

Landowner FAQ:

I received an easement offer but don't want to accept it. If I throw it away, will they take my property through eminent domain anyway?

Dominion does not have the authority to use eminent domain until and unless FERC (Federal Energy Regulatory Commission) grants it to them by issuing a "Certificate of Public Convenience and Necessity" in approving the pipeline at the end of the regulatory process. In Sept. 2015, when Dominion filed their formal application with the FERC, they asked them to grant this certificate in the summer of 2016. Therefore, Dominion does not have the power of eminent domain currently, definitely won't have it for many months, and will never have it if we can successfully derail their plans significantly enough.

If I refuse to sign the easement agreement, and they eventually do use the power of eminent domain to acquire my property, does that mean I'll get nothing or just what they offered me to begin with?

When property owners are taken to court for eminent domain proceedings (again, Dominion cannot currently do this, see above), a judge determines the compensation and terms of the easement. Dominion's attorneys would argue for the lowest amount of compensation they think they could get away with and for the terms of the easement, of course, that would be best for them. You would need to rely on the advice and expertise of your eminent domain attorney to counter their lawyers to obtain fair compensation and reasonable terms for you. See questions below about how to find an attorney.

How would the pipeline restrict my property use?

Restrictions on how you can use the right of way on your property have not publicly been spelled out, but it seems certain that you will not be permitted to erect buildings, plant trees, install obstructions like cattle fences, change the grade, or move heavy equipment or logs across the right-of-way.

<http://primis.phmsa.dot.gov/comm/ROWBrief.htm>

<http://pstrust.org/about-pipelines1/pipelines-for-landowners/>

<http://www.farmanddairy.com/top-stories/read-this-before-you-sign-that-pipeline-easement-lease/49966.html>

Dominion can require anyone engaging in any construction activities in the 'vicinity' of the pipeline to carry a 1 million dollar general liability insurance policy. Dominion also has the right to destroy your driveway and restrict access to your property without any compensation to the landowner whatsoever. Read about these facts and

others in the following 10 pages of restrictions that accompany Dominions pipelines.

<https://www.dom.com/library/domcom/pdfs/gas-transmission/pipeline-construction-guidelines.pdf>

The “land man” (right of way agent) offered me a certain sum per “acre disturbed,” meaning for the acreage directly affected by the pipeline on my property. Why isn’t that a reasonable way to calculate compensation? Or – does a pipeline affect property values?

Pipeline companies typically try to compensate landowners only for the exact square footage they intend to permanently use. Compensating like this assumes that the rest of the property, its value and use, is not affected by the pipeline’s presence. This assumption is false. An analysis by The Forensic Appraisal Group, LTD, concluded that property values near pipelines can drop by as much as 30 percent. You can read about how property values are likely to be affected by pipelines at the following sources:

http://forensic-appraisal.com/valuation_issues

http://preservethenrv.com/docs/quesenberry_housing_values.pdf

http://friendsofnelson.com/wp-content/uploads/2015/04/FoN-KeyLogEconomics_CommentRE_ACP_20140428.pdf

p. 11, Section 6.

How can I get more money for the easement on my property?

You should hire an attorney specializing in eminent domain who is familiar with the issues in gas transmission line right of ways. They know the ins and outs of what the pipeline companies try to get away with, and how to maximize your compensation under the law. In addition to considering the overall devaluation of your property, they will also help you get compensation for the “highest and best” use of your property, rather than its current use.

Virginia has many miles of pipelines buried underground --- they never cause any problems --- so why should I worry?

First, the vast majority of pipelines in VA and in the United States overall are much smaller diameter pipelines under much less pressure. The greater the diameter and pressure, the greater the consequences of a rupture or an explosion.

For a 42 inch pipeline at 1400 psi (the diameter and slightly less than the planned pressure for the ACP mainline), the evacuation zone is 3,583 feet, or 0.6785 (more than two thirds) miles on either side of the pipeline. See Appendix C, p. 29:

<http://www.pipelineawareness.org/wp-content/uploads/2014/09/2014-Pipeline-Emergency-Response-Guidelines.pdf>

The “Hazard Area Radius” (within which both the extent of property damage and the chance of serious or fatal injury would be expected to be significant) for a pipeline the size and pressure of the ACP mainline is about 1100 ft – about ¼ mile extending in each direction from the pipeline. See p. 11:

<http://nogaspipeline.org/sites/nogaspipeline.org/files/wysiwyg/docs/c-ferstudy.pdf>

Second, pipelines rupture and explode A LOT more than most people realize. There were 328 “significant” pipeline incidents in the US on gas transmission lines only (excluding gas gathering and distribution lines) since 2010. “Significant” means significant property damage or inpatient hospitalization or fatalities occurred. See <http://smartpig.pstrust.org/ignition-of-natural-gas-transmission-pipelines/>

You can see for yourself exactly what the statistics are on significant incidents, as well as the definition of “significant” by searching the PHMSA (Pipeline Hazardous Materials Safety Administration) database here:

https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?Portalpages&NQUser=PDM_WEB_USER&NQPassword=Public Web User1&PortalPath=%2Fshared%2FPDM%20Public%20Website%2F_portal%2FSC%20Incident%20Trend&Page=Significant

You need to use the filters if you want to exclude certain types of pipelines such as hazardous liquid pipelines.

Third, the PHMSA, the government department in charge of pipeline safety, has been described as a “toothless tiger” and “a sleepy, industry-dominated agency that tries to remain obscure by doing as little as possible.” Less than one-fifth of the more than 2.6 million miles of pipeline were inspected by federal or state officials in the years from 2006-2013.

See <http://www.peer.org/news/news-releases/2013/07/30/federal-safety-agency-plays-pipeline-rupture-roulette/>

https://speier.house.gov/index.php?option=com_content&view=article&id=1652:congresswoman-speier-calls-for-improved-pipeline-safety-phmsa-is-a-toothless-tiger&catid=20&Itemid=14

<http://www.politico.com/story/2015/04/the-little-pipeline-agency-that-couldnt-117147.html>

Finally, Dominion, like other pipeline companies, tries to site pipelines in rural areas so that they do not have to conform to the highest safety standards, in terms of monitoring for leaks or construction standards. More populated areas are called

“High Consequence Areas.” If you live on the route, even if your house is right next to the pipeline, you are unlikely to be in an HCA.

This article talks about an explosion in WV which was not in an HCA. It makes it clear that such pipelines do not have the same level of monitoring:

<http://www.wvgazette.com/News/201301280132>

The land man told me that all my neighbors have already signed easement agreements. He said that if I don't sign now, they'll take me to court!

First of all, you are under no legal obligation whatsoever to sign an easement agreement. Dominion has no authority to take you to court to acquire your property through eminent domain until and unless FERC (the Federal Energy Regulatory Commission) grants them a “Certificate of Public Convenience and Necessity,” which happens at the end of the regulatory process. There is no possibility that this could happen before summer 2016 at the very earliest, and later is much likelier.

It is very common for land men to tell you you're alone. They want to rush you and convince you that you don't have time to get a lawyer and to pressure you into signing terms that are best for them. Don't fall for it! If you want to see what your neighbors have or haven't signed, call them yourself.

Also, don't be afraid of going to court if it comes to that. Going to court can yield the best outcome for the landowner! See this 2012 University of Texas study that shows that, on average, a landowner *gets 78% more from having their property condemned* than what they would get in a negotiated sale:

<http://www.nofrackingway.us/2014/01/30/pipeline-rule-number-1-come-and-take-it/>

Of course, you can and should speak to your own attorney (see below) to advise you on this matter.

I understand that eminent domain attorneys are useful to help maximize compensation. But if I'm happy with the compensation, why would I need a lawyer before I sign an easement agreement?

Pipeline company lawyers write the standard right of way (easement) agreements specifically to maximize the benefit to the company for as long as possible. Many aspects of a pipeline easement agreement are negotiable, including potentially key issues like easement width, number of pipelines allowed, what can be transported, and how the land is restored and maintained. These issues can affect your property value and its use for generations. Please read this document to understand more about why it is essential to use a lawyer prior to signing agreements:

https://cedik.ca.uky.edu/files/questions_for_landowners_garkovich.pdf

How can I afford a lawyer?

All the eminent domain firms we are aware of do not charge any money up front. Rather, you sign an agreement that if Dominion takes your property, you will pay them some percentage of the amount they get for you (which is calculated as the amount above Dominion's first written offer to you). Typically, the attorneys want 1/3 of the final settlement amount over the first written offer. If for any reason Dominion ends up not taking your property, you don't owe the attorneys for any work they have done.

How can I find an eminent domain lawyer that has worked on gas transmission line right of ways?

You can do an internet search and see who you find and ask for recommendations among your friends, neighbors, and any lawyers you may know.

Lawyers that have worked with Landowners in Nelson County include:

Chuck Lollar: (757) 735-0777 chuck@lollarlaw.com

Henry Howell III: <http://eminentdomaingroup.us/attorney-bios/henry-e-howell-iii/>

Michael Coughlin: <http://thelandlawyers.com/michael-j-coughlin/>

Waldo and Lyle is also a reputable eminent domain firm that has worked with many property owners along the route: <http://www.waldoandlyle.com>

What if I want a lawyer to help me keep Dominion's surveyors off of my property?

All of the eminent domain attorneys mentioned above are representing landowners along the route who do not want to allow surveying on their property. These landowners do not have to pay for this legal help. Rather, the lawyers will only be paid out of the settlement if Dominion eventually acquires their property. Joe Lovett, of Appalachian Mountain Advocates, (<http://www.appalmad.org/about-us/sub-page-2/>) has also offered his firm's legal help pro-bono to any landowner who wants to prevent their property from being surveyed or who has other legal questions regarding the prevention of the pipeline. Mr. Lovett is an environmental attorney, not an eminent domain attorney. Contact him for further information.

I'm not sure this pipeline is worth the compensation to me. Do I have any options to keep it off my property?

Even though FERC (the Federal Energy Regulatory Commission) grants the power of eminent domain to Dominion if they issue the Certificate of Public Convenience and

Necessity for the ACP (which Dominion is hoping for in summer 2016), there are still important steps you can take to protect your property.

It is important to understand that the government, including FERC, encourages minimal use of eminent domain. Unfortunately, they measure the use of eminent domain by whether your compensation is determined by a court versus through voluntary negotiation, not by whether you want the pipeline on your property or not. This means that as long as you negotiate with Dominion, they will count you as a landowner who supports the project on your property.

Landowners are left though, with a few choices to demonstrate opposition to the project.

First, you can deny permission to survey – refusal shows that you do not want the pipeline on your property. Even if you have already given permission, if they have not finished surveying, you can rescind it. We have a lot of information on our website about refusing permission to survey, why it is helpful and how to keep surveyors off your property. See <http://friendsofnelson.com/for-landowners/surveying-access-and-eminent-domain/>

Second, it is very helpful to tell FERC that you will not negotiate with Dominion for compensation and that they will have to take you to court to get your property. Please see our FERC page to understand how to give comments to FERC: <http://friendsofnelson.com/ferc/>

Read this page to understand why telling FERC you will not negotiate is very important for landowners who do not want the pipeline: <http://www.lancasterpipeline.org/eminent-domain>

This page (and site over all) also has a lot of information on the strategy of welcoming eminent domain as a tool to stop the pipeline:

<http://www.nofrackingway.us/2014/01/30/pipeline-rule-number-1-come-and-take-it/>

The third thing you can do to keep the pipeline off your property is join forces with the many individuals and groups working to stop the pipeline's approval and construction. Friends of Nelson points out many opportunities for you to give input to local, state, and federal officials and to the regulatory process on our facebook page, web page, and in emails.

I'm worried about my well or spring. Is it possible that Dominion's blasting or digging could affect the ground water feeding my water source?

It certainly is possible. Dominion says they will compensate landowners for any damages caused by their construction --- but you will have to prove they caused the

damages by suing them, providing evidence, and winning. The burden of proof is on the landowner, in other words, not Dominion, even though you may be forced to have the pipeline on your property. Dominion could put up bonds in advance so that landowners would know damages would be covered with little hassle, but they have refused to do this. It is also far from clear exactly who would provide compensation or whether they would have the resources to do so. Technically, ACP LLC, a Delaware limited liability company, is in charge of the ACP. *Limited liability* – get it?