

## Chapter 10

# Condemnation in the Natural Gas Industry: Who Can Take What, When, and How Much Will It Cost?

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### § 10.01. Introduction.

The power of eminent domain is a critical tool for interstate natural gas pipeline companies and intrastate utilities in acquiring the necessary property interests to construct natural gas pipelines, storage fields, and other facilities necessary to fulfill the companies’ obligations under law to provide service to the public.

This chapter will analyze what entities are granted the power of eminent domain under federal law and the law of selected states (focusing primarily on the states most affected by the Marcellus Shale boom — Pennsylvania, West Virginia, Maryland, New York, and Ohio), what property interests can be taken, when the interests can be obtained and under what procedures, and how much the interests will cost.

The chapter is organized into separate sections detailing the process from the pre-condemnation phase through the various steps required to condemn.

### **§ 10.02. Prior to Condemnation.**

Before considering condemnation as a means of acquiring property interests for a project, the company must ascertain whether it has the power to condemn the particular interests sought.

The power of eminent domain is a power held by the sovereign to take private property for the public good.<sup>1</sup> By statute, the government can extend that power to publicly regulated companies for projects determined to be in the public's interest.<sup>2</sup> However, the Fifth Amendment to the United States Constitution prohibits the taking of private property "without just compensation."<sup>3</sup>

#### **[1] — Source and Scope of Power.**

Under the federal Natural Gas Act,<sup>4</sup> eminent domain powers may be exercised to obtain "the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location

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<sup>1</sup> See *Balant v. City of Wilkes-Barre*, 669 A.2d 309, 314 (Pa. 1995) ("Eminent domain is the power to take property for public use.").

<sup>2</sup> See *NW. Lehigh Sch. Dist. v. Agric. Lands Condemnation Approval Bd.*, 559 A.2d 978, 980 (Pa. Commw. Ct. 1989) ("The sovereignty can delegate the power to such entities as it sees fit, provided that its exercise is for a public use. This includes not only governmental bodies, but corporations and individuals.").

<sup>3</sup> U.S. Const. amend. V.

<sup>4</sup> 15 U.S.C. § 717 *et seq.* (2006).