

A large industrial drilling rig is the central focus, standing tall in a gravel-covered field. The rig is a complex structure of metal, with various pipes, ladders, and platforms. In the background, there are several white trailers, some with satellite dishes, and several vehicles including a black pickup truck and a white car. The area is surrounded by a wooden fence, and beyond that, there are green hills under a blue sky with scattered white clouds.

# Act 13 Summary of Eminent Domain Decision

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# THE STATUTE

- ▶ § 3241. Appropriation of interest in real property

(a) **General rule.**--Except as provided in this subsection, **a corporation empowered to transport, sell or store natural gas or manufactured gas in this Commonwealth may appropriate** an interest in real property located in a storage reservoir or reservoir protective area for injection, storage and removal from storage of natural gas or manufactured gas in a stratum which is or previously has been commercially productive of natural gas. The right granted by this subsection shall not be exercised to acquire any of the following for the purpose of gas storage:

- ▶ (1) An interest in a geological stratum within the area of a proposed storage reservoir or reservoir protective area:
  - ▶ (i) unless the original recoverable oil or gas reserves in the proposed storage reservoir have been depleted or exhausted by at least 80%; and
  - ▶ (ii) until the condemnor has acquired the right, by grant, lease or other agreement, to store gas in the geological stratum underlying at least 75% of the area of the proposed storage reservoir.
- ▶ (2) An interest in a geological stratum within the area of a proposed storage reservoir or reservoir protective area owned directly or indirectly by a gas company or other person engaged in local distribution of natural gas, if the interest to be acquired is presently being used by the gas company or other person for storage of gas in performance of service to customers in its service area.
- ▶ [2012, Feb. 14, P.L. 87, No. 13, § 1](#), effective in 60 days [April 16, 2012].

# THE STATUTE CONTINUED

- ▶ **(b) Construction.**--The following shall apply:
- ▶ (1) This chapter authorizes appropriation within a storage reservoir or reservoir protective area of the following:
  - ▶ (i) a stratum to be used for storage;
  - ▶ (ii) any gas reserve remaining a stratum to be used for storage;
  - ▶ (iii) an active or abandoned well or wells drilled into a stratum to be used for storage; and
  - ▶ (iv) the right to enter upon and use the surface of lands to:
    - ▶ (A) locate, recondition, maintain, plug or replug an active or abandoned well; or
    - ▶ (B) operate a well drilled into or through a stratum to be used for storage.
- ▶ (2) This chapter does not preclude the owner of nonstorage strata from drilling wells to produce oil or gas from a stratum above or below the storage stratum appropriated by another person, but a person appropriating or holding storage rights may access, inspect and examine the drilling, the completed well, drilling logs and other records relating to drilling, equipping or operating the well in order to determine whether the storage stratum is being adequately protected to prevent escape of gas stored therein.
- ▶ (3) This chapter does not authorize appropriation of a coal or coal measure, regardless of whether it is being mined, or an interest in the coal mine or coal measure.

# THE STATUTE CONTINUED

- ▶ **(c) Activities through appropriated strata.**--A person drilling, operating, using or plugging a well through a stratum appropriated under this chapter shall drill, case, equip, operate or plug it in a manner designed to prevent avoidable escape of gas that may be stored in the storage stratum. Upon violation of this subsection, the court of common pleas of the county where the land in question is situated may compel compliance by injunction or grant other appropriate relief in an action brought by the person storing gas in the storage stratum.
- ▶ **(d) Prerequisites to appropriation.**--Before appropriating under this chapter, a person shall attempt to agree with owners of interests in the real property involved as to damages payable for rights and interests to be appropriated, if the owners can be found and are sui juris. If the parties fail to agree, the person shall tender a surety bond to the owners to secure them in the payment of damages. If the owners refuse to accept the bond, cannot be found or are not sui juris, and after reasonable notice to the owners by advertisement or otherwise, the bond shall be presented for approval to the court of common pleas of the county in which the tract of land is situated. Upon the approval of the bond by the court, the right of the person to appropriate in accordance with the provisions of this chapter shall be complete.
- ▶ **(e) Appointment of viewers.**--Upon petition of a property owner or a person appropriating under this chapter, the court shall:
  - ▶ (1) appoint three disinterested freeholders of the county to serve as viewers to assess damages to be paid to the property owner for the rights appropriated;
  - ▶ (2) fix a time for the parties to meet;
  - ▶ (3) provide notice to the parties; and
  - ▶ (4) after the viewers have filed their report, fix reasonable compensation for the service of the viewers.
- ▶ **(f) Appeal.**--Within 20 days after the filing of a report by viewers appointed under subsection (e), a party may appeal and proceed to a jury trial as in ordinary cases.

# PROBLEMS

- Violation of Fifth Amendment of US Constitution.
- Violation of Article 1, §10 of Pa. Constitution.
  - Public Benefit to Private Corporation.
- Ignores The Supreme Court's Decision in In re Opening of Private Road For Benefit of O'Reilly.
- Gives Rights To Companies Who Are Not Regulated By PUC.

# The Supreme Court Decision

- ▶ “Although the Commonwealth may choose to delegate such power to other entities, the Commonwealth’s power of delegation is not plenary, as it is restrained by our federal and state Constitutions, and may be further limited by statute.”
- ▶ “The primary federal and state constitutional limitation imposed on the exercise of this power by the Commonwealth, or by any entity to which the Commonwealth has delegated such power is that private property may only be taken to serve a public purpose.”
- ▶ “The Public MUST be the **primary** and **paramount** beneficiary of the taking.”
- ▶ Indeed, the breadth of the scope of this power is underscored by the fact that Section 3241(a) places only two limited types of property outside of its reach (1) property which still has more than 20 percent of its recoverable oil and gas reserves, and (2) subsurface areas already owned by other gas companies, or persons engaged in the distribution of natural gas, if those areas are presently being used by those companies for storing gas as part of providing service to customers.”

# The Supreme Court Decision

- ▶ THE COMMONWEALTH DOES NOT CLAIM, NOR CAN IT DO SO REASONABLY, THAT THE PUBLIC IS THE “PRIMARY AND PARAMOUNT” BENEFICIARY WHEN PRIVATE PROPERTY IS TAKEN IN THIS MANNER. INSTEAD, IT ADVANCES THE PROPOSITION THAT ALLOWING SUCH TAKINGS WOULD SOMEHOW ADVANCE THE DEVELOPMENT OF INFRASTRUCTURE IN THE COMMONWEALTH. **SUCH A PROJECTED BENEFIT IS SPECULATIVE, AND, IN ANY EVENT, WOULD BE MERELY AN INCIDENTAL ONE AND NOT THE PRIMARY PURPOSE FOR ALLOWING THESE TYPE OF TAKINGS.”**