

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DELAWARE RIVERKEEPER
NETWORK, *et al.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,
Respondent.

Case Nos. 18-1128, *et al.*

JOINT RESPONSE IN OPPOSITION TO
JOINT MOTION TO SUSPEND SUPPLEMENTAL BRIEFING
DEADLINES AND TO HOLD CASE IN ABEYANCE

I. INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 27(a)(3), Petitioners Delaware Riverkeeper Network and Maya van Rossum, the Delaware Riverkeeper (No. 18-1128 and 18-1220) and Petitioner Homeowners Against Land Taking—PennEast, Inc. (No. 18-1226) (collectively, “Responding Parties”), submit this response in opposition to the October 29, 2021 Joint Motion to Suspend Supplemental Briefing Deadlines and to Hold Case in Abeyance (“Abeyance Motion”) filed by Respondent Federal Energy Regulatory Commission (“FERC” or the “Commission”), Petitioners New Jersey Department of Environmental

Protection and Delaware and Raritan Canal Commission (Nos. 18-1144 and 18-1256), Petitioners New Jersey Conservation Foundation and The Watershed Institute (No. 18-1225), Petitioner New Jersey Division of Rate Counsel (No. 18-1233), Petitioner Township of Hopewell, N.J. (No. 18-1274), and Respondent-Intervenor Consolidated Edison Company of New York, Inc. (No. 18-1144) (collectively, “Movants”). Responding Parties respectfully request that the Court deny Movants’ motion, and modify the supplemental briefing schedule¹ with initial briefs due within fourteen (14) days of the Court’s order.

II. ARGUMENT

A. Suspension of supplemental briefing and a subsequent abeyance is not warranted in this case because PennEast has stated it is not abandoning the Project.

Relying on press accounts, Movants have mischaracterized the current status of the PennEast Pipeline Project (“Project”). A more reliable description of what PennEast is proposing to do can be found in court filings made by PennEast in a Pennsylvania condemnation case weeks after publication of the news articles cited by Movants in the Abeyance Motion. On October 14, 2021, in response to a Defendant’s objection made to the closing of a condemnation case *without payment of any compensation*, “PennEast denie[d] that it has abandoned the PennEast Pipeline Project.” Response by PennEast Pipeline Co., LLC to

¹ Set by Order of the Court dated September 13, 2021. ECF No. 1913871.

Defendant's Objection to Dismissal and Request to Reopen the Case, *PennEast Pipeline Co., LLC v. A Permanent Easement of .60 Acres*, No. 18-cv-00281, (M.D. Pa. Oct. 14, 2021) ECF No. 48 (Attachment 1).² Since PennEast has already stated that it has no intention to abandon the Project in its court filings, there is no reason to suspend the current supplemental briefing schedule or put the cases in abeyance.

Three months ago, the investors in PennEast revealed impairments regarding the financing of the Project in their quarterly statements to the Securities and Exchange Commission, which were summarized in news reports to their investors. For example, New Jersey Resources, one of five investors in the Project,³ stated:

PennEast - On June 29, 2021, the U.S. Supreme Court overturned the September 10, 2019 Third Circuit decision vacating the New Jersey Federal District Court's December 13, 2018 condemnation order. Despite the favorable outcome, PennEast continues to see regulatory and legal challenges that result in the continued delay of construction and commercial operation. As a result, the impairment of NJR's investment is due to management's estimates and assumptions regarding the timing uncertainty of regulatory and legal matters, construction and in-service dates, and NJR's evaluation of the environmental and political climate as it relates to interstate pipeline development.

New Jersey Resources Reports Third-Quarter Fiscal 2021 Results, New Jersey Resources News Release, 5 (Aug. 5, 2021), <https://www.njresources.com/news/>

² PennEast's Sept. 27, 2021 Notice of Dismissal, Defendant's Sept. 28, 2021 Objection to the closing of the case, and the Court's Oct. 14, 2021 Order scheduling a Nov. 12, 2021 hearing on the matter are in Attachment 2.

³ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053, note 3 (2018).

[releases/2021/njr/Press%20Release%203Q%202021%20-%20Final.pdf](#). The day

before, South Jersey Industries (“SJI”) issued a similar report to its investors.

Midstream Performance. Midstream includes SJI's 20% equity interest in the PennEast Pipeline. ...

Update. Work continues with state and federal agencies to obtain the required permits to begin construction of the PennEast Pipeline. Despite the favorable outcome from the Supreme Court, PennEast continues to experience regulatory and legal challenges resulting in continued delays preventing the commencement of construction and commercial operation of the project. As a result, the Company evaluated its investment in PennEast and recorded an other-than-temporary impairment charge of \$87.4 million in the condensed consolidated statements of income for the three and six months ended June 30, 2021. This action does not change our belief that PennEast is an important and needed project to serve constrained markets in the region, and that it should be built. Natural gas continues to play a critical role in meeting the energy needs of the United States, and the northeast in particular, and will be critical to ensure that energy remains affordable and reliable as we transition our supplies to lower-carbon sources.

SJI Reports Second Quarter 2021 Results Reaffirms Guidance, South Jersey News

(Aug. 4, 2021), <https://www.sjindustries.com/investors/news-events/newsroom/south-jersey-industries/2021/sji-reports-second-quarter-2021-results-reaffirms>.

These reports were available and known to some or all of the Parties prior to the filing of the Joint Motion to Govern Future Proceedings on September 1, 2021, (ECF No. 1912486) (“Joint Motion”), which resulted in the September 13, 2021 Scheduling Order (ECF No. 1913871). If the withdrawal of financial support for

the Project was significant, it should have been noted in the Joint Motion. Instead, Movants waited until two weeks before the Supplemental Briefs were due to file their Abeyance Motion. We respectfully ask that it be denied, as news reports regarding the Project are substantially undermined by court filings and continued pursuit of federal and state authorizations.

B. PennEast’s pursuit of “Phase 1” of the Project depends on the continued effectiveness of the Certificate Order subject to judicial review in this case, and Responding Parties will be harmed by construction of Phase 1.

PennEast has not abandoned its efforts to obtain state and federal authorizations that would allow it to construct the “Phase 1” portion of the Project in Pennsylvania.⁴ Before FERC, PennEast is seeking an amendment of its currently valid and effective certificate that would allow PennEast to

construct, own and operate the Project in two (2) phases, such that PennEast will be able to construct and operate the facilities proposed to be located in Pennsylvania through approximate milepost (“MP”) 68 of the Certificated Route, including two (2) of the compressor units at the Kidder Compressor Station, as well as new interconnection facilities in Pennsylvania (collectively,

⁴ Significantly, none of the Movants represent the interests of landowners and communities that would be affected by the Project in Pennsylvania. Delaware Riverkeeper Network has members who use and enjoy areas to be crossed by the Pennsylvania portion of the Project. *See* Addendum to Petitioners’ Joint Opening Brief, ECF No. 1765338, at ADD. 043, ADD. 059. Petitioner Maya K. van Rossum lives in Pennsylvania and recreates in areas to be affected by the Pennsylvania portion of the Project. *See id.* at ADD. 040, ADD. 046. Members of HALT live in Pennsylvania and own land in Pennsylvania that would be directly impacted by the Project. *See id.* ADD. 090–101.

“Phase 1”), which are *independent of the New Jersey Authorizations*.

Abbreviated Application for Amendment to Certificate of Public Convenience and Necessity, Doc. Accession No. 20200130-5196, FERC Docket No. CP20-47-000 (Jan. 30, 2020) (hereinafter, “Abbreviated Application”) (emphasis added). Any regulatory hurdles faced in New Jersey cited by Movants are not germane to PennEast’s ability to continue pursuing the Project’s construction in Pennsylvania. PennEast has made recent statements to the press that it is still pursuing the Project in Pennsylvania:

The company also said, however, it was still discussing the future of the first phase of the 120-mile pipeline, which includes a 68-mile route in Pennsylvania from Luzerne County to the Church Road Interconnect in Northampton County where it would tie in with the Adelpia Gateway and Columbia Transmission lines. Phase One had originally been scheduled to become operational in November, but that target was pushed into 2022 earlier this year amid regulatory delays. The company said it was “examining the proper next steps in the regulatory process as it pertains to the Phase One Amendment pending at FERC.”

Hil Anderson, *PennEast cancels New Jersey pipeline; deliberates future of Pa. segment*, Pennsylvania Business Report (Sept. 28, 2021), <https://pennbizreport.com/news/21146-penneast-cancels-new-jersey-pipeline-deliberates-future-of-pa-segment/>.

PennEast has not withdrawn its Abbreviated Application for Amendment, wherein PennEast explains that “[t]he Phase 1 facilities and provision of Phase 1 service are . . . independent of the Phase 2 facilities, and *will be constructed and operated irrespective of whether the Phase 2 facilities [in New Jersey] are constructed.*” Abbreviated Application at 10 (emphasis added). PennEast’s position before FERC is that the Commission may rely on its Final Environmental Impact Statement (“FEIS”) in Docket No. CP15-558-000 and Environmental Assessment (“EA”) in Docket No. CP19-78-000, and the Commission’s conclusions reached in those proceedings, in deciding whether to approve PennEast’s amendment request in CP20-47-000. *See* Response of PennEast Pipeline Company, LLC to Comments on Environmental Assessment at 5–6, Doc. Accession No. 20200909-5127, PennEast Pipeline Company, LLC, FERC Docket No. CP20-47-000 (Sept. 9, 2020). The adequacy of the Commission’s FEIS in FERC Docket No. CP15-558-000 is currently a live issue before this Court. *See* Pet’rs’ Joint Opening Brief at 1, ECF No. 1791473 (June 6, 2019); Final Joint Brief of State Petitioners at 4, ECF No. 1791464 (June 6, 2019).

PennEast still has pending applications for Pennsylvania state permits that have not been denied, terminated, or withdrawn. *See* Erosion and Sediment Control Permits, ESG02000160002, 49 Pa. B. 4551, 4600 (Aug. 17, 2019); Water Obstructions and Encroachments, E40-780, E13-185, E48-438, & E09-998, 49 Pa.

B. 713, 777–78 (Feb. 16, 2019); Erosion and Sediment Control Permits, ESG02000160001, 49 Pa. B. 713, 778 (Feb. 16, 2019). PennEast also has a final Clean Water Act Section 401 Water Quality Certification from Pennsylvania. *See* 401 Water Quality Certification, Doc Accession No. 20170214-0021, FERC Docket No. CP15-558 (Feb. 13, 2017). PennEast still has pending applications for Department of the Army permits pursuant to Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, and Section 404 of the Clean Water Act, 33 U.S.C. § 1344. *See* U.S. Army Corps of Eng’rs, Baltimore Dist., Public Notice PN17-42 (PennEast Pipeline)—2015-00581 (Sept. 11, 2017); U.S. Army Corps of Eng’rs, Philadelphia Dist., Public Notice for Application No. CENAP 2014-00975 (Sept. 14, 2017). PennEast also has a pending application for a docket from the Delaware River Basin Commission (“DRBC”). *See* Project Review: Pending Project Status Page, Del. River Basin Comm’n, https://www.nj.gov/drbc/programs/project/project-review_status-pg.html#2 (last visited November 2, 2021) (showing PennEast Docket No. D-2016-001-2 as “Pending” in the DRBC Pending Project Status Matrix).

Thus, this case is unlike *Atlantic Coast Pipeline, LLC, et al. v. FERC*, which is cited by the Movants. In *Atlantic Coast*, this Court placed the proceedings in abeyance upon the consent of all parties. *See Atlantic Coast Pipeline, LLC, et al. v. FERC*, Nos. 18-1224, *et al.* (D.C. Cir. Aug. 17, 2020). In that case, the pipeline

company *itself* moved for abeyance, informing the Court of its decision to cancel the pipeline and its intention to “voluntarily dismiss[] the petitions for review once Commission proceedings effectuating the decision to cancel the Atlantic Coast Pipeline are concluded.” *See* Mot. to Govern Further Proceedings, ECF No. 1851862, *Atlantic Coast Pipeline, LLC v. FERC*, Nos. 18-1224, *et al.* (July 15, 2020). In contrast, PennEast has “take[n] no position” on the Motion for Abeyance.

Additionally, abeyance was requested in *Atlantic Coast Pipeline* because construction of the pipeline project had already begun, and additional approval from FERC was necessary for abandonment and restoration of areas affected by construction under the certificate. *See* Joint Response of Conservation Petitioners and Landowner Petitioners Withdrawing Prior Motion and Consenting to Hold Cases in Abeyance, ECF No. 1852355, *Atlantic Coast Pipeline, LLC v. FERC*, Nos. 18-1224, *et al.* (July 17, 2020). This necessary action under the certificate warranted further proceedings on the FERC docket. Here, although Movants assert that PennEast’s Project is cancelled, PennEast itself has not made any representation to this Court regarding its plans going forward, nor has it made any filing in any of the FERC dockets indicating a change in plans.

Rather than “preserving federal and state governmental resources,” an abeyance of this case would allow PennEast to pursue approvals before FERC, the Corps, Pennsylvania Department of Environmental Protection, and DRBC on the

basis of a Certificate Order that may ultimately be vacated by a decision of this Court. Given PennEast's continued pursuit of Phase 1, which relies on the Certificate Order issued by FERC in CP15-558-000, the issues presented in this case remain live and ripe for adjudication.

C. The issue of whether the Commission had the authority to grant PennEast the use of Eminent Domain is timely and will not become moot.

Homeowners Against Land Taking – PennEast, Inc. (“HALT”) is challenging the Commission's authority to grant PennEast the right to use eminent domain prior to obtaining federal licenses and permits that are required to construct the Project. *See* HALT's Statement of Issues to Be Raised, No. 18-1226 (Sept. 24, 2018), ECF No. 1752295. These issues are timely and will remain so even if there is a delay in the construction schedule or if the condemnation cases are dismissed.

In 2018, PennEast acquired the right to take property and have access to it. HALT's standing affidavits, Addendum to Petitioners' Joint Opening Brief, No. 18-1128, ADD. 089–185 (Dec. 21, 2018), ECF No. 1765338. It is now asking the district courts to dismiss the condemnation cases without prejudice, or stipulating the same with Defendants. Abeyance Motion, 3. *See also*, Fed. R. Civ. P. 71.1(i)(3) (“A dismissal is without prejudice unless otherwise stated in the notice, stipulation, or court order.”). Since the condemnation cases can be reactivated at any time, the dismissal of the current cases has no effect on HALT's standing and will not

render the issues HALT raised moot. However, if these Petitions are put in abeyance, the same landowners could be subjected to the same statutory and Constitutional violations twice, as they would have to defend their property a second time from a certificate of public convenience and necessity that could (and should) have been vacated the first time.

D. The lapse of the construction deadline in the Certificate Order is not relevant to the continued viability of the Project.

The Movants' emphasis of the January 19, 2022 construction deadline is not relevant, as the passage of that date has no bearing on the continued viability of the Certificate Order and will not assist in determining the outcome of these petitions. Abeyance Motion, 4–5. A certificate of public convenience and necessity remains valid until it is vacated. While the Movants claim that the Commission's authorization for the pipeline project may lapse, the passage of the construction deadline does not mean the Certificate Order has expired or is void. Instead, the passage of the construction deadline is simply an unfulfilled condition, just like PennEast's noncompliance with various environmental conditions listed in the Appendix.

The Commission orders:

A certificate of public convenience and necessity is issued to PennEast, authorizing it to construct and operate the proposed PennEast Project, as described and conditioned herein, and as more fully described in the application.

The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) PennEast's proposed project being constructed and made available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) PennEast's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and
- (3) PennEast's compliance with the environmental conditions listed in Appendix A to this order.

PennEast Pipeline Co., LLC, 162 FERC ¶ 61,053, 82 (2018).

The Movants also ignore the Commission's regulations, which state that a member of FERC's staff can grant a motion by PennEast to extend the construction deadline "at any time," thereby reviving the project. *See* 18 C.F.R. §§ 375.308(w)(4), 385.212(a)(1). Such extensions are regularly granted. For example, Magnum was granted a certificate on March 18, 2011, *Magnum Gas Storage, LLC*, 134 FERC ¶ 61,197 (2011), which was extended on November 17, 2016. *Magnum Gas Storage, LLC*, 157 FERC ¶ 61,114 (2016). On August 17, 2020, Magnum requested a four-and-a-half-year extension, which was granted by a member of FERC's staff on September 15, 2020. FERC, Letter Order Granting Extension, 2,

Sept. 15, 2020.⁵ The last sentence of the Letter Order states, “This action is taken pursuant to authority delegated by the Commission in 18 C.F.R. § 375.308(w)(4).” *Id.* Construction under that certificate must now be completed by May 17, 2025, which is fourteen years after the certificate was issued. *Id.* Nothing in the Natural Gas Act precludes another extension, even after the “lapse” of the construction deadline.

Here PennEast has not made any move to relinquish the certificate it holds in CP15-558 or the order it obtained in CP19-78 to amend the route. Nor has it withdrawn its application in CP20-47 to divide the project into two phases. Instead, it is attempting to dismiss condemnation cases without prejudice—and without payment for the time it used them. Accordingly, the Abeyance Motion should be denied, and the supplemental briefing schedule should be modified so that initial supplemental briefs are due within fourteen (14) days of the Court’s order denying the Abeyance Motion.

III. CONCLUSION

For the foregoing reasons, Responding Parties respectfully request that this Court deny the Abeyance Motion, and modify its Order of September 13, 2021 so that initial supplemental briefs are due within fourteen (14) days of the Court’s order denying the Abeyance Motion.

⁵ Available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20200915-3030.

Respectfully submitted,

Date: November 4, 2021

/s/ Kacy C. Manahan

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this response to a motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this response to a motion contains 2,905 words.

I further certify, pursuant to Fed. R. App. P. 27(d)(1)(E), that this response to a motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this response to a motion has been prepared in Times New Roman 14-point font using Microsoft Word 2019.

Dated: November 4, 2021

/s/ Kacy C. Manahan
Kacy C. Manahan

CERTIFICATE OF SERVICE

I certify that on November 4, 2021, the foregoing response to a motion was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which filing effected service upon counsel of record through the CM/ECF system.

/s/ Kacy C. Manahan
Kacy C. Manahan

Attachment 1

PennEast Pipeline Co., LLC's Response to Defendant's Objection to Dismissal and Request to Reopen the Case

Oct. 14, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<p>PENNEAST PIPELINE COMPANY, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>A PERMANENT EASEMENT OF 0.60 ACRE ± AND A TEMPORARY EASEMENT OF 0.60 ACRE ± IN TOWAMENSING TOWNSHIP, CARBON COUNTY, PENNSYLVANIA, TAX PARCEL NOS. 16-56-A73.05 and 16B-56-A7; SUSANA V. BULLRICH; BANK OF AMERICA, N.A.</p> <p>AND ALL UNKNOWN OWNERS,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 3:18-cv-00281-MEM</p> <p>Civil Action</p> <p>Eminent Domain</p> <p>FILED ELECTRONICALLY</p>
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**RESPONSE BY PENNEAST PIPELINE COMPANY, LLC
TO DEFENDANT’S OBJECTION TO DISMISSAL AND
REQUEST TO REOPEN THE CASE**

NOW COMES Plaintiff PennEast Pipeline Company, LLC (“PennEast”) to respond to the objection by Susana V. Bullrich (“Defendant”) to PennEast’s Notice of Dismissal pursuant to Rule 71.1(i)(1)(A) of the Federal Rules of Civil Procedure, and to Defendant’s request to reopen the case, averring as follows:

1. PennEast denies that it acquired title, exclusive possession or a lesser property interest, within the meaning of Fed. R. Civ. P. 71.1(i)(1)(A)), in the proposed Easements or Defendant's property before it filed its Notice of Dismissal without prejudice.

2. Prior to the filing of the Notice of Dismissal no hearing had begun for the determination of compensation to be paid for the proposed Easements.

3. PennEast denies that it has abandoned the PennEast Pipeline Project.

4. Nonetheless, given the uncertainty on timing to resolve the remaining legal and regulatory hurdles in the PennEast Pipeline Project, PennEast believes it is not prudent to complete the acquisition of the rights of way in the various actions until has a better understanding of when it would need to acquire the property interests.

5. The Order issued in this case on December 3, 2018 (ECF Doc. 40), in which the Court granted PennEast's motion for a partial summary judgment, confirmed PennEast's condemnation authority under the Natural Gas Act and the Certificate Order issued by the FERC. However, the acquisition of the proposed Easements through condemnation was not completed in that there was no hearing on compensation and no judgment was entered vesting PennEast with title or a lesser interest in, or possession of, the Subject Property.

6. The Order issued by the Court on December 3, 2018, granting PennEast's motion for a preliminary injunction only permitted PennEast to access and enter the proposed easements to perform certain surveys required by the FERC Certificate Order. (*See* ECF Doc. 42, Para. 2). The Court's Order did not grant PennEast access to the Property or a right of entry for any other purpose. (*Id.*).

7. The surveys on Defendant's property were completed within the space of a few hours on December 7, 2018, and there was no subsequent entry onto the Property.

8. If the Court deems it appropriate to reopen the action, it should be for the limited purpose of determining the amount to be awarded to Defendant under Fed. R. Civ. P. 71.1(i)(1)(C) as compensation for PennEast's entry onto the Property on December 7, 2018, to complete surveys.

9. The Court is respectfully requested to schedule a status conference before entering any further order regarding the disposition of defendant's request to reopen the case.

WHEREFORE, Plaintiff respectfully requests that the objections and request to reopen filed by defendant Susana V. Bullrich be dismissed.

Respectfully submitted,

KEEFER WOOD ALLEN & RAHAL, LLP

Dated: October 14, 2021

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Donald M. Lewis III, Esquire, one of the attorneys for plaintiff PennEast Pipeline Company, LLC, hereby certify that the foregoing paper has been served upon counsel of record via the ECF system this date, as follows:

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KEEFER WOOD ALLEN & RAHAL, LLP

Dated: October 14, 2021

By s/ Donald M. Lewis III
Donald M. Lewis III, Of Counsel

Attachment 2

PennEast's Sept. 27, 2021
Notice of Dismissal;

Defendant's Sept. 28, 2021
Objection; and

the Court's Oct. 14, 2021 Order
scheduling a Nov. 12, 2021
hearing

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<p>PENNEAST PIPELINE COMPANY, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>A PERMANENT EASEMENT OF 0.60 ACRE ± AND A TEMPORARY EASEMENT OF 0.60 ACRE ± IN TOWAMENSING TOWNSHIP, CARBON COUNTY, PENNSYLVANIA, TAX PARCEL NOS. 16-56-A73.05 and 16B-56-A7; SUSANA V. BULLRICH; BANK OF AMERICA, N.A.</p> <p>AND ALL UNKNOWN OWNERS,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 3:18-cv-00281-MEM</p> <p>Civil Action</p> <p>Eminent Domain</p> <p>FILED ELECTRONICALLY</p>
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NOTICE OF DISMISSAL
PURSUANT TO FED. R. CIV. P. 71.1(i)(1)(A)

TO: Defendants Susana V. Bullrich and Bank of America, N.A.

PLEASE TAKE NOTICE that Plaintiff PennEast Pipeline Company, LLC, dismisses this action without prejudice pursuant to Rule 71.1(i)(1)(A) of the Federal Rules of Civil Procedure.

The property identified in this action, as to which no hearing has begun for the determination of compensation to be paid for the property and in that Plaintiff

has not yet acquired title or a lesser interest or taken possession, is a proposed permanent easement of 0.60 acre ±, a temporary easement of 3.12 acres ± and a permanent surface site easement of 0.60 acre ± in Towamensing Township, Carbon County, Pennsylvania, Tax Parcel Nos. 16-56-A73.05 and 16B-56-A7, as depicted on Exhibits A-1 and A-2 hereto.

Respectfully submitted,

KEEFER WOOD ALLEN & RAHAL, LLP

Dated: September 27, 2021

By s/ Donald M. Lewis III
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CERTIFICATE OF SERVICE

I, Donald M. Lewis III, Esquire, one of the attorneys for plaintiff PennEast Pipeline Company, LLC, hereby certify that the foregoing paper has been served upon counsel of record via the ECF system this date, as follows:

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KEEFER WOOD ALLEN & RAHAL, LLP

Dated: September 27, 2021

By s/ Donald M. Lewis III
Donald M. Lewis III, Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PENNEAST PIPELINE COMPANY, LLC
One Meridian Blvd., Suite 2C01
Wyomissing, PA 19610

Plaintiffs,

v.

A PERMANENT EASEMENT OF 0.60
ACRE \pm , AND A TEMPORARY EASEMENT
OF 0.60 ACRE \pm IN TOWAMENSING
TOWNSHIP, CARBON COUNTY,
PENNSYLVANIA, TAX PARCEL
NOS. 16-56-A73.05 and 16B-56-A7;

SUSANA V. BULLRICH
200 Vista Court
Palmerton, PA 18071; and

BANK OF AMERICA, N.A.
c/o CT Corporation System
600 N. 2d Street, Suite 401
Harrisburg, PA 17101-1071

AND ALL UNKNOWN OWNERS,

Defendants.

CIVIL ACTION

Case No. 3:18-cv-00281-MEM

Electronically Filed

**OBJECTION TO DISMISSAL AND
REQUEST TO REOPEN CASE TO VACATE ORDERS
AND DETERMINE JUST COMPENSATION**

On September 27, 2021, Plaintiff, PennEast Pipeline Company, LLC (“PennEast”) filed a Notice of Dismissal pursuant to Rule 71.1(i)(1)(A) of the Federal Rules of Civil Procedure (Doc. No. 45). Mrs. Bullrich planned to object, but the Clerk closed the case less than two hours after PennEast filed its Notice.

PennEast’s request is clearly erroneous as this Court ordered the taking of Mrs. Bullrich’s property and granted PennEast access to it on December 3, 2018 (Doc. Nos. 39-42). Since “the plaintiff has already taken [] a lesser interest [and] possession as to any part of [the property], the court must award compensation for the title, lesser interest, or possession taken.” Fed.R.Civ.P. 71.1(i)(1)(C). In addition, PennEast announced it was abandoning the project on September 27, 2021.¹ Under these circumstances, Mrs. Bullrich is entitled to attorney’s fees and all other expenses. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4654. *See also, Transcontinental Gas Pipeline Co. v. A Permanent Easement for 0.018 Acres*, Nos. 09-1385, 09-1396, and 09-1402, 2010 WL 3282954, at *2-3 (E.D. Pa. 2010).² Finally, as in Constitution Pipeline’s cases, the prior orders granting PennEast the right to take the land

¹ Niina H. Farah, *PennEast cancels pipeline despite Supreme Court win*, E&E NEWS (Sept. 27, 2021, 9:03 AM), <https://www.eenews.net/articles/penneast-cancels-pipeline-despite-supreme-court-win/>.

² Williams, the owner of the Transcontinental Gas Pipeline Company (and the majority owner and proposed operator of the Constitution Pipeline), unsuccessfully opposed the payment of attorney’s fees. It appears that PennEast is attempting to avoid paying compensation and attorney’s fees by having the case prematurely dismissed.

(partial summary judgment) and the right to access it (injunction) must be vacated.

See Attachment. If the parties are unable to reach agreement under Rule 71.1(i)(1)(B), then this case must proceed to trial under Rule 71.1(h).

In light of the erroneous filing made by PennEast (Doc. No. 45), Mrs. Bullrich respectfully asks the Court to reopen the case so these other issues may be properly determined.

Dated: September 28, 2021

Respectfully submitted,

s/ Anne Marie Garti
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Attorney for the Defendant
Susana V. Bullrich

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

PENNEAST PIPELINE :
COMPANY, :
LLC :
Plaintiff : CIVIL ACTION NO. 18-281
v. : (JUDGE MANNION)
A PERMANENT EASEMENT OF :
0.60 ACRE ± AND A :
TEMPORARY :
EASEMENT OF 0.60 ACRE ± IN :
TOWAMENSING TOWNSHIP, :
CARBON COUNTY, :
PENNSYLVANIA, TAX PARCEL :
NOS. 16-56-A73.05 AND :
16B-56-A7; SUSANA V. :
BULLRICH; BANK OF AMERICA, :
N.A.; AND ALL UNKNOWN :
OWNERS :
Defendants :

ORDER

The court has reviewed the Response by the plaintiff to the objections to the dismissal of this action. (Doc. 48). Counsel is directed to discuss a possible resolution of this matter. If the matter is not resolved by October 29, 2021 Oral Argument will be held on **Friday, November 12, 2021 at 1:30 p.m.** in Courtroom #3 in the William J. Nealon Federal Building and United

States Courthouse, 235 North Washington Avenue, Scranton, PA.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

DATE: October 14, 2021

18-281-03