

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PAUL GARY WILSON, *et al.*,

Plaintiffs,

v.

COLUMBIA GAS TRANSMISSION, LLC,

Defendant/Counterclaimant,

v.

EXCLUSIVE NATURAL GAS STORAGE EASEMENTS, *et al.*,

Counter-Defendants.

Case No. 2:12-cv-1203

Judge Graham/Magistrate Judge Abel

This document applies to: ALL PARTIES

CASE MANAGEMENT ORDER

Having heard and considered the proposals of the parties, the Court ORDERS the following:

I. GENERAL MATTERS

1. Captions and Filing: All filing in this case is to be performed electronically in accordance with the Court's procedures on electronic filing. Documents intended to apply only to a particular Plaintiff, Counter-Defendant or Counter-Defendants will specifically indicate the parties to which they apply by including, in the caption, the notation "This document applies to: [party name(s)]."

2. Service of Documents and Orders: In lieu of service of documents pursuant to Rule 5 of the Federal Rules of Civil Procedure, service of all papers other than original process shall be made as follows:

a. Service upon Parties Represented by Counsel: Notice of documents filed with the Court will be automatically sent to all counsel of record through the automatic operation of the Court's CM/ECF system, and no further service is required. Any counsel of record who has not signed up for automatic notice of filings through the Court's CM/ECF system is directed to do so immediately. Documents not filed with the Court, such as discovery documents, shall be served by electronic mail upon counsel of record, using the e-mail addresses set out in the Court's docket.

b. Service upon Counter-Defendants Not Represented by Counsel: Any document specifically relating to a Counter-Defendant not represented by counsel, relating to a parcel owned by a Counter-Defendant not represented by counsel, or that would require a response from a Counter-Defendant not represented by counsel in order to avoid substantive prejudice to the rights of said party, shall be served upon said party by first-class mail. In all other respects, service may be effectuated by making a document accessible to all Counter-Defendants through the document depository to be established pursuant to Paragraph 17, and (except as otherwise provided in this Paragraph 2) need not be directly served upon all Counter-defendants.

c. Service of This Order: This Order shall be served upon all Counter-Defendants not represented by counsel by first-class mail, at Defendant's expense. Any subsequently added Counter-Defendants shall be served with a copy of this Order with service of original process.

d. Discovery Documents: The Court orders, pursuant to Rule 5(a)(1)(C) of the Federal Rules of Civil Procedure, that discovery requests required to be served upon a party need not be served on all other parties. Discovery responses (except for materials subject to the Stipulated Protective

Order (ECF No. 152)) shall be made accessible through the document depository to be established pursuant to Paragraph 17.

e. Certificates of Service: It shall be sufficient to state in the certificate of service that service has been made in this manner set out in this Paragraph 2.

3. Status Conferences: The Court will convene a status conference in this litigation every ninety (90) days, subject to the Court's calendar. A party may participate by telephone. Counsel for the parties shall confer at least seven days before each scheduled conference and attempt to resolve outstanding disputes and shall provide the Court at least five days prior to the hearing a joint letter listing all motions and other matters the parties anticipate addressing at the conference. No deposition shall go forward on days on which status conferences are scheduled without prior leave of Court. At the Court's discretion, additional telephone conferences may be scheduled to address matters arising between regularly-scheduled status conferences, if all necessary parties are available.

4. Amendments/Modifications: Nothing in this Order is intended to limit any party's ability to seek an amendment to or modification of any part of this Order.

5. Pending Matters: Defendant shall file returns of service within ten (10) days following service of original process upon a party newly added as a Counter-Defendant in the Second Amended Counterclaim or in any subsequently-filed amended counterclaim. Defendant shall endeavor in good faith to serve original process on all newly-added Counter-Defendants within thirty days of the date hereof.

Defendant shall answer Plaintiffs' Complaint (ECF No. 2) by **August 8, 2014**. Defendant shall file reply briefs in support of its motions to dismiss counterclaims (ECF Nos. 247 and 248) by **August 8, 2014**. Counter-Defendants shall file responses to Defendant's motions to dismiss filed on September 6, 2013 (ECF No. 252) and September 17, 2013 (ECF No. 254) by **August 8, 2014**; any reply briefs will be submitted in accordance with this Court's Local Civil Rules.

6. Settlement: The parties are expected to consider and discuss settlement on an ongoing basis. The Court will schedule a second mediation involving the parties, facilitated by the Magistrate Judge, in a subsequent order.

II. ANSWERS AND OBJECTIONS TO COUNTERCLAIMS

7. Answers and Objections to Previously Filed Counterclaims in Condemnation: Any Counter-Defendant who has previously filed an Answer and Objections to the Counterclaim in Condemnation (ECF No. 22) or the First Amended Counterclaim in Condemnation (ECF No. 275) need not file an Answer and Objections to the Second Amended Counterclaim in Condemnation (ECF No. 288) or to any subsequently-filed amended counterclaim. The responses and allegations in the previously-filed Answer and Objections shall be deemed to apply to the corresponding paragraphs of the Second Amended Counterclaim in Condemnation or any subsequently-filed amended counterclaim. To the extent there is a substantive change in Defendant's allegations with respect to a Counter-Defendant in a subsequently Amended Counterclaim, the Counter-Defendant may file an Answer and Objections with respect to the changed paragraphs only and otherwise may incorporate by reference its previously-filed Answer and Objections.

8. Answers and Objections to New Counterclaims in Condemnation:

a. Counsel who have appeared to date and who represent parties newly added to the case by Defendant's Second Amended Counterclaim in Condemnation shall each file a master Answer and Objections applicable to counsel's clients on or before **August 8, 2014**. Counsel for Counter-Defendants are encouraged, but are not required, to collaborate to file a joint master Answer and Objections. Any master Answer and Objections shall set forth verbatim those allegations in the Second Amended Counterclaim in Condemnation that do not relate to specific properties or specific Counter-Defendants (paragraphs 2-48 and 1576-1580), shall state generally-applicable responses to those allegations, and shall assert any affirmative defenses or objections that may be generally applicable.

b. Any Counter-Defendant answering the Second Amended Counterclaim or any subsequently-filed amended counterclaim shall be deemed to have incorporated by reference any Master Answer and Objections filed pursuant to Paragraph 8.a. unless the answering Counter-Defendant states otherwise. Any such Counter-Defendant need only (i) answer those allegations that relate specifically to the answering Counter-Defendant and any real property owned by the answering Counter-Defendant that has been identified in paragraphs 49-1575 of the Second Amended Counterclaim in Condemnation or that is identified in any subsequently-filed amended counterclaim; and (ii) assert any affirmative defenses or objections not already asserted in the Master Answer that specifically relate to the answering Counter-Defendant and/or the answering Counter-Defendant's identified property.

c. Any responses to the Second Amended Counterclaim shall be due on or before the later of the following dates: (i) August 15, 2014; (ii) twenty-one (21) days following the date of service; or (iii) the date stipulated by the relevant parties in a stipulation conforming to Local Civil Rule 6.1.

III. DISCOVERY PROCEDURES

9. Discovery May Proceed: All parties may avail themselves of any of the discovery mechanisms set forth in the Federal Rules of Civil Procedure, except as those procedures may otherwise be modified by this Order. No further planning meetings pursuant to Rule 26(f) of the Federal Rules of Civil Procedure are necessary before any party may serve discovery on any other party. Initial disclosures pursuant to Rule 26(a) of the Federal Rules of Civil Procedure are not required.

10. Parties to Cooperate and Coordinate: The parties shall cooperate with respect to discovery. Counter-Defendants shall endeavor in good faith to develop and serve joint discovery requests on Defendant on behalf of all Counter-Defendants collectively where appropriate and to avoid duplicative requests to Defendant. The parties retain the right to object to discovery requests on any valid ground, including without limitation that multiple requests by

separate counsel are unduly burdensome or duplicative or are an attempt to circumvent the limits on discovery set forth herein, in any subsequent orders, in the Local Civil Rules of this Court, or in the Federal Rules of Civil Procedure. No motion regarding discovery may be made to the Court until the parties have had a telephonic or in-person conference, in a good faith effort to resolve the dispute.

11. Confidentiality: The provisions of the parties' Stipulated Protective Order (ECF No. 152) shall remain in full force and effect as to all parties to this matter.

12. Numbering System: The parties shall confer and agree upon a system for uniquely identifying all discovery materials with a prefix indicating the producing party, and a unique page number for each page. (Documents produced by Defendant shall bear the prefix "CGT.") The combination of letters and digits should then be used throughout the discovery process whenever referring to a particular document or page.

13. Production of Documents: The parties must produce documents to which they have not raised an objection on a rolling basis rather than waiting until all documents responsive to a request have been gathered.

14. Production of Electronically Stored Information: Electronically stored information (ESI) shall be produced in image (PDF or TIFF) format, with the exception of any documents that are only reasonably legible in native format (e.g., large unformatted Excel spreadsheets). The parties are directed to work cooperatively to determine appropriate custodians and key word searches. To facilitate this process, Defendant shall, by August 15, 2014, provide to counsel for Plaintiffs and Counter-Defendants an initial list of proposed custodians and proposed key-word search terms.

15. Limits on Interrogatories: The following provisions govern the parties' service of interrogatories:

a. Plaintiff's Claims: Prior to any ruling on a motion for class certification, Plaintiffs and Defendant may each serve on the other one or more

sets of interrogatories containing in the aggregate no more than forty (40) interrogatories, including subparts.

b. Defendant's Counterclaims: Counter-Defendants may serve interrogatories upon Defendant in compliance with the limits set out in Rule 33(a)(1) of the Federal Rules of Civil Procedure. Counter-Defendants shall endeavor in good faith to serve joint interrogatories where appropriate and to avoid duplicative interrogatories, and may not utilize separate sets of interrogatories by individual Counter-Defendants or separate groups of Counter-Defendants to circumvent the limits set forth in Rule 33(a)(1). However, each counsel are entitled to avail themselves of the interrogatories provided for in Rule 33(a)(1) with respect to their Counter-Defendants collectively and to the extent there is a particularized need for discovery relating specifically to a specific Counter-Defendant and/or that Counter-Defendant's identified property, that Counter-Defendant may serve ten (10) additional Counter-Defendant-specific interrogatories, including sub-parts. Defendant may serve one joint, coordinated set of interrogatories upon all Counter-Defendants in compliance with the limits set out in Rule 33(a)(1) of the Federal Rules of Civil Procedure. Defendant may also serve ten (10) additional interrogatories, including all subparts, on any individual Counter-Defendant to the extent that there is a particularized need for discovery relating specifically to a specific Counter-Defendant and/or that Counter-Defendant's identified property.

c. Additional Interrogatories: Nothing in this Order shall preclude the parties from agreeing, or from seeking leave of Court, to serve additional interrogatories.

16. Document Depository: On or before **August 1, 2014**, Defendant shall establish and maintain, at its expense, an internet-accessible document depository program, to store all materials produced by parties, the Court and non-parties in this proceeding (including

pleadings and all other documents filed with the Court, interrogatories and objections and responses, requests for admission and objections and responses, requests for production of documents and objections and responses, subpoenas and objections and responses, documents produced in discovery, deposition transcripts, Court transcripts and similar materials), other than materials subject to the Stipulated Protective Order (ECF No. 152). Upon establishment of the document depository, Defendant shall electronically file a notice stating that the parties may access all non-confidential case-related materials through the document depository website, and shall serve the notice upon all Counter-Defendants not represented by counsel, by first class mail; any subsequently-added Counter-Defendants shall be served with a copy of this notice with service of original process.

17. Privilege Claims: Pursuant to Rule 26(b)(5) of the Federal Rules of Civil Procedure, a party who, relying on any privilege or on the work product doctrine, does not produce all relevant or requested documents in response to a request for production of documents or a subpoena must prepare a log identifying documents withheld by production number. For each such document, the party must (i) specify which privilege or doctrine it is invoking; (ii) identify all authors and recipients of the document (including “cc” and “bcc” recipients); (iii) state the date(s) on which the document was prepared; and (iv) provide a brief description of the subject matter of the document. The privilege log for a production of documents should be served within thirty days after the production. Notwithstanding the foregoing, Plaintiffs and Defendant need not prepare a privilege log for documents subject to privilege or work product protection that were generated on or after December 21, 2012, and a Counter-Defendant need not prepare a privilege log for documents subject to privilege or work product protection that were generated on or after the date upon which it was served with original process.

18. Redactions: Where a page or part of a page is redacted, the fact of the redaction shall be made clear on the face of the document. The basis for each redaction shall be set forth in a privilege log that complies with Paragraph 18 of this Order.

19. Inadvertent Production: Pursuant to Rule 502(d) of the Federal Rules of Evidence, the production of any document as to which a party has a good faith claim of exemption from discovery (whether based on the attorney-client privilege, the work product doctrine, or another applicable exemption from discovery) shall not be a waiver of such privilege or exemption from discovery in this proceeding or in any other federal or state proceeding, provided that the producing party makes a claim for the return of such document upon discovering its production. Upon receiving such claim, the receiving party shall return the document and shall not use it in any way until the validity of the claim of exemption from discovery shall have been agreed upon or decided upon by the Court.

20. Depositions: Depositions are to be conducted in accordance with the following rules, unless agreed by the parties (and not contrary to an order of the Court) or unless ordered by the Court for good cause shown:

a. The limitations on the number of depositions pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure shall not apply to this case. Nonetheless, the parties are encouraged to exercise good judgment in deciding whether to take the deposition of any particular party or witness.

b. Counsel are expected to cooperate with, and be courteous to, each other and deponents.

c. The parties (and when appropriate, a nonparty witness) may stipulate, in writing or on the record, to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition.

d. Counsel shall consult in advance with opposing counsel in an effort to schedule depositions at mutually convenient times and places. Scheduling should take into account (i) the availability of documents from among those produced by the parties and third parties, (ii) the objective of avoiding the need to subject any person to repeated depositions, and (iii) the need to preserve relevant testimony. No witness shall be deposed more than once in this litigation,

absent agreement of the parties or good cause shown. Continuing a deposition that could not in good faith have been concluded at the end of a day shall not constitute multiple depositions of a single witness.

e. The deposition of a Plaintiff or Counter-Defendant shall take place at a location in Franklin County, Ohio or within the county in which the deponent resides, at the witness's election. The deposition of an employee, agent or representative of Defendant shall take place in Kanawha County, West Virginia; Franklin County, Ohio; or Allegheny County, Pennsylvania, at Defendant's election. Depositions conducted in Kanawha County, West Virginia or Allegheny County, Pennsylvania shall be conducted on consecutive days to the greatest extent practicable. The depositions of a non-party shall take place in the county in which the non-party has his or her principal place of business or place of residence, or at some other place convenient to the non-party, at the non-party's election. The depositions of an expert witness shall take place at a location to be agreed to by the parties; if the parties are unable to agree, the deposition shall take place in the county in which the expert has his or her principal place of business. The parties may agree upon other locations for depositions for the convenience of deponents or counsel.

f. A copy of the Stipulated Protective Order shall be provided to the deponent before the deposition commences if the deponent is to produce or may be asked about Confidential Information. While a deponent is being examined about any Confidential Information, persons to whom disclosure is not authorized under the Stipulated Protective Order shall be excluded.

g. Only one attorney for each party may question a deponent.

h. Only one attorney for each party may assert objections to a deposition question; once an objection has been asserted by any attorney, it shall be deemed to have been asserted by all other counsel and may not be repeated.

i. Deposition exhibits shall be identified with the witness's name and shall be sequentially numbered, regardless of which party introduces the exhibit. Extra copies of deposition exhibits are to be provided to opposing counsel and the deponent. The index of exhibits attached to each deposition transcript shall contain, for each exhibit marked or referred to in the deposition, the document production (Bates) number, the exhibit number, and a brief description of the exhibit.

j. By so indicating in its notice of a deposition, a party may video record the deposition, in addition to obtaining a stenographic transcription. At the commencement of the deposition the video operator(s) shall swear or affirm to record the proceedings fairly and accurately. Each witness, attorney, and other person attending the deposition shall be identified at the commencement of the deposition, but only the deponent (and demonstrative materials used during the deposition) will be video recorded. No part of a video recorded deposition shall be released or made available to any member of the public unless authorized by the Court.

k. Disputes between the parties that arise during a deposition should be addressed to this Court, regardless of where the deposition takes place. Disputes arising during depositions that cannot be resolved by agreement may be presented by telephone to the Court, at the Court's discretion. The presentation of the issue and the Court's ruling will be recorded as part of the deposition.

IV. SCHEDULE

21. Pretrial Schedule:

a. As stated in Paragraph 9 of this Order, discovery may commence immediately.

b. In light of the recent addition of a substantial number of additional parties, and the fact that service of process on those parties remains ongoing, the parties shall submit a proposed pretrial schedule, including a class certification briefing schedule, fact and expert witness discovery deadlines, deadlines for the filing of dispositive motions and, to the extent applicable, procedural motions such as motions to transfer venue, and other appropriate pretrial deadlines, in a subsequent proposed Joint Case Management Order to be filed by no later than September 5, 2014. If no agreement can be reached on a proposed pre-trial schedule, the parties may submit their respective proposals following a good faith attempt to reach agreement in a meet and confer.

SO ORDERED.

Dated: August 1, 2014

s/Mark R. Abel
United States Magistrate Judge