

Legal Ad

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omion authorizing construction of 37.5 miles of natural-gas pipeline in West Virginia (“the Project”) (Dkt. No. 1-2 at 7). [FN2]

[FN2] Citations to the FERC Certificate reference pagination of the FERC Certificate itself rather than CM/ECF pagination.

On February 5, 2018, Dominion sought to exercise that authority over certain property located in the Northern District of West Virginia that it had been unable to acquire by agreement. It did so by filing a complaint pursuant to the NGA and Fed. R. Civ. P. 71.1 (Dkt. No. 1). As required by Rule 71.1(c)(2), Dominion included a description of the property, as well as the interests to be taken (Dkt. Nos. 1 at 5-8; 1-4).

On February 6, 2018, Dominion sought partial summary judgment as to its right to condemn the subject property (Dkt. No. 3). It also sought a preliminary injunction allowing it to possess the easements (Dkt. No. 4). After the Court conducted an evidentiary hearing, it granted Dominion's motion for order of condemnation and for preliminary injunction on March 2, 2018, thereby authorizing Dominion to condemn and obtain immediate access to and possession of the subject property (Dkt. No. 29).

On April 2, 2019, Dominion moved for summary judgment on the remaining issue of just compensation owed to the Defendants (Dkt. Nos. 83, 84). Despite being served a Roseboro Notice (Dkt. Nos. 85, 86, 87), the Defendants have not responded to Dominion's motion. Accordingly, Dominion's motion is ripe for disposition. [FN3]

[FN3] Although Dominion's motion for summary judgment is unopposed, the Court is nevertheless required to thoroughly analyze the issue of just compensation. Robinson v. Wix Elevation Corp., 599 F.3d 463, 469 n.8 (4th Cir. 2010) (“[I]n considering a motion for summary judgment, the district court ‘must review the motion, even if unopposed, and determine from what it has before it whether the moving party is entitled to summary judgment as a matter of law.’” (emphasis in original) (quoting Custer v. Pan Am. Life Ins. Co., 12 F.3d 410, 416 (4th Cir. 1993)).

II. STANDARD OF REVIEW

Summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, the Court reviews all the evidence “in the light most favorable” to the nonmoving party. Providence Square, 211 F.3d at 850. The Court must avoid weighing the evidence or determining its truth and limit its inquiry solely to a determination of whether genuine issues of triable fact exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

The moving party bears the initial burden of informing the Court of the basis for the motion and of establishing the nonexistence of genuine issues of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has made the necessary showing, the non-moving party “must set forth specific facts showing that there is a genuine issue for trial.” Anderson, 477 U.S. at 256 (internal quotation marks and citation omitted). The “mere existence of a scintilla of evidence” favoring the non-moving party will not prevent the entry of summary judgment; the evidence must be such that a rational trier of fact could reasonably find for the nonmoving party. Id. at 248-52.

III. DISCUSSION

The question at issue is the amount of just compensation due to the Defendants for their respective interests in the property taken by Dominion (Dkt. No. 84 at 1-2).

“Just compensation” is that amount of money necessary to put a landowner in as good a pecuniary position, but no better, as if his property had not been taken.” United States v. 69 L. Acres of Land, More or Less, Situated in Platt Springs Twp., Cty. of Lexington, State of S.C., 942 F.2d 290, 292 (4th Cir. 1991). “[I]t is well settled that in the event of a ‘partial taking’—i.e., a case in which the [condemnor] has taken one part of a larger tract, leaving the remainder to the landowner—the measure of just compensation is the difference between the fair and reasonable market value of the land immediately before the taking and the fair and reasonable market value of the portion that remains after the taking.” United States v. Bannisdr Bldg. Joint Venture, 65 F.3d 374, 378 (4th Cir. 1995). When a taking is temporary in nature, because it involves a temporary work space, “the value of the taking is what rental the marketplace would have yielded for the property taken.” Bannisdr Bldg. Joint Venture, 65 F.3d at 378.

Generally, “the property owners bear the burden of proving the fair market value at trial.” Hardy Storage Co., LLC v. Prop. Interests Necessary to Conduct Gas Storage Operations, No. 2:07-cv-5, 2009 WL 689054, at *3 (N.D. W. Va. Mar. 9, 2009) (citing United States ex rel. and for Use of Tenn. Valley Auth. v. Powelson, 319 U.S. 273-74 (1943)). However,

[i]f the condemnor is the only party to admit evidence to the Court of the value of the real property taken, the Court may use that evidence to determine the just compensation of the property and enter default judgment against defendant landowners and award the defendants their just compensation as determined by the condemnor. Atl. Coast Pipeline, LLC v. 1.52 Acres, No. 3:17-cv-814, 2019 WL 148402, at *7 (E.D. Va. Jan. 9, 2019). So too here. Because the Defendants have not appeared, answered, or otherwise defended this case, the Court may consider Dominion's undisputed evidence in order to determine just compensation. Id.

A. Just Compensation for the Defendants

According to Dominion's expert and certified appraiser, Wesley D. Woods (“Woods”), the property at issue is comprised of 16.40 total acres of land (Dkt. No. 84-1 at 3). This tract is encumbered by a permanent pipeline easement totaling 0.99 acres and a temporary workspace easement totaling 1.22 acres. Id. As of the date of the taking, February 5, 2018, Woods determined that the total value of the permanent pipeline easement was \$3,564.00, and the total rental value of the temporary easement was \$2,440.00, for a total value of \$6,004.00. Id. Because the Defendants own only a 0.0793650794% interest in the underlying property, they are entitled to 0.0793650794% of \$6,004.00, or \$476.51 (0.0793650794 X \$6,004.00 = \$476.51). [FN4]

[FN4] The Court declines Dominion's request to award the Defendants only nominal damages (Dkt. No. 84 at 7) because there is no evidence to suggest that the temporary and permanent easements here involve vacant and abandoned property. See Columbia Gas. Transm., LLC v. An Easement to Construct, Operate and Maintain a 20-inch Gas Transm. Pipeline Across Props. in Allegheny Cty., Pa. No. 17-1191, 2018 WL 348844, at *6 (W.D. Pa. Jan. 10, 2018) (finding nominal damages appropriate “where the easements [were] . . . minimal [in] size and scope and over vacant and abandoned property”).

B. Prejudgment Interest

The Defendants are also entitled to prejudgment interest on the amount of just compensation from the date of the taking, February 5, 2018, to the date of the judgment, January 10, 2020. See United States v. Eltzroth, 124 F.3d 632, 638 (4th Cir. 1997) (“The date of taking ‘fixes the date as of which the land is to be valued and the Government's obligation to pay interest accrues.” (quoting United States v. Dow, 357 U.S. 17, 22 (1958))).

Federal law leaves to the Court's discretion the appropriate procedure to determine what rate of interest applies. See Washington Metro. Area Transit Auth. v. One Parcel of Land in Montgomery Co., Md., 706 F.2d 1312, 1322 (4th Cir. 1983) (“The choice of an appropriate rate of interest is a question of fact, to be determined by the district court. . . .”). Judges in the District have previously observed that, “in order to make the injured parties whole, the prejudgment interest should reflect the injured party's borrowing costs.” Dijkstra v. Carenbauer, Inc., No. 5:11-CV-152, 2015 WL 12750449, at *7 (N.D. W. Va. July 29, 2015) (Bailey, J.) (quoting Zerkel v. Trinity Resources, Inc., 2013 WL 3187077, at *2 (N.D. W. Va. June 20, 2013) (Stamp, J.)).

Applying this principle, the rate at which prejudgment interest is to be calculated should reflect the rate best representing the Defendants' borrowing cost during the period of the loss of use of the monies owed. To determine this, the Court will apply the average federal interest rate from February 2018. During that time, the federal interest rates for marketable interest-bearing debt averaged 2.17%. TreasuryDirect.gov, Average Interest Rates, February 20 18 https://www.treasurydirect.gov/govt/rates/pd/avg/2018/2018_02.htm (last visited Jan. 10, 2020). Accordingly, the Court will award prejudgment interest on the amount of just compensation, from February 5, 2018, to January 10, 2020, to be calculated at the rate of 2.17% per annum.

IV. CONCLUSION

For the reasons discussed, the Court:

- GRANTS Dominion's unopposed motion for summary judgment (Dkt. No. 83); and
- DIRECTS Dominion to pay \$476.51 to the Defendants, plus prejudgment interest on this amount at the rate of 2.17% per annum.

It is so ORDERED.

The Court DIRECTS the Clerk to transmit copies of this Order to counsel of record and enter a separate judgment order in favor of Dominion. It further DIRECTS Dominion to provide copies of both Orders to the Defendants and file proof of service with the Court.

DATED: January 10, 2020

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

PLEASE ALSO TAKE NOTICE that on January 20, 2020, the United States District Court for the Northern District of West Virginia in the above-captioned matter entered the following “Judgment in a Civil Action” [Dkt. No. 89]: The court has ordered that: Dominion Energy Transmission, Inc.'s unopposed motion for summary judgment (Dkt. No. 83) is GRANTED. It is further DIRECTED that the plaintiff, Dominion Energy Transmission, Inc., pay the remaining defendants, Miranda Dawn Richardson; Jon T. Wilby; the Unknown Heirs, Successors, and Assigns of Leona Meredith; the Unknown Heirs, Successors, and Assigns of Ronald Allis Meredith; the Unknown Heirs, Successors, and Assigns of Frederick Lambert Strother; the Unknown Heirs, Successors, and Assigns of Lloyd Sward Strother; the Unknown Heirs, Successors, and Assigns of Earl W. Meredith; and Any Unknown Owners, the amount of Four Hundred Seventy-Six Dollars and fifty-one cents (\$476.51), plus prejudgment interest at the rate of 2.17%, per annum, and post judgment interest at the rate of 1.57% per annum. This action was decided by Judge Irene M. Keeley
DATE: January 10, 2020

CLERK OF COURT
Cheryl Dean Riley
/s/ W. Riffle
Deputy Clerk

By counsel for Dominion Energy Transmission, Inc. /k/a Dominion Transmission, Inc.: William J. O'Brien (WV Bar #10549), Steptoe & Johnson PLLC, william.obrien@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (304) 933-8000; Lauren K. Turner (WV Bar #1942), Steptoe & Johnson PLLC, lauren.turner@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (304) 933-8000; and Brooks Spears (WV Bar #12820), McGuireWoods LLP, bspears@mcguirewoods.com, 1750 Tysons Boulevard, Suite 1800, Tysons, Virginia 22102, (304) (703) 712-5000.

2/43xb

**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways
NOTICE TO CONTRACTORS**

Bids will be received electronically by the West Virginia Department of Transportation, Division of Highways through the Bid Express Bidding Service (www.bidx.com) and by sealed proposals (only when prequalification is waived) being received at its office in Building 5, Room 843, 1900 Kanawha Boulevard East, Charleston, West Virginia until February 11, 2020 at 10:00 AM (Eastern Standard Time). The bids will be downloaded and/or opened and read publicly thereafter for the construction of the following project(s):

Call 025
Contract 1723402
State Project S309-50/16-01 00
Federal Project
Description SLIDE REPAIR
SNOWBIRD ROAD
COUNTY: DODDRIDGE

Proposals will be received from prequalified and West Virginia licensed contractors only except that on Federal-Aid Projects a contractor's license is not required at time of bid, but will be required before work can begin. Registration is required with the Department of Administration, Division of Purchasing, in accordance with Chapter 5A, Article 3, Guaranty Bond, Cashier's Check, or Certified Check for \$500.00 or 5% of the total bid, whichever is greater.

*These are projects on which any contractor with a Category “W” Prequalification Rating may be eligible to bid.

The West Virginia Department of Transportation, Division of Highways reserves the right to defer, delay or postpone the date for receiving and publicly opening proposals for any project designated in this advertisement, without the necessity of renewing such advertisement. All bidders holding valid bidding proposals will be notified of such deferment, delay or postponement and the date that proposals will be received and publicly opened.

The West Virginia Department of Transportation, Division of Highways hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, sex or national origin in consideration for an award.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways
Ryan W. Musick, P.E., Ph.D.
Deputy State Highway Engineer-
Planning and Programming

1-28-2xb

Legal Ad

March 31, 2020..... \$96.64

Amount of subsequent years taxes paid on the property, since the sale, with interest to March 31, 2020.....\$2.78

Amount paid for the Title Examination and preparation of the list to be served and for preparation and service of notice with interest from January 1, 2019 following the sheriff's sale to March 31, 2020..... \$1,157.40

Amount paid for other statutory costs with interest from following the sheriff's sale to March 31, 2020..... \$0.00

Total Amount Payable to Sheriff – cashier check, money order or certified check must be made payable to the **The Honorable Mike Headley, Sheriff and Treasurer of Doddridge County**.....\$1,256.82

Cost of Certification of Redemption – cashier check, money order or certified check must be made payable to the **The Honorable John B. McCuskey, State Auditor**.....\$35.00

You may redeem at any time before March 31, 2020, by paying the above total less any unearned interest.

**Return this letter and both certified funds to the WV State Auditor's Office,
County Collections Division
1900 Kanawha Blvd East, Building 1, Room W-114
Charleston, West Virginia 25305
Questions please call 1-888-509-6568 option 2**

1-28-3xb

NOTICE TO REDEEM

(2018-S-00000055-Doddridge County – H3 LLC)
TO: THOMAS E. FREEMAN RE: SHARON LAWRENCE, THOMAS E. FREEMAN RE: WATER BERNARD FREEMAN, WALTER BERNARD FREEMAN, SHARON LAWRENCE THOMAS E. FREEMAN, OSTEN E. FREEMAN, NETTIE FREEMAN, JEAN ANN FREEMAN, DOROTHEA J. MITCHELL, PHILLIP D. FREEMAN, BETTY MAE SUMMERS, MARION JOAN MCCRAY, C.A. TRAUGH ESTATE, C.A. TRAUGH, CYRUS AUGUSTUS TRAUGH, LEAH FRANCES HANSFORD TRAUGH, LEA FRANCES HANSFORD TROUGH, CYRUS AUGUSTUS TROUGH, EVELYN TRAUGH DAVIS, AUGUSTUS TRAUGH, BLANCHE TRAUGH PRESTON, or heirs at law, devisees, creditors, representatives, successors, assigns, all known heirs, guardians, conservators, fiduciaries, administrators, lienholders, co-owners, other parties having an undivided interest in the delinquent property, and other parties that may have any interest in the subject property.

You will take notice that H3 LLC, the purchaser of the tax lien(s) on the following real estate, Certificate of Sale: 2018-S-00000055, 181A 49P BUCKEY, located in GREENBRIER, which was returned delinquent in the name of FREEMAN WALTER BERNARD, and for which the tax lien(s) thereon was sold by the sheriff of Doddridge County at the sale for the delinquent taxes made on the 17th day of October, 2018, has requested that you be notified that a deed for such real estate will be made to him or her on or after April 1, 2020, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay on the last day, March 31, 2020 will be as follows:

Amount equal to the taxes and charges due on the date of the sale, with interest, to March 31, 2020..... \$96.64

Amount of subsequent years taxes paid on the property, since the sale, with interest to March 31, 2020.....\$2.78

Amount paid for the Title Examination and preparation of the list to be served and for preparation and service of notice with interest from January 1, 2019 following the sheriff's sale to March 31, 2020..... \$1,157.40

Amount paid for other statutory costs with interest from following the sheriff's sale to March 31, 2020..... \$0.00

Total Amount Payable to Sheriff – cashier check, money order or certified check must be made payable to the **The Honorable Mike Headley, Sheriff and Treasurer of Doddridge County**.....\$1,256.82

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1-28-3xb

NOTICE TO REDEEM

(2018-S-00000058-Doddridge County – H3 LLC)
TO: THOMAS E. FREEMAN RE: SHARON LAWRENCE, THOMAS E. FREEMAN RE: WALTER BERNARD FREEMAN, WALTER BERNARD FREEMAN, SHARON LAWRENCE, THOMAS E. FREEMAN, OSTEN E. FREEMAN, NETTIE FREEMAN, JEAN ANN FREEMAN, DOROTHEA J. MITCHELL, PHILLIP D. FREEMAN, BETTY MAE SUMMERS, MARION JOAN MCCRAY, ARCHIE B. STUTLER, GEORGE B. CROUSE, ANNE B. CROUSE, RUHAMMA B. DAVIS, CLAUD D. DAVIS, or heirs at law, devisees, creditors, representatives, successors, assigns, all known heirs, guardians, conservators, fiduciaries, administrators, lienholders, co-owners, other parties having an undivided interest in the delinquent property, and other parties that may have any interest in the subject property.

You will take notice that H3 LLC, the purchaser of the tax lien(s) on the following real estate, Certificate of Sale: 2018-S-00000058, O&G 18A BUCKEY, located in GREENBRIER, which was returned delinquent in the name of FREEMAN WALTER BERNARD, and for which the tax lien(s) thereon was sold by the sheriff of Doddridge County at the sale for the delinquent taxes made on the 17th day of October, 2018, has requested that you be notified that a deed for such real estate will be made to him or her on or after April 1, 2020, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay on the last day, March 31, 2020 will be as follows:

Amount equal to the taxes and charges due on the date of the sale, with interest, to March 31, 2020..... \$96.64

Amount of subsequent years taxes paid on the property, since the sale, with interest to March 31, 2020.....\$2.78

Amount paid for the Title Examination and preparation of the list to be served and for preparation and service of notice with interest from January 1, 2019 following the sheriff's sale to March 31, 2020..... \$968.74

Amount paid for other statutory costs with interest from following the sheriff's sale to March 31, 2020..... \$395.40

Total Amount Payable to Sheriff – cashier check, money order or certified check must be made payable to the **The Honorable Mike Headley, Sheriff and Treasurer of Doddridge County**.....\$1,463.56

Cost of Certification of Redemption – cashier check, money order or certified check must be made payable to the **The Honorable John B. McCuskey, State Auditor**.....\$35.00

You may redeem at any time before March 31, 2020, by paying the above total less any unearned interest.

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1-28-3xb

NOTICE TO REDEEM

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TO: THOMAS E. FREEMAN RE: SHARON LAWRENCE, THOMAS E. FREEMAN RE: WALTER BERNARD FREEMAN, WALTER BERNARD FREEMAN, SHARON LAWRENCE, THOMAS E. FREEMAN, OSTEN E. FREEMAN, NETTIE FREEMAN, JEAN ANN FREEMAN, DOROTHEA J. MITCHELL, PHILLIP D. FREEMAN, BETTY MAW SUMMERS, MARION JOAN MCCRAY, SARAH E. COTTRILL, LOYD W. COTTRILL, L.E. WILLIAMS, LINDA WILLIAMS, or heirs at law, devisees, creditors, representatives, successors, assigns, all known heirs, guardians, conservators, fiduciaries, administrators, lienholders, co-owners, other parties having an undivided interest in the delinquent property, and other parties that may have any interest in the subject property.

You will take notice that H3 LLC, the purchaser of the tax lien(s) on the following real estate, Certificate of Sale: 2018-S-00000056, O&G 4A 30P BUCKEY, located in GREENBRIER, which was returned delinquent in the name of FREEMAN WALTER BERNARD, and for which the tax lien(s) thereon was sold by the sheriff of Doddridge County at the sale for the delinquent taxes made on the 17th day of October, 2018, has requested that you be notified that a deed for such real estate will be made to him or her on or after April 1, 2020, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay on the last day, March 31, 2020 will be as follows:

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