



applicable issues until the Commission determines that restoration is complete. Furthermore, Spire STL will continue to monitor the right-of-way and address landowner concerns for the life of the asset, even after restoration is complete.

In support of this Answer, Spire STL submits the following:

## **I. BACKGROUND**

The Commission issued Spire STL a certificate of public convenience and necessity to construct and operate the Spire STL project facilities (“STL Pipeline”) on August 3, 2018 (“Certificate Order”).<sup>4</sup> Since that time, Spire STL has worked diligently to construct the STL Pipeline consistent with all requirements, conditions, and commitments set forth in the Certificate Order. Spire STL has followed Commission directives and policy regarding communications with affected landowners and has been committed to working with landowners to minimize and mitigate impacts associated with the STL Pipeline. Upon identification of any issue affecting landowners, as directed by the Certificate Order and Spire STL’s Implementation Plan, Spire STL has reported the concern in its ongoing status reports to the Commission and worked with Landowners, and their representatives, to address and/or resolve the issue.<sup>5</sup>

On June 22, 2021, the U.S. Court of Appeals for the District of Columbia (“D.C. Circuit”) issued its decision in *Environmental Defense Fund v. FERC*,<sup>6</sup> vacating the Commission’s Certificate Order and Rehearing Order and remanding the proceeding back to the Commission for

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<sup>4</sup> *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018). Thereafter, Spire STL filed its Implementation Plan for construction of the STL Pipeline on August 13, 2018.

<sup>5</sup> To date, Spire STL has filed eighty-eight status reports, in compliance with Environmental Condition 8 of the Certificate Order. Separately, Spire STL has been filing detailed status reports regarding the specific corrective actions described in FERC’s March 18, 2021 order in this docket, *Spire STL Pipeline LLC*, 174 FERC ¶ 61,219 (2021) (“March 18 Order”), and will continue to do so until such issues have been fully resolved. *See, e.g.*, Spire STL Pipeline LLC, Corrective Action Status Report No. 22, Docket Nos. CP17-40-000, *et al.*, at n.4 (filed Aug. 23, 2021).

<sup>6</sup> *EDF v. FERC*, 2021 WL 2546672 (D.C. Cir. June 22, 2021).

further explanation and analysis. In order to prevent an emergency and assure maintenance of adequate gas service for 650,000 homes and businesses in the St. Louis metropolitan area and ten surrounding counties in eastern Missouri, Spire STL filed its Emergency Certificate Application on July 26, 2021.

## II. MOTION FOR LEAVE TO ANSWER

In addition to commenting on Spire STL's Emergency Certificate Application, Landowners styled their pleading as a "protest." While a certificate applicant would be entitled, and in fact expected, to respond to comments made in the course of its certificate proceeding, the Commission's Rules of Practice and Procedure do not permit answers to protests except by leave of the Commission.<sup>7</sup> Accordingly, Spire STL respectfully seeks leave to answer the protests.<sup>8</sup>

The Commission permits an answer when it provides useful and relevant information that will assist the Commission in the decision-making process, or where the answer will clarify the issues before the Commission.<sup>9</sup> This Answer satisfies those criteria. The Answer will assure a more complete and accurate record, which will assist the Commission in reviewing the issues properly raised in this proceeding and the Emergency Certificate Application specifically.

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<sup>7</sup> 18 C.F.R. § 385.213(a)(2) (2021). Spire STL also notes that pursuant to the August 6, 2021 Notice of Application and Establishing Intervention Deadline in this proceeding, the deadline for submitting comments on the pending Emergency Certificate Application is September 7, 2021, with reply comments due by October 5, 2021.

<sup>8</sup> The Commission permits answers that would otherwise be prohibited where the reply would assure a complete record in the proceeding or assists the Commission in its decision-making process. *New Fortress Energy, LLC*, 174 FERC ¶ 61,207, at P 7 (2021) ("The Commission's Rules of Practice and Procedure do not permit answers to protests or answers to answers; however, we find good cause to waive our rules and accept the answers because they provide information that has assisted in our decision-making process.").

<sup>9</sup> *Saltville Gas Storage Co, L.L.C.*, 164 FERC ¶ 61,212 (2018) ("[T]he Commission finds good cause to accept Saltville's answer because it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will ensure a complete record; provide information helpful to the disposition of an issue."); *Columbia Gas Transmission, LLC*, 146 FERC ¶ 61,232 (2014) ("While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, ... the Commission will accept Columbia's answer to aid in the disposition of the issues."); *Algonquin Gas Transmission, LLC*, 166 FERC ¶ 61,012 (2019) ("[W]e will accept Algonquin's answers because they clarify the concerns raised.").

Accordingly, good cause exists for the Commission to grant this motion for leave to file this Answer.

### **III. ANSWER**

#### **A. Spire STL Has and Will Continue to Work in Good Faith with All Landowners.**

A significant portion of the Protest focused on general landowner impacts, along with allegations of harm, as a result of the STL Pipeline,<sup>10</sup> including various claims that Spire STL has refused to negotiate with the Landowners, ignored restoration issues, and failed to uphold its obligations under the Certificate Order. While some of these issues may go beyond the scope of the exigent emergency circumstances at the center of the Emergency Certificate Application, Spire STL believes it is important to correct these misstatements and clarify the record.

##### **1. Spire STL Has Been Negotiating and Will Continue to Negotiate with Landowners to Resolve all Remaining Issues.**

The Protest makes several inaccurate claims regarding the pipeline's negotiations with landowners for easement agreements along the STL Pipeline's route. For instance, the Protest claims that Spire STL rushed to gain immediate possession of property rights to build the STL Pipeline via condemnation proceedings, refused to negotiate with Landowners after initiating the condemnation proceedings, and has since forced Landowners to engage in protracted lawsuits based on the company's insistence to litigate.<sup>11</sup> Each of these statements are incorrect.

First, the Protest fails to recognize that Spire STL negotiated, or attempted to negotiate, with all STL Pipeline landowners (including those listed under the Protest) prior to filing *any*

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<sup>10</sup> The Protest alleges in multiple places that Landowners have lost "millions" of dollars in topsoil alone. Protest at 4, 7. In doing so, the Protest fails to note however that the Commission has already determined that Spire STL implemented best practices to ensure topsoil and subsoil were properly handled, segregated, stabilized, and replaced during construction. See *Spire STL Pipeline, LLC*, 174 FERC ¶ 61,219, at PP 33–34 (2021) (finding that FERC Staff ensured Spire STL was implementing best practices regarding topsoil and subsoil). The Protest's claims suggesting otherwise are without merit.

<sup>11</sup> Protest at 3, 12.

eminent domain filings. These landowner negotiations were extensive and occurred over a year or more—again, before and during construction—via direct communications between Spire STL land agents and landowners or their designated representatives.

After the Commission issued the Certificate Order, condemnation filings were made at the appropriate time in order to assure access to the STL Pipeline right-of-way so that Spire STL could construct pipeline facilities in a timely manner, consistent with the Certificate Order’s two-year deadline to do so.<sup>12</sup> Spire STL’s approach in this regard is consistent with general industry practices and otherwise unremarkable. Although Spire STL would have preferred to have settled with all landowners, Spire STL notes that all Landowners in the condemnation proceedings described in the Protest have had the right for more than a year to be compensated for the appraised value of their land.<sup>13</sup>

Despite the ongoing proceedings, Spire STL has continued to try to engage Landowners to negotiate potential settlements for their respective easements. And while Spire STL previously anticipated that several of the proceedings would have been concluded by this time, multiple delays have occurred due in part to the COVID-19 pandemic and, mostly, at the urging of Landowner

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<sup>12</sup> Certificate Order at Ordering Paragraph (B)(1). Spire STL also notes that it originally requested Commission action approving the STL Pipeline by December 2017 so that the pipeline could be placed into service by November 2018, the date requested by the project’s shipper, Spire Missouri Inc. Once the STL Pipeline was authorized in August 2018, Spire STL had a more limited window to clear trees in 2018 and wanted to ensure it could complete any remaining tree clearing during the 2019 spring construction window.

<sup>13</sup> Spire STL has made this point clear, and provided supporting evidence, multiple times in this proceeding. *See, e.g.*, Spire STL Pipeline LLC, Response to CLC and IDOA Reports, Docket Nos. CP17-40-000, *et al.*, at 2–3 (filed Sept. 4, 2020).

counsel.<sup>14</sup> Nonetheless, some of those proceedings are in advanced stages,<sup>15</sup> and Spire STL hopes to resolve the remaining cases in the near future, including via settlement, if possible, with Landowners.<sup>16</sup>

## **2. Spire STL Has Monitored, Tracked, and Responded to All Landowner Issues Raised Throughout the Proceeding and Will Continue to Do So.**

The Protest also asserts that Spire STL has done “nothing” to acknowledge or address restoration and revegetation issues after placing the pipeline into service and has refused to honor its obligations under the Certificate Order.<sup>17</sup> Both of these claims are also untrue. As detailed below, Spire STL has made numerous status report filings in this proceeding to track and address restoration and revegetation issues, and Commission Staff reported as recently as July 20, 2021 in this very proceeding that the restoration work is proceeding satisfactorily.

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<sup>14</sup> See, e.g., *Spire STL Pipeline LLC v. 3.31 Acres of Land (Missouri)*, Cons. Case No. 4:18-CV-01327) (Doc. 354 (Motion by Landowners for additional time to respond to discovery); Doc.380 (Revised Schedule submitted by Attorney Elefant and Attorney Walker extending dates for hearings on just compensation); Doc. 471 (Joint Motion by Attorney Elefant and Attorney Walker to stay hearings on just compensation); Doc. 574 (Joint Motion by Attorney Elefant and Attorney Walker requesting continuance of pre-trial hearing); Doc 608 (Motion by Attorney Elefant to continue hearing on just compensation)). See also *Spire STL Pipeline LLC v. Betty Ann Jefferson, et al.*, Doc. 165 Motion by Attorney Elefant for Extension of Time to Complete Discovery, 3:18-cv-3204-SEM-TSH (C.D. Ill. Jan. 25, 2021); *Spire STL Pipeline LLC v. Betty Ann Jefferson, et al.*, Doc. 169 Joint Motion to Reconsider the Court’s Amended Deadline, 3:18-cv-3204-SEM-TSH (C.D. Ill. Feb. 12, 2021); *Spire STL Pipeline LLC v. Gerald Scott Turman, et al.*, Doc. 150 Motion by Attorney Walker to Continue Hearing on Motion to Appoint Commission, 3:18-cv-1502-SPM (S.D. Ill. May 6, 2019); *Spire STL Pipeline LLC v. Gerald Scott Turman, et al.*, Joint Motion for Extension of Time to Extend Certain Deadlines, 3:18-cv-1502-SPM (S.D. Oct. 30, 2020).

<sup>15</sup> See, e.g., *Spire STL Pipeline LLC v. 3.31 Acres of Land (Missouri)*, Cons. Case No. 4:18-CV-01327) (Doc. 622 at pp. 8-11) (Missouri Commissioners’ July 12, 2021 Report on Just compensation for Schaeffer tract, agreeing with Spire STL or entitling more weight to its expert testimony that decompaction efforts by Spire STL were successful, soil chemistry and nutrients between the topsoil and the subsoil were very similar to each other, assertions regarding negative impacts to drainage patterns of the property were speculative and not otherwise supported, the soil properties and chemical differences between samples on and off the pipeline project right-of-way were very similar, and crop yields on the subject property in 2020 were equal to or slightly greater than the crop yields in 2018). Separately, Spire STL expects Reports on Just Compensation to be issued by the Missouri Commissioners involving two additional tracts on or before September 3, 2021.

<sup>16</sup> Unfortunately, several Landowners have recently indicated to Spire STL that they do not wish to engage in any further negotiations now that the D.C. Circuit has vacated Spire STL’s Certificate Order, and because the Commission has not yet communicated the path forward.

<sup>17</sup> Protest at 4.

Spire STL strictly follows well-established pipeline construction practices and procedures, including its Implementation Plan, the Certificate Order, and FERC’s Upland Erosion Control, Revegetation, and Maintenance Plan (“Plan”) and Wetland and Waterbody Construction and Mitigation Procedures (“Procedures”). As part of that practice, Spire STL has filed over eighty-eight monthly construction status reports in this proceeding since February 2019, which are ongoing.<sup>18</sup> Through these status reports, Spire STL has promptly tracked, responded to, and if applicable, addressed any issues properly raised by any landowner or in response to FERC Staff’s ongoing inspections of the STL Pipeline. Further, FERC Staff, and at times the Chairman’s office, has reviewed Spire STL’s efforts in this regard. In fact, there have been several occasions in which FERC Staff<sup>19</sup> and then-Chairman Neil Chatterjee<sup>20</sup> have concluded that Spire STL’s actions were consistent with the Certificate Order and FERC’s Plan. The Protest’s disregard for these prior findings and continued insistence to the contrary does not change these facts.

Spire STL has also made significant efforts to resolve restoration issues raised in the Commission’s March 18 Order involving seven specific landowners.<sup>21</sup> Spire STL created comprehensive remediation plans to address all restoration issues for these landowners, including those beyond the corrective actions discussed in the March 18 Order.<sup>22</sup> In addition, Spire STL has

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<sup>18</sup> Spire STL’s most recent monthly status report was just filed on August 19, 2021. Spire STL Pipeline LLC, Monthly Status Report No. 88, Docket Nos. CP17-40-000 (filed Aug. 19, 2021) (“Status Report 88”).

<sup>19</sup> See, e.g., FERC Staff Letter in Response to Mr. Gerald Scott Turman, Docket Nos. CP17-40-000, *et al.* (Mar. 25, 2020); 23 Individual FERC Staff Letters Responding to Landowners, Docket Nos. CP17-40-000, *et al.* (May 24, 2019).

<sup>20</sup> See, e.g., Former Chairman Chatterjee’s Response to U.S. Congressman Rodney Davis, Docket Nos. CP17-40-000, *et al.* (Oct. 15, 2019); Former Chairman Chatterjee’s Response to U.S. Congressman Rodney Davis, Docket Nos. CP17-40-000, *et al.* (June 17, 2019); Former Chairman Chatterjee’s Response to U.S. Congressman Darrin LaHood, Docket Nos. CP17-40-000, *et al.* (May 3, 2019).

<sup>21</sup> *Spire STL Pipeline, LLC*, 174 FERC ¶ 61,219 (2021).

<sup>22</sup> See, e.g., Spire STL Pipeline LLC, Corrective Action Status Report 21, Docket Nos. CP17-40-000 and -001 (filed Aug. 13, 2021).

made multiple offers to compensate landowners in the event the landowners would prefer to perform the corrective actions themselves. As a result, two landowners have settled all of their respective restoration and revegetation issues with Spire STL. With only a few exceptions, the remaining landowners have either: (1) refused to grant Spire STL temporary access to the construction right-of-way, which is necessary for Spire STL to complete restoration activities (this has created a self-fulfilling prophecy where Spire STL has been criticized for failing to address restoration issues, yet the on-going restoration concerns cannot be addressed because Spire STL has been denied access to perform such work); or (2) requested that Spire STL delay any restoration activities until a later date.

Spire STL is planning on initiating the restoration work described in the March 18 Order the week of September 13, 2021, the date last requested by various landowners, and is hopeful it will be able to commence this work at that time. However, Spire STL is currently prevented from actually remedying these issues until these landowners confirm when Spire STL can perform the Commission-required corrective actions and allow for temporary access to perform such work.

Finally, FERC Staff is also continuing to review and monitor restoration issues or concerns raised by Landowners. In fact, FERC Staff filed its most recent inspection report in this regard on July 20, 2021.<sup>23</sup> While the July 20 Inspection Report notes that restoration across properties ranged from successful restoration to properties that require more attention,<sup>24</sup> the report concludes that “restoration of affected lands, which is a process that occurs over multiple years, is proceeding satisfactorily.”<sup>25</sup> The Protest ignores this conclusion in Staff’s report and there is no evidence that

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<sup>23</sup> *Spire STL Pipeline LLC*, Docket Nos. CP17-40-000, *et al.* (July 20, 2021) (Restoration Inspection Report) (“July 20 Inspection Report”).

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.* at 4.



Spire STL is not complying with, or refusing to honor its obligations under, the Certificate Order. As for those properties that require more attention, Spire STL has already responded to FERC Staff's July 20 Inspection Report in Spire STL's most recent monthly construction status report filed on August 19, 2021.<sup>26</sup>

**3. Spire STL Will Continue to Work with All Landowners to Address Any Other Issues.**

Spire STL reiterates that, contrary to the Protest, it will address any future issues, including those items raised during any FERC Staff inspection, with landowners. To be clear, this includes both those landowners in on-going eminent domain proceedings and those that have previously settled with Spire STL. For example, Spire STL settled with landowner Dahman on July 22, 2020, but still performed additional remediation work as recently as the end of July 2021 (more than 1 year after settlement was reached) because Spire STL and Mr. Dahman later identified new restoration concerns that required resolution.<sup>27</sup> Spire STL is proud of its record to date in the proceeding and looks forward to continuing to work with landowners to properly maintain the pipeline and ensure full restoration and revegetation along the STL Pipeline's route.

**B. Spire STL's Certificate Has Not Been Invalidated and the Commission Is Authorized to Issue the Temporary Certificate.**

Regarding the Emergency Certificate Application, the Protest incorrectly asserts that the Commission has no authority to approve the Emergency Certificate Application because Spire STL's certificate has been invalidated.<sup>28</sup> Despite their claims arguing otherwise, counsel for Landowners know that the mandate to invalidate the certificate has yet to issue from the D.C.

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<sup>26</sup> See Status Report 88 (detailing all restoration issues raised by landowners and Spire STL's response to address such issues).

<sup>27</sup> See *id.* at 4–5, 11–12 (regarding Tract Number IL-SC-011.000).

<sup>28</sup> Protest at 10.

Circuit. While Spire STL’s certificate is still valid, it could be invalidated by the D.C. Circuit in the near future – hence the need to file the Emergency Certificate Application to help prevent life-threatening circumstances during the upcoming winter season. In addition, Spire STL notes that on August 5, 2021, it sought rehearing of the D.C. Circuit’s remedy decision regarding vacatur. Soon thereafter, the clerk for the D.C. Circuit ordered petitioners to file responses to the petition for rehearing, thus further reiterating the fact that Spire STL’s certificate is currently valid.

In addition, the Protest fails to cite any meaningful authority or precedent for its position that the Commission cannot grant the temporary certificate. Instead, it highlights a case in which a gas company never received a valid certificate,<sup>29</sup> which is inapplicable to the circumstances in this proceeding, where Spire STL received (and currently maintains) a valid certificate. In addition, section 7(c) of the Natural Gas Act (“NGA”)<sup>30</sup> provides the Commission with broad discretion to issue temporary certificates and does not include any of the limits described in the Protest. The Protest’s attempts to alter prior precedent or create new limits on temporary certificates should be rejected.

### **C. Any Temporary or Interim Certificate Would Convey Eminent Domain Authority.**

The Protest also asserts that any temporary certificate may not confer eminent domain powers and, instead, easements should only be acquired by Spire STL via landowner negotiations.<sup>31</sup> However, there is no legal basis to withhold eminent domain authority for a temporary certificate under section 7 of the NGA. Congress granted all certificate holders eminent

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<sup>29</sup> *Id.* (citing *Algonquin Gas Transmission v. Federal Power Commission*, 201 F.2d 334, 340–41 (1st Cir. 1953)).

<sup>30</sup> 15 U.S.C. § 717f(c)(1)(B) (2018).

<sup>31</sup> Protest at 11.

domain rights and chose not to withhold or otherwise limit those rights from holders of emergency certificates. There is nothing in the NGA indicating temporary certificates are treated differently with regard to NGA eminent domain authority.

Furthermore, the Protest's request conflicts with the Commission's very own precedent in which it has concluded that it "lacks the authority to deny or restrict the power of eminent domain in a section 7 certificate."<sup>32</sup> Courts have likewise held that "[i]ssuing such a Certificate conveys and automatically transfers the power of eminent domain to the Certificate holder. *See id.* § 717f(h). Thus, the Commission does not have discretion to withhold eminent domain power once it grants a Certificate,"<sup>33</sup> nor does it make any sense to do so if the goal, as is the case in these circumstances, would be to use eminent domain to complete restoration along the project's route.

Furthermore, Spire STL requested a temporary certificate, consistent with Commission precedent, to maintain service while the Commission considers the D.C. Circuit decision on remand. The temporary authority requested by Spire STL would not be used for construction but is instead necessary to help operate and maintain existing facilities, particularly during the upcoming winter. Access to the permanent right-of-way along the STL Pipeline's route allows Spire STL to ensure the safety and reliability of the pipeline facilities, as well as help address any remaining (or future) restoration or revegetation issues while the Certificate Order is on remand with the Commission. The arguments in the Protest that would otherwise prevent Spire STL from doing so should be rejected.

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<sup>32</sup> *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871-B, 175 FERC ¶ 61,098, at P 45 (2021). *See also* Spire STL Response to EDF Protest at 16.

<sup>33</sup> *Berkley v. Mountain Valley Pipeline, LLC*, 896 F.3d 624 (4th Cir. 2018) (citing *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000)).

**D. Any Temporary or Interim Certificate Would Require Spire STL to Restore and Maintain Properties, Consistent with Spire STL's Current Certificate.**

Finally, the Protests asks that any temporary certificate be conditioned on restoring properties to the Landowners' satisfaction.<sup>34</sup> To the extent the Protest is looking for Spire STL to ensure its commitment toward restoration and revegetation (as well as continued operation and maintenance activities), Spire STL has reiterated on several occasions its obligations to continue to monitor the pipeline and address any restoration issues on a going-forward basis. Nothing has changed Spire STL's commitment to do so.

As evidenced by Spire STL's recent status report filings, the company has been trying to work with landowners to address restoration issues. Unfortunately, in many instances landowners have either denied Spire STL access or delayed such access, and therefore the corresponding remediation work. Regardless, Spire STL will continue to operate the pipeline facilities consistent with the Commission's Certificate Order and regulations and address any issues (restoration or otherwise) for the life of the certificate.

To the extent the Protest is asserting that Landowners should determine when restoration is complete, such claims are completely unfounded. Spire STL is unaware of any authority under which landowners, instead of FERC Staff, can inspect pipeline facilities, apply the conditions and obligations of a pipeline certificate, and determine if restoration is proceeding satisfactorily.<sup>35</sup> The Protest's attempts to create such authority here should be rejected.

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<sup>34</sup> Protest at 14.

<sup>35</sup> As the Supreme Court reiterated earlier this month, "no man can be a judge in his own case." *Chrysaflis v. Marks*, No. 21A8 (U.S.) Aug. 12, 2021.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Spire STL respectfully requests that the Commission grant Spire STL's Motion for Leave to Answer, clarifying the record, and reject the Protest.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of August, 2021, I have served a copy of the Motion for Leave to Answer and Answer on the official service list compiled by the Office of the Secretary for the above-referenced proceeding.

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