

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

Spire STL Pipeline LLC)
)

Docket No. CP17-40-007

**MOTION TO REJECT IN PART AND PROTEST OF THE
ENVIRONMENTAL DEFENSE FUND**

Pursuant to Rules 211 and 212 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure,¹ Environmental Defense Fund (“EDF”) respectfully submits this Motion to Reject in Part and Protest of the Application of Spire STL Pipeline LLC for a Temporary Emergency Certificate, or, in the Alternative, Limited-Term Certificate (“Application” or “Spire Affiliates’ Application”) filed by Spire STL Pipeline LLC (“Spire STL”) on July 26, 2021. While the Commission should act as necessary to ensure that residents and businesses in St. Louis continue to have reliable access to natural gas, the Spire Affiliates’ Application has serious deficiencies and any temporary emergency certificate granted by the Commission should be limited and subject to strict conditions.

I. INTRODUCTION

The Spire Affiliates’ Application seeking a temporary emergency certificate is fraught with inaccuracies, lacking in key information, and should be scrutinized carefully by the Commission and rejected in part. The U.S. Court of Appeals for the D.C. Circuit (“D.C. Circuit”) recently issued a decision² finding that the Commission’s Certificate Order and Rehearing Order

¹ 18 C.F.R. §§ 385.211 and 212.

² *Environmental Defense Fund v. Federal Energy Regulatory Commission*, Case No. 20-1016, 2021 U.S. App. LEXIS 18503, 2021 WL 2546672 (D.C. Cir. June 22, 2021) (“*EDF v. FERC*”), available at https://www.edf.org/sites/default/files/press-releases/2021-06-21_EDFvFERC_SpirePipelineDecision.pdf.

approving the Spire STL Pipeline³ were arbitrary and capricious and lacked evidentiary support. The Court vacated the orders; as a result, when the decision becomes legally effective upon issuance of the mandate, the Spire STL Pipeline will have no legal authority to operate. This prompted the Spire Affiliates to file the instant Application. This is an unprecedented situation and the Commission must make decisions based on facts and the law, not fear. Spire STL knowingly assumed the risk of constructing and operating a pipeline that was subject to ongoing legal challenges, and the Commission must not permit the Spire Affiliates to avoid the consequences of their actions.

The sole issue legitimately before the Commission at this juncture is whether an emergency exists to necessitate issuance of a temporary certificate. In this filing, EDF explains that the Commission should reject inappropriate and irrelevant aspects of the Spire Affiliates' Application; require the Spire Affiliates to submit additional needed information to support their Application; and, if it does review the Application on the merits, impose strict conditions on any resulting temporary emergency certificate. Attached to EDF's pleading are the following Exhibits:

Exhibit A: Affidavit of Gregory Lander

Exhibit B: Excerpt of Rebuttal Testimony of Robert Noelker on behalf of Spire Missouri, Inc., Missouri PSC Docket GR-2021-0108 (June 17, 2021).

Exhibit C: Excerpt of Surrebuttal Testimony of Geoff Marke submitted on behalf of the Office of the Public Counsel, Missouri PSC Docket GR-2021-0108 (July 14, 2021).

Exhibit D: Surrebuttal Testimony of Karen Lyons submitted on behalf of the Missouri Public Service Commission, Missouri PSC Docket GR-2021-0108 (July 14, 2021)

³ *Spire STL Pipeline LLC*, Order Issuing Certificates, 164 FERC ¶ 61,085 (Aug. 3, 2018) (“Spire Certificate Order”); *Spire STL Pipeline LLC*, Order on Rehearing, 169 FERC ¶ 61,134 (Nov. 21, 2019).

The Spire Affiliates' Application alleges that, if the Spire STL Pipeline were required to shut down as a result of the D.C. Circuit's mandate, Spire Missouri, a local distribution company ("LDC") serving the St. Louis area, would be required "to curtail natural gas service during the upcoming winter heating season." Spire STL and Spire Missouri (collectively, the "Spire Affiliates") are affiliates under common ownership and the Application, while filed by Spire STL, contains substantial operational details regarding Spire Missouri and includes an affidavit by the President of Spire Missouri, Scott Carter ("Carter Affidavit").

To the extent an emergency exists, it is of the Spire Affiliates' own making. When the Spire STL Pipeline came online, Spire Missouri's distribution system became isolated in part from other sources of gas supply and Spire Missouri retired assets that supported reliable service during peak usage. This is contrary to reasonable utility practice to preserve direct interconnections with existing pipelines in order to ensure continued access to more supply options. In fact, the Commission's Certificate Policy Statement explicitly mentions new interconnections as a potential public benefit.⁴ The Spire Affiliates claimed that the Spire STL Pipeline was providing more diverse supply options to the region, but in fact its actions have rendered the St. Louis region dependent, in the immediate term, predominantly on a single pipeline that has been deemed unlawful in court. As EDF explains herein, the Spire Affiliates cannot be permitted to reap financial benefits as a result of any temporary emergency authorization.

⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, Statement of Policy, 88 FERC ¶ 61,227, 61,748 (September 15, 1999) ("The types of public benefits that might be shown are quite diverse but could include meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives.") ("Certificate Policy Statement").

The Spire Affiliates' Application seeking authorization to operate their pipeline during the pendency of the remand proceedings violates the D.C. Circuit's finding that vacatur of the certificate orders is the appropriate relief in this matter and the Commission must act consistent with the Court's decision. The Application must be rejected in part for its inappropriate reliance on irrelevant information, and the request for a limited-term certificate should be rejected outright because it is procedurally inappropriate. Before considering the merits of the remaining segments of the Application, the Commission should require that the Spire Affiliates provide necessary information—which is conspicuously missing from the Application—to ensure that the Commission can render a reasoned decision. Furthermore, any temporary emergency certificate granted by the Commission should include conditions to limit the scope, duration, and ratepayer impacts of any temporary emergency certificate.

II. BACKGROUND

In August 2016, Spire STL announced its intent to build a new pipeline to serve St. Louis, despite the fact that natural gas consumption in Missouri has been flat for nearly two decades.⁵ Numerous pipelines already served the St. Louis region, which has a failed track record of proposals to build new pipelines—indeed, Spire Missouri had previously explained that it was uninterested in a proposal for a new pipeline because it “did not make operational or economic sense for either the Company or its customers.”⁶ But in an about face, Spire Missouri executed a precedent agreement with its corporate affiliate Spire STL even though it did not need

⁵ Application of Spire STL Pipeline LLC for Certificates of Public Convenience and Necessity, Docket CP17-40-000, at p4 (Jan. 26, 2017); Protest of Enable Mississippi River Transmission, LLC, Docket CP17-40-000, at p14 (Feb. 27, 2017).

⁶ Protest of Enable Mississippi River Transmission, LLC, Docket CP17-40-000, at p29 (Feb. 27, 2017)

new capacity.⁷ Rather, Spire Missouri proposed to transfer its existing load from a competitor to Spire STL under the pretense of replacing propane facilities and accessing diverse gas supplies.

Spire STL filed its certificate application with the Commission on January 26, 2017.⁸ The precedent agreement with Spire Missouri was the only evidence of need that Spire STL presented. Numerous parties protested the application, including EDF; the Missouri Public Service Commission; Enable Mississippi River Transmission LLC (“Enable” or “MRT”), the owner of an existing pipeline serving Spire Missouri; and Ameren Service Company, MRT’s second-largest customer.

On August 3, 2018, the Commission approved Spire STL’s application by a 3-2 vote.⁹ The majority relied exclusively on the existence of the precedent agreement between Spire STL and Spire Missouri to establish need. Rather than consider whether the affiliate relationship diminished the probative value of the precedent agreement regarding the question of need, the Commission declared it was “not in the position to evaluate Spire Missouri’s business decision.”¹⁰ In considering adverse impacts consistent with the Certificate Policy Statement,¹¹ the Commission recognized that captive customers of existing pipelines would potentially face higher rates. It also found that Spire STL had not finalized easement agreements with affected

⁷ Application of Spire STL Pipeline LLC for Certificates of Public Convenience and Necessity, Docket CP17-40-000, at p3 (Jan. 26, 2017); *Spire STL Pipeline LLC*, Order Issuing Certificates, 164 FERC ¶ 61,085, at ¶107 (Aug. 3, 2018).

⁸ Application of Spire STL Pipeline LLC for Certificates of Public Convenience and Necessity, Docket CP17-40-000 (Jan. 26, 2017).

⁹ *Spire STL Pipeline LLC*, Order Issuing Certificates, 164 FERC ¶ 61,085.

¹⁰ *Id.* at ¶33.

¹¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, Statement of Policy, 88 FERC ¶ 61,227.

landowners for “most of the land required for the project.”¹² Without these agreements, Spire STL would need to exercise its FERC-enabled eminent domain authority to seize private property through disruptive condemnation proceedings. Without assessing or quantifying this evidence of substantial harm, the Commission majority summarily concluded “that the benefits that the Spire STL Project will provide to the market . . . outweigh the potential adverse effects.”¹³

EDF and other parties sought rehearing of the Spire Certificate Order.¹⁴ With rehearing requests still pending, the Commission authorized Spire STL to begin construction and, ultimately, commence service.¹⁵ Spire STL seized land through condemnation proceedings before landowners and affected parties could seek judicial review of the Commission’s actions. On November 21, 2019, more than one year after parties sought rehearing and one week after the Spire STL Pipeline commenced service, the Commission denied all rehearing requests by divided 2-1 vote.¹⁶ The majority affirmed the exclusive reliance on the precedent agreement between Spire STL and Spire Missouri as evidence of need without questioning whether the affiliate relationship undermined such uncritical reliance. Commissioner Glick dissented, noting that “there is nothing in the record to suggest” that the Project is needed.

On January 21, 2020, EDF filed a Petition for Review of the Certificate Order and the Rehearing Order with the D.C. Circuit. EDF argued that the Commission’s issuance of a

¹² Spire Certificate Order at p54.

¹³ *Id.* at p55.

¹⁴ Request for Rehearing of the Environmental Defense Fund, Docket CP17-40-000 & CP17-40-001 (Sept. 4, 2018); Request for Rehearing of Juli Viel, Docket CP17-40-000 & CP17-40-001 (Aug. 31, 2018).

¹⁵ Notice to Proceed with Construction, Docket CP17-40 (November 5, 2018).

¹⁶ *Spire STL Pipeline LLC*, Order on Rehearing, 169 FERC ¶ 61,134.

certificate to Spire STL was unlawful because the Commission failed to consider whether the affiliate relationship tainted the evidentiary value of the precedent agreement, yet the Commission simultaneously claimed that it had found no evidence of self-dealing despite conducting no such analysis, and because it relied exclusively on the precedent agreement without considering the evidence that there was no need for a new pipeline in the region. EDF further argued that the Commission violated its Certificate Policy Statement by failing to meaningfully evaluate the public benefits of the project compared to its adverse effects.

In a unanimous panel decision on June 22, 2021, the D.C. Circuit granted EDF’s petition, vacated the Commission’s orders approving the Spire STL pipeline—identifying “serious deficiencies in the Certificate Order and Rehearing Order”—and remanded to the Commission for further proceedings.¹⁷ The D.C. Circuit found that the Commission “ignored record evidence of self-dealing” and made clear that the Commission’s reliance on precedent agreements is not necessarily sufficient to show that a proposed pipeline meets the stringent public convenience and necessity standard of the Natural Gas Act.¹⁸ The D.C. Circuit decision emphasizes the Commission’s obligation to respond to legitimate concerns raised by intervenors and disallows the Commission from deferring to the business judgment of local distribution companies without conducting the rigorous analysis demanded by the Natural Gas Act.¹⁹ The Court also found that the Commission’s balancing analysis of public benefits and adverse impacts was arbitrary and capricious agency action, and that this inquiry must be a thorough assessment supported by concrete evidence and a demonstration that the purported benefits are expected to materialize.²⁰

¹⁷ *EDF v. FERC* at p36.

¹⁸ *See id.* at p5, 29.

¹⁹ *Id.* at p31.

²⁰ *See id.* at p5, 31.

Finally, the Court found that the Commission failed to “make a finding as to whether the construction of the proposed pipeline would result in cost savings or otherwise represented a more economical alternative to existing pipelines.”²¹

As of the time of this filing, the D.C. Circuit has not yet issued the mandate that will render its decision legally effective. On July 26, 2021, Spire STL filed an application for a temporary emergency certificate or, in the alternative, limited-term certificate.²² EDF responds to that application herein.

III. MOTION TO REJECT²³

Pursuant to 18 C.F.R. § 385.2001, the Commission may reject any filing that “does not comply with any applicable statute, rule, or order” and “[i]f a filing does not comply with any applicable requirement, all or part of the filing may be stricken.” Similarly, pursuant to 18 C.F.R. § 157.8, an application for a certificate of public convenience and necessity may be rejected when it “patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders.” Substantial portions of the Spire Affiliates’ Application, including Sections V, VI, IX, and X and portions of Section I, Subsection E, should be rejected because they fail to comply with applicable statutes, regulations, and court rulings—

²¹ *Id.* at p35.

²² Application of Spire STL Pipeline LLC for a Temporary Emergency Certificate, Or, In the Alternative, Limited-Term Certificate, Docket CP17-40-007 (July 26, 2021).

²³ As described herein, EDF contends that FERC should reject outright any elements of the Spire Affiliates’ Application that are not in compliance with applicable statutes, rules, or orders. However, in the event that FERC elects not to *reject* these components of the Application, FERC still should consider this Section as a Protest and based on the arguments herein should *deny* the aspects of the Application that extend beyond the relevant scope of the emergency certificate determination.

including the Natural Gas Act, the Commission regulations regarding certificates of public convenience and necessity, and the D.C. Circuit’s decision in *EDF v. FERC*.

Allowing the Spire STL Pipeline to continue to operate outside of what is absolutely necessary to avoid an emergency situation is clearly inconsistent with the D.C. Circuit decision. The Court concluded that vacatur of the certificate was the appropriate remedy and found that the Commission and pipeline owners should not be incentivized to continue a policy of “build[ing] first and conduct[ing] comprehensive reviews later” through allowing a certificate to remain in effect during a remand.²⁴

Substantial portions of the Spire Affiliates’ filing contain information that is: (a) irrelevant to the only currently valid issue in this proceeding, whether a temporary emergency certificate should be granted and, if so, the appropriate conditions; and (b) a simple repetition of information and material submitted as part of the Spire Affiliates’ initial application, which the D.C. Circuit found insufficient to justify the Commission’s approval of that application. The Commission should reject that irrelevant, dated, and insufficient information to prevent inappropriately expanding the set of issues to be addressed in this phase of the proceeding. Furthermore, the Spire Affiliates’ claim that the Commission should use the standard for abandonment proceedings to determine whether their pipeline should be permitted to remain in service is directly contrary to the law, including the D.C. Circuit’s decision, and should be rejected. Finally, the Spire Affiliates’ request for a “limited-term certificate” is inconsistent with the Natural Gas Act, Commission regulations, and Commission precedent and should be rejected. Specifically, Sections V, VI, IX, and X of the Spire Affiliates’ Application should be rejected in their entirety, as well as the portions of Section I, Subsection E not directly relevant to

²⁴ *EDF v. FERC* at p37.

the question of whether a temporary certificate is necessary “to assure maintenance of adequate service or to serve particular customers.”

A. Information Not Relevant to the Granting of a Temporary Emergency Certificate Should Be Rejected

In considering whether to grant a temporary emergency certificate under Section 7(c)(1)(B),²⁵ the Commission has, consistent with the Natural Gas Act, considered a single issue: whether an emergency exists such that a temporary certificate is necessary “to assure maintenance of adequate service or to serve particular customers.”²⁶ Furthermore, the D.C. Circuit has found that Section 7(c)(1)(B) “cover[s] a narrow class of situations” involving an unanticipated interruption in natural gas supply, and does not cover “an economic predicament” where the risk is that some party may face increased costs while the Commission reviews the full certificate application.²⁷ The Commission has similarly found that “financial considerations” cannot justify or otherwise support the issuance of a temporary emergency certificate.²⁸ Furthermore, the definition of “emergency” in 18 C.F.R. § 284.262 includes only situations where curtailment of firm service would be required or where action is needed “protection of life or health or for maintenance of physical property.” In establishing this definition, the

²⁵ 15 U.S.C. § 717f(c)(1)(B).

²⁶ *Texas-Ohio Pipeline, Inc.*, Order Issuing Temporary Certificate, 58 FERC ¶ 61,025 (Jan. 15, 1992); *Northern Natural Gas Co.*, Order Rescinding Temporary Certificate, 22 FERC ¶ 61,173 (Feb. 18, 1983); *NGPL-Canyon Compression Co.*, Findings and Order After Statutory Hearing Granting Certificate of Public Convenience and Necessity Authorizing Construction, Denying Request for Temporary Certificate, and Granting Petitions to Intervene, 16 FERC ¶ 61,175 (Sept. 10, 1981).

²⁷ *Pennsylvania Gas & Water Co. v. Federal Power Com.*, 427 F.2d 568, 574-5 (D.C. Cir. 1970). The First Circuit has similarly found that temporary emergency certificates are limited to cases where existing natural gas customers are at risk of being curtailed. *Algonquin Gas Transmission Co. v. Federal Power Com.*, 201 F.2d 334 (1st Cir. 1953).

²⁸ *NGPL-Canyon Compression Co.*, 16 FERC 61,175.

Commission specifically found that “economic emergencies” should not be included in the definition and would not justify exemptions from compliance with the Natural Gas Act.²⁹ Similarly, 18 C.F.R. § 157.202 defines “emergency” as sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of interrupted service *for protection of life or health or for maintenance of physical property.*” (emphasis added). While neither of these sections apply directly to temporary certificate applications under Section 7(c)(1)(B), they cover closely analogous sets of situations, where exemptions from Section 7 of the Natural Gas Act are necessary to prevent or address an emergency. Pursuant to D.C. Circuit and Commission precedent and the text of the Natural Gas Act, the only question in deciding whether a temporary emergency certificate should be issued is whether an emergency exists that would otherwise prevent maintenance of adequate service.

While filing a request for a temporary emergency certificate in advance of the D.C. Circuit issuing its mandate may be a reasonable step, the Spire Affiliates should not be permitted to use the alleged need for emergency action to prematurely reopen consideration of their certificate application. Substantial portions of the Spire Affiliates’ filing focus on issues that have no relation to the question of whether there is an emergency—a risk of curtailment of service to firm Spire Missouri customers—but instead relate to the alleged benefits of the Spire STL Pipeline. This includes, in particular, the Spire Affiliates’ assertions regarding the use of the Spire STL Pipeline since it has entered service in Section I, Subsection E and Section VI. Those assertions and claims regarding the economic impact of operation of the Spire STL Pipeline, and more generally the extent to which it has created benefits and adverse impacts, is not relevant to

²⁹ *Emergency Natural Gas Sale, Transportation and Exchange Transactions*, 51 FR 9179 (March 18, 1986).

whether a temporary emergency certificate should be granted. Therefore, Section I, Subsection E and Section VI should be rejected.

B. The Spire Affiliates’ Reliance on Exhibits from their Initial Application Should Be Rejected

In addition to offering irrelevant and inappropriate claims about the benefits of the Spire STL Pipeline’s operation, much of the Spire Affiliates’ Application consists of reassertion of the same claims and information presented in its initial certificate application. In particular, Section X asserts that the Spire Affiliates are entitled to rely on exhibits filed as part of their initial certificate application rather than submitting new information. As recognized by the D.C. Circuit decision in *EDF v. FERC*, as well as in the dissents to the Spire Certificate Order and the Spire Rehearing Order, that information was wholly insufficient to support the issuance of a Certificate of Public Convenience and Necessity consistent with the requirements of the Natural Gas Act and the Commission’s Certificate Policy Statement.³⁰

The Spire Affiliates seek to relitigate the D.C. Circuit decision vacating the certificate orders by referring back to those orders that have been invalidated by the Court. This is procedurally invalid, and completely irrelevant to the sole question before the Commission now: whether there is an emergency necessitating issuance of a temporary emergency certificate. Thus, the Commission should reject Section X of the Application.

C. The Spire Affiliates’ Reliance on Their Negotiated Rate Filing Should Be Rejected

In Section IX, the Spire Affiliates assume that Spire STL’s existing transportation rates and the negotiated rate agreement between Spire STL and Spire Missouri will continue to govern

³⁰ See *EDF v. FERC* at p34 (finding that the Commission “fail[ed] to engage with” the “plausible evidence of self-dealing” identified by EDF and others); *id.* at p31 (finding that the “Commission pointed to no concrete evidence to support these assertions” regarding the balancing of public benefits and adverse impacts).

rates during any temporary emergency or “limited-term” certificate period. However, those rates are contingent on, and subject to modification by, a Commission order granting a certificate of public convenience and necessity.³¹ When the D.C. Circuit issues its mandate vacating the Spire Certificate Order and Spire Rehearing Order, the approval of those rates, including the negotiated rate agreement, will be vacated. The Spire Affiliates attempt to rely on those rates should therefore be rejected. As described below, the Commission should impose new rate conditions on any temporary emergency certificate.

D. The Assertion That the “Abandonment” Analysis Is Relevant to this Proceeding Should Be Rejected

The Spire Affiliates’ suggestion that the Commission analyze “whether the STL Pipeline’s operation remains in the public interest” based on the “framework for analyzing applications for abandonment under NGA Section 7(b)” is particularly inappropriate.³² First, as described above, the relevant question in this filing is not “whether the STL Pipeline’s operation remains in the public interest” but solely whether an emergency exists such that a temporary certificate is necessary “to assure maintenance of adequate service or to serve particular customers.”³³ Second, even if a public interest analysis were appropriate at this time, the vacatur of the Spire Certificate Order and Spire Rehearing Order requires that the Commission treat the Spire Affiliates as new applicants seeking approval for a pipeline, not pipeline owners contemplating abandonment.

Furthermore, applying the abandonment standard, or any other standard that removes the burden of demonstrating that the Spire STL Pipeline is in the public interest from the Spire

³¹ Spire Certificate Order at ¶¶ 137-171.

³² See Spire Affiliates’ Application at p31.

³³ 15 U.S.C. § 717f(c)(1)(B).

Affiliates, would be clearly inconsistent with the decision in *EDF v. FERC*. The D.C. Circuit declined to remand without vacatur because, inter alia, it would create an “incentive to allow ‘build[ing] first and conduct[ing] comprehensive reviews later.’”³⁴ The standards of review proposed by the Spire Affiliates would similarly create an inappropriate incentive. By building first and leaving review for later, under the Spire Affiliates’ proposed standard, pipeline developers could reverse the burden, requiring intervenors to demonstrate that “abandonment” is in the public interest rather than requiring the applicant to demonstrate that the project is in the public interest. This would be inconsistent with the *EDF v. FERC* decision, the Natural Gas Act, and the Commission’s regulations and should therefore be rejected.

E. The Request for a “Limited-Term Certificate” Should Be Rejected

The Spire Affiliates request a “limited-term certificate” as an alternative to a temporary emergency certificate. However, nothing in the Natural Gas Act or the Commission’s regulations permits an application for or the issuance of a “limited-term certificate” distinct from a temporary emergency certificate under Section 7(c)(1)(B) of the Natural Gas Act. The Natural Gas Act offers two paths for the issuance of a certificate: (1) pursuant to the standard process, as described in Sections 7(c)-(e) of the Natural Gas Act and the Commission’s Certificate Policy Statement,³⁵ the Commission may issue a certificate when, following notice and hearing consistent with the Natural Gas Act and the Administrative Procedure Act, it finds that the proposed facility “is or will be required by the present or future public convenience and necessity” and makes other findings consistent with the requirements of the Natural Gas Act and

³⁴ *EDF v. FERC* at p37 (quoting *Standing Rock Sioux Tribe v. Army Corps of Eng’rs*, 985 F.3d 1032, 1052 (D.C. Cir. 2021)).

³⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, Statement of Policy, 88 FERC ¶ 61,227.

the Certificate Policy Statement; or (2) pursuant to Section 7(c)(1)(B), the Commission may “issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate.” If no emergency exists such that a temporary certificate is necessary “to assure maintenance of adequate service or to serve particular customers,” no certificate can be issued except through the standard process, including with standard notice and hearing procedures and with a finding by the Commission that the proposed facility “is or will be required by the present or future public convenience and necessity.” Consistent with this, the only Commission regulations that discuss issuance of a temporary certificate, 18 C.F.R. § 2.57 and 18 C.F.R. § 157.17, refer specifically to the temporary emergency certificate provisions of Section 7(c)(1)(B).

The single case the Spire Affiliates discuss in support of their assertion that the Commission could grant the Spire STL Pipeline a “limited-term certificate,” *Nornew Energy Supply*, is inapposite to this situation.³⁶ In *Nornew Energy Supply*, the limited term of the

³⁶ *Nornew Energy Supply*, 95 FERC ¶ 61,134 (2001). The Spire Affiliates also cite several other cases for the proposition that the Commission can issue a “limited-term certificate” while considering a certificate application, but each is equally irrelevant. In *Questar Gas Co.*, the certificate granted was a temporary emergency certificate under Section 7(c)(1)(B). *Questar Gas Co.*, 135 FERC ¶ 62,193 (2011). In *Equitrans, L.P.*, the issued certificate had a limited term because it was for equipment that the company only intended to operate for a single winter. *Equitrans, L.P.*, 93 FERC ¶ 62,229 (2000). *Quicksilver Res., Inc.* and *Bos. Gas Co.* both involve facilities built under state approval and permitted to continue to operate following a jurisdictional filing by FERC while applying for a certificate of public convenience and necessity, analogous to the *New Fortress Energy* proceeding discussed below. *Quicksilver Res., Inc.*, 122 FERC ¶ 61,115 (2008); *Bos. Gas Co.*, 57 FERC ¶ 61,054 (1991). None of the cases cited in the Spire Affiliates’ Application contemplates the scenario where a court vacated a pipeline certificate with a high degree of skepticism as to whether the decision could be rehabilitated. *EDF v. FERC* at p36-37 (stating that FERC’s ability to “rehabilitate its rationale” is “not at all clear to us at this juncture” and referring to the possibility of “some disruption as a result of . . . de-issuance of the Certificate”).

certificate was a condition of an otherwise typical certificate, rather than a new kind of certificate not subject to existing rules—as the Commission noted when citing *Nornew Energy Supply* in a later proceeding.³⁷ The Commission granted the certificate only after finding that the pipeline was in the public interest consistent with the “public convenience and necessity” standard of Section 7 of the Natural Gas Act.³⁸

Similarly, the cases the Spire Affiliates cite, such as *New Fortress Energy*, where the Commission has found that operational facilities were subject to its jurisdiction and directed the filing of a Section 7 application but declined to require those facilities to shut down, are not relevant to this proceeding.³⁹ In deciding not to direct a shutdown in *New Fortress Energy* the Commission did not issue a “limited-term certificate” for the relevant facilities or otherwise direct that those facilities be treated as certified facilities.⁴⁰ In addition, in all cases cited by the Spire Affiliates, the facilities at issue had been built following approvals by local authorities, including state and territorial regulators, based on an understanding that the facilities would not be subject to the Commission’s regulations.⁴¹ By contrast, in this proceeding, the only regulatory decision approving the overall construction of the Spire STL Pipeline has been vacated.

To the extent that, rather than being viewed as an application for relief that is not permitted by the Natural Gas Act, the Commission’s rules, or the Commission’s precedent, the request for a “limited-term certificate” in the Spire Affiliates’ Application is viewed as an application for a standard certificate with a condition limiting its term, the request would be

³⁷ *Quicksilver Res., Inc.*, 122 FERC ¶ 61,115 at p. 19 fn. 22.

³⁸ *Nornew Energy Supply*, 95 FERC ¶ 61,134.

³⁹ *New Fortress Energy LLC*, 174 FERC ¶ 61,207 (2021).

⁴⁰ *Id.*

⁴¹ *Id.*; *Quicksilver Res., Inc.*, 122 FERC ¶ 61,115; *Bos. Gas Co.*, 57 FERC ¶ 61,054.

highly deficient and procedurally improper. The Spire Affiliates' Application does not meet the procedural standards for granting a standard certificate, nor could such a certificate be granted in an expedited fashion with limited procedure for intervenors as they suggest. Furthermore, in *EDF v. FERC*, the unanimous panel of the D.C. Circuit specifically declined the Spire Affiliates' request that the case be remanded without vacatur—the Court found that “vacatur is appropriate” and acknowledged that “there may be some disruption as a result of the ‘interim change,’ . . . i.e., de-issuance of the Certificate, caused by vacatur.”⁴² For the Commission to grant a temporary certificate for the pendency of the remand, beyond what is necessary to prevent an emergency situation, would directly conflict with the D.C. Circuit's decision.

In addition, in order to make any further decision on a non-emergency certificate for the Spire STL Pipeline, the Commission would need to address the issues identified by the D.C. Circuit in *EDF v. FERC*, including whether a legitimate need for the Pipeline exists, whether the benefits of the Pipeline outweigh the adverse impacts, and whether the development of the Pipeline involved impermissible self-dealing. This issue cannot properly come before the Commission until the D.C. Circuit issues the mandate and remands the matter, and as described above, the Spire Affiliates' Application fails to offer any additional information that would allow the Commission to fully evaluate these issues. For those reasons, the Spire Affiliates' Application is not a valid application for a standard certificate with a condition limiting its term.

Given the lack of any legitimate authority or process for the granting of a non-emergency “limited-term certificate” outside of the standard certificate process, as well as the inconsistency of such a certificate with the D.C. Circuit's decision in *EDF v. FERC*, Section V of the Application, which requests such a certificate, should be rejected. The Commission should

⁴² *EDF v. FERC* at p36.

evaluate only the Spire Affiliates' request for a temporary emergency certificate and should defer any consideration of a full certificate for the Spire STL Pipeline until after the D.C. Circuit issues its mandate and there has been an appropriate process.

IV. PROTEST

A. The Spire Affiliates' Request to Operate their Pipeline During the Pendency of the Remand Proceedings Violates the D.C. Circuit Decision's Finding on the Appropriate Relief

The Spire Affiliates mischaracterize and obfuscate the D.C. Circuit's findings in this case, suggesting that the only issue on remand is "related to the precedent agreement."⁴³ The D.C. Circuit's opinion vacating the Commission's orders stated that there were "serious deficiencies in the Certificate Order and Rehearing Order."⁴⁴ The Commission's analysis was so deficient, the Court questioned whether the Commission could even rehabilitate its rationale on remand.⁴⁵ The instant application must be viewed against this backdrop, and the Commission should reject the Spire Affiliates' attempt to recast what are definitively clear and decisive findings from the Court.

The unanimous panel of judges made clear that the Commission may rely on precedent agreements as important evidence but not necessarily as *sufficient* evidence to show that a proposed pipeline meets the stringent public convenience and necessity standard of the Natural Gas Act.⁴⁶ This directly contravenes the Commission's finding in the Spire Certificate Order that precedent agreements are "substantial and sufficient evidence of need."⁴⁷ The Court specifically

⁴³ Spire Affiliates' Application at 9.

⁴⁴ *EDF v. FERC* at p36.

⁴⁵ *Id.* at p37.

⁴⁶ *Id.* at p29.

⁴⁷ Spire Certificate Order at ¶ 72.

rejected the Commission’s broad interpretation of its prior case law,⁴⁸ disagreeing with the Commission’s assertion that: (1) it generally need not look behind precedent agreements in determining whether there is market demand; and (2) affiliated precedent agreements should almost always be treated the same as unaffiliated precedent agreements.⁴⁹

The Court’s finding that the Commission “ignored record evidence of self-dealing”⁵⁰ obligates the Commission to ensure protections are in place to abate this threat going forward. The Decision also emphasizes the Commission’s obligation to respond to legitimate concerns raised by intervenors and that the Commission may not simply defer to the business judgment of local distribution companies without conducting the rigorous analysis demanded by the Natural Gas Act.⁵¹

In addition to finding the Commission’s blinkered reliance on a single utility affiliate precedent agreement unlawful, the Court found that the Commission’s balancing analysis of public benefits and adverse impacts was arbitrary and capricious, warranting vacatur on those independent grounds as well.⁵² The Court made clear that this inquiry is supposed to be a thorough assessment, supported by concrete evidence and a demonstration that the purported

⁴⁸ *Minisink Residents for Env’t Pres. & Safety v. FERC*, 762 F.3d 97 (D.C. Cir. 2014); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301 (D.C. Cir. 2015); *City of Oberlin v. FERC*, 937 F.3d 599 (D.C. Cir. 2019); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, (D.C. Cir. Feb. 19, 2019) (per curiam) (unpublished).

⁴⁹ *EDF v. FERC* at p33 (“it is quite clear that our case law does not go as far as Respondents claim”).

⁵⁰ *Id.* at p5.

⁵¹ *Id.* at p31.

⁵² *Id.*

benefits are expected to materialize.⁵³ The decision calls into question the Commission’s entire prior approach to its balancing analysis in this case, which was a paragraph naming—but not weighing—public benefits versus adverse effects.⁵⁴ Finally, the Court’s Decision underscores the importance of the Commission assessing whether the construction of a proposed pipeline would result in cost savings or otherwise represent a more economical alternative to existing pipelines.⁵⁵ The Spire Affiliates’ strained interpretation of the impact of this decision should be rejected.

Most relevant to the Commission’s task in whether to grant the extraordinary relief requested by the Spire Affiliates is the Court’s finding on the appropriate remedy in this case. The D.C. Circuit rejected the Spire Affiliates’ suggestion that the case be remanded without vacatur,⁵⁶ stating that such relief “would give the Commission incentive to allow ‘build[ing] first and conduct[ing] comprehensive reviews later.’”⁵⁷ The Spire Affiliates now ask the Commission to disregard this concern of the Court, requesting an emergency or temporary certificate

⁵³ *Id.* at p5 (“we find that the Commission ignored record evidence of self-dealing and failed to seriously and thoroughly conduct the interest-balancing required by its own Certificate Policy Statement”); p31 (“the Commission failed to adequately balance public benefits and adverse impacts” and “pointed to no concrete evidence to support these assertions”); *id.* (“the Commission never addressed the claims raised by EDF and others challenging whether these purported benefits were likely to occur.”).

⁵⁴ Spire Certificate Order at ¶ 123.

⁵⁵ *EDF v. FERC* at p35 (“the Commission neglected to make a finding as to whether the construction of the proposed pipeline would result in cost savings or otherwise represented a more economical alternative to existing pipelines.”).

⁵⁶ Brief for Intervenors-Respondents Spire STL Pipeline LLC and Spire Missouri Inc., Case No. 20-1016 at p42 (“In the unlikely event that the Court finds FERC’s reasoning inadequate, it should remand without vacating the Certificate Order”).

⁵⁷ *EDF v. FERC* at p37 (citing *Standing Rock Sioux Tribe v. Army Corps of Eng’rs*, 985 F.3d 1032, 1052 (D.C. Cir. 2021)).

“extending through the remand proceedings.”⁵⁸ The effect of the Spire Affiliates’ request is a complete evisceration of the Court’s finding on the appropriate remedy in this case and must be rejected. As demonstrated below, the Commission needs additional information before deciding whether to grant a temporary emergency certificate to the Spire Affiliates in this case. If the Commission decides to rule on the Spire Affiliates’ request absent that information, it must attach conditions to protect the public interest.

B. The Commission Should Not Act on the Spire Affiliates’ Request Without Sufficient Information Upon Which to Make a Reasoned Decision

The Spire Affiliates request the Commission to act “as soon as possible” but no later than August 12, 2021.⁵⁹ They also request approval of the application without notice or hearing procedures.⁶⁰ In addition to rushing the Commission’s review and compromising the due process rights of intervenors, the Spire Affiliates’ proposed process eliminates the ability of intervenors to test the motive, intent, and credibility of the only witness offered to support the application.

In other contexts, where intervenors have raised credible arguments regarding affiliate abuse, the Commission has recognized the importance of carefully examining these issues.⁶¹

⁵⁸ Spire Affiliates’ Application at p1.

⁵⁹ Spire Affiliates’ Application at p32.

⁶⁰ Spire Affiliates’ Application at pp18-19.

⁶¹ *S. Companies Energy Marketing, Inc.*, 111 FERC ¶ 61,144 at P 30 (2005) (“Where, as here, intervenors have raised credible arguments that Southern Companies may have the ability to exercise transmission market power, to erect barriers to entry and to engage in affiliate abuse, it is appropriate to examine these issues....[O]ur order today...only initiates a proceeding to determine whether such actions are appropriate, after full opportunity for Southern Companies to present all relevant information it so chooses.”); *see also Florida Power & Light Co.*, 8 FERC ¶ 61,121 at 61,457 (1979) (if “a rate provision would weaken a competitor or raise the entry barriers to a market where competition can exist, that will likely be sufficient evidence of anticompetitive effect to warrant its elimination or modification....”).

The self-dealing threat posed by the Application, and recognized by the D.C. Circuit, only heightens the need for careful examination in this particular case.⁶²

Equally troubling is the fact that the Spire Affiliates' representations to this Commission contravene the positions asserted to their state regulator. The Application states that "Spire Missouri's antiquated propane-peaking facility has been retired and is no longer available."⁶³ Yet in sworn testimony before its state regulator, Spire Missouri witness Robert Noelker admits that it is possible to bring the propane assets back in service.⁶⁴ Missouri PSC Staff in fact recommend this very action in Spire Missouri's pending rate case.⁶⁵

In the absence of any meaningful opportunity to cross-examine the Spire Affiliates' only witness or otherwise test the verity of the Application's claims, the Commission must ensure it has enough information upon which to make a reasoned decision.⁶⁶

In addition, while EDF agrees that the Commission should take whatever action is necessary to alleviate an emergency to ensure that Spire Missouri customers have reliable gas service in the winter months, the Spire Affiliates' request for action by August 12, 2021 suggests a more urgent emergency than exists. First, the D.C. Circuit will not issue its mandate until seven days after it decides on the rehearing petition that the Spire Affiliates filed on August 5, 2021.

⁶² *Missouri River Energy Services*, 130 FERC ¶ 63,014 at P 437 (2010) ("[a]ffiliates risk unduly preferential transactions where they share a common incentive, such as benefiting the same parent company shareholders").

⁶³ Spire Affiliates' Application at p14.

⁶⁴ Exhibit B, Rebuttal Testimony of Robert Noelker on behalf of Spire Missouri, Inc., Docket GR-2021-0108 at p5 (June 17, 2021).

⁶⁵ Exhibit D, Surrebuttal Testimony of Karen Lyons submitted on behalf of the Missouri Public Service Commission, Case No. GR-2021-0108 at p2 (July 14, 2021).

⁶⁶ See *Bay State Gas*, 2012 WL 5448763 at 62, Mass. DPU Order No. 12-25 at 106 (Nov. 1, 2012) ("full disclosure of information by regulated companies is essential for the Department to properly fulfill its function of regulating in the public interest.").

While there is not a fixed schedule for such a decision, it is likely to take at least several weeks. Second, the Spire Affiliates' Application acknowledges that the risk of curtailment will apply only during the winter heating season, which does not begin until November 1, 2021.⁶⁷ Even if the mandate issues and becomes effective before a temporary emergency certificate is issued, no immediate action by the Spire Affiliates will be required that would prevent them from providing service during the winter heating season if a decision is issued before then. Therefore, EDF encourages the Commission to take the time necessary to explore the issues raised by the Application, as well as to allow full participation by intervenors.

The Spire Affiliates' Application is long on assertions and short on detailed information or data to support their argument that there are emergency circumstances. The question in this phase of the proceeding is not whether the Spire STL pipeline is needed—the question is whether Spire STL's customer Spire Missouri is genuinely utterly unprepared to supply gas to its customers this winter in the face of a court decision invalidating the Spire STL pipeline. To the extent any emergency exists, it is an emergency of the Spire Affiliates' own making—they have been well aware of the ongoing challenges brought by EDF and others that created a strong possibility that the Spire STL Pipeline would be unable to continue operating.⁶⁸

In *City of Oberlin*, which involved a pipeline that had already been constructed, the D.C. Circuit recognized that a company choosing to construct its pipeline while the certificate was being challenged acted at its own risk, citing the Commission's statement in the underlying order

⁶⁷ Spire Affiliates' Application at pp1-2; Lander Affidavit at ¶ 27.

⁶⁸ See *City of Oberlin v. FERC*, 937 F.3d 599, 605 (2019) (quoting Nexus Gas Transmission, LLC, 162 FERC ¶ 61,011, at ¶ 7 (2018)) (“[T]o the extent that [Nexus] elects to proceed with construction, it bears the risk that . . . our orders will be overturned on appeal. If this were to occur, [Nexus] might not be able to utilize any new facilities and could be required to remove them or to undertake further remediation.”).

that “to the extent the pipeline elects to proceed with construction, it bears the risk that the orders will be overturned on appeal. If this were to occur, NEXUS might not be able to utilize any new facilities and could be required to remove them or to undertake further remediation.”⁶⁹ Numerous other FERC Orders have included that language,⁷⁰ leaving no doubt that Spire STL bears the risk of its decision to proceed with construction. That risk was elevated in this particular proceeding, given that the Missouri PSC raised concerns regarding the Spire STL Pipeline before this Commission, a narrow majority supported the Spire Certificate Order, and the fact that the entire demonstration of market need was based solely upon a single affiliate precedent agreement. Chairman Richard Glick issued a Press Release in response to the *EDF v. FERC* decision, stating that the “decision shows that when FERC cuts corners with its analysis, it puts its decisions – and the investments made in reliance on those decisions – at substantial risk.”⁷¹

The Commission must require the Spire Affiliates to submit additional information to explain why it cannot obtain reliable service from other sources in the immediate term; how it will prepare to obtain that reliable service during the duration of any emergency certificate; and valid, supported timing estimates for the work required. At a minimum, the Commission should require the Spire Affiliates to provide answers to the questions listed in the Lander Affidavit at paragraphs 8a through 8m.

⁶⁹ *City of Oberlin v. FERC*, 937 F.3d 599, 604 (D.C. Cir. 2019).

⁷⁰ *See e.g. Transcontinental Pipe Line Co. LLC*, 161 FERC ¶ 61,250 at ¶ 100 (2017); *Northwest Pipeline*, 156 FERC ¶ 61,086 at ¶ 15 (2016); *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,287 at ¶ 32 (2017); *Tennessee Gas Pipeline Company, LLC*, 158 FERC ¶ 61,002 at ¶ 12 (2017); *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,264 at ¶ 9 (2016).

⁷¹ FERC News Release of June 22, 2021, “FERC Reviewing D.C. Circuit Decision to Vacate Spire Pipeline Certificate,” *available at* <https://www.ferc.gov/news-events/news/ferc-reviewing-dc-circuit-decision-vacate-spire-pipeline-certificate>.

C. In the Event the Commission Acts on Spire’s Extraordinary Request, It Must Attach Conditions in Order to Protect the Public Interest

i. The Commission Has Broad Authority to Attach Conditions to the Spire Affiliates’ Extraordinary Request

The Commission has broad authority to attach conditions to the Spire Affiliates’ extraordinary request. Section 16 of the Natural Gas Act grants the Commission the “power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act.”⁷²

This section of the statute has been analogized to the necessary and proper clause of the Constitution:

[O]nce a matter has been found to be a proper subject of Commission concern, section 16 empowers the Commission to exercise wide discretion in selecting the tools with which to safeguard the public interest in matters relating to the transportation and sale of natural gas.⁷³

The Commission’s authority to attach conditions to Spire’s application is at its zenith,⁷⁴ and the Commission must do so in this case to ensure the public interest is protected. The D.C. Circuit has found that temporary emergency certificates, in particular, should have a scope and conditions that are consistent with the nature of the emergency, that is the need to “to assure maintenance of adequate service or to serve particular customers.”⁷⁵ In *Pennsylvania Gas & Water Co.*, the D.C. Circuit vacated the issuance of a temporary emergency certificate under Section 7(c)(1)(B) of the Natural Gas Act partly because the certificate was too broad given the scope of the emergency and the Commission had failed to impose reasonable limits suggested by

⁷² 15 U.S.C. § 717o.

⁷³ *Gulf Oil Corp. v. Federal Power Com.*, 563 F.2d 588, 606 (3rd Cir. 1977).

⁷⁴ *Niagara Mohawk Power Corp. v. Federal Power Com.*, 379 F.2d 153 (D.C. Cir. 1967).

⁷⁵ *Pennsylvania Gas & Water Co. v. Federal Power Com.*, 427 F.2d 568.

intervenors.⁷⁶ Consistent with its responsibilities under the Natural Gas Act and precedent, the Commission should impose stringent certificate conditions on any temporary emergency certificate to ensure that it is limited to the scope of the emergency and protects captive Spire Missouri ratepayers, including: (a) specifying a clear end date for the emergency certificate; (b) limiting use of the Spire STL Pipeline to only the minimum necessary to avoid curtailment of firm Spire Missouri customers; (c) imposing rate conditions that prevent the Spire Affiliates' from unreasonably profiting from their self-created emergency; and (d) protecting landowners by requiring continued remediation and appropriate compensation.

ii. The Commission Must Specify a Clear End Date for the Emergency Certificate

The Spire Affiliates seek to operate their unlawful pipeline “extending through the remand proceedings.”⁷⁷ As explained above, this unbounded ask contravenes the Court’s finding that the appropriate relief in this case is vacatur given the serious deficiencies in the Certificate Order and Rehearing Order.⁷⁸ In making that determination, the Court explicitly recognized that the pipeline is currently operational and such relief may cause “some disruption.”⁷⁹ Thus, the default procedure upon remand to the Commission should be the process of an orderly shutdown of the Spire STL Pipeline consistent with the D.C. Circuit’s decision vacating the Spire Certificate Order and the Spire Rehearing Order and finding that the pipeline certificate was granted unlawfully. If the Commission grants a temporary emergency certificate, it must be appropriately time bound so as not to constitute an end run around, or otherwise contradict, the D.C. Circuit decision.

⁷⁶ *Id.*

⁷⁷ Spire Affiliates’ Application at 1.

⁷⁸ *EDF v. FERC* at p36.

⁷⁹ *Id.*

The Spire Affiliates' request for emergency relief appears to be based entirely on an asserted need associated with the upcoming winter period.⁸⁰ The Spire Affiliates have made no demonstration that an emergency request would be warranted outside of the 2021-2022 winter period. In fact, in Spire Missouri's pending rate case before the Missouri Public Service Commission, Spire Missouri has stated that the pipeline is currently not in operation. The Office of Public Counsel sent Spire Missouri a data request regarding the status of the pipeline and provided the following summary in its testimony before the Missouri Commission, appended to this pleading as Exhibit C:

Q. Have you sent discovery to check on the status of the pipeline?

A. Yes. OPC DR-2155 asked the following question and received the following response:

Request: Is the Spire STL pipeline currently in operation in light of the DC Circuit Court of Appeals ruling on the Spire STL pipeline?

Response: No.⁸¹

However, in a recent presentation to the Missouri Public Service Commission, Spire Missouri stated that the Spire STL Pipeline is currently in operation.⁸² Put differently, the Spire Affiliates

⁸⁰ See Spire Affiliates' Application at p1 ("This will ensure that STL Pipeline's customers can continue receiving service through the upcoming winter"); *id.* at p2 ("This will force Spire Missouri Inc. ("Spire Missouri"), the local distribution company ("LDC") served by the STL Pipeline, to curtail natural gas service during the upcoming winter heating season."); *id.* at p14 ("Physically reassembling these facilities cannot be done before the 2021-2022 winter season.").

⁸¹ Exhibit C, Surrebuttal Testimony of Geoff Marke submitted on behalf of the Office of the Public Counsel, Case No. GR-2021-0108 at p28 (July 14, 2021).

⁸² Recording of Missouri Public Service Commission Meeting at 1:02:52 (July 14, 2021), <http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6352> (Commissioner asks, "Is the gas flowing on that pipeline today?"; Spire Missouri responds, "It is.").

are asserting an emergency to their federal regulator, while providing contradictory evidence in other forums, including averring in their state rate case that their pipeline is not even operational.

Furthermore, as described in the Lander Affidavit and discussed in further detail in Section IV.C.iii below, the assertion that operation of the Spire STL Pipeline is necessary to avoid curtailment during the winter season is based on the existence of three risk conditions on the Spire Missouri system created by the Spire Affiliates that can be remedied by the Spire Affiliates.⁸³

For these reasons, if the Commission decides to grant the Spire Affiliates' request in part or full, it must provide a clear end date for the temporary emergency certificate—i.e., the time necessary for the Spire Affiliates to remedy the risk conditions asserted in their Application. In order to determine the appropriate duration of the temporary emergency certificate, the Commission should immediately require the Spire Affiliates to file information regarding how long it will take to remedy those risk conditions, consistent with the recommendations in Section IV.B above and the Lander Affidavit.⁸⁴ The Commission should carefully scrutinize that information to ensure that the risk conditions are being remedied with reasonable haste and any temporary emergency certificate should be set to expire at the time the risk conditions will be remedied. In any event, the temporary emergency certificate should not run beyond the 2021-2022 heating season, as the Spire Affiliates concede that Spire Missouri can access adequate gas supply without the Spire STL Pipeline outside of the heating season and there is no reasonable basis to suggest that the Spire Affiliates cannot remedy all of the risk conditions before the 2022-2023 heating season.

⁸³ Lander Affidavit at ¶¶ 5-6, 9-25.

⁸⁴ Lander Affidavit at ¶¶ 8, 26.

iii. The Commission Must Condition Any Certificate to Allow the Operation of the Spire STL Pipeline Only to the Extent Necessary to Avoid Curtailment of Firm Spire Missouri Customers

As described in Section III.E above, the sole legitimate purpose of a temporary emergency certificate is “to assure maintenance of adequate service or to serve particular customers.”⁸⁵ There is precedent for imposing conditions on temporary emergency certificates to limit the usage of the certified facilities to what is necessary to ensure adequate service.⁸⁶ Any temporary emergency certificate issued for the Spire STL Pipeline should include a condition limiting the use of the Spire STL Pipeline only to the extent necessary to avoid curtailment of firm Spire Missouri customers.

This is particularly appropriate because the Spire Affiliates are responsible for creating the risk conditions that are causing the threat of curtailment. The Spire Affiliates conceded in the initial certificate proceeding that the Spire STL Pipeline was not needed to continue or expand service, as natural gas demand was expected to stay flat and existing infrastructure was providing sufficient supply to meet system needs. As such, had the Spire Affiliates not created the risk conditions, the Spire STL Pipeline could be shut down during the remand period without any risk of curtailment. While the granting of a temporary emergency certificate may be necessary to

⁸⁵ *Pennsylvania Gas & Water Co. v. Federal Power Com.*, 427 F.2d 568, 574-5; *Algonquin Gas Transmission Co. v. Federal Power Com.*, 201 F.2d 334; *Texas-Ohio Pipeline, Inc.*, 58 FERC ¶ 61,025; *Northern Natural Gas Co.*, 22 FERC ¶ 61,173 (Feb. 18, 1983); *NGPL-Canyon Compression Co.*, 16 FERC ¶ 61,175.

⁸⁶ *Mississippi River Transmission Corporation*, Order Granting Temporary and Permanent Certificates, 40 FPC 190 (July 31, 1968) (“in order to protect the Coal Interests during the interim period until we make a determination as to a permanent certificate we shall provide that through the installation of appropriate valves Mississippi not deliver additional firm gas to Laclede in excess of 28,200 Mcf per day, so that Laclede's industrial customers will receive no more gas than at present”); *see also* *Texas-Ohio Pipeline*, 58 FERC ¶ 61,025, 61,059 (“The temporary certificate is not a blanket authorization, but is limited to only those customers with whom it has existing transportation arrangements.”).

ensure that no harm comes to Spire Missouri customers as a result of the Spire Affiliates' actions, the Spire Affiliates should not be able to profit from a now-invalidated pipeline without sufficiently stringent conditions. Furthermore, any temporary emergency certificate should require the Spire Affiliates to immediately begin work to remedy the risk conditions and to report to the Commission on this work, as well as on their usage of the Spire STL Pipeline.

In its presentation to the D.C. Circuit, one of the Spire Affiliates' central arguments to establish need for its affiliate project was an assertion that it "was captive to a single, rate-stacked pipeline for nearly 90% of its gas from sources hundreds of miles south across an earthquake zone."⁸⁷ However, the Spire Affiliates now admit that rather than reducing their reliance on a single asset, they have merely shifted it from one pipeline to another. The Spire Affiliates have created a situation where taking a single asset out of commission could compromise service to more than 400,000 customers—the very threat the Spire STL Pipeline was supposedly designed to avert. The coordinated actions of the Spire Affiliates contravene FERC and Missouri precedent expressing an abhorrence for undue affiliate preference,⁸⁸ as well

⁸⁷ Spire Appellate Brief at p28.

⁸⁸ 18 C.F.R. § 358.2 ("a transmission provider must treat all transmission customers, affiliated and non-affiliated, on a not unduly discriminatory basis, and must not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to any transportation of natural gas or transmission of electric energy in interstate commerce, or with respect to the wholesale sale of natural gas or of electric energy in interstate commerce."); *Office of the Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 371, 377 (Mo. 2013) (quoting *Pac. Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 215 P.2d 441, 449 (Cal. 1950) (Carter, J. dissenting)) ("This greater risk inherent in affiliate transactions arises because agreements between a public utility and its affiliates are not 'made at arm's length or on an open market. They are between corporations, one of which is controlled by the other. As such they are subject to suspicion and therefore present dangerous potentialities."); *id.* at 376 (citing Staff of Senate Comm. on Gov't Affairs, 107th Cong., *Committee Staff Investigation of the Federal Energy Regulatory Commission's Oversight of Enron* 26, n.75 (Nov. 12, 2002)) ("whenever a company conducts transactions among its own affiliates there are inherent issues about the fairness and motivations of such transactions").

as Missouri law, which requires gas utilities to obtain or arrange gas supply to meet the design winter requirements of firm gas customers.⁸⁹ The decisions to remove these facilities, which would have provided critical redundancies, would have been unreasonable in any situation, but were especially problematic where the Spire Affiliates knew that the Spire STL Pipeline’s certificate remained subject to challenge.

The Spire Affiliates claim contractual and technical impediments to ceasing operation on the Spire STL Pipeline. As acknowledged in the Application and described in the Lander Affidavit, since Spire STL Pipeline has commenced service, the Spire Affiliates have: (1) allowed contracts on MRT and upstream pipelines to expire; (2) alienated the Spire Missouri system from the MRT Pipeline at the Chain of Rocks interconnect, as well as retired or isolated the only Spire Missouri controlled connection between Chain of Rocks and the Lange citygate and storage field; (3) retired their propane peaking facilities; (4) removed compressors from the Lange storage facility, impairing its ability to take gas from sources other than the Spire STL Pipeline; and (5) foregone system reinforcements for service to the western and southwestern areas because of the new supplies by the STL Pipeline.⁹⁰ In other words, Spire Missouri has managed or *mismanaged* its gas supply portfolio to become so heavily reliant on its own affiliate pipeline that elimination of that pipeline will compromise reliable service and leave 400,000 customers at risk, even though merely three years ago it was capable of serving the same level of demand without the Spire STL Pipeline.⁹¹

⁸⁹ MO Rev. Stat. § 393.130.1.

⁹⁰ Carter Affidavit at p14; Lander Affidavit at ¶¶ 9-25.

⁹¹ Spire Affiliates’ Application at p23 (“once Lange is depleted, up to 400,000 customers—or 62 percent—could be without gas”).

As detailed in the Lander Affidavit, the steps the Spire Affiliates have taken since the Spire STL Pipeline has been placed into service are curious at best and imprudent at worst.⁹² For example, Spire Missouri’s decision to retire its propane peaking facilities is currently being opposed by the Missouri PSC Staff and the Office of the Public Counsel in its pending rate case before its state regulator. Missouri Commission Staff witness Karen Lyons states:

While Staff agrees that the STL Pipeline currently provides the capacity needed to meet peak demand, Staff believes it is premature to remove the propane assets from utility service since they can be used for extreme cold weather events such as the one that occurred in February 2021.⁹³

The Office of the Public Counsel similarly opposes the retirement:

It would be imprudent and irresponsible to retire the fully depreciated propane storage assets with the heightened uncertainty surrounding the Spire STL pipeline. I recommend that the propane storage facilities not be retired and be included in the Company’s cost of service until they can be reexamined in the Company’s next rate case.⁹⁴

The Spire Affiliates never mention this controversy surrounding their propane facilities, merely asserting that they have already been retired and cannot be restored in a reasonable timeframe.⁹⁵

The Spire Affiliates’ decision to alienate the Spire Missouri system from the MRT Pipeline at the Chain of Rocks interconnect, rather than preserving the existing connection and adding a new connection for the Spire STL Pipeline, similarly created an unreasonable risk condition that is now contributing to the potential for curtailment in the absence of a temporary

⁹² Lander Affidavit at ¶¶ 9-16.

⁹³ Exhibit D, Surrebuttal Testimony of Karen Lyons submitted on behalf of the Missouri Public Service Commission, Case No. GR-2021-0108 at p2 (July 14, 2021).

⁹⁴ Exhibit C, Surrebuttal Testimony of Geoff Marke submitted on behalf of the Office of the Public Counsel, Case No. GR-2021-0108 at p28 (July 14, 2021).

⁹⁵ In an apparent attempt to defend the retirement and non-restoration of the propane peaking facilities, the Carter Affidavit makes a puzzling assertion that it “was the only system of its kind in the U.S.” As the Lander Affidavit explains, there are quite a few LDC-operated propane-air facilities in service in the country to support peak period demands. Lander Affidavit at ¶ 20.

emergency certificate. As explained in the Lander Affidavit, normal practice when an LDC connects to a new interstate pipeline is to preserve interconnections with existing pipelines, so that the LDC can continue to directly access those pipelines as necessary to deal with high demand or take advantage of favorable rates or prices.⁹⁶ While the Chain of Rocks interconnect was not the only link between Spire Missouri and the MRT Pipeline, it was the only connection that would allow gas from the MRT Pipeline to directly reach the northern part of Spire Missouri's service territory, as well as facilitating injections of gas supplied by the MRT Pipeline into the Lange storage field. With the current system configuration, Spire Missouri can only receive gas from the MRT Pipeline in that portion of its service territory by relying on the Spire STL Pipeline. Retaining a direct connection to the MRT Pipeline would have provided an important redundancy and would have avoided requiring Spire Missouri to rely on a separate pipeline for its access to the MRT Pipeline at an important location.

While information provided in the Spire Affiliates' Application and other documents reviewed by EDF is not fully conclusive, as described in the Lander Affidavit, it appears that the Spire Affiliates also removed from service or isolated Spire Missouri Line 880, which provided Spire Missouri with a connection between the Chain of Rocks interconnect and the Lange citygate, and has instead relied on Spire STL Pipeline in that area.⁹⁷ It is difficult to imagine a scenario where an unaffiliated, independent LDC would take these same actions.

The retirement of compressors at the Lange storage field is a further example of the Spire Affiliates making decisions about the Spire Missouri system that impair the capabilities of that system and increase its reliance on the Spire STL Pipeline. As acknowledged in the Application

⁹⁶ Lander Affidavit at ¶ 12.

⁹⁷ Lander Affidavit at ¶¶ 8, 12.

and further described in the Lander Affidavit, those compressors enabled filling and winter-refilling of the Lange storage field using gas from various suppliers and under a wide range of conditions, including when the field neared full capacity.⁹⁸ The compressors likely also supported the functionality of the storage field in other ways, such as assisting with withdrawal and, by changing valve settings, enabling compression of gas from pipeline suppliers when needed to support pressure to other parts of the Spire Missouri system, as described in the Lander Affidavit.⁹⁹ While the Spire STL Pipeline may allow the Lange Storage Field to be filled and re-filled without compressors, retaining the compressors as a redundancy and for their other uses would have been prudent.

Fortunately, the Spire Affiliates have the ability to remedy all three of the risk conditions and thereby remove the risk of curtailment when the Spire STL Pipeline is no longer permitted to operate, as described in the Lander Affidavit.¹⁰⁰ The Spire Affiliates essentially concede this in their Application, though they claim without further detail that such remedies will be expensive and difficult.¹⁰¹ Spire Missouri can be reconnected to the MRT Pipeline at the Chain of Rocks interconnect and a Spire Missouri controlled connection between Chain of Rocks and Lange can be restored, either through installing an additional interconnect with the MRT Pipeline and

⁹⁸ Lander Affidavit at ¶ 13.

⁹⁹ *Id.*

¹⁰⁰ Lander Affidavit at ¶¶ 17-21.

¹⁰¹ In addition, Spire Missouri acknowledged in a presentation before the Missouri PSC that Spire Missouri has the capability, in “the long term,” to ensure reliable service without access to the Spire STL Pipeline. Recording of Missouri Public Service Commission Meeting at 1:00:36 (July 14, 2021), <http://psc.mo.gov/Videos/VideoDetail.aspx?Id=6352> (“Our focus right now is the immediacy of making sure this pipe continues to serve while FERC goes through its process. We can handle whatever the long term, but in the short term, we really need that system to continue to operate, to continue to bring that supply in while FERC works through the challenges with the certificate.”).

restoring Line 880 to service or through Spire Missouri, after receiving any necessary regulatory approvals, acquiring the portion(s) of the Spire STL Pipeline necessary for connecting to the MRT Pipeline and for connecting Chain of Rocks and Lange, as part of, and for operation of, its intrastate, Missouri PSC-regulated system. Compression capabilities can be restored at the Lange storage field, through restoring the three retired compressors or other appropriate action. The propane vaporization facility can also be restored to service.

The Spire Affiliates also argue that there may not be sufficient gas supply available from other interstate pipelines to replace the gas currently supplied by the Spire STL Pipeline. As the Spire Affiliates acknowledge, this is a result of Spire Missouri allowing a portion of the contracts with other interstate pipelines that were sufficient to serve all of Spire Missouri's firm load to expire. However, the Lander Affidavit presents evidence that sufficient available capacity remains available and unsubscribed on pipelines connected to Spire Missouri.¹⁰² The Spire Affiliates should immediately enter discussions with those pipelines to acquire sufficient capacity.

The fact that the emergency is the result of problematic decisions by the Spire Affiliates and that the Spire Affiliates, and only the Spire Affiliates, are capable of remedying the emergency emphasizes the importance of limiting usage of the Spire STL Pipeline during the term of any temporary emergency certificate. First, the Spire Affiliates should not be allowed to profit from their problematic decisions by using the resulting risk conditions to justify continuing to operate at full capacity. Second, the Spire Affiliates should not be incentivized to delay remedial action by a temporary emergency certificate that permits it to make full use of the pipeline until all remedial action is done. Therefore, any temporary emergency certificate should

¹⁰² Lander Affidavit at ¶¶ 22-25.

include a condition requiring that the Spire Affiliates only transport gas through the Spire STL Pipeline to the extent necessary to avoid curtailment of firm Spire Missouri customers. In particular, the Spire STL Pipeline should not be used at all when supply from other sources is sufficient to meet demand; this should be the case at all times outside the winter heating season, as well as during portions of the winter heating season. In addition, when use of the Spire STL Pipeline is necessary to avoid curtailment of firm Spire Missouri customers, usage should be limited to the minimum necessary to prevent curtailment and ensure reliable service. To ensure compliance with this condition, the Commission should require the Spire Affiliates to make weekly filings for any week in which the Spire STL Pipeline is used reporting daily usage volume and affirming under oath that all usage was necessary to avoid curtailments and ensure reliable service.

The Commission should also require reporting regarding remedial action related to the risk conditions. First, as described in Section IV.B above, before issuing any certificate, the Commission should require the Spire Affiliates to file additional information on the risk conditions and the restoration process. Second, upon issuing a temporary emergency certificate, the Commission should require the Spire Affiliates to file a detailed plan for remedying the risk conditions, including a timeline for restoration. Third, the Commission should require the Spire Affiliates to file ongoing reports, monthly or more frequently as appropriate, on the status of remedial efforts.

iv. The Commission Must Protect Ratepayers from the Costs Associated with a Legally Infirm Pipeline Through a Rate Condition

The Spire Affiliates’ Application completely ignores the impact of the D.C. Circuit’s vacatur on Spire STL’s transportation rates.¹⁰³ The entire basis for Spire’s negotiated rate filing is the “Certificate Order [that] granted Spire the authority to construct, own, and operate a new, 65-mile-long interstate natural gas pipeline, which is designed to provide 400,000 Dth per day of firm transportation service”¹⁰⁴ The D.C. Circuit vacated the Spire Certificate Order, which provided the legally necessary approval of Spire STL’s rates, in its entirety—it is illogical to assert that any transportation rates associated with an unlawful pipeline would persist when the Court called into question whether the pipeline was even needed in the first place. Furthermore, the Supreme Court has found that the Commission has the authority to impose rate conditions on temporary certificates, including to protect customers from excessive rates and charges.¹⁰⁵

Further elevating the need for careful review of the appropriate rate structure is the D.C. Circuit’s finding that the Commission “ignored record evidence of self-dealing.”¹⁰⁶ In the underlying FERC proceeding, EDF and other intervenors raised significant concerns regarding affiliate abuse, including the fact that:

- Spire STL shifted all risk for the construction of its project onto its shipper (Certificate Order at P 33);

¹⁰³ Spire Affiliates’ Application at 34.

¹⁰⁴ Negotiated Rate and Non-Conforming Service Agreement Compliance Filing, Docket RP20-70 at p1 (October 16, 2019).

¹⁰⁵ *Federal Power Com. v. Hunt*, 376 U.S. 515 (1964); *see, e.g., Texas-Ohio Pipeline, Inc.*, 58 FERC ¶ 61,025 (“During the effectiveness of the temporary certificate, Texas-Ohio shall charge its proposed initial rates. . . . Texas-Ohio will not be permitted to discount initial rates.”)

¹⁰⁶ *EDF v. FERC* at p5.

- an affiliated LDC-shipper is incentivized to contract with an affiliate pipeline because the costs, including the 14% rate of return, are recoverable from captive ratepayers (*Id.* at P 36);
- the project would not be financially viable but for Spire Missouri’s subscription (*Id.*);
- Spire STL received no capacity subscriptions as a result of its open season (*Id.*);
- Spire Missouri’s evaluation process for new transportation was not transparent to third parties (*Id.* at P 38);
- Spire Missouri relied on certain project benefits which it refused to accept when associated with earlier non-affiliated projects (*Id.*);
- the precedent agreement includes terms more favorable to its affiliate than Spire Missouri was willing to offer an earlier non-affiliated project sponsor (*Id.*);
- there was a demonstration of the intermixing of roles between Spire STL and Spire Missouri (*Id.* at P 39);
- Spire STL failed to disclose terms of the precedent agreement to the competitor pipeline (*Id.* at P 40);
- Spire STL failed to demonstrate future demand growth in the St. Louis area (*Id.* at P 49);
- Spire Missouri already had ample access to gas flowing on REX via existing pipelines (*Id.* at P 50);
- Spire Missouri declined to support pipeline projects with unaffiliated sponsors that provided both additional capacity and a connection with REX (*Id.* at P 57);
- Spire Missouri’s state regulator questioned the need for the project, asking the Commission to carefully review this issue;¹⁰⁷ and
- Spire Missouri ultimately withdrew its application¹⁰⁸ from the Missouri PSC for approval of the acquisition of Line 880, which eliminated any obligation for Spire Missouri to demonstrate, in advance, compliance with Missouri’s Affiliate Transaction Rule.¹⁰⁹

¹⁰⁷ Protest of Missouri PSC, Docket CP17-40 (February 27, 2017) at pp4-5.

¹⁰⁸ Verified Application of Laclede Gas Company for Authority to Sell Assets and For Any Necessary Variance from Certain Requirements of the Commission’s Affiliate Transactions Rule, Missouri PSC Case No. GM-2017-0018 (October 31, 2016).

¹⁰⁹ Protest of EDF, Docket CP17-40 (May 22, 2017), at pp4-5.

The self-dealing concerns that were present in the initial certificate application persist in the Spire Affiliates' request for emergency action. Again, there is no meaningful distinction between Spire STL and Spire Missouri—they are acting in complete and admitted unity of interest and taking coordinated actions that create an undue preference for their affiliated project. In prior instances where similar threats have been exposed, the Commission has taken action to protect ratepayers¹¹⁰ and it must similarly do so here, consistent with its primary duty under the Natural Gas Act to protect consumers.¹¹¹

Under the prior regime, Spire earned a hearty return for its affiliate project. As the Lander Affidavit explains, left unchecked, the Spire Affiliates stand to gain over \$130 million in after-tax profits (\$170 million in gross pre-tax profits) over the term of the (now invalidated) transportation contract.¹¹² To allow the Spire Affiliates to earn a profit on an affiliate asset declared by the D.C. Circuit to contravene the Natural Gas Act runs counter to well-established FERC precedent. For example, in *Cove Point LNG*, the Commission expressed concern that “a regulated affiliate might be able to purchase LNG peaking services from Cove Point LNG at prices above those established in a competitive market. The affiliate might be able to pass through those inflated purchasing costs to its ratepayers. These transactions would earn higher

¹¹⁰ *Florida Power & Light Co.*, 8 FERC ¶ 61,121 at 61,457 (1979) (if “a rate provision would weaken a competitor or raise the entry barriers to a market where competition can exist, that will likely be sufficient evidence of anticompetitive effect to warrant its elimination or modification....”).

¹¹¹ *California Gas Producers Ass'n v. FPC*, 421 F.2d 422, 428-29 (9th Cir. 1970) (“The Commission’s primary duty under the Natural Gas Act is the protection of the consumer.”); *Atlantic Refining Co. v. P.S.C. of New York*, 360 U.S. 378, 388 (1959) (“[t]he purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas”).

¹¹² Lander Affidavit at ¶ 32.

than normal profits.”¹¹³ The Commission ultimately denied the use of negotiated market-based rates because “Cove Point LNG had not demonstrated that it would not have market power over storage services in the market area, and because of the Commission’s concerns regarding affiliates.”¹¹⁴ Similar findings permeate the Commission’s regulatory reviews in other contexts.¹¹⁵

Absent a rate condition, the Lander Affidavit estimates that Spire shareholders would realize approximately \$9 million of annualized pre-tax gross profit.¹¹⁶ In the event the Commission declines to reject Spire’s application, it should impose a rate condition on Spire STL and require Spire STL to place at least 50% of its recovery of return and taxes in the usage rate. Before the Order 636 restructuring, when pipelines were merchants proposing new facilities to conduct sales activities, the Commission put a portion of the return and taxes in the commodity rate to ensure there was a degree of economic discipline governing the proposed

¹¹³ *Cove Point LNG*, 68 FERC ¶ 61,128 at p. 61,618 (1994).

¹¹⁴ *Id.* at 61,627.

¹¹⁵ *Boston Edison*, 55 FERC ¶ 61,382 at p. 62,170 (1991) (“Boston Edison has failed to demonstrate that the proposed contract between it and its affiliate, Edgar, does not provide the parties with the chance for abuse of self-dealing, and alternatively has failed to support the rates on a cost-of-service basis.”); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, 61,767 (2009) (explaining that, in a different context, the Commission “will apply a higher level of scrutiny” to certain affiliate transactions “due to the absence of arms’ length negotiations as a basis for the commitment, concerns that the affiliate would receive unduly preferential treatment, further concerns that a utility affiliate contract could shift costs to captive ratepayers of the affiliate and subsidize the . . . project inappropriately, and the lack of transparency that would surround the arrangement”).

¹¹⁶ Lander Affidavit at ¶ 32.

expansion.¹¹⁷ That condition ensured that, if the gas was not demanded by the marketplace, the resulting throughput would not provide a commensurate return:

In sum, the Commission has determined that risk-sharing by the pipeline is necessary to make it subject to competitive forces, since the pipeline will have less incentive to operate efficiently, i.e., to maximize throughput and thereby reduce per unit charges to its customers, if its rates guarantee full cost recovery, including its full return on equity, regardless of whether its system is underutilized. Since 100 percent demand rates shift all risks to pipelines' firm customers, regardless of whether they fully use their reserved capacity, the Commission rejected such rates in its Phase 2 Boundary order so that Tennessee's profit would be at risk if its facilities were underutilized¹¹⁸

The same rationale applies to the instant proceeding, as the Spire Affiliates together are, in essence, operating similar to the pipeline merchants of old (with the notable exception of no affiliate protections).

By placing at least 50% of Spire STL's recovery of return and taxes in the usage rate, the Commission can protect against the threat of self-dealing identified by the D.C. Circuit. To calculate the appropriate usage determinants, the Commission should direct the Spire Affiliates to identify what the anticipated level of throughput should be to avoid curtailment of Spire Missouri firm customers. The usage determinants should be no less than the usage quantities underlying the avoidance of curtailment under the conditions assumed in the Carter Affidavit.¹¹⁹

¹¹⁷ See, e.g., *In the Matter of Northern Natural Gas Co.*, Opinion No. 230, 11 F.P.C. 174, 230 (1952) (classifying 50% of return and taxes to demand and 50% to commodity); *Tennessee Gas Pipeline Co.*, 49 FERC ¶ 61,038 at p. 61,141 (1989) (explaining that the Commission's decision in the Phase 2 Order had the effect of requiring a two-part rate and moving some of Tennessee's fixed costs (return on equity and associated taxes) from the demand component to the commodity charge because the 100% demand rate "would maximize the charges that the Boundary customers would have to pay for Tennessee's capacity, whether or not they used it").

¹¹⁸ *Tennessee Gas Pipeline Co.*, 49 FERC ¶ 61,038 at p. 61,145-46 (1989).

¹¹⁹ Lander Affidavit at ¶ 31.

The Commission should also condition any emergency certificate on Spire STL maintaining its tariff, as modified for rate purposes, so that Spire STL is not in a position to deny service to Spire Missouri to avert curtailment of Spire Missouri's firm customers or otherwise act in contravention of open access principles with respect to service to avert curtailments.

Once the Commission has determined the appropriate rate design placing at least 50% of Spire STL's recovery of return and taxes in the usage rate, Spire Missouri could contract for interruptible service at the 100% load factor of the redesigned recourse rate.¹²⁰ This would further insulate Spire Missouri's firm ratepayers from bearing the costs of Spire STL while the Commission determines the outcome of the remand proceeding.

v. The Commission Must Protect Landowners as a Condition of Any Emergency Certificate

In any action on the Spire Affiliates' Application, the Commission must ensure that landowners along the route of the Pipeline are protected and made whole. Many landowners remain opposed to the presence of the Spire STL Pipeline on their property and have declined to sell easements.¹²¹ Spire STL still does not possess title to more than 60 tracts of land spanning 24 miles of the Pipeline route—thus, over *one third* of the land on which the 65-mile Spire STL Pipeline is built remains contested. As a result, Spire STL's current right to access and occupy these tracts of land is based on injunction orders issued in federal district courts, which were

¹²⁰ *Id.* at P 32.

¹²¹ See Environmental Defense Fund's Addendum on Standing, *EDF v. FERC*, Case No. 20-1016, Doc#1849117 (D.C. Cir., filed June 26, 2020) (containing declarations of EDF members and landowners impacted by the pipeline, Jacob Gettings, Jr., Greg Stout, Kenneth Davis, and Patrick Parker), https://www.edf.org/sites/default/files/documents/EDF_Filed_Brief_20-1016_6.26.20.pdf.

premised on the now-invalidated Certificate Order issued by the Commission.¹²² Spire STL continues to seek title to these tracts in eminent domain proceedings in federal district courts. However, there is uncertainty surrounding the status of these properties because when the D.C. Circuit mandate issues and the Certificate Order is vacated, Spire STL will lose the ability to pursue title through eminent domain authority.

Many of the affected landowners continue to face uncompensated property damage, including environmental harms and crop damage. Spire STL failed to fulfill the conditions of the original (now-invalidated) Certificate Order to remediate the land during and after pipeline construction and to minimize environmental harms. These harms have been documented by the landowners' representatives, the Illinois Department of Agriculture, and recently the Commission's Office of Energy Projects Staff.¹²³ In EDF's experience, the reports often do not

¹²² See, e.g., Order, *Spire STL Pipeline LLC v. Betty Ann Jefferson*, No. 3:18-CV-03204 (SEM) (TSH), 2018 WL 8244004, *11 (C.D. Ill. Dec. 14, 2018) (granting Spire STL's motion for a preliminary injunction for immediate possession of land); Memorandum and Order, *Spire STL Pipeline, LLC v. Gerald Scott Turman*, No. 3:18-CV-01502-NJR-SCW (S.D. Ill. Dec. 12, 2018) (granting Spire STL's motion for a preliminary injunction for immediate possession of land, in part because "Spire STL holds a FERC Certificate").

¹²³ FERC Office of Energy Projects, Restoration Inspection Report, Project: Spire STL Pipeline Project, at p4, Docket Nos. CP17-40-000 & CP17-40-001 (Dated June 28, 2021 – July 1, 2021) (Filed July 20, 2021) ("Evidence was observed in the field indicating that additional restoration efforts are required by Spire to ensure that affected lands are stabilized and successful restoration is eventually reached."), https://elibrary.ferc.gov/eLibrary/filelist?document_id=14971671; Letter from Nate Laps, Central Land Consulting to FERC Re: Docket # CP17-40-000 – Restoration Concerns (Feb. 21, 2021) ("To date, neither the FERC nor Spire have addressed the IDOA or landowners' concerns and have not taken corrective action on any of the issues identified."), https://elibrary.ferc.gov/eLibrary/filelist?document_id=14930177&accessionnumber=20210222-5023; Illinois Department of Agriculture, Spire STL Pipeline June 19, 2020 Site Inspections, Docket Nos. CP17-40-000 & CP17-40-001 (filed Aug. 13, 2020) (summarizing site inspections and stating that "topsoil in the impacted area has not been restored to its original depth and contour," "proper and successful decompaction has not occurred on the impacted soil," and that "the Department's analysis of the impacted sites showed intermixing of topsoil and subsoil material."), https://elibrary.ferc.gov/eLibrary/filelist?document_id=14883416.

capture the extent of the hardships and heartbreak faced by landowners who have spent the last several years dealing with the construction and operation of a pipeline on their properties, near their homes. For example, one EDF member has experienced diminished enjoyment of the recreational and aesthetic benefits of a conservation prairie—which provided a habitat for migratory butterflies and other pollinators—that was largely destroyed by Spire STL and has not been fully restored.¹²⁴

In a March 21, 2021 Order on Environmental Compliance, the Commission stated that “Spire must conduct further restoration work to address concerns regarding topsoil compaction, soil composition, land leveling, and soil erosion on the properties identified in the [Illinois Department of Agriculture’s] report,” adopted multiple recommendations from that report, and directed Spire STL to undertake further remediation efforts.¹²⁵ These issues are ongoing for many landowners and have not been resolved by Spire STL.

If the Commission issues a temporary emergency certificate in response to the Spire Affiliates, any such emergency certificate must explicitly not confer eminent domain authority to Spire STL. Conferring eminent domain authority, which permits Spire STL to seek permanent ownership of land tracts, would be inappropriate for a temporary emergency certificate that will expire after a certain time period, particularly when the pipeline is expected to shut down permanently after an emergency has been resolved.¹²⁶ If FERC declines to explicitly not confer

¹²⁴ Declaration of Gregory Stout, Environmental Defense Fund’s Addendum on Standing, *EDF v. FERC*, Case No. 20-1016, Doc#1849117 (D.C. Cir., filed June 26, 2020).

¹²⁵ Order on Environmental Compliance, *Spire STL Pipeline LLC*, 174 FERC ¶ 61,219 (Mar. 18, 2021).

¹²⁶ Attaching a condition to a temporary emergency certificate indicating that the certificate does not convey eminent domain rights to the holder is consistent with the Natural Gas Act. First, it would be unreasonable to expect that the significant power of eminent domain was intended to be conveyed along with the limited grant of a temporary

eminent domain authority, FERC should at minimum stay the effectiveness of any eminent domain authority (1) pursuant to the rules recently enacted in Orders 871 and 871-A through 871-C (which would stay eminent domain pending resolution of any potential rehearing request on the temporary certificate order), and (2) for the duration of the temporary certificate.¹²⁷ Furthermore, any emergency certificate should include conditions that Spire STL make the landowners whole by providing compensation for the continued use of their land and restoration of the land to the landowners' satisfaction. Furthermore, once the D.C. Circuit mandate is issued, in the context of the remand proceeding, the Commission should consider further remedial action, including additional compensation to landowners subjected to eminent domain and damage to their property.

V. CONCLUSION

EDF respectfully recommends that the Commission (a) reject Sections V, VI, IX, and X and portions of Section I, Subsection E of the Spire Affiliates' Application; (b) require the Spire Affiliates to file additional information related to the alleged emergency and potential remedial actions; and (c) include conditions on any temporary emergency certificate issued for the Spire STL Pipeline that: (i) specify a clear end date for the emergency certificate; (ii) limit use of the Spire STL Pipeline to only the minimum necessary to avoid curtailment of firm Spire Missouri customers; (iii) impose rate conditions that prevent the Spire Affiliates' from unreasonably

emergency certificate. Second, Section 7(c)(1)(B) of the Natural Gas Act distinguishes between a traditional certificate of public convenience and necessity and a "temporary certificate in cases of emergency," while Section 7(h) states only that "any holder of a certificate of public convenience and necessity" may acquire land through "exercise of the right of eminent domain."

¹²⁷ 18 C.F.R. 153, 157. *Limiting Authorizations To Proceed With Construction Activities Pending Rehearing*, Order No. 871, 85 FR 40113 (July 6, 2020); Order No. 871-A, 86 FR 7643 (Feb. 1, 2021); Order No. 871-B, 86 FR 26150 (May 13, 2021); Order No. 871-C 176 FERC ¶ 61,062 (August 2, 2021).

profiting from their self-created emergency; and (iv) protect landowners by requiring continued remediation and appropriate compensation.

Dated: August 5, 2021

Respectfully submitted,

/s/ Natalie Karas

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 5th day of August, 2021.

/s/ Ted Kelly
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Exhibit A
Affidavit of Gregory Lander

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

Spire STL Pipeline LLC

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Docket No. CP17-40-007

**AFFIDAVIT OF GREGORY LANDER IN SUPPORT OF MOTION TO REJECT AND
PROTEST BY ENVIRONMENTAL DEFENSE FUND**

1. My name is Gregory M. Lander. I am President of Skipping Stone, LLC (“Skipping Stone”). My business address is 83 Pine Street, Suite 101, West Peabody, MA 01960.
2. I graduated from Hampshire College in Amherst, Massachusetts, in 1977, with a Bachelor of Arts degree. I co-founded and ran an independent gas marketing firm in the early to late 1980s and was involved with energy transaction information technology development through the 1990s. Since 1999, I have headed up Skipping Stone’s Energy Logistics practice, where my specialization has been interstate pipeline capacity issues, information, research, pricing, acquisition due diligence, project development related planning and consulting for pipelines, potential project shippers and policymakers. I have experience with a wide range of pipeline transportation issues, beginning with access to pipeline capacity to make competitive sales, resolution of the pipeline take-or-pay contracting regime, pipeline affiliate marketer concerns, restructuring of the pipelines from merchants to transporters and thereafter, and definitions of what constituted a pipeline capacity “right” for the purposes of formulating the then newly commenced capacity release and capacity rights trading business process. I continue to be involved in nearly all facets of the capacity information and trading business as part of my duties at Skipping Stone. I have been the lead principal on 50+ pipeline and storage mergers and acquisitions transactions as well as pipeline and storage facility expansion projects for which Skipping Stone has been retained by potential purchasers and project sponsors to provide economic due diligence consulting and market analysis. In addition I was lead consultant for a PJM Interconnection L.L.C. power plant with respect to installation of back-up liquefied natural gas (“LNG”) supply for start-up gas and have more than 30 years of experience with LNG related issues, infrastructure and energy policy.
3. I have been asked by Environmental Defense Fund (“EDF”) to review the Application of Spire STL Pipeline LLC for a Temporary Emergency Certificate, or, in the Alternative, Limited-Term Certificate (“Application” or “Spire Affiliates’ Application”) and attached Affidavit of Scott Carter, President of Spire Missouri, Inc. (“Carter Affidavit”) filed in Docket No. CP17-40 on July 26, 2021. I reviewed those documents and additional relevant materials in the preparation of this affidavit. I have worked with EDF on matters related to the Spire STL Pipeline since 2017, including providing analysis in support of EDF’s filings before the Federal Energy Regulatory Commission (“Commission” or “FERC”), before the Missouri Public Service Commission (“Missouri PSC”), and before the D.C. Circuit in *Environmental Defense Fund v. Federal Energy Regulatory Commission*. A portion of my

testimony before the Missouri PSC was filed with FERC in Docket No. CP17-40 by EDF as an attachment to a Motion to Lodge on January 9, 2018.

4. The Spire Affiliates' Application requests that the Commission grant a Temporary Emergency Certificate or "Limited-Term" Certificate to the Spire STL Pipeline, owned by Spire STL Pipeline LLC ("Spire STL"). The Application alleges that, if the Spire STL Pipeline were required to shut down as a result of its Certificate being vacated by the D.C. Circuit, Spire Missouri, the local distribution company serving the St. Louis area, would be required "to curtail natural gas service during the upcoming winter heating season." Spire STL and Spire Missouri (collectively, "Spire Affiliates") are affiliates under common ownership. The Application, while filed by Spire STL, contains substantial operational details regarding Spire Missouri and is supported by an affidavit by the President of Spire Missouri.
5. In this affidavit, I analyze the claims made by the Spire Affiliates regarding risk conditions that they assert will result in curtailment of service to Spire Missouri's firm customers through Spire Missouri's facilities, should the Spire STL Pipeline not be permitted to operate during the 2021-2022 winter heating season. I use the term "risk conditions" to describe the unreasonable, if not imprudent, actions the Spire Affiliates took to alter their system while challenges to the Commission's certificate order were pending.
6. I then explain that each of these risk conditions can be remedied through action by the Spire Affiliates. I explain that, should any temporary emergency certificate be issued by the Commission, such certificate can and 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.
7. I identify a number of areas where additional information is necessary to evaluate the Spire Affiliates' claims. I also describe how a rate condition could offer further protection to Spire Missouri customers. I therefore recommend that the Commission require the Spire Affiliates to submit additional information before rendering a decision in this proceeding. To the extent a temporary emergency certificate is issued, I recommend the Commission attach conditions to that certificate requiring: (a) that the certificate be limited to the time necessary for the Spire Affiliates to remedy the risk conditions; (b) that the certificate allow the operation of the Spire STL Pipeline only to the extent necessary to avoid curtailment of service to Spire Missouri firm customers; and (c) that the certificate require Spire STL Pipeline to charge Spire Missouri a re-designed rate to place at least 50% 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.

THE COMMISSION SHOULD REQUIRE THE SPIRE AFFILIATES TO FILE ADDITIONAL INFORMATION TO CLARIFY THE NATURE OF THE RISKS AND AVAILABLE CAPACITY

8. Limitations in the information included in the Spire Affiliates’ Application, as well as apparent inconsistencies between the Application and other documents prepared by the Spire Affiliates, prevent intervenors and the Commission from fully assessing the veracity and completeness of the Spire Affiliates’ claims. The Commission should require that the Spire Affiliates provide supplemental information answering the following questions before making any decision. These questions are primarily designed to elicit full details on the causes and natures of the risk conditions and the factors associated with eliminating the risk conditions, described in further detail below.

Questions for the Spire Affiliates

- a. Is Spire Missouri’s Line 880 still in service? If not, identify when Line 880 was removed/isolated from service, identify any relevant regulatory filings or approvals, and identify, in a detailed narrative with a timeline, the steps Spire Missouri would need to take to return Line 880 to service and to connect it directly to the MRT Pipeline.¹
- b. Provide Spire Missouri’s Resource Plan (“RP”) submitted to the Missouri Public Service Commission the year prior to entering into the Precedent Agreement with Spire STL (i.e., 2016). Identify then pending low pressure issues faced on the Spire Missouri system.
- c. Provide Spire Missouri’s most recent RP and identify all pipelines running between and/or proximate to the Spire STL/Enable Interconnect and the Chain of Rocks City Gate. With respect to each such line, please identify:
 - i. The owner, operator, line diameter, and maximum operating pressure.
 - ii. All meter devices (active or inactive) and the owner of same.
 - iii. All valves and appurtenances (active or inactive).
- d. Referring to the most recent Spire Missouri RP, identify all pipelines running between and/or proximate to the Chain of Rocks City Gate and the Lange City Gate. With respect to each such line, please identify:
 - i. The owner, operator, line diameter, and maximum operating pressure.
 - ii. All meter devices (active or inactive) and the owner of same.
 - iii. All valves and appurtenances (active or inactive).
- e. Referring to the map provided in the Carter Affidavit at Appendix A, please identify:
 - i. All pipelines running from, or proximate to, the Spire STL Chain of Rocks Interconnect; and
 - ii. With respect to each such line, please identify:

¹ See the map provided by Spire STL in Resource Report 10 Alternative 5 of the original application, which was incorporated by reference in Spire STL’s Amended Application where the “Blue” Spire STL line appears inserted between the “Red” Line 880 at either end of Line 880.

1. Where it runs to;
 2. The owner, operator, line diameter, and maximum operating pressure;
 3. All meter devices (active or inactive) and the owner of same; and
 4. All valves and appurtenances (active or inactive).
- f. Referring to the map provided in the Carter Affidavit at Appendix A, please identify all pipelines running between and/or proximate to the STL Chain of Rocks Interconnect and/or proximate to the Lange City Gate and, with respect to each such line, please identify:
- i. The owner, operator, line diameter, and maximum operating pressure.
 - ii. All meter devices (active or inactive) and the owner of same.
 - iii. All valves and appurtenances (active or inactive).
- g. Identify, in a detailed narrative with a timeline, the steps Spire Missouri would need to take to return the three compressor units to service at the Lange storage facility or to otherwise enable full operation of the Lange storage facility without use of the Spire STL Pipeline.
- h. Please identify, and provide, as of November 1, 2018:
- i. The compression horsepower of each of the three compressor units then located at the Lange storage facility and subsequently retired.
 - ii. A Lange storage facility site diagram with a description of the piping, including line size and maximum operating pressure, and valves proximate to those compressors, as well as the lines running between the Lange City Gate, including Line 880, and the facility and between the facility and the Algana and Spencer City Gates; and please identify all directions of flow, including bi-directional capability, with respect to such lines and compressors.
- i. Provide a narrative describing all changes to the units, piping, valves and/or appurtenant facilities associated with the three compressor units formerly at the Lange storage facility since November 1, 2018.
- j. Identify, in a detailed narrative with a timeline, the steps Spire Missouri would need to take to return the propane vaporization facility to service.
- k. Referring to the map provided in the Carter Affidavit, please identify the location of Spire Missouri's propane vaporization facility.
- l. Prior to the repurposing or retirement of equipment at the propane vaporization facility, was it a propane-air facility, or did Spire Missouri solely inject un-mixed propane into its system?
- m. Referring to the map provided in the Carter Affidavit at Appendix A, please explain:
- i. Why are there yellow-shaded areas on the eastern and southeastern areas of the Spire Missouri system, particularly in proximity to identified City Gates connecting the Enable MRT Pipeline to the Spire Missouri system?
 - ii. When, prior to submitting the Carter Affidavit, did Spire Missouri first calculate that such yellow areas would face outages?
 - iii. What steps, prior to construction of the Spire STL Pipeline, did Spire Missouri take to address the outages projected for the yellow areas?

- iv. What steps following construction of the Spire STL pipeline did Spire Missouri take to address the outages projected for the yellow areas?

THE RISK CONDITIONS CITED BY THE SPIRE AFFILIATES IN THE APPLICATION ARE THE RESULT OF UNREASONABLE ACTIONS BY THE SPIRE AFFILIATES

9. In the original certificate application process, the Spire Affiliates acknowledged that the Spire STL Pipeline was not necessary as a result of demand growth in the St. Louis area and that the Spire Missouri system had sufficient capacity to serve all customers without the Spire STL Pipeline. Thus, the Spire Affiliates' argument that removing the Spire STL Pipeline from service now will render Spire Missouri unable to serve its customers during the winter is a direct result of self-inflicted risk conditions created by the Spire Affiliates. The risk conditions created by the Spire Affiliates degrade the capabilities of the Spire Missouri system to meet its capacity needs. Specifically, the Spire Affiliates' Application describes three risk conditions:
 - a. The Spire Affiliates alienated the Spire Missouri distribution system from its largest pipeline supplier, the Enable Mississippi River Transmission ("MRT") Pipeline, at the Chain of Rocks site—creating additional, unnecessary reliance on the Spire STL Pipeline. This alienation creates the following new hurdles for gas from the MRT Pipeline to enter the Spire Missouri distribution system:
 - i. Gas cannot move from the Chain of Rocks site into the Spire Missouri distribution system without going through the Spire STL pipeline, thus, gas from the MRT Pipeline must travel through a portion of the Spire STL Pipeline to reach the Spire Missouri system;
 - ii. Gas from the MRT Pipeline must travel through a portion of the Spire STL Pipeline to reach Spire Missouri's Lange area storage field as well as Spire Missouri customers immediately west of Lange; and
 - iii. Gas from the MRT Pipeline at the Chain of Rocks site cannot be transported to Spire Missouri customers in areas west of the Lange storage field without going through the Spire STL Pipeline, as a result of the potential retirement/isolation of Spire Missouri Line 880 which runs between Chain of Rocks and the Lange area storage field;
 - b. Spire Missouri retired three compressor units located at the Spire Missouri-owned Lange area storage field, which created a requirement that the Spire STL Pipeline, rather than gas sourced from the MRT Pipeline or other pipelines and compressed into storage, be used to inject winter-period supplies into that field to refill following winter-period withdrawals;
 - c. Spire Missouri rendered unavailable its propane peaking capability, through repurposing or retiring its propane injection facilities and vaporizers, which removed Spire Missouri's ability to supplement natural gas from interstate pipelines with propane on extreme peak days.

The Spire Affiliates also assert that as a result of Spire Missouri's decision to allow contracted capacity with the MRT Pipeline to expire, it cannot contract for the same level of capacity to its system as it was able to prior to building the Spire STL Pipeline; this assertion is discussed separately, see Paragraphs 22-25 below.

10. Each of these risk conditions stems from decisions made by the Spire Affiliates; had the Spire Affiliates configured the newly constructed connection with the MRT Pipeline so as to maintain a direct connection between Spire Missouri and MRT, retained the compressor units at Lange storage field, retained its propane peaking capability; and, renewed its MRT contracted capacity on a year to year basis, the Spire Affiliates' asserted risk conditions would not now exist, and Spire Missouri would clearly be able to serve its customers through the 2021-2022 winter season without use of the Spire STL Pipeline and with the same facilities that it had prior to introduction of Spire STL and Spire Missouri's system changes discussed above.
11. The Spire Affiliates were aware at the time they made the decisions and implemented the changes described above that the Spire STL Pipeline's certificate had been challenged and that FERC's orders were pending on appeal. They were, therefore, aware that the Commission decision to grant a certificate to the Spire STL Pipeline could be reversed or vacated by the Commission or a court. Therefore, given Spire Missouri's obligation to provide safe and adequate natural gas service to its customers, the Spire Affiliates should have maintained the Spire Missouri system and resources to ensure that it would be able to continue to provide safe and adequate service in the event that the Spire STL Pipeline certificate was voided.
12. The alienation of Spire Missouri from the MRT Pipeline is inconsistent with prudent LDC practice and unreasonable. Generally, when an LDC connects to a new interstate pipeline, the new connection is in addition to existing connections to other interstate pipelines, not an insertion of the new pipeline between an existing supplier and the LDC which in effect alienates the LDC from the prior existing connection. As a result of this alienation, all MRT deliveries directly to Spire Missouri must be made in the southern part of St. Louis, rather than also allowing deliveries at the Chain of Rocks location which, through Spire Missouri Line 880, would also enable gas from MRT to get to the more northern portion of Spire Missouri's system, including the Lange area and the Spire Missouri firm customers westerly of there without reliance on Spire STL. Assuming that, as suggested by the map included in Appendix A of the Application, Spire Missouri's Line 880, which previously connected Chain of Rocks to the Lange storage facility and the northern-most and more westerly portions of the Spire Missouri system, was retired or isolated, this decision is equally problematic and unreasonable. Even with a portion of the Spire STL Pipeline connecting those areas, Line 880 would have served as a critical redundancy of facilities as well as a connection controlled solely by Spire Missouri between itself and MRT (its major pipeline supplier) as well as between two important parts of Spire Missouri's system.
13. The retirement of three compressors at the Lange storage field is also unreasonable and problematic. Those compressors enabled seasonal filling and winter-refilling of the Lange storage field when flowing gas pressures from Spire Missouri's pipeline suppliers did not

enable free-flow into the facility, such as when the field neared full capacity. Typically such piping and compressor arrangements would not only allow injection into the field but also would assist with withdrawal and, by changing valve settings, enable compressing gas from pipeline suppliers, and when such pressures may be low, to support pressure to other parts of the LDC system. While the Spire STL Pipeline may allow the Lange Storage Field to be filled without compressors, retaining the compressors as a redundancy and for their other uses would have been prudent, especially given the risk associated with the Spire STL certificate.

14. The repurposing or retirement of propane injection facilities and vaporizers, notably over the objections of Missouri PSC Staff and the Missouri Office of the Public Counsel, would only further impair the ability of Spire Missouri's system to reliably operate under severe cold conditions.
15. While these actions may have created some savings for Spire Missouri, offsetting the increased costs associated with Spire STL, their primary impact was to make Spire Missouri's system entirely reliant on the Spire STL Pipeline to the extent Spire Missouri faced design day weather conditions. Even if the Spire STL Pipeline certificate had not been challenged and invalidated, this elimination of redundancies would be troubling and unreasonable. Moreover, given that these actions were taken either while a rehearing petition was pending before the Commission or while a challenge to the certificate was pending before the D.C. Circuit, it was particularly irresponsible to eliminate Spire Missouri's ability to provide safe and adequate service without the Spire STL Pipeline.
16. The Spire Affiliates' Application does not present information to explain or justify why it implemented the changes to its system that created the risk conditions, and thus does not explain why the Spire Affiliates now face these conditions. While the Spire Affiliates' Application includes some detail regarding each of the risk conditions, more information is necessary for intervenors and the Commission to fully assess its claims, as described further above.

THE SPIRE AFFILIATES CAN TAKE ACTION TO REMEDY THE RISK CONDITIONS SO THAT THE SPIRE STL PIPELINE CAN BE SHUT DOWN WITHOUT CAUSING AN EMERGENCY

17. Each of the risk conditions described above can and should be remedied such that Spire Missouri can provide safe and adequate service without the Spire STL Pipeline in operation. The Spire Affiliates' Application acknowledges this to an extent but asserts, without detail, that remedying the risk conditions would be expensive or difficult.
18. With respect to reconnecting the MRT Pipeline directly to Spire Missouri at or near the Chain of Rocks interconnect, Spire Missouri should undertake all measures necessary to reconnect itself directly to the MRT Pipeline and to restore a Spire Missouri-controlled pipeline between Chain of Rocks and Lange, including restoring Line 880 to service as necessary. Alternatively, the Spire Affiliates could take necessary steps, including seeking appropriate regulatory approvals, for Spire Missouri to acquire the portion(s) of the Spire

STL Pipeline necessary to connect the MRT Pipeline and to connect Chain of Rocks and Lange, as part of, and for operation of, its intrastate, Missouri PSC-regulated system.

19. With respect to the Lange storage facility, Spire Missouri should undertake all measures necessary to restore compression capabilities at the storage facility, including returning the three retired compressor units to service.
20. With respect to the propane vaporization facility, Spire Missouri should undertake all measures necessary to return it to functionality, including returning the propane injection facilities and vaporizers to service and reconnecting with the propane pipeline, which is controlled by a separate Spire Missouri affiliate. The Spire Affiliates aver that the Spire Missouri propane facility is the only one “of its kind” in the country, without further elaboration. In fact, there are quite a few LDC-operated propane-air facilities in service in the country to support peak period demands.²
21. A prudent LDC, faced with changed circumstances, would begin work as soon as possible to ensure that it is able to provide safe and adequate service without reliance on a pipeline that no longer has a valid certificate, rather than use its statements of self-inflicted risk to lay the problem at the feet of federal regulators and speak generally of the expense and difficulty of remedying its errors.

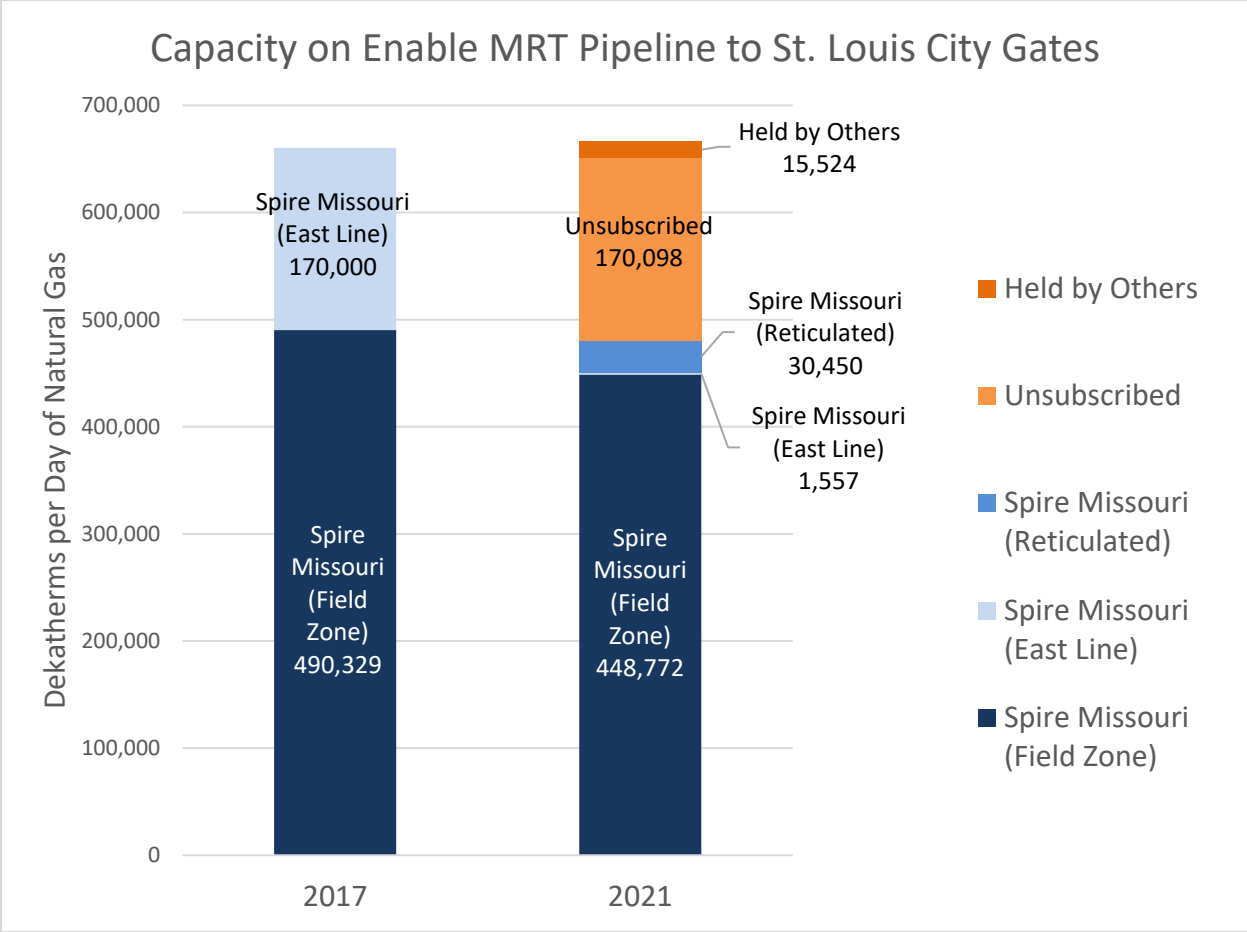
SUFFICIENT GAS CAPACITY EXISTS ON INTERSTATE PIPELINES TO SERVE THE ST. LOUIS AREA WITH SPIRE STL SHUT DOWN

22. The Spire Affiliates claim that there is only 586 dekatherms (Dth) per day of Mainline capacity on MRT that could be available to Spire Missouri. Spire Missouri also states that it turned back approximately 180,000 Dth per day of capacity on MRT. Based on my review of publicly available information I obtained from pipeline bulletin boards, I have identified the following relevant information that is omitted from the Spire Affiliates’ Application: In 2017, Spire Missouri had, on MRT, 490,329 Dth per day of Field Zone to Mainline receipts on forward-haul contracts into its service territory. In 2021, Spire Missouri still has 448,772 Dth per day of Field Zone to Mainline receipts on forward-haul contracts into its service territory; a downward change of only 41,557 Dth per day. The rest of its turn back was of capacity on MRT’s East Line, where Spire Missouri’s MRT

² For example, PSE&G in New Jersey maintains three Liquid Propane Air plants, and these facilities are part of “the Company’s distribution system used for peaking purposes.” See In the Matter of Public Service Electric and Gas Company’s 2021/2022 Annual BGSS Commodity Charge Filing for its Residential Gas Customers Under its Periodic Pricing Mechanism and for Changes in its Balancing Charge, before the NJ BPU, PSE&G Motion and Testimony, Item 18, Gas Supply Plan (June 1, 2021), <https://nj.pseg.com/aboutpseg/regulatorypage/-/media/78C8191CD540477D9230DA056F9A675B.ashx>; In The Matter of the Petition of Public Service Electric and Gas Company for Approval of The Second Energy Strong Program (Energy Strong II), before the NJ BPU, Testimony of Wade Miller for PSE&G at p1 (PDF p538) (June 8, 2018), <https://nj.pseg.com/aboutpseg/regulatorypage/-/media/6DCDE89354844F93975C0DA2D98825C6.ashx>.

East Line receipt capacity of 170,000 Dth per day in 2017 has dropped to 2021 MRT East Line receipt capacity of 1,557 Dth per day; a downward change of 168,443 Dth per day.

23. The Spire Affiliates' Application fails to disclose that MRT, as of July 5, 2021, had a total of 135,548 Dth per day of East Line unsubscribed capacity plus another 34,550 Dth per day of unsubscribed capacity in MRT's reticulated area near to St. Louis from Natural Gas Pipeline of America ("NGPL") to Spire Missouri. These two amounts bring the total unsubscribed MRT capacity that remains available to ameliorate Spire Missouri's premature turnback to 170,098 Dth per day. Spire Missouri is currently contracted with the MRT Pipeline for 30,450 Dth per day from NGPL in MRT's reticulated area to Spire Missouri's City gates. In addition, in 2021, Spire Missouri affiliate Spire Marketing added new contracted forward haul capacity on MRT from MRT's Field Zone to Market Area for delivery to Spire Missouri's citygates of 2,994 Dth per day. In addition, another firm (Symmetry Energy Marketing) contracted for 29,233 Dth per day of forward haul from MRT's Field Zone to Market Area, of which 12,530 Dth per day (42%) is contracted to Spire Missouri's city gates. Neither of these contracted capacities to Spire Missouri's city gates was in effect in 2020.
24. In sum, there is significant capacity available on the MRT pipeline that Spire Missouri could access to supply its customers. Almost exactly the same total capacity (counting contracted and unsubscribed capacity) exists on the MRT Pipeline in 2021 as existed in 2017, to Spire Missouri's city gates. The Spire Affiliates' Application appears to oversimplify or disregard the fact that capacity on the MRT Pipeline is currently unsubscribed and available, as indicated in the chart below.



25. This information demonstrates that significant capacity is available for Spire Missouri to replace capacity currently provided by the Spire STL Pipeline. Spire Missouri should immediately seek to contract for that capacity to remedy the alleged emergency.

UNTIL THE RISK CONDITIONS ARE REMEDIED SUCH THAT IT CAN BE SAFELY SHUT DOWN, USAGE OF THE SPIRE STL PIPELINE CAN AND SHOULD BE LIMITED TO MEET AN EMERGENCY NEED

26. While the Spire Affiliates’ Application acknowledges that some of the risk conditions described above could be remedied, it summarily states that those remedies cannot be completed “before the 2021-2022 winter season,” notably without providing meaningful detail on what work would need to be done or the potential timeline for such work. Furthermore, the Spire Affiliates do not state whether they have started work on those remedies or whether they would plan to do so if the Commission granted their application for a temporary emergency certificate. The Commission should require the Spire Affiliates to provide additional detail on these issues.

27. The 2021-2022 winter season begins on November 1, 2021.³ Spire Missouri generally experiences peak usage in January or February. Therefore, if the Spire Affiliates begin working to remedy the risk conditions immediately, some or all of the risk conditions could likely be ameliorated prior to the winter peak. Breakages of pipelines are fixed in days or at most weeks; returning Spire Missouri pipeline facilities to the status quo ante should be treated as an emergency by Spire Missouri and it should proceed with the same promptness of action as that requested of this Commission by the Spire Affiliates.
28. Furthermore, to the extent that any temporary emergency certificate is granted, the Spire STL Pipeline should only be used as necessary to avoid curtailment of firm Spire Missouri customers. A temporary emergency certificate should be designed and conditioned to allow usage of Spire STL only to the extent necessary to avoid interruptions of service while alternative solutions are developed, and should not allow unlimited usage of the pipeline for an indefinite period.
29. First, use of the Spire STL Pipeline should only be considered when system conditions require more gas than is available to Spire Missouri through other pipelines. During times when other pipelines can offer adequate supply, Spire STL should not be permitted to supply gas to Spire Missouri.
30. Second, use of the Spire STL Pipeline should be limited to the minimum usage necessary to achieve sufficient capacity for deliveries to avoid firm Spire Missouri customer curtailment. For example, to the extent that, as the Spire Affiliates assert, gas from MRT cannot reach the Spire Missouri system without using the Spire STL Pipeline, gas should be sourced through MRT and the Spire STL Pipeline should only be used to the extent necessary to transport gas from MRT to the Spire Missouri system. Similarly, to the extent that use of the Spire STL Pipeline is required to achieve winter-refill of the Lange storage field, only those portions of the pipeline and the quantities necessary to achieve winter re-fill of the storage field should be used.

IF THE COMMISSION GRANTS A TEMPORARY EMERGENCY CERTIFICATE, IT SHOULD INCLUDE A RATE CONDITION

31. For any temporary emergency certificate, this Commission should use its conditioning powers to require that Spire STL alter its rate design to one that places at least 50% of Spire STL's recovery of return and taxes in the usage rate. The usage determinants for such usage rate should be no less than those projected to be experienced for throughput to avoid Spire Missouri curtailment of Spire Missouri's firm customers. In particular, such usage determinants should be no less than the usage quantities underlying avoidance of curtailment under the conditions assumed by Spire Affiliates in the Carter affidavit. Such rate design was historically used by the Commission back when the interstate natural gas pipelines were wholly merchants. The Spire Affiliates' combined actions are akin to that of a merchant as far as their effects on Spire Missouri's firm customers can be gauged.

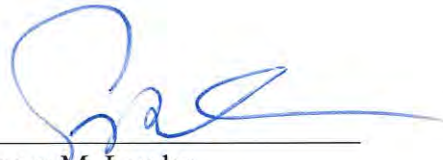
³ It is an industry-wide norm that the winter season is from November through March.

32. As presently configured, without such alteration of the Spire STL rate design, Spire Missouri will pay Spire STL more than \$2.4 million per month in fixed reservation charges, the vast majority of which is return related. This cost could well end up on the backs of captive Spire Missouri ratepayers. I have made a back of the envelope calculation that, absent a rate condition of the form suggested, Spire shareholders would realize nearly \$9.2 million of annualized pre-tax gross profit. Thus, over the remainder of the 20-year term of the transportation contract, Spire shareholders would realize approximately \$170 million in gross pre-tax profits. Assuming continuation of existing tax rates as contained in FERC's rate determination, Spire shareholders would thus realize approximately \$130 million in after-tax profits.
33. Moreover, should the Commission void the existing contract between Spire STL and Spire Missouri but permit the tariff to remain in place (as protection against refusal of service by Spire STL), Spire Missouri could contract for interruptible service at the 100% load factor of the redesigned recourse rate. This would further insulate Spire Missouri's firm ratepayers from bearing the costs of Spire STL while the Commission determines the outcome of the remand proceeding. Then, because Spire STL is only permitted to serve Spire Missouri; and, then only to the extent of avoiding curtailment of Spire Missouri firm customer load, the interruptible contract would be sufficient to serve such load as it is the only load Spire STL is permitted to serve with its 400,000 Dth/d of capacity.

CONCLUSION

34. As described above, the emergency alleged by the Spire Affiliates as justification for a temporary emergency certificate is the direct result of self-inflicted risk conditions. These risk conditions can and should be remedied so that Spire Missouri can provide safe and adequate service without the Spire STL Pipeline in operation. Before issuing any temporary emergency certificate, the Commission should require the Spire Affiliates to file additional information to allow a full assessment of system conditions and capabilities. To the extent that a review of all appropriate information demonstrates the need for a temporary emergency certificate, the Commission should impose conditions on any such certificate to (1) limit the term of the certificate, (2) minimize use of the Spire STL Pipeline while the certificate is in place, and (3) require that the Spire STL Pipeline charge Spire Missouri a rate designed to place at least 50% of its recovery of return and taxes in the usage rate as further detailed infra.

I declare that the foregoing affidavit, submitted in support of Environmental Defense Fund's Protest and Motion to Reject, is true and correct.



Gregory M. Lander
President of Skipping Stone, LLC

Dated August 5, 2021

Exhibit B
Excerpt of Testimony of
Robert Noelker

Exhibit No:	_____
Issue:	Propane Assets
Witness:	Robert Noelker
Type of Exhibit:	Rebuttal Testimony
Sponsoring Party:	Spire Missouri Inc.
Case No.:	GR-2021-0108
Testimony Date:	June 17, 2021

SPIRE MISSOURI INC.

GR-2021-0108

REBUTTAL TESTIMONY

OF

ROBERT NOELKER

JUNE 17, 2021

1 **Q. COULD THE COMPANY BRING THE PROPANE ASSETS BACK IN SERVICE?**

2 A. While possible, I would not recommend it. The Company has already moved and
3 repurposed the heating and vaporization equipment at the Lange Storage Facility and the
4 pumps that delivered liquid propane from the cavern to that equipment have been placed
5 out of service and are in the process of being removed. The source of liquid propane has
6 been physically disconnected from the heating and vaporization facilities at the Catalan
7 Plant as well. Additional investments would be required to replace and/or to bring these
8 assets back in service.

9 **Q. EVEN IF YOU RECONNECTED ALL OF THE EQUIPMENT, WOULD YOU BE**
10 **ABLE TO VAPORIZE AT THE CATALAN PLANT IN THE FUTURE?**

11 A. No. The pipeline that is used to transport liquid propane from the cavern to the Catalan
12 Plant is owned by Spire NGL. Spire NGL is retiring a portion of the pipeline that connects
13 the cavern to the Catalan Plant due to integrity issues. This retirement/abandonment is
14 scheduled to take place in August 2021. Once this section of pipeline is retired and
15 abandoned, it will not be possible to transport liquid propane to the Catalan Plant.

16 **Q. GIVEN THAT THE COMPANY IS UNABLE TO VAPORIZE THAT INVENTORY,**
17 **DO YOU BELIEVE IT SHOULD BE REMOVED FROM RATE BASE?**

18 A. Yes.

19 **Q. WILL THE COMPANY REALIZE ANY GAIN ON THIS INVENTORY?**

20 A. No. The Company's weighted average cost to acquire this propane inventory is
21 significantly above the current market value of the propane inventory.

22 **Q. PLEASE SUMMARIZE SPIRE MISSOURI'S RECOMMENDATION**
23 **REGARDING THE TREATMENT OF THE PROPANE ASSETS.**

Exhibit C
Excerpt of Testimony of
Geoff Marke

Exhibit No.: _____
Issue(s): AMI/AMI Opt-Out/Corporate
Governance: Workplace Discrimination/Propane
Storage/Research and Development/Rate Design
Witness/Type of Exhibit: Marke/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: GR-2021-0108

SURREBUTTAL TESTIMONY

OF

GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

SPIRE MISSOURI, INC.

CASE NO. GR-2021-0108

July 14, 2021

1 **operational, and thus there may be some disruption as a result of the**
2 **“interim change,” see id. at 150-51 (citation omitted), i.e., de-issuance of the**
3 **Certificate, caused by vacatur. However, we have identified serious**
4 **deficiencies in the Certificate Order and Rehearing Order. And “the second**
5 **Allied-Signal factor is weighty only insofar as the agency may be able to**
6 **rehabilitate its rationale.” Comcast Corp. v. FCC, 579 F.3d 1, 9 (D.C. Cir. 2009)**
7 (citation omitted). **The Commission’s ability to do so is not at all clear to us at**
8 **this juncture.** (emphasis added)²²

9 **Q. Have you sent discovery to check on the status of the pipeline?**

10 A. Yes. OPC DR-2155 asked the following question and received the following response:

11 **Request:** Is the Spire STL pipeline currently in operation in light of the DC
12 Circuit Court of Appeals ruling on the Spire STL pipeline?

13 **Response:** No.

14 **Q. What is your recommendation in light of that response?**

15 A. I fully support Staff’s position as the STL pipeline is not currently in operation. It would be
16 imprudent and irresponsible to retire the fully depreciated propane storage assets with the
17 heightened uncertainty surrounding the Spire STL pipeline. I recommend that the propane
18 storage facilities not be retired and be included in the Company’s cost of service until they
19 can be reexamined in the Company’s next rate case.

20 **VI. RESEARCH AND DEVELOPMENT**

21 **Q. Did Staff support Spire’s request to have ratepayers fund \$1 million in annual research**
22 **and development (“R&D”)?**

23 A. No. Staff witness Karen Lyons recommended that the R&D funding be rejected due to lack of
24 details surrounding the proposal.

²² Ibid.

Exhibit D
Excerpt of Testimony of
Karen Lyons

Exhibit No.:
Issues: Propane
Revenue Requirement Update
Witness: Karen Lyons
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: GR-2021-0108
Date Testimony Prepared: July 14, 2021

MISSOURI PUBLIC SERVICE COMMISSION
FINANCIAL AND BUSINESS ANALYSIS DIVISION
AUDITING DEPARTMENT

SURREBUTTAL TESTIMONY
OF
KAREN LYONS

SPIRE MISSOURI INC., d/b/a SPIRE
SPIRE EAST and SPIRE WEST
GENERAL RATE CASE

CASE NO. GR-2021-0108

Jefferson City, Missouri
July 2021

1 **PROPANE INVESTMENT**

2 Q. What is Spire’s position regarding its propane investment?

3 A. Mr. Noelker states “the propane heating/vaporization assets are no longer in
4 service and therefore are neither used nor useful for the purposes of serving the Company’s
5 customers. These assets need to be taken out of rate base as well.”² Mr. Noelker goes on
6 to say “With the increased pipeline natural gas supply provided by the addition of the
7 Spire STL Pipeline being built into the St. Louis metropolitan area, propane is no longer needed
8 to meet peak demand.”

9 Q. Does Staff agree?

10 A. While Staff agrees that the STL Pipeline currently provides the capacity needed
11 to meet peak demand, Staff believes it is premature to remove the propane assets from utility
12 service since they can be used for extreme cold weather events such as the one that occurred in
13 February 2021. In addition, there is current uncertainty regarding the ability of Spire to obtain
14 gas from the STL Pipeline on an ongoing basis.

15 Q. Did Spire attempt to use the propane assets during the February 2021 cold
16 weather event?

17 A. No. Mr. Noelker stated that Spire did not pre-plan for this scenario.³ The Lange
18 Storage Facility (“Lange”) was not available to vaporize propane because the equipment was
19 disconnected and some of the equipment was repurposed. Spire retired the vaporizers at Lange
20 in May 2021. The Catalan Plant (“Catalan”) continues to have the capability to vaporize

² Case No. GR-2021-0108, Robert Noelker, page 3.

³ Case No. GR-2021-0108, Robert Noelker, page 4, line 7.