

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ENABLE OKLAHOMA INTRASTATE)
TRANSMISSION, LLC, a Delaware)
limited liability company,)
)
Plaintiff,)

vs.)

Case No. CIV-15-1250-M

A 25 FOOT WIDE EASEMENT and)
right-of-way for underground natural gas)
pipeline lying and situated in the Southwest)
Quarter of the Southeast Quarter and the)
West Half of the Southeast Quarter of the)
Southeast Quarter in Section 28, Township 7)
North, Range 11 West of the I. B. & M., in)
Caddo County, State of Oklahoma, et al.,)
)
Defendants.)

ORDER

Before the Court is plaintiff’s Motion for New Trial, filed September 14, 2016. On September 28, 2016, the individual defendants filed their response, and on October 5, 2016, plaintiff filed its reply to the individual defendants’ response. On November 2, 2016, defendant United States filed its response, and on November 16, 2016, plaintiff filed its reply to defendant United States’ response. On March 9, 2017, plaintiff filed a notice of supplemental authority, and on March 13, 2017, the individual defendants filed a response to plaintiff’s notice of supplemental authority. Finally, on May 26, 2017, the individual defendants filed a Notice of Subsequently Decided Authority.

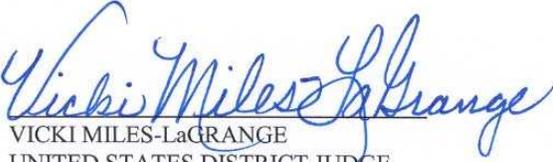
On August 18, 2016, this Court granted defendants’ motions to dismiss and dismissed this case. Plaintiff now moves, pursuant to Federal Rule of Civil Procedure 59, for a new trial. Specifically, plaintiff contends that this Court erred as a matter of law when it held that

fractionalized interests of allotted Indian land, which escheated from a deceased allottee to an Indian Tribe through operation of the Indian Land Consolidation Act, became cloaked with sovereign immunity, thus precluding condemnation of the land and the joinder of the Tribe.

The United States Court of Appeals for the Tenth Circuit recently addressed this specific issue in *Public Service Company of New Mexico v. Barboan*, 857 F.3d 1101 (10th Cir. 2017), and affirmed the district court's dismissal of a condemnation action for lack of subject matter jurisdiction as to two land parcels in which an Indian Tribe held an interest. The Tenth Circuit held "[w]hen all or part of a parcel of allotted land owned by one or more individuals is transferred to the United States in trust for a tribe; that land becomes 'tribal land' not subject to condemnation under § 357." *Id.* at 1111 (internal quotations and citation omitted). The Tenth Circuit further held that "because the tribe owns an interest in the disputed parcels, § 357's '[l]ands allotted in severalty to Indians' prerequisite is inapplicable and so the law gives [plaintiff] no authority to condemn. And that deprives us of federal jurisdiction under 28 U.S.C. § 1331." *Id.* at 1112.

In light of the Tenth Circuit's opinion in *Public Service Company of New Mexico v. Barboan*, the Court finds that it did not err in dismissing this case. Accordingly, the Court DENIES plaintiff's Motion for New Trial [docket no. 59].

IT IS SO ORDERED this 21st day of July, 2017.


VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE