

**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 THE
AMERICAN GAS ASSOCIATION**

Pursuant to Rules 212 and 214¹ of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), the American Gas Association (“AGA”) respectfully moves to intervene in the above-captioned proceeding. Furthermore, AGA respectfully submits comments in support of Spire STL Pipeline LLC’s (“Spire STL”) request that the Commission issue a temporary certificate of public convenience and necessity (“Temporary Certificate”) for the Spire STL Pipeline Project (“STL Pipeline”) to prevent an emergency and assure maintenance of adequate service to Spire STL’s customers filed on July 26, 2021, in the above-captioned proceeding.² The July 26, 2021 application for a Temporary Certificate (“Application”) was filed in response to the decision in *Environmental Defense Fund v FERC*.³ AGA supports the issuance of a Temporary Certificate in order to ensure service to the local natural gas utility and its customers which ultimately receive natural gas transported on STL Pipeline.

¹ 18 C.F.R. §§ 285.212, 285.214 (2021).

² If the Commission does grant the Temporary Certificate, it should grant a limited-term certificate to Spire STL to allow it to continue providing service, as discussed in Spire STL’s application.

³ See *Environmental Defense Fund v FERC*, ___ F.4th ___, No. 20-1016, 2021 U.S. App. LEXIS 18503 (D.C. Cir. June 22, 2021).

I. COMMUNICATIONS

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II. BACKGROUND

On January 26, 2017, Spire STL submitted an application to the Commission for a certificate of public convenience to construct a new natural gas pipeline in the St. Louis area. On August 3, 2018, the Commission issued a certificate of public convenience for the Spire STL proposed project.⁴ STL Pipeline went in service in November 2019. On June 22, 2021, the U.S. Court of Appeals for the District of Columbia Circuit vacated Spire STL's certificate of public convenience issued by the Commission to construct the pipeline. On July 26, 2021, Spire STL submitted its Application for a Temporary Certificate to allow Spire STL to continue providing service on the existing STL Pipeline for a limited period until the Commission issues an order on remand from *Environmental Defense Fund v. FERC*.

III. MOTION FOR LEAVE TO INTERVENE

AGA represents critical domestic infrastructure – namely, local natural gas distribution companies that deliver natural gas to homes and businesses. The American Gas Association,

⁴ *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018), *order amending certificate*, 169 FERC ¶ 61,074, *order on reh'g*, 169 FERC ¶ 61,134 (2019), *pet. for review granted in part, vacating decision sub nom.*, *Environmental Defense Fund v FERC*, No. 20-1016, 2021 U.S. App. LEXIS 18503 (D.C. Cir. June 22, 2021).

founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 76 million residential, commercial, and industrial natural gas customers in the U.S., of which 95 percent — more than 72 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than thirty percent of the United States' energy needs.⁵

AGA's member natural gas local distribution companies ("LDCs" or "natural gas utilities") own and operate local natural gas distribution pipeline systems that typically receive natural gas supplies that have been transported on the interstate pipeline system. LDCs deliver natural gas under locally regulated rates, terms and conditions, directly to residential, commercial, and industrial customers, including electric generators. AGA members take service from virtually every interstate natural gas pipeline regulated by the Commission under the Natural Gas Act. As customers of jurisdictional pipelines and providers of natural gas distribution service to all retail segments, AGA members are directly affected by the rates, terms and conditions of the transportation and storage services provided by jurisdictional pipelines, including Commission policies regarding authorization to construct and operate proposed pipeline projects that are of public convenience and necessity. AGA and its members have a substantial interest in continued investment in and development of interstate natural gas infrastructure, and in ensuring predictable and consistent policies and regulations that affect that infrastructure. These interests are increasingly important: according to federal authorities, interstate natural gas pipelines are "[t]he

⁵ For more information, please visit www.aga.org.

arteries of the Nation’s energy infrastructure.”⁶ The gas they move heats millions of American homes,⁷ and generates over thirty percent of the nation’s electricity.⁸ AGA member companies, therefore, have a direct and substantial interest in the issues raised in this proceeding that cannot be adequately represented by any other party, and allowing AGA to participate in this proceeding is in the public interest. AGA’s goals include ensuring that the interstate natural gas transportation network provides adequate, secure, and reliable service. Accordingly, AGA has an interest in this proceeding and requests that the Commission grant its intervention.

Spire STL’s Application seeking a Temporary Certificate, relief not previously sought in the existing docket and based on current facts and circumstances, was filed on July 26, 2021, and was given a sub-docket number in a docket that was initiated in January 2017. The Commission has not issued a notice establishing a date for filing interventions in response to the Application. Due to the fact that the original comment date in the root docket closed some time ago and to the extent that this motion is considered out-of-time, AGA submits that, pursuant to Rule 214(d), there is good cause for filing the motion at this time. Rule 214 provides that the Commission may consider certain factors when reviewing on a motion to intervene out-of-time: (i) whether there is good cause for failing to file the motion within the time prescribed; (ii) any disruption of the proceeding might result from permitting intervention; (iii) the movant’s interest is not adequately represented in the proceeding; (iv) any prejudice to, or burdens upon, the existing parties that might result from permitting the intervention; and (v) whether the motion conforms to the content requirements under the Commission’s rules.

⁶ See U.S. Pipeline and Hazardous Materials Safety Admin., General Pipeline FAQs, <https://www.phmsa.dot.gov/faqs/general-pipeline-faqs> (last visited August 4, 2021).

⁷ See AGA, Picture the Potential, <https://www.aga.org/news/aga-playbook> (last visited August 4, 2021).

⁸ See U.S. Energy Info. Admin., What is U.S. electricity generation by energy source?, <https://www.eia.gov/tools/faqs/faq.php?id=427&t=3> (last visited August 4, 2021).

The request for intervention at this time is a direct result of the submission of, first, the Application on July 26, 2021; and second, the quantification of the potential harm to the LDC, its customers, and the entire St. Louis metropolitan area due to the court's decision in *Environmental Defense Fund v. FERC* described in the Application. AGA is submitting this motion as soon as possible following the filing of the Application and the creation of the relevant sub-docket.

Regarding the other elements of Rule 214(d), there will be no disruption of the proceeding by granting the requested intervention. AGA is willing to accept the record as it stands. As illustrated above, AGA's interest is not adequately represented by other parties in this proceeding. Furthermore, no party will be prejudiced by granting AGA's motion to intervene. Under Commission precedent, when a late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and the burden upon the Commission of granting the late intervention may be substantial; therefore, movants bear a higher burden to demonstrate good cause for granting such late intervention.⁹ However, such circumstances are not applicable in this instance. While a certificate order was previously issued in the root docket, a dispositive order has not been issued in response to the July 26, 2021 Application and the relief sought therein. Therefore, the prejudice to other parties and the burden upon the Commission of granting the late intervention, which could be present in another context, are not present in this case. Moreover, granting this motion to intervene will not prejudice or unreasonably delay the proceeding because the Commission has yet to respond to the Application. Therefore, for the reasons stated herein, AGA submits that good cause exists to grant its motion to intervene at this time.

⁹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, P 7 (2003).

IV. COMMENTS

AGA submits these comments in this proceeding to urge the Commission to issue the requested Temporary Certificate of public convenience and necessity to Spire STL, or the other relief sought in the Application, to avoid potential negative impacts and assure maintenance of adequate service to Spire STL's customers. This proceeding concerns an interstate natural gas pipeline facility, which commenced service in 2019 and serves a wide range of consumer interests, including a natural gas distribution company that delivers natural gas to families, businesses, and other end users. AGA is very concerned about the potential negative impacts on Spire Missouri Inc. ("Spire Missouri"), the LDC in the St. Louis metropolitan area that receives gas from Spire STL, and its customers may encounter if the requested Temporary Certificate is not promptly issued.

A. The Temporary Certificate Is Needed To Ensure the LDC Can Meet Its Obligation To Serve

The highest priority for a natural gas LDC is the delivery of natural gas to its customers safely, reliably, responsibly, and at just and reasonable rates.¹⁰ LDCs across the country are obligated, in accordance with applicable state law and regulatory requirements, to distribute the natural gas transported by interstate pipelines to retail, residential, commercial, governmental, and industrial customers.¹¹ Missouri is no different than other states in that LDCs are required to serve customers and continue that service once initiated. In Missouri "[e]very gas corporation . . . shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and

¹⁰ Elements of an LDC's retail services are regulated at the state level, not by the Commission. *See, e.g.*, 15 U.S.C. § 717(b) ("The provisions of this chapter . . . shall not apply . . . to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.").

¹¹ Most laws or regulations that govern utility service include the concept of the "obligation to serve." In short, this duty stems from the reality that when a franchise service territory is granted by a state or regulatory entity, a public interest is established in maintaining reliable service. *See e.g.*, § 393.130.1 RSMo (2016).

in all respects just and reasonable.”¹² As such, Spire Missouri “must serve on reasonable terms all those who desire the company’s service without unreasonable discrimination.”¹³ Furthermore, once a utility, such as Spire Missouri, undertakes to supply a utility service, there is a duty to supply adequate and continuous service.¹⁴ These requirements underscore the fact that residential and business customers require uninterrupted service for human need purposes, such as home heating, and business purposes.

Due to this obligation to serve and as an essential predicate to providing natural gas distribution services, utilities develop and implement detailed long-term supply plans.¹⁵ The goal of these gas supply plans is to ensure that natural gas utilities can reliably meet their projected physical firm demand for service on peak days. This process requires building and managing portfolios of physical natural gas supply, and building or contracting for storage and pipeline transportation services to meet anticipated peak day customer needs.

Guided by experience and regulatory oversight, gas utilities plan natural gas deliveries on a daily, weekly, monthly, and seasonal basis by matching supply resources to forecasted demand and preparing for “design day” conditions, such as winter demand. Acquiring pipeline capacity is

¹² Section 393.130.1, RSMo; *In the Matter of the Application of Missouri Gas Energy, a Division of Southern Union Company, for a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Natural Gas Distribution System to Provide Gas Service in Platte County, Missouri, as an Expansion of its Existing Certified Area*, 2008 Mo. PSC LEXIS 155, *118 (2008) (“Once the Commission grants a [Certificate of Convenience and Necessity] to a LDC, the LDC has an obligation to serve the public in its allotted service areas. The certificate of convenience and necessity is a mandate to serve the area covered by it, because it is the utility’s duty, within reasonable limitations, to serve all persons in an area it has undertaken to serve.”).

¹³ *State ex rel. Fed. Res. Bank of Kansas City v. Pub. Serv. Comm’n*, 191 S.W.2d 307, 313 (Mo. Ct. App. W.D. 1945).

¹⁴ *National Food Stores, Inc. v. Union Elec. Co.*, 494 S.W.2d 379, 383 (Mo. Ct. App. E.D. 1973).

¹⁵ As one state court succinctly explained, “[n]ecessarily encompassed within a utility’s obligation to serve is an attendant obligation to plan and make reasonable provision for the continuing availability of its products or services in order to meet reasonably expected future demand, given the information which the utility possesses and the options open to it.” *People’s Org. for Wash. Energy Res. v. Utils. & Transp. Comm’n*, 104 Wn.2d 798 (Supreme Court of Washington, 1985).

an integral part of this planning process. Therefore, LDCs often serve as “anchor shippers” that contractually agree to subscribe to service from new and expanded interstate pipelines. Interstate pipelines play a critical part in the supply chain because the natural gas flowing through those pipelines is ultimately used by LDCs to serve customers that use natural gas in their homes, businesses, or industrial facilities.

As pertinent to this proceeding, Spire Missouri entered into a 20-year agreement for 350,000 dekatherms (“Dth”) per day of firm transportation service on Spire STL.¹⁶ Furthermore, as discussed in the Application and noted below, Spire Missouri began to rely on the contracted for service once Spire STL went in to service. Therefore, the pipeline became an integral part of the LDCs supply chain and its obligation to serve customers. Denying the Temporary Certificate, for a facility that is already in use, could have significant negative impacts on the affected utility, its retail customers, and the economy of the communities that the utility serves. As the Commission considers the Application, it cannot ignore a utility’s need for the pipeline and the consequences that the Commission’s actions might have on customers, as discussed below. Ignoring a natural gas utility’s need for and use of a pipeline jeopardizes their obligation to serve customers and denial of the Temporary Certificate would compromise consumers’ access to an adequate supply of natural gas.

B. AGA Is Deeply Concerned About The Impact On Customers In The St. Louis Metropolitan Area

The practical impact of terminating service on an operational pipeline that is needed for human needs, reliability and resiliency purposes cannot be overstated. Post-operational cessation of service of a pipeline needed to supply energy to customers threatens a utility’s ability to meet

¹⁶ Application at 7. AGA notes that by granting the Temporary Certificate, the Commission would provide time to address any terms of service and rate issues related to court vacatur of a certificate for an operational pipeline.

consumers' needs for natural gas supply, *i.e.*, the obligation to serve noted above, potentially during peak winter seasons. The Commission should not ignore the practical implications of what a denial of the Temporary Certificate would mean to retail and business customers.

The STL Pipeline is currently in service, supplying natural gas to companies who contracted for those supplies and ultimately to retail end-users – families, businesses, and other end users. Spire STL explains in its Application that upon issuance of the mandate from the D.C. Circuit, the STL Pipeline will have to shut down.¹⁷ The shutdown will force Spire Missouri to curtail natural gas service during the upcoming winter heating season.¹⁸ Spire Missouri believes shutting down the STL Pipeline will endanger the health and safety of its customers.¹⁹ Prompt action is needed to assure the maintenance of gas service for approximately 650,000 customers in the St. Louis metropolitan area and ten surrounding counties in eastern Missouri, according to the Application.²⁰ Specifically, under extreme weather planning scenarios approximately 175,000-400,000 Spire Missouri customers may be without gas service for periods of time. AGA is very concerned about the potential negative impact on Spire Missouri and its customers if the Temporary Certificate is not granted.

The STL Pipeline is an essential element in the energy supply chain that serves the greater St. Louis area and other parts of Missouri. Of importance to AGA is the fact that Spire Missouri relies on the pipeline to serve LDC customers. The importance of the pipeline can be illustrated by the reliability and resilience the pipeline provides on a day-to-day basis, and also when severe weather conditions occur. As explained in the Application, Spire Missouri customers would have

¹⁷ Application at 2.

¹⁸ *Id.* at 2 and 15-17.

¹⁹ *Id.* at 2 and 17.

²⁰ *Id.* at 2.

lost gas service on eight of the nine days from February 11, 2021 to February 19, 2021, with a peak of roughly 133,000 customers without service on February 15, 2021, and customers overall would have experienced an increase in gas costs of up to \$300 million.²¹ However, Spire Missouri and its customers were able to avoid the most severe impacts of the storm due in large part to the STL Pipeline.

Furthermore, Spire Missouri does not have the ability to reset its supply options before the winter heating season and go back to a time before the STL Pipeline was in service. When STL Pipeline was completed in 2019, Spire Missouri allowed some of its transportation contracts with other pipeline suppliers to expire.²² These other pipelines have subsequently re-contracted a large portion of the former Spire Missouri capacity to other shippers.²³ Moreover, a relevant delivery point for the LDC has been physically abandoned.²⁴ Additionally, according to the Application, the LDC's infrastructure, distribution systems and storage facilities has changed in the last few years.²⁵ As such, if the STL Pipeline ceases operations, new infrastructure would be needed to serve customers.²⁶ Therefore, it is not a simple task to re-acquire all the previously held capacity or reactivating former supply lines. As a result of these and other changes since the STL Pipeline became operational,²⁷ without the pipeline, Spire Missouri may be required to implement a curtailment plan in the event of extreme cold weather, which would allocate gas to its customers based upon need.²⁸

²¹ Application at 3, 11, and 25.

²² *Id.* at 11 and 22.

²³ *Id.* at 12 and 22.

²⁴ *Id.* at 12 and 14.

²⁵ *Id.* at 13.

²⁶ *Id.* at 13-16.

²⁷ Application at 12-16 and 22-23.

²⁸ *Id.* at 13 and 23-26.

Downstream of the LDCs, the uncertainties regarding pipeline service would cause potential planning and consumption problems for a wider range of affected end users. Uncertainty over the reliability puts energy consumers, such as families, at risk of ultimately not being able to access natural gas for necessities such as home heating and cooking. Moreover, large commercial and industrial users rely on natural gas transportation service commitments for resource planning purposes.

As the 2021-2022 winter season approaches, it is imperative that the Commission ensure that customers that ultimately rely on STL Pipeline can continue to receive service. According to the Application and based on Spire Missouri's extreme cold weather planning scenarios, if the STL Pipeline is not in service during the upcoming winter heating season, approximately 175,000 or 27 percent of Spire Missouri customers could be without gas service.²⁹ If storage is not available, the number of impacted customers increases to up to 400,000 customers or 62 percent of Spire Missouri customers could be without gas.³⁰ AGA is very concerned about the human consequences that could result from STL Pipeline ceasing service. Based on the Application, Spire Missouri will be unable to serve residential, commercial, and industrial customers, and customers will be curtailed on peak days. In short, an entire major U.S. city will be impacted.³¹ AGA believes that the Temporary Certificate, as requested by Spire STL, is necessary to assure maintenance of adequate service to the St. Louis metropolitan area, and the requested authorizations are in the public interest.

²⁹ Application at 23.

³⁰ *Id.*

³¹ *Id.* at 24.

V. CONCLUSION

The American Gas Association respectfully requests that the Commission grant the motion to intervene and consider these comments in this proceeding. AGA urges the Commission to take into consideration the negative impacts Spire Missouri and its customers may encounter if the Temporary Certificate is not issued in a timely fashion.

Respectfully submitted,

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Dated: August 4, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2021).

Dated this 4th day of August 2021, Washington, DC.

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