

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

Spire STL Pipeline

)

CP17-40

**MOTION TO INTERVENE AND PROTEST BY IMPACTED LANDOWNERS TO
SPIRE’S APPLICATION FOR A TEMPORARY EMERGENCY CERTIFICATE**

On July 30, 2021, Spire STL Pipeline (Spire) requested that the Commission issue a temporary certificate for the Spire Pipeline to ensure continuity of service in the aftermath of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) ruling in *Environmental Defense Fund v. FERC*, No. 20-1016 (D.C. Cir. June 22, 2021) vacating Spire’s certificate of public necessity and convenience. Yet even if the Commission were inclined to grant Spire’s request, the Commission is powerless to do so because Spire neither acquired the legal property rights to continue operation of its pipeline now that the original certificate has been invalidated and nor discharged its obligation under the original certificate to restore dozens of productive agricultural properties devastated by pipeline construction.

For these reasons, the impacted landowners who collectively own 62 parcels crossed by the Spire Pipeline move to intervene in this proceeding and protest Spire’s application for a temporary emergency certificate unless the temporary certificate (1) clearly states that it does not authorize eminent domain and (2) is conditioned on Spire’s negotiated acquisition of necessary, legal easement rights from landowners and satisfactory resolution of all outstanding restoration issues.

I. CONTACT INFORMATION

Notice and communications in this proceeding should be addressed to the following:

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II. STATEMENT OF INTEREST FOR MOTION TO INTERVENE

A. Description of Landowners’ Interests

The Landowners seeking intervention in this proceeding are listed in Attachment A. Collectively, these Landowners own 62 parcels in Scott, Greene and Jersey Counties in Illinois and St. Charles County, Missouri, crossed by the Spire Pipeline. Together, these properties span 22 miles or roughly one third of the 65-mile Spire Pipeline. Almost all of the parcels are used for agricultural purposes such as farming crops such as corn, soybeans and alfalfa and pasturing livestock. Located in the Corn Belt in the Midwest, these properties are considered amongst the most productive in the world,¹ boasting deep, fertile topsoil that the Landowners have worked hard to protect through responsible farming practices.² Many of the Landowners are committed

¹ See <https://www.worldatlas.com/geography/corn-belt-united-states.html>

² See <https://e360.yale.edu/digest/one-third-of-farmland-in-the-u-s-corn-belt-has-lost-its-topsoil> (documenting natural loss of topsoil in Corn Belt and climate change impacts).

to environmental sustainability; some landowners participate in Conservation Reserve Programs and while others are members of the Environmental Defense Fund and support the organization's mission.

The Landowners are directly aggrieved by the Spire Pipeline. For starters, just twelve days after the Commission granted Spire a Certificate Order for the pipeline, Spire filed condemnation complaints against all of these Landowners in three different federal district courts to seize their properties for the project.³ *See City of Oberlin v. Fed. Energy Regulatory Comm'n*, 937 F.3d 599, 604 (D.C. Cir. 2019) (“landowners forced to choose between selling to a FERC-certified developer and undergoing eminent domain proceedings, are ‘aggrieved’ within the meaning of the [Natural Gas] Act”). In December 2018, all three district courts issued an injunctive order granting Spire immediate possession of the properties prior to payment of just compensation.⁴ And while Spire could have negotiated fair easement agreements with the landowners in the nearly three years since filing condemnation lawsuits, Spire instead chose to litigate aggressively with the Landowners instead, and that litigation continues as of the date of this filing.

³ *See* Docket, Spire STL Pipeline LLC v. 3.31 Acres of Land, No. 4:2018-CV1327 (E.D. Mo.) (listing consolidated condemnation actions against roughly 150 acres of land); *Spire STL Pipeline v. Turman*, Verified Complaint for Condemnation of Pipeline Easements, No. 3:18-CV-1502 (S.D. Ill. Aug. 15, 2018) (listing consolidated condemnation actions against roughly 80 acres); *Spire Pipeline v. Betty Ann Jefferson*, Case No. 18-CV-03204 (C.D. Ill. 2018).

⁴ *ee Spire STL v. Turman*, Docket 3:18-CV-1502, Order Granting Immediate Possession, Doc.135 (December 12, 2018); *Spire STL v. Betty Ann Jefferson*, Docket 18-CV-03204, Order Granting Preliminary Injunction for Possession, Doc.114 (December 14, 2018); *Spire STL Pipeline LLC v. 3.31 Acres of Land*, Docket No. 4:2018-CV1327 (E.D. Mo.), Doc. 235 Memorandum and Order Granting Condemnation Order and Preliminary Injunction, (December 12, 2018).

Once Spire gained possession of the properties and began construction, the harm to the Landowners increased. On the Illinois side of the project, Spire simply ignored the requirements of the Illinois Agricultural Impact Mitigation Agreement (AIMA) incorporated in its Certificate which is designed to preserve precious topsoil from further losses and protect valuable farmland. In Missouri, where the less stringent FERC Upland Erosion Control guidelines were implemented, Spire still failed to segregate or secure topsoil from loss. Spire also worked in wet conditions, resulting in deep soil compaction, erosion and flooding on and off the right-of-way.

Once Spire completed the project and placed it in service in November 2019, it did nothing to acknowledge or clean up the mess. Instead, as Spire began operations and racking up millions of dollars in revenues, Landowners were left to contend with their broken farms with deeply compacted easements denuded of topsoil, some strewn with rocks and debris, broken drain tiles and blocked drainage resulting in flooding and reduced crop productivity. Both the Illinois Department of Agriculture and the Commission itself have identified multiple problems and directed Spire to work with landowners or otherwise take corrective action which Spire has not completed.⁵ All told, the Landowners have lost millions of dollars in topsoil alone and will need to devote millions of dollars, out of their own pocket, to mend their properties. Meanwhile, Spire refuses to honor its obligations under the Certificate Order to comply with both the Illinois AIMA and FERC Upland Erosion Control restoration requirements and return properties to pre-construction conditions. For all of these reasons, the Landowners are directly aggrieved by the pipeline and entitled to intervene.

⁵ See e.g., Illinois Department of Agriculture Investigation re: Spire restoration filed at the Commission (August 14, 2020), Commission August 2020 notice directing response by Spire and Landowners, *Spire Pipeline STL*, Order on Compliance, 174 FERC ¶ 61,219 (March 2021)(directing Spire to work with impacted landowners to restore properties); Memo and Inspection Report (July 30, 2021) directing Spire to “1) continue to work with landowners to address their restoration concerns; 2) within 30 days, prepare and file a detailed list of all outstanding restoration issues to ensure that restoration is successful...”

B. No Other Party Can Represent the Landowners' Interests

Absent intervention by the Landowners, their interests will go unrepresented. There are no other parties to this proceeding who have suffered the same loss of constitutionally-protected property rights and economic livelihood. Moreover, without the Landowners' participation, these impacts will go unnoticed. Indeed, Spire's temporary certificate application did not mention the Landowners' interests at all. Because no other party can represent the Landowners' interests, intervention is justified.

C. Intervention is Timely

The Landowners did not originally intervene in this proceeding because they did not oppose the project; however, Spire's application for an emergency certificate is a post-certificate development that heralds the commencement of a new proceeding—just as in post-licensing proceedings in hydroelectric projects. *See SMUD, Order Granting Intervention in Part*, 171 FERC ¶61,131, P. 13 (May 21, 2020), *citing Kings River Conservation District*, 36 FERC ¶ 61,365 (1986) (describing FERC policy of post-licensing interventions for hydroelectric projects). On the hydro side, the Commission's, "longstanding policy and practice has been to provide notice and allow an opportunity for intervention and rehearing when a filing 'entails a material change in the plan of project development or terms of the license, would adversely affect the rights of a property holder in a manner not contemplated by the license'...." *Kings River Conservation District*, 36 FERC ¶ 61,365 (1986). Spire's emergency certificate application satisfies this criteria. The Landowners' rights will be directly and adversely affected by a grant of a temporary certificate which could result in an unauthorized taking of Landowners' properties since Spire never acquired legal title to the easements. Accordingly,

Central and the Landowners should be deemed timely intervenors for purposes of protesting Spire's application for a certificate.

III. FACTUAL BACKGROUND

A. Spire Receives A Certificate and Races to Condemn the Properties

On August 3, 2018, the Commission, by a 3-2 margin granted Spire a certificate of necessity and convenience to construct and operate a 65-mile pipeline. Because the pipeline would run through and potentially destroy highly productive farmland owned by these Landowners and others, Spire agreed to comply with the stringent requirements of the Illinois AIMA along with other Commission regulations for restoration of properties. Certificate Order at P. 241. In addition, Spire also committed to, "limit the use of eminent domain to the greatest extent possible by negotiating mutually acceptable permanent and temporary workspace easement agreements with any impacted landowners." Certificate Order, P. 118. Yet despite its promises, Spire never engaged in *bona fide* negotiations with the Landowners. In fact, the Certificate Order itself at P. 119, as well as then-Commissioner Glick's dissent, both noted that Spire had not yet finalized agreements for most of the property required for the project.

Following the issuance of the Certificate Order in August 3, 2018, Spire could have continued to negotiate with landowners as it promised. Yet just twelve days later, on August 15, 2018, Spire raced to three different federal district courts to file condemnation complaints against all of the Landowners pursuant to Section 717f(h) of the Natural Gas Act. According to Chairman Glick's dissent on rehearing (*Spire Pipeline Order on Rehearing*, 169 FERC ¶ 61,134 (2019) (Rehearing Order) at P. 25):

All told, it appears that Spire prosecuted condemnation proceedings against roughly 40 percent of the relevant landowners in Missouri and 30 percent of the relevant landowners in Illinois. It should go without saying that such extensive use

of eminent domain has a considerable effect on landowners and surrounding communities.

B. Spire Gains Possession But Not Title

Unlike many other condemnation statutes, the Natural Gas Act does not grant certificate holders “quick take” powers -- *i.e.*, the ability to take property prior to adjudication and payment of just compensation. However, federal courts have allowed pipeline companies holding a valid FERC certificate to gain immediate possession of property through a preliminary injunction. *See East Tennessee Natural Gas Co. v. Sage*, 361 F.3d 808 (4th Cir. 2004)(allowing pipelines to seek injunctive relief for immediate possession in condemnation action upon demonstration of irreparable harm). Here, all three federal courts granted Spire immediate possession, finding that Spire held a valid certificate and could not place its project in service to the detriment of customers if injunctive relief was denied.⁶

Although a preliminary injunction is a quick fix that enables a pipeline to quickly proceed with a project, it is not without risk. Significantly, a preliminary injunction confers only equitable rights to use the property; legal title does not transfer until just compensation is determined and paid. *Sage*, 361 F.3d at 825 (explaining that landowners’ ability to retain legal title protects them if the project is abandoned or compensation is inadequate). Presumably, Spire was aware that it was placing its project at risk by failing to secure legal title through negotiations with at least some of the Landowners, but it chose to take its chances. What’s more, Spire never disclosed to either the Commission nor its investors that nearly three full years after issuance of the certificate, Spire had not yet obtained legal title to the easements necessary to operate the project.

C. Spire Fails to Restore the Properties

⁶ All three federal district courts issued Injunction Orders in December 2018. *See* Dockets, *supra* at n. 4.

Spire also shirked its obligation to restore the properties. As already discussed earlier in Part II.A, Spire's slipshod construction practices and repeated failure to restore the properties has left the Landowners with millions of dollars in damage in the form of lost topsoil, uneven grade, clogged drainage, and deep compaction which have diminished the productivity of the easement areas and caused impacts outside the easement such as flooding and erosion.

Most recently, on July 27, 2021, the Commission dispatched staff to inspect sites along the Spire line in Missouri and Illinois. Staff subsequently filed an inspection report documenting outstanding damage. The Commission issued a memo July 31, 2021, ordering Spire to continue to work with landowners to address their restoration concerns and within 30 days, prepare and file a detailed list of all outstanding restoration issues to ensure that restoration is successful, including those newly identified areas observed and documented during the inspection, and include in the filing a proposed schedule for completing the identified restoration work.⁷

D. The D.C. Circuit Decision

Meanwhile, as Spire dragged its feet on acquiring legal title to the easement or settling restoration claims with Landowners, EDF's challenge to the Commission certificate wound its way through rehearing and judicial review. On June 22, 2021, the D.C. Circuit granted EDF's petition and vacated the Spire certificate.

Following the D.C. Circuit's decision, the Landowners moved to vacate the federal courts' orders granting immediate possession based on changed circumstances,⁸ *i.e.*, that the certificates that had originally justified the injunction were no longer valid. Earlier this week,

⁷ Spire has contacted some but not all of the landowners to discuss resolution of outstanding restoration claims. As of the date of this filing, many outstanding restoration issues still remain unaddressed - although Spire has until the end of August to report back to the Commission.

⁸ See *Landowner Letter, Motion to Vacate (July 19, 2021)*, FERC e-Library, Accession No. 202107-19.

the Southern District of Illinois stayed all eminent domain proceedings pending resolution of the D.C. Circuit remand while the other two courts have not yet acted.

IV. PROTEST

With its certificate invalidated, Spire now urges the Commission for a temporary certificate to enable the pipeline to continue to operate to avoid service disruptions to Spire Missouri customers. It is expected that other parties may argue that Spire's claim that St. Louis will freeze over this winter if the pipeline shuts down is exaggerated because Spire can access other supply options to serve customers -- though these options are unlikely to be as lucrative for Spire's shareholders.⁹ The Landowners agree but in the interest of economy do not otherwise dwell on this point in this Protest.

In any event, even if the Commission is inclined to accept Spire's emergency claims, the Commission cannot grant Spire a temporary certificate absent certain conditions. First, Spire lacks the necessary property rights to continue pipeline operation under a temporary certificate, and because the original certificate was invalidated, Spire cannot acquire these rights through eminent domain. Therefore, the Commission must condition a grant of a temporary certificate on Spire's negotiated acquisition of property rights from the landowners. Second, Spire is not entitled to a second, temporary certificate until it discharges its restoration obligations under the origins certificate, so a grant of a temporary certificate must also be conditioned on Spire's resolution of restoration of the properties to Landowners' satisfaction. Without these conditions, the Commission must deny the temporary certificate. Discussion follows.

⁹ See *February Deep Freeze Propels Profits*, St. Louis Today (May 7, 2021), online at (https://www.stltoday.com/business/local/february-deep-freeze-propels-spire-profits/article_39c5791e-9cb7-5ff3-af89-a215a74f8aa6.html) (reporting that Spire profits rose exponentially due to the February 2021 freeze, yielding quarterly profits of \$187.4 million, a 40 percent increase over the same period a year prior.)

A. The Commission Cannot Grant Spire A Temporary Certificate Because Spire’s Original Certificate Was Invalidated and Spire Lacks Legal Property Rights for Temporary Operation of the Project

Section 7f(c)(1)(B) of the Natural Gas Act provides in relevant part that:

the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate...

A temporary certificate does not function as a stand-alone approval, but rather, is derivative of an underlying authorization - for example, a short-term expansion of storage capacity at an already certificated-facility (*Columbia Gas*, 118 FERC ¶61,082 (2007)(granting temporary certificate to increase storage capacity) or an authorization to substitute another facility to provide stop-gap service under an existing certificate. *See Tri State Ethanol*, 110 FERC ¶62,350 (2005)(approving temporary certificate for use of an ethanol facility to provide service under certificate where explosion damaged facilities). Congress did not intend for a company to “back-door” service through a temporary certificate when the underlying certificate was invalidated. *See Algonquin Gas Transmission v. Federal Power Commission*, 201 F.2d 334, 340-341 (1st Cir. 1953)(affirming denial of temporary certificate when gas company was never validly certified to supply gas to the area for which temporary permit was sought and therefore, could not be said to be “maintaining service.”).

1. A Temporary Certificate May Not Confer Eminent Domain Powers.

That said, the Landowners do not necessarily object to a grant of a temporary certificate if the Commission were to determine that a true emergency exists. But the Commission cannot grant this relief because Spire does not have legal title to the property rights needed to maintain the pipeline. As described earlier, Spire currently has an equitable right to possession of the Landowners’ properties. The court orders granting injunctive relief assumed that Spire held a

valid certificate and granted immediate possession so that Spire could enforce its right under the certificate to construct and operate the project. With the certificate invalidated, however, the foundation for the injunction granting possessions crumbles.

Spire cannot rely on the temporary certificate to justify continuation of equitable possession or to condemn property rights necessary for the project. First, Section 717f(h) extends eminent domain rights to certificate holders, not temporary certificate holders and because eminent domain powers are in derogation of property rights, any authorization of condemnation powers must be narrowly construed. *Tenn. Gas Pipeline v. 104 Acre Prov. Cty.*, 749 F. Supp. 427, 432 (D.R.I. 1990), *citing Delaware, Lackawanna W. R.R. v. Morristown*, [276 U.S. 182, 192](#), 48 S.Ct. 276, 278, 72 L.Ed. 523 (1928) (“the taking of private property for public use is deemed to be against the common right and authority so to do must be clearly expressed”). Second, as the *Algonquin* court ruled, a temporary certificate may only be used to maintain validly granted rights under the existing certificate, not to create new ones. *See Algonquin Gas Transmission v. Federal Power Commission*, 201 F.2d 334, 340-341. Here, with the underlying certificate -- the very source of a pipeline company’s eminent domain authority -- invalidated, Spire cannot use condemnation to acquire the rights to keep its pipeline in place to continue to operate.

Consistent with this precedent, the Commission must state in the temporary certificate that it does not authorize Spire to use eminent domain to take the properties. This express limitation is necessary to prevent Spire from attempting to rely on the temporary certificate as a basis for condemning rights for the temporary certificate, or expanding the injunction orders granted by the federal district courts based on the now invalidated FERC certificate.

2. Spire Must Acquire the Properties Through Negotiation to Qualify for a Temporary Certificate.

Holding that a temporary certificate does not confer eminent domain rights is consistent with the Natural Gas Act and the Takings Clause. Moreover, such a ruling is not prejudicial to Spire which had ample opportunity to avoid this predicament. For example, if Spire had negotiated easements with the Landowners from the get-go it would not only have acquired legal title to the easements necessary for operation of the pipeline but also allayed now-Chairman Glick's concerns that Spire's "extensive use of eminent domain has a considerable effect on landowners and surrounding communities." Rehearing Order, Glick Dissent at P.25. Yet Spire chose to race to court to condemn the properties before the ink on the certificate was dry.

Once in court, Spire could have changed the narrative by negotiating with Landowners after gaining possession. But at that point, Spire gave up on any effort to negotiate, content to stake the property rights for a multi-million dollar project on an order issued by judicial fiat and backed by a certificate that was vulnerable to reversal. In so doing, Spire harmed all stakeholders. Spire's insistence on litigating the condemnation cases forced Landowners to engage in protracted, complicated and costly condemnation lawsuits before appointed Commissioners (paid for by taxpayer dollars). Spire's reliance on a court order for site access jeopardized continued service to customers and put millions of dollars of shareholder investment at risk.

Worst of all, Spire's failure to pin down legal easement rights places the Commission in an awkward situation. Absent Spire's ownership of necessary property rights to continue operation of the project, or the ability to obtain them through eminent domain (which it lacks because the certificate was invalidated), the Commission cannot grant the temporary certificate that Spire requested even if the Commission determined that it was necessary.

There is a solution to this conundrum: the Commission must condition a temporary certificate on Spire's acquisition of easement rights through negotiations with the Landowners. Although no specific statutory authority exists for the Commission to impose conditions on temporary certificates, "such authority [is] inherent in the power to summarily grant or reject applications for temporary service." See *Sunray Mid-Continent Oil v. Fed. Power Com'n*, 270 F.2d 404, 408 (10th Cir. 1959).

Spire may argue that acquiring requisite property rights is impossible without eminent domain. But the fact is that many unregulated private companies (from small wind and solar developers to commercial entities like Wal-mart) to countless other FERC-regulated companies -- successfully acquire property rights for projects without relying on condemnation as a crutch. Spire generated \$187 million in profits during the first quarter of 2021 alone. Surely Spire can afford to compensate Landowners fairly to ensure continued operation of the pipeline until the Commission makes a determination on whether to issue a new certificate.

Conditioning a temporary certificate on Spire's acquisition of property rights will also ensure protection of the public interest. Once the D.C. Circuit mandate vacating the certificate takes effect, Spire will be in trespass on the Landowners' property and potentially liable for payment not just for occupation of the properties but for punitive damages as well. More seriously, once uncertificated, the pipeline easement will be loose "in the wild," outside Spire's control and the Commission's jurisdiction. Unless Spire obtains legal title to the easements through negotiations with landowners, Spire's loss of site access is only a matter of time. Accordingly, if the Commission decides to grant a temporary certificate, it must condition the grant on Spire's negotiated acquisition of legal title to the easements necessary to keep the project in service.

The need for the Commission to take this action becomes more necessary in light of Spire attempting to circumvent the Commission. In its recent pleadings at the Central District of Illinois District Court, Spire requests the Court to grant Spire new access to certain Landowners' properties (Phil Brown and Marc Steckel). *See* Attachment B (Spire's Second Preliminary Injunction Request). This second preliminary injunction request comes without compensation being paid for damages already incurred. Spire's actions and positions were foreshadowed by Commission Glick's dissent in the original certificate. Thus, the need for Landowner approved remediation needs incorporated into any Certificate.

B. The Commission Must Condition a Temporary Certificate on Restoration of the Properties to the Landowners' Satisfaction.

The Commission certificate obligated Spire to comply with the Illinois AIMA and FERC Upland Erosion Control regulations which govern topsoil segregation during project construction and require restoration of properties to pre-construction conditions. Spire placed its project in service in November 2019 and still, a full year and a half later, the properties remain in a shameful state of disrepair as described *supra*. Because the certificate is the source of Spire's obligations, once it is formally invalidated, the Landowners are concerned that the Commission's ability to force Spire to repair the properties may be compromised. To prevent this outcome, the Commission must require Spire to restore the Landowners' properties to their satisfaction or to compensate Landowners for self-performance. Most importantly, restoration issues must be resolved *before* a temporary certificate is issued to ensure that the properties are not left in an irreparable state of disrepair when the Spire certificate terminates.

IV. CONCLUSION

If the Commission finds that a temporary certificate is justified based on exigent emergency circumstances, the Landowners would not object to its general issuance. But the only

way that the Commission may lawfully award Spire a temporary certificate consistent with the public interest and the Takings Clause of the Constitution is to (1) clearly state the temporary certificate does not confer eminent domain powers, and (2) condition a temporary certificate on Spire's negotiated acquisition of legal title to the easements needed to keep the pipeline in service and Spire's restoration of the properties to FERC and Illinois AIMA standards and the Landowners' satisfaction either through doing the work itself or paying Landowners to self-perform. Absent these conditions, Spire's application for a temporary certificate must be denied.

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Respectfully submitted,

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Appendix A

List of Landowners Intervening in Protest of Spire Application for Temporary Certificate

Landowner Name	Tract Number	Outstanding Restoration Issues
Betty and Keith Jefferson	IL-SC-003.000	<p>Grade is off by an average of 11.88" inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Loss of topsoil. Topsoil / Subsoil Mixing. Average depth to 300 PSI, On-ROW: 3.4" Average depth to 300 PSI, Off-ROW: 11.63" ROW is extremely wet and saturated with several areas of ponding throughout the ROW.</p>
Betty and Keith Jefferson	IL-SC-008.000	<p>Grade is off by at least 6" inside the ROW. Loss of topsoil. Topsoil / Subsoil Mixing. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is expected to be widespread inside the ROW but has been too wet to test for compaction. ROW is extremely wet and saturated with several areas of ponding throughout the ROW.</p>
Kenneth Davis	IL-SC-018.000	<p>Grade is off by an average of 10.64" inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 2.33" Average depth to 300 PSI, Off-ROW: 8.25" Several areas of erosion, up to 28" deep. Southern slope near center of property, adjacent to pipeline are unstable and slipping. These need to be stabilized immediately. Slope very near pipeline workspace is unstable and slipping towards pipeline.</p>
William and Alice Ballard	IL-SC-019.000	<p>Grade is off by an average of 12.46" inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 2.5" Average depth to 300 PSI, Off-ROW: 10" ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Large areas of erosion. Up to 20" deep. Rocks and debris buried in ground.</p>
Anne and Matthew Clayton	IL-GC-022.000	<p>Grade is off by an average of 9" inside the ROW. General compaction of soils compared to off-ROW areas. Creek bank slip. Noxious weeds are spreading throughout CRP tract. Property is under existing NRCS CRP easement and landowner is risk of being kicked out of program and would have to reimburse NRCS for funds paid.</p>
Hart Farms, LLC	IL-GC-041.001	<p>Grade is off by an average of 14.65" inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 3.67" Average depth to 300 PSI, Off-ROW: 11.67" ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Contours have not been restored and water is unable to discharge into road ditch.</p>

Landowner Name	Tract Number	Outstanding Restoration Issues
Jo Ann Mansfield	IL-GC-068.000	<p>Grade is off by an average of 10.5" inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Rill and gully erosion present throughout easement. Large dead spots in easement.</p>
Bernard H Meyer Trust #9-11, Mary Lois Meyer trust #9-11	IL-GC-093.000	<p>Grade is off by an average of 13" inside the ROW. Subsoil is buried between topsoil layers inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 4.25" Average depth to 300 PSI, Off-ROW: 11.78" ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Construction debris found buried into the soils.</p>
Bernard H Meyer Trust #9-11, Mary Lois Meyer trust #9-11	IL-GC-094.000	<p>Grade is off by an average of 14.61" inside the ROW. Subsoil is buried between topsoil layers inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 3.17" Average depth to 300 PSI, Off-ROW: 12.14" ROW is extremely wet and saturated with several areas of ponding throughout the ROW.</p>
Jacob D. Gettings, Mildred L. Gettings, Jacob "Jay" Gettings TTE Land Trust	IL-JC-149.000	<p>Grade is off by an average of 13.3" inside the ROW. Subsoil is buried between topsoil layers inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 3.25" Average depth to 300 PSI, Off-ROW: 10.83" ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Severe yield reduction inside and outside the ROW.</p>
Dannie Malone	IL-JC-179.000	<p>Grade is off by an average of 10.5" inside the ROW. Soil compaction is widespread inside the ROW. ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Slope on north end of property is eroding severely. Approx. 2 feet of silt has accumulated in silt fencing. Creek bank on southern property line is unstable and rip rap is falling downslope and into creek.</p>

Landowner Name	Tract Number	Outstanding Restoration Issues
Sinclair Family Farm, LLC	IL-JC-183.000	<p>Grade is off by an average of 12.96" inside the ROW. Subsoil is buried between topsoil layers inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 4" Average depth to 300 PSI, Off-ROW: 12.4" Inaccessible agricultural field on southern portion of properties. Rip rap rocks and construction debris buried into soils by road crossing. ROW is extremely wet and saturated with several areas of ponding throughout the ROW. In the fall of 2019 the farmer attempted to cross the easement but Sinclair's tractor became struck and subsequent attempts to remove the equipment resulted in damages and repair costs. Spire's easement has caused instability of soils and widespread erosion throughout the easement. Severe erosion was evident north of the landowners access road due to instability inside the easement. Erosion ditches have formed as deep as 28" throughout the easement and leading off-ROW. Area north of Sinclair access road continues to erode and ineffective erosion control is allowing sediment and silt to discharge into the wetland and onto private property in several locations. Much of the Spire easement is covered with areas of rill erosion. There are three drain tiles that will need replaced south of the farm road approximately 325 feet long with a 12" drain outlet. Four additional drain tile lines approximately 300 feet accords the easement will need replaced north of the farm road. Additional drainage is recommended south of the creek</p>
4850 Longhorn, LLC	IL-JC-200.000	<p>Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Deep and widespread erosion has formed throughout the easement as deep as 36 inches. High levels of construction debris has been observed on the surface of the ROW. Excessive levels of rocks have been observed on the surface of the ROW, buried in the soils, and uncovered by erosion. 3 creeks have severe erosion and instability causing slipping into waterbodies. Several washes have spread high volumes of sediment into the landowner's fields. Severe erosion flowing into grassy waterway.</p>
Greg and Connie Stout	IL-JC-223.000	<p>Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. ROW is extremely wet and saturated with several areas of ponding throughout the ROW. Currently, noxious weeds including Lambs Quarter and Maretail are present inside the easement area and are quickly spreading outside of the easement area. Mr. and Mrs. Stout will be held liable to control these invasive weeds per their CRP contract.</p>

Landowner Name	Tract Number	Outstanding Restoration Issues
Sheila Segraves	IL-JC-220.000	<p>Grade is off by an average of 10.5" inside the ROW. Trenchline soil subsidence up to 17" deep. Driveway is settling severely. Slopes and contours have not been restored correctly on the north side of the property. These issues are creating runoff issues and erosion issues. Pond on south side has been inundated with silt throughout construction and may need to be dredged. Large staging area is sunken and vegetation is visually impaired. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. ROW is extremely wet and saturated with several areas of ponding throughout the ROW.</p>
Dennis & Virginia Schaeffer	MO-SC-312.000	<p>Grade is off by an average of 12.83" inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 3.67" Average depth to 300 PSI, Off-ROW: 11.71" ROW is extremely wet and saturated with several areas of ponding throughout the ROW.</p>
Cletus Kampmann Jr.	MO-SC-319.000	<p>Grade is off by an average of 12.03" inside the ROW. Drain tiles are crushed and/or clogged inside the ROW and are causing drainage issues outside the ROW. Soil compaction is widespread inside the ROW. Average depth to 300 PSI, On-ROW: 4.33" Average depth to 300 PSI, Off-ROW: 11.5" ROW is extremely wet and saturated with several areas of ponding throughout the ROW.</p>
Eugene and Joyce Weidner	880L-011.00	<p>Topsoil and soil horizons have not been restored. Soil compaction is present inside the ROW compared to outside the ROW. Areas inside and around the easement are excessively saturated and have trouble draining. Residential property. Weidner home is very close to the pipeline.</p>
Corgaf LLC: Cori Patricia Christiansen, Barry Michael Corona, Kathleen Ann Corona-Bittick, and Karin Gaut	880L-014.00	<p>Contours not restored to pre-construction condition. Erosion present. Property is zoned commercial.</p>
Alan & Barbara Schlemmer	880L-023.00	<p>Contours not restored to pre-construction condition. Excessive rocks found on the surface. Matting and construction debris found throughout the surface. Easement is slipping north into woods.</p>
Margaret G. Bell	880L-024.01	<p>Contours not restored to pre-construction condition. Excessive rocks found on the surface. Matting and construction debris found throughout the surface. Easement is slipping north into woods. Water well has been impacted and is now severely discolored since HDD activities took place.</p>

Additional Landowner Intervenor - Marc Steckel and Phil Brown (See also Attachment B)

Sherry and Richard Hunt	880L-008.00	Uneven grade and contouring
Social Betterment Properties	880L-044.00	Uneven grade and contouring
Social Betterment Properties	880L-047.00	Uneven grade and contouring
Lynn and Janet Meyer	IL-JC-189.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement. Estimated Cost to Restore: \$730,000
Delbert Fraley Trust	IL-JC-191.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement. Estimated Cost to Restore: \$93,000
RWF Partnership	IL-JC-192.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement. Estimated Cost to Restore: \$212,000
Cathy Schrodt Perkinson	IL-JC-194.001	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement. Estimated Cost to Restore: \$65,000
RWF Partnership, Barbara Rogers, and	IL-JC-194.002	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement: \$277,000
Jacob and Kaeta Cronin	IL-JC-222.000	Significant soil runoff into adjacent pond. Estimated Cost to Restore: \$26,000
Dorwood F. Borgschulte,	MO-SC-304.002	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Dorwood F. Borgschulte,	MO-SC-306.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement

Alan and Sharon Poeggemueller	MO-SC-307.000	Uneven grade and contouring, easement is 'concave' ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil. Estimated Cost to Restore: \$357,000
Little Farm LLC	MO-SC-309.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Beckemeier Trust	MO-SC-310.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Simon Farms, LLC	MO-SC-313.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Bradley Schmidt	MO-SC-314.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil. Estimated Cost to Restore: \$115,000
F & Z Knobbe Farm, LLC	MO-SC-316.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Francis J. Machens Trust, et al	MO-SC-317.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Neil Rothermich	MO-SC-318.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil. Estimated Cost to Restore: \$140,000

David and Nancy Machens	MO-SC-320.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Francis J. Machens Trust	MO-SC-321.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Meyer Agricultural Enterprises, Inc.	MO-SC-323.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Saale Farms, Inc.	MO-SC-324.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Aloysius Machens Trust	MO-SC-327.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Saale Farms, Inc.	MO-SC-328.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Kathleen Thomas	MO-SC-329.001	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil
Kevin and Shelley Machens	MO-SC-330.000	Uneven grade and contouring, easement is 'concave' ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil. Estimated Cost to Restore: \$221,000

C & J Steinhoff Properties, LLC	MO-SC-334.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Saale Family, L.P.	MO-SC-339.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Saale Family, L.P.	MO-SC-345.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Saale Family, L.P.	MO-SC-346.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Sarah Stalschmidt	MO-SC-347.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Vincent and Carol Saale	MO-SC-347.001	Uneven grade and contouring, easement is 'concave' ruts, depressions, lost topsoil, poor drainage through easement, mixing of sub and topsoil. Estimated Cost to Restore: \$298,000
Casper Brass and M&E Farms	MO-SC-349.001	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Saale Farms, Inc.	MO-SC-352.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Saale Farms, Inc.	MO-SC-353.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Saale Family, L.P.	MO-SC-355.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement

Saale Family, L.P.	MO-SC-356.000	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement
Judy Worlitz	MO-SL-372.002	Uneven grade and contouring, ruts, depressions, lost topsoil, poor drainage through easement

Appendix B

Spire Memorandum in Support of Motion for Additional Access

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

SPIRE STL PIPELINE LLC,)
a Missouri limited liability company,)
)
Plaintiff,)
)
v.)
)
BETTY ANN JEFFERSON as TRUSTEE)
of the BETTY ANN JEFFERSON)
TRUST #11-08, *et al.*,)
)
Defendants.)

Case No: 3:18-cv-03204

**MEMORANDUM IN SUPPORT OF THE MOTION FOR PRELIMINARY
INJUNCTION FOR IMMEDIATE POSSESSION OF CERTAIN TEMPORARY
EASEMENTS AND TEMPORARY ACCESS ROAD TAR-010**

NOW COMES, Plaintiff, SPIRE STL PIPELINE LLC, (“Spire STL”) by and through its attorneys, Sorling Northrup, Lisa A. Petrilli and David A. Rolf, of Counsel, pursuant to Local Rule 7.1, and for its Memorandum in Support of the Motion for Preliminary Injunction for Immediate Possession of Certain Temporary Easements and Temporary Access Road TAR-010 against the Defendants, Philip Brown and Zena Brown (Counts XVI, XVII, XVIII, XIX), and against Defendant Marc Steckel (Counts XXII, XXIII, XXV) respectfully represents as follows:

I. Introduction

On August 3, 2018, the Federal Energy Regulatory Commission (“FERC”) in Docket Nos. CP17-40-000 / CP17-40-001 granted a Certificate of Public Convenience and Necessity (“FERC Certificate”) to Spire STL directing the construction and operation of the Spire STL Pipeline Project, the 65-mile natural gas pipeline described in Spire STL Pipeline’s Verified Complaint (“Spire STL Pipeline Project”). The FERC Certificate sets forth certain conditions

and requirements under which Spire STL must construct the Spire STL Pipeline Project, including the requirements that: the Spire STL Pipeline Project be operational within two (2) years of the date of the FERC Certificate; Spire STL comply with the environmental specifications and FERC conditions; and Spire STL not deviate from the route established in the FERC Certificate. The property interests sought and described in the Complaint for Condemnation Exhibits 2A through 29B include “Proposed Easement” / “Proposed Permanent Easement”, “Temporary Workspace”, “Additional Temporary Workspace”, and “Temporary Access Road”. These easement interests are the same property interests approved and designated in the FERC Certificate as more fully explained in Spire STL’s Motion to Confirm Condemnation (d/e 79) and Memorandum in Support of the Motion (d/e 80).

On December 7, 2018, this Court entered an Order Confirming Condemnation. On December 14, 2018, this Court entered an order granting a preliminary injunction. (d/e 114) In early 2019, Spire STL Pipeline commenced construction of the Spire STL Pipeline Project. Spire STL Pipeline completed construction and restoration activities prior to August 2020. On January 12, 2021, Spire STL Pipeline moved to modify the order granting the preliminary injunction as at that time Spire STL Pipeline believed it no longer needed access to the temporary easement areas and temporary access roads to comply with the conditions in the FERC Certificate.

On March 18, 2021, FERC issued a new order in Docket No. CP17-40-000 / CP17-40-001, requiring that Spire undertake additional remediation activities on certain landowners’ properties based upon a report from the Illinois Department of Agriculture (IDOA). The remediation work FERC ordered is to be performed on both the permanent easement areas and on the temporary easement areas. Additionally, the FERC ordered work requires use of one temporary access road, TAR-010, on the Brown’s property.

Upon request from each landowner named in the FERC's March 18, 2021 Order, Spire STL Pipeline made offers to settle all issues with each landowner including offers of compensation to landowners to self-perform the remediation work ordered by FERC. After those attempts to settle with the Browns and Steckel were unsuccessful, Spire STL Pipeline attempted to negotiate access to the temporary easement areas and use of temporary access road TAR-010. The Browns and Steckel have refused Spire's request for access to the temporary easement areas and use of temporary access road TAR-010 despite the Browns and Steckel specifically requesting that FERC order the remediation work detailed in the March 18, 2021 FERC Order. Spire STL Pipeline seeks a preliminary injunction granting Spire STL Pipeline access to the temporary easement areas and to TAR-010 to complete the remediation work ordered in FERC's March 18, 2021 Order on the Brown and Steckel properties.

II. Factual Background

A. Spire's initial construction and restoration activities pursuant to the FERC Certificate were completed prior to January 2021, and at that time Spire STL Pipeline no longer needed certain easements to comply with the FERC Certificate.

On or about October 19, 2018, Spire STL Pipeline filed its Motion for Preliminary Injunction seeking immediate possession of the easement areas described in the Complaint and in Exhibits 2A through 29B in order to construct, operate, and maintain the Spire STL Pipeline Project, a natural gas pipeline project approved by FERC on August 3, 2018 (d/e 84). On or about December 14, 2018, this Court granted Spire STL Pipeline's Motion for Preliminary Injunction stating:

Plaintiff Spire STL Pipeline LLC's Motion for Preliminary Injunction for Immediate Possession is GRANTED. Plaintiff may take immediate possession of the easement interests in Defendants' property for the construction, operation, and maintenance of the natural gas pipeline approved by FERC on August 3, 2018, but only after deposits with the Clerk of the Court a surety bond in the amount of \$1.35 million...In compliance with the requirements set forth in Rule 65(d)(1) of

the Federal Rules of Civil Procedure, the easements to which this Order applies are set forth in the attached exhibits (Exhibits 2A through 29B from Plaintiff's Verified Complaint) (d/e 114).

On or about December 18, 2018, Spire STL Pipeline deposited the surety bond of \$1.35 million with the Clerk of the Court (d/e 115). Shortly after possession was granted, Spire STL Pipeline began construction of the Spire STL Pipeline Project. On or about November 1, 2019, Spire STL Pipeline completed construction activities on the Brown's and Steckel's properties, even though restoration was ongoing. D. Feeman Decl., ¶3. On or about November 22, 2019, the Spire STL Pipeline Project was placed in service and is operating within the area shown and described in the Verified Complaint as either "Proposed Easement" or "Proposed Permanent Easement." *Id.* at ¶4.

Spire STL Pipeline believed its restoration activities on Defendants' properties in the areas described and shown as "Temporary Workspace," "Additional Temporary Workspace," and "Temporary Access Road" were completed on or about July 1, 2020 in accordance with the FERC Certificate. *Id.* at ¶5. Spire STL Pipeline believed that it no longer required possession of the areas on Brown's and Steckel's properties described and shown as "Temporary Workspace," "Additional Temporary Workspace," and "Temporary Access Road" TAR-010 to continue to construct, operate, and maintain the Spire STL Pipeline in accordance with the FERC Certificate. *Id.* at ¶6.

On January 12, 2021, Spire STL Pipeline filed its Motion to Modify Preliminary Injunction Order seeking the release of the easements described as "Temporary Workspace," "Additional Temporary Workspace," and "Temporary Access Road" in this Court's December 14, 2018 Order (d/e 162). On January 27, 2021, the Court granted Spire's Motion to Modify Preliminary Injunction Order and the "Temporary Workspace," "Additional Temporary

Workspace,” and “Temporary Access Road” were released from the Order dated December 14, 2018 (d/e 168). Spire STL Pipeline retains access rights through the “Proposed Easement” / “Proposed Permanent Easement” areas pursuant to this Court’s December 14, 2018 Order as modified on January 27, 2021.

B. On March 18, 2021, FERC ordered that Spire STL Pipeline undertake additional remediation work within the Proposed Easement / Proposed Permanent Easement, Temporary Workspace, and Additional Temporary Workspace areas on certain properties in accordance with the conditions in the FERC Certificate.

On March 18, 2021 FERC ordered that Spire STL Pipeline undertake additional remediation work on certain properties owned by seven sets of landowners. Among those properties are those owned by the Browns (described in Counts XVI, XVII, XVIII, XIX), and by Steckel (described in Counts XXII, XXIII, XXV). A copy of FERC’s March 18, 2021 Order is attached as **Exhibit 1** to D. Feeman Decl., ¶7. In FERC’s March 18, 2021 Order, FERC states that it has “sole authority to ensure compliance with its certificate orders” including the FERC Certificate issued to Spire STL Pipeline on August 3, 2018 in FERC Docket Nos. CP17-40-000 / CP17-40-001. A copy of the IDOA Report is attached as **Exhibit 2** to D. Feeman Decl., ¶9. The FERC’s March 18, 2021 Order was entered following the Illinois Department of Agriculture’s (IDOA) submission of a report dated August 14, 2020 (IDOA Report) discussing remediation issues on certain properties, and landowners’ responses to the IDOA Report. *Id.*

1. The August 14, 2020 IDOA Report.

On June 19, 2020, Spire STL Pipeline met with landowners, landowners’ representatives, and IDOA to view the condition of certain properties. *Id.* at ¶10. Among those properties viewed were the Brown’s properties and Steckel’s properties. Philip Brown, Steckel, and their attorney, Joshua Evans (Evans), were present on June 19, 2020. *Id.* On August 14, 2020 IDOA issued a

report and submitted the report to FERC. In its report, IDOA asserts that Spire STL Pipeline did not adhere to the terms of an Agricultural Impact Mitigation Agreement (AIMA) between Spire STL Pipeline and IDOA dated March 15, 2017 in restoring certain properties following initial construction of the Spire STL Pipeline Project. *Id.* at ¶10. A copy of the AIMA is attached as **Exhibit 3** to D. Feeman Decl., ¶11.

FERC reviewed the IDOA report and allegations, and then requested landowner comment. *Id.* at ¶12.

2. Brown and Steckel’s Response to the IDOA Report.

The Browns and Steckel each submitted a response to the IDOA Report to FERC through their attorney, Evans. A copy of the Brown’s September 14, 2020 response to FERC is attached as **Exhibit 4** to D. Feeman Decl., ¶13 and a copy of Steckel’s September 11[sic], 2020 response to FERC is attached as **Exhibit 5** to D. Feeman Decl., ¶13. In the responses, both the Browns and Steckel “respectfully request that the FERC mandate Spire take the corrective actions set forth in the AIMA or otherwise come to a private agreement with the landowners.” *Id.* at ¶13-14; Exhibit 4, p. 1 ¶2; Exhibit 5, p. 1 ¶2. The FERC acknowledges it has no authority to compel Spire STL Pipeline issue compensation or enter into private agreements with landowners. Indeed, its authority is to compel Spire STL Pipeline to undertake certain remediation action as in the March 18, 2021 Order.

3. FERC’s March 18, 2021 Order directed Spire STL Pipeline perform remediation on the Brown’s properties and on Steckel’s properties.

On March 18, 2021, FERC, after review of the IDOA Report, the AIMA, and the landowner comments, issued an order requiring Spire STL Pipeline take additional remediation / corrective action on certain properties, including the Brown and Steckel properties. D. Feeman Decl., ¶15. In the March 18, 2021 Order, FERC notes that it has the sole authority to ensure

compliance with the FERC Certificate issued to Spire STL Pipeline. *Id.* at ¶15. The terms of the AIMA between Spire STL Pipeline and IDOA were incorporated into the FERC Certificate as a condition of the FERC Certificate. Because FERC has sole authority to ensure the Spire STL Pipeline complies with the terms of the FERC Certificate, and the AIMA is a condition of the FERC Certificate, the FERC has authority to determine whether Spire STL Pipeline has complied with the AIMA and to determine whether to order Spire STL Pipeline to take additional remedial action to comply.

FERC notes that the landowners generally agree with the findings in the IDOA Report and acknowledge that the landowners, including the Browns and Steckel, urge the FERC to require Spire STL Pipeline take corrective actions. *Id.* at ¶16. The FERC adopted certain IDOA Report recommendations and ordered as follows:

(A) Spire STL Pipeline shall perform soil decompaction following the guidelines set forth in AIMA section 7(A) and Appendices A and B on certain properties including the Brown and Steckel properties;

(B) Spire STL Pipeline shall conduct soil sampling on certain properties including the Brown and Steckel properties;

(C) Spire STL Pipeline shall perform land leveling and recontouring on certain properties including Steckel's property;

(D) Spire STL Pipeline shall correct the erosion issue on the Steckel property;

(E) Spire STL Pipeline shall employ an agricultural inspector to oversee the work ordered; and

(F) Spire STL Pipeline shall file weekly status reports with FERC.

Id. at ¶17, ¶7 Exhibit 1, pp. 20-22.

The March 18, 2021 FERC Order requires that Spire STL Pipeline remediate the areas referred to in the Verified Complaint as "Proposed Easement" / "Proposed Permanent Easement"

as well as the “Temporary Workspace” and “Additional Temporary Workspace” on the Brown’s and Steckel’s properties. To perform the FERC ordered remediation, Spire STL Pipeline needs access to certain portions of the Brown’s property using Temporary Access Road TAR-010 on the Brown’s property. *Id.* at ¶18.

The March 18, 2021 FERC Order also permitted landowners to request the work be completed on a different timeline. *Id.* at ¶19. All landowners named in the March 18, 2021 Order expressed interest in negotiating payment by Spire STL Pipeline to landowners so that landowners could self-perform the remediation work ordered by FERC on their own timeline. *Id.* Between April 16, 2021 and May 28, 2021, Spire STL Pipeline attempted to negotiate settlement of all issues, including payment for the remediation work required in the March 18, 2021 FERC Order. *Id.* at ¶20. While Spire STL Pipeline tendered offers to each of the landowners named in the March 18, 2021 FERC Order and was able to settle with two of the seven sets of landowners, neither the Browns nor Steckel responded to Spire STL Pipeline’s offers. *Id.* at ¶21.

C. Despite requesting that FERC order Spire STL Pipeline to complete additional remediation work on their properties, the Browns and Steckel refuse to allow Spire STL Pipeline access to the “Temporary Workspace,” “Additional Temporary Workspace,” and use of “Temporary Access Road” TAR-010 to complete the additional FERC ordered remediation work.

After Spire STL Pipeline was unable to negotiate settlement with the Browns and Steckel, Spire STL Pipeline then attempted to negotiate the terms of access and timeline for completion of the remediation work required by FERC in its March 18, 2021 Order. *Id.* at ¶22. Browns and Steckel have generally been unresponsive to Spire STL Pipeline’s request to confirm access, and since at least late 2020 have claimed that Spire STL Pipeline has no right to be present on any property belonging to the Browns and Steckel except on the areas described as “Proposed Easement” or “Proposed Permanent Easement.” *Id.* at ¶23.

On June 2, 2021, Spire STL Pipeline requested that the Browns and Steckel each consent to Spire STL Pipeline's access to and use of the Temporary Workspace, Additional Temporary Workspace, and Temporary Access Road TAR-010 to perform the FERC ordered remediation work on those easement areas. In response to the June 2, 2021 request, counsel for Browns and Steckel stated "as I recall Spire abandoned the temporary workspace." *Id.* at ¶24.

On June 8, 2021, and again on June 9, 2021, Spire STL Pipeline requested consent to access the Temporary Workspace and Additional Temporary Workspace to perform the FERC ordered remediation, and requested consent to use Temporary Access Road TAR-010 to access the easement areas to perform the FERC ordered remediation on those temporary easement areas. Specifically, in its June 9, 2021 correspondence to Evans, Spire STL Pipeline stated:

We've attempted to negotiate resolution of all issues, and are now attempting to try and negotiate access to the temporary easement areas to perform the work your clients requested the FERC order Spire to undertake. We continue to receive no response from you on behalf of your clients. We understand that your clients' position is that Spire is not authorized to access the temporary easement areas because the injunction no longer covers those areas. If that is inaccurate, let us know.

We are again requesting consent from Mr. and Mrs. Brown and Mr. Steckel to access the temporary easement areas and TAR-010 to perform the FERC remediation work. If we do not hear from you by Friday, June 11, 2021 at Noon C.D.T., we will assume your clients continue to deny Spire's access to the temporary easement areas and TAR-010 needed to perform the FERC remediation work.

Neither the Browns nor Steckel responded. *Id.* at ¶25-26.

III. Argument: Spire STL Pipeline has met the standard for obtaining a preliminary injunction for immediate possession of the Temporary Workspace and Additional Temporary Workspace on the Brown's and Steckel's properties, as well as Temporary Access Road TAR-010 on the Brown's property.

The threshold question is whether Spire STL, as a matter of law, has the right of immediate possession of the Brown's and Steckel's real property prior to the determination and

payment of just compensation. Numerous federal courts, including this Court have held that such a right exists if the plaintiff can show irreparable harm if immediate possession is not granted. (d/e 114, p. 4 citing *Guardian Pipeline, LLC v. 950.80 Acres of Land* (“*Guardian I*”), 210 F. Supp. 2d 976, 979 (N.D. Ill. 2002)). “To obtain a preliminary injunction, a plaintiff must first show that: (1) without such relief, it will suffer irreparable harm before final resolution of its claims; (2) traditional legal remedies would be inadequate; and (3) it has some likelihood of success on the merits.” (d/e 114, p. 4 citing *Courthouse News Serv. v. Brown*, 908 F.3d 1063, 1068 (7th Cir. 2018)).

If a plaintiff makes this showing, the Court must weigh the harm the plaintiff will suffer without an injunction against the harm the defendants will suffer if the injunction is issued. The more likely a plaintiff is to prevail on the merits, the less heavily the balance of harms need weigh in the plaintiff’s favor. Lastly, the Court “must ask whether the preliminary injunction is in the public interest, which entails taking into account any effects on nonparties.” The party seeking a preliminary injunction bears the burden of showing that the injunction is warranted. (d/e 114, pp. 4-5)

Spire STL Pipeline has met its burden in showing that a preliminary injunction for immediate possession is warranted. This Court has already confirmed condemnation of the “Proposed Easement” / “Proposed Permanent Easement”, “Temporary Workspace”, “Additional Temporary Workspace”, and use of the “Temporary Access Road” as described in the Verified Complaint exhibits, including Exhibits 17A, 17B, 18A, 18B, 19A, 19B, 20A, and 20B describing those easements on the Brown’s properties and including Exhibits 23A, 23B, 24A, 24B, 26A, and 26B describing those easements on Steckel’s properties. Each of these easements is necessary for the construction, operation, and maintenance of the pipeline authorized in the

FERC Certificate. (d/e 114). Since this Court confirmed condemnation of those easements, Spire STL Pipeline is virtually certain to succeed on the merits, and the only matter left to be resolved is compensation for Spire STL Pipeline's taking of those easement interests.

Spire STL Pipeline has shown that it will suffer irreparable harm for which traditional legal remedies would be inadequate if the court does not issue a preliminary injunction for immediate possession of the "Temporary Workspace" and "Additional Temporary Workspace" on the Brown's properties and on Steckel's properties, and the "Temporary Access Road" TAR-010 on the Brown's property. "A harm is irreparable if it cannot be prevented or fully rectified by the final judgment after trial." (d/e 114, p. 5 citing *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, 549 F.3d 1079, 1089 (7th Cir. 2008)).

The FERC determined that Spire STL Pipeline must perform additional remediation work on the Brown's and Steckel's properties as a condition of the FERC Certificate authorizing the construction, operation, and maintenance of the Spire STL Pipeline Project. The FERC is the sole entity with authority to oversee the construction, operation, and maintenance of the Spire STL Pipeline Project. The FERC determined that Spire STL Pipeline must perform additional remediation work on both the "Proposed Easement" / "Proposed Permanent Easement" areas over which the December 14, 2018 injunction still applies, and on the "Temporary Workspace" and "Additional Temporary Workspace" areas described in Verified Complaint Exhibits 17A, 17B, 18A, 18B, 19A, 19B, 20A, 20B, 23A, 23B, 24A, 24B, 26A, and 26B. To perform this FERC ordered remediation work, Spire STL Pipeline needs to use Temporary Access Road TAR-010 described in Verified Complaint Exhibits 18A and 18B.

Despite requesting that FERC order Spire STL Pipeline to perform the remediation work described in the March 18, 2021 Order, the Browns and Steckel now deny Spire STL Pipeline

access to certain areas on their properties to perform the remediation work. The Browns and Steckel claim that Spire STL Pipeline has no authority to access the Temporary Workspace or the Additional Temporary Workspace, or to use the Temporary Access Road TAR-010, even though both the Browns and Steckel requested that FERC order remediation work on those areas as well as on the Proposed Easement / Proposed Permanent Easement areas. Neither the Browns nor Steckel consent to Spire STL Pipeline's access to perform the FERC ordered remediation, and both have taken the position that Spire STL Pipeline has no authority to perform the FERC ordered work on the Temporary Workspace and Additional Temporary Workspace. By refusing to permit Spire STL Pipeline on certain portions of their properties, the Brown's and Steckel are interfering with Spire STL Pipeline's ability to perform the work ordered by the FERC in the March 18, 2021 Order. Such interference amounts to irreparable harm to Spire STL Pipeline.

While not binding, the Illinois District Court decisions in *Rockies Express I* and *Guardian Pipeline I* are persuasive. Those Courts held that since the pipeline was under a deadline imposed by the FERC, a delay until compensation is determined would cause the pipeline to be unable to meet its FERC imposed deadline. *Rockies Express*, 2008 U.S. Dist. LEXIS 74247, *4; *Guardian Pipeline I*, 210 F. Supp. 2d at 976. Interference with Spire STL Pipeline's ability to comply with the FERC's March 18, 2021 order related to the conditions of the FERC Certificate amounts to irreparable harm to Spire STL Pipeline. Indeed, these individuals are interfering with the FERC's March 18, 2021 Order is against the public interest.

The balancing of the harms weighs in favor of issuing the preliminary injunction for immediate possession, especially given that Spire STL Pipeline is virtually certain to succeed on the merits. As set forth above, Spire STL Pipeline stands to suffer irreparable harm if the preliminary injunction for immediate possession is not issued. Prior to the December 13, 2018

hearing on Spire's first Motion for Preliminary Injunction, defendants made no claim that Spire STL Pipeline's immediate possession of the easements to which Spire STL Pipeline is entitled would cause defendants harm that would not occur if Spire STL Pipeline took possession after the issue of compensation was determined. Any "harm" that occurs by virtue of Spire STL Pipeline's possession of the temporary easement areas for an additional period of time to perform the FERC ordered remediation is an issue of compensation to be addressed later by a commission.

Furthermore, the sole purpose of the FERC's March 18, 2021 Order is to require Spire STL Pipeline to take additional action to remediate the Brown's properties and Steckel's properties impacted in the initial construction of the Spire STL Pipeline Project. The FERC is ordering Spire STL Pipeline to improve the condition of the Brown's properties and Steckel's properties. Why the Browns and Steckel are refusing Spire STL Pipeline access to perform the FERC ordered work benefitting their properties is unclear.

The only remaining issue relates to security. While Steckel has withdrawn 100% of the amount deposited by Spire STL Pipeline in December 2018, the remaining 100% is still being held with the Clerk. Additionally, the full 200% deposited on behalf of the Browns remains with the Clerk. The existing security is sufficient to cover any costs or damages sustained by any party found to have been wrongfully enjoined or restrained as a result of this Motion. See Fed. R. Civ. P. 65(c).

IV. Conclusion

In this case, as in many other FERC Certificate based cases, the standards for a preliminary injunction are easily met. See, *Rockies Express*, 2008 U.S. Dist. LEXIS 74247, *4 (citing *N. Border Pipeline Co. v. 64.111 Acres of Land*, 125 F. Supp. 2d 299, 301 (N.D. Ill.

2000)). The FERC Certificate, combined with this Court's confirmation order, mean that "it is virtually certain that plaintiff will succeed on the merits." *Id.* Further, Spire STL Pipeline's access to both the permanent and temporary easement areas on the Brown's and Steckel's properties benefits the Browns and Steckel. Any potential "harm" is minor in comparison. Spire STL Pipeline has demonstrated irreparable harm since, without possession of the Temporary Workspace, Additional Temporary Workspace, and Temporary Access Road TAR-010, Spire STL Pipeline will be unable to comply with the FERC's March 18, 2021 Order requiring Spire STL Pipeline take further action to remediate the damage to the Brown's and Steckel's properties resulting from the initial construction of the STL Pipeline Project.

WHEREFORE, Plaintiff, Spire STL, respectfully requests that this Court enter an Order granting immediate possession of the of the easements referred to as "Temporary Workspace", "Additional Temporary Workspace", and "Temporary Access Road" TAR-010 defined in Verified Complaint Exhibits 17A, 17B, 18A, 18B, 19A, 19B, 20A, 20B, 23A, 23B, 24A, 24B, 26A, and 26B, to Spire STL Pipeline for the remediation work ordered by the FERC in its March 18, 2021 Order in Docket No. CP17-40-000 / CP17-40-001, and for any other relief that this Court deems just.

Dated: June 15, 2021

SPIRE STL PIPELINE LLC,
Plaintiff,

By: /s/ Lisa A. Petrilli
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CERTIFICATE OF SERVICE

I hereby certify that June 15, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following and by email to the following at the email addresses shown below:

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