



that period.”<sup>5</sup> Likewise, the Public Service Commission of Missouri (“MoPSC”) requested the Commission “grant the application for a temporary certificate to [Spire STL] without imposing conditions on the temporary certificate that would encroach on the MoPSC’s authority or impose any increased costs or risk of curtailment upon the retail natural gas customers of Spire Missouri Inc.”<sup>6</sup> Thus, even those who previously opposed the initial certificate support the Commission’s action granting the Temporary Certificate and recognize that the Temporary Certificate should extend through at least the winter heating season.<sup>7</sup>

Spire STL appreciates the Commission’s action in issuing the Temporary Certificate, however, there are ambiguities in the Commission’s order that require clarification or rehearing. The Temporary Certificate grants a temporary emergency certificate to Spire STL for 90 days “issued under the previously approved terms, conditions, authorizations, and tariff,” but “does not permit Spire to engage in any construction or to provide any new service.”<sup>8</sup> The Commission also stated that it was “issuing a temporary certificate to operate the Spire STL Pipeline to assure adequate natural gas supplies to Spire Missouri and its customers.”<sup>9</sup> Depending on the Commission’s meaning in prohibiting Spire STL from “provid[ing] any new service,” these statements may be internally inconsistent.

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<sup>5</sup> Reply Comments of the Environmental Defense Fund, Docket No. CP17-40-007, at 1 (Oct. 5, 2021).

<sup>6</sup> Reply Comments of the Public Service Commission of the State of Missouri, Docket No. CP17-40-007, at 1 (Oct. 5, 2021).

<sup>7</sup> Given the lack of opposition to the Temporary Certificate, Spire STL also requests that the Commission act as expeditiously as possible to extend the Temporary Certificate until, on remand from the U.S. Court of Appeals from the District of Columbia Circuit (“D.C. Circuit”), the Commission issues Spire STL a permanent certificate.

<sup>8</sup> Temporary Certificate at P 8.

<sup>9</sup> *Id.*

Spire STL, therefore, requests clarification or, in the alternative, rehearing, that it may enter into new contracts to provide firm and interruptible (including park and loan) transportation services for the currently unsubscribed capacity on its system, consistent with its currently effective FERC NGA Gas Tariff (“Tariff”) and the Commission’s bedrock open-access policies. Specifically, Spire STL seeks clarification that (1) Spire STL may continue to provide open-access transmission service under its Tariff and existing Rate Schedules; and (2) Spire STL may enter into new contracts for the currently available unsubscribed capacity. To the extent the answers to either of the previous questions is “no,” then Spire STL is caught in a Catch-22. Spire STL does not wish to violate a Commission directive, but Spire STL’s Tariff requires it to provide service on an open-access basis.

If the Commission denies clarification, Spire STL seeks rehearing because the Temporary Certificate would be internally inconsistent by prohibiting new transportation contracts, but also requiring Spire STL to comply with its Tariff and the Commission’s open-access requirements. Spire STL, therefore, respectfully submits this limited request for clarification or, in the alternative, rehearing of the Commission’s Certificate Order.

These are not merely hypothetical questions. Spire STL requests expedited action on this clarification request to determine whether it can serve an existing shipper and a potential new unaffiliated shipper. Spire STL has been in discussions with two marketing companies that serve end-users behind the Spire Missouri Inc. (“Spire Missouri”) city-gate, consistent with the policies of the MoPSC that allow certain customers to obtain the commodity from suppliers other than Spire Missouri. Both marketers are interested in entering into new contracts with Spire STL to serve their respective customers.

Furthermore, Spire Marketing Inc. (“Spire Marketing”) currently holds 10,000 Dth per day of firm transportation capacity under Rate Schedule FTS to serve industrial and commercial customers behind the Spire Missouri city-gate for the winter.<sup>10</sup> Spire Marketing customers are also customers of Spire Missouri, but they purchase the commodity from a marketer. To the extent the Temporary Certificate was issued solely “to assure adequate natural gas supplies to Spire Missouri and its customers,” it is unclear whether Spire Marketing may continue to receive service from the STL Pipeline.<sup>11</sup>

In fairness to the interested marketers and their customers, Spire STL requests that the Commission grant these clarifications on an expedited basis and confirm that Spire STL may continue to provide transportation service to Spire Marketing under its existing firm transportation service agreement and may provide transportation service under new contracts in accordance with its currently effective Tariff.

**I.**  
**STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS**

Pursuant to Section 713(c) of the Commission’s Rules of Practice and Procedure,<sup>12</sup> Spire STL provides a statement of issues and specification of alleged errors in the Temporary Certificate order:

1. Spire STL seeks clarification or, in the alternative, rehearing that it may continue to provide open-access transportation on its system and enter into contracts for service for currently available unsubscribed capacity. The Temporary Certificate

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<sup>10</sup> See Spire STL Pipeline LLC, Negotiated Rate Filing, Docket No. RP21-796-000 (Apr. 30, 2021), *accepted*, Letter Order, Docket No. RP21-796-000 (May 14, 2021).

<sup>11</sup> Spire Marketing has informed Spire STL that Spire Marketing’s customers include Curium, which is designated as Essential Critical Infrastructure by the Department of Homeland Security, and other end users serving national defense needs, such as Sullivan Precision Metal Finishing. See Comments of Curium in Support of Emergency Application, Docket No. CP17-40-000 (Oct. 13, 2021); Comments of Sullivan Precision Metal Finishing in Support of Emergency Application, Docket No. CP17-40-000 (Oct. 13, 2021).

<sup>12</sup> 18 C.F.R. § 385.713(c).

specifies that it is “issued under the previously approved terms, conditions, authorizations and tariff.”<sup>13</sup> However, the very next sentence creates a significant ambiguity and perhaps a conflict with that approval, stating “[t]his authorization does not permit Spire to . . . provide any new service.”<sup>14</sup> This ambiguity is repeated in Ordering Paragraph A, which prohibits the commencement of any new service. It is unclear what the Commission means by “provid[ing] new service.” To the extent the Commission denies the requested clarification, the Commission erred in the Temporary Certificate by prohibiting Spire STL, consistent with its FERC-approved Tariff, from granting the requests for transportation service for the existing unsubscribed capacity on its system. Such a prohibition conflicts with Commission regulations and policies and would be a departure from settled Commission precedent without reasoned analysis and would be arbitrary and capricious. *See* 18 C.F.R. § 284.7(b) (requiring pipelines to provide transportation service without undue discrimination); *Crossroads Pipeline Co.*, 71 FERC ¶ 61,076, at p. 61,264 (“an open access pipeline . . . must provide service to any shipper . . . if it receives a request for service and capacity is available”), *order on reh’g*, 73 FERC ¶ 61,138 (1995). *See generally Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 1991–1996 FERC Stats. & Regs., Regs. Preambles ¶ 30,939, at pp. 30,393 (requiring pipelines to offer service on an open-access basis “to ensure that all shippers have meaningful access to the pipeline

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<sup>13</sup> Temporary Certificate at P 8.

<sup>14</sup> *Id.*

transportation grid”), *order on reh’g*, Order No. 636-A, 1991–1996 FERC Stats. & Regs., Regs. Preambles ¶ 30,950, *order on reh’g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *aff’d in part and remanded in part sub nom. United Distrib. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *cert. denied*, 520 U.S. 1224, *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *reh’g denied*, Order No. 636-D, 83 FERC ¶ 61,210 (1998); *United Mun. Distribs. Grp. v. FERC*, 732 F.2d 202, 210 (D.C. Cir. 1984) (“an agency must conform to its prior practice and decisions or explain the reason for its departure from such precedent”); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”) (quotations omitted).

2. Spire STL seeks clarification or, in the alternative, rehearing, that it is not prohibited from continuing to provide service under existing rate schedules, pursuant to authorization granted in the Temporary Certificate. The Commission issued the Temporary Certificate to “assure adequate natural gas supplies to Spire Missouri and its customers.”<sup>15</sup> Spire STL seeks clarification that this statement does not prohibit Spire STL from continuing to provide open-access service under its existing Rate Schedules to shippers other than Spire Missouri, including gas marketers that serve Spire Missouri customers. To the extent the Commission denies the requested clarification, the Commission erred by prohibiting Spire STL from continuing to provide service to Spire Marketing as required by an existing

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<sup>15</sup> *Id.*

service agreement, and as required by Spire STL's Tariff and Commission policy. *See United Mun. Distributions Grp.*, 732 F.2d at 210; *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43.

3. To the extent the answer to either of the previous questions is "no," then the Temporary Certificate is internally inconsistent, as it would require Spire STL to comply with its Tariff and the Commission's open-access requirements, but prohibit Spire STL from serving an existing customer, Spire Marketing, or entering into new contracts for existing unsubscribed capacity. In so holding, the Commission would be departing from fundamental Commission policy and its actions would be arbitrary and capricious. *See Crossroads Pipeline*, 71 FERC at p. 61,264; *United Mun. Distributions Grp.*, 732 F.2d at 210; *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43. If the Commission determines the Temporary Certificate prohibits Spire STL from complying with the existing Tariff and providing open-access service, the order conflicts with the filed-rate doctrine and rehearing is required to allow Spire STL to follow its Commission-approved Tariff. *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (the Commission has "no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations"); *Nicole Gas Prod., Ltd.*, 105 FERC ¶ 61,371, at P 7 (2003) ("Under the filed rate doctrine, the tariff on file with the Commission . . . must be complied with by the pipeline and enforced by the Commission, until it is changed pursuant to Sections 4 or 5 of the NGA."), *vacated on other grounds*, *Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459 (D.C. Cir. 2005). *See*

also *AT&T v. Cent. Off. Tel., Inc.*, 524 U.S. 214 (1998); *Ark. La. Gas Co. v. Hall*, 453 U.S. 571 (1981).

## **II. BACKGROUND**

On August 3, 2018, the Commission issued a certificate of public convenience and necessity under Section 7(c) of the NGA to Spire STL to construct and operate the STL Pipeline, a 65-mile-long interstate natural gas pipeline system, extending from an interconnection with Rockies Express Pipeline LLC (“REX”) in Scott County, Illinois, to interconnections with both Spire Missouri and Enable Mississippi River Transmission, LLC (“MRT”) in St. Louis County, Missouri.<sup>16</sup> Spire STL and MoGas Pipeline, LLC constructed interconnection facilities between their respective pipeline systems to further integrate the pipeline systems in the region.<sup>17</sup> The STL Pipeline is designed to provide up to 400,000 Dth per day of firm transportation service and access to diverse upstream supply sources to better serve the natural gas and energy needs of the Greater St. Louis region.<sup>18</sup> The Project was originally supported by a binding precedent agreement for a 20-year term with Spire Missouri for 350,000 Dth per day of firm transportation service.<sup>19</sup> Subsequently, Spire Marketing subscribed to 10,000 Dth per day of firm capacity on the STL Pipeline.<sup>20</sup>

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<sup>16</sup> *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018).

<sup>17</sup> *See Dominion Transmission, Inc.*, 99 FERC ¶ 61367 at P 83 (2002) (“Commission policy is to promote an integrated pipeline system”). *See also Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement)*, 88 FERC ¶ 61,227, at p. 61,748 (1999); *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000) (“providing new interconnects that improve the interstate grid” is a “public benefit”).

<sup>18</sup> *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 at PP 107, 123.

<sup>19</sup> *Id.* at P 73.

<sup>20</sup> *See Spire STL Pipeline LLC*, Negotiated Rate Filing, Docket No. RP21-796-000 (Apr. 30, 2021), *accepted*, Letter Order, Docket No. RP21-796-000 (May 14, 2021).



Following the D.C. Circuit's decision in *Environmental Defense Fund v. FERC*<sup>21</sup> vacating and remanding Spire STL's certificate, Spire STL filed the Emergency Application to prevent an emergency and ensure that the STL Pipeline continues operating while the Commission adjudicates an order on remand. The Commission issued a Notice of Application for the Emergency Application on August 6, 2021, setting a briefing schedule with initial comments due September 7, 2021, and reply comments due by October 5, 2021.<sup>22</sup> The Commission also issued data requests to assist the Commission in its analysis of the Emergency Application.<sup>23</sup> Detailed responses to the data request were submitted on September 7, 2021.<sup>24</sup> On the same day, the D.C. Circuit denied Spire STL's petitions for rehearing of the court's opinion, setting off the possibility that the court's mandate could issue shortly thereafter. The Commission acted, *sua sponte*, issuing the Temporary Certificate on September 14, 2021, effective for 90 days, absent further action from the Commission.<sup>25</sup>

In issuing the Temporary Certificate, the Commission found that once the D.C. Circuit's mandate vacating the certificate issues, and until the Commission can complete its review of the Emergency Application, "an emergency exists under NGA section 7(c)(1)(B) insofar as the vacatur presents the potential for 'a sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of interrupted service for protection of life or health or for maintenance of physical property.'"<sup>26</sup> The Temporary

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<sup>21</sup> 2 F.4th 953 (D.C. Cir. 2021).

<sup>22</sup> Notice of Application and Establishing Intervention Deadline, Docket No. CP17-40-007 (Aug. 6, 2021).

<sup>23</sup> Data Request to Spire STL Pipeline LLC, Docket No. CP17-40-007 (Aug. 6, 2021).

<sup>24</sup> Spire STL Pipeline LLC Response to August 6, 2021 Data Request, Docket No. CP17-40-007 (Sept. 7, 2021).

<sup>25</sup> Subsequently the court denied Spire STL's request to stay issuance of the mandate and issued the mandate on October 8, 2021. A request to the Chief Justice of the United States for a stay is pending.

<sup>26</sup> Temporary Certificate at P 8 (quoting 15 U.S.C. § 717f(c)(1)(B)).

Certificate was required “to assure adequate natural gas supplies to Spire Missouri and its customers while the Commission considers [Spire STL’s Emergency Application] and other information in the record.”<sup>27</sup> The Commission issued the Temporary Certificate “under the previously approved terms, conditions, authorizations, and tariff,” but stated the authorization did not permit Spire STL “to engage in any construction or to provide any new service.”<sup>28</sup> The Commission explained that the “temporary certificate will allow for the maintenance of adequate service via the Spire STL Pipeline for Spire Missouri during a defined period of time.”<sup>29</sup> The Commission’s ordering paragraphs reiterate: “The temporary certificate does not authorize the . . . commencement of any new service.”<sup>30</sup> The language in the Temporary Certificate is ambiguous and potentially conflicting. Therefore, this clarification or, in the alternative, rehearing is required.

**III.**  
**REQUEST FOR CLARIFICATION**  
**OR, IN THE ALTERNATIVE, REHEARING**

**A. The Commission Should Clarify That Spire STL May Enter into New Contracts for Service for Unsubscribed Capacity, or in the Alternative, Grant Rehearing.**

Clarification is required so that Spire STL can ensure that it is complying with the requirements of the authorization granted in the Temporary Certificate. The Temporary Certificate authorizes Spire STL to continue operating “under the previously approved terms, conditions, authorizations, and tariff.”<sup>31</sup> In the very next sentence, however, the order creates significant ambiguity and perhaps a conflict with the approval, stating that

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<sup>27</sup> Temporary Certificate at P 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at P 9.

<sup>30</sup> *Id.* at Ordering Paragraph (A).

<sup>31</sup> *Id.* at P 8.

“[t]his authorization does not permit Spire to . . . provide any new service.”<sup>32</sup> This ambiguity is accentuated by Ordering Paragraph (A), which states the certificate “does not authorize the . . . commencement of any new service.”<sup>33</sup> Depending on the Commission’s meaning of “new service” in this context, it is possible the limiting language could be read to prevent Spire STL from entering into a new contract for unsubscribed capacity under its existing Rate Schedules in the current Tariff. If that is the case, the order is internally inconsistent and requires clarification.

It is unclear what the Commission means by “commencement of new service.” If the limitation on “provid[ing] any new service” or “commencement of new service” is intended to preclude Spire STL from executing new contracts for existing and unsubscribed available capacity, such as firm or interruptible transportation, it conflicts with Spire STL’s Tariff and the Commission’s open-access policies. Spire STL does not believe the intent of the Temporary Certificate was to preclude new contracts for existing services, but clarification, or rehearing in the alternative, on this point is required.

The STL Pipeline is an open-access pipeline and is required by Commission regulations and policies to offer service on a not unduly discriminatory basis.<sup>34</sup> STL Pipeline’s Tariff specifies that service will be provided to any party that submits a valid service request for available capacity, subject to execution of a contract.<sup>35</sup> Authorizing Spire STL to continue operating “under the previously approved terms, conditions, authorizations, and tariff” means that Spire STL is required to comply with its Tariff,

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<sup>32</sup> Temporary Certificate at P 8.

<sup>33</sup> *Id.* at Ordering Paragraph (A).

<sup>34</sup> 18 C.F.R. § 284.7(b) (requiring pipelines to provide transportation service without undue discrimination); *See generally* Order No. 636, *et al.*

<sup>35</sup> *See, e.g.*, Spire STL Tariff, Rate Schedule FTS, § 5.1.

including provisions requiring Spire STL to provide service to qualifying customers that make a valid request.

Commission regulations define “new service” differently from a new “contract.” In order to “initiate a new service,” the Commission requires a pipeline company to file a new rate schedule.<sup>36</sup> In contrast, the Commission defines “contract” separately as “any agreement which in any manner affects or relates to rates, charges, classifications, practices, rules, regulations, or services for any transportation or sale of natural gas subject to the jurisdiction of the Commission. This term includes an executed service agreement.”<sup>37</sup>

Consistent with these meanings, Spire STL understands the Commission’s prohibition in the Temporary Certificate against providing or commencing “new service” to preclude the filing of any new rate schedule to implement a new service, like storage or no-notice service, which is currently not offered by Spire STL on the STL Pipeline. This reading of the Temporary Certificate properly harmonizes the meaning of “new service” and the requirement that Spire STL adhere to the “previously approved terms, conditions, authorizations, and tariff.”

However, if the Commission interprets the Temporary Certificate differently to preclude the execution of new contracts for existing services, that prohibition would conflict with the Commission’s open access policies<sup>38</sup> and Spire STL’s Tariff, which the

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<sup>36</sup> 18 C.F.R. § 154.202 (requiring an NGA Section 4 filing to “initiate a new service”).

<sup>37</sup> *Id.* § 154.2(a).

<sup>38</sup> 18 C.F.R. § 284.7(b) (requiring pipelines to provide transportation service without undue discrimination); *Crossroads Pipeline*, 71 FERC at p. 61,264 (“an open access pipeline . . . must provide service to any shipper . . . if it receives a request for service and capacity is available”). *See generally* Order No. 636 at p. 30,392 (requiring pipelines to offer service on an open-access basis “to ensure that all shippers have meaningful access to the pipeline transportation grid”).

Commission expressly incorporates into the Temporary Certificate.<sup>39</sup> Therefore, Spire STL requests clarification that it may enter into new contracts for existing and available unsubscribed capacity under its Tariff and the services currently offered thereunder. This includes requests for service under Rate Schedules FTS, ITS, and PALS.

This clarification is not merely an academic exercise. Spire STL is in discussions with gas marketers who serve customers behind the Spire Missouri city-gate. From there, the gas is transported from Spire STL to the end-user by Spire Missouri. Thus, the marketers' customers are also customers of Spire Missouri who should be assured adequate supplies of natural gas consistent with the purpose of the Temporary Certificate. It should not matter that the commodity is sold by a marketer instead of Spire Missouri. End-users are entitled to the reliable service by the gas marketer of their choice. If Spire STL cannot enter into a new contract, the end-users may be denied their supplier of choice—and perhaps even reliable natural gas service this upcoming winter heating season.

A limitation to providing service under only existing contracts can create additional operational complexities. For example, Spire STL is authorized to provide overrun service (gas in excess of contract quantities), under Section 6.22 of the General Terms and Conditions of its Tariff. If a shipper has not previously required overrun service, would the provision of overrun service to that shipper run afoul of the prohibition on new services? Similar questions can arise if a customer needs to execute a new park and loan agreement under Rate Schedule PALS. PALS deals can arise on short notice in reaction to market conditions. Are shippers prohibited from entering into such

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<sup>39</sup> Temporary Certificate at P 8, Ordering Paragraph (A).

transactions under Spire STL's authorized services? To be clear, Spire STL understands that if this clarification is granted it will only be allowed to contract for service under its existing Rate Schedules FTS, ITS, and PALS, as stated in its currently effective Tariff.

However, if the clarification is denied, Spire STL requests rehearing of the prohibition against providing or commencement of new services under its existing Commission-approved Tariff. Denying rehearing on this issue would be inconsistent with Commission precedent and policies without reasoned analysis or explanation for such departure.<sup>40</sup>

**B. The Commission Should Clarify or, in the Alternative, Grant Rehearing That Spire STL May Continue to Provide Service to Spire Marketing, an Existing Customer.**

To the extent the language in the order that the Temporary Certificate is required "to assure adequate natural gas supplies to Spire Missouri and its customers" is meant to limit Spire STL's ability to continue serving its other existing customer, Spire Marketing, the order is internally inconsistent and requires clarification.

The Commission found that due to the D.C. Circuit decision to vacate the 2018 certificate, an emergency exists under the NGA.<sup>41</sup> The Commission, therefore, issued Spire STL the Temporary Certificate to "assure adequate natural gas supplies to Spire Missouri and its customers" while the Commission continues to consider the Emergency

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<sup>40</sup> *United Mun. Distributions Grp.*, 732 F.2d at 210 ("an agency must conform to its prior practice and decisions or explain the reason for its departure from such precedent"); *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 ("the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made") (quotations omitted).

<sup>41</sup> Temporary Certificate at P 8 (explaining that the emergency exists "insofar as the vacatur presents the potential for 'a sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of interrupted service for protection of life or health or for maintenance of physical property'") (quoting 18 C.F.R. § 157.202(b)(13)).

Application and “other information.”<sup>42</sup> Ordering Paragraph (A) of the Temporary Certificate is not so limited, however, as it issued a “temporary certificate of public convenience and necessity” to Spire STL “to continue to operate the facilities authorized by the Commission in Docket Nos. CP17-40-000 and CP17-40-001 that are currently in service, under the terms, conditions, and authorizations previously issued, including the approved tariff.”<sup>43</sup>

Spire STL understands the Temporary Certificate and the language in Ordering Paragraph (A) to allow Spire STL to continue to serve both its existing customers, Spire Missouri and Spire Marketing, despite the potentially limiting language that the Temporary Certificate is to “assure adequate natural gas supplies to Spire Missouri and its customers.” Spire STL currently has a contract to provide transportation service to Spire Marketing for 10,000 Dth per day from the REX receipt interconnection to the Laclede delivery point.<sup>44</sup> Spire Marketing contracts for service on Spire STL to supply natural gas to customers behind the Spire Missouri city-gate. Spire Marketing’s gas is delivered to the Spire Missouri city-gate for further transport on Spire Missouri’s system to Spire Marketing customers, which are also Spire Missouri transport customers, on Spire Missouri’s distribution system.<sup>45</sup> Prohibiting Spire Marketing from continuing to

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<sup>42</sup> Temporary Certificate at P 8 (emphasis added).

<sup>43</sup> *Id.* at Ordering Paragraph (A).

<sup>44</sup> See Spire, Inc., Index of Customers (Oct. 1, 2021)

<https://spire.trellisenergy.com/ptms/public/infopost/viewInfoPostingReportTable.do?reportType=16&tspId=1&proxyTspId=1> (last visited Oct. 14, 2021); see also Index of Customers Report of Spire, Inc. for Q4 of 2021 (Oct. 1, 2021) (Accession No. 20211001-5095).

<sup>45</sup> Spire Marketing customers have also supported Spire STL’s Emergency Application. See, e.g., Comments of Phillips 66 on behalf of WRB Refining LP, Docket No. CP17-40-007 (Sept. 7, 2021).

service customers behind the Spire Missouri city-gate could conflict with the policies of the MoPSC allowing end-users to select their gas supplier.<sup>46</sup>

Spire STL requests clarification that the language in the Temporary Certificate to “assure adequate natural gas supplies to Spire Missouri and its customers” does not prohibit Spire STL from also providing transportation to its other existing customer, Spire Marketing. Denying clarification would abrogate Spire STL’s contract with Spire Marketing and strand Spire Marketing’s customers without gas supplies just weeks before the winter heating season. Such a result would be inconsistent with the intent of the Temporary Certificate which was to assure adequate supply of natural gas and forestall what the Commission has determined—and all other parties agree—was an emergency situation. Surely, the Commission did not intend such a result.

**C. The Filed Rate Doctrine Requires That Spire STL Be Allowed to Execute New Contracts.**

The filed-rate doctrine applies to more than just rates—it also governs all of the terms and conditions of service, including those provided in Spire STL’s Tariff.<sup>47</sup> Spire STL still has a FERC-approved tariff that it is required to comply with pursuant to the express terms of the Temporary Certificate, which was “issued under the previously approved terms, conditions, authorizations, and *tariff*.”<sup>48</sup> This includes negotiated rate agreements on file with the Commission and service agreements executed under the

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<sup>46</sup> Prohibiting new contracts for existing services could also conflict with these policies to the extent another marketer needs service.

<sup>47</sup> See, e.g., *AT&T*, 524 U.S. 214.

<sup>48</sup> Temporary Certificate at P 8 (emphasis added). The Commission expressly issued the temporary certificate to Spire STL “to continue to operate the facilities authorized by the Commission in Docket Nos. CP17-40-000 and CP17-40-001 that are currently in service, under the terms, conditions, and authorizations previously issued, *including the approved tariff*.” *Id.* at Ordering Paragraph (A) (emphasis added).



Tariff.<sup>49</sup> Because it remains effective, Spire STL’s existing Tariff can only be changed in accord with Section 4 or 5 of the NGA.<sup>50</sup> Spire STL has not proposed any changes under Section 4 and the Commission has not initiated a proceeding, or met its burden, under Section 5 to modify the existing tariff.<sup>51</sup> Therefore, Spire STL must continue to comply with the Tariff—as expressly required by the Temporary Certificate—and offer open-access service.<sup>52</sup> To the extent the Temporary Certificate prohibits compliance with the existing Tariff, it conflicts with the filed-rate doctrine and the order must be clarified to allow Spire STL to follow its Commission-approved Tariff.<sup>53</sup>

If the Commission denies this clarification, Spire STL seeks rehearing of the Temporary Certificate to allow Spire STL to continue to operate under its approved Tariff. Denying rehearing on this issue would violate the filed-rate doctrine and be inconsistent with Commission precedent and policies without reasoned analysis or explanation for such a departure.<sup>54</sup>

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<sup>49</sup> Section 154.1(d) of the Commission’s regulations provides that “any contract that conforms to the form of service agreement that is part of the pipeline’s tariff pursuant to § 154.110 does not have to be filed.” 18 C.F.R. § 154.1(d).

<sup>50</sup> See *N. Nat. Gas Co.*, 118 FERC ¶ 61,072, at P 23 (2007).

<sup>51</sup> See *Gulf S. Pipeline Co.*, 104 FERC ¶ 61,160, at P 10 (2003).

<sup>52</sup> See Spire Tariff, Rate Schedule FTS, § 5.1 (requiring Spire STL to provide service to any party that submits a valid service request for available capacity, subject to execution of a contract).

<sup>53</sup> *Nicole Gas Prod.*, 105 FERC ¶ 61,371 at P 7 (“Under the filed rate doctrine, the tariff on file with the Commission . . . must be complied with by the pipeline and enforced by the Commission, until it is changed pursuant to Sections 4 or 5 of the NGA.”).

<sup>54</sup> *Ark. La. Gas Co. v. Hall*, 453 U.S. 571; *United Mun. Distribs. Grp.*, 732 F.2d at 210; *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

**IV.**  
**CONCLUSION**

Wherefore, Spire STL respectfully requests that Commission act as expeditiously as possible to grant the requests for clarification or, in the alternative, rehearing contained herein.

Respectfully submitted,

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Dated: October 14, 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.

Dated at Washington, DC, this 14th day of October 2021.

*/s/ Claire M. Brennan*

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