UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

MOTION TO INTERVENE AND COMMENTS OF FORREST JONES, ST TURMAN CONTRACTING, LLC, SCOTT TURMAN, KENNETH "RUSTY" WILLIS, DAWN AVERITT, WILLIAM BARR, MELISSA BARR, CAROLYN FISCHER, DEMIAN K. JACKON, LOUIS RAVINA, VICTOR BAUM, LORA BAUM, HORIZONS VILLAGE PROPERTY OWNERS ASSOCIATION, INC., KENNETH E. HOGLUND AND THE NISKANEN CENTER
ON THE APPLICATION OF SPIRE STL PIPELINE LLC
FOR A TEMPORARY EMERGENCY CERTIFICATE,
OR, IN THE ALTERNATIVE, LIMITED-TERM CERTIFICATE

Pursuant to the Commission's August 6, 2021 Notice of Application and Establishing Intervention Deadline, Rule 214 of FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.214, and 18 C.F.R. § 157.10, Forrest Jones, ST Turman Contracting, LLC, Scott Turman (both individually and as sole member of ST Turman Contracting, LLC), Kenneth "Rusty" Willis, Dawn Averitt, William Barr, Melissa Barr, Carolyn Fischer, Demian K. Jackon, Louis Ravina, Victor Baum, Lora Baum, Horizons Village Property Owners Association, Inc., and Kenneth E. Hoglund (in his capacity as President of Horizons Village Board) (collectively, "Landowners") and the Niskanen Center ("Niskanen") move to intervene in this proceeding and to submit these comments on the Application of Spire STL Pipeline LLC's Application for a Temporary Emergency Certificate, or, in the Alternative, Limited-Term Certificate, Accession No. 20210726-5164 (the "Application").

Spire Landowner Movants

Each of the Spire Landowner Movants owns property that Spire took via eminent domain.

Forrest Jones owns a 55-acre farm at 104 Westbrook Road, Roodhouse, Illinois 62082. He has lived on the farm since 1983. In 2018, Spire seized about 1,800 linear feet of timberland on the farm by preliminary injunction, a total of about 1.8 acres, for which Mr. Jones was not paid until about June, 2021. Mr. Jones wants the Pipeline, a threat to his family's health and safety, to cease operation as soon as possible. Once the Pipeline has ceased operation, Mr. Jones wants his land restored as close as possible to its original condition, and all easement restrictions removed.

Scott Turman and ST Turman Contracting, LLC (an Illinois corporation) each own pieces of active farmland in Illinois where Spire has seized land for the Pipeline. Mr. Turman owns the one in Greene County (610 acres), and ST Turman Contracting owns an 80-acre portion of a 180-acre property in Jersey County. Spire took land on both the Greene County property and the 80-acre portion of the Jersey County property by preliminary injunction in 2018, has still not paid for either, and condemnation actions against both properties are ongoing to determine 'just compensation'. Mr. Turman, who is also a contractor, had started preliminary work on building his new home on the Jersey County property when Spire seized part of the property and installed the pipeline right next to where the house would be, forcing Mr. Turman to abandon plans for his new home. The Pipeline has also wreaked damage to the farmland on both properties, compacting the soil so that it cannot be farmed, and during excavation the pipeline trench brought large rocks to the surface making the use of some farming equipment impossible. The Pipeline has also dissected one of the fields on his Greene County property, leaving an approximately 50' strip of land completely separated from the rest of the field. Mr. Turman wants Spire to stop operating as soon as possible so that he can resume building his new home, and then restore his property to its original condition.

Kenneth "Rusty" Willis has lived and farmed corn and soybeans for more than 60 years on his 40-acre farm at 22 Daisey Lane, Roodhouse, Illinois 62082. Spire seized about 2.5 acres of it by preliminary injunction in 2018, and placed the Pipeline about a quarter-mile from Mr. Willis' house. While operating, the Pipeline presents a threat to the health and safety of Mr. Willis' family, and by damaging his property, it has interfered with his use of his land. Mr. Willis wants Spire to stop operating as soon as possible, and then restore his property to its original condition.

ACP Landowner Movants

The ACP movants are all landowners whose property was taken or signed over under threat of eminent domain by ACP for a pipeline that will never be built. They are each intervenors in the Commission's proceedings on ACP's proposed amendment to its certificate concerning its abandonment (Docket Nos. CP15-554-000, CP15-554-001, CP15-554-009, CP15-555-000, & CP15-555-007; *see ACP Landowners Motion to Intervene and Comments on the Atlantic Coast Pipeline's Project Disposition and Restoration Plan,* Accession No. 20210416-5358), and their interest in this proceeding is that, like ACP, the Spire Pipeline will also soon be subject to Commission proceedings dealing with its abandonment. The ACP movants have an interest in this proceeding because the Commission's decisions and actions concerning the Spire abandonment will likely affect the Commission's decisions and actions in the ACP proceeding.

Dawn Averitt owns about 74 acres in Nellysford, Virginia, of which ACP has taken more than 5.5 acres.

Melissa Barr and William Barr own 8.28 acres of land in Nellysford, Virginia, where they had planned to build their retirement home when Mr. Barr retired from the U.S. Marine

Corps. ACP has taken temporary and permanent easements directly in front of their planned building site.

Carolyn Fischer lives in the Horizons Village community, a neighborhood in Nelson County, Virginia, that has legally binding covenants to protect and conserve the area's environment. Ms. Fischer has lived there for over 12 years, and ACP has taken about one acre of her 8.5-acre property.

Demian K. Jackon lives with his family on their 105-acre property in Shipman, Virginia, more than 10 acres of which ACP has taken under permanent or temporary easements, all for a pipeline that will never be built.

Louis Ravina both lives and works on his 160 acres of land, located just outside Churchville in Augusta County, Virginia. ACP has taken approximately 14 acres of his property under temporary and permanent easements.

Lora Baum and Victor Baum own a 31.5-acre property in Warm Springs, Bath County, Virginia. On their land, they live in a log cabin that was originally constructed around 1900 and was reconstructed in 2006. ACP has taken temporary and permanent easements on more than five acres of their property.

Horizons Village Property Owners Association, Inc. is a neighborhood in Nelson County, Virginia, that has legally binding covenants to protect and conserve the area's environment. ACP has taken about 7.5 acres of property from Horizons Village residents.

Kenneth E. Hoglund intervenes in his capacity as President of the Horizons Village Board.

Niskanen Center

Niskanen Center is a 501(c)(3) think tank and advocacy group that represents landowners whose property interstate natural gas pipelines have taken, or are threatening to take, under Section 7 certificates issued by the Commission. In addition to this proceeding, Niskanen currently represents such landowners in FERC administrative proceedings and litigation in connection with the ACP, Pacific Connector, and PennEast pipelines. Pursuant to 18 C.F.R. § 385.203(b)(3), Niskanen identifies the following persons for service of correspondence and communications regarding this application:

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Comments

I. Introduction

At bottom, the Application is Spire's plea to be saved from the consequences of its own decisions. Not that Spire is the only party at fault; Spire notes that it "built the STL Pipeline in reasonable reliance upon the Commission's Certificate Order" (Application p. 2) and, indeed, for decades the Commission has been issuing Section 7 certificates with the same fundamental flaws that the D.C. Circuit has finally put a halt to. *Environmental Defense Fund v. FERC,* 2 F.4th 953 (2021) (the "Decision").

Landowners and Niskanen submits these comments as to three issues with the Application.

First, Spire's hyperbole is simply not believable for one simple reason – despite the Petitioners' request for vacatur, Spire never said a word to the D.C. Circuit about *any* of the apocalyptic consequences Spire now says will happen if it is forced to shut down.

Second, the Application grossly mischaracterizes the D.C. decision, specifically as to the Commission's findings concerning the adequacy of Spire's steps to minimize project impacts on landowners and communities.

Third, the Application is almost entirely silent as to what steps Spire had taken to mitigate the consequences of the Decision vacating Spire's Certificate in the almost five weeks between when the Decision was issued on June 22, 2021 and when Spire filed the Application on July 26, 2021. Spire's apparent lack of action means either that it does not believe its own apocalyptic rhetoric, or that it has deliberately sat on its hands in order to exacerbate the potential consequences of shutting down, thereby increasing pressure on the Commission to grant the Application. Moreover, the Application is silent as to what Spire intends to do if the Commission

were to deny the Application or grant either a "Temporary Emergency Certificate" or "Limited-Term Certificate", allowing the Pipeline "to remain in service pending the Commission's action on remand" (Application, p. 2) but then deny reissuance of the Certificate on remand (even though the D.C. Circuit was skeptical that the Pipeline could be resurrected on remand; "The Commission's ability to do so is not at all clear to us"; Decision at 976). Spire's parallel silence as to what it will do if the Commission does not grant the Application—or does so but then declines to reissue the Certificate on remand—strongly implies that Spire intends to continue to take no steps to secure alternatives to the Pipeline. In other words, Spire is engaging in a regulatory game of chicken with the Commission, daring it to permanently pull the plug (either by denying the Application, or by granting emergency/temporary relief but then not reissuing the Certificate on remand) and take the blame for any consequences.

Together, these circumstances indicate that Spire is relying on its lawyers rather than its system operators and engineers to avert any adverse consequences of shutting down the Pipeline. It is the Commission's responsibility not to play Spire's game; it should demand to know what – aside from lawyering up – Spire has done to prepare for shutting down the Pipeline, whether now or if the Commission does not reissue the Certificate on remand.

II. Spire's Hyperbole is Not Believable in Light of its Failure to Mention Such Consequences to the D.C. Circuit.

Despite Petitioner's request that the D.C. Circuit vacate Spire's Certificate (Opening Brief of Petitioner Environmental Defense Fund, *Environmental Defense Fund v. FERC,* No. 20-1016, ECF #1871063, p. 40), Spire barely addressed this issue at all in its brief, just three cursory sentences on the very last page, saying that vacatur would be inappropriate because it was "plausible" that FERC could remedy any deficiencies on remand, and that vacatur would be

"disruptive". *Id.*, Brief for Intervenors-Respondents Spire STL Pipeline LLC and Spire Missouri Inc., ECF #1863062, p. 42.

Only now does Spire claim that the consequences of shutting down include "uncontrolled loss of service to households and other high priority consumers, such as hospitals, nursing homes, and schools", leading to "potential for loss of life and severe impacts to essential services", Carter Decl. ¶ 4; "imposing severe hardships on the people of eastern Missouri, including the potential for loss of life", *id*. ¶ 5; "approximately 175,000-400,000 Spire Missouri customers may be without gas service for periods of time", *id*. ¶ 16; "customers will remain without heat, hot water, and the ability to cook for a prolonged period of time due to the time and complexity required to reestablish service [and] [l]oss of heat during extreme cold weather sometimes results in death", *id*. ¶ 22.

If the consequences of vacatur truly were as dire as Spire claims, surely it would have made more of an effort to so inform the D.C. Circuit. Spire, after all, takes great pride in its "prudent" behavior, which it mentions throughout the Application (*e.g.*, it was "prudent" for Spire to allow its contracts for other pipeline capacity – which it now desperately needs – to expire; Application p. 12). If Spire's hyperbole were true, presumably such a prudent actor as Spire would have provided the D.C. Circuit with some inkling of vacatur's consequences, instead of describing these as being merely "disruptive". That the very prudent Spire did not do so strongly suggests that it has conjured these up solely in order to scare the Commission into granting Spire's application.

III. The Application Grossly Mischaracterizes the Decision.

Spire states, "The Court vacated the Certificate and Rehearing Orders and remanded the proceeding to the Commission to provide the needed explanation or analysis related to the

precedent agreement, but otherwise left the Commission's other findings intact." Application, p. 9. This is not correct; the Court remanded not only on the precedent agreement issue, but also because "the Commission failed to adequately balance public benefits and adverse impacts" (Decision at 973). Elsewhere the Court noted as to this balancing issue that, "The Commission must provide a cogent explanation for how it reached its conclusions" (*id*. at 975), and specifically that, "the Commission's cursory balancing of public benefits and adverse impacts was arbitrary and capricious." *Id*. at 976.

Spire then goes from eliding this issue to a flat-out whopper, stating, "The Commission already determined that Spire STL has taken sufficient steps to minimize impacts on landowners and the surrounding community" and that "The Court did not dispute this finding." Application, p. 31. The Court's specific finding that "the Commission's cursory balancing of public benefits and adverse impacts was arbitrary and capricious" (Decision at 976) most certainly does dispute the Commission's finding "that Spire has taken sufficient steps to minimize impacts on landowners and the surrounding community". Presumably Spire's ploy in making these statements is to downplay the magnitude of the Commission's task on remand, and thus the amount of time an emergency/temporary certificate would be necessary.

IV. The Application is Virtually Silent as to What Steps Spire Took in the Five Weeks Between the Decision and the Application, or What it Will Do if the Commission Denies the Application.

The Application reveals that Spire had done virtually nothing to prepare to serve its customers if and when the Pipeline were shut down. The Application's factual support is limited to a single, conclusory declaration from Scott Carter, President of Spire Missouri. According to Mr. Carter, "it is essential that STL Pipeline be permitted to maintain adequate service to its customer Spire Missouri during the upcoming winter season and beyond, in order to

avoid imposing severe hardships on the people of eastern Missouri, including the potential for loss of life." Carter Decl. ¶ 5. Given this dire threat, one would assume that Spire had contingency plans should the D.C. Circuit vacated the Certificate. Or, at a minimum, has been working around the clock once the Court did so.

Apparently not. After saying it is not possible for Spire to reverse the actions it took as to the system it had in place before the Pipeline went into service,[1] apparently the only action Spire has taken to find a solution is that, "Spire Missouri is exploring availability on upstream pipelines, NGPL and Trunkline, to feed into the East Line. However, recent pressure issues have been acknowledged by the upstream pipelines, and Spire Missouri has not received a firm delivery pressure commitment from either upstream pipeline, making transportation capacity on the East Line even less dependable." Carter Decl. ¶ 42. Ten days later, on August 5, 2021, Spire moved the D.C. Circuit for rehearing or rehearing en banc, and apparently nothing had changed: "Spire Missouri is exploring availability on upstream pipelines, NGPL and Trunkline, to feed into the MRT East Line. However, Spire Missouri has not received a firm delivery pressure commitment from either of those upstream pipelines, further compromising the company's ability to rely on the MRT East Line as a substitute for STL Pipeline." Declaration of Scott Carter, ¶ 40; ECF #1909142. These minimal efforts mean either that the threatened consequences of shut down are not nearly as dire as Spire claims, or that Spire is making a calculated gamble

[1]"Those changes were: (1) allowing contracts on MRT and upstream pipelines to expire; (2) retiring the antiquated propane peaking facilities; (3) making changes to the operations at the Lange storage facility to allow reliance on high pressure supply from STL Pipeline; and (4) foregoing system reinforcements for service to the western and southwestern areas because of the new supplies by STL Pipeline." Carter Decl. ¶ 36.

that by not coming up with any alternatives, it will force the Commission to grant its Application.

One of the reasons why Spire might not be taking such steps is that all of those "irreversible" (Application, p. 2) changes Spire made may not actually be so. On August 6, 2021, the Commission asked Spire to provide actual evidence to support all of its conjectures (Accession No. 20210806-3036), including its inability to reverse the steps it took to retire its previous supply system and the lack of capacity on other pipelines. Landowners and Niskanen appreciate the Commission's request for evidence concerning Spire's statements about availability of open capacity on the MRT and MoGas pipelines (including whether those pipelines have any capacity contracts expiring in the near future), and whether there is capacity "available on these system, or how much capacity is available" on the NGPL and Trunkline systems. The Commission should make explicit that its questions about available capacity should include whether Spire explored purchasing capacity on those pipelines from the entities that have contracts on them; it is possible that Spire made such inquiries and that such capacity is available, but Spire is keeping that quiet in order to compel the Commission to allow the Pipeline to keep operating.

While Spire detailed a minimal effort as to what it has been doing in the interval between the Decision and the Application, Spire is completely silent as to what it intends to do if the Commission denies the Application. This appears to mean–again–either that the consequences of shut down are nowhere near as dire as Spire predicts, or it is further evidence of Spire's game of regulatory chicken, daring the Commission to deny the Application and letting Spire then blame it for any resulting problems.

Conclusion

For the reasons given herein, and in the comments of the other intervenors, the Commission should grant intervention to each Landowner and the Niskanen Center, and deny Spire's Application.

Respectfully submitted,

s/David Bookbinder
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