

# PENNSYLVANIA PIPELINE CONDEMNATION OR EMINENT DOMAIN

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## **In Pennsylvania, there are two ways that an oil and gas company can condemn a landowner's land for a pipeline**

An oil and gas company wants to put a pipeline across a landowner's property. It threatens to condemn the property. Can the oil and gas company condemn the property? If so, under what conditions and what is the procedure? What rights does the landowner have?

If the oil and gas company is going to condemn the landowner's property for a pipeline, it is important to know whether the pipeline is an intrastate or interstate pipeline. If it is going to be an intrastate pipeline, the matter is regulated by Pennsylvania law and the [Pennsylvania Public Utility Commission](#) ("PUC"). If the pipeline is an interstate pipeline, then the matter is regulated by federal law and the [Federal Energy Regulatory Commission](#) ("FERC"). This article will address Pennsylvania condemnation procedures for an intrastate pipeline.

In Pennsylvania, there are two ways that an oil and gas company can condemn a landowner's land for a pipeline, either under Pennsylvania's Eminent Domain Code or under Pennsylvania's Business Corporation Law.

### **Condemnation Under Pennsylvania's Eminent Domain Code**

If an oil and gas company is going to use [Pennsylvania's Eminent Domain Code](#) to condemn property for a pipeline right of way, the applicable provisions are found at 26 Pa. C.S. § 101 et seq.; however, in order to utilize these provisions, the oil and gas company must be a public utility corporation. If the oil and gas company is a public utility corporation, it may, subject to certain requirements, exercise the power of eminent domain to condemn property for transportation of artificial or natural gas, petroleum or petroleum products. 15 Pa. C.S. § 1511(a)(2).

A public utility corporation is defined as "[a]ny domestic or foreign corporation for profit that . . . is subject to regulation as a public utility by the [PUC] or an officer or agency of the United States . . . ." 15 Pa. C.S. §1103.

Pennsylvania's Public Utility Code ("Code") defines a "Public utility" as "Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for: . . . Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation." 66 Pa. C.S. § 102(1)(v).

Jurisdiction over the certification and regulation of public utilities in Pennsylvania is vested in the PUC; however, simply being subject to the PUC and PUC regulations is insufficient for an entity to have the power of eminent domain. *In re Condemnation of Sunoco Pipeline L.P.*, 165 A.3d 1044 (Pa. Cmwlth. 2017). Pursuant to Section 1104 of the Code, 66 Pa. C.S. § 1104, a public utility must also possess a certificate of public convenience (CPC), issued by the PUC pursuant to Section 1101 of the Code, 66 Pa. C.S. § 1101.

To obtain a CPC, a public utility is required to submit a written application to the PUC, after which “A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” Section 1103(a) of the Code, 66 Pa. C.S. § 1103(a).

Once the PUC approves the CPC, the public utility corporation can begin taking private property under Pennsylvania’s Eminent Domain Code by filing a declaration of taking with the security required by Code Section 303(a) (relating to security required), 26 Pa. C.S. § 302(a)(1); however, the power of eminent domain cannot be exercised for a private purpose. The power is limited to the taking of private property for public use. 26 Pa. C.S. § 204(a).

The declaration of taking has to be in writing and executed by the condemnor and is to be captioned as a proceeding in rem and contain the following:

1. The name and address of the condemnor.
2. A specific reference to the statute and section under which the condemnation is authorized.
3. A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when the action was taken and the place where the record may be examined.
4. A brief description of the purpose of the condemnation.
5. A description of the property condemned, sufficient for identification, specifying the municipal corporation and the county or counties where the property taken is located, a reference to the place of recording in the office of the recorder of deeds of plans showing the property condemned or a statement that plans showing the property condemned are on the same day being lodged for record or filed in the office of the recorder of deeds in the county in accordance with Section 304 (relating to recording notice of condemnation).
6. A statement of the nature of the title acquired, if any.
7. A statement specifying where a plan showing the condemned property may be inspected in the county in which the property taken is located.
8. A statement of how just compensation has been made or secured.

See [26 Pa. C.S. § 302\(b\)](#).

The title which the oil and gas company (“condemnor”) acquires in the property condemned passes to the condemnor on the date of the filing of the declaration of taking, 26 Pa. C.S. § 302(a)(2), and the condemnor is entitled to possession under 26 Pa. C.S.A. § 307 (relating to possession, right of entry and payment of compensation).

Every condemnor is required to give security to effect the condemnation by filing with the declaration of taking its bond, without surety, to the

Commonwealth for the use of the owner of the property interests condemned, the condition of which is that the condemnor shall pay damages determined by law. 26 Pa. C.S.A. § 303(a). The court, upon preliminary objections of the landowner (hereinafter the “condemnee”) under and within the time set forth in 26 Pa. C.S.A. § 306(a) (relating to preliminary objections), may require the condemnor to give bond and security as the court deems proper if it appears to the court that the bond of the condemnor is insufficient in security. 26 Pa. C.S.A. § 303(c).

Upon the filing of its declaration of taking, the condemnor is required on the same day to lodge for record a notice of the declaration in the office of the recorder of deeds of the county in which the property is located. 26 Pa. C.S.A. § 304(a)(1). The notice of declaration is to specify:

- (i) The court term and number of the declaration of taking.
- (ii) The date it was filed.
- (iii) A description or plan of the property condemned sufficient for identification.
- (iv) The names of the owners of the property interests condemned, as reasonably known to the condemnor.

**26 Pa. C.S.A. § 304(b)(1).** The notice is to be indexed in the deed indices showing the condemnnee set forth in the notice as grantor and the condemnor as grantee. 26 Pa. C.S.A. § 304(b)(2).

Within 30 days after the filing of the declaration of taking, the condemnor is to give written notice of the filing to the condemnnee, to any mortgagee of record and to any lienholder of record. 26 Pa. C.S.A. § 305(a). The notice to be given to condemnnee is to state:

1. The caption of the case.
2. The date of filing of the declaration of taking and the court term and number.
3. The name of the condemnnee to whom it is directed.
4. The name and address of the condemnor.
5. A specific reference to the statute and section under which the condemnation action is authorized.
6. A specific reference to the action, whether by ordinance, resolution or otherwise, by which the declaration of taking was authorized, including the date when the action was taken and the place where the record may be examined.
7. A brief description of the purpose of the condemnation.
8. A statement that the condemnnee’s property has been condemned and a reasonable identification of the property.
9. In the case of a partial taking, a plot plan showing the condemnnee’s entire property and the area taken.
10. A statement of the nature of the title acquired.
11. A statement specifying where a plan showing the condemned property may be inspected in the county in which the property is located.

12. A statement of how just compensation has been made or secured.
13. A statement that, if the condemnee wishes to challenge the power or right of the condemnor to appropriate the condemned property, the sufficiency of the security, the procedure followed by the condemnor or the declaration of taking, the condemnee must file preliminary objections within 30 days after being served with the notice of condemnation.

#### 26 Pa. C.S.A. § 305(c).

If the condemnee wishes to challenge the declaration of taking, 26 Pa. C.S.A. § 306(a) provides the exclusive method for challenging the declaration of taking. Within 30 days after being served with notice of condemnation, the condemnee may file preliminary objections to the declaration of taking. The preliminary objections are limited to and are the exclusive method of challenging:

- (i) The power or right of the condemnor to appropriate the condemned property unless it has been previously adjudicated.
- (ii) The sufficiency of the security.
- (iii) The declaration of taking.
- (iv) Any other procedure followed by the condemnor.

After the preliminary objections are filed, the court is to promptly determine all preliminary objections and make preliminary and final orders and decrees, including the revesting of the title. If an issue of fact is raised, the court is to take evidence by depositions or otherwise. The court may allow amendment or direct the filing of a more specific declaration of taking. 26 Pa. C.S.A. § 306(f). If the preliminary objections, which have the effect of terminating the condemnation, are sustained, the condemnor is to reimburse the condemnee for reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred because of the condemnation proceedings. 26 Pa. C.S.A. § 306(g). After the expiration of the time for filing preliminary objections by the condemnee to the declaration of taking, the condemnor is entitled to possession or right of entry upon payment of or a written offer to pay to the condemnee the amount of just compensation as estimated by the condemnor. 26 Pa. C.S.A. § 307(a)(1)(i). The compensation paid is without prejudice to the rights of either the condemnor or the condemnee to proceed to final determination of the just compensation, and any payments made are to be considered only as payments pro tanto of the just compensation as finally determined. 26 Pa. C.S.A. § 307(c)(1). If a condemnee refuses to deliver possession or permit right of entry, the prothonotary, a/k/a clerk of court records, upon praecipe of the condemnor, is to issue a rule, returnable in five days after service upon the condemnee, to show cause why a writ of possession should not issue. 26 Pa. C.S. § 307(a)(1)(iii). The court, unless preliminary objections warranting delay are pending, may issue a writ of possession conditioned upon payment to the condemnee or into court of the estimated just compensation and on any terms as the court may direct. 26 Pa. C.S. § 307(a)(1)(iv).

Prior to the filing of the declaration of taking, the condemnor or its employees or agents have the right to enter upon any land or improvement in order to make studies, surveys, tests, soundings and appraisals upon ten days prior notice to the owner of the land or the party in whose name the property is assessed. 26 Pa. C.S. §§ 309(a) and 309(b).

At any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages and proceed to have those parts or

items not agreed upon assessed. The condemnor may make payment of any part or item agreed upon. 26 Pa. C.S. § 501. In the alternative, the condemnor, condemnee or a displaced person may file a petition requesting the appointment of viewers in order to determine the condemnee's damages. 26 Pa. C.S. § 502 Upon the filing of a petition for the appointment of viewers, the court, unless preliminary objections to the validity of the condemnation or jurisdiction warranting delay are pending, is to promptly appoint three viewers who are to view the premises, hold hearings and file a report. 26 Pa. C.S.A. § 504(a)(1). Any objection to the appointment of viewers may be raised by preliminary objections filed within 30 days after receipt of notice of the appointment of viewers. 26 Pa. C.S.A. § 504(d)(1). The viewers are to file their report within 30 days of their final hearing or within 30 days from the filing of the transcription of the stenographic notes of testimony. The transcription is to be filed within 30 days of the final hearing. 26 Pa. C.S.A. § 514(a). A copy of the report is to be mailed by the viewers ten days before the filing of their report to all the parties or their attorneys of record with notice of the date of the intended filing and that the report shall become final unless an appeal is filed within 30 days from the date the report is filed. 26 Pa. C.S.A. § 514(a).

Any party aggrieved by the decision of the viewers may appeal to the court. The appeal is to raise all objections of law or fact to the viewers' report. 26 Pa. C.S.A. § 516(a)(1). On appeal, all objections, other than to the amount of the award, raised by the appeal are to be determined by the court preliminarily. The court may confirm, modify or change the report or refer it back to the same or other viewers. A decree confirming, modifying or changing the report constitutes a final order. The amount of damages is to be determined by the court unless a jury trial has been demanded. At the trial of the case, the condemnee is the plaintiff and the condemnor is the defendant. 26 Pa. C.S.A. § 518.

The condemnee is entitled to just compensation for the taking, injury or destruction of the condemnee's property. 26 Pa. C.S. § 701. Just compensation consists of the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected by the condemnation and the fair market value of the property interest remaining immediately after the condemnation and as affected by the condemnation. 26 Pa. C.S.A. § 702(a). Fair market value is the price which would be agreed to by a willing and informed seller and buyer, taking into consideration but not limited to the following factors:

1. The present use of the property and its value for that use.
2. The highest and best reasonably available use of the property and its value for that use.
3. The machinery, equipment and fixtures forming part of the real estate taken.
4. Other factors as to which evidence may be offered as provided by Chapter 11 (relating to evidence), 26 Pa. C.S. § 1101 et seq.

#### **26 Pa. C.S.A. § 703.**

In addition to the Eminent Domain Code, there is an alternative way for a public utility to condemn land for an easement. This is under Section 1511(g) of the Business Corporation Law of 1988, 15 Pa. C.S. § 1511(g), a/k/a quick take condemnation.

### **Condemnation Under Pennsylvania's Business Corporation Law**

Under § 1511 of Pennsylvania's Business Corporation Law of 1988, a public utility corporation, in addition to any other power of eminent domain conferred by any other statute, has the right to take, occupy and condemn property for the transportation of artificial or natural gas, petroleum, petroleum products or water or any combination of such substances for the public and for the production, generation, manufacture, transmission, storage, distribution or furnishing of natural or artificial gas, or any combination thereof to or for the public. 15 Pa. C.S.A. §§ 1511(a)(2) and 1511(a)(3).

A corporation having the power of eminent domain that condemns for occupation by gas, oil or petroleum products lines used directly or indirectly in furnishing service to the public an interest (other than a fee) for right-of-way purposes or an easement for such purpose may elect to proceed as follows in lieu of the procedures specified in the Eminent Domain Code; i.e., 26 Pa. C.S.A. §§ 302, 303, 305 and 306:

(i) If the corporation and any interested party cannot agree on the amount of damages sustained, or if any interested party is an unincorporated association, or is absent, unknown, not of full age or otherwise incompetent or unavailable to contract with the corporation, or in the case of disputed, doubtful or defective title, the corporation may make a verified application to the appropriate court for an order directing the filing of a bond to the Commonwealth, in an amount and with security to be approved by the court, for the use of the person or persons who may be found to be entitled to the damages sustained. The application shall be accompanied by the bond and a certified copy of the resolution of condemnation. The resolution shall describe the nature and extent of the taking.

(ii) If the address of such interested party is known to the corporation, written notice of the filing of the application under subparagraph (i) shall be sent to such party by mail, or otherwise, at least ten days prior to the consideration thereof by the court. Otherwise the corporation shall officially publish such notice in the county or counties where the property is situated twice a week for two weeks prior to consideration by the court and shall give such supplemental or alternative notice as the court may direct.

(iii) Upon entry by the court of an order approving the bond and directing that it be filed, the title that the corporation acquires in the right-of-way or easement described in the resolution of condemnation shall pass to the corporation and the corporation shall be entitled to immediate possession.

(iv) The papers filed by the corporation with the court under this paragraph constitute the declaration of taking for the purposes of Sections 304, 308 and 309 of the Eminent Domain Code and Article V through VIII of the Eminent Domain Code.

See 15 Pa. C.S.A. § 1511(g)(2)(i) through (iv).

The foregoing is a summary of the condemnation procedures available in Pennsylvania to an oil and gas company that is a public utility corporation for the condemnation of an easement or right-of-way for an oil and gas pipeline. This is not to be construed as legal advice or the forming of an attorney-client relationship. If your property is condemned for a pipeline, the oil and gas lawyers in our firm can assist you.