

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Spire STL Pipeline LLC)
)
)
Docket No. CP17-40

**RESPONSE OF THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
TO THE APPLICATION OF SPIRE STL PIPELINE LLC
FOR A TEMPORARY EMERGENCY CERTIFICATE,
OR, IN THE ALTERNATIVE, LIMITED-TERM CERTIFICATE**

The Public Service Commission of the State of Missouri (MoPSC) hereby submits these comments in response to the *Application Of Spire STL Pipeline LLC For A Temporary Emergency Certificate, Or, In The Alternative, Limited-Term Certificate (Application)* filed in this docket on July 26, 2021. As discussed below, the MoPSC requests the Commission take expedited action by granting a temporary emergency certificate, or, in the alternative, a limited-term certificate to Spire STL Pipeline LLC (Spire STL) for the STL Pipeline. Such action will allow Spire Missouri Inc. (Spire Missouri) to continue providing safe and adequate natural gas service to its retail customers as required by Missouri law, as the Commission proceeds with the matter of Spire STL’s certificate on remand.

Introduction

The MoPSC is a government agency created under the laws of the State of Missouri, Section 386.040, RSMo (2016), with jurisdiction to regulate rates, charges and

quality of service for the sale of natural gas to consumers in Missouri.¹ The MoPSC is a “State Commission” within the meaning of Section 1.101(k) of the Commission’s general regulations.

Spire Missouri is a “gas corporation” and a “public utility” subject to the jurisdiction of the MoPSC pursuant to Section 386.020(18) and (43), RSMo (2016). Spire Missouri is a subsidiary of Spire Inc. and an affiliate of Spire STL. Spire Missouri provides natural gas service to approximately 650,000 residential, commercial and industrial customers in eastern Missouri.² Spire Missouri relies on natural gas it receives from its affiliate Spire STL through a 20-year firm gas supply agreement in order to serve those customers.³ Additionally, in December 2020, an interconnection between MoGas Pipeline LLC and the STL Pipeline went into service.⁴

Background

In August 2018, the Commission issued a Certificate Order granting Spire STL the authority to build and operate the pipeline.⁵ In October 2018, the Commission issued a tolling order affording the Commission additional time to consider matters raised by parties requesting rehearing of the Certificate Order.⁶ The Commission issued a

¹ Section 386.250, RSMo (2016).

² *Application* pg. 2.

³ *Id.* pg. 7.

⁴ CP17-40, *Motion To Intervene Out-Of-Time Of MoGas Pipeline LLC and Comments In Support* (July 28, 2021).

⁵ CP17-40, *Order Issuing Certificates re Spire STL Pipeline LLC* (Certificate Order) (August 3, 2018).

⁶ CP17-40-002, *Order Granting Rehearings For Further Consideration* (October 1, 2018).

Rehearing Order in November 2019 denying the requests for rehearing on their merits.⁷ During the time between the Certificate Order and the Rehearing Order, Spire STL completed virtually all construction of the pipeline.⁸ After the pipeline was placed in service in November 2019, Spire Missouri allowed some of its gas supply contracts to expire, and Spire Missouri retired its propane facilities that allowed the utility to supplement its gas supply during periods of peak demand.⁹

After the Commission issued its Rehearing Order, the Environmental Defense Fund (EDF) sought judicial review of the Commission's decision to approve the pipeline. On June 22, 2021, the United States Court of Appeals for the District of Columbia Circuit issued an opinion concluding that the Commission erred in its approval by failing to scrutinize Spire STL's evidence of need for the pipeline and failing to consider evidence of self-dealing among the various Spire-related entities.¹⁰ The Court vacated the Commission's orders.¹¹ Spire STL filed its *Application* because, as Spire STL stated, "[u]pon issuance of the mandate from the D.C. Circuit, the STL Pipeline will have to shut down."¹²

⁷ CP17-40-002, *Order On Rehearing* (November 21, 2019).

⁸ CP-40, *Letter Order Granting Spire STL Pipeline LLC's 11/12/2019 Request To Commence Service To Facilities In St. Louis And St. Charles Counties etc. Part Of The Spire STL Pipeline Project Under CP17-40 et al.* (November 14, 2019).

⁹ *Application* Ex. Z-1, Affidavit of Scott Carter, pg. 4.

¹⁰ *Environmental Defense Fund v. F.E.R.C.*, 2021 WL 2546672 (U.S. Ct. App. D.C. 2021).

¹¹ *Id.*

¹² *Application* pg. 2.

Comments

The MoPSC is concerned by claims in the *Application* of potentially widespread loss of natural gas service to Missouri customers if Spire STL takes the STL Pipeline out of service. The MoPSC respectfully requests the Commission take expedited action on Spire STL's *Application* that will allow the public utility affiliate, Spire Missouri, to continue providing safe and adequate natural gas service to their customers in the St. Louis metropolitan area, while the Commission proceeds with the case on remand or until Spire Missouri can implement a contingency plan to serve its customers without the STL Pipeline. Spire Missouri's customers include individuals and businesses that depend on continuous natural gas service for heat, cooking, and commercial activity. Caught in a situation not of their own making, these captive retail customers may have no viable alternative to the natural gas provided by Spire Missouri. As the winter season approaches, the unique circumstances set forth in the *Application* constitute an emergency for Spire Missouri customers that supports the Commission's issuance of a temporary certificate.

To protect essential service to captive customers, Missouri law requires that “[e]very gas corporation... shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.”¹³ A public utility such as Spire Missouri “must serve on reasonable terms all those who desire the

¹³ Section 393.130.1, RSMo (2016).

company's service without unreasonable discrimination."¹⁴ Missouri courts hold the general rule is that once a utility undertakes to supply a utility service, they owe a duty to supply continuous service.¹⁵ As the Commission noted in its Certificate Order, under Missouri law and practice the MoPSC does not pre-approve Spire Missouri's agreements with suppliers such as its affiliate Spire STL.¹⁶ The MoPSC will review the reasonableness and prudence of Spire Missouri's actions with respect to the STL Pipeline in upcoming cases.¹⁷

In an affidavit attached to Spire STL's *Application*, Spire Missouri president Scott Carter explains that Spire Missouri's operations may be compromised if the STL Pipeline is taken out of service.¹⁸ The MoPSC is concerned by the extent of the potential disruptions asserted by Spire Missouri. Spire Missouri states that loss of supply from the STL Pipeline could create an overall deficit of over half the utility's planned supply on a cold day when demand for natural gas in the St. Louis region would hit its peak.¹⁹ If the STL Pipeline is not in service during the upcoming winter heating season, Spire Missouri estimates that between 175,000 and 400,000 of the utility's 650,000 Missouri customers

¹⁴ *State ex rel. Fed. Res. Bank of Kansas City v. Pub. Serv. Comm'n*, 191 S.W.2d 307, 313 (Mo. Ct. App. W.D. 1945).

¹⁵ *National Food Stores, Inc. v. Union Elec. Co.*, 494 S.W.2d 379, 383 (Mo. Ct. App. E.D. 1973).

¹⁶ Certificate Order P 64.

¹⁷ *Id.*

¹⁸ *Application* Ex. Z-1, Affidavit of Scott Carter, pg. 4.

¹⁹ *Id.* at pgs. 5-7. Spire Missouri's planning estimates show the utility would need nearly 1,300,000 Dth of capacity for a planned peak day.

may be without gas service for some period of time in an extreme cold weather scenario.²⁰

The STL Pipeline provides Spire Missouri with 350,000 dekatherms (Dth) per day of pipeline capacity that would be lost if the pipeline ceases operation.²¹ In addition, Spire Missouri states that it relies on the STL Pipeline's high-pressure supply to fill the large Lange underground storage field, which Spire Missouri draws upon during the winter.²² The Lange storage field can deliver up to 357,000 Dth per day.²³ Once the gas stored in Lange would be depleted, Spire Missouri states that it may be unable to operate the field without the high-pressure supply from the STL Pipeline, jeopardizing the availability of the asset to serve its customers at temperatures as high as approximately 38 degrees Fahrenheit.²⁴

Spire Missouri attests that service disruptions could extend beyond mandatory curtailments.²⁵ The company says that loss of service from the STL Pipeline would lead to low pressure on the distribution system during cold periods, which would "cause uncontrolled loss of service to households and other high priority consumers, such as hospitals, nursing homes and schools."²⁶ Spire Missouri estimates that its customers

²⁰ *Id.* at pg. 8.

²¹ *Id.* at pg. 4.

²² *Id.* at 4-5. After the STL Pipeline commenced service, Spire Missouri says it retired and removed three compressors that the company used to inject gas into the Lange storage field prior to the STL Pipeline.

²³ *Id.* at pg. 5.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at pg. 8.

could begin to lose service due to uncontrolled pressure loss at an average daily temperature of approximately 9 degrees Fahrenheit, which is not atypical for St. Louis. The loss of natural gas during cold periods would create the potential for loss of life and severely impact essential services relied on by many people and businesses served by this public utility.²⁷

The Commission should take expedited action on Spire STL's *Application For A Temporary Emergency Certificate*. The Court decided to vacate the Commission's Certificate Order and Rehearing Order, and remand the matter to the Commission for further proceedings.²⁸ As explained in the *Application*, the Court's mandate is scheduled to issue on August 13, 2021. Once the Court issues its mandate, the Certificate Order and Rehearing Order are "officially gone... [t]hey have no legal effect whatever... [t]hey are void"²⁹ and Spire STL will not possess the federal certification required under the Natural Gas Act to construct and operate the pipeline.³⁰ The Commission should act in this situation before the court issues its mandate.

If the STL Pipeline is shut down, Spire Missouri attests that its ability to provide safe and adequate natural gas service to Missouri customers will be impaired going into the winter 2021-22 heating season. This presents an emergency for Spire Missouri's customers that rely on the utility for an essential service. Under these circumstances, expedited action is warranted in order to preserve safe and adequate service to Missouri

²⁷ *Id.* 2.

²⁸ 2021 WL 2546672 at p. 16.

²⁹ *United States v. Sigma Int'l, Inc.*, 300 F.3d 1278, 1280 (11th Cir. 2002).

³⁰ 15 USC § 717f(c)(1)(A) (2020).

customers while the Commission proceeds with the certificate case on remand or while Spire Missouri develops a contingency plan in order to meet its legal obligations to its customers.

Conclusion

The MoPSC respectfully submits this response to the July 26, 2021, *Application Of Spire STL Pipeline LLC For A Temporary Emergency Certificate, Or, In The Alternative, Limited-Term Certificate* in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 29th day of July 2021 in Jefferson City Missouri.

/s/ John D. Borgmeyer

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