

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SPIRE STL PIPELINE LLC,)

Plaintiff,)

v.)

3.22 ACRES OF LAND, MORE OR LESS,)
SITUATED IN ST. CHARLES COUNTY,)
STATE OF MISSOURI,)

and)

2.64 ACRES OF LAND, MORE OR LESS,)
SITUATED IN ST. CHARLES COUNTY,)
STATE OF MISSOURI,)

and)

1.56 ACRES OF LAND, MORE OR LESS,)
SITUATED IN ST. CHARLES COUNTY,)
STATE OF MISSOURI,)

and)

4.13 ACRES OF LAND, MORE OR LESS,)
SITUATED IN ST. CHARLES COUNTY,)
STATE OF MISSOURI,)

and)

DORWOOD F. BORGSCHULTE)
REVOCABLE TRUST U/T/A DATED)
MAY 28, 1998,)

Serve at:)
Elsa Borgschulte, Trustee)

and)

ELSA M. BORGSCHULTE)
REVOCABLE TRUST U/T/A DATED)

Case No. 4:18-cv-1350

Tract Nos. MO-SC 304.002, 306.000

MAY 28, 1998,)

Serve at:)
Elsa Borgschulte, Trustee)

and)

ELSA M. BORGSCHULTE,)
TRUSTEE OF THE)
DORWOOD F. BORGSCHULTE)
REVOCABLE TRUST, U/T/A DATED)
MAY 28, 1998,)

Serve at:)
6800 Portage Rd.)
Portage Des Sioux, MO 63373)

and)

ELSA M. BORGSCHULTE,)
TRUSTEE OF THE)
ELSA M. BORGSCHULTE)
REVOCABLE TRUST, U/T/A DATED)
MAY 28, 1998,)

Serve at:)
6800 Portage Rd.)
Portage Des Sioux, MO 63373)

and)

NUSTAR PIPELINE OPERATING)
PARTNERSHIP L.P.,)

Serve at:)
CT Corporation System)
120 South Central Avenue)
Clayton, MO 63105)

and)

GULF CENTRAL PIPELINE COMPANY,)

Serve at:)
C T Corporation System)
906 Olive St.)

St. Louis, MO 63101)
)
 and)
)
 COLLECTOR OF REVENUE)
 OF ST. CHARLES COUNTY,)
)
Serve:)
 Attn: Michelle D. McBride)
 201 N. Second St.)
 Suite 134)
 St. Charles, MO 63301)
)
 and)
)
 CITY OF PORTAGE DES SIOUX,)
)
Serve:)
 Angie J. Young, Treasurer/Collector)
 c/o Stephen A. Martin, Attorney)
 The Law Office of Stephen A. Martin)
 330 Jefferson Street)
 St. Charles, MO 63301)
)
 and)
)
 OTHER UNKNOWN INDIVIDUALS OR)
 OTHER LEGAL ENTITIES WHO MAY)
 CLAIM AN INTEREST,)
)
Serve:)
 By Publication)
)
 Defendants.)

COMPLAINT IN EMINENT DOMAIN

COMES NOW Plaintiff, Spire STL Pipeline LLC (“Spire”), and states the following as its Complaint in Eminent Domain:

1. This action is instituted under the authority and pursuant to the provisions of the Natural Gas Act, 15 U.S.C. § 717f(h), Federal Rule of Civil Procedure 71.1, and E.D. Mo. L.R. 9.04.

2. Plaintiff Spire is a Missouri limited liability company with its principal place of business in St. Louis, Missouri.

3. Spire is a “natural gas company” under the Natural Gas Act, 15 U.S.C. § 717a(6) and is organized for the purpose, among others, of engaging in the business of the “transportation of natural gas in interstate commerce” and the “sale in interstate commerce of such gas for resale.” 15 U.S.C. § 717a(6).

4. Based upon Spire’s diligence and investigation, Defendants have or may have an interest in 3.22 acres of land, more or less, 2.64 acres of land, more or less, 1.56 acres of land, more or less, 4.13 acres of land, more or less, that are needed for the construction and operation of a 65-mile steel natural gas pipeline that will connect with the existing Rockies Express Pipeline in Scott County, Illinois, through St. Charles County, Missouri and St. Louis County, Missouri, before terminating at the Enable Mississippi River Transmission Line (“Project”).

5. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1331 by virtue of the Natural Gas Act, 15 U.S.C. § 717f(h).

6. Pursuant to 15 U.S.C. § 717f(h), the fair market value of the property interests condemned herein exceeds Three Thousand Dollars (\$3,000).

7. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 as Defendants’ property to be condemned is located in St. Charles County, Missouri.

8. Under the provisions of Section 7(c) of the Natural Gas Act and 15 U.S.C. § 717f, 18 C.F.R. § 157, the Federal Energy Regulatory Commission (“FERC”) issued a Certificate of Public Convenience and Necessity for Interstate Natural Gas Pipelines dated August 3, 2018 to Spire authorizing construction of the Project (the “FERC Certificate”). A certified copy of the FERC Certificate is attached hereto as **Exhibit 1**.

9. Spire accepted the FERC Certificate and the Order Issuing Certificates on August 8, 2018. A copy of the acceptance letter filed on August 8, 2018 is attached hereto as **Exhibit 2**.

10. Pursuant to the FERC Certificate, Spire is vested with the power of eminent domain for the Project in that, if it “cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipeline or pipelines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located.” 15 U.S.C. § 717f(h). As such, Spire is authorized to exercise the power of eminent domain for public purposes and to condemn the private properties hereinafter described on the condition that the Project be available for service within two years, Spire complies with all FERC regulations, and Spire comply with the environmental conditions listed in the appendix to the Order granting the FERC Certificate.

11. FERC has found, determined, and declared, in compliance with the law, the necessity, in constructing the Project, for the acquisition of easements in certain real property hereinafter described for the purpose of construction and operation of a new natural gas transmission line to provide natural gas to customers in Missouri and Illinois, through tracts of land being part of the St. Charles County, Missouri Deed Book 2086, Page 1779, part of Sections 7 and 18, namely part of the East Half of the Southwest Quarter of Section 7 and the East Half of the Northwest Quarter of Section 18 except Six acres thereof set apart and attached to the homestead of Joe H. Barwise, all out of Township 48 North, Range 6 East of the 5th Principal

Meridian in St. Charles County, Missouri (“the Area”). Spire has been issued a FERC Certificate dated August 3, 2018 for this purpose.

12. As set forth in the FERC Certificate, the construction of the Project is for public and necessary purposes.

13. In order to construct, operate, and maintain the Project in a manner conducive to the public interest, convenience and safety, Spire must acquire easements on, over, and across the Area.

14. In furtherance of the authority granted by FERC and in order to construct, operate, and maintain the Project, it is necessary for Spire to appropriate and acquire by the exercise of eminent domain certain easements hereinafter described. Said land is located within the corporate boundaries of St. Charles County, Missouri.

15. The land sought through this Complaint comprises contiguous and non-contiguous tracts (“Borgschulte Property”), all as shown on the Plat Maps attached hereto as **Exhibit 3**, and further described as follows:

A. Borgschulte Tract MO-SC-306.000

Permanent Easement

Part of the Dorwood F. Borgschulte Revocable Trust, an undivided 1/2 interest and the Elsa M. Borgschulte Revocable Trust, an undivided 1/2 interest, according to Quit Claim Deed as recorded in the St. Charles Co., Missouri Courthouse, Deed Book 2086, Page 1779 namely part of US Survey No. 1692 of Township 48 North, Range 6 East of the 5th Principal Meridian in St. Charles Co., Missouri and further described as follows;

Commencing at the Southwest corner of said Survey 1692, a 6”x10” Limestone Marker Found, thence Northeast along the West line of said Survey 1692, one thousand seven hundred seventy-eight and five-tenths, (**1,778.5’**) feet to the Northeast Corner of said Deed Book 2086, Page 1779, the calculated location of a stone Not Found, thence Southeast along the North line of said Deed Book 2086, Page 1779 one hundred and two (**102.0’**) feet to the Point of Beginning (POB);

said POB being the installed centerline of a twenty-four (24") inch pipeline on the subject property,

thence Southerly with said pipeline one hundred fifty and nine-tenths (**150.9'**) feet, thence deflecting with said pipeline $21^{\circ}33'34''$ to the left for sixty (**60.0'**) feet, thence deflecting with said pipeline $21^{\circ}33'34''$ to the left for one thousand one hundred seventy-seven and three-tenths (**1,177.3'**) feet, thence deflecting with said pipeline $17^{\circ}24'39''$ to the left for sixty (**60.0'**) feet, thence deflecting with said pipeline $17^{\circ}24'39''$ to the left for one thousand three hundred seventy and five-tenths (**1,370.5'**) feet the Point of Termination (POT) on the subject property, the East line of said Deed Book 2086, Page 1779, said point being eight hundred thirty-five and seven-tenths (**835.7'**) feet Northeast from the Southeast Corner of said Deed Book 2086, Page 1779, a 4"x7" Limestone Marker Found.

The area of **Proposed Easement** is parallel to the pipeline, fifteen (**15.0'**) feet Southwesterly and thirty-five (**35.0'**) feet Northeasterly of said pipeline (fifty feet total) for the length of the property and equal to an area of three and twenty-two hundredths (**3.22**) Acres, more or less.

A true and accurate depiction of the Permanent Easement to be taken is included in and incorporated by reference in **Exhibit 3**.

Temporary Workspace/Construction Easement

The area of **Temporary Workspace (TWS)** is a strip of land forty (**40.0'**) feet wide the limits of which lay fifteen (**15.0'**) feet Southwesterly and fifty-five (**55.0'**) feet Southwesterly of and parallel to the pipeline for the length of the property with the exception of a rectangle fifteen (**15.0'**) feet by two (**2.0'**) feet described as follows: commencing at the hereinabove described POT, thence northwesterly with said pipeline one thousand one hundred ninety-six and six-tenths (**1,196.6'**) feet, thence departing said pipeline and perpendicular therefrom forty (**40.0'**) feet to the Northwest corner of said rectangle, thence continuing same line fifteen (**15.0'**) feet to the Southeast corner of said rectangle, thence northwesterly parallel to said pipeline two (**2.0'**) feet to the Southwest corner of said rectangle, thence northeasterly perpendicular to said pipeline fifteen (**15.0'**) feet to the northwest corner of said rectangle, thence southeasterly parallel to said pipeline two (**2.0'**) feet closing said rectangle; equal to an aggregate area of two and sixty-four hundredths (**2.64**) Acres, more or less.

This Temporary Workspace/Construction Easement will become null and void upon completion of the above described construction, no later than August 2, 2020.

A true and accurate depiction of the Temporary Workspace/Construction Easement to be taken is included in and incorporated by reference in **Exhibit 3**.

Additional Temporary Workspace Construction (ATWS) Easement

The two areas of **Additional Temporary Workspace (ATWS)** twenty-five (**25.0'**) feet wide, making up this Additional Temporary Workspace/Construction Easement, are:

First part, limited to fifty-five (**55.0'**) feet and eighty (**80.0'**) feet Southwesterly of and parallel to the pipeline and running with pipeline, included deflections, the north limits is a line perpendicular to said pipeline projected from a point measured southeasterly twenty-seven and seven tenths (**27.7'**) feet from the most northerly angle point in west boundary of heretofore described TWS and the east limits bound to the east boundary of subject tract except for a rectangle 25.0' wide by 103.4 feet long, with its north line fifty-five (**55.0'**) feet south of and parallel to said pipeline and its east limits is a line perpendicular to said pipeline measured east along the south limits of herein described first part 1,144.4' from the east boundary of subject tract.

and **Second part**, a strip of land twenty-five (**25.0'**) feet wide the limits of which lay thirty-five (**35.0'**) feet and sixty (**60.0'**) feet Northeasterly of and parallel to the pipeline and bound by the south right-of-way of Portage Road (40' Wide) and bound by a line perpendicular to said pipeline measured one hundred (**100.0'**) feet southerly from said right-of-way. All together equal to an area of one and fifty-six hundredths (**1.56**) Acres, more or less.

This ATWS Easement will become null and void upon completion of the above described construction, no later than August 2, 2020.

A true and accurate depiction of the Area of Additional Temporary Workspace/Construction Easement to be taken is included in and incorporated by reference in **Exhibit 3**.

B. Borgschulte Tract 304.002

Additional Temporary Workspace Easement

Part of the Dorwood F. Borgschulte Revocable Trust and the Elsa M. Borgschulte Revocable Trust tract of land according to Quitclaim Deed as recorded in the St. Charles Co., Missouri Courthouse, Deed Book 2086, Page 1779; deeded land being a part of Sections 7 and 18; herein described easement being namely part of the East Half (E ½) of the

Southwest Quarter (SW $\frac{1}{4}$) of Section 7 only, all out of Township 48 North, Range 6 East of the 5th Principal Meridian in St. Charles Co., Missouri and further described as follows;

Commencing at the Northeast Corner of said SW $\frac{1}{4}$, a 11"x6" Limestone Marker Found, thence West along the North Line of said SW $\frac{1}{4}$, seventy-seven and eight tenths (77.8') feet to the East Line of herein described Additional Temporary Workspace and the Point of Beginning (**POB**);

thence deflecting to the left an angle of 58°27'37" with said herein described East Line two thousand, four hundred eighty-seven (2,487.0') feet to the West Line of said E $\frac{1}{2}$ of the SW $\frac{1}{4}$,

thence deflecting to the right an angle of 149°53'48" with said West Line one hundred forty-nine and five tenths (149.5') feet to the West Line of herein described Additional Temporary Workspace,

thence deflecting to the right an angle of 30°06'13" with said herein described West Line two thousand, three hundred eleven and seven tenths (2,311.7') feet to the aforementioned North Line of said SW $\frac{1}{4}$,

thence deflecting to the right an angle of 58°27'37" with said North Line of said SW $\frac{1}{4}$ eighty-seven and nine tenths (87.9') feet to the **POB**.

The area of **Additional Temporary Workspace** is equal to four and thirteen hundredths (4.13) Acres, more or less.

This ATWS Easement will become null and void upon completion of the above described construction, no later than August 2, 2020.

A true and accurate depiction of the Area of Additional Temporary Workspace to be taken is included in and incorporated by reference in **Exhibit 3**.

16. On information and belief, the following persons may have or claim an interest in the Borgschulte Property described in Paragraph 15.A above:

- A. Elsa M. Borgschulte, trustee of the Dorwood F. Borgschulte Revocable Trust, U/T/A dated May 28, 1998, as to an undivided 1/2 interest and Elsa M. Borgschulte, trustee of the Elsa M. Borgschulte Revocable Trust, U/T/A dated May 28 1998, as to an undivided 1/2 interest, as tenants in common, as tenants in common (altogether the "Record Owners");

- B. Rights of parties in possession or with an equitable interest under any recorded interest, including (without limitation) easements, leases, or right-of-ways; and
- C. Rights of parties in possession or with an equitable interest under any unrecorded instrument, including (without limitation) leases, month-to-month tenancies, contracts for deed, or installment sale contracts.

17. On information and belief, the following persons may have or claim an interest in the Borgschulte Property described in Paragraph 15.B above:

- A. Elsa M. Borgschulte, trustee of the Dorwood F. Borgschulte Revocable Trust, U/T/A dated May 28, 1998, as to an undivided 1/2 interest and Elsa M. Borgschulte, trustee of the Elsa M. Borgschulte Revocable Trust, U/T/A dated May 28 1998, as to an undivided 1/2 interest, as tenants in common, as tenants in common (altogether the “Record Owners”);
- B. NuStar Pipeline by reason of Temporary Workspace Easement recorded in Deed Book DE6796 at Page 1410;
- C. Senter Ebeling by quit claim deed from Gulf Central releasing all claims to Right of Way and Easement dated September 26, 1968 and recorded in Book 518 at Page 30;
- D. Gulf Central Pipeline Company by reason of Right of Way and Easement Grant recorded in Deed Book 533 at Page 937;
- E. Rights of parties in possession or with an equitable interest under any recorded interest, including (without limitation) easements, leases, or right-of-ways; and
- F. Rights of parties in possession or with an equitable interest under any unrecorded instrument, including (without limitation) leases, month-to-month tenancies, contracts for deed, or installment sale contracts.

18. Other unknown persons or entities may hold or claim an interest or interests in the Borgschulte Property, so that Spire has requested in connection with this lawsuit the publication of summons with respect to such unknown persons or entities.

19. On or about February 9, 2017, Spire sent and delivered to the Record Owners of the Borgschulte Property a landowner information letter which set forth all required notices and

information. Said letter was delivered to the Record Owners via first class mail more than sixty (60) days before this Complaint was filed.

20. In addition, on or about July 12, 2017, Spire made and transmitted to the Record Owners a bona fide offer to purchase the Borgschulte Property. Said good faith offer was delivered to the Record Owners more than thirty (30) days before this Complaint was filed.

21. On or about November 28, 2017, Spire followed-up with the Record Owners and made and transmitted to them a second bona fide offer to purchase the Borgschulte Property. Said good faith offer again was delivered to the Record Owners more than thirty (30) days before this Complaint was filed.

22. On or about August 7, 2018, Spire made and transmitted to the Record Owners another offer reaffirming the November 28 offer. Said good faith offer remained open until August 15, 2018.

23. Despite good faith negotiations, Spire has been unable to reach an agreement with the Record Owners upon the amount of just compensation to be paid to them to purchase the tracts comprising the Borgschulte Property.

24. Spire has filed the notices required by FRCP 71.1(d) contemporaneously with this Complaint.

25. All requirements and conditions under applicable law to the exercise of the power of eminent domain by Spire have been fulfilled or satisfied.

WHEREFORE, Plaintiff Spire STL Pipeline LLC respectfully prays that the Court order and adjudge as follows:

- A. that the notices filed herewith pursuant to FRCP 71.1(d) be deemed good and sufficient;

- B. that said notices be served on Defendants in a manner afforded by FRCP 71.1(d)(3);
- C. that the right to condemn the easements herein described be recognized and granted;
- D. upon deposit into the registry of the Court by Spire of the amount of just compensation determined by the Court, ownership and title of the easements shall be vested in Spire STL Pipeline LLC, free and clear of all right, title and interest of the Defendants; and
- E. enter and award such further decrees and relief as may be just and proper in this case.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Pamela J. Meanes

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