

**BEFORE THE UNITED STATES
FEDERAL ENERGY REGULATORY COMMISSION**

Spire STL Pipeline

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CP17-40

**REPLY BY IMPACTED LANDOWNERS TO SPIRE’S APPLICATION FOR A
TEMPORARY EMERGENCY CERTIFICATE**

On August 5, 2021, a group of impacted landowners (collectively, Spire Landowners) filed a motion to intervene and to protest Spire’s Application for an Emergency Certificate. In that Protest, the Landowners informed the Commission that Spire failed to acquire, by negotiation or eminent domain, legal title to 62 tracts necessary to construct and operate the Spire pipeline. Moreover, the Landowners argued that as a result of the D.C. Circuit’s invalidation and *vacateur* of the underlying certificate showing that the project serves the public necessity and convenience, Spire cannot demonstrate the requisite public use needed to justify condemnation of the properties under either the Fifth Amendment or the Natural Gas Act. The Landowners further argued that a grant of a temporary certificate or an emergency certificate do not solve the site access problem because neither of these authorizations, which are issued without notice or a hearing confer the power of eminent domain which is limited to certificates of public necessity and convenience” issued under Section 717f(e). *See also* Section 717f(h), Natural Gas Act (limiting eminent domain powers to holders of certificates of public necessity and convenience).

Though as detailed in the Protest, now Chairman Glick criticized Spire for failing to work with the landowners to negotiate site access since 2018 when the original certificate issued, Spire *still* has not done so. Nor have Spire’s filings (in which the Commission instructed Spire to

detail its property acquisition efforts) said anything to the contrary. Nor could it, because rather than negotiate, Spire has continued to try to ram through 62 condemnation proceedings pending in the federal courts. Spire has opposed landowners' motions to stay the cases until a mandate is issued, and at a recent scheduling hearing before the Eastern District of Missouri, Spire's local counsel told the court that Spire's marching orders were to continue to move forward with the eminent domain cases. And in the Central District of Illinois, Spire has moved for summary judgment on nine of the tracts which would not only result in a taking of property under the infirm certificate but would do so while denying the landowners their day in court to testify on the value of the property.

In addition to trying to accelerate the eminent domain cases through motions in the federal courts (which landowners, through great expense have managed to oppose so far), Spire has also taken steps to delay issuance of the mandate. Through just an intervenor before the appeals courts, Spire sought a stay of mandate issuance first from the D.C. Circuit and more recently, by seeking a stay to allow it to file a *certiorari* petition with the United States Supreme Court. The Landowners do not seek to interfere with Spire's right to seek appeal of the D.C. Circuit's ruling. But Spire does not need to stay the case to prosecute its appeal.

Spire claims that it seeks to delay the mandate to keep the lights and heat on during the cold St. Louis winter. But the Commission's grant of a temporary certificate already ensures that Spire can continue to operate at least for another 90 days, which is commensurate with the duration of a stay. **Because Spire does not need to delay the grant of the mandate to protect ratepayers, there is only one explanation for Spire's action: to keep the infirm certificates**

intact, at least in name only, so that Spire can take landowners' property through eminent domain for a project that the D.C. Circuit found does not serve the public convenience.

Spire has had three full months to work out property acquisition with landowners since the D.C. Circuit ruling issued (it had two years prior to that to settle acquisition) and it has not taken any steps to engage in meaningful negotiations, instead preferring to gamble at the courts. In doing so, Spire is putting its project at risk, because once the court mandates issues, Spire will trespass on the landowners' property and may be ejected from the premises. Unless and until Spire engages in *bonafide* negotiations with the landowners to acquire the property rights to the 62 tracts for which it now lacks legal title, then Spire's application for an emergency certificate must be denied for the reasons stated herein and in the original protest.

Dated: October 5, 2021

Respectfully submitted,

/s/ Carolyn Elefant

Carolyn Elefant

Law Offices of Carolyn Elefant, PLLC

1440 G Street, NW, 8th Floor

Washington, D.C. 20005

T: (202) 297-6100

E: Carolyn@carolynelefant.com