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authorizing Spire STL to provide transportation service pursuant to Spire STL's FERC Gas Tariff ("Tariff"), originally issued in the Certificate Order.

The record in this docket and two years of operational experience demonstrate the need for the STL Pipeline to ensure reliable and economic supplies of natural gas to consumers in the St. Louis region. Spire STL is committed to providing the Commission with a transparent record demonstrating that continued operation of the STL Pipeline is in the public convenience and necessity, and looks forward to participating in any proceeding that the Commission may order to make this determination. This includes responding to the D.C. Circuit's questioning of whether a greater showing of need for the STL Pipeline is necessary in light of the affiliation between Spire STL and its principal customer, Spire Missouri Inc. ("Spire Missouri").

Spire STL continues to comply with all conditions included in the Certificate Order and does not object to their inclusion in a reissued certificate. Spire STL is committed to restoration of the right-of-way in accord with the Commission's regulations and the conditions of the Certificate Order. Spire STL also commits to filing the cost and revenue study required by Ordering Paragraph (I) of the Certificate Order within three months after the third anniversary of the STL Pipeline's original in-service date, as required in the Certificate Order, provided that the Project remains authorized at that time.

Spire STL is operating under a temporary certificate that is currently set to expire on December 13, 2021,<sup>5</sup> and respectfully requests that the Commission expeditiously issue an order on remand reissuing the certificates for the Project prior to the expiration of any

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<sup>5</sup> *Spire STL Pipeline LLC*, 176 FERC ¶ 61,160, at P 11 and order para. (c) (2021) ("Temporary Certificate").

temporary authorization. In support of this request, Spire STL respectfully states as follows:

## I. EXECUTIVE SUMMARY

The STL Pipeline’s two years of operation leave no doubt that it is required by the present and future public convenience and necessity. The existing record in Docket No. CP17-40, including the sub-dockets, and this pleading demonstrate that the continued operation of the STL Pipeline is needed to serve eastern Missouri, including the St. Louis metropolitan area. The record is replete with comments of government officials, Missouri businesses and community organizations, industry stakeholders, and private citizens supporting the STL Pipeline’s continued operation.<sup>6</sup>

The D.C. Circuit vacated Spire STL’s Certificate Order on two grounds: the court found that the Commission failed to (1) support its finding that the Project was needed, and (2) show that the Project’s benefits outweighed its potential adverse effects.<sup>7</sup> The court did not find that the Project is not needed—the issue of need is for the Commission to decide based on the record. The existing record, and an analysis of the St. Louis market since the STL Pipeline entered service, provide abundant evidence that allows the Commission to redress the deficiencies in its original analysis. In the original certificate proceeding, Spire STL and Spire Missouri informed the Commission that the Project would provide numerous benefits to consumers in eastern Missouri, including increased supply diversity and reduced costs of delivered gas.<sup>8</sup> Perhaps most importantly, Spire STL and Spire

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<sup>6</sup> See Attachment A (List of Comments Supporting Spire STL’s Temporary Certificate Application).

<sup>7</sup> *EDF v. FERC*, 2 F.4th at 972-73.

<sup>8</sup> See generally Application of Spire STL Pipeline for Certificates of Public Convenience and Necessity, Docket No. CP17-40-000 (Jan. 26, 2017) (“Certificate Application”); Amendment to Application of Spire STL Pipeline LLC for Certificates of Public Convenience and Necessity, Docket No. CP17-40-001 (Apr. 21, 2017); Motion for Leave to File an Answer and Answer of Laclede Gas Company to Certain Protests, Docket

Missouri explained that the Project was critical to improving the reliability of gas supply in the region, as Spire Missouri previously was almost entirely dependent on a single pipeline that had repeatedly suffered from reliability issues.<sup>9</sup>

These predictions were prescient, as shown by the STL Pipeline's two years in operation, and most notably, during Winter Storm Uri (the "Storm") in February 2021. During the Storm, over 5 million Americans experienced blackouts and at least 210 died in Texas alone, where the conditions were most severe.<sup>10</sup> Other pipelines serving Missouri experienced interruptions of service during the Storm, in part due to pressure issues from pipelines further upstream.<sup>11</sup> Fortunately, the STL Pipeline allowed customers in St. Louis and eastern Missouri to weather the Storm without experiencing interruptions in gas service. Without the STL Pipeline, customers would have lost gas service on eight of the nine days from February 11, 2021 to February 19, 2021, with a peak of roughly 133,000 customers without service on February 15, 2021.<sup>12</sup> In addition, the STL Pipeline saved Missouri ratepayers up to \$300 million during this nine-day period because of its connection to lower-cost gas supplies from production basins that previously were difficult

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No. CP17-40-000, at 11-13 and Att. F, "LGC Delivered Cost Analysis" (Mar. 22, 2017) ("Spire Missouri March 22, 2017 Answer").

<sup>9</sup> See generally Certificate Application at 23-25; Motion for Leave to File an Answer and Answer of Laclede Gas Company to Certain Protests, Docket No. CP17-40-000, Att. A, July 14, 2017 Affidavit of Scott E. Woley ¶ 6 (July 14, 2017) ("Spire Missouri July 2017 Answer"); Response to Data Request, Docket No. CP17-40-000, at Q.1 (Mar. 13, 2018) ("Spire STL 2018 Data Response") (comparing supply diversity benefits of STL Pipeline to alternative projects considered by Spire Missouri).

<sup>10</sup> Texas Health and Human Services, Winter Storm-Related Deaths – July 13, 2021, <https://www.dshs.state.tx.us/news/updates.shtm#wi>. Other analyses have found that Texas' death toll could be as high as 978 people. Alejandro Martínez-Cabrera, "Texas Winter Storm Death Toll Could Be Much Higher Than The State's Count, BuzzFeed Data Review Found," Houston Public Media (May 27, 2021), <https://www.houstonpublicmedia.org/articles/news/energy-environment/2021/05/27/399291/texas-winter-storm-death-toll-could-be-much-higher-than-the-states-count-buzzfeed-data-review-found/>.

<sup>11</sup> Affidavit of Scott Carter ¶ 42 ("Carter Affidavit"), Application of Spire STL Pipeline LLC for a Temporary Emergency Certificate, or, in the Alternative, Limited-Term Certificate, Docket No. CP17-40-007 (July 26, 2021) ("Temporary Certificate Application"); see also Motion to Intervene and Comments in Support of Symmetry Energy Solutions, LLC, Docket No. CP17-40-007, at 4-5 (Aug. 23, 2021) ("Symmetry August 23 Comments").

<sup>12</sup> Carter Aff. ¶¶ 31, 33.

for the St. Louis market to access.<sup>13</sup> Winter Storm Uri underscores the need for the STL Pipeline to serve Spire Missouri and the eastern Missouri market, and the operational benefits of access to diverse sources of gas supply.<sup>14</sup>

A new market study conducted by RBN Energy LLC (“RBN Energy”) further demonstrates the improved reliability and economic benefits conferred by the STL Pipeline.<sup>15</sup> The 2021 Market Study is buttressed by a study by Black & Veatch Management Consulting, LLC (“Black & Veatch”), which demonstrates the inadequacy of the natural gas infrastructure in the St. Louis region in the absence of the STL Pipeline. The 2021 Market Study demonstrates that by providing Spire Missouri with direct access to abundant, low-cost supplies of natural gas produced both in the Appalachian and Rocky Mountain production areas, the STL Pipeline has already saved Missouri consumers hundreds of millions in natural gas costs. The 2021 Market Study projects that those benefits will continue into the future.

Other pipelines in the region lack available transport capacity to replace the STL Pipeline, and developing alternatives would be more costly and less effective than the service the STL Pipeline already provides.<sup>16</sup> Enable Mississippi River Transmission (“MRT”), on which Spire Missouri historically depended to receive nearly all of its gas supplies, lacks sufficient capacity to cover Spire Missouri’s needs.<sup>17</sup> MoGas Pipeline LLC (“MoGas”) serves the west side of St. Louis in part by relying on pressure from its

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<sup>13</sup> *Id.* ¶¶ 31-34.

<sup>14</sup> *See id.* ¶ 35.

<sup>15</sup> *See* Attachment B (RBN Energy LLC, Analysis of the Current and Future Market Served by Spire STL Pipeline” (Nov. 10, 2021)) (“2021 Market Study”).

<sup>16</sup> 2021 Market Study, App. A (Black & Veatch Management Consulting, LLC, “Updated: Review of Current Natural Gas Infrastructure Serving the Greater St. Louis Market and Potential Supply Disruptions During Peak-Day Demand” (Nov. 10, 2021)).

<sup>17</sup> Carter Aff. ¶¶ 38-41.



interconnect with the STL Pipeline. MoGas has reported on the record that it would have to construct a loop of most of its system to provide the same level of service without the STL Pipeline.<sup>18</sup>

In addition, the STL Pipeline provides operational and environmental benefits to Spire Missouri, including having made possible the retirement of obsolete propane peaking facilities and emissions-intensive compressor stations that previously were required for Spire Missouri to inject gas into its on-system storage facilities. Further, the higher-pressure deliveries from the STL Pipeline to MoGas have allowed Spire Missouri to avoid costly and disruptive system expansions within the St. Louis area that would otherwise have been required to serve the shifting demand within its territory; specifically, the growing demand on the west side of St. Louis.

In light of the affiliate relationship, the D.C. Circuit has directed the Commission to look more closely at the issue of project need.<sup>19</sup> A closer look reveals that the STL Pipeline is needed, and the affiliate relationship does not negate this need. Based on the need and benefits described in the record below and in this pleading, the Commission can easily address the deficiencies pointed out by the D.C. Circuit.

Continued operation of the STL Pipeline satisfies the requirement of the Certificate Policy Statement that a project's public benefits outweigh any adverse effects.<sup>20</sup> Keeping the STL Pipeline in service will have no adverse impacts to other pipelines or customers. Indeed, several other pipelines that serve eastern Missouri have filed comments supporting

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<sup>18</sup> Motion to Intervene Out-Of-Time of MoGas Pipeline LLC and Comments in Support, Docket No. CP17-40-007, at 5 (July 28, 2021) ("MoGas Comments").

<sup>19</sup> See *EDF v. FERC*, 2 F.4th at 974.

<sup>20</sup> See *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (collectively, "Certificate Policy Statement").

the STL Pipeline’s continued operation.<sup>21</sup> Dire predictions made in the underlying proceeding that MRT would not be able to make up for the loss of some Spire Missouri capacity have not come to fruition. In fact, MRT’s parent announced that an uncontested rate case settlement resulted in a revenue increase of approximately \$7 million for MRT compared to 2018 levels, the last year before the STL Pipeline went into service.<sup>22</sup> And Spire Missouri remains MRT’s largest customer with contracts for 630,779 dekatherms per day (“Dth/d”) of firm service.<sup>23</sup>

Continued operation of the pipeline would have minimal adverse impacts to landowners and communities, since the Project has already been constructed. Spire STL has completed restoration of the majority of the right-of-way and continues to engage with the Commission and affected landowners in completing the remaining required restoration work.<sup>24</sup> Conversely, as demonstrated in the attached Abbreviated Environmental Report and Summary of Alternatives, substantial adverse effects would occur if the Commission orders that the STL Pipeline be abandoned, including additional impacts to landowners from crop loss, restoration work, and the environment. Such a result is not warranted, however, because as demonstrated herein, continued operation of the Project is required by the present and future public convenience and necessity.

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<sup>21</sup> See MoGas Comments; Comments of Rockies Express Pipeline, LLC in Support of Spire STL’s Temporary Certificate Application, Docket No. CP17-40-007 (Sept. 7, 2021); Motion to Intervene and Comments of Southern Star Central Gas Pipeline, Inc., Docket No. CP17-40-007 (Sept. 7, 2021).

<sup>22</sup> Nasdaq, Enable Midstream Announces FERC Approval of MRT Rate Case Settlements (Mar. 26, 2020) (“MRT Rate Case Press Release”), <https://www.nasdaq.com/press-release/enable-midstream-announces-ferc-approval-of-mrt-rate-case-settlements-2020-03-26>.

<sup>23</sup> See Index of Customers of Enable Mississippi River Transmission, LLC for Q3 of 2021, FERC Accession No. 20211001-5356 (Oct. 1, 2021) (“MRT Q3 2021 Index of Customers”).

<sup>24</sup> This work is hindered by landowners denying Spire STL access to their properties to complete the necessary work. Reissuing a certificate may help alleviate that problem.

## II. COMMUNICATIONS

Communications regarding this Request should be directed to the following:

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## III. BACKGROUND

### A. The STL Pipeline Project

On August 3, 2018, the Commission issued the Certificate Order approving the STL Pipeline, and the Project was placed into service in November 2019.<sup>25</sup> The STL Pipeline is a 65-mile-long, 24-inch-diameter natural gas pipeline system with 400,000 Dth/d of firm transportation capacity connecting prolific natural gas supply sources in the Rocky Mountain and Appalachian production basins to markets in eastern Missouri. The STL Pipeline extends from an interconnection with Rockies Express Pipeline LLC (“REX”) in Scott County, Illinois, to interconnections in Missouri with Spire Missouri, MRT, and MoGas.

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<sup>25</sup> While the STL Pipeline mainline went into service in November 2019, the final interconnect at Chain of Rocks was placed in service in November 2020.

Spire Missouri, the local distribution company (“LDC”) that serves approximately 650,000 homes and businesses in the St. Louis metropolitan area and ten surrounding counties in eastern Missouri, holds 87.5 percent of the firm capacity on the STL Pipeline. The STL Pipeline provides Spire Missouri with access to some of the most prolific natural gas supply regions in the United States, and the liquid commodity market in REX Zone 3, thereby providing lower-cost gas and greater reliability than had been available before the Project entered service. Spire Marketing Inc. (“Spire Marketing”), a stand-alone gas marketing and logistics company, serves end-use customers behind the Spire Missouri city-gate in part from the 10,000 Dth/d of firm capacity it holds on the STL Pipeline.

The STL Pipeline was developed in response to Spire Missouri’s request for a new source of supply that would provide its customers with supply diversity and greater reliability.<sup>26</sup> Historically, Spire Missouri was almost entirely dependent on MRT to serve the St. Louis region, which presented reliability and price concerns. With the development of natural gas resources in the Appalachian Basin, the natural gas supply landscape changed dramatically, such that these new, abundant supplies of lower-cost gas, along with gas from the Rocky Mountain production regions, provided supply diversity from traditional supplies of Southern-sourced gas.<sup>27</sup> The STL Pipeline provided Spire Missouri with reliability and diversity of supply that had theretofore been unavailable.

**B. The Commission Approved the Project.**

The Commission issued Spire STL a certificate of public convenience and necessity to construct and operate the STL Pipeline on August 3, 2018, and denied rehearing on

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<sup>26</sup> See generally Certificate Application.

<sup>27</sup> Additionally, much of MRT’s northbound pipeline traverses the New Madrid Fault, which is the most active seismic area in the United States east of the Rocky Mountains. Diversification of supply sources helps Spire Missouri avoid the risk of supply disruption in the event of an earthquake.

November 21, 2019.<sup>28</sup> The Commission found that the STL Pipeline would provide several benefits, including enhanced access to diverse supply sources and the fostering of competitive alternatives.<sup>29</sup> Several intervenors asserted that Spire STL had not established need for the STL Pipeline, stating that more evidence of need was required because the Project was supported entirely by a precedent agreement with an affiliated company. In response, the Commission explained that the affiliate relationship between Spire STL and Spire Missouri did not detract from the need for the Project, as demonstrated by the long-term, binding precedent agreement between the parties.<sup>30</sup> The Commission also emphasized the Project's reliability benefits, explaining that Spire Missouri chose the STL Pipeline:

not just because it allows it to access supplies flowing on REX, but because it allows Spire Missouri to do so over a specific path, which Spire Missouri believes will provide certain benefits such as direct access to a liquid supply point in very close proximity to its distribution system, and the avoidance of transportation through a seismic zone.<sup>31</sup>

The Commission also recognized that the STL Pipeline would provide operational and economic benefits to Spire Missouri. The Commission acknowledged that STL Pipeline would allow Spire Missouri to retire 40-year-old, inefficient propane facilities on which it had relied for peaking service, and reduce reliance on propane over time.<sup>32</sup>

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<sup>28</sup> See Certificate Order, 164 FERC ¶ 61,085; Rehearing Order, 169 FERC ¶ 61,134. As discussed below, Chairman Glick and Commissioner LaFleur dissented, stating that Spire STL had not demonstrated that the Project's public benefits outweighed potential adverse effects.

<sup>29</sup> Certificate Order at P 123.

<sup>30</sup> *Id.* at PP 75-87. See *id.* at P 75 ("An affiliated shipper's need for capacity and its obligation to pay for such service under a binding contract are not lessened just because it is affiliated with the project sponsor."); see also *id.* at n.136 ("[A]s long as the precedent agreements are long-term and binding, we do not distinguish between pipelines' precedent agreements with affiliates or independent marketers in establishing the market need for a proposed project.") (citing *Millennium Pipeline Co.*, 100 FERC ¶ 61,277, at P 57 (2002)).

<sup>31</sup> *Id.* at P 84.

<sup>32</sup> Certificate Order at P 68.

Chairman Glick and then-Commissioner LaFleur dissented on the Certificate Order. Chairman Glick stated that the Certificate Order failed to support a finding that the STL Pipeline was needed. Because the Project initially relied on a single contract with an affiliate, Chairman Glick opined that the Commission should “consider other evidence to rigorously evaluate whether the project is really needed.”<sup>33</sup> Chairman Glick also stated that the Commission failed to adequately balance the Project’s benefits against its potential adverse impacts. Commissioner LaFleur raised similar concerns. On rehearing, the Commission upheld its determinations in the Certificate Order.<sup>34</sup>

### **C. The D.C. Circuit Vacated the Certificate Order.**

On June 22, 2021, the D.C. Circuit determined that the Commission had not adequately supported its finding that the Project was needed.<sup>35</sup> The court held that the Commission erred by basing its assessment of need only on the precedent agreement between Spire STL and Spire Missouri, while failing to address arguments that the precedent agreement was insufficiently probative of the need for the Project. The court also held that the Commission did not adequately explain why the Project’s public benefits outweighed possible adverse impacts.<sup>36</sup> The court acknowledged that Spire STL had presented evidence of need and benefits, but found that the Commission’s decision did not evaluate that evidence.<sup>37</sup> The court vacated the Certificate Order and remanded the proceeding to the Commission to provide the needed explanation to support its findings.<sup>38</sup>

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<sup>33</sup> *Id.* at p. 61,529 (Glick, Comm’r dissenting).

<sup>34</sup> *See generally* Rehearing Order, 169 FERC ¶ 61,134.

<sup>35</sup> *EDF v. FERC*, 2 F.4th 953.

<sup>36</sup> *Id.* at 973.

<sup>37</sup> *Id.* at 975.

<sup>38</sup> *Id.* at 976-77.

**D. The Commission Issued a Temporary Certificate.**

On July 26, 2021, Spire STL requested that the Commission issue a temporary certificate to allow it to continue serving its customers while the Commission's decision on remand was pending.<sup>39</sup> Spire STL explained in its Temporary Certificate Application that if the STL Pipeline were to be removed from service, Spire Missouri would be unable to replace its capacity on the STL Pipeline in time for the 2021-2022 winter heating season, and that without this capacity, it would be unable to meet its peak-day requirements. Spire STL included an affidavit from Scott Carter, the President of Spire Missouri, describing the consequences a shut-down of the STL Pipeline would have on Spire Missouri and its customers.

On August 6, 2021, the Commission issued a notice of Spire STL's Temporary Certificate Application and sought public comment.<sup>40</sup> The Commission also issued 18 data requests to Spire STL.<sup>41</sup> Spire STL and Spire Missouri responded to the data requests, and provided its own reply comments,<sup>42</sup> including a Declaration of Spire STL's President, Scott Smith, which described operational consequences that would occur if Spire STL were to lose its certificate authority, even for a short period of time.<sup>43</sup>

Numerous project stakeholders filed comments supporting Spire STL's request for a temporary certificate. These included the Missouri Public Service Commission

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<sup>39</sup> See generally Temporary Certificate Application. Spire STL filed the Temporary Certificate Application after the issuance of the decision in *EDF v. FERC*, but before the D.C. Circuit issued its mandate. The mandate issued on October 8, 2021.

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

<sup>41</sup> Data Request, Docket No. CP17-40-007 (Aug. 6, 2021).

<sup>42</sup> See Reply Comments of Spire STL Pipeline LLC, Docket No. CP17-40-007 (Aug. 5, 2021) ("Spire STL August 2021 Comments").

<sup>43</sup> See *id.* at Att. A and also Attachment C hereto, Declaration of Scott Smith, attached as Ex. 2 to Motion of Intervenor-Respondents Spire STL Pipeline LLC and Spire Missouri Inc. for Stay of the Mandate, *Environmental Defense Fund v. FERC*, Nos. 20-1016, *et al.* (D.C. Cir. Sept. 13, 2021)).

(“MoPSC”), which has primary jurisdiction in regulating Spire Missouri’s local distribution service; Missouri’s Governor, Lieutenant Governor, and Attorney General; mayors of St. Louis and 43 other municipalities; the senior U.S. senator from Missouri and two members of the U.S. House of Representatives; fifteen Missouri state legislators; and numerous other government officials. Spire STL also received an outpouring of supporting comments from Missouri businesses, unions, community advocacy groups, trade associations, its customers, other stakeholders, and private citizens.<sup>44</sup>

On September 14, 2021, the Commission, *sua sponte*, issued Spire STL a temporary certificate to allow the STL Pipeline to remain in service only through December 13, 2021, while the Commission “considers appropriate next steps.”<sup>45</sup> On October 8, 2021, the D.C. Circuit issued its mandate vacating the Certificate Order. Spire STL’s Temporary Certificate Application remains pending before the Commission.

#### **IV. THE STL PIPELINE IS NEEDED**

##### **A. The Existing Record Already Demonstrates the Project’s Benefits and Need.**

The D.C. Circuit held that the Commission erred by overemphasizing Spire STL’s precedent agreement with Spire Missouri as conclusive evidence of need for the Project, while ignoring other record evidence.<sup>46</sup> However, the record from the underlying proceeding provides plentiful evidence demonstrating the need for and benefits of the Project. In particular, Spire STL and Spire Missouri established in the underlying proceeding that the Project would (1) provide customers in eastern Missouri with access to

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<sup>44</sup> See generally Spire STL August 2021 Comments at 7-12 (summarizing comments).

<sup>45</sup> Temporary Certificate, 176 FERC ¶ 61,160 at P 1.

<sup>46</sup> *EDF v. FERC*, 2 F.4th at 972-76; see also *id.* at 975 (“[I]t is not enough that such evidence may exist within the record; the question is whether the Commission’s decisionmaking, as reflected in its orders, will allow us to conclude that the Commission has sufficiently evaluated that evidence in reaching a reasoned and principled decision.”).



reliable and competitively priced supplies of natural gas; (2) allow Spire Missouri to retire propane peaking facilities that had increasingly negative operational, cost, and availability issues; (3) provide Spire Missouri with operational benefits by allowing it to rely less on its own compressor units to inject gas into on-system storage; and (4) allow Spire Missouri to avoid transportation paths that traverse an area of known seismic activity.<sup>47</sup>

First, Spire STL and Spire Missouri explained that the STL Pipeline would allow Spire Missouri to diversify its supply portfolio, thereby enhancing the reliability and resilience of natural gas supplies for the St. Louis region.<sup>48</sup> Prior to the addition of the STL Pipeline, 87 percent of the firm pipeline transportation capacity into the St. Louis market area was dependent upon a single pipeline, MRT.<sup>49</sup> This left the region with access to limited supplies of gas, forcing Spire Missouri to receive the vast majority of its gas supplies from the midcontinent and Gulf Coast regions through a single pipeline.<sup>50</sup>

Spire STL and Spire Missouri explained that the additional transportation path would increase reliability and resilience for Spire Missouri and other customers in eastern Missouri.<sup>51</sup> The Project offers a direct transportation path to the REX pipeline, which provides access to both the Appalachian Basin and Rocky Mountain production areas. Spire Missouri demonstrated that the Project would allow it to avoid potential upstream

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<sup>47</sup> See generally Certificate Application at 17-26; Spire Missouri March 22, 2017 Answer at 4-21; Spire Missouri July 2017 Answer at 3, Att. B (market study entitled “Benefits of Spire STL Pipeline to Laclede Gas Company Customers” (“2017 Concentric Study”)); Spire STL 2018 Data Response (discussing Project benefits).

<sup>48</sup> See generally Certificate Application at 23-25; Spire Missouri July 2017 Answer, Att. A, July 14, 2017 Affidavit of Scott E. Woley ¶ 6; Spire STL 2018 Data Response at Q.1 (comparing supply diversity benefits of STL Pipeline to alternative projects considered by Spire Missouri).

<sup>49</sup> Certificate Application at 23.

<sup>50</sup> See *id.* at 9, 23; 2017 Concentric Study at 9-13.

<sup>51</sup> Certificate Application at 8-10, 24-25; 2017 Concentric Study at 4, 15; Spire STL 2018 Data Response at Q.2.

supply disruptions or transportation restrictions, thereby improving the chances that Spire Missouri will continue to meet its customers' needs during adverse conditions.<sup>52</sup>

Spire STL and Spire Missouri also explained that the additional supply sources would allow Spire Missouri to avoid temporary high prices that may occur due to severe weather and other unforeseen events.<sup>53</sup> As noted in a data response that Spire STL provided to the Commission during its review of the Certificate Application:

From a cost perspective, regional events such as supply freeze offs, major storms, or extreme cold or hot weather can create significant regional price spikes in the cost of gas that can be mitigated or avoided completely by having access to multiple differing supply basins in different geographical regions. The ability to avoid such price spikes in an extreme event can save utilities such as Spire Missouri and their customers tens of millions of dollars in a single year.<sup>54</sup>

Spire STL and Spire Missouri also explained that providing diverse supply access would allow shippers to realize lower prices through a more competitive supply bidding process.<sup>55</sup> Spire Missouri explained that the Project provides the flexibility to access multiple sources of supply at a liquid supply point, REX Zone 3, in close proximity to its distribution system, including direct access to Marcellus/Utica supplies and Rocky Mountain supplies, as well as indirect access to Gulf Coast, midcontinent, and potentially western Canadian supplies.<sup>56</sup> Spire Missouri further submitted that access to this liquid supply point could minimize transportation costs, provide supply security, allow price transparency, and enable the flexibility of transactions with multiple counter-parties.<sup>57</sup>

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<sup>52</sup> 2017 Concentric Study at 15.

<sup>53</sup> Certificate Application at 23; *see* 2017 Concentric Study at 4.

<sup>54</sup> Spire STL 2018 Data Response at Q.5 (p. 35). These words proved to be prescient in light of Winter Storm Uri.

<sup>55</sup> Certificate Application at 23.

<sup>56</sup> 2017 Concentric Study at 14-15.

<sup>57</sup> *See* Spire Missouri March 22, 2017 Answer at 11-14; Spire Missouri July 2017 Answer at 3; Concentric 2017 Study at 14-15; Spire STL 2018 Data Response at Q.2.

Moreover, Spire STL stated that transportation paths to the St. Louis area required service across multiple pipelines that resulted in “rate stacking” on upstream pipelines, and that the STL Pipeline’s direct access to REX Zone 3 would eliminate this problem.<sup>58</sup>

Second, Spire STL and Spire Missouri explained that the Project would eliminate Spire Missouri’s reliance on propane facilities behind its city-gate that had been required to meet critical peak system requirements.<sup>59</sup> Spire STL informed the Commission that the propane peaking service had increasingly negative environmental and operational impacts, i.e., incompatibility with certain end-use applications of natural gas, such as environmentally beneficial compressed natural gas use for vehicles.<sup>60</sup> Moreover, Spire STL explained that the cost of propane, as well as its intermittent scarcity in the region, compares unfavorably to natural gas during high-demand periods when needed for peaking supply.<sup>61</sup>

Third, Spire Missouri explained that the Project would provide operational benefits to its distribution system. Specifically, the 2017 Concentric Study indicated that the Project would provide deliveries into Spire Missouri’s distribution system at a pressure high enough to allow for direct injection into Spire Missouri’s on-system Lange storage facility under most operating conditions, therefore minimizing compressor usage.<sup>62</sup>

Lastly, Spire STL explained in its Certificate Application that the Project would provide Spire Missouri with a transportation path that does not traverse the New Madrid Fault, which is the most active seismic area in the United States east of the Rocky

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<sup>58</sup> Spire Missouri March 22, 2017 Answer at 11-13.

<sup>59</sup> Certificate Application at 24; *see* Spire Missouri March 22, 2017 Answer at 9-11; 2017 Concentric Study at 16.

<sup>60</sup> Certificate Application at 24.

<sup>61</sup> *Id.*

<sup>62</sup> 2017 Concentric Study at 16; *see also* Spire STL 2018 Data Response at Q.5.

Mountains.<sup>63</sup> Spire STL continued that the Project would thus increase supply security and safety generally and specifically in the event of major seismic activity from the New Madrid Fault.<sup>64</sup>

Accordingly, the record in this proceeding already contains evidence of the need for the Project and is not dependent on only the precedent agreement. The Certificate Policy Statement recognizes that precedent agreements “always will be important evidence of demand for a project,” and the Project satisfied this policy by having 87.5 percent of its capacity under firm contract.<sup>65</sup> But, as the D.C. Circuit recognized in *EDF v. FERC*, the Certificate Policy Statement provides for the Commission to consider a broad range of factors in determining whether a project should be built.<sup>66</sup> The Certificate Policy Statement provides for the consideration of factors beyond precedent agreements in part to “reduce[] the significance of whether the contracts are with affiliated or unaffiliated shippers,” and to allow the Commission to review a project holistically.<sup>67</sup> The Certificate Policy Statement recognizes that benefits of a new pipeline could be “quite diverse,” but might include, among other things, “access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, [and] providing competitive alternatives.”<sup>68</sup> The existing record shows that in addition to being almost fully subscribed,

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<sup>63</sup> Certificate Application at 24. *See generally* U.S. Geological Service, “The New Madrid Seismic Zone,” [https://www.usgs.gov/natural-hazards/earthquake-hazards/science/new-madrid-seismic-zone?qt-science\\_center\\_objects=0#qt-science\\_center\\_objects](https://www.usgs.gov/natural-hazards/earthquake-hazards/science/new-madrid-seismic-zone?qt-science_center_objects=0#qt-science_center_objects) (estimating that the New Madrid seismic zone has a 25-40% chance of a magnitude 6.0 and greater earthquake in the next 50 years) (last visited Nov. 10, 2021).

<sup>64</sup> Certificate Application at 25; *see also* Spire Missouri March 22, 2017 Answer at 14-16; *see also id.* at Att. A, Affidavit of Scott B. Woley, ¶¶ 29, 31-35.

<sup>65</sup> Certificate Policy Statement, 88 FERC at p. 61,748.

<sup>66</sup> *EDF v. FERC*, 2 F.4th at 961-62 (explaining that the Certificate Policy Statement provides for FERC to consider “all relevant factors” in balancing a project’s benefits against its possible adverse effects).

<sup>67</sup> Certificate Policy Statement, 88 FERC at p. 61,748.

<sup>68</sup> *Id.*

the STL Pipeline provides all of these benefits. As such, the existing record supports approval of the Project.

**B. The Commission Must Consider the Need for the STL Pipeline as It Exists Today, Not Just in 2018.**

Notwithstanding the existing record's ample support for approval of the STL Pipeline, on remand, the Commission must consider developments that occurred after the Certificate Order was issued. This is necessary for the Commission to evaluate the STL Pipeline based on the *current* market for transportation service in Missouri, not just the market as it existed when the Commission issued the Certificate Order in 2018. Considering the facts as they exist today is also consistent with the statutory mandate that the Commission base its decision on the "present or future public convenience and necessity."

Several recent developments that further underscore the need for the STL Pipeline were brought to the Commission's attention in Spire STL's Temporary Certificate Application and in comments and data responses filed in that proceeding.<sup>69</sup> These developments are described more fully in Section IV.C below. The Commission must consider these developments on remand.

***1. The Court Remanded the Certificate Order for Failure to Consider All Evidence Relevant to the Need for the STL Pipeline.***

Dissenting statements of Chairman Glick and then-Commissioner LaFleur were central to the D.C. Circuit's decision to vacate the Certificate Order. Chairman Glick asserted that by focusing only on the precedent agreement and ignoring other evidence of the need for the Project, the Commission had "turn[ed] a blind eye to the many concerns

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<sup>69</sup> See generally Docket No. CP17-40-007.

raised in the record.”<sup>70</sup> Chairman Glick stated that the Commission must “rigorously evaluate whether the project is really needed,” and that “[a]nything less is arbitrary and capricious.”<sup>71</sup> Chairman Glick concluded, “[a]t the very least, the Commission should have further examined the numerous issues of material fact raised by the parties to the proceeding rather than brushing them blithely aside in its rush to issue today’s decision.”<sup>72</sup>

Chairman Glick reiterated these concerns even more forcefully on rehearing. After explaining that “[o]ne of the foundational principles of administrative law is that an agency may not ignore an important aspect of the issue it is addressing,”<sup>73</sup> Chairman Glick asserted, “[i]n light of . . . contrary evidence, the Commission must do more than simply point to the limited evidence that it believes supports its conclusion.”<sup>74</sup> He stated that “the Commission cannot rely only on the evidence that supports its preferred conclusion and ignore the evidence that undermines that finding.”<sup>75</sup>

In vacating the Certificate Order, the D.C. Circuit emphasized the Certificate Policy Statement’s requirement that the Commission “consider *all relevant factors* reflecting on the need for the project,”<sup>76</sup> and highlighted the dissenting Commissioners’ assertions that the Commission had failed to meet this requirement. The D.C. Circuit stated, “FERC’s failure to engage with this evidence did not satisfy the requirements of reasoned

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<sup>70</sup> Certificate Order at p. 61,528 (Glick, Comm’r dissent).

<sup>71</sup> *Id.* at p. 61,529 (Glick, Comm’r dissent).

<sup>72</sup> Commissioner LaFleur similarly stated that the Certificate Policy Statement authorizes the Commission to “consider other indicators of need including, but not limited to, ‘demand projections, potential cost savings to consumers, or comparison of projected demand with the amount of capacity currently serving the market.’ The majority, however, did not consider any such evidence, which I believe we should in this case.” *Id.* at p. 61,525 (LaFleur, Comm’r dissent) (internal citation omitted). Commissioner LaFleur also stated that the Commission should make a determination about issues concerning the Project’s benefits, “or find that there are material issues of fact in dispute and send the case to hearing.” *Id.* at pp. 61,525-26 (LaFleur, Comm’r dissent).

<sup>73</sup> Rehearing Order (Glick, Comm’r dissent at P 3).

<sup>74</sup> *Id.* (Glick, Comm’r dissent at P 11).

<sup>75</sup> *Id.* (Glick, Comm’r dissent at P 12).

<sup>76</sup> *EDF v. FERC*, 2 F.4th at 961 (citing Certificate Policy Statement at p. 61,747).

decisionmaking. Indeed, as noted above, FERC’s ostrich-like approach flies in the face of the guidelines set forth in the Certificate Policy Statement.”<sup>77</sup> The court further emphasized that the Commission’s order must “allow us to conclude that the Commission has sufficiently evaluated [the] evidence in reaching a reasoned and principled decision. Based on the Certificate Order and Rehearing Order, we cannot say that the Commission has done so.”<sup>78</sup>

**2. *The Commission Must Consider All Evidence Relevant to the Need for the STL Pipeline.***

The Supreme Court has stated that on remand, the Commission is “bound to deal with the problem afresh.”<sup>79</sup> The Commission “retains wide discretion” when addressing a judicial remand, including “to solicit new comments in order to obtain updated information.”<sup>80</sup> However, a Commission decision will be arbitrary and capricious if the agency “entirely fail[s] to consider an important aspect of the problem [or] offer[s] an explanation for its decision that runs counter to the evidence before [it].”<sup>81</sup> In this case, the record contains substantial evidence of the salutary effect of STL Pipeline on the market that the Commission cannot ignore.

In similar proceedings, the Commission has allowed parties to introduce new evidence on remand, including information that post-dates the close of the original

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<sup>77</sup> *Id.* at 975.

<sup>78</sup> *Id.* (internal citations omitted).

<sup>79</sup> *SEC v. Chenery*, 332 U.S. 194, 200-01 (1947).

<sup>80</sup> *Williams Nat. Gas Co. v. FERC*, 872 F.2d 438, 450 (D.C. Cir. 1989); *see also PPL Wallingford Energy, LLC*, 115 FERC ¶ 61,015, at P 22 (2006) (citing *Williams* and explaining that “[t]he Commission is well within its authority on remand to reopen the record in this proceeding and take additional evidence.”), *order on clarification*, 116 FERC ¶ 61,089 (2006).

<sup>81</sup> *Port of Seattle, Wash. v. FERC*, 499 F.3d 1016, 1035 (9th Cir. 2007) (quoting *Motor Vehicle Mfrs. Ass’n of United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). *See also El Paso Elec. Co. v. FERC*, 201 F.3d 667, 672 (5th Cir. 2000) (remanding a Commission decision for its “arbitrary refusal to evaluate relevant evidence”).

evidentiary record.<sup>82</sup> In *Washington Gas Light Co. v. FERC*, the D.C. Circuit partially vacated a certificate order that approved expansion of a liquefied natural gas (“LNG”) terminal, finding that the Commission had failed to support its responses to safety concerns.<sup>83</sup> On remand, the Commission held a technical conference discussing the issues raised before the court, issued data requests to project stakeholders, and considered supplemental comments filed by the applicant and its customers.<sup>84</sup> This provided the Commission with substantial new evidence addressing safety concerns, including evidence that post-dated the close of the record in the underlying proceeding. The Commission reauthorized the expansion of the LNG terminal, and the D.C. Circuit upheld that order.

More recently, in *Sabal Trail*, the D.C. Circuit vacated and remanded a certificate order for the Commission’s failure to estimate downstream greenhouse gas (“GHG”) emissions associated with three new gas pipelines, or to explain why it could not have done so.<sup>85</sup> Following issuance of the court order, numerous companies submitted comments concerning the pipeline’s downstream GHG emissions.<sup>86</sup> The Commission considered these comments and reinstated the underlying authorizations.<sup>87</sup>

The Commission’s consideration of new evidence on remand from courts of appeals also is consistent with broader Commission practice of allowing litigants wide

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<sup>82</sup> *Mo. Interstate Gas, LLC*, 132 FERC ¶ 61,161, at PP 4-5 (accepting “supplemental filing” that responded to the D.C. Circuit’s order on remand, and establishing additional procedures), *order on clarification*, 133 FERC ¶ 61,115 (2010); *Algonquin Gas Transmission Co.*, 63 FERC ¶ 61,326, at p. 63,179 (1993) (finding it reasonable in light of the D.C. Circuit’s remand to grant motion to reopen record to consider the issue of rolled-in versus incremental rates).

<sup>83</sup> *Wash. Gas Light Co. v. FERC*, 532 F.3d 928 (D.C. Cir. 2008).

<sup>84</sup> *Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,018 (2008), *order on reh’g*, 126 FERC ¶ 61,036 (2009), *aff’d*, *Wash. Gas Light Co. v. FERC*, 603 F.3d 55 (D.C. Cir. 2010).

<sup>85</sup> *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (“*Sabal Trail*”).

<sup>86</sup> *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, at P 16 (2018) (“address[ing] the relevant comments,” but declining to consider arguments that “the Commission already thoroughly considered . . . in the Certificate and Rehearing Orders,” and that “the court either specifically affirmed . . . or did not remand them to the Commission for further consideration”).

<sup>87</sup> *Id.* at P 2 and ordering para.



latitude to submit evidence relevant to the decisionmaking process.<sup>88</sup> This includes evidence that post-dates the close of the underlying record. In *PPL Wallingford*, the D.C. Circuit vacated a FERC order approving a Reliability–Must–Run agreement on the basis that FERC had failed to respond to protestors’ arguments and evidence that the agreement would result in unjust and unreasonable rates.<sup>89</sup> On remand, the Commission noted that “[i]n the period following” the issuance of the underlying orders, it became clear that the agreement would not allow several generators to recover their costs of service.<sup>90</sup> Accordingly, the Commission accepted the agreement subject to refund, and reopened the record to allow the petitioner to demonstrate the justness and reasonableness of the agreement by providing additional support “that is not present in the previous record.”<sup>91</sup> The Commission is “well within its authority on remand to reopen the record in this proceeding and take additional evidence.”<sup>92</sup>

The Commission has been particularly willing to reopen the record on remand when circumstances have changed, such that the underlying record has become stale. For instance, in *Williston Basin Interstate Pipeline Co.*, the Commission sought new information after the court remanded Commission orders requiring the conversion of an individually certificated transportation contract to an open-access agreement under Part 284 of the Commission’s regulations.<sup>93</sup> The Commission explained, “[t]hree and a half years have passed since the Initial Decision on this matter. Because market conditions change over time and the parties now have experience operating under a converted Part 284

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<sup>88</sup> Under the Commission’s Rules of Practice and Procedure, evidence is admissible unless it is “irrelevant, immaterial, or unduly repetitious.” 18 C.F.R. § 385.509(a).

<sup>89</sup> 115 FERC ¶ 61,015 at PP 20-22.

<sup>90</sup> *Id.* at P 20.

<sup>91</sup> *Id.* at P 22. The Commission held the hearing in abeyance and directed that a settlement judge be appointed.

<sup>92</sup> *Id.*

<sup>93</sup> 125 FERC ¶ 61,303 (2008), *order on remand*, 129 FERC ¶ 61,084 (2009).

contract, we believe that more current information is needed to respond to the court's Remand Order."<sup>94</sup> Accordingly, the Commission directed the parties to the contract to submit the most recent data concerning transportation that had been provided under the contract.<sup>95</sup>

**3. Failure to Consider Current Evidence Would Result in Another Reversal by the D.C. Circuit.**

The market for natural gas transportation services in St. Louis and eastern Missouri is far different today than it was when the Commission issued the Certificate Order in 2018. Given Chairman Glick's emphasis in the underlying proceeding that the Commission must "rigorously evaluate whether the project is really needed,"<sup>96</sup> it is critical that the Commission do so here. Consistent with Chairman Glick's dissent, the D.C. Circuit criticized the Commission's "ostrich-like approach" of failing to consider all information relevant to the need for the STL Pipeline.<sup>97</sup>

It is in the best interests of the Commission, Spire STL, and the eastern Missouri gas consumers that the Commission fully examine all relevant factors based on today's market. Spire STL is eager to participate in that process.

**C. The STL Pipeline's Two Years of Operation Further Demonstrate Its Need and Benefits.**

The Commission must consider the circumstances as they are today. Developments since the Commission issued the Certificate Order in 2018 show that the Project benefits

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<sup>94</sup> 125 FERC ¶ 61,303 at P 16.

<sup>95</sup> *Id.* at ordering para. (A); *see also New Century Servs., Inc.*, 108 FERC ¶ 61,148, at P 2 (2004) (on remand, ordering paper hearing "to provide the Commission with more current information on which to resolve the issues presented"), *proceeding terminated after settlement*, 109 FERC ¶ 61,122 (2004). *C.f.*, *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,309, at P 14 (2004) (rejecting motion for additional briefing on remand, where the record was "entirely historical in nature and has not evolved or changed since having been filed").

<sup>96</sup> Certificate Order at p. 61,529 (Glick, Comm'r dissent).

<sup>97</sup> *EDF v. FERC*, 2 F.4th at 975.

predicted in the underlying certificate proceeding have come to fruition, proving that there is a need for the STL Pipeline. These include (1) changes in the marketplace, (2) proven reliability benefits, (3) economic developments, and (4) operational developments that have occurred since the Project entered service.

***1. Market Developments Further Support the Need for the STL Pipeline.***

**a. Spire Missouri Relies on the STL Pipeline Specifically to Meet Growing Demand on the West Side of Its System, and to Serve Customers Throughout Its Territory.**

Opponents of the STL Pipeline have argued that there is no need for the STL Pipeline due to a lack of overall demand growth in the St. Louis market. But that is an oversimplification. St. Louis' population, and gas demand has been shifting from the eastern side of the Greater St. Louis region to the western side.<sup>98</sup> Despite the decline in population within the city of St. Louis, its western suburbs are growing rapidly, and the STL Pipeline is critical to meeting that need.

The Spire STL Pipeline is necessary to allow Spire Missouri to meet this growing demand on the west side of St. Louis. Spire STL is preparing an expert demographic analysis that shows the growth on the west side of St. Louis, and will provide that to the Commission by mid-December, 2021.<sup>99</sup> In any case, the map below, based on U.S. Census data, demonstrates that there has been and continues to be population growth in the suburban counties to the west of St. Louis, particularly in St. Louis's neighboring St. Charles County.

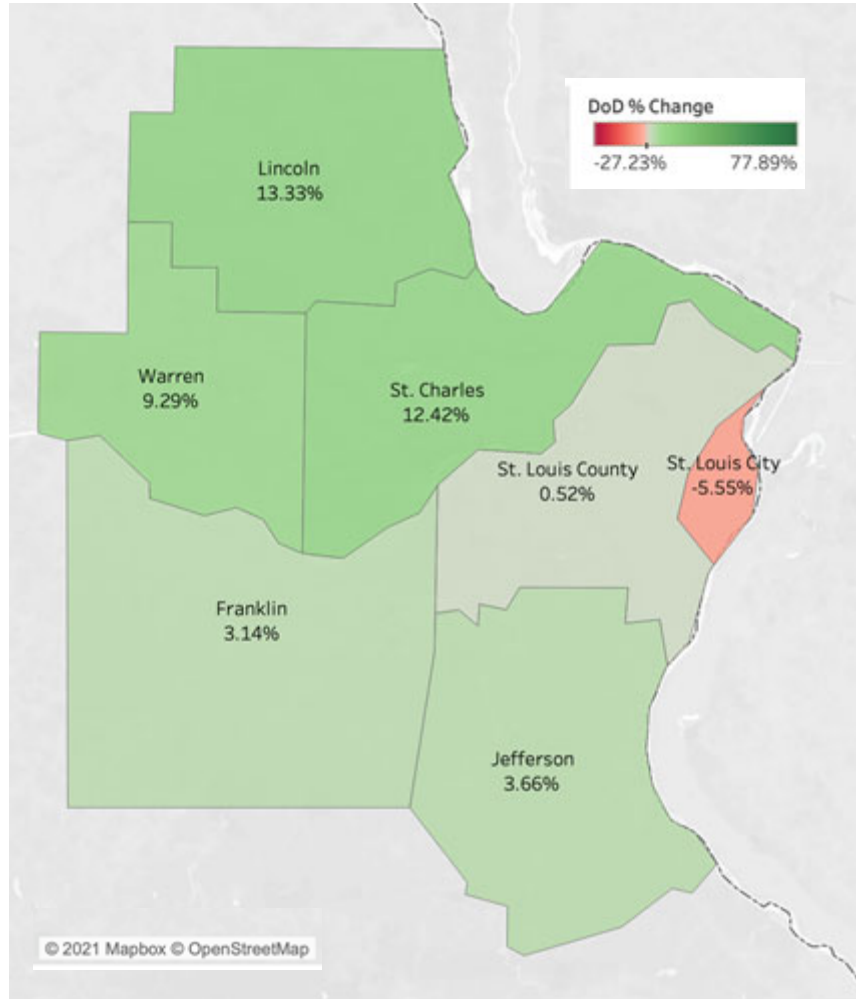
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<sup>98</sup> The need for the Project to serve west-side demand was discussed in the underlying proceeding and recognized in the Certificate Order. Certificate Order at P 90 n.158.

<sup>99</sup> On behalf of Spire STL, Bruce Katz of New Localism Associates is preparing a report regarding the spatial shifts of population and jobs in the St. Louis metropolitan area, which has long been considered one of the most decentralized in the United States. The report's conclusions support the finding that the St. Louis region has experienced growth in the western suburbs over the period studied.

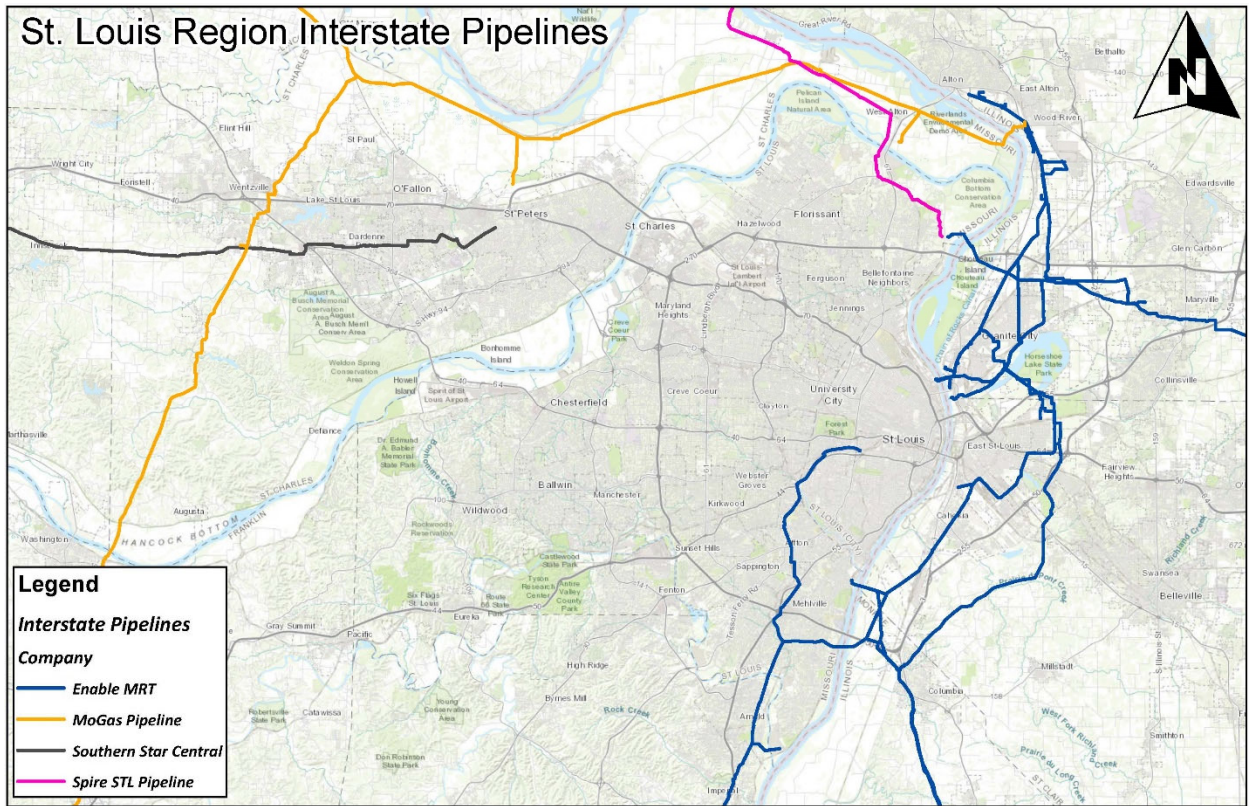
### Map 1: St. Louis MO-IL (Missouri Counties) – Percentage Population Change Decade-Over-Decade: 2020

St. Louis, MO-IL (Missouri Counties) - Percentage Population Change Decade-Over-Decade: 2020  
Source: U.S. Census Bureau



As shown below, much of the gas pipeline infrastructure in place before the STL Pipeline is located on the eastern side of St. Louis, including MRT, the incumbent pipeline prior to the STL Pipeline.

**Map 2: St. Louis Region Interstate Pipelines**



Prior to construction of the STL Pipeline, Spire Missouri was contemplating expensive multi-year improvements to its own distribution system that would allow it to serve the growing demand on the west side of its system.<sup>100</sup> Once the STL Pipeline entered service, a better option became clear. MoGas, which serves the growing markets on the west side of St. Louis and other parts of Missouri, constructed a new interconnect with the STL Pipeline at its own expense.<sup>101</sup> The STL Pipeline now delivers gas shipped by Spire Missouri into MoGas for delivery to the western suburbs of St. Louis. In comments on Spire STL’s Temporary Certificate Application, MoGas explained that “prior to the 2020 interconnection with STL Pipeline, MoGas’ system could not accommodate new load

<sup>100</sup> See In the Matter of Laclede Gas Company’s Request to Its Revenues for Gas Service, Partial Stipulation and Agreement, MoPSC File No. GR-2017-0215 (filed Dec. 13, 2017) (settlement agreement contemplating such improvements).

<sup>101</sup> Carter Aff. ¶ 12.

requests stemming from the substantial geographic demand shift to the counties to the west of St. Louis.”<sup>102</sup> MoGas explained that the STL Pipeline is “integral” to its service of markets west of St. Louis, including service to Ameren Missouri, the gas utility that serves areas west of Spire Missouri’s territory.<sup>103</sup>

Market alternatives to the STL Pipeline would be more expensive, less effective, and have significant environmental impacts.<sup>104</sup> Absent the STL Pipeline, to move gas from MRT to the growing western part of Spire Missouri’s service territory would require system changes on Spire Missouri and the construction of at least 25 miles of 20-inch new high-pressure pipeline facilities through heavily populated areas, which would take years to complete.<sup>105</sup> The higher-pressure deliveries from STL Pipeline via the new interconnection into MoGas allowed Spire Missouri to forego costly investments.<sup>106</sup> According to engineering estimates, it would take years to install these projects, putting Spire Missouri at risk of being unable to serve its customers during the protracted construction period.<sup>107</sup> The STL Pipeline has rendered this construction unnecessary, as it provides MoGas with higher pressure that allows it to meet Spire Missouri’s needs in that part of its system.<sup>108</sup> This finding is confirmed by the MoPSC Staff Report, which explains, “[t]he interconnection between Spire STL and MoGas allowed Spire Missouri to move gas

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<sup>102</sup> MoGas Comments at 5.

<sup>103</sup> *Id.* at 4.

<sup>104</sup> *See generally* 2021 Market Study §§ V, VI (discussing effectiveness and costs of identified alternatives to the STL Pipeline); Environmental Study § 3.0 (discussing environmental impacts of alternatives to the STL Pipeline).

<sup>105</sup> Data Response, Docket No. CP17-40-007, at Q.10 (Sept. 7, 2021) (“Spire STL 2021 Data Response”).

<sup>106</sup> *See* Carter Aff. ¶ 12.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* ¶ 46.

westward on MoGas rather than increasing the capacity of its distribution system to move gas to the western part of its system.”<sup>109</sup>

If the STL Pipeline ceases operations, the need to meet the growth in the western suburbs will not go away. Significant *greenfield* construction, either by Spire Missouri or MoGas, will be required to meet this demand.

More generally, since becoming fully operational in 2019, the STL Pipeline has proven to be a critical source of energy supply to the Greater St. Louis area and eastern Missouri. Spire Missouri relies on the STL Pipeline to provide 350,000 Dth/d of firm capacity, allowing it to transport natural gas for distribution to approximately 650,000 customers in the St. Louis metropolitan area and ten surrounding counties in eastern Missouri. The STL Pipeline provides Spire Missouri with approximately 38 percent of the total pipeline capacity delivering into its system and has allowed Spire Missouri to forego expensive and disruptive construction to expand its local distribution system.

Spire Missouri is a regulated local distribution company subject to the jurisdiction of the MoPSC. Spire Missouri undertakes a planning process, audited by the MoPSC, which outlines how it will meet peak-day customer demand during the winter heating season. Based on its planning estimates, Spire Missouri would require nearly 1,300,000 Dth/d of capacity to meet peak customer demand during extreme cold weather in the winter of 2021-2022.<sup>110</sup> Based on Spire Missouri’s extreme cold weather planning scenarios, approximately 175,000—or 27 percent—of Spire Missouri customers could be without gas

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<sup>109</sup> 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>.

<sup>110</sup> Carter Aff. ¶ 17.

service during the winter if Spire Missouri were to lose its 350,000 Dth/d of capacity on the STL Pipeline.<sup>111</sup> Without the STL Pipeline, Spire Missouri will not be able to serve load demand above 923,647 Dth/d of gas, which is well below its projected baseload winter demand.<sup>112</sup> Greater detail and outage forecasts are provided in Spire STL's Temporary Certificate Application and the 2021 Data Response. Spire Missouri depends on the STL Pipeline to serve its customers.

**b. Changes on MRT Have Increased the Need for the STL Pipeline.**

As contemplated in the Certificate Order, upon completion of the STL Pipeline in 2019, Spire Missouri allowed some of its previous contracts with its other pipeline suppliers to expire. Recall that the STL Pipeline was designed to reduce reliance on a single interstate pipeline that was serving the region. Therefore, Spire Missouri reduced its reliance by turning back 180,000 Dth/day of firm capacity on MRT, but still retaining 630,779 Dth/day of firm capacity on MRT. In turning back capacity on MRT, Spire Missouri also surrendered upstream capacity on Natural Gas Pipeline Company of America LLC and Trunkline Gas Company, LLC ("Trunkline") pipelines that feed gas into MRT's East Line. To do otherwise would have been costly to Spire Missouri ratepayers. After the turnback, Spire Missouri remains MRT's largest customer.<sup>113</sup>

There currently is no capacity that would be available to allow Spire Missouri to meet its customers' needs if the STL Pipeline were to be removed from service.<sup>114</sup> While currently there is approximately 165,849 Dth/d of unsubscribed capacity on MRT's East

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<sup>111</sup> *Id.* ¶ 18.

<sup>112</sup> *Id.* ¶ 13, tbl.1.

<sup>113</sup> *See* MRT Q3 2021 Index of Customers.

<sup>114</sup> *See generally* Spire STL 2021 Data Response at Q.1 and Att. 1.b.2 (showing contracts expiring on MRT and MoGas through 2030).



Line,<sup>115</sup> longstanding pressure issues make it unreliable for Spire Missouri, especially in the near term.<sup>116</sup> Trunkline recently announced an effort to address these pressure issues, along with an open season, but Spire Missouri was not awarded the capacity. As a result, absent the STL Pipeline, there is insufficient pipeline capacity to serve the needs of Spire Missouri.

**c. Additional Shippers' Use of the STL Pipeline.**

Other shippers have contracted for and/or expressed interest in capacity on the STL Pipeline since it entered service. Spire Marketing, for example, holds a firm transportation contract for 10,000 Dth/d of firm capacity on the STL Pipeline, and uses this capacity to provide gas service to customers in the Greater St. Louis region. These customers include hospitals, primary and secondary schools, universities, commercial businesses, and industrial customers, who are served under various firm natural gas delivery contracts via the STL Pipeline.

Spire STL also has been in discussions with unaffiliated marketing companies that have expressed interest in obtaining firm transportation contracts on the STL Pipeline to serve end-users behind the Spire Missouri city-gate. Spire STL believes that if not for the uncertainty surrounding its ongoing authority to operate, these shippers would already have contracted for firm capacity on the Project. One marketing company, Symmetry Energy Solutions, LLC (“Symmetry”), has commenced the process of obtaining STL Pipeline capacity, including providing credit support and executing an agreement for interruptible

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<sup>115</sup> Reply Comments of Enable Mississippi River Transmission, LLC, Docket No. CP17-40-007, at 2 (Oct. 5, 2021).

<sup>116</sup> See generally Temporary Certificate Application at 12-13; Carter Aff. ¶ 42; Spire STL 2021 Data Response at Q.2; Symmetry August 23 Comments at 4-5.

transportation service. Symmetry has filed two pleadings supporting continued operation of the STL Pipeline.<sup>117</sup>

**d. Spire STL's Updated Market Study Further Demonstrates the Project's Need and Benefits.**

Spire STL has also included a new 2021 Market Study prepared by RBN Energy that further demonstrates the need for the STL Pipeline. The 2021 Market Study describes the need for and benefits of the STL Pipeline under current market conditions. A study by Black & Veatch concludes that on a peak day Spire Missouri would have a shortfall of 272,800 Dth/d of firm transportation capacity.<sup>118</sup> According to Black & Veatch, this could lead to “significant gas supply curtailment to primary and secondary schools, hospitals, prisons, critical infrastructure and industrial users.”<sup>119</sup>

The 2021 Market Study concludes that the STL Pipeline improves regional gas supply reliability and drives down price, based on the ability to leverage different supply sources to protect against weather-driven upsets in reliability and gas costs. The 2021 Market Study also recognizes that LNG exports from the South consume an increasing portion of the gas supplies from Texas, Oklahoma, and Louisiana that have historically been a major source of Spire Missouri's supply via MRT. With competition from LNG exporters placing upward pressure on price, the STL Pipeline's connection to Marcellus/Utica and Rocky Mountain gas provides affordable, reliable supplies to customers in eastern Missouri. In addition, the 2021 Market Study recognizes that the STL

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<sup>117</sup> See Symmetry August 23 Comments; Comments of Symmetry Energy Solutions, LLC in Support of Request for Expedited Clarification or, in the Alternative, Rehearing of Spire STL Pipeline LLC at 2-3, Docket No. CP17-40-009 (Nov. 1, 2021) (“Symmetry is currently interested in contracting with Spire STL for interruptible service, and potentially firm service, that would utilize Spire STL's existing available capacity”).

<sup>118</sup> See 2021 Market Study, App. A at 1-2.

<sup>119</sup> *Id.*, App. A at 4-16.

Pipeline allows gas to be transported to growing areas of demand on the west side of Spire Missouri's system, which otherwise would need to be accommodated by new construction. This study also finds that no identified alternatives to the Project could effectively replace it in the near term.

**2. *Experience Demonstrates That the STL Pipeline Is Necessary for Reliability.***

**a. Winter Storm Uri**

The reliability benefits described in Spire STL's Certificate Application were proven in February 2021, when Winter Storm Uri brought extreme cold and losses of gas and power service to millions across the country.<sup>120</sup> People and businesses of eastern Missouri escaped the Storm largely unscathed, due in large part to the addition of the STL Pipeline.<sup>121</sup> Spire Missouri estimates that without the STL Pipeline, customers would have lost gas service on eight of the nine days from February 11, 2021 to February 19, 2021, with a peak of roughly 133,000 customers without service on February 15, 2021.<sup>122</sup> In contrast, during the Storm, Enable Gas Transmission, LLC was not making deliveries into MRT, thus raising doubts that Spire Missouri would have received its traditional southern-sourced supplies as a result of freeze-offs in the Texas region.<sup>123</sup> Spire Missouri also estimates that its customers realized up to \$300 million in gas cost savings over the course of nine days during the Storm because the STL Pipeline delivered gas supply sourced from the Rockies and Appalachian Basins, instead of the significantly higher-priced gas from the Oklahoma and Texas producing basins that suffered from major operational

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<sup>120</sup> These specific benefits in the event of a severe weather event were stated on multiple occasions *before* the Certificate Order was issued. *See, e.g.*, Certificate Application at P 23; 2017 Concentric Study at 4; Spire STL 2018 Data Response at Q.5 (p. 35).

<sup>121</sup> *See generally* Temporary Certificate Application at 24-26.

<sup>122</sup> *Id.* at 11; Carter Aff. ¶ 33.

<sup>123</sup> Temporary Certificate Application at 25.

impediments caused by extreme weather.<sup>124</sup> This is further supported by the 2021 Market Study, which describes the market pricing dynamics that allowed the STL Pipeline to “protect[] St. Louis customers” from the extreme gas prices experienced during the Storm.<sup>125</sup> The critical role that the Project played during Winter Storm Uri provides real-world evidence demonstrating that Spire Missouri needs the supply diversity that the STL Pipeline provides.

Analysis by the MoPSC further supports this conclusion. The MoPSC Staff has conducted an investigation and issued a report discussing the need for the STL Pipeline for the winter 2021-2022.<sup>126</sup> The MoPSC Staff Report recognizes that Spire Missouri benefits from the STL Pipeline, particularly on cold days, and that Spire Missouri would need the STL Pipeline in the event peak demand occurs.

#### **b. Additional Benefits to Reliability and Resilience**

As mentioned above, the Project provides supply security for Spire Missouri by avoiding the New Madrid Fault—the most active seismic area in the United States east of the Rocky Mountains—over which MRT traverses. The Project also provides supply security for Spire Missouri and its customers by helping to avoid a flood zone of the Mississippi River. As explained in the underlying proceeding, Spire Missouri’s prior interconnection with MRT was located in a flood zone that jeopardized the ability of Spire Missouri to receive gas from MRT during periods of heavy precipitation.<sup>127</sup> The old Chain of Rocks interconnect was abandoned in part due to this flood risk, and since that time, the

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<sup>124</sup> *Id.* at 25-26; Carter Aff. ¶ 34.

<sup>125</sup> 2021 Market Study § III; *id.* at 8.

<sup>126</sup> MoPSC Staff Report at 3.

<sup>127</sup> Spire STL 2018 Data Response at Q.5. Spire STL explained in 2018 that moving the prior interconnection with MRT was yet another benefit of the Project. *See* Motion for Leave to Answer and Answer of Spire STL Pipeline LLC to Unauthorized Pleadings, Docket No. CP17-40-000, *et al.*, at 9, 13 (April 11, 2018).

old Chain of Rocks station has in fact flooded, thus validating the original concern.<sup>128</sup> The Project's new Chain of Rocks interconnection with MRT and Spire Missouri avoids these flood concerns, further enhancing supply security for Spire Missouri.<sup>129</sup> Now in service, the Project continues to provide the reliability benefit of assured service in the event that an earthquake or further flooding occurs.

### **3. *The STL Pipeline Provides Economic Benefits.***

The STL Pipeline has brought economic benefits to Missouri ratepayers by providing access to diverse, low-cost supplies of natural gas, and lower transportation costs. Spire Missouri explained in the underlying proceeding that transportation paths to the St. Louis area required service across multiple pipelines and, as a consequence, "rate stacking" on upstream pipelines occurred.<sup>130</sup> Spire Missouri explained that access to Rocky Mountain and Appalachian production areas through the STL Pipeline would reduce these costs. Spire Missouri also provided a "Delivered Cost Analysis," which provided a four-year projection of savings in the delivered cost of gas that would result from the Project showing Spire Missouri and its customers paying substantially less for gas over the life of the contract.<sup>131</sup>

These predictions have come true, resulting in a lowered cost of delivered gas for Spire Missouri's customers. Spire Missouri pays a negotiated reservation rate of \$0.25 per Dth/d for service on the STL Pipeline, which is well below the Commission-approved recourse rate of \$0.3570 per Dth/d. As Spire Missouri recently explained, its delivered cost of gas on the STL Pipeline (\$6.36 per Dth) is estimated to be lower than on MRT's

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<sup>128</sup> Spire STL 2021 Data Response at Q.13.

<sup>129</sup> See generally Spire STL 2018 Data Response at Q.5; Spire STL 2021 Data Response at Q.13.

<sup>130</sup> Spire Missouri March 22, 2017 Answer at 11-13.

<sup>131</sup> *Id.*; see also *id.* Att. F, "LGC Delivered Cost Analysis."

East Line (\$6.70 per Dth),<sup>132</sup> which benefits Spire Missouri and its customers.<sup>133</sup> Spire STL clearly has provided a lower-cost option to its customers. The 2021 Market Study further shows how the STL Pipeline places downward pressure on Spire Missouri's gas costs. As the 2021 Market Study explains, the STL Pipeline provides Spire Missouri with direct access to the liquid trading point in REX Zone 3, where gas supplies from the Marcellus/Utica and the Rocky Mountain production areas converge.<sup>134</sup> This supply diversity creates market competition that benefits Spire Missouri and its customers, and which is projected to continue into the future.<sup>135</sup>

Access to diverse gas supplies was particularly helpful during Winter Storm Uri when, as noted above, the STL Pipeline saved Missouri ratepayers up to \$300 million in gas costs by providing access to gas from the Rocky Mountain and Appalachian Basins, while customers on other pipeline systems were captive to higher-priced gas from production areas in Oklahoma and Texas. These savings have new relevance in the winter 2021-2022, as the country faces drastically rising natural gas prices. Commission Staff's 2021-2022 Winter Energy Market and Reliability Assessment states that gas prices this winter will be more than *double* those of last winter, and storage inventories are 5 percent below the 5-year average.<sup>136</sup> It is abundantly clear the STL Pipeline has delivered, and will continue to deliver, cost savings to consumers.

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<sup>132</sup> See Motion for Leave to Answer and Answer of Spire Missouri Inc. to the Motion for Leave to Answer and Answer of Environmental Defense Fund, Docket No. CP17-40-007, at 4 (Oct. 29, 2021).

<sup>133</sup> See *id.*

<sup>134</sup> 2021 Market Study § III.

<sup>135</sup> *Id.*

<sup>136</sup> FERC, Staff Report: Winter Energy Market and Reliability Assessment 2021-2022, Docket No. AD06-3-000, at 11, 16 (Oct. 21, 2021) ("2021-2022 Winter Assessment"). The report states that "[a]s of October 13, 2021, the Henry Hub futures contract price, the base component of winter futures prices for all trading locations, is up 103% from last winter's settled price, increasing \$2.85/MMBtu . . . to \$5.63/MMBtu for winter 2021-2022," and that storage inventories are forecast to begin the winter 2021-2022 "at 3,572 Bcf, 5% below the five-year average." *Id.* (internal footnote omitted).

**4. Operational Developments Demonstrate the Need for the STL Pipeline.**

Spire Missouri and other downstream entities have adapted their operations to take advantage of the high-pressure deliveries from the STL Pipeline. Some of these operational benefits were planned when Spire STL submitted its Certificate Application. However, the STL Pipeline's added capacity and pressure facilitated other positive developments for the Missouri gas market, as described below.

**a. Retirement of Propane Peaking Facilities.**

Spire Missouri's need for the STL Pipeline stemmed in part from its business decision to decommission its antiquated and inefficient propane-peaking facilities. Since the STL Pipeline entered service, the propane facilities have been retired and currently are unavailable.<sup>137</sup> As Spire Missouri explained to the Commission, before the STL Pipeline entered service, Spire Missouri was injecting propane directly into natural gas lines and may have been the only utility system in the United States still relying on this outdated process.<sup>138</sup> After the STL Pipeline went into service, however, Spire Missouri removed and physically disconnected the propane injection facilities and propane pipeline from its system and repurposed the vaporizers.<sup>139</sup>

Retirement of the propane facilities has eliminated the need to perform increasing maintenance and the inevitable replacement of these facilities, which would have occurred at significant cost to Spire Missouri ratepayers. Retirement of these facilities also eliminated adverse effects associated with the direct injection of high Btu vaporized propane into the natural gas stream. As Spire Missouri stated in the underlying proceeding,

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<sup>137</sup> Carter Aff. ¶¶ 36, 44.

<sup>138</sup> Certificate Application at 24; Spire Missouri March 22, 2017 Answer at 9-11; Spire STL 2018 Data Response at Q.2. See Certificate Order at P 68.

<sup>139</sup> Temporary Certificate Application at 14, Carter Aff. ¶ 44; and Spire STL 2021 Data Response at Q.14.

this injection created operational problems for certain end-users, including natural gas vehicles.<sup>140</sup> Shutdown of the STL Pipeline would force Spire Missouri to attempt to restore these facilities, at significant cost and no benefit.

**b. Retirement of Compressors at Lange.**

With the benefit of the higher-pressure supply coming through the STL Pipeline, Spire Missouri has been able to reconfigure its on-system (behind the city-gate) Lange storage facility to improve injections.<sup>141</sup> Spire Missouri relies heavily on its Lange natural gas storage facility to meet its customers' needs. As contemplated in the underlying proceeding, the high pressure from the STL Pipeline has allowed Spire Missouri to directly inject gas into the storage field without the need for compression.<sup>142</sup>

As a result, Spire Missouri has been able to retire three natural gas compressors at the Lange storage field.<sup>143</sup> Eliminating these units sharply reduced air emissions, including a more than an 80 percent reduction in GHG emissions.<sup>144</sup>

**c. New Interconnect at Chain of Rocks**

Spire Missouri's infrastructure and distribution systems also have changed significantly since the STL Pipeline was developed. As the Commission authorized, Spire Missouri's prior connection with the MRT East Line at Chain of Rocks was physically removed and replaced, and the STL Pipeline is now Spire Missouri's connection to MRT's

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<sup>140</sup> Spire Missouri March 22, 2017 Answer at 9-11.

<sup>141</sup> Carter Aff. ¶ 11.

<sup>142</sup> 2017 Concentric Study at 16 (“[T]he STL Pipeline will provide deliveries into the distribution system at a pressure high enough to allow for direct injection into Laclede’s on-system storage facility under most operating conditions, therefore minimizing compressor usage.”). The compressors at Lange also are discussed in the Temporary Certificate Application (at 15); Carter Aff. ¶¶ 11 and 45; and the Spire STL 2021 Data Response at Q.13 and Q.15.

<sup>143</sup> Carter Aff. ¶ 11; Spire STL 2021 Data Response at Q.13.

<sup>144</sup> Carter Aff. ¶ 11.



East Line.<sup>145</sup> Rebuilding the old Chain of Rocks interconnect is not a viable substitute because it would not restore the full deliverability lost from the STL Pipeline, would not remedy upstream pressure issues that created the need for the STL Pipeline in the first place, and because it is located in a floodplain, as described above.<sup>146</sup>

**D. Spire STL’s Affiliation with Spire Missouri Does Not Negate the Need for the STL Pipeline.**

There is no evidence that the STL Pipeline was the result of improper self-dealing. Project opponents surmised that self-dealing occurred because of the affiliation between Spire STL and Spire Missouri, and because the overall level of gas demand in the St. Louis region has been flat. The Commission rejected these assertions in the Certificate Order. Finding no evidence of self-dealing, the Commission applied its longstanding policy that precedent agreements are “substantial and sufficient evidence of need,”<sup>147</sup> and declined to look “behind the precedent agreement to evaluate project need.”<sup>148</sup> In his dissent, Chairman Glick stated that in light of the affiliate relationship and the flat level of overall gas demand in St. Louis, the Commission should “also consider other evidence to rigorously evaluate whether the project is really needed.”<sup>149</sup> Chairman Glick suggested that such evidence could include, among other things, “demand projections [and] potential cost savings to consumers.”<sup>150</sup>

The D.C. Circuit agreed with Chairman Glick. The court found that it was “plausible” that self-dealing occurred because (1) the STL Pipeline was “not being built to

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<sup>145</sup> Certificate Order at P 8.

<sup>146</sup> See generally Spire STL 2021 Data Response at Q.2. While Trunkline has stated that it is attempting to remedy these issues, there is no assurance that it will be able to provide the needed pressure absent operational experience.

<sup>147</sup> Certificate Order at P 72.

<sup>148</sup> *Id.* at P 75.

<sup>149</sup> *Id.* at p. 61,529 (Glick, Comm’r dissent).

<sup>150</sup> *Id.* at p. 61,528 (Glick, Comm’r dissent).

serve increasing load demand” and (2) there was no indication that the STL Pipeline would “lead to cost savings.”<sup>151</sup> The court’s concern was not that the Commission ignored evidence of self-dealing; rather, it was simply that in these circumstances, it wanted to see a more fulsome examination of Project need in addition to reliance on a single precedent agreement between affiliates. Greater scrutiny reveals that the Project is indeed necessary. As detailed above, both the existing record and actual data of the STL Pipeline’s service provide ample evidence demonstrating the STL Pipeline is needed and provides numerous benefits to eastern Missouri consumers.

Record evidence before the Commission demonstrated that the STL Pipeline would result in significant cost savings; but according to the D.C. Circuit, the Commission simply had not “sufficiently evaluated” that evidence in reaching its decision.<sup>152</sup> The forecasted cost savings have proven accurate. As shown above, the delivered cost of gas for Spire Missouri on the STL Pipeline is estimated to be lower than on MRT.<sup>153</sup> The 2021 Market Study demonstrates that *actual* cost savings have been realized in just the first few years the STL Pipeline has been in service.

Stripped of the two concerns listed by the D.C. Circuit, no “plausible evidence of self-dealing” remains, other than the mere existence of the affiliate relationship between Spire STL and Spire Missouri.<sup>154</sup> However, asserting that the affiliate relationship *ipso facto* is evidence that would negate the need for the STL Pipeline is both unfounded and conflicts with well-established Commission precedent.<sup>155</sup> Simply put, the Commission has

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<sup>151</sup> *EDF v. FERC*, 2 F.4th at 975.

<sup>152</sup> *Id.*

<sup>153</sup> *See supra* at 34-35 (explaining that Spire Missouri’s delivered cost of gas on the STL Pipeline is estimated to be \$6.36 per Dth, while that cost on MRT’s East Line would be \$6.70 per Dth).

<sup>154</sup> *EDF v. FERC*, 2 F.4th at 975.

<sup>155</sup> *See, e.g., PennEast Pipeline Co.*, 162 FERC ¶ 61,053, at P 33, *order on reh’g*, 164 FERC ¶ 61,098 (2018); *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 59 (2017), *order on reh’g*, 164 FERC ¶ 61,100 (2018);

never concluded that need for a pipeline project is negated solely based on the mere existence of an affiliate relationship between a pipeline and customer. If the concern regarding alleged affiliate abuse is that Spire STL is earning a greater return on its service for Spire Missouri than other non-affiliated pipelines would or could make, this is simply not the case. Spire STL's actual overall return on equity based on its negotiated rate agreements with Spire Missouri and Spire Marketing is approximately 8 percent,<sup>156</sup> well below the 14 percent return on equity allowed by the Commission in the Certificate Order or the last litigated natural gas pipeline rate case.<sup>157</sup>

The evidence and record below reiterate these points. It is consistent with Commission policy, precedent, and otherwise unremarkable for a pipeline to serve an affiliated shipper. Since its inception, this Project has been driven by the needs identified by its foundation shipper, Spire Missouri (then "Laclede Gas Company"). Spire Missouri's need for new pipeline capacity would have been the same regardless of whether it was built by an affiliate. This point was highlighted in Spire STL's very first filing at the

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*Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 45 (2017), *order on reh'g*, 163 FERC ¶ 61,197 (2018), *pet. for review denied sub nom.*, *Appalachian Voices v. FERC*, Nos. 17-1271, *et al.*, 2019 WL 847199 (D.C. Cir. June 22, 2001); *Fla. Se. Connection, LLC*, 154 FERC ¶ 61,080, at P 84 ("[a]n affiliation between project shippers and the owners of the pipelines is not, by itself, evidence of self-dealing"), *order on reh'g*, 156 FERC ¶ 61,160 (2016), *vacating sub nom.*, *Sabal Trail*, 867 F.3d 1357; *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 48 (2017), *order on reh'g*, 164 FERC ¶ 61,054 (2018), *pet. for review granted in part sub nom.*, *City of Oberlin, Ohio v. FERC*, 937 F.3d 599 (D.C. Cir. 2019). *See also Millennium Pipeline Co.*, 100 FERC ¶ 61,277, at P 57 (2002) ("[A]s long as the precedent agreements are long-term and binding, we do not distinguish between pipelines' precedent agreements with affiliates or independent marketers in establishing the market need for a proposed project."); *E. Shore Nat. Gas Co.*, 132 FERC ¶ 61,204, at P 31 (2010) ("the Commission gives equal weight to contracts with affiliates and non-affiliates"). *See also* Certificate Policy Statement at pp. 61,744, 61,748 (explaining that the Commission does not look behind precedent agreements to question the individual shippers' business decisions to enter into contracts, and that the Commission's policy is less focused on whether the contracts are with affiliated or unaffiliated shippers and more focused on whether existing ratepayers would subsidize the project) (citing *Transcon. Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at p. 61,316 (1998)).

<sup>156</sup> *See* Spire STL 2021 Form 2.

<sup>157</sup> Certificate Order at P 137. *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)).

Commission more than five years ago in July 2016, as was the fact that Spire Missouri had been trying to develop such a project since 2010.<sup>158</sup> In its request to utilize the Commission’s pre-filing review process, Spire STL not only explained the need and purpose of STL Pipeline, but publicly made clear that Spire Missouri was the Project’s Foundation Shipper and that Spire STL was “currently negotiating the terms of its Foundation Shipper precedent agreement with [Spire Missouri].”<sup>159</sup> Spire STL also laid out its proposed Project timeline, which included its plans to conduct the Commission-required Open Season in August 2016,<sup>160</sup> a process used to ensure that new capacity is allocated among all potential shippers on a not unduly discriminatory basis and to design and right-size the proposed pipeline project.<sup>161</sup> Shortly thereafter, Spire STL and Spire Missouri finalized and executed a precedent agreement, which was later included in Spire STL’s Certificate Application.<sup>162</sup> All of these actions were transparent, public, and consistent with Commission policies, including the Certificate Policy Statement.

Notwithstanding such precedent and the Commission’s prior conclusion in the Certificate Order that there was no evidence of impropriety that would indicate anti-competitive behavior or affiliate abuse, Spire STL reiterates its readiness to participate in any proceeding that the Commission may order to reaffirm that the STL Pipeline is needed

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<sup>158</sup> See Spire STL Pipeline LLC, Request for Pre-filing Review, Docket Nos. PF16-9-000 (July 11, 2016).

<sup>159</sup> *Id.* at 4.

<sup>160</sup> *Id.* Spire STL publicly posted its open season, inviting any parties interested in receiving capacity, whether as a foundation shipper or otherwise, and disclosing the terms and conditions to qualify as a foundation shipper.

<sup>161</sup> See *Pine Prairie Energy Center, LLC*, 135 FERC ¶ 61,168, at P 30 (2011) (finding that an open season is intended to provide transparency to the market regarding new pipeline capacity and to assist the proponent with sizing its project), *order on reh’g*, 137 FERC ¶ 61,060 (2011).

<sup>162</sup> Whether Spire Missouri made a prudent decision to enter into a long-term commitment with Spire STL is a separate ongoing matter that the MoPSC will decide, rather than the Commission. See generally *Granite State Gas Transmission, Inc.*, 83 FERC ¶ 61,194, at p. 61,820, *order on clarification*, 84 FERC ¶ 61,285 (1998); *Paiute Pipeline Co.*, 151 FERC ¶ 61,132, at P 33, *order on reh’g*, 153 FERC ¶ 61,292 (2015), *order on reh’g*, 155 FERC ¶ 61,267 (2016).

and that any remaining concerns regarding self-dealing have been addressed. However, the nature of the affiliate relationship does not detract from the continued need for the STL Pipeline.

**V. THE PROJECT IS REQUIRED BY THE PRESENT AND FUTURE  
PUBLIC CONVENIENCE AND NECESSITY**

Under the previous record, and now as supplemented with two years of market data and operational experience, the STL Pipeline fully satisfies the test enunciated in the Commission's Certificate Policy Statement. As described above, the STL Pipeline provides numerous benefits, including making it possible for Spire Missouri to serve growing demand on the west side of its system, along with reduced costs in delivered gas, greater reliability and diversity of supply, and operational improvements.

The Certificate Policy Statement articulates the factors the Commission considers when it reviews interstate natural gas pipeline facilities to determine, whether a project "is or will be required by the present or future public convenience and necessity."<sup>163</sup> The Commission recognizes that there are three different types of projects: "an expansion project to provide additional service, a project to improve service to existing customers by replacing existing facilities, improving reliability, or providing additional flexibility, and a project that combines an expansion for new service with improvements for existing customers."<sup>164</sup> The Certificate Policy Statement first ensures a project is financially viable without subsidies from existing customers by shifting the burden of the costs of a new pipeline away from existing customers, such that the pipeline bears the risk for any underutilized capacity.<sup>165</sup>

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<sup>163</sup> 15 U.S.C. § 717f(e).

<sup>164</sup> Certificate Policy Statement, 90 FERC at p. 61,392.

<sup>165</sup> *Id.*, 88 FERC at p. 61,747.

The Certificate Policy Statement's threshold requirement is that a company proposing a new project must be prepared to support the project financially without relying on subsidization from existing customers. "Provided a project will not be subsidized by existing customers, the Commission then balances the 'public benefits against the potential adverse consequences' of the proposal."<sup>166</sup> This is "essentially an economic test."<sup>167</sup> The Commission determines whether the applicant has made efforts to eliminate or minimize any adverse effects the project may have on applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and affected communities. These "[a]dverse effects" "may include increased rates for preexisting customers, degradation in service, unfair competition, or negative impact on the environment or landowners' property."<sup>168</sup> Project benefits the Commission considers "are quite diverse but could include meeting unserved demand, eliminating bottlenecks, access to new supplies, lower costs to consumers, providing new interconnects that improve the interstate grid, providing competitive alternatives, increasing electric reliability, or advancing clean air objectives."<sup>169</sup> The Commission further recognizes that "[a]ny relevant evidence could be presented to support any public benefit the applicant may identify."<sup>170</sup> If the benefits of a proposed project outweigh its adverse effects on economic interests, the Commission will then complete the environmental analysis of the project.<sup>171</sup>

The Commission has explained that its "goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding,

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<sup>166</sup> *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015) (quoting Certificate Policy Statement, 88 FERC at p. 61,745).

<sup>167</sup> Certificate Policy Statement, 88 FERC at p. 61,745.

<sup>168</sup> *Myersville.*, 783 F.3d at 1309 (citing Certificate Policy Statement, 88 FERC at pp. 61,747-48).

<sup>169</sup> Certificate Policy Statement, 88 FERC at p. 61,748.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at p. 61,750.

subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.”<sup>172</sup> The STL Pipeline was specifically designed to meet these goals.

**A. The STL Pipeline Does Not Result in Subsidization.**

When the STL Pipeline was originally proposed and authorized, Spire STL was a new interstate natural gas pipeline company. As such, it had no existing customers that could be adversely affected by costs, or risks of unrecovered costs, of the Project. As Spire STL demonstrated in its Certificate Application, and the Commission properly found in the Certificate Order, the Certificate Policy Statement's threshold requirement of no subsidization, is not applicable to the Project because Spire STL was a new market entrant with no existing customers.<sup>173</sup> Nothing in the D.C. Circuit's opinion changes that conclusion.

Spire STL is not proposing any additional construction or proposing to impose additional costs on its customers. It simply seeks authorization on remand to continue operating the existing STL Pipeline. Therefore, there is no risk of subsidization by existing customers; the threshold “no-subsidization” requirement still is met.

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<sup>172</sup> See *Transcon. Gas Pipe Line Co.*, 147 FERC ¶ 61,042, at P 13 (2014).

<sup>173</sup> See Certificate Application at 17-18; Certificate Order at P 31. During the Commission's review of the original Certificate Application, commenters argued that Spire Missouri's ratepayers would subsidize the Project, alternately asserting that Spire Missouri's customers would be overcharged for natural gas or that Spire Missouri was negotiating too good of a deal for its ratepayers. The Commission explained, as an initial matter, that the subsidization requirement did not apply because Spire STL was a new entrant to the market without existing customers. *Id.* The Commission further explained that the extent to which it was appropriate for Spire Missouri to pass those costs through to its ratepayers was not within the Commission's jurisdiction. *Id.* at P 32.

**B. The Project Has No Adverse Impacts on Spire STL’s Existing Customers.**

The next step in the Commission’s Certificate Policy Statement analysis is to determine whether there are impacts on the applicant’s existing customers. As stated above, at the time of the original Certificate Application, Spire STL had no existing customers and, therefore, this prong of the test is not applicable. On remand, Spire STL simply is seeking to continue operating its existing facilities, which will have no adverse impacts on its customers. To the contrary, the existing shippers on the STL Pipeline and the consumers served by those shippers are vociferously in support of STL Pipeline’s continued operation.<sup>174</sup> On the other hand, were the Commission to shut down the STL Pipeline, its customers would be significantly impacted. As explained throughout this request, declining to re-issue the Certificate will have drastic consequences for Spire Missouri, Spire Marketing, and their customers.

**C. The STL Pipeline Has No Adverse Effects on Existing Pipelines and Their Captive Customers.**

The next prong of the Certificate Policy Statement test is to determine whether the applicant has taken steps to eliminate any adverse effects the project may have on existing pipelines in the market and their captive customers. As the Commission explained, it “need not protect pipeline competitors from the effects of competition, but it does have an obligation to ensure fair competition.”<sup>175</sup> The Commission’s “focus is not to protect incumbent pipelines from the risk of loss of market share to a new entrant, but rather to take the impact into account in balancing the interests.”<sup>176</sup> The Commission encourages pipeline-on-pipeline competition, and its “longstanding policy has been to allow pipelines

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<sup>174</sup> See Attachment A (List of Comments Supporting Spire STL’s Temporary Certificate Application).

<sup>175</sup> Certificate Policy Statement, 88 FERC at p. 61,748.

<sup>176</sup> *Id.* at p. 61,750.



to compete for markets and to uphold the results of that competition absent a showing of anticompetitive or unfair competition.”<sup>177</sup> The Commission, therefore, “generally concludes that the benefits of competition, which would be lost if we interfered with a customer’s decision to switch suppliers when its contract expired, outweigh the potential adverse impact on the previous supplier.”<sup>178</sup> The Commission has acknowledged that existing pipelines’ captive customers may be affected because they “can be asked to pay for the unsubscribed capacity in their rates.”<sup>179</sup>

In the certificate proceeding, several parties raised concerns over impacts of the Project on MRT and its captive customers, which the Commission dismissed as “speculative.”<sup>180</sup> Commissioner LaFleur and Chairman Glick both issued dissenting opinions addressing the alleged adverse impacts on other pipelines and their captive customers. Based on representations made by MRT, Commissioner LaFleur stated customers on MRT’s East Line could see a potential 194 percent increase in rates.<sup>181</sup> Commissioner LaFleur also expressed concern over MRT’s ability to attract customers and sell that capacity in the future, arguing that she thought the potential adverse effects on incumbent pipelines and their captive customers outweigh the benefits.<sup>182</sup> Similarly, Chairman Glick expressed concern that it “is unrealistic to expect MRT to make up for Spire Missouri’s exit.”<sup>183</sup> Chairman Glick opined that the Project would impair MRT’s market for firm transportation capacity and increase rates for MRT’s captive customers.<sup>184</sup>

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<sup>177</sup> *Guardian Pipeline, L.L.C.*, 91 FERC ¶ 61,285, at p. 61,977 (2000), *order on reh’g*, 94 FERC ¶ 61,269 (2001).

<sup>178</sup> 91 FERC at p. 61,977.

<sup>179</sup> Certificate Policy Statement, 88 FERC at p. 61,748.

<sup>180</sup> Certificate Order at P 115.

<sup>181</sup> *Id.* at p. 61,526 (LaFleur, Comm’r dissent).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at p. 61,529 (Glick, Comm’r dissent).

<sup>184</sup> *Id.*

In the two years that have passed since the Project has gone into service, the dire predictions regarding impacts on MRT and its captive customers have not come to fruition. To the contrary, MRT has sold all but 568 Dth/d of its Main Line capacity.<sup>185</sup> Spire Missouri still retains contacts for approximately 630,779 Dth/d of capacity on MRT.<sup>186</sup> While there may be, at most, 165,849 Dth/d of capacity available on MRT's East Line, there is no incremental MRT mainline capacity to reach the East Line and Spire Missouri cannot rely on that capacity because significant reliability issues on other upstream pipelines that connect to the East Line.<sup>187</sup> The MRT East Line cannot transport gas to the areas on the west side of Spire Missouri's system where gas demand is growing. Therefore, the dire predictions that MRT capacity would become severely underutilized have not materialized.

Moreover, MRT's recent rate cases resulted in uncontested and Commission-approved settlements. Thus, alleged impacts on MRT business do not provide any basis for the Commission to deny a certificate to the new entrant, Spire STL, to protect the previous incumbent, MRT. Despite the concern expressed in Chairman Glick's dissent that if Spire Missouri reduced service on MRT, "it is unrealistic to expect MRT to make up for Spire Missouri's exit,"<sup>188</sup> MRT has in fact made up for the lost Spire Missouri capacity. In the Press Release touting Commission approval of MRT's rate case settlement, MRT's parent boasted that it "expects 2020 MRT service revenues of approximately \$87

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<sup>185</sup> Spire STL also previously explained the potential economic benefits delivered by STL Pipeline to MRT as a result of increased gas flows from REX south to Chain of Rocks, which is now bi-directional. *See* Motion for Leave to Answer and Answer of Spire STL Pipeline LLC to Unauthorized Pleadings, Docket No. CP17-40-000, *et al.* (Apr. 11, 2018) (estimating that for every \$0.01/Dth increase in capacity value for flows south of Chain of Rocks on MRT, MRT would realize over \$2 million in annual revenue).

<sup>186</sup> *See* MRT Q3 2021 Index of Customers.

<sup>187</sup> *See generally* Carter Aff. ¶ 42; Spire STL 2021 Data Response at Q.2, Q.3.

<sup>188</sup> Certificate Order at p. 61,529 (Glick, Comm'r dissent).

million, an increase of approximately \$7 million compared to 2018 levels, the last year unaffected by these rate cases and recent capacity turnback.”<sup>189</sup> In fact, MRT’s Form No. 2 for 2020 reports Gas Operating Revenue of over \$92 million, and Spire STL calculated MRT’s return on equity based on its 2020 Form 2 as 13.28 percent, compared to Spire STL’s return on equity of just 8 percent.<sup>190</sup> Thus, any concern about the impact of Spire STL on MRT should be alleviated by what has actually transpired since Spire STL has entered service.

One of the other pipelines in the area, MoGas, has seen significant operational and economic benefits from Spire STL. As MoGas has explained, MoGas and its customers “enjoy a variety of benefits from the interconnection with the STL Pipeline.”<sup>191</sup> Prior to interconnecting with the STL Pipeline, MoGas could not accommodate significant new load requests on the western side of St. Louis. Without a major expansion, MoGas could not serve the natural gas demand from the growing markets west of St. Louis. After interconnecting with the STL Pipeline at a cost to MoGas of \$3.6 million,<sup>192</sup> MoGas was able to increase the pressure on its system, using the high-pressure interconnection with the STL Pipeline, and serve the growing natural gas demand west of St. Louis, not just for Spire Missouri, but for Ameren Missouri as well.

Simply put, without the STL Pipeline, MoGas’ existing infrastructure would not have been able to serve west-of-St. Louis markets. To serve those markets without Spire STL, MoGas would need to construct a 50-mile pipeline loop of its system at an estimated

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<sup>189</sup> MRT Rate Case Press Release, *supra*, note 22.

<sup>190</sup> See Enable Mississippi River Transmission, LLC, FERC Form 2 (Nov. 24, 2020); compare with Spire STL 2021 Form 2; Motion to Answer and Answer of Spire STL Pipeline LLC to Motion to Reject in Part and Protest of the Environmental Defense Fund, Docket No. CP17-40-007, at 15 (Aug. 20, 2021).

<sup>191</sup> MoGas Comments at 3.

<sup>192</sup> *Id.* at 7.

cost of \$100 million,<sup>193</sup> with associated environmental effects and landowner impacts that are now plainly unnecessary. MoGas' interconnection with the STL Pipeline increased the MoGas system's connectivity with other pipelines from three—REX, Panhandle Eastern Pipe Line Company, LP (“Panhandle”), and MRT—to four, entirely consistent with the public benefits the Certificate Policy Statement is intended to promote.<sup>194</sup> Whereas MoGas previously had received 90 percent of its supplies from Panhandle and REX, after connecting with Spire STL, about 50 percent of its supply comes from the STL Pipeline. The STL Pipeline interconnects with MoGas just north of St. Louis; the Panhandle and REX interconnects are further west. As explained above, Spire STL allows MoGas to serve markets west of St. Louis that it previously was unable to serve effectively. The STL Pipeline interconnect also increases MoGas' pressure profile for all of its customers and allows MoGas to increase its line pack when needed ensuring more reliable service on high demand days.<sup>195</sup> Without the STL Pipeline, none of these manifold public benefits would be realized.<sup>196</sup> As demonstrated, the benefits of the Project outweigh any residual impacts on incumbent pipelines and their captive customers.

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<sup>193</sup> *Id.* at 6.

<sup>194</sup> *Id.* at 7. Certificate Policy Statement, 88 FERC at p. 61,748 (“The types of public benefits that might be shown are quite diverse but could include meeting unserved demand, . . . access to new supplies, . . . providing new interconnects that improve the interstate grid . . .”).

<sup>195</sup> MoGas Comments at 9.

<sup>196</sup> Other natural gas pipelines and their customers also benefit from the STL Pipeline. REX explained that its customers benefit from the interconnect with Spire STL because it provides an additional market to its shippers. Comments of Rockies Express Pipeline, LLC in Support of Spire STL's Temporary Certificate Application, Docket No. CP17-40-007, at 1-2 (Sept. 7, 2021).

**D. Spire STL Has Continued to Minimize Impacts on Landowners and Communities, and Failure to Reissue Spire STL’s Certificates Would Have Adverse Impacts upon These Interests.**

**1. *Spire STL Has Minimized Adverse Impacts on Landowners and Communities.***

The next step in the Commission’s analysis is to determine whether the proposed action would have any adverse impacts on the economic interests of affected landowners and communities.<sup>197</sup> The Commission recognizes that pipeline projects have short-term impacts on landowners.<sup>198</sup> However, as demonstrated in Spire STL’s Certificate Application, the STL Pipeline was designed to limit impacts on landowners, stakeholders, and the environment.<sup>199</sup> Specifically, Spire STL based its routing on existing land use, the location of populated areas, surface topography, geologic considerations, and environmental factors not only to minimize adverse impacts on landowners and other stakeholders, but also to ensure that any such adverse impacts are temporary, where possible. At the same time, the Certificate Application demonstrated that the Project would provide numerous public benefits, including providing access to new sources of natural gas supply to the St. Louis region, greater reliability, supply security, lower prices, and the opportunity for Spire Missouri to reduce or eliminate dependence on an inferior peaking supply.<sup>200</sup>

The Environmental Assessment (“EA”) prepared by Commission Staff demonstrates the numerous steps Spire STL took to avoid and minimize impacts on affected landowners.<sup>201</sup> During pre-filing and the Project planning process, Spire STL

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<sup>197</sup> Certificate Policy Statement, 88 FERC at p. 61,745.

<sup>198</sup> *Id.* at pp. 61,747-48.

<sup>199</sup> Certificate Application at 20-21.

<sup>200</sup> *Id.*

<sup>201</sup> *See generally* Environmental Assessment, Docket No. CP17-40-000 (Sept. 29, 2017).

worked closely with landowners and was able to secure the right to survey 92.8 percent of the Project route prior to receiving authorization for the Project.<sup>202</sup> In addition, Spire STL's consultations with landowners resulted in the incorporation of 20 landowner-requested variations to Spire STL's proposed route.<sup>203</sup> Spire STL also took care to segregate topsoil in agricultural areas and reduce pipeline right-of-way width in order to avoid and minimize impacts on residences.<sup>204</sup> Spire STL also prepared 10 site-specific residential construction plans for the few residences within 50 feet of construction work areas to avoid and minimize impacts.<sup>205</sup>

In the Certificate Order, the Commission properly found that the Spire STL had avoided and minimized impacts to landowners by co-locating the Project with existing rights-of-way for 15 percent of its route, reducing the right-of-way width to avoid impacts on residences, compensating agricultural landowners for the crop production losses, and working with landowners throughout the pre-filing and certificate proceeding to address impacts.<sup>206</sup> The Commission reasonably concluded that Spire STL has "taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities."<sup>207</sup> On rehearing, the Commission affirmed the conclusion that Spire STL took sufficient steps to minimize impacts to landowners and communities.<sup>208</sup> On appeal before the D.C. Circuit, the court did not address or disturb the Commission's conclusions with respect to landowner impacts. Therefore, the Commission reasonably concluded that Spire STL had sufficiently mitigated landowner and community impacts.

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<sup>202</sup> *Id.* at 8.

<sup>203</sup> *Id.* at 147.

<sup>204</sup> *Id.* at 9.

<sup>205</sup> *Id.* at 86.

<sup>206</sup> Certificate Order at PP 117-18.

<sup>207</sup> *Id.* at P 119.

<sup>208</sup> Rehearing Order at PP 34-35.

With regard to restoration, although certain landowners have claimed otherwise, Commission Staff has repeatedly confirmed over the course of several investigations that Spire STL has been taking the proper steps to address restoration and revegetation issues, and that restoration is proceeding satisfactorily.<sup>209</sup> And, while Spire STL recognizes that it must undertake some additional corrective actions for a handful of individual landowners,<sup>210</sup> Spire STL has detailed in more than 30 weekly status reports its readiness to address these issues, the specific steps it has taken to do so, and its ongoing efforts to engage landowners to complete this work.<sup>211</sup>

Unfortunately, landowners' representatives and counsel have stated that landowners will not grant Spire STL access to the temporary right-of-way to commence the restoration work. Spire STL remains ready to perform the necessary work; however, many landowners and their representatives have become unresponsive to Spire STL's efforts and will not even discuss what Spire STL can do to address the landowners' concerns.<sup>212</sup> As stated at the outset of this Request, Spire STL is ready, willing, and able to fulfill all of the requirements and conditions of the Certificate Order, including those related to landowners.

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<sup>209</sup> Such findings occurred in 2019 shortly after STL Pipeline was placed in service, in 2020 when the pipeline had been in operation for more than a year, and in FERC Staff's most recent inspection report this summer. *See, e.g.*, 23 Individual FERC Staff Letters Responding to Landowners, Docket Nos. CP17-40-000, *et al.* (filed May 24, 2019); FERC Staff Letter in Response to Mr. Gerald Scott Turman, Docket Nos. CP17-40-000, *et al.* (Mar. 25, 2020); Restoration Inspection Report Spire of STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (July 20, 2021). *See also* Former Chairman Chatterjee's Response to U.S. Congressman Rodney Davis, Docket Nos. CP17-40-000, *et al.* (Oct. 15, 2019); Former Chairman Chatterjee's Response to U.S. Congressman Rodney Davis, Docket Nos. CP17-40-000, *et al.* (June 17, 2019); Former Chairman Chatterjee's Response to U.S. Congressman Darrin LaHood, Docket Nos. CP17-40-000, *et al.* (May 3, 2019).

<sup>210</sup> *See Spire STL Pipeline LLC*, 174 FERC ¶ 61,219 (2021).

<sup>211</sup> *See, e.g.*, Corrective Action Status Report No. 32 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (dated Oct. 29, 2021; filed Nov. 1, 2021).

<sup>212</sup> *See, e.g.*, Corrective Action Status Report No. 25 of Spire STL Pipeline LLC, Docket Nos. CP17-40-000, *et al.* (dated Sept. 10, 2021; filed Sept. 13, 2021) (detailing notification from landowner's representative confirming that landowner would not grant access to temporary workspace the day before remediation activities were scheduled to begin).

**2. *Landowners and Communities Would Be Harmed by a Failure to Reissue Spire STL's Certificates.***

This proceeding is unique because Spire STL is seeking authorization to continue to operate an existing pipeline. Expedited reissuance of the certificates would help to further mitigate impacts to landowners by leveraging all of the actions Spire STL has taken to date. Doing so would provide the Commission and all interested stakeholders continued and complete assurance that restoration of the entire STL Pipeline route will continue, along with Spire STL's obligation to monitor the pipeline and address any restoration issues on a going-forward basis and for the life of any underlying Commission certificate.

If Spire STL loses certificate authority for the Project and is forced to remove the pipeline from service, Spire STL would likely be required to remove some, if not all, of the pipeline facilities. This point is a significant one because to the extent Spire STL's certificates expire, Spire STL will no longer be able to access many of the parcels of property along the STL Pipeline's route.<sup>213</sup> Once that occurs, Spire STL will not be able to plan, schedule, or perform the restoration work highlighted by both landowners and the Commission, and recognized by Spire STL.

Counsel for certain landowners have already asked courts to "eject" Spire STL from their properties<sup>214</sup> and threatened trespass lawsuits should Spire STL enter their client's property.<sup>215</sup> If Spire STL were forced to remove the pipeline, landowners, communities,

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<sup>213</sup> To date, approximately 70 tracts along the Project's route (approximately 37% of the total pipeline length) remain in ongoing condemnation proceedings.

<sup>214</sup> 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 (dated July 20, 2021; filed July 19, 2021) (attaching pleadings filed in the U.S. District Court Eastern District of Missouri).

<sup>215</sup> See Comments of Spire Landowners, Docket No. CP17-40-007 (July 19, 2021); Motion to Intervene and Comments of Landowners Regarding Spire's Application for Temporary Emergency Certificate, Docket No. CP17-40-007, at 13 (Aug. 5, 2021). Several landowners have also indicated to Spire STL that they do not



and the environment would be impacted again by what would essentially be construction of the pipeline in reverse. As discussed in the attached report describing the environmental impacts of the alternatives that would be considered if the STL Pipeline is shut down, removing the STL Pipeline facilities would have substantial impacts to almost every affected landowner along the Project right-of-way. Put another way, failure to reissue a certificate allowing Spire STL to continue operating the Project would likely cause additional and considerable environmental and landowner impacts that would be mitigated or avoided altogether by allowing the pipeline to continue to operate.

Given Spire Missouri's continued need for pipeline capacity to help meet the natural gas needs for the St. Louis region, the Commission must also consider the impacts associated with the *new* projects Spire Missouri would need to undertake if Spire STL ceases operations. While the full extent of such an undertaking is unknown at this time, Spire Missouri has indicated that it would, at the very least, require either a large, on-system expansion project to be built in St. Louis, or require an extensive interstate pipeline project involving both greenfield construction and considerable compression.<sup>216</sup> To be clear, the impacts associated with any such alternatives are distinct and would affect new landowners and stakeholders *in addition to* existing landowners and stakeholders who would otherwise be significantly impacted if the STL Pipeline is required to cease operations and remove its facilities.

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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.

<sup>216</sup> It is Spire STL's understanding that in the coming weeks, Spire Missouri will be providing information about such projects to the Commission. Potential system alternatives to STL Pipeline were included in Resource Report 10 in Spire STL's Certificate Application, analyzed in the EA for the Project, and are reiterated in the attached environmental report as well.

**E. The Benefits of the Project Outweigh Any Adverse Impacts.**

The final step in the Commission’s analysis is to balance any residual adverse impacts from the Project against the Project’s benefits. As explained herein, the Project was designed and constructed to avoid and minimize adverse impacts on the interests identified in the Certificate Policy Statement. Specifically, the Commission found that the STL Pipeline would provide numerous benefits to the market, including enhanced access to diverse supply sources and the fostering of competitive alternatives.<sup>217</sup> The Commission reasonably concluded in the Certificate Order that the benefits of the Project outweighed any residual adverse effects. Therefore, the Commission held that the “public convenience and necessity requires approval of [the STL Pipeline].”<sup>218</sup> On rehearing, the Commission supported this conclusion, explaining that it properly balanced the adverse impacts on existing pipelines and their captive customers and on landowners, against the benefits of the Project.<sup>219</sup>

The D.C. Circuit vacated and remanded the Certificate, holding that it was arbitrary and capricious for the Commission to rely solely on a single precedent agreement with an affiliated customer when parties conceded that projected demand was flat, and the Commission failed to make a finding whether the Project would result in cost savings or represented a more economical alternative to existing pipelines.<sup>220</sup> Significantly, the D.C. Circuit also held that “the Commission’s *cursory balancing of public benefits and adverse impacts was arbitrary and capricious.*”<sup>221</sup> Essentially, the court directed the Commission

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<sup>217</sup> Certificate Order at P 123.

<sup>218</sup> *Id.*

<sup>219</sup> Rehearing Order at PP 29-38.

<sup>220</sup> *EDF v. FERC*, 2 F.4th at 976.

<sup>221</sup> *Id.* (emphasis added).

to do a better job balancing the adverse impacts of the Project against the Project's benefits. A thorough analysis of these impacts versus benefits results in the same conclusion the Commission reached previously: the Project meets the Certificate Policy Statement's criteria, and approval of the Spire STL Pipeline is required by the present and future public convenience and necessity.

As demonstrated above, the Project meets the threshold no-subsidy test because it did not have existing customers at the time the Project was built, and Spire STL is not seeking to impose any additional costs or to bring new pipeline capacity to market. Similarly, because there were no existing customers, there can be no adverse impacts on existing customers from the Project, and the first prong of the test is met.

Regarding existing pipelines, MRT has survived and thrived. Its mainline is largely sold out, it resolved its rate case with a revenue increase, and has a return on equity over 50 percent higher than that of Spire STL. Because the rate case was settled on a "black box basis," it is impossible to tell what, if any, impact the termination of part of Spire Missouri's contract demand had on MRT's rates. There are also numerous benefits to another pipeline in the St. Louis region—MoGas—which, as explained above, had significant operational improvements because of its tying into the STL Pipeline. With the additional high-pressure gas available from the STL Pipeline, MoGas is able to enhance the reliability, flexibility, and deliverability of its system, most decisively in serving the growing markets west of St. Louis. If the Commission considers the adverse effects to MRT and its customers, it must also consider the significant benefits of the Project on MoGas.

Spire STL acknowledges that there were some adverse impacts on landowners, including the use of eminent domain. Spire STL has repeatedly tried to settle with landowners without the use of eminent domain. When those cases have gone to litigation, the awards have been in line with Spire STL's proposal and a mere fraction of the amount sought by the landowners.<sup>222</sup> However, as explained above, Spire STL took every effort to minimize impacts to landowners by designing the Project to minimize landowner impacts, implementing route changes at the request of landowners, minimizing impacts on agricultural lands, avoiding residential structures, and co-locating the Project for a portion of the right-of-way.

Spire STL is continuing its efforts to complete the restoration work required by the Commission. These efforts have been thwarted by these select landowners' refusals to allow access to affected property. This problem is exacerbated by the current situation, as some landowners contend Spire STL has no certificate and will not allow access to the property that needs restoration. The landowners are creating a self-fulfilling prophecy: Spire cannot restore the land because access is being denied, then the landowners complain to the Commission that Spire is not restoring their land. The bottom line is the pipeline is installed, and Spire STL stands ready, willing, and able to complete the needed restoration. If Spire STL is not allowed to continue to operate, it will still require access to take the pipeline out of service, with associated environmental impacts and the need to complete additional necessary restoration work.

The residual adverse impacts to MRT and its captive customers, if any, and to landowners, are more than outweighed by the numerous significant demonstrated benefits

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<sup>222</sup> See, e.g., 2021 Spire STL Data Response at Q.18.

of the Project discussed herein and shown in the 2021 Market Study. The residual adverse impacts, therefore, are outweighed by the full benefits of the Project, which include:

- Spire Missouri and its customers now have access to reliable and competitively priced natural gas supplies from the Marcellus, Utica, and Rocky Mountain production areas.
- Access to these new supplies provides Spire Missouri with greater reliability, as shown during Winter Storm Uri, where the STL Pipeline provided uninterrupted service.
- Access to new supplies also creates market competition that places downward pressure on price, which allows Spire Missouri to mitigate price spikes that may occur due to severe weather and other unforeseen events. This also was shown during Winter Storm Uri, when Spire STL estimates it saved Spire Missouri customers up to \$300 million in gas costs by delivering gas supplies from the Rockies and Appalachian Basins, instead of the significantly higher-priced gas from the Oklahoma and Texas producing basins.
- Even outside of severe weather events, Spire STL provides economic benefits to the region by reducing the overall costs of delivered natural gas.
- Spire Missouri was able to retire antiquated propane peaking facilities that had increasingly negative operational, cost, and availability concerns, yielding economic and environmental benefits for Spire Missouri's customers.
- Higher pressures from the STL Pipeline allows Spire Missouri to fill its Lange storage facility reducing its need to utilize its compression, thereby reducing GHG and other air emissions.
- STL Pipeline does not cross the New Madrid Fault, the most active seismic area east of the Rocky Mountains.
- STL Pipeline facilities avoid the flood zone that previously plagued Spire Missouri's connection to MRT at Chain of Rocks, generating a more reliable and durable system.
- STL Pipeline allows MoGas to provide more reliable service to serve areas west of St. Louis.
- No additional construction is needed for the continued operation of the STL Pipeline and, therefore, reauthorizing the Project will have minimal impacts to landowners and the environment.

In performing its balancing analysis, the Commission must pay special attention to the added reliability that the STL Project confers, and the related economic protection it provides to Missouri ratepayers during severe weather events. The Commission has recognized similar reliability benefits in approving other projects.<sup>223</sup> This is particularly important as the United States anticipates dramatically facing gas prices.<sup>224</sup> As Commissioner Clements testified before the Senate Committee on Energy & Natural Resources on September 28, 2021, “we must address extreme weather risk across [Texas and the Central U.S.] holistically to ensure system reliability and resilience.”<sup>225</sup> The Commission must keep its industry-wide reliability concerns in mind as it considers the need for the STL Pipeline. It is clear that the STL Pipeline remains the most reliable and affordable option for gas supply to Spire STL’s customers and the St. Louis region. Its benefits far outweigh any residual adverse effects.

## **VI. ENVIRONMENTAL MATTERS**

When the Commission originally considered the Project, its Staff prepared a comprehensive EA, consistent with the Commission’s obligations under the National

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<sup>223</sup> See *S. Star Cent. Gas Pipeline, Inc.*, 169 FERC ¶ 61,214, at P 21 (2019) (finding the project “improv[ed] the safety and reliability of the pipeline”); *Tex. E. Transmission, LP*, 139 FERC ¶ 61,138, at P 26 (2012) (finding the project provided “more reliable transportation service for diverse sources of natural gas”); *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 39 (2009) (“any potential adverse impacts on existing pipelines are outweighed by the benefits to gas consumers from the increased reliability and flexibility that will result from being able to access additional supplies of competitively-priced domestic gas”); *E. Tenn. Nat. Gas, LLC*, 114 FERC ¶ 61,122, at P 16 (2006) (finding that customers will benefit from “additional system reliability, flexibility, and new supply options”); *Paiute Pipeline Co.*, 104 FERC ¶ 61,078, at P 46 (2003) (finding that “increased flexibility and reliability that outweigh any potential adverse impacts”); *Kern River Gas Transmission Co.*, 98 FERC ¶ 61, 205 (2002); *Viking Gas Transmission Co.*, 95 FERC ¶ 62,078 (2001).  
<sup>224</sup> 2021-2022 Winter Assessment at 11, 16.

<sup>225</sup> 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/h37aekf> (“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.”).

Environmental Policy Act (“NEPA”), which detailed all the potential environmental impacts associated with the Project. The EA reasonably concluded that “if Spire [STL] constructs and operates the proposed facilities in accordance with its application and supplements and our recommended mitigation measures, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.”<sup>226</sup> The Certificate Order adopted that conclusion,<sup>227</sup> and nothing in the D.C. Circuit’s opinion disturbs that finding.

Spire STL now returns to the Commission with a request to reissue its original certificates and allow the continued operation of the Project. Because this action would not require any additional construction or environmental impacts, the request qualifies for a categorical exclusion from NEPA under 18 C.F.R. § 380.4(a)(27).<sup>228</sup> Therefore, no additional environmental review is required.

Spire STL has attached an abbreviated environmental report to assist the Commission in its decision-making process on remand. The environmental report demonstrates the lack of impacts associated with the Commission reissuing the certificates to Spire STL allowing the continued operation of the STL Pipeline and, in contrast, details the potential impacts associated with various alternatives to allowing the Project to continue operations. As detailed in the environmental report, allowing the Project to continue operating will not cause any additional environmental impacts not already contemplated in the Certificate Order.<sup>229</sup>

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<sup>226</sup> EA at 161.

<sup>227</sup> Certificate Order at P 263.

<sup>228</sup> See *Nexus Gas Transmission, LLC*, 168 FERC ¶ 62,058, at P 7 (2019) (noting that because the order did not authorize any additional construction beyond what was authorized by the original certificate, the Commission’s action qualifies for the categorical exclusion in section 380.4(a)(27)).

<sup>229</sup> Environmental Report at 2-3 – 2-6.

However, if the Commission does not reissue the certificates and the STL Pipeline ceases operations, it will likely be required to remove all or some of the pipeline facilities. The environmental report demonstrates the potential substantial landowner and environmental impacts associated with pipeline removal. These impacts would be very similar to the impacts associated with the original construction of the Project, as detailed in the EA. Removal of the pipeline facilities could result in additional impacts to over 200 acres of prime farmland or farmland of statewide importance,<sup>230</sup> affect around 1,000 acres of agricultural land,<sup>231</sup> and disturb approximately 972 acres of vegetation.<sup>232</sup> In addition, pipeline removal activities could have impacts to threatened and endangered species and waterbodies and wetlands, depending on whether Spire STL would be required to remove facilities in waterbodies and wetlands.

Without the STL Pipeline, Spire Missouri will need to seek alternative sources of natural gas supply. As detailed in the environmental report, this would require other pipeline systems in the area to construct substantial additional facilities, which would cause landowner and environmental impacts over and above the previous impacts caused by the construction of the STL Pipeline.<sup>233</sup> Even if those additional facilities were built on another pipeline system, Spire Missouri also would likely have to consider making significant investments and improvements to its system, including costly and disruptive system expansions within the St. Louis, taking its propane peaking facilities out of retirement, and re-starting the three compressors it has already retired at the Lange storage facilities. All of these actions would have additional environmental and landowner impacts that

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<sup>230</sup> *Id.* at 3-8.

<sup>231</sup> *Id.* at 3-11 – 3-12.

<sup>232</sup> *Id.* at 3-10.

<sup>233</sup> *Id.* at 3-16 – 3-18.



otherwise would not occur if the Commission allows the STL Pipeline to continue to operate.

Furthermore, allowing the STL Pipeline to continue to operate would not result in any new GHG emissions. The EA found that the Project would not result in additional end-use GHG emissions.<sup>234</sup> As noted above, the Commission adopted the findings of the EA in its Certificate Order.<sup>235</sup> Chairman Glick acknowledged this finding in his dissent on rehearing, stating that the STL Pipeline “is unlikely to significantly contribute to climate change.”<sup>236</sup>

If the Project were required to cease operations and be removed, there would be additional direct GHG emissions from the removal activities. There would likely be no reduction in downstream emissions because Spire Missouri would need to find alternative sources of gas to fill the hole left by the STL Pipeline, and demand would remain the same. However, if the STL Pipeline ceased operations, Spire Missouri would likely need to bring its propane peaking facilities back online, which would increase GHG emissions. In addition, Spire Missouri would no longer be able to rely on pressure from the STL Pipeline to fill its storage facilities and may need to seek alternative way to do so, potentially increasing GHG emissions. Consequently, requiring the STL Pipeline to cease operations would likely cause an increase in GHG emissions.

It also is likely that removal of the STL Pipeline would have disproportionately adverse effects on environmental justice communities.<sup>237</sup> Spire STL has commissioned an

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<sup>234</sup> EA at 144-45.

<sup>235</sup> Certificate Order at P 263.

<sup>236</sup> Rehearing Order (Glick, Comm’r dissent at P 30).

<sup>237</sup> The term “environmental justice community” could encompass (i) populations of color; (ii) communities of color; (iii) Native communities; and (iv) and low-income rural and urban communities who are exposed to a disproportionate burden of the negative human health and environmental impacts of pollution or other environmental hazards. Exec. Order No. 14008, § 219, 86 Fed. Reg. 7619, 7629 (2021); *see also* EPA, *EJ*

analysis that identifies environmental justice communities in the Greater St. Louis area, based on the U.S. Environmental Protection Agency's EJSCREEN tool. The analysis will determine whether environmental justice communities would be adversely and disproportionately impacted by closure of the STL Pipeline, including as a result of reductions in gas service and broader economic consequences that might result, such as disruptions to business. A preliminary Environmental Justice Impact Assessment is attached.<sup>238</sup> Spire STL will provide the Commission with a full analysis of environmental justice impacts no later than mid-December, 2021. Since it began service, the STL Pipeline has become a vital piece of critical energy infrastructure. Removing it from service now could come at considerable environmental and human costs.

## VII. NOTICE

To the extent that any publication in the *Federal Register* may be required for this Request, Spire STL requests that the Commission expedite the processing of this Request by promptly publishing in the *Federal Register* a notice of this Request with a provision that establishes the time for filing protests, petitions to intervene, and notices of intervention at the earliest possible date after issuance of the notice.

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2020 Glossary (Aug. 2, 2019), <https://www.epa.gov/environmentaljustice/ej-2020-glossary> (last visited Nov. 10, 2021).

<sup>238</sup> See Attachment E (AECOM, Preliminary Environmental Justice Impact Assessment of the Spire STL Pipeline when Removed from Service (Nov. 10, 2021)).

## VIII. CONCLUSION

WHEREFORE, Spire STL respectfully requests that the Commission expedite its review of this Request and, prior to the expiration of any temporary authorization, issue an order reissuing the certificates for the STL Pipeline.

Respectfully submitted,

/s/ Paul Korman

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Dated: November 10, 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 10th day of November 2021.

*/s/ Claire M. Brennan*

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