this 16th day of December, 2014.

/s/ Jennifer A. Flint

Jennifer A. Flint (0059587)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TEXAS EASTERN TRANSMISSION, LP	:	
	:	Case No.
Plaintiff,	:	
	:	
v.	:	Judge
	:	
3.2 ACRES ± PERMANENT EASEMENT, AND 4.2 ACRES ± TEMPORARY EASEMENT: OF LAND IN COLERAIN TOWNSHIP, BELMONT COUNTY, OHIO, <i>et al.</i> ,	:	Magistrate Judge
	:	
Defendants.	:	

AFFIDAVIT AND LOCAL RULE 65.1(b) CERTIFICATION

STATE OF OHIO)	
)	SS:
COUNTY OF FRANKLIN)	

1. The statements made in this Affidavit are based on my personal knowledge.
2. I am one of the counsel for Plaintiff, Texas Eastern Transmission, LP (“Texas Eastern”).
3. Pursuant to Local Rule 65.1(b), I hereby certify that:
 - a. **For Defendant Landowners With Known Counsel (see Table 1):** Upon electronic filing of the Complaint: (i) Texas Eastern’s *Motion for Condemnation Order and Temporary Restraining Order and Preliminary Injunction for Immediate Possession* and all other filings in this action will be served upon counsel for the Defendant landowners listed in Table 1 by email service and by Federal Express overnight delivery; and (ii) the respective *Fed. R. Civ. P. 71.1 Notice, Motion for Condemnation Order and Temporary Restraining Order and Preliminary Injunction for Immediate Possession*, and *Motion for Appointment of Commission* will be diligently attempted to be personally served upon the following Defendant landowners by a process server on a “rush” schedule with estimated service within one to four days (at the Defendant landowners’ addresses listed in the Complaint case caption and Exhibit A to the Complaint):

TABLE 1	
<i>Defendant Landowner(s)</i>	<i>Counsel</i>
Eleanor J. Yoder John Spencer Yoder II Todd Charles Yoder	Paul W. Stecker, Jr. O'Diam & Stecker Law Group, Inc. 3 S. 4th Street Martins Ferry, OH 43935 Phone: 740-738-0750 Fax: 937-458-0579 Email: pws@oslawgroup.com
Allen K. Jaworski, Jr. Michelle L. Jaworski Allen K. Jaworski Jr. Charles F. Bell Charles J. Kolb John M. Dolak Carol A. Dolak	Dale H. Markowitz Thrasher, Dinsmore & Dolan 100 7th Avenue, Suite 150 Chardon, OH 44024 Phone: 440-285-2242 Email: dmarkowitz@tddlaw.com
Gerald G. Ciofani Doris E. Ciofani Alex J. Proger Bonnie J. Proger Gary A. Clark Gregory Clark Carol L. Whetzel Revocable Trust Timothy A. Mapel Charles E. Anderson Brian Powley Revocable Trust Donna A. Current Bernard L. Ravasio Lucas Cameron Waller Beth Renee Waller	Goldman & Braunstein, LLP 500 S. Front St., Suite 1200 Columbus, OH 43215 Phone: 614-229-4512 Fax: 614-229-4568 Email: braunstein@gblegal.net
Ohio Resources Company	April Bott Moore Bott Law Group LLC 5126 Blazer Parkway Dublin, OH 43017 Phone: 614-761-2688 Email: abott@bottlawgroup.com
June M. Schlernitzauer Josephine L. Brinker Robert E. Brown	Charles H. Bean Thornburg & Bean 113 W. Main St. St. Clairsville, OH 43950 Phone: 740-695-0532 Email: cbean_tbg@sbcglobal.net

<p>Judith C. Hasko Montserrat D. Friedrich</p>	<p>Christopher K. Blair S. David Wilharm Rokisky & Associates Law Firm 3200 Main St. Weirton, WV 26062 Phone: 304-748-3200 Email: cblair@rokiskylaw.com Email: dwilharm@rokiskylaw.com</p>
<p>Guianne LLC Kriechbaum Management Karen Sue Saladin Keith A. Taylor Linda J. Taylor</p>	<p>Michael S. Gruber Zollinger, Gruber, Thomas & Co. 6370 Mt. Pleasant St., NW North Canton, OH 44720 Phone: 330-497-2995 Email: mgrub@zdg.com</p>
<p>W&P McKarns Land LTD</p>	<p>Paul A. Clewell 33315 Teegarden Rd. Lisbon, OH 44432 Phone: 917-570-2541 Email: paul_clewell@yahoo.com</p>
<p>Hilda Price Briceland Revocable Trust The Estate of David M. Wargo, Rosemary C. Serra, Admin'x. John J. Wargo</p>	<p>Rosemary C. Serra Rosemary C. Serra Co., LPA 4809 Munson St., NW Canton, OH 44718 Phone: 330-498-9825 Email: r.serra@sbcglobal.net</p>
<p>RCVV Inc. Robert E. Keenan Wesley W. Burgett Mary J. Burgett Rick J. Barone Patricia L. Barone Darrell Lee Burkey Susan L. Burkey Barbara Lynn Michael Lynn</p>	<p>Lawrence T. Piergallini 131 3rd Street Tiltonsville, OH 43963 Phone: 740-859-2178 Email: ltplaw@frontier.com</p>
<p>Bruce Grywalski Frank Grywalski</p>	<p>Michael C. Bednar Blake Hershey Bednar & Richardson 4110 Sunset Blvd. Steubenville, OH 43952 Phone: 740-264-1651 Email: mbednar@bhbrlaw.com</p>

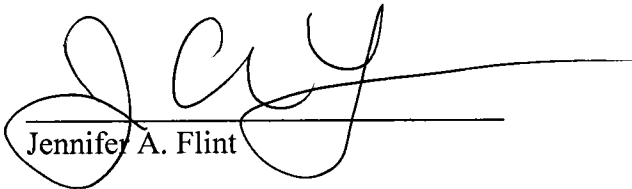
Mary Ann Boyd Karen Louise French John David Sutherland Thomas Eugene Sutherland Thomas W. Householder Janet L. Householder	Sean Jacobs Craig J. Wilson Emens & Wolper Law Firm, LPA One Easton Oval, Suite 550 Columbus, Ohio 43219 Phone: 614-414-0888 Email: sjacobs@emenswolperlaw.com Email: cwilson@emenswolperlaw.com
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- b. **For Defendant Landowner(s) With No Known Counsel but a Known Email Address (see Table 2):** Upon electronic filing of the Complaint, the respective *Fed. R. Civ. P. 71.1 Notice, Motion for Condemnation Order and Temporary Restraining Order and Preliminary Injunction for Immediate Possession*, and *Motion for Appointment of Commission* will be: (i) diligently attempted to be personally served upon the following Defendant landowner(s) by a process server on a “rush” schedule with estimated service within one to four days; and (ii) served upon the following Defendant landowner(s) by email:

TABLE 2	
<i>Defendant Landowner</i>	<i>Address & Email</i>
Lana J. Barack and Roger Barack (dower interest)	64501 Harvey Hill Drive Saint Clairsville, OH 43950 Email: gunite@bellaire.tv

- c. **For the remaining Defendants With No Known Counsel:** Upon electronic filing of the Complaint, the respective *Fed. R. Civ. P. 71.1 Notices, Motion for Condemnation Order and Temporary Restraining Order and Preliminary Injunction for Immediate Possession*, and *Motion for Appointment of Commission* will be diligently attempted to be personally served upon such Defendants by a process server on a “rush” schedule with estimated service within one to four days, at the addresses listed in the Complaint case caption.

Further affiant sayeth naught.


Jennifer A. Flint

Sworn to and subscribed before me this 16th day of December, 2014.


Notary Public



MARLEY RAYMOND
Notary Public, State of Ohio
My Commission Expires November 20, 2018