



# PennEast Needs NJ Land For \$1B Pipeline, Judge Told

Press Releases

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By **Jeannie O'Sullivan**

**Law360, Trenton (April 5, 2018, 7:27 PM EDT)** -- PennEast Pipeline Co. LLC on Thursday told a federal judge that it needs immediate access to more than 100 New Jersey properties along the course of its planned \$1 billion natural gas pipeline or else it won't be able to complete time-sensitive environmental assessments needed to meet regulatory deadlines for the project.

During an order to show cause hearing in its bid to seize public and private properties in Hunterdon and Mercer counties, the company argued that it has eminent domain power under the federal Natural Gas Act to obtain the permanent and temporary easements it needs to advance the roughly 120-mile system that would run through New Jersey and Pennsylvania. The company filed condemnation actions in Trenton federal court against private property owners, along with the conservation trusts and county and municipal governments that manage preserved public land, that haven't accepted PennEast's offers to purchase their land.

Under the Natural Gas Act, a company can acquire property for pipelines as long as it has a conditional construction permit from the **Federal Energy Regulatory Commission** and it can't reach purchase agreements with landowners, PennEast attorneys argued. PennEast satisfies both criteria, they said.

"We have to assume Congress knows what it's doing," PennEast attorney **James M. Graziano** of **Archer & Greiner PC** told U.S. District Judge Brian R. Martinotti.

However, the landowners challenged the company's assertion that it engaged in good faith attempts to acquire the properties, saying they didn't have enough time to negotiate a fair price. Two landowners who spoke during the hearing said the condemnation actions were filed in early February and they only received PennEast's offer letters in late January.

New Jersey's eminent domain law dictates that no land can be taken without just compensation to the owners, argued Joseph W. Grather of McKirdy Riskin Olson & DellaPelle PC, an attorney representing the landowners.

"[PennEast has] completely ignored New Jersey state law," Grather told Judge Martinotti.

PennEast needs to collect information about the plants and wildlife on the properties and conduct geotechnical testing and analyses, among other things, before it commences construction, according to court records. The project must be built within two years of the Federal Energy Regulatory Commission's **January order** issuing a conditional construction certificate for the project.

But the project also hinges on approval by the **New Jersey Department of Environmental Protection**, which won't process PennEast's application until all of the surveys and tests are completed, the company contends. Construction delays will result in lost contracts and inability to comply with FERC deadlines, leading to money damages, said PennEast attorney **Maureen Coghlan** of Archer & Greiner PC. She argued that PennEast would suffer irreparable harm absent the access it seeks.

"There are certain surveys and activities that are very limited in terms of the time in which they can be done," Coghlan told Judge Martinotti.

PennEast also argued mounted a preemption argument, with Graziano noting that federal laws are "supreme, and trump any state or local law."

Defending condemnation actions seeking state-owned land, Deputy New Jersey Attorney General Mark Collier countered by saying that the Natural Gas Act's eminent domain provision is only a "general authorization" to pursue the land and that the law is silent about public entities' protection from prosecution, known as sovereign immunity.

"That silence is insufficient to allow an entity like PennEast to pull the state into court to abrogate those rights [to sovereign immunity]," Collier said in court.

Roughly 75 percent of the landowners on the 120-mile route have voluntarily agreed to allow land surveying, said PennEast spokeswoman Patricia Kornick, describing the current condemnation actions as "last-resort" measures.

The number of properties subject to actions continues to decrease as the company reaches settlements with landowners, Kornick said. As of Thursday afternoon, 140 actions remained pending, she said.

According to court records, Thursday's hearing addressed 57 actions involving property in Hopewell Township in Mercer County and in the Hunterdon County towns of Alexandria, Delaware, Holland, Kingwood and West Amwell. The property owners included individuals as well as Mercer County, New Jersey Conservation, the Hunterdon **Land Trust Alliance**, the **Conservation Law Foundation** and New Jersey Central Power and Light.

Judge Martinotti said he will render a decision after considering more condemnation actions during hearings scheduled for April 19 and April 26.

PennEast is represented by James Michael Graziano and Maureen Coghlan of Archer & Greiner PC.

The attorney general's office is represented by Deputy Attorney General Mark Alcantara Collier.



Mercer County is represented by county counsel Paul R. Adezio.

New Jersey Conservation is represented by Edward Lloyd of the Columbia Environmental Law Clinic.

The Hunterdon Land Trust Alliance is represented by Timothy P. Duggan of **Stark & Stark PC**, and Susan J. Kraham of the Columbia Environmental Law Clinic.

The Conservation Law Foundation is represented by Susan J. Kraham of the Columbia Environmental Law Clinic, and Jennifer Danis of the **Eastern Environmental Law Center**.

The private landowners are represented by Timothy P. Duggan of Stark & Stark PC, and Joseph W. Grather of McKirdy Riskin Olson & DellaPelle PC.

Jersey Central Power & Light is represented by Patrick McAuley of **Connell Foley LLP**.

The cases are being heard in U.S. District Court for the District of New Jersey. Case information was not immediately available on Wednesday.

## Related People



**Maureen T. Coghlan**

Partner

✉ mcoghlan@archerlaw.com

☎ 856.354.3034



**James M. Graziano**

Partner

✉ jgraziano@archerlaw.com

☎ 856.354.3090

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