

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

ROCKIES EXPRESS PIPELINE LLC,)
)
Plaintiff,)
)
v.)
)
77.620 acres more or less, et al.,)
)
Defendants.)
)
)

NO. 08-3127

OPINION

RICHARD MILLS, U.S. District Judge:

Plaintiff Rockies Express seeks to voluntarily dismiss two defendants who have not answered their Complaint. Under Federal Rule of Civil Procedure 41(a)(1)(A)(i), such dismissal would be permissible. However, this is a condemnation case and, accordingly, Federal Rule of Civil Procedure 71.1 applies. Fed. R. Civ. P. 71.1(a).

Under Rule 71.1(i)(1)(A), dismissal is permissible without a court order so long as no compensation hearing has begun and “the plaintiff has not acquired title or a lesser interest or taken possession. . .” of the

property. In light of this Court's prior order granting immediate possession, dismissal under this provision may be inappropriate because Rockies Express may have "taken possession" of the defendants' property. Thus, Rockies Express must either provide evidence that they have not taken possession of defendants' property or seek dismissal under another provision. *E.g.*, Fed. R. Civ. P. 71.1(i)(1)(B) (stipulation); Fed. R. Civ. P. 71.1(i)(2) (unnecessarily or improperly joined defendants).

Ergo, at this juncture the motions [d/e 424, 425] must be DENIED.

IT IS SO ORDERED.

ENTERED:

February 19, 2009

FOR THE COURT:

/s Judge Richard Mills
United States District Judge