



Missouri”) 650,000 eastern Missouri customers of heating fuel this winter. EDF concedes on the first page of its pleading that the Commission should act “to ensure that residents and businesses in St. Louis continue to have reliable access to natural gas.”<sup>5</sup> Spire STL agrees. This is the central focus of the Emergency Application and, indeed, precisely why it was filed.

The need for this temporary certificate was unambiguously underscored by the Missouri Public Service Commission (“MoPSC”) staff’s investigation report on Spire STL’s Emergency Application issued August 16, 2021.<sup>6</sup> The MoPSC Staff Report concludes that “*there is a real risk of natural gas outages during the winter of 2021-2022* absent the availability of Spire STL capacity from both a flow and pressure standpoint.”<sup>7</sup> The MoPSC Staff Report emphasizes the looming emergency and clearly demonstrates the need for the Commission to grant the Emergency Application and issue a temporary certificate.

No one wins if the Commission denies Spire STL a temporary certificate. Spire STL does not win; Spire Missouri does not win; and most importantly, Spire Missouri’s residential, commercial, and industrial customers certainly do not win. If the Emergency Application is denied, Spire Missouri will be forced to spend significant amounts of money replacing the lost capacity through re-constructing its propane storage facilities, re-constructing compression at its Lange storage facility, and constructing a new interconnection with Enable Mississippi River Transmission (“MRT”). Still, as the

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<sup>5</sup> EDF Protest at 1.

<sup>6</sup> 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 (Aug. 16, 2021) (“MoPSC Staff Report”), <https://efis.psc.mo.gov/mpsc/commoncomponents/viewdocument.asp?DocId=936375668>.

<sup>7</sup> *Id.* at 9 (emphasis added).

MoPSC Staff Report concluded,<sup>8</sup> even all these changes may be insufficient for Spire Missouri to serve its customers this winter. And, even if all of this was done before this winter, Spire Missouri would still need to a way to serve the growing markets on the western side of its system, an area that MRT does not reach.<sup>9</sup> The re-built and new facilities would come at significant costs to Spire Missouri's customers and the environment. Spire Missouri would be returned to a situation in which it is largely reliant on MRT and Gulf Coast and Mid-continent gas supplies, rather than diverse and lower-cost sources of gas from Appalachia. This is inconsistent with EDF's stated interests of protecting Spire Missouri's ratepayers and the environment.

Although it agrees that service should be maintained, EDF lobs numerous accusations against Spire STL and Spire Missouri that have nothing to do with the present proceeding. EDF actually invents arguments that Spire STL did not even make to rebut. For example, EDF argues that "economic emergencies" do not support the issuance of a temporary certificate.<sup>10</sup> But that is not Spire STL's argument; a temporary certificate is required to maintain service and prevent a potentially life-threatening emergency. While attempting to alleviate the emergency will be expensive, it is not clear that any amount of money can prevent an emergency this winter.

Although this Answer is limited to the legal arguments raised in the EDF Protest, Spire STL must correct the record on one point. Attempting to minimize the STL Pipeline's importance, EDF claims that Spire Missouri informed the MoPSC that the STL Pipeline was not operational this summer.<sup>11</sup> Spire Missouri did state in a data response,

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<sup>8</sup> *See id.* at 3.

<sup>9</sup> Emergency Application at Ex. Z-1 ¶¶ 8-12 (Aff. of Scott Carter). *See also* MoPSC Staff Report at 3.

<sup>10</sup> EDF Protest at 10-11.

<sup>11</sup> *Id.* at 27-28.

mistakenly, that the STL Pipeline was not operating. However, Spire Missouri corrected the record with a supplemental filing stating that the STL Pipeline is operating and the previous statement was made in error.<sup>12</sup> Spire Missouri submitted the correct statement on July 22, 2021, before the Emergency Application was filed, and two full weeks before EDF filed its Protest. This is not some game of “gotcha.” Natural gas service to 650,000 homes and businesses—and potentially lives—are at stake.

Despite acknowledging that filing the Emergency Application was a “reasonable step” for Spire STL to take, EDF argues that any temporary certificate issued by the Commission should be made subject to unprecedented and unnecessary conditions. EDF ignores, however, that Spire STL’s request for a temporary certificate *is* a limited request. Spire STL requested the temporary certificate be effective only while the Commission considers the Court’s decision on remand, to assure that service to Spire STL’s customers will not be disrupted while the Commission addresses the remand.

EDF also argues the Commission must reject portions of Spire STL’s Emergency Application because they are, according to EDF, irrelevant to the looming emergency. Spire STL’s entire Emergency Application speaks to the pressing emergency. Portions of the Emergency Application that EDF argues the Commission should reject address, for example, changes to Spire Missouri’s distribution system since the Project went into service.<sup>13</sup> But these facts demonstrate the realities of the Spire Missouri system operations as they exist *today*. These facts also show the degree to which the STL Pipeline is used to supply gas to the Greater St. Louis region, which includes Spire Missouri’s distribution

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<sup>12</sup> See Spire Missouri Response to Office of Public Counsel Data Request 2155 - Supplemental, Case No. GR-2021-0108 (July 22, 2021).

<sup>13</sup> Emergency Application at 10-18.

network, both directly and through the unaffiliated MoGas Pipeline LLC (“MoGas”). It is also clear that without the Project, Spire Missouri would encounter difficulties meeting its customers’ needs on peak days. These facts are plainly relevant to Spire STL’s request and whether an emergency exists. EDF provides no reason why the Commission should ignore relevant information.

Spire STL respectfully requests the Commission accept this Answer, reject EDF’s Protest and its Motion to Reject, and approve the Emergency Application in order to forestall an impending emergency.

**I.**  
**MOTION TO ANSWER**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,<sup>14</sup> Spire STL respectfully moves to answer and requests that the Commission accept this Answer to those portions of EDF’s filing that constitute a protest of Spire STL’s Emergency Application.<sup>15</sup> Although the Commission’s procedural rules generally do not allow for answers to protests, the Commission may, for good cause, permit such an answer.<sup>16</sup> The Commission has accepted answers for good cause that provide information that assists in its decision-making process.<sup>17</sup> Spire STL’s Answer will ensure a complete and accurate record and will aid the Commission in its decision-making process.

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<sup>14</sup> 18 C.F.R. §§ 385.212 & 385.213.

<sup>15</sup> Since answers to motions, like EDF’s Motion to Reject, are permitted under the Commission’s rules, 18 C.F.R. § 385.212(a)(3), Spire STL does not need to move to answer EDF’s Motion to Reject.

<sup>16</sup> *Id.* §§ 385.213(a)(2) & 385.713(d)(1).

<sup>17</sup> *See, e.g.,* *Midwestern Gas Transmission Co.*, 166 FERC ¶ 61,228, at P 7 (2019); *Rover Pipeline LLC*, 165 FERC ¶ 61,068, at P 5 (2018); *Nat’l Fuel Gas Supply Corp.*, 146 FERC ¶ 61,216, at P 4 n.6 (2014).

## **II.** **ANSWER TO PROTEST**

As EDF concedes, “[t]he sole issue legitimately before the Commission at this juncture is whether an emergency exists to necessitate issuance of a temporary certificate.”<sup>18</sup> Notwithstanding, EDF goes beyond the Emergency Application to attack Spire STL, suggesting that Spire STL caused the emergency, and reiterating its questioning of the prudence of Spire Missouri’s reliance on an affiliated pipeline for gas service.<sup>19</sup> These issues can be addressed on remand, when the Commission determines whether to issue Spire STL further certificate authorization. At this juncture, all that matters is that ***there is an emergency and FERC must act to address it.*** Spire STL will not address at this time EDF’s *ad hominem* attacks on Spire STL’s construction and operation of the STL Pipeline.

On August 6, 2021, Commission Staff issued a data request to Spire STL requesting responses to multiple questions regarding the nature and extent of the emergency.<sup>20</sup> The data requests and the factual questions raised in the EDF Protest<sup>21</sup> overlap. Spire STL’s response to the Commission Staff’s data request will further demonstrate the urgent need for the Commission to grant a temporary certificate.

Spire STL’s focus is to ensure that the Greater St. Louis region natural gas consumers, including Spire Missouri’s residential, commercial, municipal, and industrial

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<sup>18</sup> EDF Protest at 2.

<sup>19</sup> *Id.* at 3, 31-34.

<sup>20</sup> FERC Data Request, Docket No. CP17-40-007 (Aug. 6, 2021).

<sup>21</sup> *See* EDF Protest at Ex. A ¶ 9 (Aff. of Gregory Lander).

customers, have the means to heat homes,<sup>22</sup> run hospitals,<sup>23</sup> keep schools open,<sup>24</sup> process wastewater,<sup>25</sup> and manufacture goods.<sup>26</sup> The mayor of the City of St. Louis succinctly expressed her “concern[] with the detrimental effects an immediate shutdown of the STL Pipeline would have on communities in and around St. Louis during the winter months.”<sup>27</sup> The MoPSC is similarly “concerned by the extent of potential disruptions” and expressed its support for the Commission taking expediated action on the Emergency Application.<sup>28</sup> As demonstrated throughout the Emergency Application and reinforced by the numerous comments of entities that may suffer actual harm if the STL Pipeline is shut down, without the STL Pipeline, Spire Missouri may not be able to reliably serve its customers during the upcoming winter heating season, which starts November 1st—just 73 days from today.

The consequences of the loss of natural gas service and heat were illustrated by Winter Storm Uri. The Commission, and presumably EDF, do not want to be responsible

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<sup>22</sup> Emergency Application at Ex. Z-1 (Aff. of Scott Carter). *See also* Motion to Intervene and Comments of American Gas Association in Support of Spire STL’s Emergency Application, Docket No. CP17-40-007 (Aug. 4, 2021).

<sup>23</sup> Comments of BJC HealthCare in Support of Spire STL’s Emergency Application, Docket No. CP20-17-007 (Aug. 2, 2021)

<sup>24</sup> Comments of Associated Industries of Missouri in Support of Spire STL’s Emergency Application, Docket No. CP17-40-007 (July 28, 2021).

<sup>25</sup> Comments of Metropolitan St. Louis Sewer District in Support of Spire STL’s Emergency Application, Docket No. CP17-40-007 (July 30, 2021) (noting that should a natural gas blackout occur solid waste processing would cease and cause a potential shutdown of seven treatment plants, resulting in untreated sewage flowing into the region’s waterways).

<sup>26</sup> Comments of Jost Chemical Co. in Support of Spire STL’s Emergency Application, Docket No. CP17-40-007 (July 27, 2021) (St. Louis company that manufactures high purity, inorganic, and organic salts for use in a variety of food applications, nutritional products, and pharmaceuticals, including COVID-19 test kits and vaccines); Comments of International Paper in Support of Spire STL’s Emergency Application, Docket No. CP17-40-007 (Aug. 3, 2021).

<sup>27</sup> Comments of Tishaura O. Jones, Mayor of the City of St. Louis, in Support of the Emergency Application, Docket No. CP17-40-007, at 1 (Aug. 10, 2021). Mayors throughout Missouri joined Mayor Jones expressing support for the Emergency Application. *See* Comments of Kansas City, Missouri Mayor Quinton D. Lucas in Support of the Emergency Application, Docket No. CP17-40-007 (Aug. 12, 2021); Comments of Municipal League Metro St. Louis in Support of Emergency Application, Docket No. CP17-40-007 (Aug. 11, 2021) (signed by 39 elected leaders of Missouri communities).

<sup>28</sup> Response of the Public Service Commission of the State of Missouri to the Emergency Application, Docket No. CP17-40-007, at 5 (July 30, 2021).

for the consequences of the loss of natural gas service to homes, schools, hospitals, wastewater treatment plants, and businesses.

Crucially, the MoPSC Staff Report demonstrates the immediate need for a temporary certificate to prevent an emergency situation this winter. Following Spire STL's filing of the Emergency Application, the MoPSC, on June 28, 2021, directed its staff to investigate Spire STL's Emergency Application and the factual assertions Spire Missouri made therein. After an investigation, MoPSC Staff made crucial findings that support Spire STL's Emergency Application:

- Spire Missouri cannot reasonably reconfigure its system to replace or restore former capacity or replace reliance on the STL Pipeline for transportation before or during the Winter of 2021-2022.<sup>29</sup>
- Spire Missouri in its current configuration would benefit from transportation support by the STL Pipeline on very cold days.<sup>30</sup>
- STL Pipeline transportation services would be necessary if the planned peak demand occurs.<sup>31</sup>
- Spire Missouri is currently reliant on the STL Pipeline, and the interstate pipelines interconnected with the STL Pipeline, to deliver gas and support pressure in parts of the distribution system.<sup>32</sup>
- The interconnection between the STL Pipeline and MoGas allowed Spire Missouri to move gas westward on MoGas rather than increasing the capacity of its distribution system to move gas to the western part of its system.<sup>33</sup>
- The interconnection between the STL Pipeline and MRT allows Spire Missouri to put gas into MRT at the Chain of Rocks interconnection and withdraw more gas from city gates in the southern part of its distribution system.<sup>34</sup>
- The first areas to be affected by the loss of transportation capacity on the STL Pipeline are in the western and southern parts of the distribution system, which are supported by westbound flows on MoGas and southbound flows on MRT from the STL Pipeline.<sup>35</sup>

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<sup>29</sup> MoPSC Staff Report at 3.

<sup>30</sup> *Id.* at 3, 8.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.* at 3, 8.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 3-4.



- *Peak day service interruptions could be expected without access to STL Pipeline capacity.*<sup>36</sup>

The MoPSC Staff Report unambiguously concludes that “[a]s a result of the significant alteration of Spire Missouri’s distribution system to accommodate the [STL Pipeline] capacity, there is a real risk of natural gas outages during the winter of 2021-2022 absent the availability of [STL Pipeline] capacity from both a flow and pressure standpoint.”<sup>37</sup>

The MoPSC Staff Report underscores the looming emergency and clearly demonstrates the need for the Commission to grant the Emergency Application and issue a temporary certificate.

EDF acknowledges that Spire STL took “a reasonable step” by filing the Emergency Application in advance of the D.C. Circuit issuing its mandate. Contrary to EDF’s assertion, Spire STL is not attempting to “prematurely reopen consideration of [its] certificate.”<sup>38</sup> Spire STL is ready, willing, and able to litigate reissuance of the certificate on remand. However, without a certificate allowing the STL Pipeline to continue to operate, a true emergency exists for the 650,000 homes and businesses in the Greater St. Louis region that depend on reliable gas service. For these reasons, EDF’s Protest and Motion to Reject lack merit and should be rejected.

**A. The Commission Has Authority to Grant a Temporary Certificate.**

EDF argues erroneously and, not surprisingly, without support that allowing Spire STL to continue to operate under a temporary certificate “violates the D.C. Circuit decision’s finding on appropriate relief.”<sup>39</sup> EDF goes so far as to assert that the Emergency

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<sup>36</sup> *Id.* at 7.

<sup>37</sup> *Id.* at 9.

<sup>38</sup> EDF Protest at 11.

<sup>39</sup> EDF Protest at 18.

Application “is a complete evisceration of the Court’s finding on the appropriate remedy.”<sup>40</sup>

It is unclear what EDF is protesting against so vociferously. The Emergency Application asks only that the Commission allow the STL Pipeline to continue operating while the Commission determines whether to grant a permanent certificate on remand. Spire STL and EDF agree that NGA Section 7(c)(1)(B) grants the Commission this power,<sup>41</sup> and that to exercise it, the Commission need only determine that an emergency exists.<sup>42</sup> Spire STL and EDF also agree the Commission should “ensure that residents and businesses in St. Louis continue to have reliable access to natural gas.”<sup>43</sup>

The Court’s decision to vacate the certificate order does not tie the Commission’s hands from preventing the emergency that would result from shutting down the STL Pipeline just weeks before winter. The NGA purposefully allows the Commission to issue emergency certificates to ensure that customers may continue to receive gas service.<sup>44</sup> Nothing in the Court’s decision changes that.

Additionally, the Emergency Application presents new facts that were not before the Commission in the underlying certificate docket and the Commission’s orders that were reviewed by the D.C. Circuit. As the Emergency Application explains, the market has adapted to the existence of the STL Pipeline, and the Commission must deal with current operational realities in addressing this application. The Commission must address the circumstances as they are today, and it is not hamstrung by the outdated record that was

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<sup>40</sup> *Id.* at 21.

<sup>41</sup> *Id.* at 15.

<sup>42</sup> *Id.* at 2.

<sup>43</sup> *Id.* at 1.

<sup>44</sup> See *Algonquin Gas Transmission Co. v. FPC*, 201 F.2d 334, 339-40 (1st Cir. 1953) (discussion of legislative history of the temporary emergency certificate).

before the Court when it vacated the original certificate. And as explained above, the MoPSC Staff Report makes clear the STL Pipeline is needed this winter.

**B. EDF’s Requested Conditions on the Temporary Certificate Are Unwarranted.**

Acknowledging that a temporary certificate may be required to save lives in the St. Louis metropolitan area this winter, EDF requests that the Commission attach conditions to such a certificate. Specifically, EDF asks the Commission to (1) place an end date on the temporary certificate authority, although EDF does not suggest one; (2) require that Spire STL only operate the STL Pipeline to the extent necessary to avoid curtailment of Spire Missouri firm customers, without even attempting to describe how such a condition would be workable; and (3) impose a rate condition on the Project in order to limit Spire STL’s rate recovery. The conditions EDF requests are unnecessary and inconsistent with the NGA and Commission policy.

*1. Spire STL Requests the Temporary Certificate to Allow the Commission to Consider the Court’s Ruling on Remand.*

Spire STL and EDF agree that the temporary certificate should be just that: temporary. EDF asks the Commission to condition the temporary certificate with a “clear end date” consistent with the time required for Spire STL and Spire Missouri “to remedy the risk conditions asserted in [the] Application.”<sup>45</sup> Spire STL, however, requests a temporary certificate for only a limited duration of time, until the Commission is able to act on remand.<sup>46</sup> To avoid giving the Commission an artificial timeline in which it must reach a decision, the only reasonable approach is to grant the Emergency Application and

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<sup>45</sup> EDF Protest at 28.

<sup>46</sup> Spire STL’s request is consistent with other instances where the Commission has issued temporary certificates. *See Texas-Ohio Pipeline, Inc.*, 58 FERC ¶ 61,025, at ordering para. A (1992) (granting temporary certificate that “will expire upon the issuance of a final Commission order on Texas-Ohio’s request for a permanent blanket certificate”).

issue a temporary certificate while the Commission engages its full deliberative process on remand. Granting the Emergency Application does not pre-judge the Commission's actions on remand; rather, it gives the Commission maximum flexibility to properly address the Court's concerns and prevent a possibly life-threatening emergency.

2. *Limiting Operation of the STL Pipeline to the Minimal Amount Necessary to Prevent Curtailments to Spire Missouri Would Violate the Commission's Open-Access Policies.*

EDF requests that the Commission condition a temporary certificate by only allowing the STL Pipeline to operate to the extent necessary to avoid curtailment of the 650,000 customers behind Spire Missouri's city-gate. However, and as noted below, such a severe and limiting condition, may not be operationally feasible, and would violate the Commission's policies on open access, standards of conduct, and non-discrimination.

Spire Missouri has an obligation to serve its customers under Missouri law.<sup>47</sup> EDF appears to be arguing that the Commission should determine the extent of that obligation and how it is to be fulfilled. However, EDF's arguments raise numerous legal issues that EDF ignores. For example, how would such a condition be enforced? Is the Commission expected to waive its Standards of Conduct regulations to allow Spire STL and Spire Missouri to exchange transmission function information? Who is responsible for the decision on whether STL Pipeline is needed to avoid curtailment? Who will determine if supplies from other sources are sufficient? How far in advance of any curtailment can Spire STL begin to operate? What if the weather forecast is wrong and immediate action is required? How are arrangements on upstream pipelines supposed to be made? EDF identifies no Commission precedent to support its requested limits on the temporary

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<sup>47</sup> Mo. Ann. Stat. § 393.130. *See also id.* § 386.020(18) (defining gas corporation).

certificate, because no such precedent exists. EDF's request is unworkable and, in fact, would leave Missourians teetering on the brink of curtailment.

In addition, MoGas, a non-affiliated pipeline company, filed comments in support of the Emergency Application. MoGas's comments demonstrate that limiting the use of the STL Pipeline could have a detrimental effect on the reliable operations of MoGas's system.<sup>48</sup> Although MoGas filed its comments well before EDF's Protest,<sup>49</sup> EDF ignores the impact that a STL Pipeline shutdown would also have on MoGas and its customers. EDF's proposal raises many questions but supplies no answers. The Commission cannot adopt such a half-baked proposal.

The prudent action is obvious. The Commission should prioritize customers that rely on this important gas infrastructure by allowing STL Pipeline to continue full operations until the Commission can reach a decision on remand. In the meantime, artificial limitations on the STL Pipeline's operation would serve only to jeopardize the continuity of reliable gas service in Missouri this winter.

3. *EDF's Requested Rate Condition Violates Section 5 of the NGA and Is Otherwise Unwarranted.*

EDF baselessly asks the Commission to require Spire STL to place at least 50 percent of its recovery of return and taxes in the usage rate.<sup>50</sup> EDF argues this is justified because Spire STL and Spire Missouri are working in concert to "create an undue

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<sup>48</sup> See Motion to Intervene and Comments of in Support of MoGas Pipeline LLC, Docket No. CP17-40-007 (July 28, 2021). The MoPSC Staff Report further demonstrates that the STL Pipeline is needed to support pressures on MoGas to deliver into Spire Missouri. MoPSC Staff Report at 3-4.

<sup>49</sup> MoGas's comments were on the record eight days before EDF filed its protest.

<sup>50</sup> EDF Protest at 40.

preference for their affiliated project.”<sup>51</sup> There is no factual support for this bald allegation, and EDF’s requested condition is inconsistent with the NGA.

Any change to Spire STL’s approved rates must be accomplished under either Section 4 or 5 of the NGA.<sup>52</sup> If EDF truly wishes to challenge STL Pipeline’s rates, including its negotiated rate agreement with Spire Missouri, EDF must proceed under the procedures of Section 5 of the NGA.<sup>53</sup> This would require EDF to file a complaint and show that the rate is unjust and unreasonable, and to propose an alternative just and reasonable rate.<sup>54</sup> EDF’s Protest does not even acknowledge, let alone meet, the statutory burden.

Spire STL filed the negotiated rate agreement in a separate docket from the certificate proceeding, as required by the Commission. The negotiated rate filing was noticed by the Commission and no one, including EDF, intervened or even commented on the filing. The Commission accepted the filing, and no parties sought rehearing.<sup>55</sup> That order is now final and unappealable and Spire STL may reasonably rely upon it. Requesting that the agreement be rejected now is a collateral attack on the final and unappealable negotiated rate agreement filing that EDF never sought to challenge in the first place. Such an attack is impermissible.

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<sup>51</sup> *Id.* at 39.

<sup>52</sup> *Tenn. Gas Pipeline Co.*, 160 FERC ¶ 61,027, at P 6 (2017) (“[T]he Commission has no authority in an NGA section 7 proceeding to order [a pipeline] to adjust its existing system rates.”); *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1127-28 (D.C. Cir. 1979); *N. Nat. Gas Co. v. FERC*, 827 F.2d 779, 781 (D.C. Cir. 1987).

<sup>53</sup> 15 U.S.C. § 717d.

<sup>54</sup> *See Pub. Serv. Comm’n of the State of N.Y. v. FERC*, 866 F.2d 487, 488 (D.C. Cir. 1989).

<sup>55</sup> *See* Spire STL Pipeline, Negotiated Rate Agreement and Non-Conforming Service Agreement Compliance Filing, Docket No. RP20-70-000 (Oct. 16, 2019), *approved*, Letter Order, Docket No. RP20-70-000 (Nov. 14, 2019).

In addition to failing to meet the burden of showing that the filed and effective negotiated rate agreement is no longer just and reasonable, EDF has not even attempted to provide a basis for deviating from straight fixed variable rate design, a fundamental premise of Commission rate making. EDF's proposal ignores this Commission policy.

Lastly, as if EDF's arguments on the law were not deficient enough, the facts similarly do not support EDF's argument requesting such a special rate condition. EDF ignores that the negotiated rate that Spire STL is charging Spire Missouri is approximately one-third *lower* than the recourse rate for firm service on the pipeline.<sup>56</sup> Spire STL's actual overall return on equity is approximately 8 percent,<sup>57</sup> well below that allowed by the Commission in the certificate order or the last litigated natural gas pipeline rate case.<sup>58</sup> Spire STL is not overcharging Spire Missouri; it is charging a rate filed and approved by the Commission that yields a return well below that which the Commission would authorize in a rate case.<sup>59</sup>

**C. Landowners Remain Protected Under the Existing Certificate and Any Temporary Certificate.**

EDF asks the Commission to stay the effectiveness of any eminent domain authority for the duration of the temporary certificate.<sup>60</sup> However, even the Commission has concluded that it “lacks the authority to deny or restrict the power of eminent domain in a section 7 certificate.”<sup>61</sup> Courts have also held that “[i]ssuing such a Certificate conveys

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<sup>56</sup> See generally *id.*

<sup>57</sup> See Spire STL Pipeline LLC, FERC Form No. 2 (revised Apr. 19, 2021).

<sup>58</sup> See *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180, at P 52 (2019) (“[t]he last applicable litigated ROE is 10.55 percent”) (citing *El Paso Nat. Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016)).

<sup>59</sup> See *id.*

<sup>60</sup> EDF Protest at 42-45.

<sup>61</sup> *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871-B, 175 FERC ¶ 61,098, at P 45 (2021).

and automatically transfers the power of eminent domain to the Certificate holder. Thus, FERC does not have discretion to withhold eminent domain power once it grants a Certificate.”<sup>62</sup> The Commission has also recognized that temporary certificates confer the right of eminent domain.<sup>63</sup>

A group of landowners filed a protest that Spire STL will answer separately. For now, it is sufficient to say that Spire STL has and will fulfill all of its obligations to landowners under applicable law and Commission regulations and orders.

### **III.** **ANSWER TO MOTION TO REJECT**

#### **A. There Are No Grounds to Reject the Temporary Certificate Application in Part or in Full.**

EDF asks the Commission to simply reject Section III, Subsection E<sup>64</sup> Sections VI, IX, and X, of the Emergency Application, asserting that these sections are not directly related to the emergency and instead address benefits of the Project since it has gone in service. It is unclear why EDF seeks to limit the information before the Commission while it evaluates Spire STL’s Emergency Application.<sup>65</sup> Spire STL’s Emergency Application includes similar information to that which would be required for a permanent certificate.<sup>66</sup>

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<sup>62</sup> *Berkley v. Mountain Valley Pipeline, LLC*, 896 F. 3d 624 (4th Cir. 2018) (citing 15 U.S.C. § 717f(h); *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000)).

<sup>63</sup> *See Mfrs.’ Light & Heat Co.*, 39 FPC 294, 304 (1968) (The Commission explicitly recognized that “land was condemned and taken under state law on the basis of the Commission’s temporary certificate.”).

<sup>64</sup> EDF’s Protest references Section I, Subsection E, but such a subsection does not exist in Spire STL’s Emergency Application, so for the sake of argument, Spire STL assumes EDF meant Section III, Subsection E.

<sup>65</sup> At the outset it should be noted that the Commission’s regulations only allow for rejection of a whole application, not parts of an application, so EDF’s motion to reject lacks support. 18 C.F.R. § 157.8. In addition, if a deficiency is found, Commission Staff must reject the application within ten business days of filing, which it did not do. *Id.*; *see also Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 74 (2016) (explaining that where an “application patently failed to comply with applicable statutory requirements or Commission rules for filing an application, Commission staff would have rejected [applicant’s] application within ten business days”).

<sup>66</sup> *See* 18 C.F.R. § 157.17 (cross referencing the application requirements in 18 C.F.R. § 157.6).



Just because the Emergency Application contains facts which EDF believes are inconvenient truths is not a ground to reject them.

Spire STL's entire Emergency Application is relevant to whether an emergency exists and to demonstrate that the Commission must issue the temporary certificate. Section III, Subsection E demonstrates how critical the STL Pipeline has become to Spire Missouri and its 650,000 homes and businesses since it went in service—and how shutting off the service now will create an emergency situation. Section VI demonstrates that continued operation of the STL Pipeline is required by the public convenience and necessity, which is a required part of a certificate application.<sup>67</sup> While such a discussion may not be strictly necessary to demonstrate an emergency exists under Section 7(c)(1)(B), this demonstrates the importance of the STL Pipeline to St. Louis and surrounding communities and how terminating service would create an untenable emergency situation. Section IX explains that granting of the Emergency Application will not affect rates, and Section X cross-references information provided in the exhibits to Spire STL's original certificate application. These sections all contain important information that are required components of a certificate application.<sup>68</sup>

Given that these sections are required in applications for permanent certificates and are pertinent to Spire STL's request, it begs the question why would EDF want the Commission to ignore or reject those sections? Simply put, those sections of the Emergency Application provide the Commission with information that will help it evaluate Spire STL's request. There is no reason for the Commission to exclude any information from its analysis of the Emergency Application.

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<sup>67</sup> 18 C.F.R. § 157.6(b)(2).

<sup>68</sup> *Id.* § 157.6(b).

**B. The Public Interest Requires That the STL Pipeline Remain in Service This Winter.**

Spire STL stated in the Emergency Application that in determining whether the public interest permits abandonment of the STL Pipeline under NGA Section 7(b), the Commission maintains “a presumption in favor of continued service,” emphasizing the importance of “the continuity and stability of existing services.”<sup>69</sup> Spire STL stated that in considering whether to allow the STL Pipeline to be removed from service, the Commission should keep this presumption in mind, consistent with its primary duty under the NGA to protect consumers.

In response, EDF curiously states that the Commission should not consider “whether the STL Pipeline’s operation remains in the public interest.”<sup>70</sup> Yet this is precisely the question here: is the public interest better served with or without the STL Pipeline in service this winter? The framework for analyzing abandonment under Section 7(b) can inform this decision. In reviewing applications for abandonment, the Commission carefully considers the effects of abandonment on the public interest, including impacts on existing shippers<sup>71</sup> and the availability of alternatives.<sup>72</sup> The Commission should carefully consider whether the public interest will be served if the STL Pipeline is shut down this winter, and homes and businesses are placed at risk of losing gas service.

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<sup>69</sup> Emergency Application at 31-32 (citations omitted). *See, e.g., N. Nat. Gas Co.*, 117 FERC ¶ 61,117, at PP 20-31 (2006), *reh’g granted*, 119 FERC ¶ 61,035 (2007).

<sup>70</sup> EDF Protest at 13 (citation omitted).

<sup>71</sup> *Transcon. Gas Pipe Line Corp.*, 110 FERC ¶ 61,337, at P 43 (2005); *N. Nat. Gas Co.*, 117 FERC ¶ 61,117, at PP 21-31 (2006). *See also S. Nat. Gas Co.*, 126 FERC ¶ 61,246, at P 30 (2009).

<sup>72</sup> *Transcon. Gas Pipe Line Co.*, 134 FERC ¶ 61,238, at P 38, *reh’g denied*, 137 FERC ¶ 61,203 (2011); *N. Nat. Gas Co.*, 135 FERC ¶ 61,048, at P 38, *reh’g denied*, 137 FERC ¶ 61,094 (2011).

**C. Spire STL’s Alternative Request for a Limited Term Certificate Is Appropriate and Reasonable.**

EDF argues that in the event the Commission does not determine that Spire STL’s current circumstances constitute an emergency, Spire STL’s alternative request for a limited-term certificate must be rejected.<sup>73</sup> EDF argues that absent an emergency, the Commission can only issue a certificate using the “standard process” used in typical certificate proceedings, and that Spire STL has not provided sufficient information for the Commission to grant a certificate under this process.<sup>74</sup>

EDF downplays the several instances, cited in the Emergency Application,<sup>75</sup> in which the Commission has granted limited-term certificates to allow pipelines to continue operating while the Commission addresses deficiencies in the original authorizations.<sup>76</sup> EDF attempts to distinguish these cases from the facts here, but misses the forest for the trees. All participants agree that this is, in EDF’s words, “an unprecedented situation.”<sup>77</sup> There is simply no precedent directly governing the Commission’s disposition here. The Commission’s consistent practice has been to allow the facilities to remain in service while it determines how to proceed over the longer term. In *Quicksilver Resources, Inc.*, for example, acting on a petition for declaratory order, the Commission determined that a small portion of a gathering system actually performed a transportation function subject to the Commission’s jurisdiction.<sup>78</sup> The Commission required the operator of the jurisdictional line to file a certificate application with the Commission. In the meantime, the

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<sup>73</sup> EDF Protest at 14-18.

<sup>74</sup> *Id.* at 14-15.

<sup>75</sup> Emergency Application at 28, n.102 (citing cases).

<sup>76</sup> EDF Protest at 15-16 and n.36.

<sup>77</sup> *Id.* at 2.

<sup>78</sup> *Quicksilver Res., Inc.*, 122 FERC ¶ 61,115, at P 10, *order denying reh’g and granting clarification*, 124 FERC ¶ 61,017, *order on clarification*, 124 FERC ¶ 61,017 (2008).

Commission, *sua sponte*, found that continued operation of the jurisdictional line was in the public convenience and necessity and issued the company a limited-term certificate for continued operation of the line until it received its permanent certificate.<sup>79</sup> Similarly, in this case, the Commission could issue a limited-term certificate based on the alternative request in Spire STL's Emergency Application.

EDF also argues that *New Fortress Energy* is inapplicable to Spire STL's arguments in support of a limited certificate because the Commission did not issue a limited certificate in that case.<sup>80</sup> As noted above, there is no precedent directly governing the Commission's actions here, but *New Fortress Energy* offers a relevant analogy.<sup>81</sup> In *New Fortress Energy*, the Commission determined that the facilities at issue were Commission-jurisdictional and required the operator to file an application to operate the facilities. But the Commission also found that allowing the facilities to continue to operate while the Commission considered its application was in the public interest.<sup>82</sup> Similar to the facilities in *New Fortress Energy*, Spire STL built its facilities upon reliance on permits issued by, and constructed the facilities under oversight of, numerous federal and state agencies. In addition, the STL Pipeline brings significant benefits to St. Louis and Spire Missouri's customer, as demonstrated in the certificate proceeding and the Emergency Certificate. Under these circumstances, the Commission should find here, as it did in *New Fortress Energy*, that allowing the STL Pipeline operate while the Commission considers the certificate on remand is in the public interest.

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<sup>79</sup> 122 FERC ¶ 61,115 at P 24.

<sup>80</sup> EDF Protest at 16.

<sup>81</sup> *New Fortress Energy LLC*, 174 FERC ¶ 61,207 (2021).

<sup>82</sup> *Id.* at P 38.

Spire STL has demonstrated that continued operation of the Project is required by the present and future public convenience and necessity.<sup>83</sup> If the Commission declines to find that the present circumstances constitute an “emergency” under NGA Section 7(c)(1)(B), it should grant a limited-term certificate to allow the STL Pipeline to continue operating while the Commission’s decision on remand is pending.

**IV.**  
**CONCLUSION**

Spire STL respectfully requests the Commission accept this Answer, reject EDF’s Protest, deny its Motion to Reject, and approve the Emergency Application in order to forestall an impending emergency.

Respectfully submitted,

*/s/ Paul Korman*

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Dated: August 20, 2021

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<sup>83</sup> See Emergency Application at 29-32.

**CERTIFICATE OF SERVICE**

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2021), I hereby certify that I have this 20th day of August 2021, served the forgoing documents on each person designated on the official service list compiled by the Secretary in this proceeding.

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