

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 05 2018

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Charles B. Simmons, Circuit Court Judge

Case No. 2012-CP-23-04064
Appellate Case No. 2015-001909

Piedmont Natural Gas Company, Inc.,Appellant/Respondent,

v.

Richeous Smith, Worthly Smith a/k/a Worley Smith, Pearl Terry, Ethel Butler, Tweety Smith a/k/a Tweety Smith Harris, Doreth Smith, Fletcher Lee Harris, Alma Williams Smith, James R. Smith, Loree Smith, Gene A. Smith, Adolf Smith, Janie Sue Smith, Samuel Paul Smith, Ruby Smith Mansell, Buford Mansell, Ethel Mae Smith, Wilson Smith, Patrick R. Smith, Reginald Lamont Smith, Eric Smith, Christine Smith Dawkins, William G. Dawkins, Alma Renee Smith Murry, Sharai Smith Brock, Robert Lee Smith, Melissa F. Smith, Rosalyn Annette Steven, Edith Smith Foster, George Waymon Foster, Bridgette Smith Blassingame, Tara Smith, Waymon Odell Smith, Martha Miller Smith, Calvin Lee Smith, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, Dorothy Smith Pearson, Gary Pearson, Jerome Smith, Jaygo Terry, Ida Terry, Mack Terry, Zone Terry, Leola Terry Smith, James Smith, J.P. Terry, David Brayvell Terry, Ettie Pearl Booker, Tecora O. Terry Mason, Odell Mason, Lenora Holley, Dorothy Terry Sheppard, Orangelee Sheppard, Vernon Sheppard, Kasandra Sheppard Jenkins, Karen Sheppard Spates, Theodore Terry, Sr., Gracie Terry, Kelvin F. Terry, Theodore Terry, Jr., Keith Terry, Leola Terry Daniels, Wilford Daniels, Terrance Leslie, Sr., Derrick McGee, Jr., Fred Smith, Jr., Mannell Terry, Patricia Terry, Sheila Terry, Barbara Evans, Leonard Evans, Linda Evans, Thomas Evans, Johnny R. Williams, Connie Evans, Michael Evans, Iola Terry Cox, William Henry Cox, Johnny F. Cox, Joyce A. Smith, Anthony Cox, Alfred Cox, J. Henry Cox, Charlette J. Cox, Charles J. Cox, Michael Cox, Supearl Terry Gilliam a/k/a Supearl Terry Gilliam Miranda, Eugene Gilliam, Terry Gilliam, Jerry Gilliam, Warren Gilliam, Eugene Gilliam, Jr., Melvin Gilliam, Rodney Gilliam, Cindy Gilliam, Shakima Gilliam, Carmella Cottom, Nina Gilliam, Vermell Gilliam Phillips, Shaynise Alston, John Gilliam, Donald Gilliam, Sr., Leunette Gilliam, Donnette Gilliam Ortchere, Leslie Gilliam Peter, Angela Gilliam, Donald E. Gilliam, Raymond T. Gilliam, Juan Miranda, Carmen Miranda a/k/a Carmen Miranda Glavin, John Glavin, Sr., John Glavin, Jr., Miranda Glavin, Jeffrey Glavin, Yolanda Glavin, Ezell Terry, Magaline Terry, Leroy Terry, Kenneth Terry, James (Jimmy) Terry, Pearlie Mae Terry, Winnie L. Terry Anderson, Furman Anderson, Tommy Anderson, Abigail Dodd, Angela Reid, Sandra McDowell, Harold Anderson, Mary Ann Davis, Charlene Peake, Albert Anderson, Paul Terry,

Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Paul A. Terry, Mark G. Terry, Terry Sholer, Jamie Terry, James O.C. Smith, Pauline Smith, Gloria Gore, Paul Smith, Ethel Allen, Desiree Golden, Pauline Workman, Brenda Moulhem, and if any of the aforementioned be deceased, then their heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives, and any party claiming by or through them, Landowners,

and

The United States of America, acting by and through its agency, the Internal Revenue Service, The United States of America, acting by and through its agency the United States Department of Justice, The South Carolina Department of Revenue, The South Carolina Department of Mental Health, The State of South Carolina, Bullhead Investments, LLC, Arrow Financial Services, LLC, Sharonview Federal Credit Union, Discover Bank, Zachery Arnold, GE Commercial Finance Business Property Corporation, Midland Funding, LLC, and Greenville County, Other Condemnees,

and

John Doe and Mary Roe, being fictitious names used to represent all persons and condemnees whose true names are not known, including the heirs, successors, devisees, distributees, Administrators, Executors and Personal Representatives of any of the above named Landowners and Other Condemnees who may be deceased; and also all Condemnees whose names are not known, including heirs, infants, persons under disability and persons who may be in Military service, who claim, or may claim, an interest in the property being condemned, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the Condemnation Notice and Tender of Payment herein, said property being identified as a portion of Greenville County Tax Map Numbers 053101010200 and 0531010102101, Unknown Claimants,.....

Of whom Ethel Allen, Shaynise Alson, Harold Anderson, Tommy Anderson, Bridgette Smith Blassingame, Sharai Smith Brock, Carmella Cottom, Alfred Cox, Mary Ann Davis, William G. Dawkins, Abigail Dodd, Linda Evans, Michael Evans, Thomas Evans, Chavonte Gilliam, Cindy Gilliam, Derrick Gilliam, Donald E. Gilliam, Jr., John L. Gilliam, Lakisha Gilliam, Latonya Gilliam, Leunette Gilliam, Mattie M. Gilliam, Nina Gilliam, Raymond TI Gilliam, Rodney Gilliam, Shakima Gilliam, Warren Gilliam, Desiree Golden, Gloria Gore, Lenora Holley, Kasandra Sheppard Jenkins, Terrance Leslie, Sr., Sandra McDowell, Derrick McGee, Jr., Brenda Moulhem, Alma Rene Smith Murry, Charlene Peake, Leslie Gilliam Peter, Angela Reid, Orangelee Sheppard, Vernon Lee Sheppard, Charles Terry Sholer, Calvin Smith, Eric Smith, Fred Smith, Jr., Gene A. Smith, James R. Smith, Joyce A. Smith, Loree Smith, Martha Miller Smith, Patrick Smith, Paul Smith, Reginald Lamont Smith, Tara Smith, Karen Regenia Spates, Rosalyn Annette Steven, Betty Jo Terry, Donald E. Terry, Deloris I. Terry, Gracie Terry, Jamie Terry, Keith Terry, Kelvin F. Terry, Leroy Terry, Mark G. Terry, Paul Terry, Jr., Theodore Terry, Jr., Porsha Williams, and Pauline Workman are the Respondents/Appellants,

and

Unknown landowners, Reece W. Smith, Raymond Eddie Smith, Michael Smith, Odell Smith, United States of America and the United States of America, acting by and through its Agency, the Internal Revenue Service, Midland Funding, LLC, Sharonview Federal Credit Union, SC Department of Revenue, County of Greenville, Arrow Financial Services, LLC, SC Dept. of Mental Health, SC Attorney General, and Bullhead Investments, LLC, Zachery Arnold, Ettie Pearl Booker, Ira K. Carol, Johnny F. Cox, Wilford Daniels, Angela Gilliam, Bianca S. Gilliam, Demetrius J. Gilliam, Jerry Gilliam, Kehimonnie S. Gilliam, Terry Gilliam, John Glavin, Jr., John Glavin, Sr. Jeffrey Glavin, Miranda Glavin, Yolanda Glavin, Terrance Leslie, Terrell Leslie, Tearia Leslie, Donnette Ortchere, Jerome Smith, Melissa F. Smith, Michael Smith, James (Jimmy) Terry, Patricia Terry, Pearlie Mae Terry, and Sheila Terry are the Respondents.

**APPELLANT’S MOTION FOR LEAVE TO FILE
A SUPPLEMENTAL BRIEF CITING NEW CASE LAW
DECIDED AFTER BRIEFING ENDED**

The Appellant, Piedmont Natural Gas Company, Inc. (“PNG”), respectfully moves the Court pursuant to Rule 240, SCACR for leave to file a supplemental brief citing new case law that was entered after the parties filed their final briefs. In support of its motion, PNG states as follows:

- (1) PNG timely served a Notice of Appeal and filed the Notice of Appeal with the Court of Appeals on various assignments of error arising from and related to the award of alleged stigma damages within a 100-foot Buffer Zone adjacent to a natural gas pipeline right of way in a condemnation action;
- (2) On April 3, 2018, this Court certified the appeal pursuant to Rule 204(b), SCACR;
- (3) No South Carolina appellate court has recognized stigma damages associated with in an eminent domain action when determining just compensation;

(4) Briefs of all parties cited case law across the United States showing different approaches taken by courts outside South Carolina regarding alleged stigma damages in eminent domain actions;

(5) After filing their final briefs with the Court of Appeals, additional case law regarding stigma damages in eminent domain actions has been entered in jurisdictions outside of South Carolina;

(6) PNG seeks to file a short, supplemental brief to bring this additional case law to the Court's attention and for the Court's consideration in this appeal, including orders that are both favorable and unfavorable to PNG's position, including the following:

A. *Enbridge Energy (Illinois), L.L.C. v. Kuerth*, 2016 IL App (4th) 150519, ¶¶ 95, 114, 117, 69 N.E.3d 287 (Dec. 13, 2016) (holding) (finding no error in the trial court's exclusion of landowners' and expert testimony regarding diminished value due to "fear" and "stigmatism" associated with oil pipelines, which the court determined was subjective, speculative and improper evidence);

B. *Enbridge Pipeline (Illinois), LLC v. Monarch Farms, LLC*, 2017 IL App (4th) 150807, ¶ 77, 82 N.E.3d 1234, 1250 (July 28, 2017) (affirming a directed verdict on just compensation after the trial court excluded landowners' experts' testimony regarding valuations that were based on "inappropriate factors includ[ing] fear and stigma associated with oil pipelines, potential for oil leaks, and the unfounded speculation that hydrostatic testing would pose unspecified safety concerns");

C. *Condemnation of Permanent & Temp. Rights of Way for Transportation of Nat. Gas in Buffalo Twp. v. Nat'l Fuel Gas Supply Corp.*, No. 1093 C.D. 2017, 2018 WL 2945112, at *2 (Pa. Comm. Ct. June 13, 2018) (holding that the trial court did not err in precluding "[a]ll testimony and reports, expert or otherwise, that relate to or incorporate indefinite, theoretical or remote damages, including but not limited to pipeline explosions, burn areas, potential impact, blast zones and perceived risks associated with proximity to natural gas lines ... without supporting market data");

D. *Rover Pipeline, LLC v. 10.55 Acres of Land, More or Less, in Ashland Cty.*, Ohio, No. 5:17-CV-239, 2018 WL 4386024 (N.D. Ohio Sept. 14, 2018) (granting the condemnor's motion *in limine* to exclude landowners' expert witness testimony regarding alleged stigma damages on the grounds that the expert's opinions were not supported by local market data);

E. *Rover Pipeline, LLC v. 1.23 Acres of Land, More or Less, Permanent Easement (Pipeline Right-of-Way Servitude)*, No. 17-CV-10365, 2018 WL 3322995, at *8 (E.D.

Mich. July 6, 2018) (denying the condemnor's motion *in limine* to exclude landowners' expert witness testimony regarding alleged stigma damages);

F. *UGI Sunbury LLC v. A Permanent Easement for 0.4308 Acres*, No. 3:16-CV-00794, 2018 WL 4184324 (M.D. Pa. Aug. 31, 2018), appeal docketed, No. 18-3127 (3rd Cir., Sept. 27, 2018) (holding) (awarding stigma damages); and

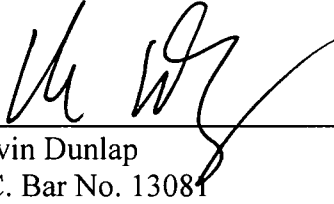
G. *UGI Sunbury LLC v. A Permanent Easement for 1.7575 Acres*, No. 3:16-CV-00788, 2018 WL 4069160 (M.D. Pa. Aug. 27, 2018), appeal docketed, No. 18-3126 (3rd Cir., Sept. 27, 2018) (same); and

(7) If permitted to file a supplemental brief, PNG will limit its supplemental brief to presenting the additional case law. PNG only requests five (5) pages of additional briefing AS LONG AS Respondents also are limited to five (5) pages.

WHEREFORE, PNG respectfully requests that it be granted leave of the Court to file a supplemental brief in this matter.

[SIGNATURE BLOCK PROVIDED ON THE FOLLOWING PAGE]

Respectfully submitted this 5th day of October, 2018.



Kevin Dunlap
S.C. Bar No. 13081
Parker Poe Adams & Bernstein LLP
100 Dunbar Street, Suite 206
Spartanburg, South Carolina 29306
(864) 591-2030
kevindunlap@parkerpoe.com

Attorney for Appellant/Respondent

RECEIVED

OCT 05 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Circuit Court Judge

Case No. 2012-CP-23-04064
Appellate Case No. 2015-001909

Piedmont Natural Gas Company, Inc.,Appellant/Respondent,

v.

Richeous Smith, *et al.* Respondents/Appellants and Respondents.

CERTIFICATE OF SERVICE

I certify that I have caused to be served the MOTION FOR LEAVE TO FILE A SUPPLEMENTAL BRIEF on counsel of record and respondents in this action by depositing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

David B. Ward, Esquire
Horton Law Firm
307 Pettigru Street
Greenville, South Carolina 29601
Attorney for the Respondents/Appellants

Erin Culbertson, Esquire
Kehl Culbertson Andrighetti & Komfeld, LLC
114 Manly St.
Greenville, SC 29601
Attorney for the Respondents/Appellants

Paul Andrew McKee, III, Esquire
Hanover Title Agency, Inc.
P.O. Box 2196
Spartanburg, SC 29304-2196
*Attorney for Respondents Reece W. Smith, Raymond Eddie Smith,
Michael Smith and Odell Smith*

Kelley Y. Woody, Esquire
P.O. Box 6432
Columbia, SC 29260
Guardian Ad Litem for Unknown Respondent Landowners

Charles N. Griffin, III, Esquire
P.O. Box 19806
Raleigh, NC 27619
Attorney for Respondent Sharonview Federal Credit Union

Kiera C. Dillon, Esquire
Counsel for Litigation, South Carolina Department of Revenue
Office of General Counsel, Tax & Regulatory Services
P.O. Box 12265
Columbia, SC 29211
Attorney for Respondent South Carolina Department of Revenue

Sean Gordon Ryan, Esquire
Managing Counsel for Litigation, South Carolina Department of Revenue
PO Box 12265
Columbia, SC 29211
Attorney for Respondent South Carolina Department of Revenue

Jason P. Luther, Esquire
General Counsel for Litigation, South Carolina Department of Revenue
Office of General Counsel, Tax & Regulatory Services
P.O. Box 12265
Columbia, SC 29211
Attorney for Respondent South Carolina Department of Revenue

Jeffrey D. Wile, Esquire
Attorney, Greenville County
301 University Ridge, Ste. 2400
Greenville, SC 29601-3681
Attorney for Respondent County of Greenville

A. Lance Crick, Esquire
55 Beattie Place, Suite 700
Greenville, SC 29601
Attorney for the Respondent United States of America

Wylie W. Clarkson, Esquire
P.O. Box 287
Columbia, SC 29202
Attorney for Respondent Midland Funding, LLC

Trace M. Dillon, Esquire
Arrow Financial Services, LLC
1130 Hurricane Shoals Rd., Suite 600
Lawrenceville, GA 30044
Statutory Agent for Respondent Arrow Financial Services, LLC

Ahmad S. Washington, Esquire
Arrow Financial Services, LLC
1211 E. Morehead St.
Charlotte, NC 28204
Statutory Agent for Respondent Arrow Financial Services, LLC

John H. Magill
State Director, South Carolina Department of Mental Health
Administration Building
2414 Bull St.
Columbia, SC 29202
State Director for Respondent South Carolina Department of Mental Health

CT Corporation System
Discover Bank
2 Office Park Court, Suite 103
Columbia, SC 29223
Registered Agent for Respondent Discover Bank

CT Corporation System
GE Commercial Finance Business Property Corporation
2 Office Park Court, Suite 103
Columbia, SC 29223
Registered Agent for Respondent GE Commercial Finance Business Property Corporation

Jerome Smith
232 Sunnyglen Dr.
Greer, SC 29651
Unrepresented Respondent Landowner

Ettie Pearl Booker
21 Cotswold Terrace
Taylors, SC 29687
Unrepresented Respondent Landowner

Wilford Daniels
144 Sweet Ave.
Buffalo, NY 14212
Unrepresented Respondent Landowner

Terrance Leslie, Jr.
204 Herman St.
Buffalo, NY 14211
Unrepresented Respondent Landowner

Terrell Leslie, Sr.
204 Herman St.
Buffalo, NY 14211
Unrepresented Respondent Landowner

Teaira Leslie
204 Herman St.
Buffalo, NY 14211
Unrepresented Respondent Landowner

Patricia Terry
211 Eagle St., #701
Buffalo, NY 14204
Unrepresented Respondent Landowner

Sheila Terry
211 Eagle St., #701
Buffalo, NY 14204
Unrepresented Respondent Landowner

Johnny F. Cox
6420 Guildford Rd.
Rockford, IL 61107
Unrepresented Respondent Landowner

Terry Gilliam
47 Myers St.
Buffalo, NY 14211
Unrepresented Respondent Landowner

Jerry Gilliam
5 Myers St.
Buffalo, NY 14211
Unrepresented Respondent Landowner

Ira K. Carol
1348 Cochran Crossing
McDonough, GA 30252
Unrepresented Respondent Landowner

Demetrius J. Gilliam
4328 Thyme Ave.
Las Vegas, NV 89910
Unrepresented Respondent Landowner

Kehiminnie S. Gilliam
4328 Thyme Ave.
Las Vegas, NV 89910
Unrepresented Respondent Landowner

Bianca S. Gilliam
4328 Thyme Ave.
Las Vegas, NV 89910
Unrepresented Respondent Landowner

Donnette Gilliam Ortchere
444 Emslie St.
Buffalo, NY 14212
Unrepresented Respondent Landowner

Angela Gilliam
445 Emslie St.
Buffalo, NY 14212
Unrepresented Respondent Landowner

John Glavin, Sr.
21 Murray Terrace
Tonawanda, NY 14150
Unrepresented Respondent Landowner

John Glavin, Jr.
196 Moore St.
Tonawanda, NY 14150
Unrepresented Respondent Landowner

Miranda Glavin
21 Murray Terrace
Tonawanda, N.Y. 14150
Unrepresented Respondent Landowner

Jeffrey Glavin
21 Murray Terrace
Tonawanda, NY 14150
Unrepresented Respondent Landowner

Yolanda Glavin
21 Murray Terrace
Tonawanda, NY 14150
Unrepresented Respondent Landowner

James (Jimmy) Terry
105 Bailey Rd.
Greer, SC 29651
Unrepresented Respondent Landowner

Pearlie Mae Terry
P.O. Box 6942
Greenville, SC 29606
Unrepresented Respondent Landowner

Zachery Arnold
460 Durham Rd.
Greer, SC 29650
Unrepresented Respondent Landowner

This the 5th day of October, 2018.

