OPINION ISSUED JUNE 22, 2021

No. 20-1016 (consolidated with 20-1017)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE FUND,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

BRIEF OF MOGAS PIPELINE LLC AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR REHEARING OR REHEARING *EN BANC*

Phil Mone
Van Ness Feldman, LLP
1050 Thomas Jefferson St., NW
Seventh Floor
Washington, D.C. 20007
(202) 298-1800

Counsel for MoGas Pipeline LLC

August 12, 2021

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, MoGas Pipeline LLC ("MoGas") hereby submits this Rule 26.1 Corporate Disclosure Statement. MoGas is a limited liability company formed under the laws of the State of Delaware. MoGas is a wholly owned subsidiary of Corridor MoGas, Inc., a wholly-owned subsidiary of CorEnergy Infrastructure Trust, Inc., a publicly traded real estate investment trust. MoGas owns certain natural gas pipeline and related natural gas transportation facilities in the States of Missouri and Illinois. MoGas's principal place of business is 329 Josephville Road, Wentzville, MO 63385.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and *Amici*.

All parties, intervenors, and *amici* appearing before this Court are as stated in the Intervenors' Petition for Rehearing or Rehearing *en banc*, with the exception of MoGas Pipeline LLC which is seeking an invitation to participate as *amicus curiae*.

B. Rulings Under Review.

The following final agency actions by Respondent are under review:

1. *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (R.164, J.A. 932-1066), and
2. *Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (2019) (R.424, J.A. 1144-1202).

C. Related Cases.

This case has not previously been before this Court or any other court. To counsel's knowledge, there are no related cases pending elsewhere.

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to D.C. Circuit Rule 29(b), counsel for *amicus curiae* certifies that we have filed a Motion for an Invitation to Participate as *Amicus Curiae* concurrently with this brief. Counsel further certifies that Counsel for Intervenors for Respondent Spire Missouri Inc. and Spire STL Pipeline, LLC consent to the filing of MoGas Pipeline LLC's brief. Respondent Federal Energy Regulatory Commission and Counsel for Petitioner Juli Steck (No. 20-1017) stated that they do not oppose the filing of the brief. Counsel for Petitioner Environmental Defense Fund (No. 20-1016) stated that they take no position on the filing of the brief. Pursuant to D.C. Circuit Rule 29(d), counsel for *amicus curiae* certifies that, to his knowledge, no other *amicus* brief addresses the precise factual questions addressed in this brief—namely, the harm that will arise from the challenged remedy. Accordingly, filing a joint brief would not be practicable.

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GLOSSARY

FERC	Respondent Federal Energy Regulatory Commission
J.A.	Citations to the Joint Appendix
MoGas	MoGas Pipeline LLC

INTEREST OF THE *AMICUS CURIAE*[1]

Amicus MoGas Pipeline LLC ("MoGas") operates over 263 miles of interstate natural gas pipeline in Missouri and Illinois through which MoGas transports and delivers natural gas to both investor-owned and municipal natural gas local distributions systems. MoGas has two primary customers, Spire Missouri East and Ameren Missouri, both local distribution companies serving natural gas demands in both St. Louis and immediately west of St. Louis, Missouri. These two shippers comprise approximately 85% of MoGas's contracted firm capacity. The remaining customers, accounting for approximately 15% of MoGas's firm contract capacity, consist of four municipalities, the U.S. Army's Fort Leonard Wood, and several small industrial and commercial natural gas demands.

In December 2020, an interconnection between MoGas and the STL Pipeline went in service. This interconnection allows MoGas to serve customers in the counties to the west of St. Louis. As explained in further detail below, MoGas's system and its customers enjoy a variety of benefits from the interconnection with STL Pipeline. If the STL Pipeline went out of service, these benefits would be lost and there would be other negative consequences.

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[1] Pursuant to Rule 29(a)(4)(E), counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party, nor any person other than *amicus curiae* or their counsel, contributed money intended to fund preparing or submitting this brief.

MoGas has a direct and substantial interest in this proceeding. As the interconnection with STL Pipeline allows MoGas to serve its customers, a shutdown of the STL Pipeline would cause a significant loss of service for some customers in the counties to the west of St. Louis. Accordingly, MoGas has a significant interest in, and can offer a unique perspective on, the remedy at issue in this case. This perspective is not provided by any other party or *amici*. *See* Fed. R. App. P. 29(a)(3).

SUMMARY OF ARGUMENT

The Panel should grant rehearing and eliminate the vacatur portion of its remedy since the appropriate remedy under *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146 (D.C. Cir. 1993), is remand without vacatur. Vacatur requires a shutdown of the STL Pipeline. Shutting down the STL Pipeline would cause substantial disruptive consequences for MoGas and its customers. MoGas has been interconnected with STL Pipeline since December 2020. The interconnection allows it to serve the markets west of St. Louis. A shutdown would cause an immediate and significant loss of service for some customers. Loss of service would be potentially worse during future extreme cold weather events. Under *Allied-Signal* the appropriate remedy is remand without vacatur where "'the disruptive consequences of vacating' are substantial," *Apache Corp. v. FERC*, 627 F.3d 1220, 1223 (D.C. Cir. 2010) (quoting *Allied-Signal*, 988 F.2d at 151), and FERC "will be able to supply the explanations required" to rehabilitate its reasoning, *City of Oberlin v. FERC*, 937 F.3d 599, 611 (D.C. Cir. 2019). Accordingly, the Panel should grant rehearing and eliminate the vacatur portion of its remedy.

ARGUMENT

I. The Shutdown of STL Pipeline Required by Vacatur Will Have Economic and Social Consequences for MoGas and Its Customers.

A shutdown of the STL Pipeline would have substantial disruptive consequences for MoGas and its customers. A shutdown would cause some MoGas customers an immediate loss of service, as MoGas would lack the required line pressure to service natural gas demand west of St. Louis. In order to provide service to these customers once again, MoGas would have to construct up to a 50-mile loop of its system. The in-service date on that potential loop would be several years in the future, leaving the natural gas demand unserved until that time. Furthermore, the cost of a 50-mile loop—previously estimated to be up to $100 million—would be ultimately borne by some if not all of MoGas's customers.

In addition, if the STL Pipeline is shut down, MoGas would lose the substantial operational reliability which played an instrumental role in MoGas's ability to perform well during the February 2021 extreme cold weather event. If STL Pipeline is shutdown, MoGas, like many pipelines in February 2021, would likely struggle to deliver all contracted volumes during similar extreme cold weather events in the future, events which are forecasted to be more frequent and more severe.[2]

A. MoGas Interconnected with STL Pipeline to Serve Natural Gas Demand West of St. Louis.

MoGas's interconnection with STL Pipeline went in service in December 2020. The interconnection allowed MoGas to immediately begin serving natural gas demands in accordance with its customers' requests in the markets west of St. Louis. MoGas continues to serve these customers today. In addition to being integral to serving this demand, the MoGas-STL Pipeline interconnection brings a variety of benefits to MoGas and its customers system-wide.

Prior to interconnecting with STL Pipeline, MoGas forecasted that it would not adequately serve the additional growing natural gas demand west of St. Louis.[3] Unfortunately, MoGas's system could not accommodate new load requests

[2] Jones et al., What Investors and the SEC Can Learn from the Texas Power Crises at ii (June 2021), *available at* http://blogs.edf.org/climate411/files/2021/06/TX-Report-Final.pdf ("The February 2021 extreme winter weather event and ensuing power outages in Texas . . . are a salient example of the electric sector's vulnerability to extreme weather events that will plausibly become more frequent and more severe with climate change.") (emphasis added).

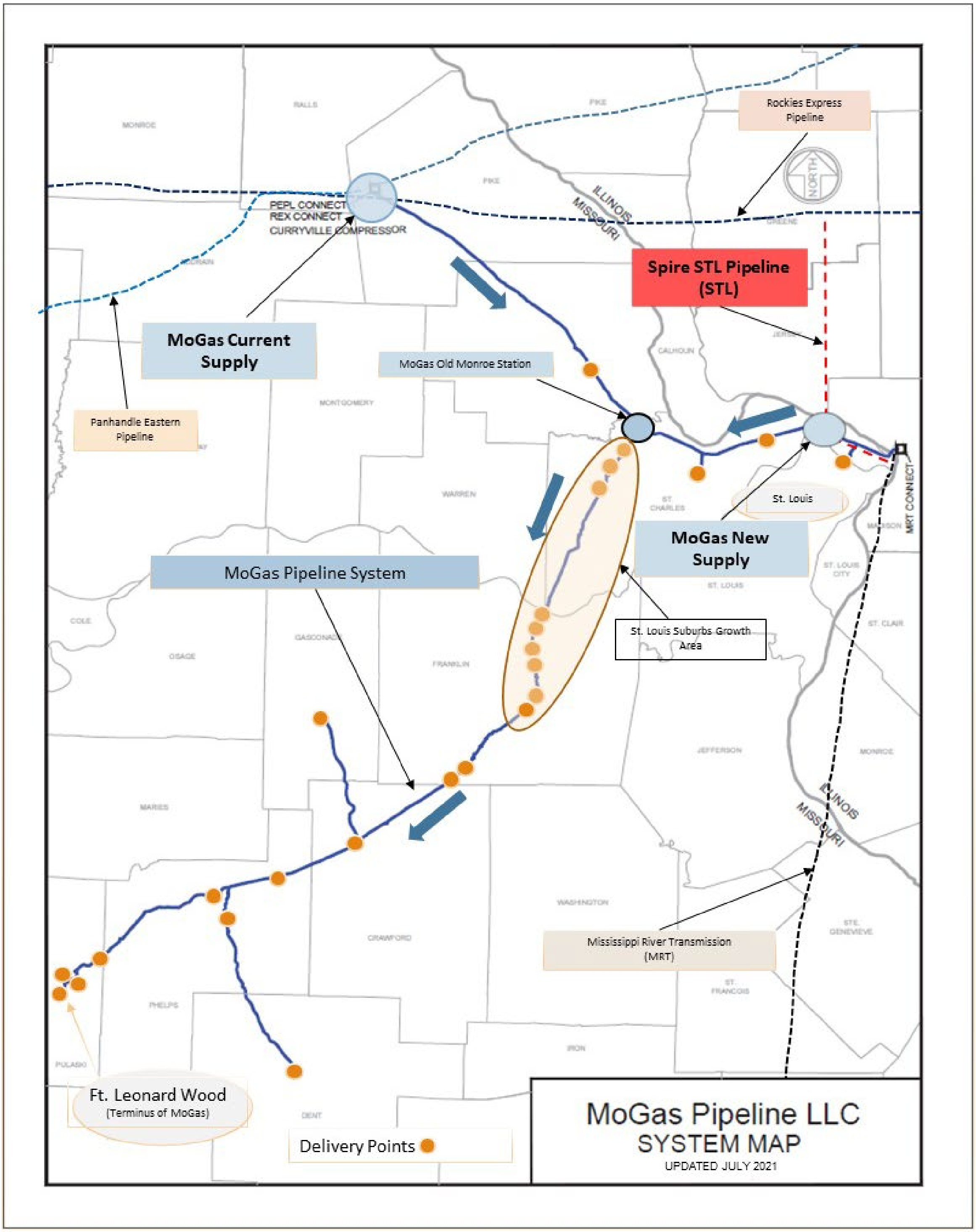
[3] Beginning about a decade ago, the markets in and around St. Louis began to experience a substantial geographic natural gas demand shift. While natural gas demand growth overall has been close to flat over that time period for the region, for the city of St. Louis and the counties to the west of St. Louis, much was changing: demand was decreasing inside of the city of St. Louis while increasing west of St. Louis.

stemming from the substantial geographic demand shift to the counties to the west of St. Louis without substantial additions to MoGas's pipeline and facilities. The existing pressure profile simply did not allow MoGas to serve the natural gas demand which had come to the west-of-St. Louis market.

To address its inability to serve the additional natural gas demand west of St. Louis and the other customers on MoGas, in 2017, MoGas initiated plans to loop its system up to 50 miles. Preliminary plans indicated that this looping project could cost up to $100 million and would involve acquiring new rights-of-way. Ultimately, MoGas did not continue with its plan to build the $100 million 50-mile loop because in late 2018, the potential of an alternative arose. MoGas determined that an interconnection with the new STL Pipeline at high quantities and delivery pressure would provide the additional supply MoGas needed to serve the natural gas demand west of St. Louis. This interconnection would only cost MoGas $3 to $4 million yet would provide all the additional operating pressure needed to serve new customer demand west of St. Louis.

MoGas moved forward with the interconnection with STL Pipeline and built approximately 1,000 feet of pipeline and measurement facilities to connect MoGas with STL Pipeline in eastern St. Charles County, Missouri. Altogether, the project cost MoGas approximately $3,600,000. The MoGas system map in Figure 1 below shows the new interconnect and supply source provided by MoGas's interconnection with STL Pipeline.

Figure 1. MoGas Pipeline LLC System Map



B. Since the MoGas-STL Pipeline Interconnection Went in Service, Customers Have Realized Significant Benefits.

Since going in service in December 2020, the MoGas-STL Pipeline interconnection has provided MoGas an enhanced pressure profile which allows MoGas to serve new (and potential future) demand west of St. Louis. In addition, the interconnection provided further substantial benefits by bolstering the operational reliability of the entire MoGas system. Not only did the interconnection increase pressure system-wide for MoGas, but it substantially increased the diversity of supply to the MoGas system and doubled supply availability. These additional benefits were especially important during the February 2021 extreme cold weather event, as they enabled MoGas to reliably serve its customers effected by the event. Via the MoGas-STL Pipeline interconnection, the natural gas supply source for MoGas was fully double what it was prior to the interconnection, enhancing the system's operational reliability. In addition, the increased line pack resulting from the increased pressure profile from the interconnection allowed MoGas to serve all customers, including Ameren Missouri, despite a shortfall in supply from some customers.

C. A Shutdown of the STL Pipeline Has Significant Negative Consequences for MoGas and Its Customers.

If STL Pipeline is shutdown, MoGas and its customers will be negatively affected. Operationally, MoGas's system would revert to pre-December 2020.

MoGas would lack the required line pressure to service natural gas demand west of St. Louis. Those customers would experience a significant loss of service immediately upon shutdown of the STL Pipeline.

In order to serve that demand, MoGas would have to resume its plans to construct up to a 50-mile loop of its system, but the in-service date on that potential loop would be several years in the future, leaving customers only partially served until that time. Furthermore, the cost of the 50-mile loop—forecasted to be up to $100 million—would be ultimately borne by some if not all of MoGas's customers. MoGas would also potentially file to abandon the $3.6 million interconnection facilities—facilities which have only been in service only since December 2020.

In addition, if STL Pipeline is shutdown, MoGas would lose the operational reliability which played an instrumental role in MoGas's ability to perform well during the February 2021 extreme cold weather event. The industry fully expects similar extreme cold weather events to recur in the coming years. If STL Pipeline is shutdown, MoGas, like many pipelines in February 2021, may struggle to deliver all contracted volumes during events like that in the future.

II. The Panel Should Remand without Vacatur, Given the Substantial Disruptive Consequences Which a Shutdown Would Cause for MoGas and Its Customers.

A shutdown of the STL Pipeline would cause substantial disruptive consequences for MoGas and its customers; consequences which would be potentially even more dire during future extreme cold weather events. Under *Allied-Signal* the appropriate remedy is remand *without* vacatur where "'the disruptive consequences of vacating' are substantial," *Apache Corp.*, 627 F.3d at 1223 (quoting *Allied-Signal*, 988 F.2d at 151), and FERC "will be able to supply the explanations required" to rehabilitate its reasoning, *City of Oberlin*, 937 F.3d at 611. Accordingly, the Panel should grant rehearing and eliminate the vacatur portion of its remedy since the appropriate remedy under *Allied-Signal* is remand without vacatur.

CONCLUSION

The Panel should grant rehearing and eliminate the vacatur portion of its remedy since the appropriate remedy under *Allied-Signal* is remand without vacatur.

Respectfully submitted,

/s/ Phil Mone

Phil Mone
Van Ness Feldman, LLP
1050 Thomas Jefferson St., NW
Seventh Floor
Washington, D.C. 20007
(202) 298-1800

Counsel for MoGas Pipeline LLC

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. This document complies with the type-volume limits of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,790 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

Respectfully submitted,

/s/ Phil Mone
Phil Mone
Van Ness Feldman, LLP
1050 Thomas Jefferson St., NW
Seventh Floor
Washington, D.C. 20007
(202) 298-1800

Counsel for MoGas Pipeline LLC

August 12, 2021

CERTIFICATE OF SERVICE

Pursuant to Rules 15(c)(2) and 25(d) of the Federal Rules of Appellate Procedure and Circuit Rule 15, I hereby certify that the foregoing document was electronically filed through this Court's CM/ECF system, which will send a notice of filing to the counsel registered to receive service through the Court's CM/ECF system via electronic filing.

Respectfully submitted,

/s/ Phil Mone

Phil Mone
Van Ness Feldman, LLP
1050 Thomas Jefferson St., NW
Seventh Floor
Washington, D.C. 20007
(202) 298-1800

Counsel for MoGas Pipeline LLC

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