

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT WHEELING

ROVER PIPELINE LLC, Plaintiff

Civil Action No. 1:18-cv-00088-JPB

ROVER TRACT NO(S), WV-DO-SHC-015.000-ROW WV-DO-SHC-015.000-ATWS AND WV-DO-SHC-015.970-TAR-3 COMPRISED OF PERMANENT EASEMENT(S) TOTALING 3 35 ACRES MORE OR LESS AND TEMPORARY EASEMENT(S) TOTALING 10.13 ACRES, MORE OR LESS, OVER A PARCEL OF LAND IN WEST UNION DISTRICT. DODDRIDGE COUNTY, WEST VIRGINIA, CONSISTING OF 91 ACRES, AND IDENTIFIED AS PARCEL NO(S). 08-13-0006-0000-0000, AS MORE PARTICULARLY DESCRIBED HEREIN, ET AL., Defendants

#### FEDERAL RULE 71 1(d) NOTICE OF CONDEMNATION ACTION

To: Peter A. Morse Sr., Trustee of the Appalachian Gas and Oil Trust, who owns or may own an interest in the above-captioned Rover Tract No(s). situate in Doddridge County, West Virginia; and Any Heirs, Successors, and Assigns of the Defendants named in the above-captioned matter and Any Unknown Owners who may own an interest in one or more of the above-captioned Rover Tract No(s), situate in Doddridge County, West Virginia as set forth in the Second Amended Verfield Complaint for Condemnation of Easement(s) Known as Tract No(s). WV-DO-SHC-015.000-ROW, WV-DO-SHC-015.000-ATWS, and WV-DO-SHC-015.970-TAR-3 (the "Verified Complaint").

PLEASE TAKE NOTICE that on March 28, 2019, Rover Pipeline LLC ("Rover") filed the Verified Complaint in the above-captioned matter to condemn property in which you own or may own an interest. The above-captioned matter is an action by Rover, pursuant to Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), and the Certificate of Public Convenience and Necessity ("Certificate") issued by the Federal Energy Regulatory Commission ("FERC") to Rover, for an order of condemnation for permanent pipeline, temporary work space, additional temporary workspace, surface site, permanent and temporary road access, and/or other rights-of-way and easements (the "Easements"), as further described in the Verified Complaint, and identified, described, and depicted on Exhibit A thereto, and for other legal and equitable relief, including injunctive relief allowing Rover to enter and access the Additional Temporary Workspace Easement(s) to commence and complete repairs of slips, while the amount of compensation for the taking of the Easements is resolved. Pursuant to the Certificate of Public Convenience and Necessity, dated February 2, 2017, and the Delegated

Order Approval of Variances, dated May 24, 2018, that FERC issued to Rover, Rover needs and is authorized to acquire the Easements which are situated on and/or traverse on, over, and under the above-captioned lands and which are more particularly described on Exhibit A to the Verified Complaint, and are comprised of the following: more particularly described on Exhibit A to the Verified Complaint, and are comprised of the following: Permanent Pipeline Easement(s): Non-exclusive fifty foot (50')-wide permanent pipeline right(s)-of-way

and easement(s) encompassing 3.35 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint; Temporary Workspace Easement(s): Non-exclusive temporary workspace(s) and additional temporary workspace(s) encompassing 6.68 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint:

Additional Temporary Workspace Easement(s): Non-exclusive additional temporary workspace(s) encompassing 1.63 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint; and

Temporary Road Access Easement(s): Non-exclusive temporary road access easement(s) encompassing 1.82 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint.

Identified, described, and depicted on Exhibit A to the Verified Complaint. Pursuant to the Natural Gas Act, 15 U.S.C. § 717, et seq., FERC has issued to Rover a Certificate of Public Convenience and Necessity authorizing Rover to construct and operate an interstate natural gas pipeline, known as the Rover Pipeline Project, which consists of approximately 713 miles of 24-inch, 30-inch, 36-inch and 42-inch diameter natural gas pipelines (approximately 510.7 linear miles of pipeline easement and approximately 713 total miles of pipe therein), with four mainline compressor stations, six supply lateral compressor stations and other ancillary facilities (the "Rover Pipeline Project"). Rover has the right of eminent domain under Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), because it has been unable to acquire the necessary Easements to construct, operate, and maintain the Rover

9 /17/10/), because it has been unable to acquire the recessary Easements to construct, operate, and maintain the Kover Pipeline Project for the transportation of natural gas. The Easements Rover seeks to acquire will be used for the construction and operation of natural gas pipelines and related appurtenances, known as the Rover Pipeline Project, and for the required restoration and remediation related to such construction. The route spans approximately 510.7 linear miles originating in Southeastern Ohio, Western West Virginia, and Southwestern Pennsylvania and continues north across the state of Ohio to an interconnection in Defiance, Ohio, in the Northwest. It will then cross into Michigan where it will terminate in Livingston County. On February 2, 2017. EEEC concluded that the Power Pineline Project is necessary and convanient for the public use and issued a 2, 2017, FERC concluded that the Rover Pipeline Project is necessary and convenient for the public use and issued a Certificate of Public Convenience and Necessity to Rover for the construction and operation of the Rover Pipeline Project. YOU ARE FURTHER NOTIFIED that if you have any objection or defense to the taking, you must serve

an answer on counsel for Rover within twenty-one (21) days after service of the notice on you. Your failure to serve an answer will constitute your consent to the taking and to the Court's authority to proceed with the action and fix the compensation.

YOU ARE FURTHER NOTIFIED that if you do not file an answer, you may serve on Rover's attorney a notice of appearance, designating the Easement(s) in which you claim an interest, and thereafter, you shall receive notice of all proceedings affecting your interest(s). YOU ARE FURTHER NOTIFIED that at the trial of the issue of just compensation, whether or not you

have answered or served a notice of appearance, you may present evidence regarding the amount of compensation to be paid for the Easement(s) in which you have an interest and you may share in the distribution of the compensation award. by counsel for Plaintiff Rover Pipeline LLC: Lori A. Dawkins (WV Bar #6880), Steptoe & Johnson PLLC, lori A.w-kins@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (303) 389-4300; William D. Wilmoth (WV Bar #4075), Steptoe & Johnson PLLC, william.wilmoth@steptoe-johnson.com, 1233 Main Street, Suite 3000, Wheeling, West Virginia 26003, (304) 233-0000; and Lauren A. Williams (WV Bar #11943), Steptoe & Johnson @steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (304) 933-PLLC, lauren.willia 8000

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT WHEELING

#### ROVER PIPELINE LLC

Plaintiff.

#### Civil Action No. 1:18-cv-00099-JPB

9/30XB3

ROVER TRACT NO(S), WV-DO-SHC-039.000-ROW, WV-DO-SHC-039.310-ROW, and WV-DO-SHC-039.310 ATWS

COMPRISED OF PERMANENT EASEMENT(S) TOTALING 2.26 ACRES, MORE OR LESS. AND TEMPORARY EASEMENT(S) TOTALING 3.99 ACRES, MORE OR LESS OVER A PARCEL OF LAND IN WEST UNION MAGISTERIAL DISTRICT, DODDRIDGE COUNTY, WEST VIRGINIA, CONSISTING OF 64.75 ACRES, AND IDENTIFIED AS PARCEL NO(S). 08-04-0019-0000-0000 AND 08-04-0020-0000, AS MORE PARTICULARLY DESCRIBED HEREIN, ET AL., Defendants



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permanent and temporary road access, and/or other rights-of-way and easements (the "Easements"), as further described in the Verified Complaint, and identified, described, and depicted on Exhibit A thereto, and for other legal and equitable relief including injunctive relief allowing Rover to enter and access the Additional Temporary Workspace Easement(s), if any 

to Rover, Rover needs and is authorized to acquire the Easements which are situated on and/or traverse on, over, and under the above-captioned lands and which are more particularly described on Exhibit A to the Verified Complaint. The Easements in which you own or may own an interest are more particularly described on Exhibit A to the Verified Complaint, and are comprised of the following: Permanent Pipeline Easement(s): Non-exclusive fifty foot (50')-wide permanent pipeline right(s)-of-way

and easement(s) encompassing 2.65 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint;

Temporary Workspace Easement(s): Non-exclusive temporary workspace(s) and additional temporary workspace(s) encompassing 4.58 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint. Pursuant to the Natural Gas Act, 15 U.S.C. § 717, et seq., FERC has issued to Rover a Certificate of Public

Convenience and Necessity authorizing Rover to construct and operate an interstate natural gas pipeline, known as the Rover Pipeline Project, which consists of approximately 713 miles of 24-inch, 30-inch, 36-inch and 42-inch diameter natural gas pipelines (approximately 510.7 linear miles of pipeline easement and approximately 713 total miles of pipeline therein), with four mainline compressor stations, six supply lateral compressor stations and other ancillary facilities (the "Rover Pipeline Project"). Rover has the right of eminent domain under Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), because it has been unable to acquire the necessary Easements to construct, operate, and maintain the Rover Pipeline Project for the transportation of natural gas.

The Easements Rover seeks to acquire will be used for the construction and operation of natural gas pipelines and related appurtenances, known as the Rover Pipeline Project, and for the required restoration and remediation related to such construction. The route spans approximately 510.7 linear miles originating in Southeastern Ohio, Western West Virginia, and Southwestern Pennsylvania and continues north across the state of Ohio to an interconnection in Defi-West Virginia, and Southwestern Pennsylvania and continues north across the state of Ohio to an interconnection in Deh-ance, Ohio, in the Northwest. It will then cross into Michigan where it will terminate in Livingston County. On February 2, 2017, FERC concluded that the Rover Pipeline Project is necessary and convenient for the public use and issued a Certificate of Public Convenience and Necessity to Rover for the construction and operation of the Rover Pipeline Project. YOU ARE FURTHER NOTIFIED that if you have any objection or defense to the taking, you must serve

an answer on counsel for Rover within twenty-one (21) days after service of the notice on you. Your failure to serve an nswer will constitute your consent to the taking and to the Court's authority to proceed with the action and fix the compensation

YOU ARE FURTHER NOTIFIED that if you do not file an answer, you may serve on Rover's attorney a notice of appearance, designating the Easement(s) in which you claim an interest, and thereafter, you shall receive notice of all proceedings affecting your interest(s)

YOU ARE FURTHER NOTIFIED that at the trial of the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence regarding the amount of compensation to be paid for the Easement(s) in which you have an interest and you may share in the distribution of the compensation award. By counsel for Plaintiff Rover Pipeline LLC: Lori A. Dawkins (WV Bar #6880), Stepte & Johnson PLLC, lori.dawkins@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (303) 389-4300; William D. Wilmoth (WV Bar #4075), Steptoe & Johnson PLLC, william.wilmoth@steptoe-johnson.com, 1233 Main Street, Suite 3000,Wheeling, West Virginia 26003, (304) 233-0000; and Lauren A. Williams (WV Bar #11943), Steptoe & Johnson PLLC, lauren.williams@steptoe-johnse n.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (304) 933-

9/30XB3

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT WHEELING

ROVER PIPELINE LLC,

Civil Action No. 1:18-cv-00084-JPB

ROVER TRACT NO(S) WV-DO-SHB-011 510-ROW AND WV-DO-SHB-013.000-ROW, COMPRISED OF PERMANENT EASEMENT(S) TOTALING 3.28 ACRES, MORE OR LESS, AND TEMPORARY EASEMENT(S) TOTALING 3.28 ACRES, MORE OR LESS OVER A PARCEL OF LAND IN GRANT DISTRICT, DODDRIDGE COUNTY WEST VIRGINIA CONSISTING OF 324.67 ACRES, AND IDENTIFIED AS PARCEL NO(S). 03-17-0018-0001-0000 AND 03-17-0018-0000-0000, AS MORE PARTICULARLY DESCRIBED HEREIN, ET AL.

### FEDERAL RULE 71.1(d) NOTICE OF CONDEMNATION ACTION

To: Willis G. Tetrick, Jr., Co-Trustee of the Virginia A. Tetrick Trust; and Maxwell Y. Sutton, Co-Trustee of the Virginia A. Tetrick Trust, who own or may own an interest in the above-captioned Rover Tract No(s). situate in Doddridge County, West Virginia; and Any Heirs, Successors, and Assigns of the Defendants named in the above-captioned matter and Any Unknown Owners who may own an interest in one or more of the above-captioned Rover Tract No(s). situate in Doddridge County, West Virginia as set forth in the Amended Verified Complaint for Condemnation of Easement(s) Known as Tract No(s). WV-DO-SHB-011.510-ROW and WV-DO-SHB-013.000-ROW (the "Verified Complaint"). PLEASE TAKE NOTICE that on March 27, 2019, Rover Pipeline LLC ("Rover") filed the Verified Complaint in the above-captioned matter to condemn property in which you own or may own an interest. The above-captioned matter is an action by Rover, pursuant to Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), and the Certificate of Public Convenience and Necessity ("Certificate") issued by the Federal Energy Regulatory Commission ("FERC") to Rover, for an order of condemnation for permanent pipeline, temporary work space, additional temporary workspace, surface site, permanent and temporary road access, and/or other rights-of-way and easements (the "Easements"), as further described in the Verified Complaint, and identified, described, and depicted on Exhibit A thereto, and for other legal and equitable relief, including injunctive relief allowing Rover to enter and access the Additional Temporary Workspace Easement(s), if any, to commence and complete repairs of slips, while the amount of compensation for the taking of the Easements is resolved.

Pursuant to the Certificate of Public Convenience and Necessity, dated February 2, 2017, that FERC issued to Rover, Rover needs and is authorized to acquire the Easements which are situated on and/or traverse on, over, and under the above-captioned lands and which are more particularly described on Exhibit A to the Verified Complaint. The Easements in which you own or may own an interest are more particularly described on Exhibit A to the Verified Complaint, and are comprised of the following:

Permanent Pipeline Easement(s): Non-exclusive fifty foot (50')-wide permanent pipeline right(s)-of-way tt(s) encompassing 3.28 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint; and

Temporary Workspace Easement(s): Non-exclusive temporary workspace(s) and additional temporary workspace(s) en-compassing 3.28 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint.

Pursuant to the Natural Gas Act, 15 U.S.C. § 717, et seq., FERC has issued to Rower a Certificate of Public Convenience and Necessity authorizing Rover to construct and operate an interstate natural gas pipeline, known as the Rover Pipeline Project, which consists of approximately 713 miles of 24-inch, 30-inch, 36-inch and 42-inch diameter natural gas pipelines (approximately 510.7 linear miles of pipeline easement and approximately 713 total miles of pipeline therein the four motion externess at the set in works to the set of th therein), with four mainline compressor stations, six supply lateral compressor stations and other ancillary facilities (the "Rover Pipeline Project"). Rover has the right of eminent domain under Section 717/f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), because it has been unable to acquire the necessary Easements to construct, operate, and maintain the Rover

9 Think because it has been under to be define the necessary Easements to construct, operate, and manual nucleoted pipeline Project for the transportation of natural gas. The Easements Rover seeks to acquire will be used for the construction and operation of natural gas pipelines and related appurtenances, known as the Rover Pipeline Project, and for the required restoration and remediation related to such construction. The route spans approximately 510.7 linear miles originating in Southeastern Ohio, Western West Virginia, and Southwestern Pennsylvania and continues north across the state of Ohio to an interconnection in Defiance, Ohio, in the Northwest. It will then cross into Michigan where it will terminate in Livingston County. On February 2017, FERC concluded that the Rover Pipeline Project is necessary and convenient for the public use and issued a Certificate of Public Convenience and Necessity to Rover for the construction and operation of the Rover Pipeline Project.

Page 9	October	7,	2020	
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### Legal Legal Advertisement Advertisement

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA At Clarksburg

DOMINION ENERGY TRANSMISSION, INC., F/k/a

DOMINION TRANSMISSION, INC Plaintiff

Case No. 1:19-cv-182 (IMK)

0.11 ACRE, MORE OR LESS, IN DODDRIDGE COUNTY, WEST VIRGINIA, et al. Defendants

## NOTICE OF FILING OF MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR SUMMARY JUGDMENT [DKT. NO. 31] AND JUDGMENT AWARD

TO: Anthony Lake and Any Unknown Owners who may own an interest in that certain tract of land described as Parcel Identification No. 09-04-10-0032-0001-0000, comprised of 19.04 acres, more or less, located in Doddridge County, West Virginia, and being more particularly described in that certain deed recorded in Deed Book 320, Page 80, of the public record of said County

PLEASE TAKE NOTICE that on September 22, 2020, the United States District Court for the Northern District of West Virginia in the above-captioned matter entered the following "Memorandum Opinion and Order Granting Plaintiff's Unopposed Motion for Summary Judgment [Dkt. No. 31]" [Dkt. No. 39]:

In this condemnation case, the plaintiff, Dominion Energy Transmission, Inc. ("Dominion"), previously obtained immedi-ate access to and possession of certain temporary and permanent easements it sought to condemn to construct a natural gas pipeline (Dkt. No. 21). Dominion has now moved for summary judgment on the amount of just compensation due for the portions of this property owned by Anthony Lake and Any Unknown Owners (collectively, "Defendants") (Dkt. No. 31). For the reasons that follow, the Court GRANTS the unopposed motion (Dkt. No. 31).

I. BACKGROUND [FN1]

FNI] As it must, the Court recites the facts in the light most favorable to the non-moving parties. See Providence Square Assocs., L.L.C. v. G.D.F., Inc., 211 F.3d 846, 850 (4th Cir. 2000).

On October 13, 2017, the Federal Energy Regulatory Commission ("FERC") granted a Certificate to Do-on 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 paginatio

The Project also included the construction of four compressor units, six valve sites, and two sets of pig launcher and receiver sites. Id. at 8. Dominion was required to obtain easements along the Project in order to construct its pipeline. Under the appropriate circumstances, the Natural Gas Act, 15 U.S.C. § 717f(h), grants it the authority to do so by eminent domain (Dkt. No. 1 at ¶ 31).

On September 16, 2019, Dominion sought to exercise that authority over certain property located in the Northern District of West Virginia, which it had been unable to acquire by agreement, 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 6: 1-8).

On the same day, Dominion sought partial summary judgment as to its right to condemn the subject property and sought a preliminary injunction allowing it to possess the easements (Dkt. Nos. 3, 4). On September 27, 2019, the Court conduct an evidentiary hearing, and, on September 30, 2019, granted Dominion's motion for order of condemna-tion and for preliminary injunction, authorizing Dominion to condemn and obtain immediate access to and possession of the subject property (Dkt. No. 21).

On May 21, 2020, Dominion moved for summary judgment on the just compensation owed to the defen-dants (Dkt. Nos. 31, 32). Despite being served with a Roseboro Notice (Dkt. Nos. 33, 34, 35), 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 re-

quired to thoroughly analyze the motion. <u>Robinson v. Wis Filtration Corp.</u> 599 F.3d 403, 409 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 <u>Custer</u> v. Pan Am. Life Ins. Co., 12 F.3d 410, 416 (4th Cir. 1993))). II. <u>STANDARD OF REVIEW</u>

Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and ad-missions 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. <u>Providence Square</u>, 211 F.34 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. <u>Anderson v. Liberty Lobby, Inc.</u>, 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 establish-ing 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." <u>Anderson</u>, 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. <u>Id.</u> at 248–52.

III. DISCUSSION The question at issue is the amount of just compensation due to Defendants for their interests in the underlying property (Dkt. No. 32).

"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." <u>United States v. 69.1</u> 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. Banisadr Bldg. Joint Venture, 65 F.3d 374, 378 (4th Cir. 1995). When a taking is temporary in nature, becaus it involves a temporary work space, "the value of the taking is what rental the marketplace would have yielded for the property taken." Id.

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 <u>United States ex rel. and for Use of Tenn. Valley Auth. v. Powelson</u>, 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 othervise defended this case, the Court may consider Dominion's undisputed evidence in order to determine just compensation. <u>Id.</u> A. Just Compensation for Defendants

According to Dominion's expert and certified appraiser, Wesley D. Woods ("Woods"), the property at issue is comprised of 19.04 total acres of land (Dkt. No. 20-6 at 3). This tract is encumbered by a permanent pipeline easement totaling 0.11 acres and will be encumbered by a temporary workspace easement also totaling 0.11 acres. Id. at 3, 33. As of the date of the taking, September 16, 2019, Woods determined that the total rental value of the temporary easement was \$83.00 for a five-year term. Id.

Because only a 0.11-acre portion of the land will be encumbered, Defendants are entitled to compensation of \$165 (\$1.500 per acre multiplied by 0.11 acre), multiplied by the annual rate based on return to land (10%), and then e Dominion This totals \$83.00 for [FN4] [FN4] The Court declines Dominion's request to award Defendants only nominal damages (Dkt. No. 32 at

#### FEDERAL RULE 71.1(d) NOTICE OF CONDEMNATION ACTION

Velma G. Osborne; Patricia A. Lewis; Kenneth P. Cottrill; Jeffrey W. Spencer; William Hinton; Allen O'Neal Brown; Anna May Brown; David Gene Smith; Nora L. Kell; Robert Shawn Schwertfeger; Amanda Stull; Rhonda J. Smith; Nichole Johnston; Carlos L. Stockham; Ruth Monroe; Wilda E. Staats; and Leslie Ray Tennant, who own or may own an interest in the above-captioned Rover Tract No(s). situate in Doddridge County, West Virginia; and Any Heirs, Successors, and Assigns of the Defendants named in the above-captioned matter and Any Unknown Owners who may own an interest in one or more of the above-captioned Rover Tract No(s), situate in Doddridge County, West Virginia as set forth in the Second Amended Verified Complaint for Condemnation of Easement(s) Known as Tract No(s). WV-DO-SHC-039.000-ROW. WV-DO-SHC-039.310-ROW, and WV-DO-SHC-039.310-ATWS (the "Verified Complaint")

PLEASE TAKE NOTICE that on March 29, 2019, Rover Pipeline LLC ("Rover") filed the Verified Complaint in the above-captioned matter to condemn property in which you own or may own an interest. The above-captioned matter is an action by Rover, pursuant to Sector 7177(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), and the Certificate of Public Convenience and Necessity ("Certificate") issued by the Federal Energy Regulatory Commission ("FERC") to Rover, for an order of condemnation for permanent pipeline, temporary work space, additional temporary workspace, surface site, permanent and temporary road access, and/or other rights-of-way and easements (the "Easements"), as further described in the Verified Complaint, and identified, described, and depicted on Exhibit A thereto, and for other legal and equitable relief, including injunctive relief allowing Rover to enter and access the Additional Temporary Workspace Easement(s) to commence and complete repairs of slips, while the amount of compensation for the taking of the Easements is resolved.

Pursuant to the Certificate of Public Convenience and Necessity, dated February 2, 2017, and the Delegated Order Approval of Variances, dated May 24, 2018, that FERC issued to Rover, Rover needs and is authorized to acquire the Easements which are situated on and/or traverse on, over, and under the above-captioned lands and which are more particularly described on Exhibit A to the Verified Complaint, and are comprised of the following:

Permanent Pipeline Easement(s): Non-exclusive fifty foot (50')-wide permanent pipeline right(s)-of-way and easement(s) encompassing 2.26 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint; Temporary Workspace Easement(s): Non-exclusive temporary workspace(s) and additional temporary workspace(s) encompassing 3.84 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint; and Additional Temporary Workspace Easement(s): Non-exclusive additional temporary workspace(s) encompassing 0.15 acres, as identified, described, and depicted on Exhibit A to the Verified Complaint. Pursuant to the Natural Gas Act, 15 U.S.C. § 717, et seq., FERC has issued to Rover a Certificate of Public

Convenience and Necessity authorizing Rover to construct and operate an interstate natural gas pipeline, known as the Rover Pipeline Project, which consists of approximately 713 miles of 24-inch, 30-inch, 36-inch and 42-inch diameter natural gas pipelines (approximately 510.7 linear miles of pipeline easement and approximately 713 total miles of pipe therein), with four mainline compressor stations, six supply lateral compressor stations and other ancillary facilities (the "Rover Pipeline Project"). Rover has the right of eminent domain under Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), because it has been unable to acquire the necessary Easements to construct, operate, and maintain the Roven Pipeline Project for the transportation of natural gas.

The Easements Rover seeks to acquire will be used for the construction and operation of natural gas pipelines and related appurchances, known as the Rover Pipeline Project, and for the required restoration and remediation related to such construction. The route spans approximately 510.7 linear miles originating in Southeastern Ohio, Western West Virginia, and Southwestern Pennsylvania and continues north across the state of Ohio to an interconnection in Defiance, Ohio, in the Northwest. It will then cross into Michigan where it will terminate in Livingston County. On February 2, 2017, FERC concluded that the Rover Pipeline Project is necessary and convenient for the public use and issued a Certificate of Public Convenience and Necessity to Rover for the construction and operation of the Rover Pipeline Project

YOU ARE FURTHER NOTIFIED that if you have any objection or defense to the taking, you must serve an answer on counsel for Rover within twenty-one (21) days after service of the notice on you. Your failure to serve an answer will constitute your consent to the taking and to the Court's authority to proceed with the action and fix the compensation.

YOU ARE FURTHER NOTIFIED that if you do not file an answer, you may serve on Rover's attorney a notice of appearance, designating the Easement(s) in which you claim an interest, and thereafter, you shall receive notice of all proceedings affecting your interest(s).

YOU ARE FURTHER NOTIFIED that at the trial of the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence regarding the amount of compensation to be paid for the Easement(s) in which you have an interest and you may share in the distribution of the compensation award. By counsel for Plaintiff Rover Pipeline LLC: Lori A. Dawkins (WV Bar #6880), Steptoe & Johnson PLLC, lori.daw-kins@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (303) 389-4300; William D. Wilmoth (WV Bar #4075), Steptoe & Johnson PLLC, william wilmoth (Steptoe-Johnson.com, 1233 Main Street, Suite 3000,Wheeling, West Virginia 26003, (304) 233-0000; and Lauren A. Williams (WV Bar #11943), Steptoe & Johnson PLLC, lauren.williams@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (304) 933-

9/30XB3

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT WHEELING

### ROVER PIPELINE LLC,

Plaintiff,

Civil Action No. 1:18-cv-00104-JPB

ROVER TRACT NO(S). WV-DO-SHC-021.000-ROW, COMPRISED OF PERMANENT EASEMENT(S) TOTALING 2 65 ACRES MORE OR LESS AND TEMPORARY EASEMENT(S) TOTALING 4.58 ACRES, MORE OR LESS. OVER A PARCEL OF LAND IN WEST UNION DISTRICT, DODDRIDGE COUNTY, WEST VIRGINIA, CONSISTING OF 175.78 ACRES, AND IDENTIFIED AS PARCEL NO(S). 08-08-0036-0000-0000, AS MORE PARTICULARLY DESCRIBED HEREIN, ET AL., Defendant

#### FEDERAL RULE 71.1(d) NOTICE OF CONDEMNATION ACTION

John E. Smith, who owns or may own an interest in the above-captioned Rover Tract No(s). situate in Doddridge County, West Virginia; and Any Heirs, Successors, and Assigns of the Defendants named in the above-captioned matter and Any Unknown Owners who may own an interest in one or more of the above-captioned Rover Tract No(s). situate in Doddridge County, West Virginia as set forth in the Amended Verified Complaint for Condemnation of Easement(s) Known as Tract No(s). WV-DO-SHC-021.000-ROW (the "Verified Complaint"). PLEASE TAKE NOTICE that on March 27, 2019, Rover Pipeline LLC ("Rover") filed the Verified Complain

in the above-captioned matter to condemn property in which you own or may own an interest. The above-captioned matter is an action by Rover, pursuant to Section 717(ft)) of the Natural Gas Act, 15 U.S.C. § 717(ft), and the Certificate of Public Convenience and Necessity ("Certificate") issued by the Federal Energy Regulatory Commission ("FERC") to Rover, for YOU ARE FURTHER NOTIFIED that if you have any objection or defense to the taking, you must serve an answer on counsel for Rover within twenty-one (21) days after service of the notice on you. Your failure to serve an answer will constitute your consent to the taking and to the Court's authority to proceed with the action and fix the compensation.

YOU ARE FURTHER NOTIFIED that if you do not file an answer, you may serve on Rover's attorney a notice of appearance, designating the Easement(s) in which you claim an interest, and thereafter, you shall receive notice of all proceedings affecting your interest(s).

YOU ARE FURTHER NOTIFIED that at the trial of the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence regarding the amount of more you paid for the Easement(s) in which you have an interest and you may share in the distribution of the compensation to be part for the Lacentral of the second se second sec Wilmoth (WV Bar #4075), Steptoe & Johnson PLLC, william.wilmoth@steptoe-johnson.com, 1233 Main Street, Suite 3000, Wheeling, West Virginia 26003, (304) 233-0000; and Lauren A. Williams (WV Bar #11943), Steptoe & Johnson PLLC, lauren.williams@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (304) 933-8000

> IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT WHEELING

ROVER PIPELINE LLC,

Plaintiff

ROVER TRACT NO(S). WV-DO-SHB-009.972-TAR-1A, COMPRISED OF PERMANENT EASEMENT(S) TOTALING 0.00 ACRES, MORE OR LESS, AND TEMPORARY EASEMENT(S) TOTALING 0.09 ACRES, MORE OR LESS OVER A PARCEL OF LAND IN GRANT DISTRICT, DODDRIDGE COUNTY, WEST VIRGINIA CONSISTING OF 0.81 ACRE, AND IDENTIFIED AS PARCEL NO(S) 03-19-0016-0000-0000 AS MORE PARTICULARLY DESCRIBED HEREIN, ET AL.,

Defendants

### FEDERAL RULE 71.1(d) NOTICE OF CONDEMNATION ACTION

To: Sheila Rena McCutchan, who owns or may own an interest in the above-captioned Rover Tract No(s). situate in Doddridge County, West Virginia; and Any Heirs, Successors, and Assigns of the Defendants named in the above-captioned matter and Any Unknown Owners who may own an interest in one or more of the above-caption Rover Tract No(s). situate in Doddridge County, West Virginia as set forth in the Amended Verified Complaint for Conation of Easement(s) Known as Tract No(s). WV-DO-SHB-009.972-TAR-1A (the "Verified Complaint"). PLEASE TAKE NOTICE that on March 27, 2019, Rover Pipeline LLC ("Rover") filed the Verified Complaint in the above-captioned matter to condemn property in which you own or may own an interest. The above-captioned matter is an action by Rover, pursuant to Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), and the Certificate of Public Convenience and Necessity ("Certificate") issued by the Federal Energy Regulatory Commission ("FERC") to Rover, for an order of condemnation for permanent pipeline, temporary work space, additional temporary workspace, surface site, permanent and temporary road access, and/or other rights-of-way and easements (the "Easements"), as further described in the Verified Complaint, and identified, described, and depicted on Exhibit A thereto, and for other legal and equitable relief, including injunctive relief allowing Rover to enter and access the Additional Temporary Workspace Easement(s), if any, to commence and complete repairs of slips, while the amount of compensation for the taking of the Easements is

Pursuant to the Certificate of Public Convenience and Necessity, dated February 2, 2017, that FERC issued to Rover, Rover needs and is authorized to acquire the Easements which are situated on and/or traverse on, over and under the above-captioned lands and which are more particularly described on Exhibit A to the Verified Complaint The Easements in which you own or may own an interest are more particularly described on Exhibit A to the Verified Complaint, and are comprised of the following: Temporary Road Access Easement(s): Non-exclusive temporary road access easement(s) encompassing 0.09 acres, as

identified, described, and depicted on Exhibit A to the Verified Complaint.

Pursuant to the Natural Gas Act, 15 U.S.C. § 717, et seq., FERC has issued to Rover a Certificate of Public Convenience and Necessity authorizing Rover to construct and operate an interstate natural gas pipeline, known as the Rover Pipeline Project, which consists of approximately 713 miles of 24-inch, 30-inch, 36-inch and 42-inch diameter natural gas pipelines (approximately 510.7 linear miles of pipeline easement and approximately 713 total miles of pipe therein), with four mainline compressor stations, six supply lateral compressor stations and other ancillary facilities (the "Rover Pipeline Project"). Rover has the right of eminent domain under Section 717f(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), because it has been unable to acquire the necessary Easements to construct, operate, and maintain the Rover Pipeline Project for the transportation of natural gas. The Easements Rover seeks to acquire will be used for the construction and operation of natural gas pipe-

lines and related appurtenances, known as the Rover Pipeline Project, and for the required restoration and remediation related to such construction. The route spans approximately 510.7 linear miles originating in Southeastern Ohio, Western West Virginia, and Southwestern Pennsylvania and continues north across the state of Ohio to an interconnection in Defiace, Ohio, in the Northwest. It will be cross into Michigan where it will terminate in Livingston County. On February 2, 2017, FERC concluded that the Rover Pipeline Project is necessary and convenient for the public use and issued a Certificate of Public Convenience and Necessity to Rover for the construction and operation of the Rover Pipeline Project.

YOU ARE FURTHER NOTIFIED that if you have any objection or defense to the taking, you must serve an answer on counsel for Rover within twenty-one (21) days after service of the notice on you. Your failure to serve an answer will constitute your consent to the taking and to the Court's authority to proceed with the action and fix the compensation

YOU ARE FURTHER NOTIFIED that if you do not file an answer, you may serve on Rover's attorney a notice of appearance, designating the Easement(s) in which you claim an interest, and thereafter, you shall receive notice of all proceedings affecting your interest(s).

YOU ARE FURTHER NOTIFIED that at the trial of the issue of just compensation, whether or not you have answered or served a notice of appearance, you may present evidence regarding the amount of compensation to be paid for the Easement(s) in which you have an interest and you may share in the distribution of the compensation award. By counsel for Plaintiff Rover Pipeline LLC: Lori A. Dawkins (WV Bar #6880), Steptoe & Johnson PLLC, lori.dav kins@steptoe-johnson.com, 400 White Oaks Boulevard, Bridgeport, West Virginia 26330, (303) 389-4300; William D. Wilmoth (WV Bar #4075), Steptoe & Johnson PLLC, william wilmoth@steptoe-johnson.com, 1233 Main Street, Suite 3000, Wheeling, West Virginia 26003, (304) 233-0000; and Lauren A. Williams (WV Bar #11943), Steptoe & Johnson PLLC lauren williams@steptoe-johnson com 400 White Oaks Boulevard Bridgeport West Virginia 26330 (304) 933-8000

#### B. Prejudgment Interest

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Civil Action No. 1:18-cv-00089-JPB

Defendants are also entitled to prejudgment interest on the amount of just compensation from the date of the taking, September 16, 2019, to the date of the judgment, September 22, 2020. See <u>United States v. Eltzroth</u>, 124 F.3d 632, (an lig, spinore and the second secon

No federal law, however, establishes the appropriate procedure for determining what interest rate 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 this District have previously observed that, "in order to make the injured parties whole, the prejudgment interest should reflect the injured party's borrowing costs." <u>See, e.g., Dijkstra v. Carenbauer</u>, No. 5:11-CV-152, 2015 WL 12750449, at **\*7** (N.D. W. Va, July 29, 2015) (Bailey, J.) (quoting <u>Zerkel v. Trinity Resources, Inc.</u>, 2013) WL 3187077, at **\*2** (D.D. W. Laward and C. 2012) (Bailey, J.) (and Section 2012) (Bailey \*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 Defendants' borrowing cost during the period of the loss of use of the monies owed. To make this determi-nation, the Court will apply the average federal interest rate from September 2019. During that time, the federal interest rates for marketable interest-bearing debt averaged 2.436%. TreasuryDirect.gov, Average Interest Rates, September 2019, https://www.treasurydirect.gov/gov/trates/pd/avg/2019/2019\_09.htm (last visited September 22, 2020). Accordingly, the Court will award prejudgment interest on the amount of just compensation, from September 16, 2019, to September 22, 2020, to be calculated at the rate of 2.436% per annum.

IV. CONCLUSION

For the reasons discussed, finding no disputed material fact as to the amount of just compensation owed to Defendants, the Court

GRANTS Dominion's unopposed motion for summary judgment (Dkt. No. 31); and

DIRECTS Dominion to pay \$83.00 to Defendants, plus prejudgment interest on this amount at the rate of 2.436% 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 Defendants and file proof of service with the Court DATED: September 22, 2020

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

PLEASE ALSO TAKE NOTICE that on September 22, 2020, the United States District Court for the Northern District of West Virginia in the above-captioned matter entered the following "Judgment Award" [Dkt. No. 40]:

The Court has ordered that: JUDGMENT AWARD: The Defendants, 0.11 Acre, more or less, in Doddridge County, West Virginia, Located on Parcel Identification No. 09-04-10-0032-0001-0000, and being more particularly described as 19.04 acres, more or less, described as General Warranty Deed in Book 320, page 80; Anthony Lake and Any Unknown Owners recover from Plaintiff, Dominion Energy Transmission, Inc. formerly known as Dominion Transmis-sion, Inc., the amount of <u>Eighty Three and 00/100 Dollars (\$83.00</u>), which includes prejudgment interest at the rate of 2.436%, plus post judgment interest at the rate of 0.13% per annum. This action was decided by Judge Irene M. Keeley DATE: September 22, 2020

CLERK OF COURT Cheryl Dean Riley /s/ M. Hare

By counsel for Dominion Energy Transmission, Inc. f/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 #11942), Steptoe & Johnson PLLC, lauren.turner@step-toe-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.

#### 10/7x3

#### PUBLIC SERVICE COMMISSION OF WEST VIRGINIA CHARLESTON

#### CASE NO. 20-0737-PWD-CN

DODDRIDGE COUNTY PUBLIC SERVICE DISTRICT Application for a certificate of convenience and necessity for the Blandville-West Union Waterline Extension Project.

#### NOTICE OF FILING

On September 25, 2020, Doddridge County Public Service District (District) filed a duly verified application for a certificate of convenience and necessity for the construction of a waterline extension project from Blandville to West Unior

The District is proposing to construct a waterline extension that would tie-in to the Route 18-Snowbird Road waterline extension that was completed in 2019. The extension would connect to the existing line at the intersection with Snowbird Road (County Route 50/16) and follow State Route 18 approximately 6,500 linear feet south to Blandville. The extension would also follow State Route 18 approximately 18,000 linear feet north to the intersection of State Route 18 and U.S. Route 50. In addition to serving 36 residential and commercial customers, the waterline would provide potable water and fire protection for development opportunities outside the flood plain at the intersection of U.S. Route 50 and State Route 18 near the Town of West Union.

The application is on file with and available for public inspection at the Public Service Commission, 201 Brooks Street, Charleston, West Virginia.

The District estimates that the project will cost approximately \$1,924,000. The District proposes that the construction will be financed through an EDA Grant in the amount of \$962,000 and a Doddridge County Commission contribution in the amount of \$962,000.

The District anticipates charging the following proposed increased rates for its customers upon substantial completion of the project

<u>APPLICABILITY</u> Applicable within the entire territory served.