

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MOUNTAIN VALLEY PIPELINE, LLC,)
)
Plaintiff,)
)
v.) Civil Action No. 7:17-cv-00492
)
EASEMENTS TO CONSTRUCT,) By: Elizabeth K. Dillon
OPERATE, AND MAINTAIN A) United States District Judge
NATURAL GAS PIPELINE OVER)
TRACTS OF LAND IN GILES COUNTY,)
CRAIG COUNTY, MONTGOMERY)
COUNTY, ROANOKE COUNTY,)
FRANKLIN COUNTY, AND)
PITTSYLVANIA COUNTY, VIRGINIA, *et*)
al.,)
)
Defendants.)

ORDER

In accordance with the memorandum opinion entered this day, it is hereby ORDERED that:

1. Defendants’ motion to dismiss (Dkt. No. 132) is DENIED.
2. Defendants’ motions to stay (Dkt. Nos. 234, 241, 243, and 247) are DENIED.
3. Plaintiff’s motion for partial summary judgment (Dkt. No. 4) is GRANTED.

Pursuant to the Natural Gas Act, as the holder of a valid Certificate of Public Convenience and Necessity issued by FERC, Mountain Valley Pipeline, LLC (MVP) has the substantive right to condemn the easements needed for the Mountain Valley Pipeline Project in Virginia on the properties set forth in its complaint, as amended, and the FERC Certificate.

4. Plaintiff's motion for immediate possession (Dkt. No. 4) is **CONDITIONALLY GRANTED**. The properties fall into one of two distinct categories and each category carries different conditions.

5. As to all of the properties except the nine for which the court has appraisals, the court concludes that MVP has shown an entitlement to injunctive relief, but the court will not permit physical possession of the properties at this time. Instead, the court's order is conditioned on MVP's first presenting sufficient additional evidence that satisfies the constitutional requirements discussed in the court's memorandum opinion. Not later than seven days after entry of this order, MVP shall file a statement informing the court of its proposed schedule for doing so.

6. As to the nine properties for which MVP offered appraisals, and only those properties, the court's order is conditioned on the following:

- a. Not later than seven days after entry of this order, MVP shall submit a separate proposed order for each of the nine properties granting MVP the immediate right of entry as to the easements in the amended complaint and the FERC Certificate Order and also containing any requirements set forth in the FERC Certificate Order that are unique to that parcel of land. The proposed orders need not contain general requirements which are applicable to all parcels. MVP shall serve a copy of each proposed order on counsel for the affected landowner(s) or on any affected *pro se* defendant. If a landowner objects to the order's form or content, the objection must be filed in writing with the court not later than seven days after service of the proposed order. If no objection is filed within that time, and the

order is sufficient and proper, the court may enter the order granting immediate possession without further notice.

- b. Pursuant to Federal Rules of Civil Procedure 65(c), 67, and 71.1(j)(1), the right to immediate possession of the easements on these properties is contingent upon MVP satisfying two requirements as to security. First, MVP must deposit with the clerk of court a certified check in an amount of three times the appraised amount for each of the nine properties on which easements are sought by MVP.¹ The deposit is made pursuant to Federal Rules of Civil Procedure 65(c), 67, and 71.1(j)(1), and Local Rule 67.
- c. Second, MVP shall obtain and post a certified surety bond in the total amount of two times the appraised amount for the nine properties on which easements are sought by MVP. The bond shall be conditioned on MVP's payment of any and all final compensation damages awarded in excess of the deposited amount, and if such payments are made, then the bond shall be null and void upon full payment having been made as to all of the properties.
- d. Both the multiplier for the deposit and the bond are designed to serve as sufficient security to protect the interests of the landowners in the event any just compensation awarded for one or more of the easements exceeds the appraised amount for such property or properties. The multiplied value, the bond amount, or the two combined, shall not be construed as any indication of the floor or

¹ The appraisal for the easements on the Owen property (Pl.'s Hr'g Ex. 21) estimated the just compensation at \$2,994, although MVP has offered at least \$3,000 for each property. Presumably, the Owens contend it is worth more than \$3,000. *See* 15 U.S.C. § 717f(h) (granting district court's jurisdiction over condemnation actions where the "amount claimed by the owner of the property to be condemned exceeds \$3,000"). As to this property, and any future properties where the appraised amount (or other court-accepted estimate) for just compensation is at or under \$3,000, MVP shall base the amount of the deposit and bond on the amount of \$3,001. So, for example, the required deposit for the Owen property would be \$9,003, and the bond amount would be \$6,002.

ceiling of the ultimate amount of just compensation, if any, to which any interest-holder is entitled. Instead, the eventual compensation award by this court, a jury, or a compensation commission may be lower, higher, or the same as the amount MVP is required to provide as security.

- e. MVP shall remit the deposit amounts to the clerk of the court for deposit into the registry of this court. The clerk shall deposit the amounts received into the registry of this court and then, as soon as the business of the clerk's office allows, the clerk shall deposit these funds into the interest-bearing Court Registry Investment System (C.R.I.S.) administered by the Administrative Office of the United States Courts as Custodian, pursuant to Federal Rule of Civil Procedure 67 and Local Rule 67.
- f. MVP shall also file, at the time it remits any deposit or deposit(s), a chart broken down by easement that identifies: (i) each appraised property for which funds are being deposited; (ii) the corresponding MVP parcel numbers; (iii) the corresponding paragraph numbers in the amended complaint; (iv) the total amount of the appraisal; (v) the amount of the deposit for that specific property (which will be three times the appraised amount); (vi) the amount of the bond that relates to that specific property (which will be two times the appraised amount); and (vii) all persons or entities who own an interest in the property and the percentage of each person's interest. The information shall also be emailed to the presiding judge's chambers in an Excel spreadsheet format. If any party disputes the accuracy of any information in the chart, he shall file an objection not later than seven days after service of the chart. Additionally, all parties—including MVP

and any defendants who have an interest in any of the deposited funds—have a continuing duty, until the conclusion of all proceedings, to advise the court if the information in any filed chart changes. This includes, in particular, a duty to advise the court if there is any change for any parcel in the number of owners or the percentages of their ownership interests.

- g. Pursuant to Federal Rule of Civil Procedure 71.1(j)(2), the deposit of any funds for an identified defendant's property shall constitute MVP's agreement that the interest-holder can access up to the base amount of the appraisal, *i.e.*, up to one-third of the deposited amount, with the understanding that such withdrawal is at the landowner's peril. **Thus, all defendants are hereby advised that, if the ultimate compensation award is less than the amount withdrawn, the interest-holder will be liable for the return of the excess with appropriate interest.** If multiple defendants claim an interest in any of the easements, each defendant claiming an interest can withdraw only its proportionate share of the funds identified for that easement and attributable to its claimed interest.
- h. Each of the defendants associated with the nine properties shall be entitled to draw from one-third of the funds deposited by MVP with the clerk of the court its ownership share of the amount of estimated just compensation deposited by MVP for the easement which burdens lands in which such defendant owns or claims an interest, subject to the warnings above, and provided that each such defendant satisfies all conditions of this order and any other court order. Furthermore, such defendants shall be entitled to interest calculated pursuant to 28 U.S.C. § 1961 from and after the date of entry of this order on the difference between the

principal amount deposited with the court by MVP and the amount of just compensation determined by the court, if any, if such determination of just compensation to be paid exceeds the amount deposited by MVP.

- i. A defendant who wants to draw on the deposited funds shall file a motion for disbursement of funds with the court and shall include a certificate of service showing that he served the motion on all other persons with a property interest in the same parcel or easement, if any. Any person objecting to the disbursement shall have fourteen days to file a written objection with the court. The court will then resolve any objections and issue an order on the withdrawal request. If there are no other persons with an interest in that property, disbursement will be permitted only by a separate order of the court, but the fourteen-day period for objections will not apply.
6. It is further ORDERED that the parties shall confer and propose to the court an appropriate litigation schedule and method to resolve the remaining issues of just compensation.

The clerk is directed to mail a copy of this order and accompanying memorandum opinion to all counsel of record, all *pro se* parties who have appeared, and all defendants who have been personally served and not yet appeared.

Entered: January 31, 2018.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge