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ATTORNEY GENERAL

July 1, 2015

The Honorable Tom Young
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The Honorable Shane Massey
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The Honorable Bill Clyburn
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The Honorable Christopher Corley
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Dear Senator Young, Senator Massey, Representative Clyburn, Representative Hixon, and Representative Corley:

You note that "Kinder Morgan Pipeline Company is proposing a $1B pipeline project to run from Belton, S.C. through Jackson, S.C. and on to Jacksonville, FL." You enclose information concerning the proposed project. By way of background, you state that:

> . . . they (Kinder Morgan) intend to purchase easements or real property to run this proposed pipeline through South Carolina. When they are not able to reach a mutually-agreeable purchase price with landowners, the company representatives have stated they will exercise their power of eminent domain and pay money into the court so that the judge can determine a just compensation price.

Thus, you seek an opinion "regarding S.C. Constitution Art. 1 § 13(A) and S.C. Code Ann. § 58-7-10." You note that "[t]his state statute purports to confer all rights, powers, and privileges given to

telegraph and telephone companies under S.C. Code Ann. § 58-9-10 et seq. to 'pipeline companies.'" Your specific questions are as follows:

1. Since S.C. Code § 58-7-10 et seq. appears to mainly concern waterworks, sewage disposal, and natural gas lines, do its provisions also apply to oil and gasoline pipelines and extend to them the public power of eminent domain?

2. If your answer to Question 1 is "yes," then why isn't an extension of eminent domain power to a private, for-profit pipeline company unconstitutional under S.C. Article 1, § 13(A)?

3. If an oil and gas pipeline company has eminent domain authority, and this authority is not unconstitutional, must an oil or gasoline pipeline company follow all regulations, rules, legal requirements, or other policies or procedures that are applicable to telephone and telegraph companies when they acquire property or easements to run lines?

Law/Analysis

S.C. Code Ann. Section 58-7-10 provides as follows:

> [s]ubject to the same duties and liabilities, all the rights, powers and privileges conferred upon telegraph and telephone companies under Article 17 of Chapter 9 of this Title are hereby granted to pipeline companies incorporated under the laws of this State or to such companies incorporated under the laws of any other state when such companies have complied with the laws of this State regulating the doing of business herein by foreign corporations.

(emphasis added). Section 58-7-20 further states:

> [s]ubject to the same duties and liabilities, all the rights, powers and privileges conferred upon telegraph and telephone companies under Chapter 2 of Title 28, including the power to condemn property, are granted to companies engaged in supplying water or sewerage services incorporated under the laws of this State or to companies incorporated under the laws of this Sate or to companies incorporated under the laws of this State regulating foreign corporations and of becoming a domestic corporation.

Thus, the first question you have asked is whether § 58-7-10 et seq. is applicable specifically to oil and gasoline pipeline companies, thereby extending to these companies the power of eminent domain?

1. Rules of Statutory Construction

In responding to your first question, a number of principles of statutory construction are applicable. The primary rule of interpretation is, of course, to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the

purpose, plan and reasoning behind its making. Greenville Baseball Club. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942). Therefore, the true aim and intention of the statute controls the literal meaning thereof. Id. Thus, statutes are to be construed as they were intended to be construed when they were passed. J.P. Morgan Chase Bank v. Earth Foods, Inc., 939 N.E.2d 487, 491 (Ill. 2010).

In Lambries v. Saluda Co. Council, 409 S.C. 1, 10, 760 S.E.2d 785, 789-790 (2014), the Supreme Court reaffirmed the rule that if a statute is ambiguous, "the Courts must construe its terms." In any such interpretation, "'the language of the statute must be read in a sense that harmonizes its subject matter and accords with its general purpose.'" Moreover, even when a statute is clear and unambiguous, the words used must be "taken and understood in their plain, ordinary and popular sense, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense." Id. (emphasis added) (internal quotations omitted). And, as the United States Supreme Court has recognized, the "meaning – or ambiguity – of certain words or phrases may only become evident when placed in context." FDA v. Browns, Williamson Tobacco Corp., 529 U.S. 120, 132 (2000). As the Court explained in Poole v. Saxon Mills, 192 S.C. 339, 6 S.E.3d 761, 764 (1940), words and phrases are used in their technical sense if they have acquired one, and in their popular meaning, if they have not.

Moreover, it is a general rule of statutory construction that the General Assembly's grant of the power of eminent domain must be strictly construed. See, Op. S.C. Att'y Gen., October 17, 2000, 2000 WL 1803618, citing Gray v. S.C. Pub. Serv. Auth., 284 S.C. 397, 325 S.E.2d 547 (1985); Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998). The Court deems the "protection of property rights" as paramount, and therefore will guard the delegation of the condemnation power jealously. Toumey Hosp. v. City of Sumter, 243 S.C. 544, 548, 134 S.E.2d 744, 746 (1964). Accordingly, where there is ambiguity or doubt as to the statute's meaning, the rule of interpretation favors the landowner rather than the condemning authority. Ex Parte Sav. River Elec. Co., 169 S.C. 198, 168 S.E. 554, 556 (1933).

Further, in conjunction with the presumption of constitutionality which must be given every statute enacted by the Legislature, it should be noted that, if possible, a statute will be construed in a constitutional rather than an unconstitutional manner. Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003). As the South Carolina Supreme Court instructed in Curtis v. State, 345 S.C. 557, 549 S.E.2d 591, 597 (2001), "[a] possible constitutional construction must prevail over an unconstitutional interpretation."

2. Section 58-7-10 et seq. (Overview)

We turn now to an analysis of § 58-7-10 et seq. It should first be noted that § 58-7-10 et seq. is codified in Title 58 dealing with "Public Utilities, Services and Carriers." Title 58 generally does not deal with oil or petroleum companies at all; the Chapter instead encompassed utilities, including "gas." The statute in question does not define the term "pipeline companies." Nor has the General Assembly defined this term within Chapter 7 since the initial enactment of this statute.

At first blush, one certainly could read the term "pipeline companies" literally to include those companies which transport oil, gasoline, or other petroleum products by pipeline. See, Williams v. State, 109 S.W.2d 489 (Tex. 1937) [the term "pipeline" is commonly understood as a means by which water, gas, oil or other liquids are conveyed from one place to another.]. Such a reading is without question, a

plausible interpretation given the "plain and ordinary" meaning of the term. Whether that interpretation is the correct one requires further examination of the history and context of these statutes.

We do not believe § 58-7-10 should be read in a vacuum. The result would be any type of pipeline possessing condemnation power. Thus, we must examine the context of the statute. Lambries, supra. An alternative reading, is available based upon this context and historical background. First, one could assume that had the General Assembly intended to bestow the power of eminent domain upon pipelines for the transportation of oil and petroleum products, it would have said so clearly to ensure that a more technical meaning was not intended. In Colonial Pipeline v. Neill, 251 S.E.2d 457 (N.C. 1979), for example, the North Carolina statute reviewed there provided that "[a]ny pipeline company transporting or conveying natural gas, gasoline, crude oil or other fluid substances by pipeline for the public for compensation, and incorporated under the laws of the State of North Carolina, may exercise the power of eminent domain. . . ." Another North Carolina statute, considered in Neill, gave the right of eminent domain to domestic or to foreign pipeline companies to transport natural gas, gasoline, crude oil etc. The latter provision was deemed to clearly convey to Colonial Pipeline Company the power of eminent domain for the purpose of constructing a pipeline to carry liquid petroleum products. Many other similar statutes in other states spell out that oil or petroleum pipelines are included.

Second, by contrast, § 58-7-10 et seq. is not nearly so specific as the North Carolina statutes. The statute uses a broad term "pipeline companies," which could apply to virtually any liquid, something the Legislature most certainly did not intend. It would be an absurdity to give condemnation powers to any "pipeline company" as such. The statute must have some limitation. Third, the statute is codified in Title 58, dealing with public utilities and their powers and regulations. Thus, based upon the placement of the statute in the Code, in the part thereof dealing with public utilities and their regulation, the lack of a definition of the broad term, "pipeline companies," as well as the fact that no mention is made of natural gas or oil, further inquiry is warranted.

3. The Williams Case Decided Prior to Passage of § 58-7-10, Is Important in Construing the Statute

The context in which § 58-7-10 was enacted is also instructive. Section 58-7-10 was enacted in 1950 by Act No. 980. Shortly before the Act's passage, in Williams v. Transcontinental Gas Pipe Line Corp., 89 F.Supp. 485 (W.D.S.C. 1950), the District Court concluded that there existed at that time no South Carolina statute authorizing a natural gas pipeline company (in that instance, Transcontinental) to condemn property. However, because Transcontinental was an interstate carrier, the Court found that the federal Natural Gas Act provided condemnation authority for such carriers.

The history detailed in the Williams case is further enlightening. There, the Court commented upon the nature of private companies having been previously given the power of eminent domain in South Carolina. Even though at the time the District Court rendered its decision, no state statute bestowed the condemnation power upon natural gas companies, there were then on the books a number of provisions authorizing other types of private companies to exercise eminent domain powers. The Williams Court's discussion of utilities in South Carolina which possess the power of condemnation is instructive:

> [p]etitioners take the position that even though the department has been granted the right to condemn for its pipeline right of way by the [federal] Natural Gas Act, it cannot enforce this right in a South Carolina court because there is no specific

> South Carolina statute providing a procedure for condemnation of property for pipeline purposes. The procedure used by the defendant is that provided by Section 8437 et seq. of the Code of Laws of South Carolina for 1942. Originally, this procedure was established for railway, canal and turnpike condemnations, but subsequent enactments by the South Carolina Legislature bestowing the right of eminent domain upon other private utilities have prescribed that the procedure to be followed in the exercise of the right should be the procedure set up in Section 8437 Code 1942, §§ 8532 (for telegraph or telephone companies), 8540 (for electric light companies). It appears therefore, that all private utilities having the power of eminent domain under South Carolina law exercise it through a common procedure, that provided by Section 8437 et seq. It is my opinion that the defendant properly adopted that procedure when it sought to condemn for its right-of-way in a South Carolina Court.

89 F.Supp at 487. (emphasis added).

> [i]t may be noted that if the petitioners are correct in their contention that the defendant is barred from condemning in the State court by the fact that the South Carolina Legislature has never set up a special procedure for gas pipeline condemnations, any interstate pipeline, despite the Natural Gas Act, could be blocked from crossing South Carolina by a single landowner. . . . In all of such cases the defendant would be powerless if it did not have the right to condemn in the State courts. I am unwilling to conclude that Congress accomplished such a futility when it passed the Natural Gas Act.

Id. at 488. (emphasis added). Thus, Williams held that, despite the absence of a controlling state statute providing "pipeline companies" with eminent domain power, the federal Natural Gas Act authorized Transcontinental to condemn property pursuant to procedures used by utilities under existing state law.

4. Historical Context of Passage of § 58-7-10

The Williams decision was rendered in March of 1950. Strikingly, on April 18, 1950, Senator McLeod introduced a Bill to give "pipeline companies" the same power of eminent domain as then possessed by "electric lighting and power companies." The legislation was ordered placed on the Senate Calendar without reference. On May 6, 1950, Senator McLeod proposed an Amendment, which was adopted, and which stated that "pipeline companies may exercise the right of condemnation thereunder only for pipeline purposes."

On June 3, 1950, Governor Thurmond signed into law Act No. 980 of 1950, which is now § 58-7-10. Act No. 980 was entitled "An Act to Amend Section 8540 of the Code of Laws of South Carolina, 1942, Relating to the Right of Condemnation by Electric Lighting and Power Companies So As To Provide That The Same Lights, Powers and Privileges May be Exercised By Pipe Line Companies for Pipe Line Purposes."

Thus, we cannot overlook the context of Act No. 980's enactment. Only three months after Judge Timmerman in Williams declared that, in the context of condemnation of property for a natural gas

pipeline, that "there is no specific South Carolina Statute providing a procedure for condemnation of property for pipe line purposes" legislation was enacted remedying this situation. Some of the same language in Judge Timmerman's opinion – "for pipeline purposes" was inserted in § 58-7-10. It would have been odd for the Legislature to address other types of "pipelines," such as oil pipelines, thereby giving all such pipelines eminent domain powers, when these other pipelines were not at issue in Judge Timmerman's ruling. As our Supreme Court has emphasized, ". . . the history of the period in which the Act was passed may be considered." Greenville Baseball v. Bearden, 200 S.C., supra, 20 S.E.2d at 816. A statute must be construed in light of conditions existing when enacted. State v. Kizer, 164 S.C. 383, 162 S.E. 444 (1932). It thus appears that, in enacting the "pipe line" statute, the General Assembly was addressing the immediate need, identified by Judge Timmerman: the lack of a state statute allowing for natural gas pipeline condemnation.

5. Federal Legislation

The contrast between Federal laws relating to condemnation powers of interstate oil pipelines and those of interstate natural gas pipelines is striking. Congress has clearly treated the two types of pipelines much differently. With respect to petroleum pipelines, in 1941, ". . . Congress enacted the Cole Act, which granted interstate pipelines the power of eminent domain in cases where the President determined such pipelines' services were necessary for the national defense. . . . Federal eminent domain authority for oil pipelines under the Cole Act expired in 1943, and today interstate and intrastate oil pipelines may only obtain eminent domain authority under state law. . . ." Kless and Meinhardt, "Transporting Oil and Gas: U.S. Infrastructure Challenges," 100 Iowa L.Rev. 947, 963 (2015). (emphasis added).

By contrast, Congress enacted "a bill in 1947 providing federal eminent domain for interstate natural gas pipelines." Id. at 997. Congress deemed it important to enable these natural gas pipelines "to cross states in which they do not offer any service, based on the pipelines' need to carry gas from fields in one region to distant markets across intervening territories." Id. It was this amendment to the Natural Gas Act which Judge Timmerman applied.

6. The Demand For Natural Gas in South Carolina In The 1950's for Industrialization

In addition to the context of Judge Timmerman's decision in Williams, prompting passage of Act No. 980 of 1950 (§ 58-7-10), there is a larger context as well. Business and industry sought an accessible supply of natural gas for power. This was an era in post-War South Carolina – when industrialization was underway. Indeed, one day before Governor Thurmond signed the pipeline legislation into law, the announcement of a new natural gas company, formed to distribute gas to North and South Carolina was made. See The State, June 2, 1950 "New Natural Gas Distribution Firm Formed to Serve SC, NC."

South Carolina Natural Gas Company was "chartered in 1952 to construct, own and operate pipelines for transmission of natural gas from the terminus of Southern Natural Gas Company's facilities of Aiken. . . ." By December of 1953, "one hundred and fifty-four miles of high pressure mains were sufficiently complete to allow use of natural gas at Plant Hagood in Charleston and its introduction in the Columbia distribution system for checking and testing purposes." Pogue, South Carolina Electric and Gas Company, 1846-1964 at 158.

As the 1950-51 Annual Report of the South Carolina Public Service Commission stated:

> [t]he demand for gas service in the several cities in South Carolina having manufactured gas plants continued to expand to the extent that several of the companies found their distribution systems inadequate to supply the increased demands for gas service. . . . Allocations of natural gas have been made by the Federal Power Commission for the cities of Gaffney, Greenville, Spartanburg and Anderson, and it is expected that natural gas services to these services will begin in 1951-1952. The allocation of natural gas are expected to be sufficient to supply large industrial customers which is not feasible with the forms of gas being supplied at present.

1950-51 Report at 13. See also, Bowaters Carolina Corp. v. Carolina Pipeline Company, 259 S.C. 500, 507, 193 S.E.2d 129, 133 (1972) ["Carolina Pipeline was organized in the fall of 1955 for the purpose of supplying natural gas to a then unserved area of the State of South Carolina. . . . During the time when Carolina Pipeline was negotiating for its supplies and arranging its finances, it entered into negotiations with Bowaters which was building a major plant at Catawba in York. County."]; Carolina Pipeline Company v. The South Carolina Public Service Comm., 255 S.C. 324, 178 S.E.2d 669 (1971) ["On August 12, 1969, South Carolina Electric and Gas petitioned the Commission for a certificate of public convenience and necessity for furnish natural gas service to Georgetown County . . . and to fulfill the request of Georgetown Steel and Midland for such service."].

And, just two years after the enactment of § 58-7-10, the General Assembly passed Act No. 789 of 1952, creating the Clinton Newberry Natural Gas Authority. In Welling v. Clinton Newberry Natural Gas Authority, 221 S.C. 417, 421, 71 S.E.2d 8-9 (1952), our Supreme Court upheld the constitutionality of the Act against a number of challenges. The Court noted the reason for passage of the Act were that Transcontinental Pipe Line Company "desired to sell only the Northeast, and was not interested in distributing natural gas in South Carolina." Thus, "[a]mong other municipalities in the Piedmont section of South Carolina [where the textile industry was concentrated], the towns of Clinton and Newberry intervened in the proceeding before the Federal Power Commission and sought an allocation of natural gas." Thus, while petroleum distribution is undoubtedly valuable to the citizens, there has not been the same level of intensity for construction of these pipelines as there has been for natural gas in this State.

7. Utilities in South Carolina

It is important also to note that in Williams, Judge Timmerman identified the various entities, possessing condemnation power as "utilities." These included telegraph and telephone companies and electric light companies. A "public utility" is generally defined as:

> . . . a business organization regularly supplying the public with some commodity or service which is of public consequence and need. . . . A distinguishing characteristic of a public utility is a devotion of private property by the owner to service useful to the public, which has a right to demand such service so long as it is continued with reasonable efficiency under property charges. . . . In order for a provider to be considered a "public utility," the provider must have an obligation to provide a good or service that cannot be arbitrarily or unreasonably withdrawn.

73B C.J.S. Public Utilities § 1. Similarly, our Supreme Court, in Cola. Gaslight Co. v. Mobley, 139 S.C. 107, 137 S.C. 211, 213 (1927) enumerated various "public utilities" as including railroads, telegraph and telephone companies, gas companies and electric and power companies. See Univ. of S.C. v. Mehlman, 245 S.C. 180, 186-187, 139 S.E.2d 771, 774 (1964) (enumerating various private entities possessing eminent domain power).

The Court has also interpreted Art. VIII, § 16 of the State Constitution which provides that incorporated municipalities may, upon a majority vote, "acquire by initial construction of purchase and may operate gas, water, sewer, electric, transportation or other public utility systems and plants." (emphasis added). In Sheppard v. City of Orangeburg, 314 S.C. 240, 243-244, 442 S.E.2d 601, 603 (1994), the Court held that a cable television system was not a "public utility" for purposes of this provision of the Constitution because it does not "provide essential services to the public."

In addition, the General Assembly has likewise characterized the various corporations clearly possessing eminent domain power as "utility companies." In Act No. 423 of 1951, shortly after providing "pipeline companies" with eminent domain authority, the Legislature delegated the power of eminent domain to "companies engaged in supplying water for fire, sanitary, industrial and domestic purposes. . . ." The Act's title is reflective of the General Assembly's intent, providing as follows:

> An Act to Amend Sections 8540 and 7303 of the Code of Laws of South Carolina, 1942, As Amended, Relating To The Right of Certain Utility Companies, Engaged In The Business of Supplying Water For Fire, Sanitation, Industrial And Domestic Purposes The Right of Eminent Domain Conferred By Said Sections.

(emphasis added).

8. Natural Gas As A "Public Utility" in South Carolina

Our Supreme Court has heretofore described a natural gas pipeline company also as a "public utility." For example, in Carolina Ceramics, Inc. v. Carolina Pipeline Co., 251 S.C. 151, 161 S.E.2d 79 (1968), the Court stated:

> that "Carolina Pipeline Company . . . is a public utility and owns and operates a natural gas line system in South Carolina, which it operates by purchasing natural gas from Transcontinental Gas Pipeline and Southern Natural Gas Company, and then transporting and reselling such gas to customers within its franchised area in this State."

The Court has also identified the importance to the public of natural gas in South Carolina. In Welling, the Court has this to say:

> [t]he question is raised that the General Assembly was not empowered to permit the Authority [Clinton Newberry Natural Gas Authority] to engage in the business of purchasing and selling gas. It is said that this is not a governmental function. This question is decided adversely to the plaintiff under the cases of Park v. Greenwood County, 174 S.C. 35, 176 S.E. 870 (1934) and Clarke v. South Carolina Public Service Authority, . . . 177 S.C. 427, 181 S.E. 481, 486 (1935). In

> the last mentioned case the Court said, 'there is no question as to the manufacture and sale of power being a government al function.' There is no valid distinction between the power of a unit of government to manufacture or sell electricity and to buy and sell natural gas. Each, under the decisions, is a public and governmental function.

221 S.C., supra at 425, 71 S.E.2d, supra at 10 (emphasis added).

Also instructive is § 58-5-10(3), which defines a "public utility" for purposes of regulation by the Public Service Commission. As our Supreme Court has stated, "[t]he South Carolina Public Service Commission was created by the legislature to supervise and regulate the rates and services of every public utility in the State." Southern Bell Telephone and Telegraph Co. v. Public Service Comm., 270 S.C. 590, 597, 244 S.E.2d 278, 282 (1978). Of course, the definition of "public utility" found at § 58-5-10(3) is contained in the same Title of the Code as § 58-7-10 is found. Section 58-5-10(3) defines a "public utility" as

> [e]very corporation and person delivering natural gas distributed or transported by pipe, and every corporation and person furnishing or supplying in any manner heat (other than by means of electricity) water, sewerage collection, sewerage disposal, and strict railway service, or any of them, to the public, or any portion thereof, for compensation; provided, however, that a corporation or person furnishing, supplying, marketing and/or selling natural gas at the retail level for use as a fuel in self-propelled vehicles shall not be considered a public utility by virtue of the furnishing, supplying, marketing, and/or selling of such natural gas.

Thus, our Supreme Court, as well as the General Assembly, deem a natural gas pipeline to be a "public utility" except where furnishing natural gas for "self propelled vehicles." This characterization is consistent with the importance of natural gas to business and industry in the State as well as to the general public. As the Court in Sheppard stated, a utility, such as natural gas, is a service "essential to the public." We are unaware of any such status as a "public utility" for oil or petroleum pipelines.

9. Oil Or Petroleum Pipelines Have Never Been Held to be Utilities in South Carolina

By contrast, while our Supreme Court has not had occasion to characterize an oil or petroleum pipeline, cases in other jurisdictions have concluded that such pipelines are not "public utilities." For example, in City of Lubbock v. Phillips Petroleum Co., 41 S.W.3d 149 (Tex. App. 2000), the Court referenced the definition of "public utility" contained in Black's Law Dictionary (5th ed.) as follows:

> [a] privately owned and operated business whose services are so essential to the general public as to justify the grant of special franchises for the use of public property or of the right of eminent domain, in consideration of which the owners must serve all persons who apply without discrimination. It is always a virtual monopoly.

41 S.W.2d at 155. There, the Court rejected the argument that the status of pipeline companies as "common carriers" made them also "public utilities." Thus, the various oil pipeline companies did not meet the definition of a "public utility." Id. at 60.

And, in Kinder Morgan v. City of Reno, 2011 WL 379135 (Nev. 2011), the Nevada Supreme Court concluded that the Kinder Morgan pipeline is not a "public utility" because, among other reasons, "it does not provide necessary services to the public, and the public is not entitled to use its products as a matter of right." Id. at * 3, n. 4 (referencing Black's Law Dictionary). Likewise, the Court rejected the argument that because Kinder Morgan is a common carrier, it is also a public utility. See also, Allied New Hampshire Gas Co. v. Tri-State Gas and Supply Co., 221 A.2d 251 (N.H. 1966) [liquefied petroleum gas company pipeline is not "public utility"].

The en banc decision of the Colorado Supreme Court in Larson v. Sinclair Transportation Company, 284 P.3d 42 (Colo. 2012) is instructive. In Larson, the Court addressed the issue "whether Section 38-5-105 C.R.S. (2011), grants condemnation authority to a company for the construction of a petroleum pipeline." In the Colorado Supreme Court's view, a petroleum pipeline is not a "pipeline company" for purposes of the Colorado condemnation statute. The Colorado statute provides as follows:

> [s]uch telegraph, telephone, electric light power, gas or pipeline company or such city or town invested with the power of eminent domain, and authorized to proceed to obtain rights-of-way for poles, wires, pipes, regulator stations, substations and systems for such purposes by means thereof.

(emphasis added). The Court noted that neither the word "petroleum" or "oil" was found in the entire article of the Colorado Code. The word "gas," as used in the statute, "refers to natural gas, not gasoline." 248 P.3d at 45. Further, in the Court's view,

> [i]t is evident by the stated purpose of the original act that the General Assembly in 1907 intended Article 5 to govern electric power infrastructure. It has never expanded that legislative purpose to include transportation of petroleum.

284 P.3d at 46. The pipeline argued that the broad interpretation of the word "pipeline company" would grant condemnation authority "for a pipeline conveying any substance." In light of the fact that "we . . . construe narrowly statutes which confer condemnation power upon private entities," the Court concluded that

> . . . Section 58-5-105 does not clearly imply condemnation authority for a company to construct a petroleum pipeline. Because the General Assembly did not give such authority as expressly or by clear implication, Sinclair does not have the power of eminent domain under Section 105 to condemn the landowner's property for construction of its petroleum pipeline.

Id.

10. Statutory Definition in § 58-5-920(h)

We find related statutory provisions in Title 58 to also be instructive. Section 58-5-910 et seq. constitutes the South Carolina Gas Safety Act of 1970. The purpose of such statute is to promote natural gas pipeline safety and is enforced by the Public Service Commission. See, § 58-5-930 ["each gas utility shall obey and comply with each and every requirement of every lawful order, decision, direction, rule or regulation made or prescribed by the Commission in the performance of its duties under this article in relating to Federal safety standards. . . ."]. The Act requires all "pipeline facilities" for the transportation of gas in South Carolina to comply with minimum federal safety standards. See § 58-5-960. A "pipeline system" or "pipeline facility" is defined in § 58-5-920(h) as:

> . . . new and existing pipe rights-of-way and any equipment, facility or building used in the transportation of gas or the treatment of gas during the course of transportation; but the Commission is not authorized to prescribe the location of any pipeline facility "rights-of-way."

"Gas' is defined as "natural gas, flammable gas or gas which is toxic or corrosive." Section 58-5-920(e). Thus, the term "pipeline facility" is limited to gas, including natural gas.

Our Supreme Court has made it clear that "statutes dealing with the same subject matter are in pari matria and must be construed together, if possible to produce a single, harmonious result." Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). While statutory definitions found in unrelated statutes are not to be used to provide a definition for undefined terms, a statute which is in pari matria may be so employed. See, Fruehauf Trailer Co. v. S.C. Elec. & Gas Co., 223 S.C. 320, 325, 75 S.E.2d 688, 690 (1953) ["there is no statute in pari matria in this state, which contains a definition."] See also State v. Fla. v. Fuchs, 769 So.2d 1006, 1009 (2000) ["In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term."].

Here, the definition of "pipeline facility" as defined in § 58-5-920(h) is clearly related to the term "pipeline" in § 58-7-10. Both are found in the same Title of the Code related to "utility" companies. Importantly, each relates to the acquisition of a right-of-way for a "pipeline." It makes sense to define the term "pipeline companies" in § 58-7-10, using the definition of "pipeline facilities" in a closely related Article of the Code. The result is consistent with the other arguments outlined here that § 58-7-10 means natural gas pipelines.

Thus, in response to your first question, at first blush, the use of the term "pipeline companies" in § 58-7-10 might suggest a phrase broad enough to encompass oil and petroleum pipelines. The plain and ordinary meaning of the term pipeline plausibly supports this argument. However, the General Assembly may not have intended this conclusion. A court may well construe the term more narrowly to include only natural gas pipelines. This conclusion is consistent with the context and history of passage of the statute. The General Assembly could easily have used language to make clear that petroleum pipelines were included, such as North Carolina has done, yet it did not. Clearly, the passage of § 58-7-10 related to the then-existing absence of a statute bestowing condemnation power upon natural gas pipelines; the law was introduced and enacted immediately on the heels of Judge Timmerman's decision in Williams regarding the absence of such a statute.

Moreover, our Supreme Court has clearly characterized natural gas as a "public utility." As such, the Court has equated natural gas with the provision of electrical power and has characterized the

provision of natural gas as a "public" and "governmental function." Indeed, § 58-7-10 expressly gave "pipeline companies" the same condemnation power as possessed by electrical companies. Section 58-5-920(h) defines "pipeline facilities" as limited to "gas" and this statute is in pari matria with § 58-7-10 and can be used to assist in defining "pipeline companies" therein.

Finally, Judge Timmerman, in Williams, the Legislature, as well as this Office, have characterized those private entities possessing eminent domain power bestowed by Title 58 as "public utilities." See Op. S.C. Att'y Gen., 2015 WL 1593294 (March 31, 2015). On the other hand, we are unaware of any such characterization of oil pipelines. In addition, because the power of eminent domain interferes with the possession and use of private property, such statutes must be construed in favor of the landowner. Thus, a court may well conclude that since § 58-7-10 does not expressly bestow condemnation power upon oil pipelines, all doubt must be resolved in favor of the landowner and against the existence of such power.

11. Constitutional Question Concerning Eminent Domain Powers in § 58-7-10

Your next question assumes the answer to Question 1 is "yes." As discussed above, while we doubt a court will conclude that § 58-7-10 et seq. extends the power of eminent domain to oil and gas pipelines, that is, of course, a question for the courts to resolve with finality. We thus address your second question which is whether the "extension of eminent domain power to a private, for profit pipeline company [is] unconstitutional under S.C Constitution Article I, § 13A?"

Article I, § 13A of the South Carolina Constitution provides as follows:

> (A) Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property. Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use.

As our Supreme Court explained in Atkinson v. Carolina Power and Light Co., 239 S.C. 150, 157, 121 S.E.2d 743, 746 (1961), "'[t]he legislature may delegate the power of eminent domain to public officers or boards or to private corporations. . . .'" The Court quoted with approval from Riley v. Chas. Union Station, 71 S.C. 457, 51 S.E. 485, 497 (1905), as follows:

> "[t]he case of S.C.R. Co. v. Blake, 9 Rich. Law 228 shows that the grantee of the power to condemn lands is not the sole judge whether any particular parcel of land is required for the purposes of the road, and that the final determination of this question rests with the courts. This is in accord with many authorities cited in Chicago 9. N.W. Ry. Co. v. Morehouse, 88 Am. St. Rep. 946, note. Nevertheless, it is right that weight should be given to the fact that the grantee to whom the statute has delegated the power to condemn has decided that the particular land in question is required. As said in Smith v. R.Co., 105 Ill. 511 and reported in O'Hare v. Chicago etc. R.Co., (Ill.) [139 Ill. 151], 28 N.E. 923, 925:

> "Every company seeking to condemn land for public improvement must, in a modified degree, be permitted to judge for itself as to what amount is necessary for such purpose." This right, however is subordinate to the right of the courts to prevent an abuse of the power by restricting its exercise to the reasonable necessities of the case, since to take more than reasonable necessity requires is to appropriate private property private use.

Id. at 746-747.

Our Court takes a "restricted view of the power of eminent domain because it is in derogation of the right to acquire, possess, and defend property. . . ." Ga. Dept. of Transp. v. Jasper County, 355 S.C. 631, 638, 586 S.E.2d 853, 856 (2003); Compare, Kelo v. City of New London, 545 U.S. 469 (2005) [applying the Fifth Amendment "Takings Clause" of the United States Constitution to equate "public use" with "public benefit," and holding that economic development is a "public use."]. The Court has further explained that "[i]t is well-settled that the power of eminent domain cannot be used to accomplish a project simply because it will benefit the public." Georgia Dept. of Transp., supra, citing Karesh v. City Council of City of Chas., 271 S.C. 339, 247 S.E.2d 342 (1978). Instead, the Court has interpreted the term "public use," employed in the Constitution, as follows:

> [t]he public use implies possession, occupation and enjoyment of the land by the public at large or by public agencies; and the due protection of the rights of private property will preclude the government from seizing it in the hands of the owner, and turning it over to another on vague grounds of public benefit to spring from a more profitable use to which the latter will devote it.

Edens v. City of Columbia, 228 S.C. 563, 573, 91 S.E.2d 280, 283 (1956). Thus, "[t]he involuntary taking of an individual's property by the government is not justified unless the property is taken for public use, independent of the will of the private lessor of the condemned property." Ga. Dept. of Transp., 355 S.C., supra at 638, 586 S.E.2d, supra at 857, referencing Karesh, 271 S.C. supra at 344, 247 S.E.2d, supra at 345.

In Edens, our Supreme Court declared unconstitutional the attempt to condemn property by the City of Columbia. In that instance, the property was deemed a "blighted" area, principally "occupied by slum dwellings." The City, through its Redevelopment Board, proposed "to take the property, by condemnation if necessary, clear it of the present structures and sell it at the then fair value, a portion of it to the University of South Carolina for the expansion of it, and the remainder which is the most of it, to private persons and corporation for sites for light industry. . . ." 227 S.C. at 567, 91 S.E.2d at 280-281. In concluding that the foregoing condemnation proposal was unconstitutional, the Court elaborated upon the definition of "public use" as contained in the State Constitution:

> "It is not easy to give a definition of 'public use' which will be adequate to cover every case that may properly fall within the term, and this case does not call for an attempt to define the term. Some cases take the very broad view that 'public use' is synonymous with 'public benefit.' A more restricted view, however, would seem to better comport with the due protection of private property against spoliation under the guise of eminent domain. Judge Cooley, in his Constitutional

> Limitations, 654, says: 'The public use implies possession, occupation, and enjoyment of the land by the public at large or by public agencies; and the due protection of the rights of private property will preclude the government from seizing it in the hands of the owner, and turning it over to another on vague grounds of public benefit to spring from a more profitable use to which the latter will devote it. In Lewis on Eminent Domain, § 165, it is said that 'public use' means the same as 'use by the public.' These definitions involve the idea that the public must have a definite and fixed use of the property to be condemned, independent of the will of the person or corporation taking title under condemnation, and that such use by the public is protected by law. [citations omitted]. . . . The case of Healy Lumber Co. v. Morris, 33 Wash. 490, 74 P. 681, 63 L.R.A. 820, 99 Am. St. Rep. 964 holds that a public use must be either a use by the public or by some quasi public agency, and not simply a use which may incidentally or directly promote the public interest or general prosperity.'"

238 S.C. at 571-572, 91 S.E. at 283.

Our Supreme Court has consistently emphasized that economic development or public benefit is insufficient in itself to constitute public use for purposes of the Constitution. Taking the "restrictive view of the power of eminent domain," the Court, in Georgia Department of Transportation, supra concluded that the condemnation by Jasper County of some 1,776 acres for a ninety-nine year lease to a private stevedoring corporation (all but forty acres) in order to construct a maritime terminal. Despite the trial court's conclusion that the project would provide major industrial development an economic benefit to the citizens of Jasper County, the Supreme Court held that such was not a public use. According to the Supreme Court, "'[h]owever attractive the proposed [project], however desirable the project from a [government] planning point to view, the use of the power of eminent domain for such purposes runs squarely into the right of an individual to own property and use it as he pleases.'" (quoting Karesh v. City Council of Charleston, 271 S.C. at 344-345, 247 S.E.2d at 345). In the Supreme Court's view,

> [c]ounty's proposed marine terminal does not meet our restrictive definition of public use. The private lessor, SAIT, will finance, design, develop, manage, and operate the marine terminal. The terminal itself will be a gated facility with no general right of public access; access is limited to those doing business with SAIT. SAIT will have agreements with various steamship lines and will charge them per container fees for unloading, storing and delivering. The marine terminal is considered a "public" terminal simply because it will serve different steamship lines as opposed to a single line or cargo interest.

355 S.C. at 639, 586 S.E.2d at 857.

Moreover, in Young v. Wiggins, 240 S.C. 426, 126 S.E.2d 360 (1962), the Court concluded that the impounding of water for the agricultural benefit of persons who owned land bounding a proposed lake surrounded by privately owned property, with no provision for access or other use by other landowners was not for a "public use." Thus, the watershed district did not have authority to condemn the land over the landowners' objections. The Court referenced decisions such as Riley v. Charleston Union Station Co., 71 S.C. 457, 51 S.E. 485 (1905) and Bookhart v. Central Elec. Power Coop., 219 S.C. 414, 65 S.E.2d

781 (1951), as well as Edens, supra. In concluding that the necessary "public use" was lacking, the Court reasoned as follows:

> [i]f constructed, the lake will be surrounded by privately owned property, with no provision for access or use by other landowners in the watershed or by the public....
>
> It is of no legal significance that the organized district involves some twenty landowners. The constitutional prohibition applies to the same extent as though there were only three owners of whom two favored the lake and one opposed it. The character of the use, whether by individuals or by members of the public, rather than the number of users is controlling.

240 S.C. at 434; 126 S.E.2d at 364. In Bookhart, supra, the Court, citing Fallsburg Power & Mfg. Co. v. Alexander, 43 S.E. 194, 195 (1903), suggested that where "the use to which the contemplated works were to be put [are] . . . at least predominantly private rather than public," a "public use" may not be present.

In this same regard, we have opined:

> [t]he essential feature of the public use is that the use is not confined to privileged individuals but is open to the indefinite public. One of the controlling features as to public use is that there must be a substantial benefit to the public form the use of the property, and if the property is utilized by private persons in a restrictive manner, this does not constitute a public purpose or a public use of the property, even though the benefits to the property may arise from the private use. Public use and public benefit are not synonymous.

Op. S.C. Att'y. Gen., May 27, 1964.

Bookhart, supra, is particularly instructive. There, the Court seemed to suggest that a private entity need be a "public utility" in order to be delegated the condemnation power. The Court emphasized that "[u]niversality of patronage of a public utility is not essential to 'public use' of its property." 219 S.C. at 422, 655 S.E.2d at 784. Nevertheless, the Court made it clear, in the context of an electric cooperative, that there must be "equal access" to the service being provided, and that the use "at least principally [be] a public use." As the Court stated,

> [b]y a simpler concept, which seems sound and applicable the same result is reached with respect to the curious wording of the provision of the law which relates to 'membership.' It is that the customers, which are called 'members,' of the cooperatives are in the territories of their operation the 'public' which must be reasonably served, and to whom the service must be available on equal terms, in order to satisfy the undoubted rule that the power to condemn can only be delegated for, at least principally, a public use. There is no 'public' which is separable from the members in the rural areas where the cooperatives do business; and they at once take the place of the stockholders and customers of privately owned utilities; they are both owners and customers, and that makes difficult at first the relation to this new situation of decisions affecting privately owned

> utilities. It is an example of the application of time-tested legal principles to a new factual situation.
>
> We follow the intention of the General Assembly, which is manifest from the terms of the enabling act, that respondent is public in its nature and purpose, with the expressly delegated power of eminent domain, which inevitably results in the obligation to reasonably render nondiscriminatory service. That affords protection to the public, including applicants for membership, from arbitrary action by way of exclusion from membership or otherwise. This view is consistent with the legislative definition of public utility which was included in Act No. 525 of 1922, 32 Stat. 938, as follows: 'every corporation and person furnishing or supplying in any manner gas, electricity, heat, electric power, water and street railway service, or any of them, to the public, or any portion thereof, for compensation. The term 'public or any portion thereof' as used herein means that public generally or any limited portion of the public, including a person, private corporation, municipality, or any political subdivision of the State'. The definition is retained in the current Code of 1942, Sec. 8209.

219 S.C. at 423-424, 65 S.E.2d at 784-785 (emphasis added). See also Mid-American Pipeline Co. v. Iowa State Commerce Comm., 114 N.W.2d 622 (Iowa 1962) [operation of private pipeline for private purposes is "beyond the pale of constitutional authority." Where private oil pipeline condemns property only for the benefit of the pipeline company itself, such action is unconstitutional].

Thus, while each case is fact-dependent, the Court has struck down as unconstitutional efforts by the General Assembly to delegate the power of eminent domain where such power will be used for a predominantly private use or when the general public does not have equal access to the service being offered. While generally speaking, under South Carolina decisions, the provision of natural gas through a "pipeline company" has been held to constitute a "public use," the same cannot be said regarding an oil pipeline. Thus, all doubt should be resolved against such pipelines possessing the power of eminent domain. No South Carolina case has so held.[1]

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[1] We recognize that the pipeline in question is a common carrier. Our Supreme Court, in Palmetto Pipe Line Co. v. S.C. Tax Comm., 261 S.C. 358, 360, 200 S.E.2d 79, 80 (1973), in the context of taxation, said that

> [r]espondents, as pipeline corporations, engaged in the public service of transporting petroleum products, are clearly engaged in similar services to those performed by the enumerated corporations.

The Court referred to Palmetto as a "public service corporation" for purposes of the tax statute at issue. The corporations enumerated in the then-existing § 65-256, which imposed an income tax on certain corporations, were: steam and electric railroads; navigation companies; waterworks companies; light or gas companies; power companies, express services; telephone or telegraph businesses; sleeping car companies; or "other form of public service." Thus it could be argued that this case stands for the proposition that oil pipelines are no different from the utilities enumerated in § 65-256.

However, we do not believe the decision of Palmetto Pipe Line Co. undermines the alternative reading of § 58-7-10 presented herein. Palmetto Pipe Line Co. speaks of the business of being "engaged in the public service of transporting petroleum products...." We do not doubt that this is a "public service" for purposes of the tax statute in question in that case. However, there is a major difference in that and possessing the eminent domain power

With respect to your third question, this matter will ultimately be for the courts in South Carolina. Our Supreme Court has said repeatedly that the proper remedy to contest the right to institute condemnation proceedings is through an action in the court of common pleas in the exercise of its chancery powers. Southern Power Co. v. Walker, 89 S.C. 84, 71 S.E. 356 (1911). As the Court explained in Tuomey Hosp. v. City of Sumter, 243 S.C. 544, 548-549, 134 S.E.2d 744, 746 (1964), overruled on other grounds, Georgia Dept. of Transp. v. Jasper Co., supra:

> [t]he legislative grant of the power of eminent domain must be strictly construed for the protection of property rights, Paris Mountain Water Co. v. City of Greenville, 105 S.C. 180, 89 S.E. 669.
>
> When the right to institute condemnation proceedings is contested in this State, the proper remedy is for the landowners to bring an action in the Court of Common Pleas, as was done here, in order for the Court in the exercise of its chancery [equity] power, to determine such right. Seabrook v. Carolina Power and Light Co., et al., 159 S.C. 1, 156 S.E. 1; Greenwood Co. v. Watkins, 196 S.C. 51, 12 S.E.2d 545; Sease v. City of Spartanburg, 242 S.C. 520, 131 S.E.2d 683.

Of course, assuming oil pipeline companies possess the power of eminent domain pursuant to § 58-7-10 et seq., the condemnation procedures contained in § 28-2-10 et seq. would still be applicable. However, an independent action to contest Kinder Morgan's right to institute condemnation proceedings at all would also lie.

Conclusion

The questions you have raised regarding the power of an oil pipeline company to condemn property in South Carolina will ultimately be dependent upon the facts, and will necessarily have to be decided by the courts of this State. Our Supreme Court has made clear that "[w]hen the right to institute condemnation proceedings is contested in this State, the proper remedy is for the landowner to bring an action in the Court of Common Pleas . . . in order for the Court in the exercise of its [equity] power to determine such right." We assume one or more landowners in this instance will contest in court the right of the oil pipeline company to condemn property in South Carolina. We believe there are good legal arguments to challenge the oil pipeline company's right of condemnation.

A South Carolina court will be required to construe § 58-7-10 et seq. bestowing the right of condemnation narrowly because of the overwhelming importance of property rights under our Constitution. Property rights in this State are considered precious and our Supreme Court has stated repeatedly that any statute purportedly providing the right of condemnation to a private company is construed in favor of the landowner.

In this instance, we have substantial doubt that the statute in question, which gives the right of condemnation to "pipeline companies" conveys such power to an oil pipeline company. We readily acknowledge that the most obvious interpretation of the statute is to give the law its plain and ordinary meaning. Under that plain meaning, a pipeline company is a pipeline company. Pursuant to this

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bestowed by § 58-7-10. Again, all doubt is resolved in favor of the landowner. The tax statute in question in Palmetto, which did not specifically enumerate oil pipeline companies, cannot be used to interpret § 58-7-10. Common carriers in South Carolina do not necessarily equate to the possession of eminent domain powers.

construction, oil pipeline companies, such as Kinder Morgan, would possess the power of eminent domain under § 58-7-10. This is undoubtedly a plausible reading.

But, such construction may sweep too broadly, thereby allowing any company with a pipeline -- of whatever kind – to possess the power of condemnation. Thus, § 58-7-10 cannot be read in a vacuum. The context and history of the statute's passage suggests a possible alternative interpretation, one which would give only natural gas pipelines the power of eminent domain.

First of all, the statute is codified in Title 58, dealing with public utilities and their regulation by the Public Service Commission. In March of 1950, the Federal District Court for South Carolina issued a ruling, noting that unlike other "utilities," such as electric light companies, South Carolina then possessed no statute giving the power of eminent domain to natural gas companies. The Court concluded that federal law, however, gave such powers to interstate pipelines shipping natural gas. The significance of this ruling is that, immediately on the heels of Judge Timmerman's decision, a bill was introduced, giving "pipeline companies," the same power of condemnation as electric light companies for "pipeline purposes," the same language as used by Judge Timmerman. This legislation passed in less than two months. Such fact alone is particularly telling as to the Legislature's intent. It would have been odd for the Legislature to have addressed all "pipelines" including oil pipelines, thereby giving all pipelines the power of eminent domain, when other pipelines were not at issue in Judge Timmerman's ruling. As the Colorado Supreme Court recently held, such an interpretation gives condemnation power to "a pipeline conveying any substance."

The historical context for the Bill's passage in 1950 was the post-War beginning of industrialization in South Carolina. The demand for natural gas to power the textile industry's growth and expansion, as well as the strong demand for natural gas by other businesses throughout the State, was a major factor in the statute's enactment. Indeed, in 1952, our Supreme Court concluded that natural gas companies, as a source of power, were equivalent to electric power companies in their legal status – providing a "public" and "governmental" service. The Court has characterized the provision of natural gas as a "utility." Again, it is significant that our Supreme Court has equated the provision of natural gas with the provision of electrical power, a classic utility. By contrast, the Supreme Court of Nevada has held that Kinder Morgan is not a "public utility" even "under a dictionary definition . . . because it does not provide necessary services to the public, and the public is not entitled to use its products as a matter of right."

Moreover, in the historical context of passage, it is notable that § 58-7-10 does not mention petroleum or oil, as does North Carolina's equivalent law or many of those in other states. It would have been an easy matter not to leave interpretation of the statute to guesswork, had the Legislature intended oil pipelines to be included. There are, as far as we can tell, no decisions of our Supreme Court, in sixty-five years since the statute's enactment, applying § 58-7-10 to condemnation of property for oil pipelines. On the other hand, there are such decisions relating to natural gas condemnation.

Further, in terms of the delegation of eminent domain powers to private companies, the General Assembly appears to have given such powers only to utilities, such as telephone, telegraph, electrical power companies, etc. Legislation actually characterizes such bestowal having been delegated to public utilities. And, in the Williams decision, the action began as one challenging the right of the natural gas company in question to condemn property for a natural gas pipeline due to the absence at that time of a state statute delegating such condemnation power. Judge Timmerman noted that the Legislature had

given eminent domain power to other "utilities," such as telegraph and phone companies and electrical power companies. Throughout Judge Timmerman's opinion, he referred to the action as one relating to the proposed "pipeline" and he noted there was, at that time no specific South Carolina statute providing a procedure for condemnation for "pipe line purposes," the very language used in § 58-7-10. Thus, there is a strong argument that § 58-7-10's reference to "pipeline companies" means natural gas pipelines, which clearly are utilities. This is consistent with the Colorado decision, concluding that an oil pipeline is not a "pipeline company" for purposes of eminent domain.

Finally, a related statute, in the same Title, § 58-5-920(h) defines "pipeline facilities" as limited to "gas," including "natural gas." This statute relates to pipeline safety and defines "pipeline facilities" for purposes of rights-of-way. We believe a court may well read this definition as in pari matria and thus controlling.

Moreover, there are fundamental constitutional questions as well. Under the South Carolina Constitution, there can never be the taking of property for a private use. Taking for a public use may be only with just compensation. The South Carolina Supreme Court has defined "public use" quite narrowly. Unlike the United States Supreme Court decision in Kelo, which interpreted the Fifth Amendment's "public use" provision, South Carolina's Constitution forbids the taking of private property merely for a public benefit such as economic development; the use of the property itself must be for the public. Thus, on a number of occasions, our Supreme Court has struck down a law which authorizes the delegation of the condemnation power for a private use. While we do not possess the facts in this instance, it is clear that the delegation of eminent domain power to a private oil pipeline must be "at least principally for a public use" with "equal access" by the public to the pipeline. Inasmuch as the Supreme Court of Nevada has concluded that Kinder Morgan's pipeline there "does not provide necessary services to the public," a court would strongly consider this constitutional argument as well in any interpretation of § 58-7-10.

In summary, no South Carolina court to date, of which we are aware, has construed § 58-7-10 as bestowing the power of eminent domain upon an oil pipeline company. We are also unaware that our courts have deemed oil pipelines as "utilities" in contrast to natural gas pipelines. While we readily admit that Kinder Morgan can plausibly argue that § 58-7-10 has a plain meaning, for the foregoing reasons, we still have substantial doubt that the statute gives an oil pipeline company such powers. We suggest, before moving forward, legislative clarification, or a definitive ruling by the courts that property can be condemned in South Carolina by an oil pipeline. The power to condemn property by a private company must be clear, and all doubt is in favor of the landowner. We certainly do not believe the statute is clear, given the context and history of its enactment. Thus, since all doubt must be resolved in favor of the landowner, we are doubtful that such statute conveys the right of condemnation in this instance.

Sincerely,

Robert D. Cook
Solicitor General