

Chapter 3

Eminent Domain Authority for Midstream Pipelines

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§ 3.01. Introduction.

The Marcellus and Utica shale plays have outrun the takeaway capacity in Ohio, Pennsylvania, West Virginia and Kentucky. Midstream pipeline developer/operators are currently engaged in planning, siting and constructing pipelines and appurtenant facilities to carry the natural gas and processed and fractionated liquids to markets both national and international. The scale of these projects is significant, involving the acquisition of miles of land rights to accommodate the required facilities. While the access to state appropriations procedures is relatively well-established for natural gas and oil pipelines operating as public utilities, that is not necessarily the case for developers of natural gas liquids pipelines, sometimes referred to herein as NGL pipelines.

The authors discuss in this chapter the varied nature of statutory authority, case law interpretation and appropriation procedure available to the developers of NGL pipelines in Kentucky (Ms. Greenwell); Ohio (Mr. Sonderman [statutory authority and case law] and Mr. Garinger [procedure]); Pennsylvania (Mr. West); and West Virginia (Mr. Garinger).

§ 3.02. **Kentucky.**

[1] — Kentucky Appropriation Statutes.

Kentucky law allows certain entities to invoke the power of eminent domain to condemn property to which they have otherwise been unable to acquire title. The statutes particularly applicable to oil and gas midstream companies are as follows:

Ky. Rev. Stat. § 278.470 provides:

Every company receiving, transporting or delivering a supply of oil or natural gas for public consumption is declared to be a common carrier, and the receipt, transportation and delivery of natural gas into, through and from a pipeline operated by any such company is declared to be a public use.

Ky. Rev. Stat. § 278.502 provides:

Any corporation or partnership organized for the purpose of, and any individual engaged in or proposing to engage in, constructing, maintaining, or operating oil or gas wells or pipelines for transporting or delivering oil or gas, including oil and gas products, in public service may, if it is unable to contract or agree with the owner after a good faith effort to do so, condemn the lands and material or the use and occupation of the lands that are necessary for constructing, maintaining, drilling, utilizing, and operating pipelines, underground oil or gas storage fields, and wells giving access thereto and all necessary machinery, equipment, pumping stations, appliances, and fixtures, including tanks and telephone lines, and other communication facilities, for use in connection therewith, and the necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove such pipelines or underground gas storage fields, to drill new wells and utilize existing wells in connection therewith, and remove pipe, casing,