

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ENVIRONMENTAL DEFENSE FUND)	
)	
and JULI STECK,)	
Petitioners,)	
)	
v.)	Nos. 20-1016 and 20-1017
)	(consolidated)
FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
Respondent;)	
)	
Spire STL Pipeline LLC <i>et al.</i> ,)	
Intervenors)	

On Petition for Review of Orders of the Federal Energy Regulatory
Commission, 164 FERC ¶ 61,085 (August 3, 2018) and 169 FERC ¶ 61,134
(November 21, 2019)

**RESPONSE OF PETITIONER JULI STECK IN OPPOSITION TO
PETITION FOR REHEARING**

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Dated August 24, 2021

On August 9, 2021, the Court ordered the petitioners for review to respond by August 24 to the petition for panel rehearing and rehearing en banc by respondent-intervenors Spire Missouri and Spire STL Pipeline.

Ms. Steck sought vacatur as her remedy on appeal, albeit on different grounds than petitioner Environmental Defense Fund. She therefore continues to support vacatur as the correct and presumptive remedy for the reasons given by EDF in its response.

Spire's petition fails to counter, or even address, the panel's decision that Spire's certificate lacks the foundational requisite of a demonstrated need for the pipeline. The petition for rehearing states as an unsubstantiated conclusion that FERC, on remand without vacatur, could remedy errors that are "mere gaps in reasoning" (Pet., p. 14). Spire has not identified any point of law or fact that the Panel overlooked or misapprehended, F.R.A.P. 40(a)(2), nor any conflict with precedent or question of exceptional importance, F.R.A.P. 35(a). Instead, Spire consistently resorts to claims of a factual nature that arose after FERC issued the Certificate Order.

Spire does not contest vacatur *per se* but invokes the "disruptive consequences" exception to vacatur, *Allied-Signal, Inc. v. NRC*, 988 F.2d 146, 150–1 (D.C. Cir. 1993), based primarily on the possibility that the severe weather of this past February may return during the heating season of 2021–22.

Spire has already applied to FERC for a temporary, emergency certificate as authorized by 15 U.S.C. § 717f(c)(1)(B) and 18 C.F.R. § 157.17 (Petition for Rehearing p. 6, fn. 2). 15 U.S.C. § 717f(c)(1)(B) gives FERC authority to “assure maintenance of adequate service,” even “without notice or hearing, pending the determination of an application for a certificate.” The issue of disruption has thus already been placed before the agency with jurisdiction and the technical expertise to decide it in a timely manner. FERC is the “logical forum” for an issue sought to be raised on rehearing in this Court but that requires new evidence. *Consumers Union v. Federal Power Commission*, 501 F.2d 656, 662 (D.C. Cir. 1974).

In support of this claim, Spire offers the self-serving declaration of Scott Carter, President of Spire Missouri (Petition, Exhibit 2). Many of its allegations have not previously been entered in the record at either FERC or this Court, have not been tested by discovery or cross-examination, and should not be taken at face value. This Court “ordinarily has no factfinding function. It cannot receive new evidence from the parties, determine where the truth actually lies, and base its decision on that determination.” *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, 711 F.2d 1071, 1075 (D.C. Cir. 1983). A “claim of new evidence...is not grounds for reconsideration of this court’s prior decision.” *Corto v. John F. Kennedy Center*, 966 F.2d 701 (D.C. Cir, 1992).

WHEREFORE Ms. Steck prays the Court to deny respondent-intervenors' Petition for Rehearing or Rehearing en Banc.

Respectfully submitted,

/s/ Henry B. Robertson

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CERTIFICATE OF COMPLIANCE

This petition complies with the type-volume limitations of the Court's August 9, 2021 Order because this petition contains 484 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(f). This petition 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 the petition has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Times New Roman typeface.

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2021, I electronically filed the foregoing Response with the Clerk of the Court by using the appellate CM/ECF System and served copies of the foregoing via the Court's EM/ECF system on all ECF-registered counsel.

/s/ Henry B. Robertson
Henry B. Robertson