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

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**Case Nos. 20-1016 and 20-1017 (Consolidated)**

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**ENVIRONMENTAL DEFENSE FUND  
Petitioner,**

**v.**

**FEDERAL ENERGY REGULATORY COMMISSION,  
Respondent.**

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

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**RESPONSE OF ENVIRONMENTAL DEFENSE FUND  
IN OPPOSITION TO PANEL OR EN BANC REHEARING**

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## GLOSSARY OF ABBREVIATED TERMS AND TERMS OF ART

Term	Description
APA	Administrative Procedure Act
Carter Declaration	Declaration of Scott Carter, President of Spire Missouri, attached to the Petition as Exhibit 2
Certificate Order	<i>Spire STL Pipeline LLC</i> , 164 FERC ¶ 61,085 (Aug. 3, 2018)
EDF	Environmental Defense Fund, Petitioner in Case No. 20-1016
Emergency Certificate Application	Application for a Temporary Emergency Certificate or, in the Alternative, Limited-Term Certificate filed by Spire STL in FERC Docket CP17-40-007 on July 26, 2021
FERC	Federal Energy Regulatory Commission, Respondent in Case Nos. 20-1016 and 20-1017 (consolidated)
FERC Orders	Certificate Order and Rehearing Order, collectively
Petition	Petition for Rehearing or Rehearing <i>En Banc</i> filed by Spire in Case Nos. 20-1016 and 20-1017 (consolidated) on August 5, 2021
Rehearing Order	<i>Spire STL Pipeline LLC</i> , 169 FERC ¶ 61,134 (Nov. 21, 2019)
Spire	Spire STL and Spire Missouri, collectively
Spire Missouri	Spire Missouri Inc., affiliate of Spire STL Pipeline LLC and Intervenor-Respondent in Case Nos. 20-1016 and 20-1017 (consolidated)
Spire STL	Spire STL Pipeline LLC, Applicant in FERC Docket No. CP17-40 and Intervenor-Respondent in Case Nos. 20-1016 and 20-1017 (consolidated)

## INTRODUCTION

Respondent-Intervenors Spire Missouri Inc. (“Spire Missouri”) and Spire STL Pipeline LLC (“Spire STL”; collectively, “Spire”) do not challenge the Panel’s decision that Federal Energy Regulatory Commission (“FERC”) orders granting Spire authority under the Natural Gas Act to construct and operate a pipeline were fatally flawed. Instead, Spire seeks rehearing of the Panel’s unanimous ruling that deficiencies in FERC’s orders warranted the presumptively proper remedy of vacatur. Spire fails to demonstrate any error in the Panel’s application of the necessarily circumstance-specific test articulated in *Allied-Signal, Inc. v. NRC*, 988 F.2d 146 (D.C. Cir. 1993), addressing when a reviewing court should remand without vacatur. The Panel applied that familiar test appropriately here; that other Court decisions remanded without vacatur represents no lack of circuit “uniformity,” Fed. R. App. P. 35(a)(1), but simply that those cases involved different facts.

Spire’s Petition rests principally on claims about alleged disruptive impacts of vacatur for natural gas customers. But these allegations were not “overlooked or misapprehended” by the Panel, *see*



Fed. R. App. P. 40(a)(2); Spire failed to present them during merits briefing. Spire improperly asks this Court to credit, in the context of a *rehearing* petition, extensive new extra-record evidence on disputed questions of fact concerning complex, technical matters.

The Natural Gas Act specifies the forum for Spire and its putative *amici curiae* to present their evidence, and that forum is not this Court. If this is truly a “case[] of emergency,” FERC “may issue a temporary certificate” authorizing continued operation of the pipeline “to assure maintenance of adequate service or to serve particular customers,” 15 U.S.C. § 717f(c)(1)(B), while FERC proceeds on remand pursuant to this Court’s decision.

As its oblique footnote concedes (Pet. 6 n.2), Spire has already applied to FERC for a temporary certificate. Petitioner Environmental Defense Fund (“EDF”) and Spire, along with other interested entities not before this Court, are presenting evidence relevant to FERC’s determination whether a true “emergency” exists warranting extraordinary relief—a determination that itself will be subject to judicial review. Yet, rather than simply pursue this prompt but orderly administrative proceeding to its conclusion, Spire asks the Panel—and,

barring that, the full Court—to short-circuit the FERC proceeding and conduct its own fact-finding based on unvetted (and, in many cases, vigorously disputed) assertions.

FERC has the statutory authority, fact-finding tools, and procedural means to evaluate such claims, and to craft a remedy that balances the need to address any truly urgent problems with other public interests. FERC has moved promptly on the Emergency Certificate Application, propounding a series of specific evidentiary requests to Spire. *Spire STL Pipeline LLC*, Data Request, FERC No. CP17-40-007 (Aug. 5, 2021) (“FERC Data Request”), Exhibit A, *infra*. That ongoing proceeding allows FERC to test Spire’s claims of harm from discontinuing operation of the pipeline while the Commission revisits the proceeding on remand. EDF has filed extensive submissions in that proceeding contesting many of Spire’s factual assertions, while also urging that FERC can and should take steps to ensure that gas customers are protected.<sup>1</sup>

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<sup>1</sup> EDF Motion to Reject in Part and Protest 8-46, FERC No. CP17-40-007 (Aug. 5, 2021) (“EDF Motion and Protest”), [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20210805-5135](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20210805-5135).

Because Spire has not identified any point of law or fact that the Panel overlooked or misapprehended, Fed. R. App. P. 40(a)(2), nor any conflict with Circuit precedent, see Fed. R. App. P. 35(a)(1); because Spire chose not to present the current allegations during merits briefing; and because the ongoing FERC proceeding is the forum Congress designated to adjudicate claims of emergency need, the Petition should be denied.

## **REASONS TO DENY THE PETITION**

### **I. THE PANEL'S DECISION IS CORRECT**

#### **A. The Panel Correctly Applied the *Allied-Signal* Factors**

After determining that FERC's Orders were arbitrary and capricious in their failure to consider evidence of lack of need and of self-dealing, the Panel considered the question of remedy. *See* Op. 36-37, *published at* 2 F.4th 953, 976-77 (D.C. Cir. 2021). It cited several of this Court's many decisions affirming that "vacatur is the normal remedy," *see* Op. 5-6, 36 (quoting *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014)); but also recognized that the Court retains equitable discretion to withhold vacatur based on the factors described in *Allied-Signal*.

Whether to remand without vacatur depends on “the seriousness of the order’s deficiencies (and thus the extent of doubt whether the agency chose correctly) and the disruptive consequences of an interim change that may itself be changed.” *Allied-Signal*, 988 F.2d at 150-51 (cleaned up). Here, the Panel found that the FERC Orders suffer “serious deficiencies” such that “it is far from certain that FERC ‘chose correctly.’” *See* Op. 36 (quoting *Allied-Signal*, 988 F.2d at 150-51). While acknowledging that some disruption could occur from vacatur, the Panel found that the *Allied-Signal* factors and other relevant precedent did not support withholding vacatur. *Id.*

Spire fails to demonstrate that the Panel overlooked or misapprehended any point of fact or law. Contrary to Spire’s characterization (Pet. 4), *Allied-Signal* and its progeny explicitly recognize that vacatur is the presumptively proper route and that remand without vacatur is only appropriate in limited circumstances based on both *Allied-Signal* factors. *See* 988 F.2d at 150-51; *see also*, *e.g.*, *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 985 F.3d

1032, 1052 (D.C. Cir. 2021).<sup>2</sup> As the Panel observed, “the second *Allied-Signal* factor is weighty only insofar as the agency may be able to rehabilitate its rationale.” Op. 36 (quoting *Comcast Corp. v. FCC*, 579 F.3d 1, 9 (D.C. Cir. 2009)). Where the agency decision has sufficiently serious deficiencies, even a robust, evidence-based showing of disruptive consequences would not necessarily suffice to support remand without vacatur.<sup>3</sup>

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<sup>2</sup> Some members of this Court have criticized remand-without-vacatur as inconsistent with reviewing courts’ instructions to “hold unlawful and set aside” agency action found to be arbitrary and capricious. 5 U.S.C. § 706(2)(A). *E.g.*, *Comcast Corp. v. FCC*, 579 F.3d 1, 10 (D.C. Cir. 2009) (Randolph, J., concurring). While that view has not prevailed, it is common ground that vacatur is the presumptively proper course, even though the APA does not foreclose vacatur in exceptional cases, as a matter of equitable discretion.

<sup>3</sup> This case is unlike *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008) and *Wisconsin v. EPA*, 938 F.3d 303, 336-37 (D.C. Cir. 2019) (cited in Pet. 5), where the Court remanded without vacatur interstate air pollution regulations found to be unlawfully underprotective because, as the prevailing petitioners agreed, see Petitioner North Carolina’s Response to Petition for Rehearing and Rehearing *En Banc*, No. 05-1244, Document 1147929 at 16 (D.C. Cir. Nov. 5, 2008); *Wisconsin*, 938 F.3d at 337-38, vacatur would have harmed the very public health interests those petitioners sought to safeguard. In contrast, leaving the regulations in place pending an EPA fix would “at least temporarily preserve ... environmental values,” *North Carolina*, 550 F.3d at 1178.

Spire is wrong to assert that the Panel deviated from *Allied-Signal* by creating a new “‘clear’ or ‘certain’ test.” Pet. 15. In fact, the Panel documented the FERC Orders’ “serious deficiencies” and found that it was “far from certain” and “not at all clear” that FERC could “rehabilitate its rationale” and issue a new certificate on remand, an inquiry entirely consistent with *Allied-Signal*. See Op. 36-37. The assessment of an agency’s errors under *Allied-Signal*’s first prong is a matter of degree – of the “extent” of legal deficiencies, 988 F.2d at 150; the Panel here correctly found the Orders’ defects to be extensive. Spire’s attempt to water down the test, so that even orders as flawed as those here remain in effect, would invite a “build first and conduct comprehensive reviews later” approach. Op. 37 (cleaned up). Granting Spire’s motion would further erode challengers’ ability to get a day in court on substantial challenges to FERC’s actions under the Natural Gas Act.

The Panel’s decision is in line with this Court’s decisions involving FERC orders. The most relevant precedent, *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017), which Spire relegates to a footnote (Pet. 5 n.1), confirms that the disposition here broke no new ground on remedy.

In *Sierra Club*, as here, the Court vacated and remanded unlawful FERC orders that granted a certificate for a new pipeline. 867 F.3d at 1375, 1379. The Court subsequently denied petitions for panel or *en banc* rehearing based, like Spire's, on arguments that vacatur would cause serious disruption because the pipeline at issue was operational.<sup>4</sup>

The Panel's disposition is also consistent with *City of Oberlin v. FERC*, 937 F.3d 599 (D.C. Cir. 2019). *Contra* Pet. 6, 14. In contrast to this case, *City of Oberlin* found fault only with a relatively narrow portion of FERC's approval of the pipeline project's demonstration of need; determined that the evidence supporting a substantial portion of the need for the project was sufficient; and did not identify any additional flaw in the orders. *See id.* at 605-11. Accordingly, the Court found it "plausible" that FERC would be able to cure the deficiencies in its orders and, therefore, remanded without vacatur. *Id.* at 611. *City of Oberlin* did not announce a per se rule against vacating FERC certificates for pipelines already in operation.

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<sup>4</sup> *See Sierra Club v FERC*, D.C. Cir. No. 16-1329: Petition for Panel Rehearing, Document No. 1697613 (Oct. 6, 2017); Intervenor-Respondents' Petition for Panel or *En Banc* Rehearing as to Remedy, Document 1697633 (Oct. 6, 2017); Order, Document 1715801 (Jan. 31, 2018); Order, Document 1715804 (Jan. 31, 2018).

Here, the Panel found that the only evidence presented of project need was entirely insufficient and that the FERC Orders were also patently deficient in failing to consider evidence of self-dealing or sufficiently balance public benefits and adverse impacts. *See Op. 29-36.* The more serious deficiencies and more extensive doubts justified vacatur in the particular circumstances here. The Panel did not misapprehend any relevant legal principle or precedent.

**B. The Panel Correctly Concluded that FERC's Decision Was Seriously Deficient Such that Rehabilitation Is Doubtful**

Spire has not challenged the Panel's decision on the merits, which identified deficiencies in the FERC Orders so serious that remand without vacatur would be inappropriate. *See Op. 36. Cf. Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 634-35 (D.C. Cir. 2000) (remanding without vacatur because, in part, the agency "relied on a factually incorrect assertion" in setting a standard, yet "a study in the record contains just such information.")

The heart of the Natural Gas Act is the prohibition on pipeline construction and operation not "required by the present or future public convenience and necessity." 15 U.S.C. § 717f(c)-(e). FERC determines



public convenience and necessity by evaluating whether there is a need for the pipeline and whether public benefits outweigh adverse impacts. *See* Op. 6-8. FERC’s sole evidence of need, a precedent agreement between Spire STL and Spire Missouri, was not sufficiently probative. *See id.* at 30-31. FERC’s balancing of public benefits and adverse impacts was also deficient and failed to adequately support the existence of meaningful benefits. *See id.* at 36 (concluding that FERC’s analysis of public benefits and burdens was “cursory”). The Panel documented myriad flaws in the FERC Orders, including unaddressed record evidence of self-dealing. Given those flaws, the current record does not contain evidence that would support the issuance of a new, permanent certificate for the Spire STL pipeline. The Panel properly found that remand without vacatur would be inappropriate.

**C. Spire Failed to Make A Timely Showing on “Disruptive Consequences,” and Its New Assertions Mischaracterize the Consequences of Vacatur**

Spire’s Petition rests largely upon claims that vacating FERC’s Orders would have disruptive consequences. But Spire’s 9000-word merits brief—filed three months after EDF’s opening brief urged that vacatur was the appropriate remedy and almost a year after the Spire

STL pipeline began service—was virtually silent about such impacts. Spire devoted “only one sentence of its entire brief to the argument” that vacatur would be disruptive, *City of Holyoke Gas & Elec. Dept. v. FERC*, 954 F.2d 740, 745 (D.C. Cir. 1992) (denying rehearing petition citing newly cited evidence), and that sentence blandly observed that the pipeline was operational, see Brief of Intervenor-Respondents, ECF No. 1871040 at 42. *Cf. Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2005) (explaining that “evidence that could have been raised prior to the entry of judgment” cannot support relief under Fed. R. Civ. P. 59(e)). Allowing Spire to introduce these claims at the rehearing stage would encourage future litigants to employ similar tactics, to the detriment of orderly and timely resolution of challenges to agency action.

In evaluating the proper remedy, this Court properly considers whether the agency has the ability to mitigate any disruptive consequences. See *Standing Rock Sioux Tribe*, 985 F.3d at 1053-54. Spire’s list of alleged consequences presumes that vacatur would result in an immediate shutdown of the Spire STL pipeline when the mandate issues. However, as explained in Section II, *infra*, FERC has the

authority to issue a temporary emergency certificate to allow the pipeline to continue operating after the FERC Orders are vacated as necessary “to assure maintenance of adequate service or to serve particular customers.” 15 U.S.C. § 717f(c)(1)(B). Spire’s new assertions about “significant service disruptions” (Pet. 6) are properly directed to FERC in that separate, and judicially reviewable, administrative process.

Furthermore, Spire’s arguments regarding the disruptive consequences of vacatur are entirely focused on the alleged consequences to the Respondent-Intervenors and their customers. But in assessing whether to refrain from vacating an unlawful agency action under *Allied-Signal*, this Court often focuses on harmful consequences that may be experienced by the *petitioner*. See *Env’tl. Def. Fund. v. EPA*, 898 F.2d 183, 190 (D.C. Cir. 1990) (remanding without vacatur where vacatur “would at least temporarily defeat petitioner’s purpose, the enhanced protection of the environmental values,” and “[n]o party to this litigation asks that the court vacate the EPA’s regulations”); see also n.3, *supra* (discussing *North Carolina* and *Wisconsin*). Here, EDF explicitly sought vacatur.

## II. FERC'S ONGOING EMERGENCY PROCEEDING IS THE APPROPRIATE FORUM TO ADDRESS SPIRE'S ALLEGATIONS REGARDING POSSIBLE SERVICE DISRUPTIONS

Spire's effort to inject new and disputed claims about possible service disruptions into this proceeding at the rehearing stage should be rejected because the proper forum for such claims is the currently ongoing "emergency certificate" proceeding before FERC. In a footnote, Pet. 6 n.2, Spire acknowledges that Spire has filed with FERC an application under 15 U.S.C. § 717f(c)(1)(B), seeking a temporary emergency certificate to allow Spire to continue to operate to prevent any interruption of service. *See Spire STL Pipeline LLC*, Application for a Temporary Emergency Certificate or, in the Alternative, Limited-Term Certificate, FERC No. CP17-40-007 (July 26, 2021) ("Emergency Certificate Application"), [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20210726-5164](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20210726-5164).

FERC has the authority and expertise to evaluate Spire's assertions, including the substantial extra-record information Spire now seeks to place before this Court directly. The ongoing FERC proceeding offers the appropriate process for Spire and all other interested persons (including many not before this Court) to be heard,

and allows FERC to tailor remedy to any potential emergency. Because the Natural Gas Act permits FERC to waive procedural requirements as necessary in granting a temporary emergency certificate, 15 U.S.C. § 717f(c)(1)(B); *see Federal Power Comm'n v. Hunt*, 376 U.S. 515, 523 (1964), there is no risk that FERC would be unable to address any emergency in a timely manner such that action by the Court would be needed. As Spire acknowledges, “the most prudent course is to allow FERC to decide in the first instance whether the Project’s continued operation is warranted.” Pet. 5 (citing *Nat’l Parks Conservation Ass’n v. Semonite*, 925 F.3d 500, 501-02 (D.C. Cir. 2019)).

Spire asserts that its pending emergency application to FERC “is no substitute for a remand without vacatur” because its outcome and timing “are far from certain, and temporary authority is not identical to a permanent certificate.” Pet. 6, n.2. In light of the Panel’s unchallenged merits ruling it is clear that Spire is not, on the current record, *entitled* to a “permanent certificate.”<sup>5</sup> There is no basis for Spire’s implication

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<sup>5</sup> If this Court were to grant Spire any relief, it should not alter the Panel’s (correct) decision to vacate, but instead stay the mandate

that FERC will fail to take appropriate and timely action to prevent any duly demonstrated emergency situation. And FERC's action on the emergency application will itself be subject to judicial review. 15 U.S.C. § 717r(b).

**A. FERC is in the Midst of Evaluating Spire's Claims and Resolving Factual Questions that Implicate its Technical Expertise**

The Natural Gas Act provision under which Spire filed its application, 15 U.S.C. § 717f(c)(1)(B), offers clear authority for granting a temporary certificate in emergency circumstances. *See, e.g., Tri-State Ethanol Co., LLC*, Order Issuing Certificate and Approving Abandonment, 110 FERC ¶ 62,350 (Mar. 31, 2005); *Texas-Ohio Pipeline, Inc.*, Order Issuing Temporary Certificate, 58 FERC ¶ 61,025 (Jan. 15, 1992).

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pending FERC's decision on the company's emergency application. *Cf. Sierra Club v. FERC*, Order, No. 16-1329, Document 1721094 (D.C. Cir. Mar. 7, 2018). Any such stay should be limited to no more than 90 days, affording FERC ample time to take final, reviewable action on Spire's application (on which the public comment period will end on October 5, 2021, *see Spire STL Pipeline LLC*, Notice of Application and Establishing Intervention Deadline, Docket No. CP17-40-007 (Aug. 6, 2021)).

FERC is currently considering Spire's Emergency Certificate Application. *See Spire STL Pipeline LLC*, Notice of Application and Establishing Intervention Deadline, FERC No. CP17-40-007 (Aug. 6, 2021). No party in the FERC proceeding has disputed that FERC has the authority to issue a temporary emergency certificate to Spire or that FERC should grant such a certificate to the extent necessary to ensure reliable gas service for end-use customers. *See, e.g., EDF*, Motion to Reject in Part and Protest, FERC No. CP17-40-007; *see generally*, FERC Docket No. CP17-40-007. As the body with technical expertise concerning the natural gas system, FERC should be allowed to make decisions regarding that system in the first instance. *See, e.g., Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667, 714 (D.C. Cir. 2000); *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1070 (D.C. Cir. 1992); *see also Far East Conference v. United States*, 342 U.S. 570, 574 (1952); Fed. R. App. P. 18(a)(2)(A)(ii) (requiring parties seeking stay of agency action to show that they sought relief from agency).

Allowing FERC to determine the need for an emergency certificate will facilitate a more thorough examination of newly filed evidence.

Spire bases its argument regarding the consequences of vacatur almost entirely on Exhibit 2 of its Petition, a declaration from Scott Carter, President of Spire Missouri, which is nearly identical to an affidavit appended to its Emergency Certificate Application at FERC. Compare Pet. Ex. 2 to Emergency Certificate Application, Ex. Z-1. The Carter Declaration, moreover, consists almost entirely of information and claims that are not in the administrative record for the FERC Orders. As explained in EDF's Motion and Protest, numerous assertions in that declaration warrant careful scrutiny, including those concerning Spire's "obsolete" propane system, the retirement of which both the Missouri PSC Staff and Missouri Office of Public Counsel opposed in Spire Missouri's pending rate case before the Missouri Public Service Commission. *See* EDF Motion and Protest at 21-24, 32. The Missouri Public Service Commission's Staff Investigation Report Spire submitted via Rule 28(j) (ECF No. 1911162) represents further new, technical information appropriately examined by FERC as it considers the pending Emergency Certificate Application. The Staff Report is "not a final disposition" (28(j) Letter at 1)—as the Report explains, it summarizes "initial findings" of an ongoing, incomplete investigation—



and does not address what conditions FERC should impose on any temporary certificate, assuming FERC finds that such a certificate is warranted by the evidence, see *infra*. The Staff Report does not support rehearing here. If anything, it further demonstrates the need for FERC to carefully weigh the assertions in the Carter Affidavit, as it calls into question the methodology Spire used to calculate avoided gas costs during Winter Storm Uri. See Report at 8 (“it would be more appropriate to compare the costs of Winter Storm Uri with Spire STL in place as compared to costs Spire Missouri may have incurred in a pre-Spire STL configuration”).

A *rehearing* petition before a *reviewing* court is not the appropriate place to adjudicate disputed factual claims. By contrast, FERC has the ability, as well as the expertise, to evaluate those claims, as well as to ensure that issues raised by EDF and other interested parties are addressed. Indeed, FERC has already issued a detailed set of questions to Spire, which includes many of the issues raised in EDF’s FERC filing. See FERC Data Request (Exhibit A). Rather than crediting the extra-record evidence belatedly submitted by Spire, the Court should deny Spire’s rehearing request and allow FERC to make the

determination of whether Spire's new evidence justifies a temporary emergency certificate.

**B. FERC is the Appropriate Forum to Consider Spire's Claims Because FERC Can Appropriately Condition Any Emergency Action**

Remand without vacatur would effectively allow Spire to continue to operate indefinitely under a certificate that the Court has found is unlawful and potentially the result of self-dealing. FERC, on the other hand, is not restricted to binary solutions to a complex problem. Of particular note here, FERC has the ability to impose "reasonable terms and conditions" on Spire's operation of the pipeline as part of granting a temporary emergency certificate. 15 U.S.C. § 717f(e); see *Federal Power Comm'n. v. Hunt*, 376 U.S. at 524-27; *Pa. Gas & Water Co. v. Federal Power Comm'n.*, 427 F.2d 568, 577 (D.C. Cir. 1970).

A FERC certificate, for example, could include: operational conditions, such as limiting the use of the pipeline to what is truly necessary to avoid an emergency; rate conditions, limiting the profits of Spire and costs charged to end-use customers while the pipeline's certificate is under review; and reporting conditions, requiring that Spire provide appropriate updates regarding the usage of the pipeline

and Spire Missouri's progress on obtaining alternate supply options. *See* EDF Motion and Protest at 25-42. FERC can also take appropriate action to protect landowners, who have been subjected to eminent domain actions resulting from the improper FERC Orders and Spire's decision to move forward with seizing land and constructing the pipeline while the certificate was being challenged. *See id.* at 42-45; *see also Spire STL Pipeline LLC*, Order on Environmental Compliance, 174 FERC ¶ 61,219 (Mar. 18, 2021).

The revised disposition Spire seeks, which would allow it to continue to operate indefinitely with no change in terms, would lack such evidence-backed tailoring, and be inequitable. Spire STL *chose* to construct and begin to operate its pipeline while the FERC orders approving it remained under review. Spire STL and its affiliate Spire Missouri chose to retire assets and otherwise modify the system such that gas service to Spire Missouri customers is primarily dependent on the pipeline. *See* Pet. 7-10. As the Panel recognized, Spire should not benefit from a "build first and conduct comprehensive reviews later" approach. *See* Op. 37 (cleaned up). Denying this meritless petition will not leave Spire without a remedy or its customers unprotected; it will

simply (and appropriately) leave to FERC the responsibility to craft any remedial action ultimately shown to be warranted.

## CONCLUSION

The petition should be denied.

Respectfully submitted,

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*Attorneys for the Environmental Defense Fund*

Dated: August 24, 2021

## CERTIFICATE OF COMPLIANCE

This petition complies with the type-volume limitations of the Court's August 9, 2021 Order because this petition contains 3,884 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 Century Schoolbook typeface.

*/s/ Jason T. Gray*

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on August 24, 2021. Service upon participants in the case who are registered CM/ECF users will be accomplished by the appellate CM/ECF system.

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

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**Case Nos. 20-1016 and 20-1017 (Consolidated)**

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**ENVIRONMENTAL DEFENSE FUND  
Petitioner,**

**v.**

**FEDERAL ENERGY REGULATORY COMMISSION,  
Respondent.**

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

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**EXHIBIT A TO THE  
RESPONSE OF ENVIRONMENTAL DEFENSE FUND  
IN OPPOSITION TO PANEL OR EN BANC REHEARING**

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**FEDERAL ENERGY REGULATORY COMMISSION**  
WASHINGTON, DC

OFFICE OF ENERGY PROJECTS

In Reply Refer To:  
OEP/DPC/CB-1  
Spire STL Pipeline LLC  
Docket No. CP17-40-007  
§ 375.308(x)(3)

August 6, 2021

Sean P. Jamieson  
Spire STL Pipeline LLC  
3773 Richmond Ave., Suite 300  
Houston, Texas 77046

Re: Data Request

Dear Mr. Jamieson:

Please provide the information described in the enclosure to assist in our analysis of Spire STL Pipeline LLC's temporary certificate application in Docket No. CP17-40-007. File your response in accordance with the provisions of the Commission's Rules of Practice and Procedure. In particular, Rule 2010 requires that you serve a copy of the response to each person whose name appears on the official service list for this proceeding.<sup>1</sup>

**Please file a complete response within 30 days of the date of this letter.** As required by Rule 2005 of the Commission's Rules of Practice and Procedure,<sup>2</sup> all responses must be filed under oath, by an authorized Spire representative and include the name, position, and telephone number of the respondent to each item.

Electronic filing is encouraged using the Commission's eFiling system (see <https://ferconline.ferc.gov/eFiling.aspx>). Be sure to prepare separate volumes, as outlined on the Commission's website at <https://www.ferc.gov/sites/default/files/2020-04/CEII-Filing-guidelines.pdf>, and label all controlled unclassified information (CUI) as described at <https://www.ferc.gov/cui>. Critical Energy Infrastructure Information (CEII) (e.g., plot

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<sup>1</sup> 18 C.F.R. § 385.2010 (2020).

<sup>2</sup> *Id.* § 2005.



plans showing equipment or piping details) and privileged information (PRIV) (e.g., cultural resources material containing location, character, or ownership information; trade Document Accession #: 20210728-3010 Filed Date: 07/28/2021 -2- secret information; proprietary information) should be filed as non-public and labeled as: “CUI//CEII” (18 CFR 388.113), “CUI//PRIV” (18 CFR 388.112), and as otherwise appropriate with other statutes for labeling CUI (e.g., “CUI//CEII/SSI” and in accordance with 49 CFR 15.13 marking requirements). All CUI should be filed separately from the remaining information, which should be marked “Public.” For assistance with the Commission’s eFiling system, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

In addition, effective July 1, 2020, hardcopy deliveries to the Commission’s headquarters in Washington D.C. will only be accepted through the U.S. Postal Service. Hand-deliveries and submissions sent through carriers other than the U.S. Postal Service must be sent to 12225 Wilkins Avenue, Rockville, Maryland 20852 for processing (see Docket No. RM19–18–000; Order No. 862).

Thank you for your cooperation. If you have any questions, please contact me at 202-502-8688.

Sincerely,

Howard J. Wheeler  
Project Manager  
Division of Pipeline Certificates  
Certificates Branch 1  
Office of Energy Projects

Enclosure

cc: Public File, Docket No. CP17-40-007

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All parties

**Enclosure**

1. On pages 12 and 13 of the application, Spire STL Pipeline, LLC (Spire) states that upon completion of the Spire STL Pipeline (STL Pipeline), Spire Missouri Inc. (Spire Missouri), the local distribution company served by the STL Pipeline let contracts for 180,000 Dth per day of firm service out of 350,000 Dth per day expire on Enable Mississippi River Transmission, LLC's (MRT) Main Line system. Spire states that currently MRT only has 568 Dth per day of firm service available on its Main Line system. Further, Spire states that there is 10,000 Dth per day of transportation service available on MoGas Pipeline LLC's system (MoGas).
  - a. Provide support for the statements concerning available capacity on MRT and MoGas.
  - b. Are any contracts for service on MRT, MoGas, or other pipelines expiring in the immediate term (next two months) or short term (within the next six to twelve months) freeing capacity that Spire Missouri could acquire to meet its distribution needs. Provide details on the amount and timing of expiring capacity contracts on MRT, MoGas, or other pipeline systems.
  - c. Provide an explanation regarding the feasibility of Spire Missouri acquiring service through capacity release on MRT and MoGas sufficient to meet its service requirements in the immediate- and short-term.
  - d. Discuss whether it is feasible for Spire Missouri to use a combination of capacity release, interruptible service, and capacity from expiring contracts (in combination with current capacity it holds on pipelines other than the STL Pipeline) to meet its service requirements in the immediate- and short-term.
2. On pages 12 and 13 of the application, Spire states that while there is unsubscribed capacity available on MRT's East Line, MRT abandoned its interconnection with Spire Missouri at Chain of Rocks, making the receipt of supplies from the East Line infeasible.
  - a. If an interconnection were reestablished between Spire Missouri and MRT at Chain of Rocks, how much transportation service would Spire Missouri be able to obtain in the immediate- and short-term?
  - b. Describe the facilities that would need to be constructed to restore the interconnection between Spire Missouri and MRT's East Line. Provide an

estimate for how long it would take to permit/reconstruct an interconnection between Spire Missouri and MRT at Chain of Rocks.

- c. Discuss the feasibility of repurposing the Spire interconnect with MRT's East Line at Chain of Rocks to an interconnection between Spire Missouri and MRT's East Line.
3. Scott Carter, President of Spire Missouri, discusses on page 16 (paragraph 42) of his affidavit (Carter Affidavit) appended to Spire's application various reliability issues associated with upstream pipeline deliveries into MRT's East Line that have occurred in the past and most recently during Winter Storm Uri. In addition, he asserts upstream pipelines are unwilling to provide firm delivery pressure commitments into MRT's East Line. Provide support for these assertions and discuss whether there are facility modifications Spire Missouri could make in the immediate- and short-term to ameliorate these pressure issues. If so, provide a description and the timeline for permitting and implementing these modifications.
4. On page 16 of the application, Spire states that Spire Missouri requires 1,300,000 Dth per day of transportation service to meet peak customer demand in the winter heating season and that without the STL Pipeline, Spire Missouri's total transportation service would decrease to 923,647 Dth per day. Identify Spire Missouri's existing transportation contracts, and the receipts point, type of contract (firm or interruptible), and if the higher pressures of the STL Pipeline are necessary to achieve any of these receipts.
5. The application does not identify Spire Missouri's supply contracts. Identify Spire Missouri's supply contracts and explain the relevant contract terms, including counterparties, quantities, and delivery points and whether the transportation path for delivery to Spire Missouri could be satisfied by other pipelines in the region if capacity existed.
6. On pages 11, 16, and 25 of the application, Spire states that Spire Missouri's interconnection with the STL Pipeline allowed Spire Missouri to maintain service to its customers during the February 13-17, 2021 winter storm. Did Spire Missouri use all of or more than its firm contracted volumes on the STL Pipeline? Could other pipelines have met Spire Missouri's needs during the storm? Provide any analyses or studies supporting this answer. Also, provide a complete list of Spire Missouri's maximum contracted capacity at each of its interconnections with Enable MRT, MoGas, Southern Star Central, and any other pipelines and document the time and amount for peak demand at each interconnection during the February 13-17, 2021 winter storm.
7. On page 12 of the application, Spire states that Spire Missouri allowed 170,000 Dth per day of firm upstream contracts on Natural Gas Pipeline Company

of America LLC (NGPL) and Trunkline Gas Company, LLC pipelines to expire, which supplied Spire Missouri's MRT East Line capacity. Please explain if this capacity is still available on these system, or how much capacity is available, and whether Spire Missouri could use this capacity in the immediate- or short-term to meet its supply requirements, assuming an interconnection was restored between Spire Missouri and MRT's East Line.

8. On pages 11 and 12 of the Carter Affidavit, Mr. Carter, states that should an outage occur as described, it could take between 25 and 100 days to restore service to accounts that might experience curtailment. Please explain how this conclusion was reached.
9. On page 11 of the application, Spire states that the STL Pipeline operates at a maximum pressure of 900 psig. What options does Spire Missouri currently have to maintain pressure and deliveries during peak demand aside from the STL Pipeline's line pressure? Assuming Spire Missouri obtains its transportation and supply elsewhere, what, if any, modifications would Spire Missouri be required to install to continue to maintain its delivery obligations? How long would it take Spire Missouri to install these additional facilities? Describe the feasibility of utilizing temporary facilities for this purpose until a permanent solution could be developed.
10. MoGas, in its July 28, 2021 filing, states that it currently receives gas from STL Pipeline on behalf of Spire Missouri and transports these volumes to the western side of Spire Missouri's service areas, and this is facilitated by the high operating pressure at its interconnection with STL Pipeline. On page 7 of the Carter Affidavit, Mr. Carter states that Spire Missouri cannot replicate this transportation using its own distribution facilities without the construction of substantial facilities through highly populated areas. Provide a general estimate of the facilities and the time that Spire Missouri would need to construct to replicate the MoGas service, including the feasibility of installing temporary facilities until a permanent solution could be developed.
11. Table 1 of the Carter Affidavit is unclear. Spire Missouri has contracted for 350,000 Dth per day on the STL Pipeline. However, Column 1 shows only 190,000 Dth per day at the Spire STL/Spire Missouri City Gate. Explain how and on what pipelines the remaining 160,000 Dth per day of Spire STL volumes are delivered to Spire Missouri.
12. Describe whether other customers, aside from Spire Missouri, including those on other interstate pipelines, would experience disruptions to service if the STL Pipeline ceased operations?

13. Spire's application discusses the changes that Spire Missouri made to its system since interconnecting with the STL Pipeline (e.g., the removal of compressors at the Lange storage facility and the abandonment of the Spire Missouri interconnection with MRT's East Line). Provide a detailed explanation of all relevant changes since the Commission issued the 2018 Certificate Order including those Spire Missouri has made to its system that purportedly precluded it from receiving transportation service from other pipelines in the area.
14. On page 14 of the application, Spire states that Spire Missouri has disassembled its propane peaking facility and would not be able to reassemble it in the short-term. How long would it take for Spire Missouri to place this facility back into service. What permitting or authorizations would be required? Also, discuss the ability of Spire Missouri to acquire propane supplies for the facility and if any temporary facilities could be used to replicate this facility until a permanent solution could be developed.
15. On page 15 of the application, Spire states that Spire Missouri has removed three natural gas compressors at the Lange storage field which allowed for winter season injections into the storage field, how long would it take for Spire Missouri to return these compressors to service and what permits would Spire Missouri require?
16. On page 6 of the application, Spire states that there were discussions with other pipeline developers regarding alternative facilities that could have connected Spire to the identified sources of natural gas supply. Please provide a detailed description of each of those alternatives and explain in detail whether such alternatives are feasible at this time.
17. Assuming weather conditions and demand for gas to be similar to the 2020-2021 heating season, provide an analysis for the number of days that Spire Missouri could meet gas demand for its customers through its existing contracts on pipelines without the use of the STL Pipeline. Provide support for your analysis.
18. Respond, in detail, to the August 5, 2021 filing from Impacted Landowners and include the status of Spire's property rights acquisition efforts.