

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

Spire STL Pipeline LLC)
)
) **Docket No. CP17-40-007**

**REPLY COMMENTS OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Pursuant to the *Notice of Application and Establishing Intervention Deadline* issued in this docket on August 6, 2021, the Public Service Commission of the State of Missouri (“MoPSC”) hereby submits these reply comments regarding the *Application Of Spire STL Pipeline LLC For A Temporary Emergency Certificate, Or, In The Alternative, Limited-Term Certificate* (“Application”) filed in this docket on July 26, 2021. In these reply comments, the MoPSC respectfully requests that FERC grant the application for a temporary certificate to Spire STL Pipeline LLC (“Spire STL”) without imposing conditions on the temporary certificate that would encroach on the MoPSC’s authority or impose any increased costs or risk of curtailment upon the retail natural gas customers of Spire Missouri Inc. (“Spire Missouri”).

1. Any adverse consequence of the Court’s vacatur should not fall upon captive customers of Spire Missouri.

The Natural Gas Act (“NGA”) authorizes FERC to issue temporary pipeline certificates “in cases of emergency, to assure maintenance of adequate service or to serve particular customers....”¹ The MoPSC directed its Staff to investigate Spire STL’s

¹15 USC § 717(f)(c)(B).

application for a temporary certificate, and Staff filed a report with the MoPSC on August 16, 2021. The report concluded that “[a]s a result of the significant alteration of Spire Missouri’s distribution system to accommodate the Spire STL capacity, there is a real risk of natural gas outages during the winter of 2021-2022 absent the availability of Spire STL capacity from both a flow and pressure standpoint.”² This constitutes an “emergency” under the NGA authorizing FERC to issue a temporary certificate for the STL Pipeline until FERC acts upon the Court’s remand.

The Court of Appeals recognized that Spire STL had already put the pipeline into service while its certificate was under judicial review, and acknowledged that its decision to vacate Spire’s certificate may cause “some disruption.”³ Blame for this disruption has been laid in various places. No party, however, argues that captive customers of Spire Missouri should bear any additional cost or loss of service as a result of the Court’s mandate. The MoPSC respectfully requests FERC not impose any conditions on a temporary certificate that would increase either the costs or the risk of service curtailments to Spire Missouri customers. Specifically, as set forth below, the MoPSC is concerned about how certain conditions requested in EDF’s protest⁴ could affect Missouri customers.

² MoPSC docket GO-2022-0022, *Staff’s Investigation Of Spire STL Pipeline’s Application At FERC For A Temporary Certificate To Operate*, (August 16, 2021), pg. 9.

³ *Environmental Defense Fund v. F.E.R.C.*, 2 F.4th 953, 976 (D.C. Cir. 2021).

⁴ CP17-40-007, *Motion To Reject In Part And Protest Of The Environmental Defense Fund* (“EDF Protest”), (August 5, 2021).

- 2. The MoPSC does not support EDF’s requests to impose conditions upon Spire Missouri, or to impose volume and rate restrictions on Spire STL’s use of the pipeline.**
 - A. FERC cannot impose conditions that direct or pre-approve the business activities of Spire Missouri.**

If FERC determines that an emergency exists and grants Spire STL a temporary certificate to operate its pipeline, FERC should not condition that certificate upon specific actions by Spire Missouri.

Spire Missouri is a local distribution company (LDC) that is a “gas corporation” and a “public utility” subject to the jurisdiction of the MoPSC under Missouri law.⁵ Section 1(b) of the NGA explicitly limits FERC’s jurisdiction to exclude “the local distribution of natural gas or to the facilities used for such distribution.”⁶ Courts have confirmed that FERC has no authority to regulate or control the activities of an LDC such as Spire Missouri.⁷ Therefore, FERC has no authority to direct the business activity of an LDC such as Spire Missouri, or issue any order amounting to a form of pre-approval of any remedies undertaken by Spire Missouri. The activities of Spire Missouri are subject to the jurisdiction of the MoPSC.

⁵ Section 386.020(43), RSMo (2016).

⁶ 15 USC § 717(b).

⁷ The current regulatory framework under the Natural Gas Act reserves for states the right to regulate natural gas local distribution companies (LDCs). *Bd. of Water, Light & Sinking Fund Comm’rs of City of Dalton, Ga. v. F.E.R.C.*, 294 F.3d 1317, 1323 (11th Cir. 2002).

EDF’s protest addresses Spire STL and Spire Missouri collectively as the “Spire Affiliates.”⁸ EDF argues that “any temporary certificate should require the Spire Affiliates to immediately begin work to remedy the risk conditions,” and EDF witness Lander sets forth a number of recommended actions that Spire Missouri should take to remedy the risk of curtailment in absence of the STL Pipeline.⁹ As just explained, the NGA provides FERC no authority to order Spire Missouri to follow EDF’s recommendations.

Under the regulatory framework in Missouri, the MoPSC is authorized, among other things, to determine what cost items should be included in (or excluded from) a utility’s operating expenses, in order to determine the “just and reasonable” rates a utility such as Spire Missouri may collect from its customers.¹⁰ The MoPSC is empowered to disallow Spire Missouri from including in its rates any costs related to the STL Pipeline that the MoPSC determines to be imprudently incurred or otherwise unreasonable.¹¹ Under this framework, the MoPSC will review all the activities of Spire Missouri regarding the STL Pipeline and its transactions with its affiliate Spire STL.

As FERC recognized in the Certificate Order, Spire STL’s decision to construct the project before affirmative action by the MoPSC puts the company at risk of not being

⁸ EDF Protest, pg. 3.

⁹ *Id.* pg. 30; EDF Protest Ex. A, *Affidavit of Gregory Lander* (“Lander Affidavit”), PP 17-21.

¹⁰ Sections 393.130, 393.140 and 393.150, RSMo (2016).

¹¹ *State ex rel. Assoc. Nat. Gas Co. v. Pub. Serv. Comm’n*, 954 S.W.2d 520, 528-29 (Mo. Ct. App. W.D. 1997); *Spire Mo. Inc. v. Pub. Serv. Comm’n*, 618 S.W.3d 225, 233 (Mo. banc 2021).

able to recover some or any of its costs from its affiliate Spire Missouri.¹² The Staff of the MoPSC is currently conducting a prudence review of Spire Missouri's actions including its transactions with Spire STL.¹³ EDF has intervened in that case and will be able to present arguments about the prudence of Spire Missouri's actions in the proper forum, before the MoPSC.¹⁴ Therefore, any conditions upon the temporary emergency certificate for Spire STL must be limited to Spire STL.

B. The MoPSC does not support the condition as proposed by EDF regarding limitations on the use of the Spire STL Pipeline.

The MoPSC is concerned that EDF's proposed limitations on Spire STL's use of the pipeline could constrain Spire Missouri's provision of natural gas to all its local Missouri customers under the utility's approved tariffs. In addition, the proposed conditions could make natural gas service to retail customers more expensive than necessary. EDF proposed that "any temporary emergency certificate ... should be limited to only allow usage of the Spire STL pipeline to the extent strictly necessary to avoid service disruptions to Spire Missouri firm customers."¹⁵ The MoPSC does not understand, and EDF does not explain, exactly how this "strict necessity" condition would apply to the various service classifications in Spire Missouri's tariff. Therefore, the MoPSC does not support this restriction as proposed by EDF and FERC should not adopt it.

¹² CP17-40, *Order Issuing Certificates*, 164 FERC P 61,085 ("Certificate Order") (August 3, 2018), P 87.

¹³ MoPSC Docket No. GR-2021-0127.

¹⁴ *Id.*, *Order Granting Applications To Intervene*, (December 30, 2020).

¹⁵ Lander Affidavit, P 6.

Spire Missouri’s tariffs do not specifically define “firm” customers. Several Spire Missouri East customer rate classes are designated as transportation services, and it is not clear how EDF’s proposed limitation would affect customers receiving transportation service from Spire Missouri. For example, both the Experimental School Transportation Program (“STP”) and Large Volume Transportation and Sales Service (“LVTSS”) tariff sheets contain provisions that allow customers to be treated similarly to “firm” customers. Specifically, the STP tariff sheet states that in the event that gas supplies are not delivered to Spire Missouri’s system, Spire Missouri shall be entitled to convert the eligible school entities to regular sales service.¹⁶ It is not clear whether EDF’s proposal would limit deliveries of the schools’ gas from the STL Pipeline to Spire Missouri’s system.

Spire Missouri’s LVTSS tariff sheet states that in the event service curtailments are required because of distribution capacity constraints on the LDC’s system, Spire Missouri shall not discriminate between transportation and sales customers for purposes of determining the order and priority of such curtailments.¹⁷ Again, it is not clear how EDF’s “strict necessity” condition applies to customers receiving gas under Spire Missouri’s LVTSS tariff. In light of Spire Missouri’s obligations to serve end-use customers under its various tariff provisions, the importance of natural gas to people in the St. Louis region, and the potential impacts of severe cold on the natural gas supply,

¹⁶ Schedule of Rates and Charges Applying To Spire Missouri East Service Areas, P.S.C. Mo. 7, Sheet No. 15.3.

¹⁷ *Id.*, Sheet No. 10.2.

the MoPSC opposes any restriction of gas deliveries to Spire Missouri customers during the time period of any temporary emergency certificate.

Finally, the condition could harm Spire Missouri customers. For example, to the extent Spire Missouri interrupts service to interruptible customers, Spire Missouri could reduce takes from Spire STL. It is unclear how depriving customers of natural gas service sourced from an existing facility serves the public interest. As was seen in February 2021, the price of natural gas differed significantly at various hubs. Depriving Spire Missouri of full ability to purchase the most economic natural gas forces Spire Missouri's retail customers to pay more without creating additional public benefits. If EDF wishes to limit revenues to Spire STL, the Commission has other options that will not harm Spire Missouri's customers.

C. The rate impacts of EDF's proposed rate conditions on Spire Missouri customers is not clear from its filing.

Finally, the MoPSC is concerned about the effects of EDF's proposed rate condition on Spire STL will have on Spire Missouri's customers. The third condition included in Lander's affidavit proposes that the certificate require Spire STL to charge Spire Missouri a re-designed rate to place at least 50 percent of Spire STL's recovery of return and taxes in the usage rate, based upon usage determinants no less than the usage associated with that throughput projected to be necessary to avoid curtailment of service to Spire Missouri's firm customers.¹⁸ It is not clear from the language in EDF's filing

¹⁸ Lander Affidavit, P 31.

how this re-designed rate would compare to the existing negotiated contract rate between Spire STL and Spire Missouri.

EDF and Spire STL disagree about the effects of the Court's mandate on the rate agreement between Spire STL and Spire Missouri.¹⁹ The MoPSC takes no position on this issue. Section 7 of the NGA does not require a finding that Spire STL's initial rates are just and reasonable, but simply that the temporary emergency service "is required by the present and future public convenience and necessity."²⁰ FERC may attach conditions to a certificate which the agency deems necessary to protect consumers from excessive rates and charges.²¹ When considering temporary emergency certificates, FERC has looked "even more carefully" at the public convenience and necessity and imposed conditions precedent to the certificate "as would... fully protect consumers from excessive rates and charges."²² When exercising its authority under the NGA's emergency provisions, the MoPSC requests FERC impose no condition that would cause Spire Missouri customers to pay more than they would under its current rate agreement with Spire STL.

The current negotiated rate that Spire STL charges Spire Missouri is approximately one-third lower than the recourse rate for firm service on the STL

¹⁹ Compare EDF Protest pg. 13; *Motion To Answer And Answer Of Spire STL Pipeline LLC To Motion To Reject In Part And Protest Of The Environmental Defense Fund* ("Spire STL Answer"), pg. 14.

²⁰ *Fed. Power Comm'n v. Hunt*, 376 U.S. 515, 521 (1964).

²¹ *Id.*

²² *Id.*

Pipeline.²³ The only other customer of STL Pipeline, Spire Marketing Inc., also takes service through a negotiated rate agreement. The MoPSC is unaware of any customers taking service under the FERC-approved recourse rate. Spire STL reports that its actual return on equity (ROE) it earns through the negotiated rate agreements is approximately 8 percent, which is less than the 12 percent ROE that FERC authorized in the Certificate Order.

It is unclear to the MoPSC what rate Spire Missouri customers would pay under the modified rate proposed by EDF, or the basis for such a rate. There is no cost of service study for the STL Pipeline on file in this case. However, numerous filings in the amended certificate applications, filings of landowners affected by the construction of the pipeline, and Spire STL status reports included in this docket show that construction and remediation costs have increased since the pipeline was initially proposed, and increased further since the amended certificate application was approved in October 2019. Based on these recent cost increases, a new recourse rate based upon some cost-of-service calculation for a temporary emergency certificate could result in recourse rates above the current FERC-approved recourse rate of \$10.8579 Dth/mo.²⁴ or at least above \$0.2500 Dth/day, Spire Missouri's current rate agreement. The MoPSC opposes any rate determination that would be cause Spire Missouri's rate to increase from the negotiated rate currently in place.

²³ Spire STL Answer, pg. 15.

²⁴ The amended certificate order issued October 28, 2019 approved a maximum firm transportation rate of \$10.8579 due to increased construction costs.

The setting of a recourse rate has little relevance in the present case because the only two firm transportation customers of Spire STL Pipeline, Spire Missouri and Spire Marketing, take service under rate agreements. EDF proposes a usage rate for the temporary certificate, but the impact of any adjustment to the usage rate is also unknown, because the usage rate is now zero under Spire STL's firm transportation service tariff. Spire STL's negotiated rate agreement with Spire Missouri is set based upon usage of 350,000 Dth at a charge of \$0.2500/Dth. The negotiated rate is not based upon any cost of service that quantifies a rate of return, income tax expense or billing determinants.

Spire Missouri recovers all reasonable and prudently-incurred costs associated with natural gas procurement and delivery (interstate pipeline costs) from its LDC end-use customers through the MoPSC's Purchased Gas Adjustment/Actual Cost Adjustment (PGA/ACA) process. Ultimately any change in rates from the current negotiated contract between Spire STL and Spire Missouri potentially will impact Spire Missouri's end-use customers. The MoPSC asks that FERC not allow the impact of the remand and vacating of the Spire STL Pipeline certificate result in a detriment to Spire Missouri's end-use customers by reducing their access to natural gas or by paying a higher rate.

Conclusion

Wherefore, the MoPSC respectfully submits these reply comments regarding the *Application of Spire STL Pipeline LLC for a Temporary Emergency Certificate, Or, In The Alternative, Limited-Term Certificate* in this docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 5th day of October, 2021 in Jefferson City Missouri.

/s/ John D. Borgmeyer