

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TEXAS EASTERN TRANSMISSION, : CIVIL ACTION  
Plaintiff :  
 :  
v. :  
 :  
FRANK T. PERANO, et al. :  
 :  
Defendants : NO. 04-3915

MEMORANDUM AND ORDER

McLaughlin, J.

February 4, 2005

This case involves a dispute between a natural gas pipeline company and the owners and operators of a mobile home park regarding easements for two natural gas pipelines on the land of the mobile home park. Texas Eastern Transmission ("Texas Eastern") has moved for a preliminary injunction to prevent the interference with the use of a right-of-way across lands owned by defendant RHG Properties, LLC, upon which defendant Frank T. Perano and GSP Management Co. operate a mobile home park.

Texas Eastern alleges that the defendants allowed a contractor to install a mobile home in a location that encroaches on Texas Eastern's right-of-way. Texas Eastern asks the Court to order removal of the mobile home and to enjoin the defendants from any further interference with the right-of-way for the pipelines.

The Court concludes that Texas Eastern has shown a strong likelihood of success in proving that it possesses an easement, which entitles it to the use of a right-of-way of 25 feet in width on either side of its two pipelines. Because Texas Eastern has otherwise shown that it is entitled to preliminary relief, the Court will grant Texas Eastern's motion for a preliminary injunction.

Pursuant to Federal Rule of Civil Procedure 52(a), the Court's findings of fact and conclusions of law are set forth below.

I. Findings of Fact

A. The Parties

The plaintiff Texas Eastern is a Delaware limited partnership, registered to do business in Pennsylvania. Texas Eastern owns and operates natural gas pipelines serving customers throughout the Northeast.

Duke Energy Gas Transmission is the parent of Texas Eastern Transmission. Texas Eastern utilizes Duke Energy Gas Transmission employees to operate and maintain the pipelines. October 6, 2004 Hearing Transcript at 16 (hereinafter, "Hr'g Tr.").

GSP Management Company owns and operates Deer Run Mobile Home Park, the site of the mobile home at issue. GSP

Management Company leases land for people to set up mobile homes in the park. Frank T. Perano is the Vice-President of GSP Management. Mr. Perano and his company purchased Deer Run Mobile Home Park in February 2001. Hr'g Tr. at 124-25. RHG Properties, LLC ("RHG") owns the land in Honeybrook Township, Chester County, Pennsylvania, on which GSP Management operates Deer Run Mobile Home Park. Hr'g. Tr. at 3.

B. Easement Grants

RHG's predecessors in interest, Francis and Nick Zaferes, conveyed the rights to lay one or more pipelines in Chester County to an organization called the Defense Plant Corporation. In a December 15, 1942 easement grant, they conveyed to the Defense Plant Corporation "the right to lay, operate, renew, alter, inspect, and maintain a pipeline for the transportation of oil, gas, petroleum products or any other material or substance which can be transported through a pipeline...." Hr'g Tr. at 4.

The Zafereses further granted the Defense Plant Corporation, upon consideration of \$48.50, "the right...to lay, operate, renew, alter, inspect and maintain a second pipeline for like transportation, adjacent to and parallel with the first pipeline...." The easement grant does not specify any boundaries in metes and bounds. Ex. P-1; Hr'g Tr. at 11.

The easement grant provided that, "Grantee agrees to bury such pipelines so that they will not interfere with the cultivation or drainage of the land, and also to pay any and all damages to stock, crops, fences, timber, and land which may be suffered from the construction, operation, removal, alteration, inspection or maintenance of such pipelines." Ex. P-1.

On August 11, 1943, the Zafereses granted the Defense Plant Corporation "the right to lay, operate, renew, alter, inspect and maintain a second pipeline adjacent to and parallel" with the first pipeline. The Defense Plant Corporation paid consideration in the amount of \$48.50. See Receipt of Payment of Consideration for Second Installation.<sup>1</sup>

Texas Eastern purchased the Defense Plant Corporation assets and rights in 1947 and has operated the pipelines since that time. Hr'g Tr. at 9. As an assignee of the Defense Plant Corporation, Texas Eastern succeeded to the easement rights of the Defense Plant Corporation. Ex. P-1; Hr'g Tr. at 12.

When Mr. Perano purchased Deer Run, he was aware of the grant conveying the easement for the operation of one pipeline

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<sup>1</sup> The plaintiff's counsel sent a letter to the Court on November 3, 2004, requesting the Court to admit into evidence a copy of a receipt for payment of consideration for the second pipeline installation, dated August 11, 1943. Counsel enclosed a copy of the receipt with the letter. The defendants have not disputed the authenticity of this document. The Court will consider this receipt as evidence of consideration paid for a second pipeline installation.

and the option to purchase the easement for the second pipeline. The easement grant was included in the title documentation for the purchase of the property. Hr'g Tr. at 133.

C. Texas Eastern's Pipelines

Texas Eastern operates two high pressure natural gas pipelines in the area of the right-of-way, both of which were installed in approximately 1943. One is 20 inches in diameter ("Line 2") and one is 36 inches in diameter ("Line 1"). Hr'g Tr. at 12. The pipelines are buried underground approximately three to five feet deep. They are approximately 29 feet apart. Hr'g Tr. at 26. Line 2 is closer to the mobile home in question. Hr'g Tr. at 21.

Texas Eastern marks the two pipelines at all road crossings, railway crossings, and at various locations along the right-of-way to prevent homeowners and contractors from excavating and digging within these boundaries. Hr'g Tr. at 27; 48-49; 75. Texas Eastern places markers and large decals on the pavement to notify the public of the pipelines under parking lots. Hr'g Tr. at 109-110.

D. Texas Eastern's Pipeline Operations and Right-of Way Requirements

Texas Eastern is required to operate the pipelines under the guidance and rules of the Department of Transportation,

Office of Pipeline Safety and the Federal Energy Regulatory Commission. Hr'g Tr. at 35. Federal regulators inspect the pipelines and impose monetary penalties for safety violations. If the pipeline is unsafe to operate at its maximum allowable operating pressure, the pipeline is subject to pressure restrictions, which limit gas delivery to customers. Hr'g Tr. at 45-46.

In accordance with federal requirements, Texas Eastern utilizes several methods to maintain the pipelines. Texas Eastern performs monitoring and testing of its pipelines on an ongoing basis. Hr'g Tr. at 39. Texas Eastern monitors the pipelines in annual corrosion surveys, in-line tool inspections, and through a close internal survey. Hr'g Tr. at 43.

In order to conduct its pipeline operations, Texas Eastern typically requires 25 feet to the outboard side of the pipelines. Hr'g Tr. at 51. Maintaining this cleared right-of-way on the land enables Texas Eastern to perform aerial patrol surveillance and vehicular surveillance due to increased visibility. It allows Texas Eastern to perform maintenance on the pipeline system in a safe manner, while minimizing the impact to property owners. Hr'g Tr. at 47, 49.

A 25-foot right-of-way allows Texas Eastern to bring in excavation equipment to repair the pipeline in the event of a pipeline leak. In the event of a leak, Texas Eastern would use

the following equipment: a large piece of machinery called a backhoe; a side boom dozer, which lifts the pipe in and out of the ditch; and a boom truck equipped with a crane to lift pieces of pipe in and out of a ditch. The equipment cannot be placed on another pipeline with natural gas under high pressure running through it. The heavy equipment would put undue stress on the pipeline. Hr'g Tr. at 51-54.

The presence of mobile homes, tool sheds, and other structures on the land inhibit the ability to excavate a pipeline and transport equipment to the pipeline site, thereby increasing the time it takes to complete the repair work. Such encroachments also impact Texas Eastern's ability to find a pipeline leak, as such leaks may occur under a mobile home or some other structure. Hr'g Tr. at 56-57.

Texas Eastern monitors the pipeline sites for encroachments within 25 feet of its pipelines. Texas Eastern uses a patrol plane, which is flown three days a week. The patrol plane has a two-way radio to allow the patrol pilot to notify personnel in the area to address possible encroachments. Texas Eastern is also a member of the Pennsylvania One Call System wherein anyone operating excavation equipment in the vicinity of Texas Eastern's pipelines must call a toll-free number before doing an excavation. Texas Eastern receives immediate notification anytime a person calls the number and

responds by sending personnel to the site to verify that the work taking place is not an encroachment on its pipeline right-of-way. Hr'g Tr. at 40-41.

Excavation near the pipelines is a source of concern for Texas Eastern due to the risk of the equipment rupturing the pipeline. The primary cause of the most severe rupture is third party damage, where contractors, home owners, or the general public excavate in the vicinity of the pipeline using equipment, such as a backhoe, trencher, or auger for construction. Pipeline ruptures and gas leaks are major safety concerns for Texas Eastern as they lead to the possibility of explosions. Hr'g Tr. at 36-39.

Duke Energy Gas Transmission has communicated with Mr. Perano in the past regarding structures in the mobile home park that are encroachments on Texas Eastern's right-of-way. In September 2002, Michael Baehr of Duke Energy Gas Transmission Corp. sent Mr. Perano a letter informing him, "We flagged and measured our easement on your property. All structures that reside within our easement area have been identified and placed on the enclosed plan." He further stated, "I hope this clarifies the encroachments that we need to address on site at the trailer park." Hr'g Tr. at 129; Ex. D-1.

In March 2003, Mr. Perano responded in a letter to Mr. Baehr that Texas Eastern was receiving the full benefit of its



right-of-way with two pipelines installed and that he needed to be able to use and enjoy his land. In this letter, Mr. Perano also inquired about compensation for moving the encroaching mobile homes. Hr'g Tr. at 135-36.

E. The Mobile Home on Lot 40

On or about June 9, 2004, Texas Eastern personnel discovered that the defendants or their contractor had begun procedures for installing a mobile home at 40 Violet Avenue in the Deer Run Mobile Home Park ("Lot 40"). Hr'g Tr. at 68.<sup>2</sup> Thomas Wagner, an employee of Texas Eastern, had received a One Call Report about the installation of the new mobile home on Lot 40. Hr'g Tr. at 62; 66.

On June 9, 2004, Dan Thompson, a Texas Eastern employee in charge of right-of-way matters, sent Mr. Perano a letter regarding the proposed mobile home installation. Mr. Thompson wrote:

Currently there are several trailers and other structures that are located within 25 feet of the centerline of either pipeline that traverses your property....By this letter you are prohibited from installing any additional trailers or structures within 25 feet of the centerline of either pipeline. In addition it is a violation of various federal and Pennsylvania One Call regulations to auger or dig within 25 feet of either pipeline....This unauthorized work and placement of additional structures within the

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<sup>2</sup> A contractor was installing the mobile home on Lot 40 for a new tenant to the mobile home park. Hr'g Tr. at 33.

pipeline right-of-way represents a threat to the safety and integrity of the pipelines and the general public.

Ex. P-6.

In addition to communicating directly with Mr. Perano regarding the proposed installation on Lot 40, Texas Eastern employees went on site to speak with the contractor preparing to install the mobile home. An area manager for Texas Eastern, William Quinn, pointed out to the contractor the area upon which Texas Eastern claimed to have a right-of-way for the pipelines. The area in which the contractor proposed to install the mobile home was within the area that Texas Eastern claimed to have a right-of-way. Hr'g Tr. at 68. Following conversations with the contractor on the site of Lot 40, Texas Eastern installed orange fences to delineate the edge of the pipeline right-of-way. Hr'g Tr. at 74.

After Mr. Quinn's conversation with the contractor, the contractor began the process for installing the mobile home. The contractor used a power-operated auger in installing the home, causing a risk of puncturing the pipeline. Hr'g Tr. at 68.

In response to the mobile home installation, Mr. Wagner of Texas Eastern filled out an incident report to the State Department of Labor and Industry. Hr'g Tr. at 62; 66. Texas Eastern fills out these incident reports in an effort to receive support in handling conflicts over rights-of-way with homeowners and contractors. Hr'g Tr. at 59-60. According to the incident

report, the location of the new trailer on Lot 40 was being installed 10 feet, 6 inches from the 20-inch pipeline on one side and 10 feet from the pipeline on another side. Ex. P-5. According to the incident report, the previous trailer was 15 feet from the 20-inch pipeline. Hr'g Tr. at 64.<sup>3</sup>

Mr. Perano communicated with the contractor regarding the installation of the mobile home on Lot 40. Prior to the installation, Mr. Perano called the mobile home dealership to verify that the home installed on Lot 40 was no larger than the home that was already there. Hr'g Tr. at 138. He also instructed the contractors to give as much separation between the mobile home and the pipelines as possible. Hr'g Tr. at 127.

## II. Conclusions of Law

In ruling on the plaintiff's motion for preliminary injunctive relief, the Court must consider four factors: (1) the likelihood that the plaintiff will prevail on the merits at the final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent

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<sup>3</sup> The defendants challenge the Court's acceptance of the measurements contained in the incident report because Mr. Wagner, who filled out the incident report, did not testify at the preliminary injunction hearing. The defendants contend that the old and new mobile homes on Lot 40 were installed in the same location. The Court will assume that the new mobile home was in the same place as the old one. Because the old one infringed the plaintiff's right-of-way, I do not need to resolve this factual dispute.

to which the defendants will suffer irreparable harm if the preliminary injunction is issued; and (4) the public interest. See Pappan Enterprises, Inc. v. Hardee's Food Systems, Inc., 143 F.3d 800, 803 (3d Cir. 1998). The burden of proof lies with the plaintiff. See BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp., 229 F.3d 254, 263 (3d Cir. 2000). The Court will address each of these factors.

A. Likelihood of Plaintiff Prevailing on the Merits

Texas Eastern must demonstrate that it has a likelihood of prevailing on its claim that it is entitled to maintain a 25-foot wide right-of-way to the outboard side of each of the two pipelines. In order to meet this standard, Texas Eastern must show that it has a reasonable probability of ultimate success on the merits of the litigation. ECRI v. McGraw-Hill, 809 F.2d 223, 226 (3d Cir. 1987).

1. Validity of Texas Eastern's Easements

Texas Eastern must demonstrate that it has an easement for its two pipelines. There is no dispute that Texas Eastern owns an easement for one pipeline on the defendants' land. The defendants, however, dispute that Texas Eastern owns the right to easements for both pipelines, arguing that there is no evidence that the Defense Plant Corporation ever exercised the option to

purchase a right-of-way for the second pipeline. The Court finds that Texas Eastern has proffered sufficient evidence of ownership of an easement for the second pipeline. Texas Eastern has submitted documentation of a receipt showing consideration paid in the amount of \$48.50 for an easement for the second pipeline.

## 2. Extent of Texas Eastern's Easements

Texas Eastern must demonstrate that the easements entitle it to use a 25-foot right-of-way from the outboard side of the pipelines. The easement grants do not state specifically the physical scope of the easements. In order to determine the physical scope of Texas Eastern's easements, the Court will apply Pennsylvania law.

### a. Rights Above the Surface

Texas Eastern contends that the easement grant provides it with the use and enjoyment of a right-of-way over, under, and across the defendants' land. The defendants argue that Texas Eastern only has the right to bury a pipeline on the property, and that the easement does not require the grantor to give up its rights in the surface property over the pipeline or near it. The defendants rely on the following language of the easement grant:

Grantee agrees to bury such pipelines so that they will not interfere with the cultivation or drainage of the land, and also to pay any and all damages to stock,

crops, fences, timber and land which may be suffered from the construction, operation, removal, alteration, inspection, or maintenance of such pipelines.

The Court finds that the only reasonable interpretation of the easement grant is to provide Texas Eastern a right-of-way over, under, and across the defendants' land.

The same rules of construction that apply to contracts are applicable in the construction of easement grants.

Zettlemyer v. Transcontinental Gas Pipeline Corp., 540 Pa. 337, 344, 650 A.2d 920, 924 (1995). The easement does not have to state specifically that Texas Eastern may use the surface. The Court only has to find that Texas Eastern's asserted use is reasonable and necessary in relation to the original purpose of the grant and within the intention of the original parties to the grant. Id. at 344, 650 A.2d at 924.

Texas Eastern's use of the surface area is (1) reasonable and necessary to carry out the pipeline activities specified in the easement and (2) within the intent of the parties to the easement grant. Activities exercised by Texas Eastern under the easements include routine inspection, maintenance of the pipelines, and removal of the pipelines. At the preliminary injunction hearing, Texas Eastern presented evidence that it is necessary to use the surface area to obtain access in the event of a pipeline leak or rupture, to carry out

routine tests, and to conduct monitoring and maintenance activities.

The mere fact that the easement grant contains a remedy for damages caused by the pipelines does not suggest that the parties intended the grantee to conduct only underground activities. Because it would be impossible to conduct the activities specified in the grant without using the land above the surface, the Court construes the damages provision as evidence that the grantor intended simply to make the grantee liable for the pipeline activities that it would need to conduct above the surface.

b. Width of the Easement

Texas Eastern argues that it is entitled to the reasonable use and enjoyment of a right-of-way of 25 feet to the outboard side of the pipelines to conduct its pipeline activities. The defendants argue that Texas Eastern does not require 25 feet, especially in light of the fact that it has been operating the pipelines with much less distance between the pipeline and encroaching structures.

Pennsylvania case law establishes that when an easement is silent or ambiguous as to width, the interpretation of the easement is governed by a reasonable and necessary use standard. In Zettlemyer, the Pennsylvania Supreme Court applied this

standard to determine whether a natural gas pipeline easement holder had the right to expand its easement across the land of property owners in order to lay an additional pipeline. Id. at 345, 657 A.2d at 923-24. The pipeline company sought use of an extra 30 feet of land beyond the 100-foot right-of-way that it had maintained for over 30 years in conducting its pipeline activities. The easement at issue provided that the company had the right to conduct pipeline activities similar to those in this case, and all other rights and benefits necessary for the full enjoyment or use of those rights. As in this case, the grant did not specify the width of the easement. Id. at 341, 657 A.2d at 922.

In determining that the pipeline company was entitled to the extra 30 feet of clearing, the Pennsylvania Supreme Court determined that the pipeline company's use of the land was reasonable and necessary in relation to the original purpose of the grant and within the intention of the original parties to the grant. The court found that the language of the grant was evidence of the original intent of the parties to allow the company to clear additional land.

The court also found that the use of an extra 30 feet was reasonable and necessary to effectuate the purposes of the grant. In making this determination, the court considered the pipeline company's interest in having sufficient space to allow



its construction equipment to maneuver safely during the construction of the additional pipeline. The company presented expert testimony that the additional 30 feet were needed to avoid construction equipment from operating on top of the two existing pipelines. Id. at 347, 657 A.2d at 925.

Zettlemyer instructs that Texas Eastern is entitled to a 25-foot right-of-way to the outboard side of the pipelines. Here, the language of the easement grant demonstrates that the parties intended the pipeline easement holder to use the servient land as necessary to carry out its rights under the easement to operate, remove, alter, and inspect the pipelines. In doing so, the grant provides a remedy for any damages to stock, crops, fences, timber, and land which may be suffered in the process.

Texas Eastern has demonstrated that the use of a right-of-way within 25 feet of the pipeline is reasonable and necessary to effectuate the purposes of the grant. During the hearing, Texas Eastern presented testimony from Mr. Quinn, who is responsible for the safe maintenance and operation of the pipelines, that it requires 25 feet to the outboard side of the pipelines to conduct its operations. The encroachment of mobile homes and other structures within this right-of-way poses a threat to homeowners and nearby property. Encroachment by such structures compromises Texas Eastern's ability to conduct repair and maintenance procedures in a safe and effective manner because

it inhibits Texas Eastern from transporting the necessary equipment. A cluttered right-of-way prevents Texas Eastern personnel from performing federally-mandated monitoring and testing activities. Texas Eastern also has to protect its pipelines from construction activities in close proximity to the pipelines. Excavation and digging activities performed too close to the pipeline increase the risk of puncturing the pipelines, leading to gas leaks.

In addition to Texas Eastern's evidence that it requires a 25 foot right-of-way on each side of its natural gas transmission pipeline, courts have found that safety concerns mandate such a right-of-way. See, e.g., Columbia Gas Transmission Corp. v. Savage, 863 F. Supp. 198, 202 (M.D. Pa. 1994) (finding in the absence of a specific width in the easement agreement, pipeline company entitled to 25-foot distance on each side of the pipeline to maintain pipeline); Columbia Gas Transmission Corp. v. Burke, 768 F. Supp. 1167, 1173 (N.D. W.Va. 1990) (finding that in the absence of an easement grant specifying width, twenty-five feet on either side of the pipeline is reasonable and necessary to operate the pipeline safely and effectively and to inspect, repair, and replace the pipeline).

Texas Eastern's past use of a right-of-way of 10 feet or 15 feet from the pipelines does not defeat its claim to the right to use a 25-foot right-of-way. In Zettlemyer, 540 Pa. at

348, 657 A.2d at 925, the Pennsylvania Supreme Court disagreed that subsequent agreement, use, and acquiescence established the width of a right-of-way when the written agreement is ambiguous. Zettlemyer rejected the contention that because the pipeline company had maintained a 100-foot right-of-way for over 30 years, the width of the easement had become fixed to that width. Id. The court recognized that a grantee's past use has some evidentiary value in interpreting the grant, but it should not be the sole extrinsic evidence considered by a court. Id. at 347; 657 A.2d at 925.

Texas Eastern has a stronger argument for its proposed right-of-way than the pipeline company in Zettlemyer. Here, Texas Eastern has a reasonable probability of success on the merits because Texas Eastern is seeking to enforce the right-of-way to which it has always been entitled. In Zettlemyer, by contrast, the pipeline company sought an expansion of an easement that had been sufficient for its uses for 30 years.

B. Irreparable Harm

A plaintiff seeking a preliminary injunction must make a clear showing of immediate irreparable injury. See ECRI, 809 F.2d at 226 (3d Cir. 1987). Irreparable harm is such "that compensation in money alone cannot atone for it." Pappan, 143 F.3d at 805.

Without an injunction, interference with the 25-foot right-of-way compromises Texas Eastern's ability to inspect, maintain, and repair the pipeline, as required by federal regulations. A cluttered right-of-way inhibits Texas Eastern's ability to perform its aerial patrol and vehicular surveillance by decreasing visibility. Interference with the right-of-way also impacts Texas Eastern's ability to repair the pipelines efficiently. In the event of a gas leak or rupture, Texas Eastern has to transport large pieces of machinery and equipment to repair the pipelines. Texas Eastern needs enough room so that the equipment can be transported to the site without placing equipment on top of the other pipeline. If there are mobile homes or other structures within the right-of-way, Texas Eastern has to move the structures before responding to the problem with the pipeline. Structures on the right-of-way also inhibit Texas Eastern's ability to locate the site of pipeline leaks. Because pipeline leaks and ruptures lead to the possibility of explosions, interference with Texas Eastern's right-of-way limits its effectiveness in responding to major public safety concerns.

Maintaining a right-of-way free from interference protects Texas Eastern's pipelines from leaks and ruptures. Mr. Quinn testified at the hearing that construction and development near the pipelines can severely damage the pipelines. When contractors, homeowners, or the general public excavate in the

vicinity of the pipelines using backhoes, trenchers, or augers, they pose a danger of puncturing the pipelines. The issuance of the injunction helps to preserve Texas Eastern's pipelines from damage and minimizes the safety risks to the public that flow from a damaged pipeline.

The Court finds that the above factors demonstrate that Texas Eastern will suffer irreparable harm in the absence of an injunction. Without conducting proper maintenance, inspection, and repair, Texas Eastern's pipelines pose a very serious threat of danger to life and property. See, e.g., Texas Eastern Transmission Corp. v. Giannaris, 818 F.Supp. 755, 760 (M.D. Pa. 1993) (finding the irreparable harm prong satisfied on the basis of the serious threat of danger to both the public and the environment without proper pipeline inspections and maintenance); see, e.g., Burke, 768 F.Supp. at 1171 (finding "potential for serious injury or loss of life clearly qualifies as an 'irreparable injury'").

The Court also finds that an injunction is a necessary remedy for these harms. Texas Eastern has made repeated requests for the defendants to stop interfering with the 25-foot right-of-way, even explaining the major safety risks that could result. The defendants have continued to construct mobile homes within this right-of-way despite these warnings. An injunction is,

therefore, necessary to prevent harm from occurring pending a trial on the merits.

C. Balancing the Hardships

After considering the likelihood of success on the merits and irreparable harm, a court must balance the hardships the respective parties will suffer from granting or withholding the injunction. See Pappan, 143 F.3d at 805.

The harm to the defendants if the preliminary injunction should issue would be minimal. Here, a preliminary injunction would prevent the defendants, pending trial on the merits, from interfering with Texas Eastern's use and enjoyment of a 25-foot right-of-way on each side of the pipelines. It would also require the defendants to relocate one mobile home on Lot 40.<sup>4</sup> Any harm suffered by the defendants could be adequately compensated in monetary damages. Texas Eastern has agreed to pay the reasonable costs of moving the mobile home on Lot 40; and, the Court will order Texas Eastern to post a bond for \$50,000.

Any difficulty the defendants now face was brought on by their own conduct in continuing to install the mobile home on Lot 40 despite the repeated warnings that the home's location

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<sup>4</sup> The Court is ordering the removal of only one mobile home. The Court is not ordering the removal of any other structures that infringe upon the right-of-way, and Texas Eastern has not requested the Court to do so.

was an encroachment on Texas Eastern's right-of-way. Texas Eastern sent a letter to Mr. Perano in June 2004, explaining that Texas Eastern claimed a right-of-way in the area of the site for the proposed installation of the mobile home. Texas Eastern personnel went on site to Lot 40 to inform the contractor installing the home where Texas Eastern claimed to have a right-of-way. Texas Eastern even set up orange fences to identify the edge of the pipeline right-of-way. Still, the defendants allowed the installation of the mobile home on Lot 40.

Further, any harm that the defendants would suffer under the issuance of a preliminary injunction would be small compared to the harm Texas Eastern would suffer in the absence of an injunction. The presence of structures within Texas Eastern's right-of-way, such as the mobile home on Lot 40, compromises its ability to inspect, repair, and maintain its pipelines safely and efficiently. The inability to perform such activities in the event of a pipeline leak or rupture increases the risks of an explosion. Digging and excavating within the 25-foot right-of-way threatens the physical integrity of Texas Eastern's pipelines. The catastrophic consequences that could result in the absence of an injunction would be great compared to the harm that the defendants would face.

Accordingly, the Court finds the balance of the hardships favors Texas Eastern.

D. Public Interest

A district court must consider whether the issuance of a preliminary injunction serves the public interest before granting preliminary injunctive relief. Id. at 807. Here, Texas Eastern presented testimony that encroachments upon the right-of-way interfere with the performance of maintenance and safety operations for the gas pipelines. Gas pipeline leaks and ruptures have the potential to lead to explosions. A preliminary injunction minimizes the risk of serious harm to life and surrounding property.

Further, Texas Eastern's proper compliance with federal maintenance requirements implicates the public interest in receiving services of natural gas. If the pipeline is unsafe to operate at its maximum allowable pressure, the pipeline is subject to pressure restrictions, which limit natural gas delivery to customers. The cutoff of natural gas services to Texas Eastern's customers weighs in favor of granting the injunction. See, e.g., Burke, 768 F.Supp. at 1171 (finding pipeline company's cutoff of natural gas services, particularly in the winter months, could



have serious implications and weighs in favor of the public interest).

Accordingly, because the Court concludes that the critical public interest in the safety and proper maintenance of the natural gas pipelines would be advanced by the grant of a preliminary injunction, the Court finds that the public interest favors granting preliminary injunctive relief.

Because Texas Eastern has established each of the requisite elements for obtaining a preliminary injunction, the Court will grant Texas Eastern's motion. A bond pursuant to Federal Rule of Civil Procedure 65(c) in the amount of \$50,000 is appropriate. Texas Eastern shall also pay the reasonable costs of moving the mobile home on Lot 40. The defendants will have sixty days to arrange for the transfer of the mobile home on Lot 40 to another location in the park, off of Texas Eastern's right-of-way.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TEXAS EASTERN TRANSMISSION,       :       CIVIL ACTION  
  
                  Plaintiff         :  
  
                                      :  
  
                  v.                   :  
  
                                      :  
  
FRANK T. PERANO, et al.           :  
  
                                      :  
  
                  Defendants         :       NO. 04-3915

ORDER

AND NOW, this 4<sup>th</sup> day of February, 2005, upon consideration of the plaintiff's Motion for Preliminary Injunction (Docket No. 2), the defendants' response thereto, the plaintiff's reply, and the defendants' sur-reply, following an evidentiary hearing held on October 6, 2004, and following a

telephone conference with counsel for the parties on January 27, 2005, IT IS HEREBY ORDERED that, for the reasons stated in a memorandum of today's date, Texas Eastern Transmission's Motion is GRANTED. IT IS FURTHER ORDERED that:

1. Frank T. Perano, GSP Management Co., and RHG Properties are HEREBY PRELIMINARILY ENJOINED, pending the final hearing and determination of this cause or until further Order of this Court, from (a) obstructing and interfering with Texas Eastern's ability to locate, inspect, maintain, and operate the pipelines within a right-of-way of 25 feet from the outboard sides of Texas Eastern's two pipelines; (b) commencing any digging, excavation or other construction work within the right-of-way without first notifying Texas Eastern and submitting copies of proposed plans and drawings for its review, consideration, and approval; and (c) commencing any digging or excavation work without first notifying One Call of the work to be performed within the right-of-way and following Texas Eastern's directives with regard to said excavations.

2. The defendants shall remove the mobile home located at 40 Violet Drive from within the right-of-way within sixty days of this Order.

Texas Eastern shall within ten (10) days of this Order for preliminary injunction post a bond with the Clerk of Court in an amount of \$50,000, pursuant to Federal Rule of Civil Procedure 65(c). This Order of Preliminary Injunction shall take effect

upon the posting by Texas Eastern of the bond. Texas Eastern shall also pay the reasonable costs of moving the mobile home on 40 Violet Drive to another location.

BY THE COURT:

/s/ Mary A. McLaughlin

MARY A. McLAUGHLIN, J.

Faxed by Chambers:

Charles W. Rubendall

Allen E. Ertel

Daniel F. Schranghamer