

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

SABAL TRAIL TRANSMISSION, LLC,

Plaintiff,

Case No. 6:16-cv-474-Orl-41-KRS

v.

Tract Nos: HCL-FL-OS-020.000,  
HCL-FL-OS-020.010

+/- 19.775 ACRES OF LAND IN  
OSCEOLA COUNTY, FLORIDA;  
B-K RANCH, L.C.; GERALD R.  
McGRATTY, JR.; BEN BENHAM;  
and UNKNOWN OWNERS, IF ANY,

Defendants.

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**ORDER**

This cause is before the Court on the following matters:

- (1) Motion for Partial Summary Judgment Determining the Right to Condemn Easements and Incorporated Memorandum of Law (Doc. 2), filed March 18, 2016;
- (2) Plaintiff's Motion for Preliminary Injunction for Immediate Possession and Incorporated Memorandum of Law (Doc. 3), filed March 18, 2016; and
- (3) Stipulation for Immediate Possession (Doc. 32), filed May 5, 2016.

**BACKGROUND**

On **February 2, 2016**, the Federal Energy Regulatory Commission ("**FERC**") issued an order which, among other things, granted to Plaintiff Sabal Trail Transmission, LLC ("**Plaintiff**") a Certificate of Public Convenience and Necessity ("**FERC Certificate**"), authorizing Plaintiff to construct and operate facilities for transporting natural gas in interstate commerce—the Sabal Trail Project ("**Project**"). Pursuant to the Natural Gas

Act, 15 U.S.C. §§ 717–717z (“**Gas Act**”), and based on the FERC Certificate, Plaintiff filed several land condemnation actions throughout the U.S. District Courts for the Middle District of Florida (“**M.D. Courts**”) to acquire the easements necessary to complete the Project. (Doc. 1.)

With its Complaint in this action against property located in Osceola County, Florida, B-K Ranch, L.C. (“**BKR**”), Gerald R. McGratty, Jr., as receiver (“**Receiver**”), and Ben Benham (“**Benham**”), Plaintiff also filed:

1. description of the largest parcel of land at issue in this action (Doc. 1-1 (“**Parcel**”));
2. proposed “Grant of Easement” with easement drawings (Doc. 1-2 (“**Subject Easements**”));
3. copy of the FERC Certificate (Doc. 1-4);
4. copy of the Notice of Condemnation in accordance with the requirements of Federal Rules of Civil Procedure 71.1(c)(4) and 71.1(d)(2) (Doc. 1-5 (“**Condemnation Notice**”));
5. Motion for Partial Summary Judgment Determining the Right to Condemn Easements and Incorporated Memorandum of Law (Doc. 2 (“**Rule 56 Motion**”)); and
6. Motion for Preliminary Injunction for Immediate Possession and Incorporated Memorandum of Law (Doc. 3 (“**Rule 65 Motion**”)).

In support of the Rule 56 and Rule 65 Motions, Plaintiff also filed sworn Declarations from the Project’s Right-of-Way Project Manager (Doc. 4), the Construction Project Manager (Doc. 6), and the Project Director (Doc. 5). Finally, on **May 20, 2016**, Plaintiff filed the Declaration of its counsel (Doc. 36), which set out appraised values for the Parcels at issue in this action and in other actions pending in the M.D. Courts.

In accordance with Rule 71.1(d)(3)(B), Plaintiff served Benham by publication in the Osceola News-Gazette. (See Docs. 33, 33-1.) “Service by publication is complete on

the date of the last publication.” Fed. R. Civ. P. 71.1(d)(3)(B)(ii). Here, the last publication date was May 5, 2016 (Doc. 22-1).<sup>1</sup> The Court directed Defendants to Answer the Complaint and respond to the Rule 56 and Rule 65 Motions “[o]n or before May 17, 2016.” (Doc. 18, p. 3.) In addition, the Court set a hearing in this action for 2:00 p.m. on May 23, 2016 (“**Hearing**”). (See *id.*) Benham did not attend the Hearing or otherwise appear in this action. (See Doc. 37.) In contrast, BKR and Receiver jointly-filed a Stipulation for Immediate Possession (Doc. 32), which confirms Plaintiff’s rights to condemn and immediate possession (“**Stipulation**”).

Upon review, the Court agrees with the other judges in the M.D. Courts that Plaintiff’s Rule 56 and Rule 65 Motions are due to be granted. See *Sabal Trail Transmission, LLC v. +/- 0.9 Acres of Land in Citrus Cnty., Fla.*, Case No. 5:16-cv-196-Oc-30-PRL, 2016 WL 2997669, at \*1 (M.D. Fla. May, 25, 2016); *Sabal Trail Transmission, LLC, v. +/- 9.669 Acres of Land in Polk Cnty., Fla.*, Case No. 8:16-cv-640-T-33-EAP, 2016 WL 2745082, at \*1 (M.D. Fla. May 11, 2016).

### **CONCLUSION**

Accordingly, it is hereby **ORDERED, ADJUDGED, and DECREED**:

1. Plaintiff’s Motion for Partial Summary Judgment (Doc. 2) is **GRANTED** in that the Court finds that Plaintiff has the right to condemn the Subject Easements.

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<sup>1</sup> Defendants who have “an objection or defense to the taking must serve an answer within **21 days** after being served.” Fed. R. Civ. P. 71(e)(2) (emphasis added). Objections and defenses that are not set forth in an answer are waived. See Fed. R. Civ. P. 71.1(e)(3).

2. Plaintiff's Motion for Preliminary Injunction and Immediate Possession (Doc. 3) is **GRANTED**.
3. Upon Plaintiff posting a proper security bond with the Clerk of this Court in the amount of **\$448,800.00**, the following shall occur:
  - a. Plaintiff shall have immediate access to, and possession of, the Subject Easements described in the Notice of Condemnation (Doc. 1-5) and incorporated herein; and
  - b. Plaintiff may immediately begin pre-installation activities so that construction-related activities can commence by **June 21, 2016**, for the purposes of constructing the Project.
4. All pre-installation and construction-related activities shall be consistent with the FERC Certificate and all other applicable regulatory permits.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on June 3, 2016.



  
ROY B. DALTON JR.  
United States District Judge

Copies:

Counsel of Record

Unrepresented Parties

U.S. District Judge Carlos E. Mendoza

U.S. Magistrate Judge Karla R. Spaulding