IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

UNITED STATES OF AMERICA
upon the relation and
for the use of the
TENNESSEE VALLEY AUTHORITY
Plaintiff

V. NO. 2:97CV176-B-B

AN EASEMENT AND RIGHT-OF-WAY
OVER 2.8 ACRES OF LAND, MORE OR
LESS, IN DESOTO COUNTY, MISSISSIPPI

M.E. BRIDGFORTH HEIRS
PARTNERSHIP
DEFENDANTS

Memorandum Opinion

This cause comes before the court upon the motion of the plaintiff, United States of America, through its agent the Tennessee Valley Authority [TVA], for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. Defendant M.E. Bridgforth Heirs Partnership [the defendant] has not filed a response as contemplated by Rule 8(d) of the Uniform Local Rules. The court, having duly considered the plaintiff's motion, finds that it is well taken and should be granted.

FACTS

This is a condemnation action to acquire a permanent easement and right-of-way over certain land located in DeSoto County, Mississippi for the erection, operation and maintenance of electric power transmission circuits by TVA. In accordance with the Declaration of Taking Act, 40 U.S.C. § 258a, the plaintiff, at the time of filing this action, deposited $13,060 with the court as its estimate

of just and liberal compensation for the property taken.

The defendant's answer alleges, inter alia, that the complaint and declaration of taking fail to state a claim upon which relief can be granted. The answer further alleges: "Defendant affirmatively objects to the proposed location of the easement as set forth in EXHIBIT "A" attached to the Declaration of Taking." The plaintiff has moved for judgment on the pleadings with respect to the taking on the grounds that the defendant's failure to state a claim defense and objection to the location of the taking do not raise justiciable issues in this action.

LAW

With respect to the failure to state a claim defense, TVA's statutory authority under 16 U.S.C. §§ 831c(h), (i), (j), and 831x to acquire property to carry out the purposes of the TVA Act is clear. This authority was expressly recognized by the United States Supreme Court in United States ex rel. TVA v. Welch, 327 U.S. 546 (1946), in which the Court stated:

> To make clear beyond any doubt the TVA's broad power [of condemnation], Congress in § 25 authorized [TVA] to file proceedings..."for the acquisition by condemnation of any lands, easement, or rights of way which, in the opinion of [TVA], are necessary to carry out the provisions of this Act."

Id. at 554. Accord United States ex rel. TVA v. An Easement and Right-of-Way, 235 F. Supp. 376, 377 (N.D. Miss. 1964) ("The authority and power of TVA to condemn all property that it deems necessary for carrying out the purposes of this Act [are] established beyond question."). The declaration of taking filed on September 15, 1997 affirmatively states that the taking is "for the use of the United States of America acting by and through its agent, the Tennessee Valley Authority" and that the "public use for which the easement and right-of-way is taken is the erection, operation, and maintenance of electric power transmission circuits." Condemnation for the stated purpose is within the authority of the TVA Act. United States ex rel. TVA v. An Easement & Right-of-Way, 235 F.

Supp. at 377 ("The statutory and constitutional authority of TVA under the TVA Act to construct transmission lines and acquire rights-of-way therefor by condemnation also has been long established."). Accordingly, the court finds that the failure to state a claim defense has no merit.

With respect to the defendant's objection to the taking, the defendant merely asserts that it objects to the location; the defendant did not respond to the instant motion and has asserted no basis for its objection. Where a federal taking of property is authorized, such as through the TVA Act, the necessity, expediency, location and extent of the taking are purely legislative questions for Congress or administrative questions for the executive agency to which Congress has delegated condemnation authority. Joslin Mfg. Co. v. City of Providence, 262 U.S. 668, 678 (1923); Illinois Cent. R.R. v. TVA, 445 F.2d 308, 313 (6th Cir. 1971); United States ex rel. TVA v. An Easement and Right-of-Way, 682 F. Supp. 353, 357 (M.D. Tenn. 1988); United States ex rel. TVA v. An Easement and Right-of-Way, 246 F. Supp. 263, 270 (W.D. Ky. 1965), aff'd, 375 F.2d 120 (6th Cir. 1967); United States ex rel. TVA v. An Easement and Right-of-Way, 235 F. Supp. at 377. Therefore, the defendant's objection to the proposed location of the easement and right-of-way does not present a justiciable issue.

CONCLUSION

For the foregoing reasons, the court finds that the plaintiff's motion for judgment on the pleadings should be granted. An order will issue accordingly.

THIS, the _____ day of December, 1997.

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NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE