

(“NGA”) Section 7(c)(1)(B) and issued a temporary certificate to allow the STL Pipeline to continue operating through December 13, 2021, while it evaluates Spire STL’s Emergency Application.⁵ Nothing will change on December 14; in fact, St. Louis will just be on the precipice of the coldest months of winter. Having already found that the loss of the STL Pipeline constitutes an emergency, the Commission should extend Spire STL’s temporary certificate until it can make a permanent decision on remand from the decision in *Environmental Defense Fund v. FERC*.⁶

Spire STL provided detailed evidence supporting the Commission’s temporary certificate, demonstrating that it is critical for the STL Pipeline to remain in service this winter. This includes information provided in Spire STL’s Emergency Application and the accompanying Affidavit of Scott Carter (“Carter Affidavit”), the President of its largest customer, Spire Missouri Inc. (“Spire Missouri”). Spire STL also provided detailed responses to FERC Staff’s data requests.⁷ In addition, Spire STL has attached to these Reply Comments the Declaration of Scott Smith, which was included as part of Spire STL’s Motion for Stay of the Mandate, filed with the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”), and contains relevant information for the Commission’s record.⁸ Spire STL’s Emergency Application is now supported by 30 pages of affidavits and responses to 18 data requests.

⁵ *Spire STL Pipeline*, 176 FERC ¶ 61,160 (2021) (“90-Day Temporary Certificate Order”); *see also* Spire STL Pipeline LLC, Application for a Temporary Emergency Certificate, or, in the Alternative, Limited-term Certificate, Docket No. CP17-40-007 (July 26, 2021) (“Emergency Application”).

⁶ *Env’tl. Def. Fund v. FERC*, 2 F.4th 953 (D.C. Cir. 2021).

⁷ *See* Response to August 6, 2021 Data Request of Spire STL Pipeline LLC, Docket No. CP17-40-007 (Sept. 7, 2021) (“Data Responses”).

⁸ *See* Attachment A, Motion of Intervenor-Respondents Spire STL Pipeline LLC and Spire Missouri Inc. for Stay of the Mandate, at Ex. 2, Declaration of Scott Smith, *Environmental Defense Fund v. FERC*, Nos. 20-1016, *et al.* (D.C. Cir. Sept. 13, 2021) (“Smith Declaration”).

While Spire STL provided facts supported by sworn affidavits and verified data responses signed under oath,⁹ Sierra Club and Niskanen Center provide absolutely no evidence. Sierra Club asserts that Spire STL has provided “little data or evidence” and only “vague allegations” of harm that would occur if the Project were shut down,¹⁰ and Niskanen Center likewise claims that Spire STL has provided only “hyperbole” that is “not believable.”¹¹ It appears that neither party reviewed the 19-page supporting Carter Affidavit filed with the application. Subsequently, Spire STL submitted robust data responses supporting the need for the STL Pipeline. Just because Sierra Club and Niskanen Center do not like these facts does not make them “vague allegations” or “hyperbole.” Far from it.

The Carter Affidavit demonstrates the STL Pipeline cannot be replaced this winter. In response, Commission Staff sent Spire STL data requests asking comprehensive follow-up questions about the statements made in the Carter Affidavit. Spire STL’s Data Responses provide additional supporting evidence, including detailed information demonstrating Spire Missouri’s inability to secure adequate reliable transportation for the coming winter.

Perhaps more significantly, the key assertions made in the Carter Affidavit were investigated independently by the Staff of the Missouri Public Service Commission (“MoPSC”). The MoPSC Staff Report found:

⁹ See 18 C.F.R. § 385.2005 (2021).

¹⁰ Sierra Club Comments at 7-8. Sierra Club repeatedly characterizes Spire STL as irresponsible, apparently hoping that casting Spire STL in a negative light will influence the Commission’s decision as to whether the STL Pipeline is needed this winter. See, e.g., *id.* at 2, 4 (calling Spire STL’s construction of the STL Pipeline a “poor choice” and referring to Spire STL’s “self-made mess”). What matters here is that the Commission protect the people and businesses of Missouri.

¹¹ Niskanen Center Comments at 6-8.

Spire Missouri cannot reasonably reconfigure its system to replace or restore former capacity, or replace reliance on Spire STL for transportation before or during the Winter of 2021-2022. Spire Missouri in its current configuration would benefit from transportation support by Spire STL on very cold days, and Spire STL transportation services would be necessary if the planned peak demand occurs.¹²

Notably, MoPSC opposed issuance of the original certificate. Its recognition of the need for the STL Pipeline—at least on a temporary emergency basis—is therefore significant.

The STL Pipeline was particularly critical last winter during Winter Storm Uri when gas service was lost in several places across the country, yet Missouri homes and businesses were kept safe and warm.¹³ The Data Responses demonstrate that if the conditions of the 2020-2021 winter reoccur this winter and the STL Pipeline is not in service, Spire Missouri’s customers would lose service for up to eight days.¹⁴ Spire Missouri’s “design day” plans for even colder weather than was experienced last winter, including during Winter Storm Uri.¹⁵ If design day conditions occur and the STL Pipeline is out of service, up to 400,000 customers could lose service during extreme cold weather this winter.¹⁶ This is an intolerable risk.¹⁷

¹² See Missouri Public Service Commission, Staff Investigation Report, *Staff’s Investigation of Spire STL Pipeline’s Application at FERC for a Temporary Certificate to Operate*, Case No. Go-2022-0022, at 3 (Aug. 16, 2021) (“MoPSC Staff Report”), <https://efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=936375668>.

¹³ Without the STL Pipeline, up to 133,000 of its customers would have been without gas service during Winter Storm Uri, and customers overall would have experienced up to \$300 million of increased gas costs. Carter Aff. ¶ 31.

¹⁴ See Data Responses at Question 17 and attached spreadsheet.

¹⁵ See *id.* at Question 6.

¹⁶ This would extend beyond customers of Spire Missouri, affecting a range of customers behind Spire Missouri and Ameren Missouri city-gates as well. See Data Responses at Question 12.

¹⁷ Niskanen Center suggests that Spire Missouri has failed to take steps to protect customers against a potential shutdown of the STL Pipeline. Niskanen Center Comments at 9-11. As Niskanen Center recognizes, Spire Missouri is seeking to obtain capacity from Natural Gas Pipeline Company of America LLC and Trunkline Gas Company, LLC.

Advance knowledge of the STL Pipeline’s availability is crucial for its customers to prepare for the winter, particularly as the winter heating season draws near.¹⁸ As recognized in the joint analysis from the Commission and the North American Electric Reliability Corporation (“NERC”), issued in response to Winter Storm Uri, “[c]areful planning and coordination” is needed to manage the needs of the natural gas and electric systems “so that both systems are ultimately reliable for consumers, especially during cold weather conditions when the demand for natural gas and electricity are at their highest levels.”¹⁹ Testifying about this report before the Senate Committee on Energy & Natural Resources on September 28, 2021, Commissioner Clements emphasized that “we must address extreme weather risk across [Texas and the Central U.S.] holistically to ensure system reliability and resilience.”²⁰ As Spire STL noted in its Data Responses, it could take between 25 and 100 days to restore gas service following an outage, since technicians must go door-to-door to re-light all gas appliances individually.²¹

Consistent with the Commission and NERC’s joint analysis, prudent utility companies make gas supply plans far in advance of each winter. Without clarity about

¹⁸ This winter is predicted to be colder than usual, particularly in the Midwest. The Old Farmer’s Almanac states that “[t]his coming winter could well be one of the longest and coldest that we’ve seen in years,” and that it expects this winter in Missouri to be “positively bone-chilling.” The Old Farmer’s Almanac, 2021–2022 Winter Weather Forecast, <https://www.almanac.com/winter-extended-forecast-farmers-almanac> (last visited Oct. 1, 2021).

¹⁹ Staff Presentation, FERC, NERC and Regional Entity Joint Staff Inquiry, February 2021 Cold Weather Grid Operations: Preliminary Findings and Recommendations, at 5-6 (Sept. 23, 2021), <https://www.ferc.gov/news-events/news/ferc-nerc-staff-review-2021-winter-freeze-recommend-standards-improvements>.

²⁰ Written Testimony of Commissioner Allison Clements Before the Committee on Energy and Natural Resources, United States Senate, at 2 (Sept. 28, 2021), <https://tinyurl.com/y62jzmsw>. See also Written Testimony of Chairman Richard Glick Before the Committee on Energy and Natural Resources, United States House Senate, at 6 (Sept. 28, 2021), <https://tinyurl.com/h37aekef> (“Chairman Glick stated that “problems associated with natural gas production and processing were [one of] the main causes of the Texas blackouts. I am determined that the recommendations arising from this joint inquiry be implemented to avoid a reoccurrence of these events.”).

²¹ Data Responses at Question 8.

STL Pipeline's availability, ratepayers may be forced to bear the cost of unnecessary, expensive contingency plans to mitigate uncertainty of whether the STL Pipeline will be in service, and these plans are unlikely to be able to compensate for any outages of the pipeline. The Commission and NERC's joint analysis supports that the Commission should act swiftly to provide STL Pipeline's shippers and the end-users they serve with assurance that the pipeline will remain in service pending Commission action on remand.

The Data Responses show that no band-aids or quick fixes can replace the reliable supply provided by the STL Pipeline. The Data Responses include postings from upstream pipelines' electronic bulletin boards and emails between Spire Missouri's gas supply personnel and personnel at those pipelines, which show that there is currently no capacity from any other interstate pipeline that amounts to the 350,000 Dth/d of capacity Spire Missouri has contracted on STL Pipeline.²² The lesser amount of capacity that is available cannot reliably replace the supply provided by the STL Pipeline this winter.²³

The Data Responses also show that there are no construction projects or facility reconfigurations that can be placed in service quickly enough to replace the STL Pipeline this winter.²⁴ As Missourians head into the winter, they should be given the security of a brand-new, state-of-the-art pipeline.

The Smith Declaration explains the complications and dangers associated with the Project's authorization lapsing even for a short period.²⁵ An interstate natural gas pipeline like the STL Pipeline cannot be simply turned off and turned back on again. If the Commission allows the STL Pipeline to lose certificate authority, or otherwise suspends

²² See Data Responses, Attachments to Question 2.

²³ See *id.* at Questions 1, 2, 3, 7, 9, 11.

²⁴ See *id.* at Questions 2, 7, 9, 10, 14, 15, 16.

²⁵ See Smith Decl. ¶¶ 25, 26.

Spire STL’s ability to operate, even for a short period of time, Spire STL may be forced to decommission the pipeline. The need to shut down the pipeline would be due in part to security concerns stemming from Spire STL’s loss of ability to ensure that the pipeline is not damaged, vandalized, or sabotaged.²⁶ The full decommissioning process could take 6-12 weeks.²⁷ If, during or after decommissioning, the Commission should reinstate the Project’s certificate authority on an emergency basis or on other grounds, Spire STL would not be able to restore service immediately. Instead, up to 10-12 weeks of lead time would be required for the STL Pipeline to be recommissioned.²⁸ As a result, even a brief loss of Spire STL’s certificate authority could preclude the opportunity for reliable natural gas service for the duration of the winter season.²⁹

Numerous entities have filed comments in support of Spire STL’s Emergency Application. Sierra Club asserts that the Commission should examine evidence from the MoPSC.³⁰ In fact, the MoPSC filed comments *supporting* Spire STL’s Emergency Application,³¹ and as noted above, its staff conducted an investigation concluding that “there is a real risk of natural gas outages during the winter of 2021-2022 absent the availability of Spire STL capacity.”³²

²⁶ *Id.* ¶ 7. Indeed, a recent book titled “How to Blow Up a Pipeline” has been promoted in the New Yorker and other popular media. *See* Podcast, The New Yorker, Andreas Malm on the Environmental Movement and “Intelligent Sabotage” (Sept. 27, 2021), <https://www.newyorker.com/podcast/political-scene/andreas-malm-on-the-environmental-movement-and-intelligent-sabotage> (stating that the book’s author believes the environmental movement should “rethink its roots in non-violence” and “advocates for ‘intelligent sabotage’ of fossil-fuel infrastructure”).

²⁷ Smith Decl. ¶¶ 7, 18, 26.

²⁸ *Id.* ¶¶ 8, 24, 26.

²⁹ The deleterious effect on landowners is discussed below.

³⁰ Sierra Club Comments at 8.

³¹ Response of the Public Service Commission of the State of Missouri to the Application of Spire STL Pipeline LLC for a Temporary Emergency Certificate, Docket No. CP17-40-007 (July 29, 2021). or, in the Alternative, Limited-Term Certificate

³² MoPSC Staff Report at 9 (emphasis added).

Government officials responsible for protecting the people of Missouri undeniably support Spire STL's Emergency Application. Supporting comments have been filed by:

- Missouri's Governor,
- Missouri's Lieutenant Governor,
- Missouri's Attorney General,
- the Mayor of St. Louis,
- the senior U.S. senator from Missouri,
- two members of the U.S. House of Representatives representing a significant portion of the eastern Missouri service territory,
- eight Missouri State senators,
- six Missouri State representatives,
- the St. Louis County Executive,
- the St. Charles County Executive,
- 43 mayors representing nearly every portion of Eastern Missouri Municipal authorities,
- the Metropolitan St. Louis Sewer District,
- Missouri Department of Economic Development,
- Public Service Commission of the State of Missouri, and
- the St. Louis Lambert International Airport.

Trade Associations have weighed in with support for the continued operation of STL Pipeline, including:

- American Gas Association,
- American Public Gas Association,
- Consumer Energy Alliance,
- Distribution Contractors Association,

- Energy Equipment & Infrastructure Alliance,
- GPA Midstream Association,
- Independent Petroleum Association of America,
- Missouri Grocers Association,
- Missouri Retailers Association,
- National Association of Manufacturers, and
- National Utility Contractors Association.

The Missouri business community expressed concerned with not having reliable gas service this winter, including:

- Associated Industries of Missouri,
- BJC HealthCare (a Hospital),
- Greater St. Charles Chamber of Commerce,
- Greater St. Louis Inc.,
- Hearth Patio Barbeque Association,
- International Paper Company,
- Jost Chemical Company,
- Louisa Food Products Inc.,
- Mallinckrodt Pharmaceuticals,
- Maritz Holdings Inc.,
- Missouri Athletic Club,
- Missouri Chamber of Commerce and Industry,
- Municipal League of Metro St. Louis,
- St. Louis Building & Construction Trades Council, and
- St. Luke's Hospital.

Unions also have overwhelmingly voiced support for the STL Pipeline, including:

- Gas Workers Union Local 11-6,
- International Brotherhood of Electrical Workers,
- Midwest Regional Office and the Missouri and Kansas Laborers District Council of Laborers' International Union North America (LiUNA!),
- North America's Building Trades Unions,
- United Steelworkers Union, District 11, and
- Utility Workers Union of America/AFL-CIO.

Community advocacy groups, such as the Urban League of Metropolitan St. Louis, Inc. ("Urban League"), the Missouri School Boards' Association, and the United Way of Greater St. Louis, have also expressed support for continued operation of the STL Pipeline.

The Urban League, in particular, wrote that:

[f]or over a century, the Urban League of Metropolitan St. Louis has been a champion for economic and social justice for the region's Black community. Spire STL Pipeline has been an ally in our mission by partnering with us on various programs to help those in need, while also providing affordable and reliable natural gas service to our collective community's most vulnerable populations.³³

No gas market participant in the St. Louis region has objected to Spire STL's Emergency Application, and in fact, there is overwhelming support from competitors and others alike, including from Symmetry Energy Solutions, LLC, MoGas Pipeline LLC,

³³ Comments of Urban League of Metropolitan St. Louis, Inc., Docket No. CP17-40-000, at 1 (Sept. 1, 2021). *See also* Michael P. McMillan, President and CEO, Urban League of Metropolitan St. Louis, "St. Louis needs the STL Pipeline," *The St. Louis American* (Sept. 1, 2021), http://www.stlamerican.com/news/columnists/guest_columnists/st-louis-needs-the-stl-pipeline/article_d179c458-0b44-11ec-996c-5771797743ac.html (stating, "It is vital that the FERC quickly takes action to allow the STL Pipeline to continue to operate. Without this critical infrastructure, our most vulnerable residents could be without heat during the upcoming winter.").

Southern Star Central Gas Pipeline, Spire Marketing Inc., Rockies Express Pipeline LLC, and Phillips 66 Company, on behalf of WRB Refining LP.

As if the above support is not overwhelming enough, diverse enough, or compelling enough, the MoPSC and Ameren Services Company—entities that protested STL Pipeline’s original certificate application—now support the STL Pipeline Emergency Application.³⁴

These comments demonstrate the extent of the need for STL Pipeline’s services this winter, and the emergency that would result without the Project. The only entities opposing the Emergency Application are national organizations not based in Saint Louis that appear to oppose all natural gas infrastructure in the country, and a handful of landowners affected by the Project, who are seeking additional leverage in their negotiations with Spire STL.³⁵ This disparity of interests is telling: while a broad and diverse body of local and directly affected commentors support the STL Pipeline and the Emergency Application based on a need for reliable natural gas service this winter, only a few special interest groups oppose it. The NGA was designed to ensure that in these circumstances, parochial opposition does not prevent operation of necessary infrastructure.³⁶ With overwhelming evidence demonstrating the need for the STL Pipeline

³⁴ See Response of Missouri Public Service Commission, Docket No. CP17-40-007 (filed July 29, 2021); Comments of Ameren Services Co., Docket No. CP17-40-007 (filed Aug. 6, 2021). Another of the protestors, Enable Mississippi River Transmission, LLC, has not filed comments in the temporary certificate proceeding.

³⁵ See Defendant-Landowners, Renewed Motion for Relief Under Rule 60(B)(5) and Memorandum to Stay Proceeding Based on Updated Information at 6, Spire STL Pipeline LLC v. 3.31 Acres of Land, No. 4:18-cv-01327-DDN (E.D. Mo. Sept. 23, 2021), ECF No. 667 (“Landowners’ Renewed Motion for Relief”) (“If Spire is eventually forced to shut down operations, landowners will be entitled to attorneys’ fees and trespass damages that are outside the scope of the current condemnation hearings.”).

³⁶ See *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 830 (4th Cir. 2004) (“Congress passed the [NGA] and gave gas companies condemnation power to insure that consumers would have access to an adequate supply of natural gas at reasonable prices.”). In adding eminent domain power to the NGA, Congress explained that states and competing local interests, such as coal companies and railroads, had been preventing construction of natural gas facilities. See also S. Rep. No. 80-429, at 2-3 (1947).

this winter, and those who depend upon the facilities *pleading* for protection this winter, the Commission should grant the Emergency Application to ensure that Missourians continue to have access to gas.

II. The Commission Has Authority to Issue a Temporary Certificate to Allow the STL Pipeline to Remain in Service.

A. This Is an Emergency Within the Scope of NGA Section 7(c)(1)(B).

The Commission has already determined that under NGA Section 7(c)(1)(B), “the breakdown in service to existing customers that may result from the cessation in operation of a functioning pipeline” is an “emergency.”³⁷ The MoPSC Staff has substantially concluded the same.³⁸ The Commission should reject Sierra Club’s arguments that the circumstances here do not rise to the level of an emergency covered under Section 7(c)(1)(B).³⁹ The possibility of customers losing gas service during the winter is *precisely* why the Commission uses its temporary emergency authority. The Commission has routinely found, as it did here, that the risk of winter shortfalls in gas supply is an emergency.⁴⁰ In fact, the Commission has found that emergencies existed in circumstances *far less exigent* than those present. To spotlight just a few:

- A pipeline’s loss of customers switching to alternate fuels was an “emergency” that justified a temporary certificate approving new services designed to compete with these fuels.⁴¹

³⁷ 90-Day Temporary Certificate at P 10.

³⁸ See generally MoPSC Staff Report.

³⁹ Sierra Club Comments at 5-9.

⁴⁰ See, e.g., *Miss. River Transmission Corp.*, 40 FPC 190, *reh’g denied*, 40 FPC 932 (1968), *order amending orders*, 42 FPC 1006 (1969) (allowing construction of 195.9 miles of 26-inch looping pipeline to provide 100,000 thousand cubic feet per day capacity on the Mississippi River Transmission Corp. system, to meet the winter needs of the St. Louis market); *Penn-York Energy Corp.*, 37 FERC ¶ 61,109, at p. 61,267 (1986), *order approving settlement*, 38 FERC ¶ 61,135 (1987) (found that there was an emergency because a gas distributor lacked rights to withdraw sufficient amounts of gas from storage to reliably meet its customers’ demand during the upcoming winter, and granting a temporary certificate authorizing extension of the term of storage and exchange services to allow customers “for a limited time, a dependable supplementary source of natural gas”).

⁴¹ *N. Nat. Gas Co.*, 23 FERC ¶ 61,295, *reh’g denied*, 24 FERC ¶ 61,340 (1983).

- An industrial plant’s claim that higher gas costs would force the plant to shut down was an “emergency” justifying a temporary certificate that approved new transportation service.⁴²
- A liquefied natural gas (“LNG”) importer’s lack of storage capacity for a planned LNG receipt, where failure to receive the LNG would cause the importer to violate its contract, was an “emergency” that supported issuance of a temporary certificate allowing the importer to deliver its stored LNG to make space for the planned shipment.⁴³
- The risk that the operator of a chicken plant would experience a gas shortfall leaving it unable to heat its facilities on time for the scheduled delivery of chickens was an “emergency” that justified a temporary certificate allowing construction of a delivery tap.⁴⁴

The circumstances facing St. Louis are far more grave than those listed above, all of which were “emergencies” under NGA Section 7(c)(1)(B). The Carter Affidavit warns that “loss of service from STL Pipeline would severely jeopardize Spire Missouri’s ability to provide needed energy to a large portion of the 650,000 households and businesses that Spire Missouri serves in Eastern Missouri, in addition to other potentially severe consequences.”⁴⁵ Mr. Carter explains that the STL Pipeline must be in service this winter “in order to avoid imposing severe hardships on the people of eastern Missouri, including the potential for loss of life.”⁴⁶

If this is not an “emergency,” then what is?

⁴² *Transcon. Gas Pipe Line Corp.*, 34 FERC ¶ 61,402 (1986).

⁴³ *Distrigas of Mass. Corp.*, 31 FERC ¶ 61,166, *reh’g denied*, 32 FERC ¶ 61,008 (1985).

⁴⁴ *Arkla Energy Res. Co.*, 64 FERC ¶ 61,094 (1993).

⁴⁵ Emergency Certificate Application, Carter Aff. ¶ 3.

⁴⁶ *Id.* ¶ 5.

B. Spire STL Requests a Narrow Exercise of the Commission's Emergency Powers Under NGA Section 7(c)(1)(B).

Sierra Club mischaracterizes the Emergency Application as requesting a “vast expansion of FERC’s emergency authorization power,”⁴⁷ but in fact, this is a modest application of the Commission’s existing authority to issue temporary certificates. Spire STL is not seeking to construct a single inch of new pipeline capacity. Spire STL asks only that the Commission allow it to continue operating the STL Pipeline to ensure that customers continue to receive gas service this winter. The Commission has the emergency authority to keep the STL Pipeline in service this winter; doing so is not an expansion of that power.

Spire STL’s Emergency Application falls squarely within the plain meaning of the statutory language allowing the Commission to issue temporary certificates. NGA Section 7(c)(1)(B) allows the Commission to “issue a temporary certificate in cases of emergency, to assure maintenance of adequate services.”⁴⁸ Seeking to narrow the scope of this statute, Sierra Club cherry picks language from *Consumer Federation of America v. FPC*, in which the D.C. Circuit stated that NGA Section 7(c)(1)(B) includes “a narrow exception to enable the companies to grapple with temporary emergencies and minor acts or operations, like emergency interconnections to cope with breakdowns or sporadic excess demand for gas.”⁴⁹

However, the quoted language does not address the Commission’s authority to issue temporary certificates at issue here; it addresses a *different proviso* of NGA

⁴⁷ Sierra Club Comments at 5.

⁴⁸ 90-Day Temporary Certificate at P 6 (quoting NGA Section 7(c)(1)(B), 15 U.S.C. § 717f(c)(1)(B)).

⁴⁹ Sierra Club Comments at 5-6 (citing *Consumer Fed’n of Am. v. FPC*, 515 F.2d 347, 353 (D.C. Cir. 1975)).

Section 7(c)(1)(B), which allows the Commission to, “by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.”⁵⁰ There was no temporary certificate in *Consumer Federation*; rather, the Commission had issued a rule, without notice and comment procedures, that allowed producers to sell gas to interstate pipelines at any price for 180-day periods, without obtaining certificate authorization and without the possibility of future refunds.⁵¹ By the time the D.C. Circuit reviewed the rule, over 500 separate sales, amounting to 172 billion cubic feet of gas, had been exempted from Commission oversight. The D.C. Circuit concluded that the Commission could not allow this massive volume of gas sales to be “freed from the constraints of meaningful regulation.”⁵²

In setting this rule aside, the court added *dicta* discussing the legislative history of NGA Section 7(c)(1)(B), including the Commission’s authority to grant temporary certificates.⁵³ The court noted that the original text of the temporary certificate clause was amended to include the limiting language “to assure maintenance of adequate service or to serve particular customers,” and that this was meant to clarify that the temporary certificate authority would be used for “comparatively minor extension of the facilities of an existing system” including, for example, “breakdowns in the service of operating natural gas companies, or sudden unanticipated demands.”⁵⁴

⁵⁰ *Consumer Fed’n* at 352-53.

⁵¹ *Id.* at 350-51. This occurred prior to wellhead decontrol when a certificate was still required for interstate sales of gas.

⁵² *Id.* at 359.

⁵³ *Id.* at 353 (after discussing the proviso allowing temporary exemptions from certificate requirements, noting that “[o]ther discussion [in the NGA’s legislative history] focused on the temporary certificate clause”).

⁵⁴ *Id.* at 352-54 (citation omitted).

The *dicta* above provides *examples* of situations in which the Commission would grant temporary certificates; it is not an exhaustive list. Here, Spire STL does not even ask to build a “minor extension.” Spire STL asks only to keep the STL Pipeline running through the winter and until the Commission makes a permanent decision on remand. This is a far more modest use of the emergency provision than the action overturned and scenarios described in *Consumer Federation*.⁵⁵ Unlike in *Consumer Federation*, Spire STL is not going to be freed from any regulation—it remains subject to the Commission’s rules and its Commission-approved tariff. Spire STL’s Emergency Application fits comfortably within the Commission’s authority under Section 7(c)(1)(B), since it will “assure maintenance of adequate service” to the millions of citizens who live and work in the 650,000 homes and businesses that rely on the STL Pipeline.

The Commission explained in the 90-Day Temporary Certificate Order, seemingly in response to *Consumer Federation*, that the temporary certificate “does not provide authorization for a large swath of the industry to provide service without Commission oversight.”⁵⁶ Rather, the Temporary Certificate Order “allow[s] for the maintenance of adequate service.”⁵⁷ That is all Spire STL is requesting in the Emergency Application.

Sierra Club emphasizes that the Commission has not used its temporary certificate authority to keep a pipeline in operation following vacatur of a certificate,⁵⁸ but this is not

⁵⁵ Nor does the U.S. Court of Appeals for the First Circuit’s *dicta* in *Algonquin* prevent the Commission from issuing Spire STL a temporary certificate. *See Algonquin Gas Transmission Co. v. FPC*, 201 F.2d 334 (1st Cir. 1953). In that case, the court noted that it was uncertain whether a temporary certificate could be used as a stop-gap measure in the event a permanent certificate was vacated. But the court never decided this question; it merely stated that it was unclear. Subsequent precedent clears this up, as the Commission has commonly used its temporary certificate authority as a stop-gap measure to allow pipelines to remain in operation while permanent certificate applications were pending. *See n. [[60, infra]]*.

⁵⁶ 90-Day Temporary Certificate Order at P 9.

⁵⁷ *Id.*

⁵⁸ *See* Sierra Club Comments at 5-6.

due to a lack of authority; it is because the current circumstances are unprecedented. Sierra Club attempts to distinguish this case from *Texas-Ohio*, in which the Commission granted a temporary certificate to allow continued operation of an interstate pipeline that had been built under state authority, while its application for a permanent certificate from the Commission was pending.⁵⁹ But *Texas-Ohio* is just one example that illustrates a more general practice: when operating pipelines lose authority to operate, the Commission does not simply shut them down. Instead, the Commission has issued temporary certificates to ensure that the facilities can remain in service, and their customers served, while it evaluates their applications for a permanent certificate.⁶⁰ This practice is entirely consistent with a grant of authority to keep Spire STL operating while the Commission considers Spire STL's certificate on remand. To Spire STL's knowledge, no court order has ever resulted in the ultimate shutdown of an operational natural gas pipeline under FERC's NGA jurisdiction. Spire STL's Emergency Application is consistent with numerous cases in which the Commission allowed pipelines to remain in operation while deficiencies in their permanent authorization were remedied. This is not "a vast expansion of FERC's emergency authorization power;" rather, it falls squarely within that power.

C. FERC Can Issue a Limited-Term Certificate Under NGA Sections 7 and 16.

Even if this was not an emergency, the Commission still would have the power to issue a limited-term certificate to keep the STL Pipeline operating, pursuant to its broad

⁵⁹ *Id.* (citing *Texas-Ohio Pipeline Inc.*, 58 FERC ¶ 61,025 (1992)).

⁶⁰ *See, e.g., Superior Offshore Pipeline Co.*, 35 FERC ¶ 61,068 (1986) (after pipeline's blanket certificate expired, issuing temporary certificate to allow it to continue operating, where temporary shutdown could result in damage to wells and loss of gas reserves); *NRM Operating Co.*, 45 FERC ¶ 61,494 (1988) (denying petition for declaratory order that existing pipeline was a non-jurisdictional gathering line, and granting temporary certificate to allow it to continue operating while Commission reviewed permanent certificate application), *reh'g denied*, 46 FERC ¶ 61,172 (1989). *See also* Emergency Application at 28, n.102 (citing additional cases).

authority to protect the public, under NGA Sections 7 and 16. NGA Section 7 allows the Commission to issue certificates authorizing the construction and operation of interstate gas pipelines, while NGA Section 16 permits the Commission to “perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of [the NGA].”⁶¹ Courts have explained that:

the authority conferred by § 16 has been broadly construed. Indeed, ‘Section 16 demonstrates a realization by Congress that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation.’⁶²

The present circumstances are unique, and likely unforeseen when Congress passed the NGA in 1938. In such circumstances, the Supreme Court has explained that it is “the duty of the Commission to look at ‘the backdrop of the practical consequences (resulting) . . . and the purposes of the [NGA].’”⁶³

The Supreme Court discussed the Commission’s discretion under NGA Section 16 at length in *FPC v. Louisiana Power & Light Co.*, in which it determined that the Commission, and not the states, had jurisdiction to regulate pipelines’ curtailment plans during gas shortages. The Court stated that the “FPC and other agencies created to protect the public interest must be free, ‘within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.’”⁶⁴ Relying on NGA Section 16, the Court continued that “the width of administrative authority must

⁶¹ 15 U.S.C. § 717o.

⁶² *Mesa Petroleum Co. v. FPC*, 441 F.2d 182, 188 (5th Cir. 1971) (citation omitted).

⁶³ *FPC v. Tenn. Gas Transmission Co.*, 371 U.S. 145, 155 (1962) (quoting *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 147 (1960)).

⁶⁴ *FPC v. La. Power & Light Co.*, 406 U.S. 621, 642 (1972).

be measured in part by the purposes for which it was conferred. . . . Surely the Commission’s broad responsibilities therefore demand a generous construction of its statutory authority.”⁶⁵

Given the risk to life and safety associated with an outage of the STL Pipeline, and that “[t]he fundamental purpose of the [NGA] is to assure an adequate and reliable supply of gas at reasonable prices,”⁶⁶ the Commission must ensure that the facilities will remain in service this winter. The consequences of failing to act are too large.

III. The Landowner Comments Continue to Perpetuate Misleading, Incorrect, and Internally Conflicting Comments.

The shift in attack from certain landowners over the course of the last few months is disappointing after Spire STL has worked so hard to earn back the trust and confidence of its landowner partners, especially in 2021.⁶⁷ Nevertheless, Spire STL is, and always will be (provided it retains the requisite authorization to operate), committed to partnering with landowners to perform restoration and to bring closure to the “just compensation” determination in any outstanding condemnation proceedings pending in federal district courts.

Landowner Filings however, several of which use an identical template, attempt to use Spire STL’s pending Emergency Certificate Application as another opportunity to comment on their ongoing eminent domain proceedings and regurgitate several misleading and incorrect statements regarding restoration along the STL Pipeline route. The resulting

⁶⁵ *Id.* at 642 (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 776 (1968); *United Gas Pipe Line Co. v. FPC*, 385 U.S. 83, 89-90 (1966)).

⁶⁶ *California v. Southland Royalty Co.*, 436 U.S. 519, 523 (1978). *See also Sage*, 361 F.3d at 830.

⁶⁷ *Compare Acknowledgement of Resolution with Spire, CLC, and Forrest Jones*, Docket Nos. CP17-40-000, *et al.* (June 1, 2021) (confirming settlement reached between Spire STL and Jones), *and Acknowledgement of Resolution with Spire, CLC, and Rusty & Gayle Willis*, Docket Nos. CP17-40-000, *et al.* (June 1, 2021) (confirming settlement reached between Spire STL and Willis); Landowners’ Renewed Motion for Relief.

comments are largely irrelevant to the issue at hand and do not address whether FERC should approve Spire STL's pending Emergency Certificate Application in order to avoid a looming emergency this winter for the greater St. Louis area. Nevertheless, because the Landowner Filings perpetuate numerous inaccuracies and misrepresentations that are either at odds with the evidence in this proceeding or internally inconsistent, Spire STL addresses them below.

A. Contrary to the Landowner Filings, Granting the Emergency Certificate Would Help Restoration Efforts and Help Mitigate Impacts.

Spire STL reiterates its commitment to resolving all outstanding condemnation proceedings, including through settlement (where possible), and its obligations to continue to monitor the pipeline and address any restoration issues on a going-forward basis. In this regard, Spire STL believes that the Landowner Filings raise some important points that support the pending Emergency Certificate Application.

First, as described in the attached Smith Declaration, there are significant security and safety risks that the parties would need to address if STL Pipeline is shut down and Spire STL loses its right to survey and monitor the permanent right-of-way. In particular, the Smith Declaration explains that the pipeline could be subjected to sabotage and vandalism, as well as undetected leaks along the pipeline's route.⁶⁸

Second, to the extent Spire STL's original and temporary certificates expire, Spire STL will no longer be able to enter onto many of the parcels of property along the STL Pipeline's route. Once that occurs, Spire STL will not be able to plan, schedule, or perform the restoration work highlighted by the Landowner Filings. Instead of allowing Spire STL

⁶⁸ Smith Decl. ¶¶ 7, 11, 15. *See also* Malm, *supra* note 26.

to complete this work in an expeditious manner, counsel for landowners have already asked courts to “eject” Spire STL from their properties⁶⁹ and have threatened trespass lawsuits should Spire STL enter their client’s property.⁷⁰ Without an underlying FERC certificate, Spire STL will be unable to complete restoration work, potentially leaving landowners in worse positions while also unreasonably exposing Spire STL to litigation for performing activities required by FERC.⁷¹

For the reasons described above, Spire STL is hopeful that FERC will take action on the pending Emergency Certificate Application in the very near future to prevent an emergency, assure adequate gas service to the greater St. Louis region, and allow Spire STL to continue to honor its certificate obligations to landowners.

B. The Landowner Filings Grossly Misrepresent Spire STL’s Prior and Ongoing Negotiations for Property Rights.

The Landowner Filings make several unfounded and incorrect assertions about Spire STL’s engagement and negotiations with landowners for the property rights necessary to properly construct, maintain, and operate the STL Pipeline. As Spire STL has previously explained,⁷² such statements are at best misleading, and at worst intentionally dishonest and should be rejected by the Commission.

⁶⁹ Update on Condemnation Cases in Light of D.C. Circuit *EDF v. FERC* Ruling Vacating Certificate and Request for Commission Follow-Up, Letter from Law Offices of Carolyn Elefant, PLLC, Docket No. CP17-40-000 (filed July 19, 2021) (attaching a pleading filed in the U.S. District Court for the Eastern District of Missouri).

⁷⁰ *See id.*; Motion to Intervene and Comments of Landowners Regarding Spire’s Application for Temporary Emergency Certificate, Docket No. CP17-40-007, at 13 (filed Aug. 5, 2021). Several landowners have also indicated to Spire STL that they do not wish to engage in any further negotiations because of the D.C. Circuit’s vacatur and because the Commission has not yet communicated a path forward.

⁷¹ Spire STL notes that FERC Staff’s most recent inspection of the STL Pipeline concluded that “restoration of affected lands, which is a process that occurs over multiple years, is proceeding satisfactorily.” Restoration Inspection Report of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.*, at 4 (July 20, 2021).

⁷² *See* Response of Spire STL Pipeline LLC to Landowner Comments Regarding Restoration, Docket Nos. CP17-40-000, *et al.* (filed Aug. 27, 2021) (“Spire STL August 27 Response”).

As a general matter, the Landowner Filings state that Spire STL has acquired property through litigation and has been unwilling to negotiate compensation with landowners. Most of the Landowner Filings contain the same generic statement: “[W]ithin two weeks of the FERC approving the Spire [STL] project, landowners including myself, received condemnation notices with little to no negotiation.”⁷³ The Elephant Letter, which is authored by the lawyers that represent the minority of landowners who remain in condemnation litigation, in particular goes so far as to claim that “once Spire [STL] gained possession by court order, its settlement efforts ceased”⁷⁴ and that “since the D.C. Circuit invalidated the Spire [STL] certificate, Spire [STL] has not approached landowners’ counsel with settlement proposals to resolve acquisition of easement rights.”⁷⁵ The Elephant Letter also criticizes Spire STL’s inability to resolve the majority of the ongoing condemnation cases that are outside of this proceeding.⁷⁶

With regard to negotiations, the Landowner Filings ignore (again) the fact that Spire STL either negotiated or attempted to negotiate with all landowners, including those listed in the Landowner Filings, for over a year or more—both before and during construction of the STL Pipeline.⁷⁷ After the Commission issued Spire STL its Certificate, Spire STL made condemnation filings at the appropriate time in order to secure access to the STL Pipeline right-of-way so that Spire STL could construct the STL Pipeline in accordance with the Commission’s requirement that the project be completed within two years.⁷⁸ Any

⁷³ See generally, e.g., Landowner Filings at 1.

⁷⁴ Elephant Letter at 1.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Motion for Leave to Answer and Answer of Spire STL Pipeline LLC, Docket No. CP17-40-007, at 4-5 (filed Aug. 26, 2021).

⁷⁸ *Id.* at 5.

claims that there was little to no prior negotiations between Spire STL and landowners are without merit.

In addition, Spire STL has continued throughout this proceeding to engage with landowners to negotiate settlements after the condemnation proceedings were initiated.⁷⁹ In 2021 alone, Spire STL has (1) communicated its willingness to enter into alternative dispute resolution processes; (2) participated in an Spire STL officer-level all-day, in-person settlement conference with certain landowners and their respective representatives on May 27, 2021;⁸⁰ and (3) extended multiple settlement offers to compensate landowners and resolve all on-going restoration issues. Those comments alleging that all such negotiations have ceased from Spire STL are wrong. In fact, Spire STL just presented comprehensive settlement offers to landowners' counsel representing various landowners listed in the Landowner Filings as recently as this past July and again in August, all of which occurred *after* the D.C. Circuit's June 22 decision in *Environmental Defense Fund v. FERC*, as detailed in this very docket.⁸¹ Spire STL is troubled by landowners' counsel's willingness to not only disregard Spire STL's continued efforts, but more concerned that they have knowingly advanced false claims before this Commission in an effort to prevent

⁷⁹ Spire STL has also clarified numerous times that certain landowners in condemnation proceedings have had the right for more than a year to be compensated for the appraised value of their land. *See id.* at 5 & n.13 (citing Response of Spire STL Pipeline LLC to CLC and IDOA Reports, Docket Nos. CP17-40-000, *et al.*, at 2-3 (filed Sept. 4, 2020)).

⁸⁰ Corrective Action Status Report No. 10 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (filed June 1, 2021) ("Spire CASR No. 10") (detailing summary of in-person meetings with several landowners to discuss outstanding settlement offers and any corresponding progress made with landowners to reach comprehensive settlements).

⁸¹ Corrective Action Status Report No. 25 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.*, at Att. 2 (filed Sept. 13, 2021) (email string from Spire STL's outside counsel to outside counsel for certain landowners regarding offers to compensate landowners).

the issuance of a temporary certificate so that subsequent claims for trespass (and therefore higher damages payments) can be brought in federal and/or state courts.⁸²

Finally, with regard to those comments criticizing Spire STL's inability to resolve ongoing condemnation proceedings, Spire STL notes the internal contradiction in which Spire STL is criticized for initiating the proceedings too quickly, while simultaneously being accused of taking a "lax approach to acquiring property rights for the project."⁸³ To be clear, resolution of the "just compensation" determinations to bring closure to the outstanding condemnation cases is a key priority for Spire STL. However, it has been landowners' counsel that has stalled, delayed, and even obfuscated discovery and now the scheduling of trials.⁸⁴ These matters would be resolved if not for such delays. At a minimum, Landowners' Counsel should be estopped from arguing that Spire STL has failed to obtain legal title to all of the right-of-way when the delays have been, in part, the result of Courts' own motions to delay during the early months of the COVID-19

⁸² Landowners' Renewed Motion for Relief at 6-7 (claiming that landowners will be entitled to attorneys' fees and trespass damages beyond the scope of compensation at issue in the condemnation hearings if Spire STL is forced to shut down). *See also Spire STL Pipeline LLC v. Betty Ann Jefferson, et al.*, Doc. 182 (Joint Motion for Relief from Condemnation Judgement, Dissolution of Preliminary Injunction, Dismissal of Condemnation Complaint, Hearing on Damages for Trespass and Stay of All Deadlines, 3:18-cv-3204-SEM-TSH (C.D. Ill. July 19, 2021)); *Spire STL Pipeline LLC v. Gerald Scott Turman, et al.*, Doc. 216 (Joint Motion for Relief from Condemnation Judgement, Dissolution of Preliminary Injunction, Dismissal of Condemnation Complaint, Hearing on Damages for Trespass and Stay of All, 3:18-cv-1502-SPM (S.D. Ill. July 16, 2021)).

⁸³ While Spire STL presumes that the comments' aim is to force Spire STL to increase the compensation amount in their standing settlement offers to landowners, Spire STL also notes that it already provided evidence in its data responses showing that, for those condemnation proceedings that have received Reports on Just Compensation from the Missouri Commissioners, the average recommended compensation level from Spire STL to landowners was only 15% of what landowners previously requested. Data Responses at Question 18.

⁸⁴ *See* Attachment B (summarizing requested delays by landowners' counsel in ongoing eminent domain proceedings). *See also Spire STL Pipeline LLC v. 3.31 Acres of Land, etc., et al.*, Order Regarding Motions to Compel, Consolidated Cases 4:18-CV-1327-DDN (E.D. Mo. May 12, 2021) (ordering defendants to pay attorney fees and expenses caused by filing and prosecution of underlying motions to compel discovery).

pandemic, but largely due to the consistent urging of Landowners' Counsel.⁸⁵ Those comments claiming that Spire STL has taken a lax approach are patently false.

C. The Landowner Filings Ignore That FERC Staff Has Visited the Right-of-Way and Determined That Restoration Is Proceeding Satisfactory.

Several of the Landowner Filings also allege that the Commission should reject Spire STL's Emergency Certificate Application based on various restoration issues associated with the STL Pipeline. In general, these comments point to FERC Staff's July 20, 2021 inspection report,⁸⁶ arguing, without providing any further support, that the July 20 Inspection Report detailed "numerous" restoration issues and implying that Spire STL is not complying with its certificate requirements.

That is a false statement. The July 20 Inspection Report notes that restoration ranged across properties from successful restoration to properties that require more attention,⁸⁷ but the July 20 Inspection Report concluded that "restoration of affected lands, which is a process that occurs over multiple years, is proceeding satisfactorily."⁸⁸ And while the July 20 Inspection Report reflects the most recent evidence that restoration is

⁸⁵ See, e.g., *Spire STL Pipeline LLC v. 3.31 Acres of Land (Missouri)*, Cons. Case No. 4:18-CV-01327 (Doc. 354 (Motion by Landowners for additional time to respond to discovery); Doc. 380 (Revised Schedule submitted by Attorney Elefant and Attorney Walker extending dates for hearings on just compensation); Doc. 471 (Joint Motion by Attorney Elefant and Attorney Walker to stay hearings on just compensation); Doc. 574 (Joint Motion by Attorney Elefant and Attorney Walker requesting continuance of pre-trial hearing); Doc. 608 (Motion by Attorney Elefant to continue hearing on just compensation)). See also *Spire STL Pipeline LLC v. Betty Ann Jefferson, et al.*, Doc. 165 (Motion by Attorney Elefant for Extension of Time to Complete Discovery, 3:18-cv-3204-SEM-TSH (C.D. Ill. Jan. 25, 2021)); *Spire STL Pipeline LLC v. Betty Ann Jefferson, et al.*, Doc. 169 (Joint Motion to Reconsider the Court's Amended Deadline, 3:18-cv-3204-SEM-TSH (C.D. Ill. Feb. 12, 2021)); *Spire STL Pipeline LLC v. Gerald Scott Turman, et al.*, Doc. 150 (Motion by Attorney Walker to Continue Hearing on Motion to Appoint Commission, 3:18-cv-1502-SPM (S.D. Ill. May 6, 2019)); *Spire STL Pipeline LLC v. Gerald Scott Turman, et al.*, Joint Motion for Extension of Time to Extend Certain Deadlines, 3:18-cv-1502-SPM (S.D. Ill. Oct. 30, 2020)).

⁸⁶ Restoration Inspection Report Spire of STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (filed July 20, 2021) ("July 20 Inspection Report").

⁸⁷ *Id.* at 3.

⁸⁸ Spire STL August 27 Response at 2 (quoting July 20 Inspection Report at 4).

proceeding satisfactorily, several similar conclusions have already been made by FERC Staff⁸⁹ and former Chairman Neil Chatterjee in this proceeding.⁹⁰

As for those properties that require more attention, Spire STL's monthly construction report filed on September 24, 2021, demonstrates that all concerns either have been addressed, are planned to be addressed in the near future, or are delayed based on landowners' preferences or failure to respond to Spire STL.⁹¹ Spire STL strictly follows well-established pipeline construction practices and procedures, including its Implementation Plan, the Certificate Order, and FERC's Upland Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures and will continue to monitor the pipeline and address any restoration issues on a going-forward basis.

Separately, certain of the Landowner Filings complain that Spire STL has failed to correct the restoration requirements included in the Commission's March 18 Order.⁹² These comments ignore two important points. First, Spire STL has settled all outstanding issues, including all restoration or revegetation issues beyond those described in the March 18 Order, with two of the seven landowners whose properties are covered by the

⁸⁹ See, e.g., FERC Staff Letter in Response to Mr. Gerald Scott Turman, Docket Nos. CP17-40-000, *et al.* (Mar. 25, 2020); 23 Individual FERC Staff Letters Responding to Landowners, Docket Nos. CP17-40-000, *et al.* (filed May 24, 2019).

⁹⁰ See, e.g., Former Chairman Chatterjee's Response to U.S. Congressman Rodney Davis, Docket Nos. CP17-40-000, *et al.* (filed Oct. 15, 2019); Former Chairman Chatterjee's Response to U.S. Congressman Rodney Davis, Docket Nos. CP17-40-000, *et al.* (filed June 17, 2019); Former Chairman Chatterjee's Response to U.S. Congressman Darrin LaHood, Docket Nos. CP17-40-000, *et al.* (filed May 3, 2019).

⁹¹ Status Report No. 89 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (filed Sept. 24, 2021).

⁹² *Spire STL Pipeline LLC*, 174 FERC ¶ 61,219 (2021) ("March 18 Order") (requiring Spire STL to perform specific corrective actions on seven individual landowners' properties). While Spire STL previously contested, among other items, that such corrective actions were either unnecessary or premature, Spire STL did not challenge the March 18 Order and has instead focused on working diligently with landowners to complete these Commission-ordered restoration activities, as evidenced by Spire STL's prior and ongoing Corrective Action Status Reports in this docket.

March 18 Order.⁹³ Second, Spire STL has been trying for several months to complete the restoration work described in the March 18 Order but has been denied access by landowners to do so.⁹⁴ Unfortunately, as Spire STL reported in its most recent weekly corrective action report, landowners have either (1) refused Spire STL access to the construction right-of-way, which is necessary for Spire STL to complete restoration activities, or (2) disputed Spire STL's remediation plan (including the required corrective actions described in the March 18 Order), and thus have not permitted Spire STL to complete restoration.⁹⁵

The Landowner Filings' attempts to criticize Spire STL's efforts to complete this restoration work lacks merit and are plainly contradicted by the record in this FERC Docket CP17-40. Notwithstanding such unfounded claims, Spire STL is eager to complete the corrective actions described in the March 18 Order and has been ready to remediate these properties for months. In this regard, Spire STL is continuing to work diligently with the landowners to secure access to the construction right-of-way and complete the corrective actions.

⁹³ See, e.g., Spire STL August 27 Response at 1-2; Spire CASR No. 10 (detailing settlement and corresponding compensation to resolve all outstanding issues for landowners Jones and Willis). Spire STL notes that Niskanen Center in particular includes comments on behalf of certain landowners that had already resolved all outstanding landowner issues as a result of in-person meetings in May of this year, which Spire STL clarified on several prior occasions in this docket. It is unclear from the comments submitted whether the Niskanen Center were aware of landowners' settlements with Spire STL, or to the extent they were, whether Niskanen Center fully considered landowners' interests regarding the potential liability for breaching such settlement agreements.

⁹⁴ See Corrective Action Status Report No. 25 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (filed Sept. 13, 2021). Spire STL scheduled and notified the landowner on August 11, 2021, that this remediation work would commence on September 13, 2021—which was consistent with the timeline the landowner requested in order to delay the commencement of such work. *Id.* at Att. 2.

⁹⁵ Corrective Action Status Report No. 27 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (filed Sept. 27, 2021). Although limited, Spire STL was recently able to complete land leveling and recontouring remediation for a specific portion of one landowner's property. Corrective Action Status Report No. 26 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.*, at tbl.1 (filed Sept. 20, 2021).

IV. Conclusion

For the reasons described above, Spire STL requests that the Commission extend the temporary certificate granted on September 14, 2021 until the Commission issues a final order on remand from the D.C. Circuit.

Respectfully submitted,

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Dated: October 5, 2021

ATTACHMENT A

Motion of Intervenor-Respondents Spire STL Pipeline LLC and Spire Missouri Inc.
for Stay of the Mandate, at Ex. 2, Declaration of Scott Smith, Environmental Defense
Fund v. FERC, Nos. 20-1016, *et al.* (D.C. Cir. Sept. 13, 2021)

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

Environmental Defense Fund, et al.)	
)	
Petitioners,)	
)	
v.)	Nos. 20-1016 and 20-1017
)	(consolidated)
Federal Energy Regulatory)	
Commission,)	
)	
Respondent.)	

DECLARATION OF SCOTT SMITH

1. My name is Scott Smith, and I am President of Spire STL Pipeline LLC (“Spire STL”). Spire STL is a natural-gas company, as defined by the Natural Gas Act, 15 U.S.C. § 717a(6), which operates a 65-mile-long interstate natural gas pipeline system (“STL Pipeline”) that extends from an interconnection with Rockies Express Pipeline LLC (“REX”) in Scott County, Illinois, to interconnections with MoGas Pipeline, LLC (“MoGas”) in St. Charles County, Missouri, and Spire Missouri Inc. (“Spire Missouri”) and Enable Mississippi River Transmission, LLC (“MRT”) in St. Louis County, Missouri. My business address is 3773 Richmond Ave, Suite 300, Houston, Texas 77046. I have over thirty years of energy industry experience that includes asset operations, business development, marketing and trading, market analysis, energy asset valuation and optimization, business strategy development, and gas processing operations, at Spire STL and

other companies throughout the United States. I earned a B.S. in Chemical Engineering from the University of Texas at Austin and an M.B.A. from Southern Methodist University. I oversee the construction and operation of the STL Pipeline and I am very familiar with Spire STL's system and its operations.

2. Spire STL is regulated by the Federal Energy Regulatory Commission ("FERC"), which provided Spire STL with authority to construct, operate, and maintain the STL Pipeline, pursuant to a certificate of public convenience and necessity. The FERC certificate includes the authority for Spire STL to access right-of-way along the pipeline route as needed to construct, operate, and maintain the STL Pipeline.

3. If the Court issues a mandate that vacates the FERC certificate, Spire STL will have no authority to operate and maintain the STL Pipeline. Spire STL is seeking a temporary certificate from FERC, which would allow Spire STL to continue operating the STL Pipeline and to maintain the right-of-way, including for safety and integrity purposes, in the event its current FERC certificate is vacated. Spire STL's application for a temporary certificate is currently pending before FERC in Docket No. CP17-40-007.

Purpose of Declaration and Summary of Conclusions

4. The purpose of this Declaration is to inform the U.S. Court of Appeals for the District of Columbia Circuit of the potential disruption and safety impacts

in the event the STL Pipeline were to cease operations even temporarily due to a loss of certificate authority, and the steps required to restart operations and maintenance if Spire STL reacquires FERC authorization to operate the STL Pipeline.

5. I am aware of no precedent for shutting down an operational natural gas pipeline due to a vacated certificate where there remains a possibility that FERC may issue either a temporary or permanent certificate soon thereafter. It therefore is not clear exactly what steps would need to occur upon issuance of the D.C. Circuit's mandate. Neither FERC's regulations nor those of the Pipeline and Hazardous Materials Safety Administration ("PHMSA") contemplate shutting down a pipeline that may be deemed necessary in the public interest in the near future. As a result, Spire STL may need to work with FERC and PHMSA to respond to the issuance of the D.C. Circuit's mandate in a way that balances concerns regarding safety, impacts to the environment, and impacts to ratepayers.

6. That said, if the D.C. Circuit does not stay its mandate and FERC has not issued a temporary or permanent certificate before the mandate issues, Spire STL would likely have to take the following steps to ensure the safety of the pipeline, which could preclude recommissioning and restarting the pipeline before the 2021-22 winter heating season.

7. If Spire STL loses its certificate authority, and FERC has not yet issued a temporary certificate or limited-term certificate, Spire STL will lose the right to enter the pipeline right-of-way along portions of the pipeline. Without access to these areas of the right-of-way, Spire STL would lose the ability to monitor the integrity of the pipeline, which is necessary to ensure safety and compliance with pipeline safety regulations issued by PHMSA. Of particular importance, Spire STL would be unable to ensure the pipeline is not damaged, vandalized, or sabotaged. Therefore, in order to ensure the safety of people, property, and the environment, Spire STL would need to undertake decommissioning activities including purging the pipeline of natural gas. As I describe in more detail below, ceasing operations and decommissioning the pipeline would take an estimated 6-12 weeks to plan and execute.

8. If FERC issues a temporary certificate or reissues a certificate of public convenience and necessity authorizing operation of the STL Pipeline after the pipeline has been decommissioned, it would take Spire STL an estimated 10-12 weeks to recommission and restart operation of the pipeline. If Spire STL is required to partially or fully decommission and then recommission the STL Pipeline, the STL Pipeline may not be operational during all or parts of the 2021-2022 winter heating season that begins November 1, 2021.

9. Therefore, it is essential that Spire STL be permitted to maintain service on the STL Pipeline while FERC considers Spire STL's request for a temporary emergency certificate and the Court's order on remand.

Spire STL Will Be Forced to Halt Safety and Restoration Activities

10. If Spire STL loses its certificate authority, Spire STL would lose the right to enter certain portions of the right-of-way along the pipeline route. Spire STL would, therefore, lose the ability to perform certain tasks on the pipeline that are necessary to ensure safety and compliance with the pipeline safety regulations issued by PHMSA.

11. Specifically, Spire STL would lose the ability to perform leakage surveys, test its cathodic protection test stations, perform line location services in response to planned excavation activities, and monitor the pipeline for potential vandalism or sabotage. *See* 49 C.F.R. §§ 192.706, 192.465, 192.614.

Furthermore, Spire STL would not be able to complete any repair work, if needed, on the pipeline at a location where Spire STL would not be able to enter the right-of-way.

12. In addition, Spire STL is in the process of restoring land following pipeline construction. Without certificate authority, landowners may seek to prevent Spire STL from performing that work, which would cause a greater impact to the environment.

13. As a result, if Spire STL loses its certificate authority, in order to ensure the safety of people, property, and the environment, Spire STL would need to decommission and purge the pipeline of natural gas, as described below.

Steps Required to Cease Operations and Shut Down the STL Pipeline

14. If the Court issues its mandate before FERC issues a temporary certificate or acts on remand and reissues a certificate of public convenience and necessity for the STL Pipeline, Spire STL would be forced to take steps to shut down the STL Pipeline and ensure the safety of the right-of-way.¹ If that happens, Spire STL may be required to take the following actions:

15. If Spire STL does not have a certificate, it cannot transport natural gas. Spire STL would need to develop and execute a depressurization and flare procedure to remove gas from the pipeline. This will ensure that any vandalism or sabotage done to the pipeline while Spire STL lacks access to monitor the right-of-

¹ While it is my understanding that PHMSA's pipeline safety regulations do not specify the steps a pipeline must take upon losing certificate authority, they do require operators to prepare and follow customized procedures to provide safety during operations and maintenance of the pipeline. 49 C.F.R. § 192.605(b). The unique circumstance of losing certificate authority would require Spire STL to develop and follow specific procedures for ceasing operations, purging the pipeline of hazardous fluids, and shutting down the pipeline in order to ensure the continued safety of people, property, and the environment. The steps outlined in this section summarize the procedures and activities that would likely be needed.

way does not result in an inadvertent release of natural gas. Flaring off the gas would require contracting with a third-party service provider, and further consultation with state and local permitting agencies concerning air emissions.

16. Spire STL would need to physically isolate the pipeline from any sources of natural gas. This involves cutting or otherwise removing large diameter piping at each of the interconnects with REX, MoGas, MRT, and two with Spire Missouri (the primary gas utility serving eastern Missouri). Isolating the pipeline would require contracting with third-party mechanical contractors and procurement of isolation materials such as blind flanges and weld caps.

17. Spire STL would also be required to develop and execute a plan to fill the pipeline with nitrogen. Filling the pipeline with nitrogen creates an inert environment in the pipeline and prevents the development of internal corrosion. Executing the nitrogen task would involve contracting with a third-party engineer, mechanical contractor, and nitrogen supplier.

18. Spire STL may also be required to obtain federal, state, and local permits for some of these actions. While some of these steps may be accomplished concurrently, I estimate that the entire process of ceasing operations and shutting down the pipeline would take 6-12 weeks.

Steps Required to Recommission and Restart Operations of the STL Pipeline

19. In the event the STL Pipeline is decommissioned, and then FERC subsequently issues a temporary certificate or reissues a permanent certificate on remand for the STL Pipeline, Spire STL would need to undertake the following steps to recommission the pipeline and restart transportation service. Some of these steps may require federal, state, or local permits.

20. Spire STL would likely need to reverify the integrity of the pipeline, prior to restarting operations to ensure no damage or vandalism occurred after Spire STL lost its right to enter the permanent right-of-way and physically inspect the pipeline facilities. Specifically, Spire STL may need to design and implement a hydrostatic pressure test of the entire 65 miles of pipeline.² Hydrostatically testing the pipeline will ensure that the pipeline is fit to operate at its certificated operating pressures. Hydrostatically testing the pipeline would involve contracting with third-party mechanical and testing contractors, procuring large volumes of water and land to store the water, and acquiring state-mandated hydrostatic discharge permits.

² Simply put, a hydrostatic test is the process of filling a pipeline with water and pressurizing the medium to test the system's integrity. Depending on the design, a hydrostatic test of the STL Pipeline may require as much as 7.6 million gallons of water.

21. Spire STL would then design and execute a geometry tool or similar inline inspection tool run to ensure the pipeline was not dented or otherwise damaged while Spire STL did not have access to certain parts of the right-of-way. Performing an inline inspection would involve contracting with a third-party inline inspection tool vendor and mechanical contractor.

22. Spire STL would also need to remove the physical isolation measures previously installed at the metering and regulating stations to restore connectivity at the interconnection points. Restoring connectivity at the interconnects would involve procuring and testing materials and contracting with a third-party mechanical contractor. Spire STL would then refill and pack the pipeline with natural gas in order to be ready for receipt of customer gas for transportation in interstate commerce.

23. Spire STL would need to recommission the five STL Pipeline metering and regulating stations, which would include purging air and nitrogen out of all equipment, performing functional acceptance tests of all equipment, and performing point-to-point verification of all equipment communications with the STL Pipeline gas control room.

24. Spire STL may also be required to obtain federal, state, and local permits for some of these actions. While some of these steps may be accomplished concurrently, the whole process of recommissioning and restarting service on the

pipeline would take an estimated 10-12 weeks, assuming Spire STL is able to quickly negotiate with landowners for use of temporary, additional workspace for staging areas and to situate equipment used for hydrostatic testing processes. This estimate can vary greatly and is subject to weather delays, material and contractor availability, and permitting authorities.

Summary

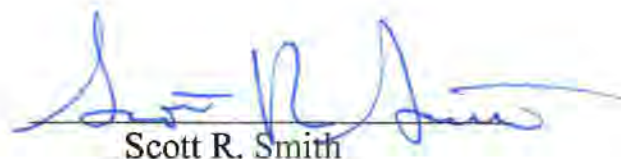
25. As explained above, if there is a lapse in certificate authority for the STL Pipeline, Spire STL will lose the right to enter the pipeline right-of-way along portions of the pipeline. Without access to these areas of the right-of-way, Spire STL would lose the ability to monitor the integrity of the pipeline, which is necessary to ensure safety and compliance with PHMSA's pipeline safety regulations. Spire STL would also be ill-equipped to prevent damage, vandalization, or sabotage to the pipeline while it is denied access to the permanent right-of-way during any lapse in authorization. Therefore, to ensure the safety of people, property, and the environment, Spire STL would need to undertake decommissioning activities including the purging of natural gas from the pipeline.

26. As detailed above, if a lapse in authorization occurs, then Spire STL would likely need to undertake decommissioning activities for the pipeline facilities, which would take an estimated 6-12 weeks. If FERC issues a temporary certificate or reissues a certificate of public convenience and necessity authorizing

operation of the STL Pipeline after the pipeline has been decommissioned, it could take Spire STL an estimated 10-12 weeks to recommission and restart operations of the pipeline. If Spire STL is required to partially or fully decommission and then recommission the STL Pipeline, the STL Pipeline may not be operational during all or parts of the 2021-2022 winter heating season that begins November 1, 2021 even if, after the conclusion of the pending temporary certificate proceeding at the FERC, the FERC determines that STL Pipeline is necessary to avert an emergency of gas service projected outages this coming winter in the Greater St. Louis region.

27. For all of the foregoing reasons, it is critically important that STL Pipeline continue its current operations for the upcoming 2021-22 winter heating season.

28. I declare under penalty of perjury that the foregoing is true and correct. Executed on September 13, 2021.



Scott R. Smith

ATTACHMENT B

Requested Delays by Landowners' Counsel
In Ongoing Eminent Domain Proceeding

Requested Delays by Landowners' Counsel in Ongoing Condemnation Proceedings

Court	Date	Delay Filings Made By Landowners' Counsel
U.S. District Court for the Eastern District of Missouri	July 16, 2019	Landowners' Counsel Motion to Continue Amendment of Pleadings and Expert Report Submission Deadlines
	February 2, 2019	Landowners' Counsel Request for Extension of Time to Respond to Discovery Requests
	March 11, 2020	Landowners' Counsel Motion to Extend Deadline to Exchange Expert Witness Reports
	July 13, 2020	Landowners' Counsel Motion for Immediate Stay of Scheduling Order for All Landowners with Hearings After 9/14/2020
	April 28, 2021	Landowners' Counsel Motion to Continue Hearing on Pre-Trial Matters
	June 22, 2021	Landowners' Counsel Motion to Continue Commissioners Hearing
U.S. District Court for the Central District of Illinois	January 25, 2021	Landowners' Counsel files Motion for Extension of Time to Discovery Schedule
	February 12, 2021	Landowners' Counsel files Motion to Reconsider Request to Extend Discovery Schedule (for all but three applicable landowners)
	September 23, 2021	Landowners' Counsel files Motion to Stay Proceedings or 45-Day Extension to Respond to Motions in Limine and Motions for Summary Judgement
U.S. District Court for the Southern District of Illinois	May 6, 2019	Landowners' Counsel files Motion to Continue Hearing
	October 30, 2020	Landowners' Counsel files Motion for Extension of Time to Discovery Schedule
	August 2, 2021	Court Stays Proceedings Prior to Discovery Closing on August 8, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in Docket No. CP17-40-007.

Dated at Washington, DC, this 5th day of October 2021.

/s/ Claire M. Brennan

Claire M. Brennan

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