

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

GULF SOUTH PIPELINE COMPANY, LP

PLAINTIFF

VS.

CIVIL ACTION NO. 3:08CV372

19.80 ACRES ± OWNED BY LLOYD ROBINSON  
A/K/A LOYAL ROBINSON, ET AL.

DEFENDANTS

**ORDER CONFIRMING PLAINTIFF'S RIGHT TO CONDEMN  
AND GRANTING A PRELIMINARY INJUNCTION AUTHORIZING  
IMMEDIATE POSSESSION**

This Cause came on for hearing on July 24, 2008 and on August 7, 2008, on the Motion of the Plaintiff, Gulf South Pipeline Company, LP ("Gulf South"), to confirm Gulf South's right to condemn rights of way and easements, temporary workspace, and rights of use across the Defendants' tracts of land, and for a preliminary injunction authorizing immediate possession (the "Motion"). The Court, having considered the Motion, the objections thereto filed by the various Defendants, the evidence presented at the hearing and arguments of Plaintiff's and various Defendants' counsel, finds that the Motion is well taken and should be granted.

**JURISDICTION AND VENUE**

1. Gulf South is engaged in the transportation of natural gas in interstate commerce and is, therefore, a natural gas company within the meaning of the Natural Gas Act (the "Act"), 15 U.S.C. §§ 717-717z. Gulf South has been issued a Certificate of Public Convenience and Necessity ("Certificate") by the Federal Energy Regulatory Commission ("FERC") to construct, operate and maintain an interstate natural gas pipeline and all necessary appliances, appurtenances, fixtures, equipment, and facilities (the "Pipeline").

2. This action is governed by the section 717f(h) of the Act, which provides, in pertinent part:

When any holder of a certificate of public convenience and necessity 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 pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way... 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, or in the State Courts.

15 U.S.C. § 717f(h).

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because this action arises under the laws of the United States, and under 28 U.S.C. § 1337, because this action arises under an Act of Congress regulating interstate commerce. Jurisdiction is also proper in this Court pursuant to the Act, 15 U.S.C. § 717f(h). Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

#### **CONFIRMATION OF THE PLAINTIFF'S RIGHT TO CONDEMN**

4. After the Certificate was issued, Gulf South filed the Verified Amended Complaint for Condemnation and Related Relief under the Act pursuant to Rule 71.1 of the Federal Rules of Civil Procedure, condemning a fifty (50) foot wide permanent and perpetual pipeline right of way and easement (the "Permanent Easement"), as approved and certificated by FERC, and temporary workspace (the "Temporary Workspace"), as approved and certificated by FERC, under, upon, across and through lands owned by the Defendants. The Temporary Workspace contains space parallel and contiguous to the Permanent Easement and other areas, for use by Gulf South and its employees, contractors or other agents during the construction and installation of the Pipeline. Gulf South also filed the Motion, requesting the Court to enter an

order confirming that Gulf South has the substantive right to condemn the properties described in the Verified Amended Complaint (the "Properties"). The Properties are more particularly described in Exhibit "A" to this Order. On July 8, 2008, Gulf South filed a Notice of Hearing, stating that this Court would hear the Motion on Thursday, July 24, 2008 (the "July 24 Hearing"). Gulf South served on the Defendants notice of the July 24 Hearing.

5. The Court finds that the Defendants were duly and properly served with the Notice required by Rule 71.1, the Verified Amended Complaint for Condemnation, the Notice of Hearing, the Motion and the Memorandum of Authorities in support thereof.

6. On or before July 23, 2008, Defendants Robert King, Paula King, Bobby Owens, Denise Owens, and Vollie F. Campbell, Jr. (the "Responding Defendants") filed responses to the Motion. Each response did not challenge Gulf South's right to condemn the Properties, but did challenge Gulf South's right to immediate possession of the Properties. The Court, having considered the Motion, the Responding Defendants' objections to immediate possession, the evidence and testimony presented at the hearing, and arguments of counsel, finds that the Defendants' objections should be denied, and that the Motion should be granted.

7. Accordingly, the Court finds that Gulf South is the holder of a valid Certificate of Public Convenience and Necessity issued by FERC, that FERC has determined that the Defendants' Properties are needed for the Pipeline, and that Gulf South has been unable to acquire the Defendants' Properties by agreement, and thus that Gulf South has satisfied all requirements of the Act, 15 U.S.C. § 717f(h). The Court further finds that the interests condemned by Gulf South are consistent with the authority granted it by the Certificate and within the scope of such authority, and that Gulf South is authorized by the Act to exercise the power of eminent domain. Therefore, the Court hereby confirms Gulf South's right to

condemnation of the easements and rights of way identified in Exhibit "B" hereto.

### PRELIMINARY INJUNCTION GRANTING ACCESS

8. Gulf South also requests the Court to grant it a preliminary injunction authorizing it to enter upon the Properties to begin construction-related activities on the Project. For injunctive relief to be proper the Court must determine that four factors exist. There must be a substantial likelihood that the Plaintiff will prevail on the merits; there must be a substantial threat that irreparable harm will result if the injunction is not granted; the harm that would result to the Plaintiff if the injunction is denied must outweigh the harm to the Defendants if the injunction is granted; and granting the injunction will not disserve the public interest. *Clark v. Prichard*, 812 F.2d 991 (5th Cir. 1987).

9. Numerous other federal district courts have held that if the standard for injunctive relief is satisfied in favor of granting the relief, pipeline companies with the authority of eminent domain under the Natural Gas Act may be granted immediate access to property to be condemned - prior to the trial on compensation - to begin construction of a pipeline. *See, e.g., East Tennessee Natural Gas Co., v. Sage*, 361 F.3d 808, 826-828 (4th Cir.), cert. denied, 543 U.S. 978 (2004) (granting immediate possession of easements where delays in construction would generate significant unrecoverable costs and time delays in completing project); *Guardian Pipeline, L.L.C. v. 295.49 Acres*, 2008 U.S. Dist. LEXIS 35818 (E.D. Wisc. April 11, 2008); *Maritimes & Northeast Pipeline, LLC v. Decoulos*, 146 Fed. Appx. 495, \*2-3 (1st Cir., 2005); *Northwest Pipeline Corp. v. The 20' by 1,430' Pipeline Right-of-Way*, 197 F.Supp.2d 1241, 1245 (E.D. Wash. 2002)("[w]here there is no dispute about the validity of [the gas company's] actual right to the easement, denying authority to grant immediate possession would produce an absurd result"); *Guardian Pipeline, L.L. C. v. 950.80 Acres of Land*, 210 F.Supp. 2d 976, 979 (N.D. Ill.

2002)(immediate possession proper when condemnation order has been entered and preliminary injunction standards have been satisfied); *Northern Border Pipeline Co. v. 64.111 Acres of Land*, 125 F.Supp.2d 299, 301 (N.D. Ill. 2000)(same).

10. Having considered the Motion and supporting memorandum, the Responding Defendants' objections, the evidence and testimony presented at the hearing and arguments of counsel, the Court finds that Gulf South has satisfied the four requirements established for the granting of injunctive relief. The Court finds that Gulf South has been issued a valid Certificate of Public Convenience and Necessity by FERC, and that all requirements under the Act for Gulf South to exercise the right of eminent domain have been satisfied. Thus, there is a substantial likelihood that Gulf South will prevail on the merits and be awarded the easements and temporary workspace condemned.

11. The Court further finds that Gulf South has met its burden of demonstrating a substantial likelihood that immediate and irreparable harm will result if the injunction is not granted, and if it is not able to obtain immediate entry upon the Properties to begin construction. As demonstrated by the evidence and testimony presented, there is a substantial likelihood that Gulf South, numerous public utility providers, and the public at large will be irreparably harmed if the Project is not in-service by early December, 2008. Because the construction of the Project requires detailed sequencing of numerous disciplines, access to the Properties must be granted immediately to begin construction-related activities in order to meet this in-service date. Any delay in granting Gulf South access to the Properties to begin construction activities will impede Gulf South's ability to provide the needed energy delivery services determined by FERC to be in the best interest of the public. Additionally, the costs to Gulf South, its customers and the public will be significantly increased because of move-around costs if immediate possession is not

granted. These increased costs are against public policy, and would be unrecoverable.

12. On balance, the potential harm to Gulf South and the public at large outweighs any harm to the Defendants by granting Gulf South the injunction it seeks. Granting the injunction to permit Gulf South to begin construction prior to the determination of just compensation will not cause the Defendants to lose or compromise any right they have to just compensation under federal law. The value of just compensation is not affected one way or the other by Gulf South beginning the Project prior to the determination of compensation. Moreover, the Clerk of the Court shall establish a single, interest-bearing account in the Court's registry. Before entering onto the Properties, Gulf South shall pay into said account the amounts set forth in Exhibit "C" to this Order as surety for payment of just compensation as determined at trial. The Defendants listed in Exhibit "C" shall have the right to withdraw those funds attributable to their interests in the manner set forth below, and without waiving any right to argue at trial that just compensation should be a greater amount. Likewise, by depositing such amounts, Gulf South does not waive any right to argue at trial that just compensation should be a lower amount.

13. Any Defendant listed in Exhibit "C" desiring to withdraw deposited funds attributable to his or her interest shall file a motion with the Court identifying such interest and requesting withdrawal, and shall provide Gulf South's counsel in this action with a copy of said motion. The Court will issue an order authorizing the clerk to disburse the requested amount after determining that the Defendant is the proper party listed in Exhibit "C", and that there has been no settlement as to that Defendant. If the just compensation amount determined at trial is more than the amount withdrawn, then Gulf South shall be responsible for the excess. If the just compensation amount determined at trial is less than the amount withdrawn, then Gulf South

shall be entitled to a personal judgment for the amount of the difference.

14. Finally, it is within FERC's authority to determine whether a proposed Pipeline furthers the public interest. FERC's issuance of the Certificate is evidence that it has so determined, and this Court may not contradict FERC's determination in that regard. Additionally, the Court finds that the grant of injunctive relief to permit Gulf South to begin construction of the Project prior to the determination of just compensation furthers the public interest in that it will aid in ensuring that the FERC-approved Project will not be delayed.

15. Accordingly, for the foregoing reasons, the Court finds that Gulf South's request for a preliminary injunction is well taken and should be granted.

**IT IS, THEREFORE, ORDERED**

A. That pursuant to the Natural Gas Act, as the holder of a valid Certificate of Public Convenience and Necessity issued by FERC on April 30, 2008, Gulf South has the substantive right to condemn property rights needed for the Project;

B. That Gulf South shall be awarded a preliminary injunction permitting it an immediate right of entry upon the Permanent Easement as approved and certificated by FERC, and the Temporary Workspace as approved and certificated by FERC, both of which are identified in "Exhibit B" to this Order, under, upon, across and through land owned by the Defendants, which is described in "Exhibit A" to this Order.

C. Gulf South may immediately begin pre-construction and construction-related activities for the purpose of constructing the Pipeline at the location approved and certificated by FERC and consistent with the descriptions identified on Exhibit "B", in a manner consistent with the FERC Certificate and FERC regulations, which pre-construction and construction-related activities may include, but not be limited to, surveys, examinations, and tests, and constructing,

laying, maintaining, operating, inspecting, altering, repairing, replacing, and reconstructing the Pipeline, and any and all necessary or useful appurtenances thereto, on said Permanent Easement;

D. The Temporary Workspace shall expire and revert to Defendants upon completion of construction and testing of the Pipeline, or, in any event, not later than two (2) years from the date title to the Permanent Easement vests in Gulf South pursuant to final judgment, unless the property owner consents to a period longer than two (2) years. Gulf South shall have no rights in oil, gas or other minerals;

E. Gulf South shall construct the Pipeline sufficiently to bear the weight of heavy trucks and/or equipment up to 90,000 pounds at the following crossing point or points across the Permanent Easement: (i) at each existing road crossing the Permanent Easement and (ii) at such other locations reasonably designated by the Defendants and provided to Gulf South on or before September 1, 2008, by marking the same on the plat map in the form attached as Exhibit "B", with the total number of crossing points not to exceed one for every longitudinal 1,320 feet of the Permanent Easement on the Defendants' property;

F. Gulf South's immediate entry on the Permanent Easement is for the purposes, presently and at such other times in the future as Gulf South, its successors and assigns, may elect, of constructing, maintaining, operating, renewing, repairing, relocating, removing and/or replacing one pipeline for the transportation of gas and all appliances, appurtenances, fixtures, and equipment, all located below ground with the exception of right-of-way markers and test leads, for ultimate distribution to the public, along with rights of ingress and egress along existing roads reasonably necessary for the construction, operation, and maintenance of the Pipeline.

G. Any pipeline constructed within said Permanent Easement shall be buried during

construction to provide a minimum cover of not less than thirty-six inches (36").

H. The present and future owners of the land on which the Permanent Easement is located shall have the right to cultivate or otherwise make use of said land for any lawful purpose, providing such use shall not interfere with the construction, maintenance, operation, renewal, repair, relocation, removal and/or repair, of the Pipeline located on the Permanent Easement, and provided further that the present or future owners of said lands shall not construct or maintain or permit to be constructed or maintained any house, structure, building, dam, levee, lakes, ponds, trees or any other similar or dissimilar obstructions on or over said Permanent Easement or any part thereof. However, the present and future owners shall have the right to cross approximately at right angles the Permanent Easement with roads, fences, utilities, and any similar fixtures necessary for such owners' reasonable use of said land, in a manner that does not unreasonably interfere with the maintenance, placement, location, operation, renewal, repair, or removal of the Pipeline, and provided the said owners provide reasonable notice of any crossing.

I. Upon the entry of this Order, Defendants shall be entitled to draw from the funds deposited by Gulf South with the Clerk of the Court the amounts deposited by Gulf South related to the Defendants' Properties, consistent with paragraph 12 and 13 above. Furthermore, Defendants shall be entitled to interest calculated pursuant to 28 U.S.C. § 1961 from and after the date of entry of this Order on the difference between the principal amount deposited with the Court by Gulf South and the amount of just compensation determined by the Court, if such determination of just compensation to be paid exceeds the amount deposited by Gulf South.

SO ORDERED this the 22<sup>nd</sup> day of August, 2008.

s/William H. Barbour, Jr.  
WILLIAM H. BARBOUR  
UNITED STATES DISTRICT COURT JUDGE

Agreed as to form:

s/James L. Halford  
James L. Halford, Esq.  
One of the Attorneys for Plaintiff

s/Carroll E. Rhodes  
Carroll E. Rhodes, Esq.  
One of the Attorneys for Defendant  
Vollie F. Campbell, Jr.

s/C. Stephen Stack  
C. Stephen Stack, Esq.  
One of the Attorneys for Defendants  
Robert King, Paula King, Bob Owens  
and Denise Owens