

Mountain Valley 'quick take' fight heads to Supreme Court

Pamela King, E&E News reporter Published: Monday, July 8, 2019

A new battle over pipeline companies' power to seize private property made its way to the Supreme Court last week.

Landowners in the path of the 300-mile Mountain Valley natural gas pipeline through Appalachia asked the justices to consider whether federal courts can allow pipeline firms to acquire private tracts before paying.

The Natural Gas Act only says a developer behind a project approved by the Federal Energy Regulatory Commission may condemn land after it agrees to provide just compensation, Chris Johns, an attorney for the property owners, argued in *Givens v. Mountain Valley Pipeline*.

"FERC certificate in hand, the companies run to federal district court asking for a preliminary injunction giving them immediate access to begin bulldozing land and cutting down trees in the proposed right-of-way before securing the state and federal permits needed to lay their line," he wrote in the [petition](#) filed last Wednesday.

"They make the request even though the NGA confers no right to early entry and even though there is no guarantee that the permits will ever be granted — or the pipeline ever built."

Gas pipeline developers along the East Coast have used immediate possession, or "quick take," to gain access to private property before project costs balloon out of control.

But some land-use attorneys say federal judges are granting pipeline companies powers that Congress never intended to convey ([Energywire](#), July 2).

"[B]ecause neither state law nor federal statute gives a pipeline company any substantive right to pretrial possession, an injunction granting immediate possession exceeds federal judicial power," Johns argued on behalf of a slew of West Virginia and Virginia landowners.

The case features Karolyn Givens, who, together with her late husband Clarence, raised concerns about the Mountain Valley pipeline's effect on environmental and human health.

When Clarence Givens died in 2017, Karolyn needed to survive on a fixed income tied to the couple's Virginia farm. She testified in federal district court that a quick-take action by Mountain Valley's developers would force her tenant and her cattle away from her land.

"That lost income and her extra costs, both of which would likely not be recoverable in the condemnation proceeding, would impose a real hardship," Johns wrote in the Supreme Court petition.

"For a widow on a fixed income, missing out on one or two years of rents means a great deal."

The Supreme Court has already declined to hear at least two other quick-take disputes this year.

One of the rejected petitions, backed by the conservative firm behind a watershed eminent domain case the Supreme Court heard in 2005, focused on the already-built Atlantic Sunrise pipeline through Pennsylvania.

Attorneys in the Mountain Valley case said the justices may be more inclined to wade into a battle over a pipeline that has yet to be constructed.

Landowner advocates were also encouraged by a recent 5-4 Supreme Court finding that a property taking, absent just compensation, constitutes an immediate violation of the Fifth Amendment (*Greenwire*, June 21).

The court hears just 1% of cases it receives. The justices will vote on the *Givens* petition during its next term, which starts in October.