

181 FERC ¶ 61,232
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Spire STL Pipeline LLC

Docket No. CP17-40-006

ORDER ON REMAND AND REISSUING CERTIFICATES

(Issued December 15, 2022)

1. This case is before the Commission on remand from the United States Court of Appeals for the District of Columbia Circuit.¹ The court vacated and remanded the Commission's orders authorizing the construction and operation of the Spire STL Pipeline Project (Spire STL Pipeline)² for failing to demonstrate the need for the project and balance the benefits and adverse effects of the project under the Commission's Certificate Policy Statement.³ For the reasons discussed below, we find that Spire STL Pipeline Project is needed and that the benefits outweigh the adverse impacts. Accordingly, we reissue a certificate of public convenience and necessity to Spire STL Pipeline LLC (Spire).

I. Background

2. On January 26, 2017, Spire filed an application under section 7(c) of the NGA⁴ and Part 157 of the Commission's regulations⁵ requesting authorization to construct and operate the Spire STL Pipeline, a new, 65-mile-long interstate natural gas pipeline system, extending from an interconnection with Rockies Express Pipeline LLC (REX) in Scott County, Illinois, to interconnections with Spire Missouri Inc., (Spire Missouri), an

¹ *Envtl. Def. Fund v. FERC*, 2 F.4th 953 (D.C. Cir 2021).

² *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (Certificate Order), *on reh'g* 169 FERC ¶ 61,134 (2019) (Rehearing Order).

³ *Envtl. Def. Fund*, 2 F.4th at 973-74.

⁴ 15 U.S.C. § 717f(c).

⁵ 18 C.F.R. pt. 157 (2021).

affiliate of Spire,⁶ and Enable Mississippi River Transmission, LLC (MRT) in St. Louis County, Missouri. The Spire STL Pipeline, which is designed to provide up to 400,000 dekatherms per day (Dth/d) of firm transportation service to the St. Louis metropolitan area, eastern Missouri, and southwestern Illinois, is composed of two segments: (1) a 24-inch-diameter, 59-mile-long segment originating at a new interconnection with REX and terminating at a new interconnection with Spire Missouri's Lange Delivery Station; and (2) a 24-inch-diameter, 6-mile-long segment originating at Spire Missouri's Lange interconnection and terminating at a new bidirectional interconnection with both MRT and Spire Missouri at the Chain of Rocks Delivery Station (North County Extension). The project includes three new aboveground meter and regulating stations: (1) the REX Receipt Station; (2) the Lange Delivery Station; and (3) the bidirectional Chain of Rocks Delivery Station (with separate meters for MRT and Spire Missouri), as well as interconnection facilities, and other appurtenant facilities.

3. Spire executed a binding precedent agreement with Spire Missouri for 350,000 Dth/d of firm transportation service, representing 87.5% of the total design capacity of the project. Spire Missouri provides natural gas distribution service to approximately 650,000 residential, commercial, and industrial customers in the St. Louis metropolitan area and surrounding counties in eastern Missouri. Protesters challenged the need for the Spire STL Pipeline, arguing that a single precedent agreement with an affiliate is insufficient to demonstrate need, particularly when the project does not serve increased demand in the St. Louis market and existing infrastructure can meet the project purpose.⁷

4. On August 3, 2018, the Commission issued Spire a certificate of public convenience and necessity under section 7(c) of the NGA⁸ to construct and operate the Spire STL Pipeline.⁹ The Commission stated it would not look behind the precedent agreement and found that the benefits of the project outweighed the potential adverse

⁶ Spire Missouri is a local gas distribution company and an indirect wholly-owned subsidiary of Spire. Spire Missouri's rates and services are regulated by the Missouri Public Service Commission (Missouri PSC).

⁷ Since issuance of the certificate, Spire Marketing Inc., a stand-alone gas marketing and logistics company that serves end-use customers behind the Spire Missouri city-gate signed a firm transportation contract for 10,000 Dth/d of firm capacity.

⁸ 15 U.S.C. § 717f(c).

⁹ Certificate Order, 164 FERC ¶ 61,085.

effects. Following project construction, the Commission authorized Spire to commence service on the majority of the Spire STL Pipeline on November 14, 2019.¹⁰

5. The Environmental Defense Fund (EDF), Missouri Public Service Commission (Missouri PSC), and Juli Steck each filed timely requests for rehearing.¹¹ EDF asserted that the Commission failed to comply with the Certificate Policy Statement by relying on an affiliate precedent agreement to establish need, and that doing so would result in over building. EDF also argued that the Commission failed to balance the project's impacts on existing pipelines and their customers and on landowners and the environment. The Missouri PSC argued that the 14% return on equity authorized by the Commission was unsupported and would result in excessive rates. Ms. Steck asserted that the Commission's environmental review did not comply with the National Environmental Policy Act of 1969 (NEPA).

6. On November 21, 2019, the Commission issued an order on rehearing affirming the underlying determination that Spire had provided a sufficient demonstration of need for the project.¹² The order explained that precedent agreements with affiliated shippers are sufficient to demonstrate need¹³ and concluded that a 14% return on equity is consistent with Commission precedent for greenfield pipelines, like Spire.¹⁴ In addition to addressing issues related to the project's purpose and need, the order also addressed reasonable alternatives to the project, and the impacts of GHG and methane emissions, and cumulative impacts.¹⁵

7. EDF appealed the Commission's orders to the U.S. Court of Appeals for the D.C. Circuit,¹⁶ claiming that the Commission's decision was arbitrary and capricious because

¹⁰ The Commission authorized Spire to place the Chain of Rocks Delivery Station into service on October 30, 2020.

¹¹ MRT filed a timely request for rehearing, but ultimately withdrew its request. Rehearing Order, 169 FERC ¶ 61,134 at PP 6-7.

¹² *Id.* PP 22-38.

¹³ *Id.* PP 12-38.

¹⁴ *Id.* PP 39-48.

¹⁵ *Id.* PP 49-72.

¹⁶ Ms. Steck appealed the Commission's orders challenging the Commission's environmental analysis; however the court found that Ms. Steck lacked standing to pursue her claims. *Env'tl. Def. Fund*, 2 F.4th at 968-970. On November 3, 2021, Ms. Steck filed a notice of withdrawal from the proceeding, effective November 18, 2021.

the Commission inappropriately relied on the single precedent agreement to find need and because the Commission failed to sufficiently balance the project's benefits against the adverse effects.

8. On June 22, 2021, the D.C. Circuit issued a decision granting EDF's petition, vacating the Commission's Certificate and Rehearing Orders, and remanding the case to the Commission for further proceedings.¹⁷ The court found that the Commission's grant of a certificate of public convenience and necessity was arbitrary and capricious because even though "the Commission was presented with strong arguments as to why the precedent agreement between Spire STL and Spire Missouri was insufficiently probative of market need and benefits of the proposed pipeline," the Commission relied upon a single precedent agreement with an affiliated shipper, Spire Missouri, to establish need and failed to weigh the project's benefits against its adverse effects.¹⁸ Specifically, the court stated that:

nothing in the Certificate Policy Statement suggests that a precedent agreement is conclusive proof of need in a situation in which there is no new load demand, no Commission finding that a new pipeline would reduce costs, only a single precedent agreement in which the pipeline and shipper are corporate affiliates, the affiliate precedent agreement was entered into privately after no shipper subscribed during an open season, and the agreement is not for the full capacity of the pipeline.¹⁹

9. The court held that the Commission failed to engage with "plausible evidence of self-dealing" offered by EDF²⁰ and that "[t]he challenges raised by EDF and others were more than enough to require the Commission to 'look behind' the precedent agreement in determining whether there was market need."²¹ The court also faulted the Commission for failing to meaningfully examine the purported benefits of the project (i.e., retiring of Spire Missouri's propane peaking facilities, access to natural gas supplies from the

Steck Nov. 3, 2021 Notice of Withdrawal.

¹⁷ *Env'tl. Def. Fund*, 2 F.4th 953.

¹⁸ *Id.* at 973.

¹⁹ *Id.*

²⁰ *Id.* at 975.

²¹ *Id.*

Marcellus region, and avoiding the New Madrid Fault) even though EDF and others challenged whether these benefits were likely to occur.²²

10. On August 5, 2021, Spire filed a petition for panel rehearing or rehearing *en banc*, asserting that vacatur would cause service disruptions during the 2021-2022 winter heating season.²³ The court denied Spire's petition.²⁴ Thus, once the D.C. Circuit's mandate became effective, the Commission's orders and Spire's authorizations were no longer valid.²⁵

11. On July 26, 2021, Spire filed an application requesting that the Commission issue a temporary certificate under NGA section 7(c)(1)(B).²⁶ Spire stated that without a temporary certificate Spire Missouri would be unable to transport gas via the Spire STL Pipeline during the 2021-2022 winter heating season and this could cause the curtailment of service to 175,000 of its 650,000 customers.

12. On September 14, 2021, to prevent an emergency from the immediate cessation of service by Spire, the Commission, *sua sponte*, issued a temporary certificate for 90 days while it evaluated Spire's temporary certificate application.²⁷ On October 14, 2021, Scott Turman and the Niskanen Center, jointly, and a group of 51 landowners filed requests for rehearing and Spire filed a request for clarification. The Niskanen Center questioned whether a section 7(c)(1)(B) temporary certificate includes eminent domain authority under section 7(h) and whether Commission Order Nos. 871-B and 871-C²⁸ would

²² *Id.* at 973-74.

²³ Spire Aug. 5, 2021 Petition for Rehearing at 7, D.C. Cir. Nos. 20-1016, 20-1017.

²⁴ Sept. 7, 2021 Order Denying Petition for Rehearing, D.C. Cir. Nos. 20-1016, 20-1017; Sept. 7, 2021 Order Denying Petition for Rehearing *En Banc*, D.C. Cir. Nos. 20-1016, 20-1017.

²⁵ On September 13, 2021, Spire filed a motion for stay of the mandate pending its petition for a writ of certiorari before the Supreme Court of the United States. The D.C. Circuit denied Spire's motion on October 1 and issued the mandate on October 8, 2021. Spire subsequently filed an application for stay of the D.C. Circuit's mandate with the Supreme Court, which was denied on October 15, 2021.

²⁶ 15 U.S.C. § 717f. In the alternative, Spire requested a limited-term certificate under NGA sections 7 and 16. *Id.* §§ 717f, 717o.

²⁷ *Spire STL Pipeline LLC*, 176 FERC ¶ 61,160 (2021).

²⁸ In Order Nos. 871-B and 871-C, the Commission adopted a policy of

presumptively stay the proceeding pending requests for rehearing. Spire requested clarification as to whether it could continue to serve another existing customer, Spire Marketing, and if it could enter new contracts under the temporary authorization. The Commission, on November 18, 2021, issued an order granting both of Spire's requests for clarification and addressing the requests for rehearing.²⁹ The Commission found that whether eminent domain authority under section 7(h) applied to temporary certificates was an issue better resolved by the courts.³⁰ As for a stay under Order Nos. 871-B and 871-C, the Commission concluded that its presumptive stay policy was not applicable due to the emergency nature of the proceeding.³¹

13. On November 12, 2021, Spire filed a request for expedited reissuance of the certificates. In its request, Spire asks that the Commission reissue the Certificate of Public Convenience and Necessity; the blanket certificate issued under Part 157, Subpart F of the Commission's regulations authorizing certain routine construction, operation, and abandonment activities; and a blanket certificate under Part 284, Subpart G of the Commission's regulations authorizing Spire to provide transportation service under its tariff.

14. On December 3, 2021, the Commission issued a temporary certificate to Spire.³² The order found that Spire Missouri would be unable to find replacement capacity via other pipelines in the region³³ and that it would be unable to reconstruct the facilities required to replicate its earlier operations, which it had taken out of service in reliance on

presumptively staying a certificate order during the 30-day rehearing period and pending Commission resolution of requests for rehearing filed by landowners, thereby addressing concerns regarding a certificate-holder's exercise of eminent domain prior to the conclusion of Commission proceedings. *Limiting Authorizations to Proceed with Const. Activities Pending Rehearing*, Order No. 871, 171 FERC ¶ 61,201 (2020), *order on reh'g*, Order No. 871-B, 175 FERC ¶ 61,098, *order on reh'g*, Order No. 871-C, 176 FERC ¶ 61,062 (2021).

²⁹ *Spire STL Pipeline LLC*, 177 FERC ¶ 61,114 (2021).

³⁰ *Id.* P 10.

³¹ *Id.* P 13.

³² *Spire STL Pipeline LLC*, 177 FERC ¶ 61,147 (2021) (Dec. 3 Temporary Certificate Order).

³³ *Id.* P 44.

service from Spire.³⁴ The December 3 temporary certificate order vacated the September 14 temporary certificate order and stated that the temporary certificate would remain in effect until the Commission issues an order on remand. The Commission also stated it would address on remand issues raised by EDF in the temporary certificate proceeding.³⁵

15. The Niskanen Center and EDF filed timely requests for rehearing. The Niskanen Center reiterated its allegations from its *sua sponte* temporary certificate rehearing—Spire should be precluded from exercising eminent domain and the order should be stayed under Order Nos. 871-B and 871-C. EDF argued that the Commission failed to address the allegations of self-dealing between Spire and Spire Missouri as identified by the D.C. Circuit. On February 17, 2022, the Commission issued an order addressing arguments raised on rehearing and denying stay.³⁶ The Commission reiterated that this issue of eminent domain is best resolved by the courts and the presumptive stay under Order Nos. 871-B and 871-C was not applicable because of the emergency nature of the proceeding.³⁷ The Commission stated that issues remanded by the court would be addressed in the remand proceeding.³⁸ The Niskanen Center appealed the Commission's December 3 Temporary Certificate and Rehearing Orders to the D.C. Circuit raising the same issues as on rehearing.³⁹ The Commission filed a motion asking the court to hold the proceeding in abeyance pending the outcome of Commission's proceedings or the Supreme Court's review, whichever is later.⁴⁰ The D.C. Circuit granted the motion and required the Commission to file a status report every 60 days and the parties to file

³⁴ *Id.* P 45.

³⁵ *See* Dec. 3 Temporary Certificate Order, 177 FERC ¶ 61,147 at P 61 (the Commission stated that issues remanded by the court will not be addressed in the temporary certificate proceeding).

³⁶ *Spire STL Pipeline LLC*, 178 FERC ¶ 61,109 (2022).

³⁷ *Id.* PP 10, 13.

³⁸ *Id.* P 19.

³⁹ Niskanen Center, Apr. 7, 2022 Statement of Issues, *Scott Turman v. FERC*, D.C. Cir. No. 22-1043.

⁴⁰ Commission, Apr. 11, 2022 Motion to Hold Appeal in Abeyance, *Scott Turman v. FERC*, D.C. Cir. No. 22-1043.

motions governing further proceedings within 30 days of the conclusion of agency proceedings.⁴¹

16. On June 16, 2022, Commission staff issued a draft Environmental Impact Statement (EIS) to update the environmental review for the Spire STL Pipeline. In response to the draft EIS, Central Land Consulting and a group of landowners (collectively, Central Land Consulting);⁴² the Niskanen Center and group of landowners (collectively, Niskanen Center);⁴³ and Philip and Zena Brown filed motions to intervene.⁴⁴ Commission staff issued the final EIS on October 7, 2022.

II. Discussion

17. Because the Spire STL Pipeline will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the operation of the facilities and capacity are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁴⁵ For the reasons discussed below, we find that the record demonstrates a need for the Spire STL Pipeline and on balance the benefits of the project outweigh the adverse impacts.

A. Procedural Comments

18. The Niskanen Center alleges that the Commission's process has lacked transparency about the type of proceeding the Commission is using and in effect limited the ability of the public and affected landowners to meaningfully participate.⁴⁶ It argues

⁴¹ June 29, 2022 Order Granting Abeyance, *Scott Turman v. FERC*, D.C. Cir. No. 22-1043.

⁴² The landowners are Betty & Keith Jefferson, William & Alice Ballard, Anne & Matthew Clayton, Hart Farms LLC, Jo Ann Mansfield, Larry Meyer, Dannie Malone, Greg & Connie Stout, and Sheila Segraves.

⁴³ The landowners are Kenny Davis, Jay Gettings, Sinclair Family Farm LLC, 4850 Longhorn LLC, Scott Turman, and St Turman Contracting LLC.

⁴⁴ These motions were filed during the during the comment period for the draft EIS and under our regulations are considered timely. 18 C.F.R. § 380.10(a) (2021). Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2021).

⁴⁵ 15 U.S.C. § 717f(c), (e).

⁴⁶ Niskanen Center Aug. 8, 2022 Comments at 2; Niskanen Center Nov. 4, 2022

that Spire's November 12, 2021 filing is a new application for a certificate of public convenience and necessity to add 400,000 Dth/d to the interstate pipeline system and the Commission should have processed it as a new application, establishing a scoping period and publishing notice in the *Federal Register*.⁴⁷

19. EDF, in its comments on the draft EIS, "recognizes the Commission's discretion to manage the remand process," but notes that it refrained from submitting comments regarding evidence of self-dealing, or the benefits and adverse impacts of the pipeline, or responses to Spire's comments because the Commission has not solicited comments.⁴⁸

20. Agencies on remand, unless otherwise directed by the court, may proceed as needed to supplement the record and redress issues identified by the court.⁴⁹ Consistent with how the Commission has processed other remand orders,⁵⁰ we reviewed the record before us to determine whether the deficiencies identified by the court could be redressed and what, if any, additional information would be helpful. We find, as discussed below, the record is sufficient to allow us to proceed without requesting supplemental briefing or initiating a new proceeding and issuing a notice of Spire's application.⁵¹

Comments at 5-6.

⁴⁷ Niskanen Center Aug. 8, 2022 Comments at 2.

⁴⁸ EDF Aug. 8, 2022 Comments at 3.

⁴⁹ See *Cooley v. FERC*, 843 F.2d 1464, 1473 (D.C. Cir. 1983) ("We only order the Commission to reopen the record where it 'clearly appear[s] that the new evidence would compel or persuade to a contrary result.'" (quoting *Friends of the River v. FERC*, 720 F.2d 93, 98 n.6 (D.C. Cir. 1983) (citation removed))); *SFPP, L.P. v. FERC*, 967 F.3d 788, 797 (D.C. Cir. 2020), *cert. dismissed*, 141 S. Ct. 2170 (2021) (finding that on remand it is up to the Commission to determine if the record should be reopened); *Williston Basin Interstate Pipeline Co.*, 125 FERC ¶ 61,303, at P 16 (2008) (reopening a record on remand after three and a half years elapsed from the initial decision to consider updated information to make an informed decision).

⁵⁰ E.g., *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233 (2018); *NEXUS Gas Transmission, LLC*, 172 FERC ¶ 61,199 (2020).

⁵¹ In addition, the public was given the opportunity to comment on the EIS during the scoping and draft EIS comment periods, which the Niskanen Center and EDF did. See Niskanen Center Aug. 8, 2022 Comments, Niskanen Center Mar. 22, 2022 Comments, EDF Aug. 8, 2022 Comments, EDF Jan. 14, 2022 Comments.

B. Certificate Policy Statement

21. The 1999 Certificate Policy Statement provides guidance as to how proposals for certificating new construction will be evaluated.⁵² The 1999 Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. It explains that, in deciding whether and under what terms to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, 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.

22. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the route of the new pipeline facilities. If residual adverse effects on these groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. No Subsidy Requirement

23. As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has consistently found that there is no potential for subsidization or degradation of service to existing customers on a greenfield pipeline because by default, there are no existing customers on such a facility.⁵³ At the time of its application, Spire was a new pipeline entrant that

⁵² *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, corrected, 89 FERC ¶ 61,040 (1999), clarified, 90 FERC ¶ 61,128, further clarified, 92 FERC ¶ 61,094 (2000) (1999 Certificate Policy Statement).

⁵³ See *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192, at P 23 (2014); *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 32 (2017), order on reh'g, 163 FERC ¶ 61,197 (2018); *Atl. Coast Pipeline, LLC*, 161 FERC 61,042, at P 28 (2017), order

proposed to provide interstate transportation service and had no existing customers; therefore, there will be no subsidization by existing interstate pipeline customers for the Spire STL Pipeline.

2. Project Need

24. The Spire STL Pipeline was built to primarily serve the customers of Spire Missouri. The greenfield Spire STL Pipeline was proposed to allow that single shipper, Spire Missouri, to let its existing transportation service contracts on third-party pipelines (principally MRT) expire, so that Spire Missouri could take service, instead, on a system to be newly constructed by its affiliate. On review of the Commission's orders addressing the proposal, the D.C. Circuit held that the Commission's need determination was arbitrary and capricious because it failed to engage with "strong arguments" as to why the precedent agreement between Spire and Spire Missouri was not probative of market need.⁵⁴ The court found "because the Commission declined to engage with EDF's arguments and the underlying evidence regarding self-dealing, its decisionmaking was arbitrary and capricious."⁵⁵ Specifically, the court found that:

[I]t was arbitrary and capricious for the Commission to rely solely on a precedent agreement to establish market need for a proposed pipeline when (1) there was a single precedent agreement for the pipeline; (2) that agreement was with an affiliated shipper; (3) all parties agreed that projected demand for natural gas in the area to be served by the new pipeline was flat for the foreseeable future; and (4) the Commission neglected to make a finding as to whether the construction of the proposed pipeline would result in cost savings or otherwise represented a more economical alternative to existing pipelines.⁵⁶

denying reh'g, 163 FERC ¶ 61,098 (2018).

⁵⁴ *Env'tl. Def. Fund*, 2 F.4th at 973.

⁵⁵ *Id.* at 975.

⁵⁶ *Id.* at 976.

The court further concluded that “[t]he challenges raised by EDF and others were more than enough to require the Commission to ‘look behind’ the precedent agreement in determining whether there was market need.”⁵⁷

25. Considering the record anew on remand, and in light of the court’s vacatur of the 2018 certificate, we conclude that the Commission erred in relying solely, without any further examination, on a single precedent agreement among affiliated entities to find need in the original certificate order, given the particular facts and circumstances of this case, especially the undisputed fact that the existing system was sufficient to enable the single shipper to meet the vast majority of its demonstrated level of current and anticipated customer demand.⁵⁸ At this point, however, the Spire STL Pipeline has been in service for three years, transporting gas for Spire Missouri, and we find that it is appropriate to determine the public convenience and necessity by taking into account current facts and circumstances .

26. The 1999 Certificate Policy Statement provides that “[r]ather than relying only on one test for need, the Commission will consider all relevant factors reflecting on the need for the project.”⁵⁹ It further explains “[t]he types of public benefits” that establish project need “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,” and states that the applicant may present “any relevant evidence” to support “any public benefit.”⁶⁰

27. Spire asserts that the public benefits of the project include the continuation of needed natural gas service to Spire Missouri, operational benefits, economic benefits, increased supply diversity and reliability, the elimination of Spire Missouri’s reliance on propane peaking facilities, and increased supply security and safety by avoiding a

⁵⁷ *Id.* at 976.

⁵⁸ *Id.* at 962 (“For the last two decades, natural gas consumption in the St. Louis area has been roughly flat. And when the Commission issued the Certificate Order in this case, all parties agreed that future demand projections were not expected to increase.”); *see also* Certificate Order, 164 FERC ¶ 61,085 at P 107 (“All parties, including Spire, agree that the new capacity is not meant to serve new demand, as load forecasts for the region are flat for the foreseeable future.”).

⁵⁹ 1999 Certificate Policy Statement, 88 FERC at 61,747.

⁶⁰ *Id.*

transportation path over the New Madrid Fault.⁶¹ As discussed below, having conducted that more comprehensive review of the record, including decisions made by Spire Missouri and other relevant entities after the Commission's issuance of the original section 7 certificate, we conclude that the Spire STL Pipeline is needed.

28. Spire's precedent agreement with Spire Missouri has been superseded by the execution of a long-term service agreement for 87.5% of the project's firm transportation service.⁶² Spire is currently providing service under a temporary certificate, because, as the Commission has previously determined, shutdown of the pipeline would halt necessary service to Spire Missouri and harm consumers.⁶³ That fact has not changed. It is no longer possible to return to the situation that existed prior to the Commission's issuance of the original certificate. In the three years since the Spire STL Pipeline entered service, Spire Missouri has retired three compressors at its Lange Storage Field⁶⁴ and decommissioned its propane peaking facilities. Even if Spire were to attempt to restore these service components, Spire Missouri has let contracts with its primary service provider, MRT, expire and, because much of that capacity on its mainline has been remarketed, it is no longer available.⁶⁵ As a result of these changes, we find that the Spire STL Pipeline is needed to meet Spire Missouri's current and future demand for natural gas transportation service and provide reliable service to meet the heating and other needs of its approximately 650,000 residential, commercial, and industrial customers.⁶⁶

29. The Spire STL Pipeline is also providing other public benefits. With regard to operational benefits, Spire states that Spire Missouri's system has benefited from the higher operating pressures of Spire's system, which have allowed Spire Missouri to

⁶¹ Spire Nov. 12, 2021 Request to Reinstate Certificates at 24-38.

⁶² Spire Oct. 16, 2019 Negotiated Rate Agreement and Non-Conforming Service Agreement Filing, Docket No. RP 20-70-000. Commission staff accepted the tariff records on November 14, 2019. *Spire STL Pipeline, LLC*, Docket No. RP20-70-000 (Nov. 14, 2019) (delegated letter).

⁶³ Dec. 3 Temporary Certificate Order, 177 FERC ¶ 61,147.

⁶⁴ *See id.* P 45. We note that Spire did not construct any compression as part of its Spire STL Pipeline.

⁶⁵ *See id.* PP 30, 44.

⁶⁶ *See id.* PP 44-47.

replenish its Lange Storage Field and retire its three compression facilities at that field.⁶⁷ Spire also notes that, by relying on the firm capacity contract for the Spire STL Pipeline, Spire Missouri was able to retire its propane peaking facilities,⁶⁸ which had previously provided 160,000 Dth/d of peaking service to cover Spire Missouri's peak-day capacity requirements. By relying on its firm capacity contract with Spire, Spire Missouri was able to retire the equipment, satisfy its peak-day capacity needs, and avoid the adverse effects associated with injecting the high Btu vaporized propane into Spire Missouri's natural gas system.

30. In addition, Spire recounts that an interconnection constructed with MoGas Pipeline LLC (MoGas)⁶⁹ has provided operational benefits to MoGas, which is unaffiliated with Spire. The interconnection consists of 1,000 feet of pipe, costs approximately \$3.6 million, and was constructed under MoGas' blanket certificate.⁷⁰ MoGas states that prior to construction of this interconnection, receipt pressures from MRT were insufficient to allow MoGas to serve natural gas demand along its system to the west of St. Louis.⁷¹ MoGas further states that accommodating these requests in the absence of the interconnection with the Spire STL Pipeline would require a major expansion of its system, costing approximately \$100 million and requiring the construction of over 50 miles of pipeline, or the installation of additional compression at its interconnection with MRT.⁷² With the interconnection with Spire, MoGas determined it could serve the natural gas demand west of St. Louis without additional looping or

⁶⁷ Spire Nov. 12, 2021 Request to Reinstate Certificates at 58.

⁶⁸ *Id.* at 36.

⁶⁹ MoGas operates approximately 260 miles of interstate natural gas pipeline in Missouri and Illinois, transporting natural gas to investor-owned and municipal local distribution companies with facilities located on the north and west side of St. Louis. MoGas July 28, 2021 Motion to Intervene at 4, Docket No. CP17-40-007. MoGas' facilities also interconnect with REX and Panhandle Eastern Pipe Line Company, LP (Panhandle) on the western leg of its system and MRT on the eastern leg of its system. Two LDC shippers, Spire Missouri and Ameren Missouri, comprise approximately 85% of MoGas' firm transportation service.

⁷⁰ *See MoGas Pipeline LLC*, 124 FERC ¶ 61,287 (2008).

⁷¹ MoGas, Comments, Docket No. CP17-40-007 at 3 (filed Dec. 2, 2021).

⁷² *Id.*

compression because of the high quantities and delivery pressure provided by the Spire STL Pipeline.⁷³

31. Spire states that Spire Missouri contracted for an additional 82,800 Dth/d of service on MoGas, which now allows Spire Missouri to transfer gas from the Spire STL Pipeline to MoGas for delivery to the western and southwestern parts of Spire Missouri's distribution system.⁷⁴ Spire asserts that the increased operating pressure of the Spire STL Pipeline allowed Spire Missouri to forgo the construction of an estimated 25 miles of pipeline improvements that would have been needed to move gas from MRT to the western portion of its territory as MoGas could not meet additional service requests.⁷⁵ Similarly, Spire explains that the interconnection between Spire STL Pipeline and MRT has allowed Spire Missouri to move gas from REX onto MRT for delivery to the southern part of its distribution system.⁷⁶

32. With regard to economic benefits, the record reflects reduced delivered costs of natural gas for Spire Missouri. Pointing to Spire Missouri's estimates, Spire asserts the total cost of delivered gas on the Spire STL Pipeline is \$6.36 per Dth, which is less than the \$6.70 per Dth cost that Spire Missouri incurred on MRT's system.⁷⁷

33. Spire also included a new 2021 market study with its request for reissuance of certificates.⁷⁸ The study examines the value of the supply diversity for both pricing and supply security that the Spire STL Pipeline provides for its customers by connecting to

⁷³ *Id.*

⁷⁴ Spire Nov. 12, 2021 Request to Reinstate Certificates at 6.

⁷⁵ *Id.*

⁷⁶ Spire Aug. 20, 2021 Answer to EDF at 8.

⁷⁷ Spire Nov. 12, 2021 Request to Reinstate Certificates at 34-35. *See also id.* at 48 (stating that the negotiated rate between Spire and Spire Missouri is \$0.25 Dth/d for firm transportation service on the Spire STL Pipeline, which is below the recourse rate for this project of \$0.3570 Dth/d, yielding a return on equity of approximately 8%).

⁷⁸ *See Env'tl. Def. Fund*, 2 F.4th at 972 ("According to the Commission's Certificate Policy Statement, 'the evidence necessary to establish the need for [a] project will usually include a market study. . . . Vague assertions of public benefits will not be sufficient.'") (quoting 1999 Certificate Policy Statement, 88 FERC at 61,748); *id.* at 975 (drawing a contrast with another case, which affirmed a Commission certificate, where the applicant had submitted a market study to the Commission to show the need for and benefits of a proposed pipeline project).

REX and the associated supply basins, the market dynamics in the St. Louis area, the pipeline alternatives that serve the area and their ability to provide similar benefits to Spire Missouri, and the added operational benefits the Spire STL Pipeline provides to Spire Missouri.⁷⁹ The report notes that since the supply of natural gas in the Marcellus and Utica plays began producing in the 2010s, the traditional model for obtaining natural gas supply has changed.⁸⁰ Previously, producing regions in the south transported natural gas to the northeast, but since 2010, gas now flows from the northeast to the south.⁸¹ The REX pipeline played an important part in this process as it moves gas both from the Marcellus and Utica plays in the east and the Rockies and Denver Julesberg plays to the west.⁸² The interconnection of the Spire STL Pipeline with REX “provides [shippers on the Spire STL Pipeline] full access to widely diverse supply areas to some of the least expensive supply areas in the nation, and substantial protection against weather events in the specific region.”⁸³ The report also documents how the natural gas deliveries in the entire St. Louis market have increased moderately, with an average daily consumption of 486,000 Dth/d in 2015 and increasing to 556,863 Dth/d in 2019.⁸⁴

34. The Niskanen Center states that there “continues to be no need (or potentially some small incremental demand) that couldn’t be met by the existing systems resources.”⁸⁵ It further argues that MRT could provide the service needed for Spire Missouri and the 2017 environmental assessment found that market demand would be met by other pipelines already serving the area.⁸⁶ We disagree that there are existing alternatives to the Spire STL Pipeline, as the Niskanen Center asserts. As discussed, in the three years since the Spire STL Pipeline entered service, Spire Missouri has removed

⁷⁹ Spire Nov. 12, 2021 Request to Reinstate Certificates Attachment B at 5 (RBN Energy Study).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 6.

⁸³ *Id.* at 14.

⁸⁴ *Id.* Appendix A Black and Veatch *Updated: Review of Current Natural Gas Infrastructure Serving the Greater St. Louis Market and Potential Disruption During Peak-Day Demand* at 2-7 (Black and Veatch Report).

⁸⁵ Niskanen Center Aug. 8, 2022 Draft EIS Comments at 9.

⁸⁶ Niskanen Center Oct. 7, 2022 Answer to Spire’s Comments on Draft EIS at 7 (citing the 2017 EA at 147).

and disposed of several of its facilities while needed transportation capacity on MRT is no longer available. Spire also documents that Spire Missouri previously relied on MRT for approximately 70-80% of its transportation capacity and obtained over 95% of its gas portfolio from the traditional domestic sources of gas in Oklahoma, Texas, Louisiana, and Arkansas.⁸⁷ The Spire STL Pipeline, as described above, provides Spire Missouri with direct access to REX and provides access to the Marcellus and Utica basins. The Spire STL Pipeline allows gas to move from REX to Spire Missouri's city gate without rate stacking,⁸⁸ as would be required with other pipelines. The record also indicates that, at this point, 38% of Spire Missouri's pipeline capacity is provided by the Spire STL Pipeline⁸⁹ and allows Spire Missouri to diversify its access to all three major supply basins.⁹⁰

35. Commenters note that the demand for natural gas in the St. Louis region remains flat. However, the demand profile for gas within the region is changing, with a shift to increasing demands in the western area of St. Louis, which is served by Spire Missouri. MoGas states that while demand throughout the St. Louis area appeared flat, the areas west of St. Louis had increasing demand and prior to its interconnection with the Spire STL Pipeline it could not serve this demand without needing to construct extensive and costly facilities.⁹¹ Similarly, Spire's market study supports this conclusion, even documenting a slight increase in natural gas demand.⁹² In addition, commenters raise concerns that the captive customers of Spire Missouri will pay excessive rates. As noted above, Spire reports that its return on equity is approximately 8%, which is less than the 14% return on equity the Commission approves for greenfield pipelines.⁹³ We note that

⁸⁷ See MoPSC Staff Schumaker & Company May 27, 2022 Report at 15-16.

⁸⁸ In this instance, Spire Missouri would have to pay for transportation across numerous pipeline systems for gas from the Marcellus and Utica basins to reach its city gate via MRT (i.e., Spire Missouri would need to ship gas on REX, then Trunkline Gas Company, LLC or Natural Gas Pipeline Company of America, L.L.C., and ultimately MRT for delivery to the city gate). With the Spire STL Pipeline, Spire Missouri can buy gas at the liquid trading point on REX.

⁸⁹ Spire Nov. 12, 2021 Request to Reinstate Certificates at 28.

⁹⁰ *Id.* at 58.

⁹¹ MoGas, Motion to Intervene at 5, Docket No. CP17-40-007 (filed July 28, 2021).

⁹² See *supra* P 33.

⁹³ Spire Nov. 12, 2021 Request to Reinstate Certificates at 40.

the recourse rates set by the Commission serve as the upper bound, but in many instances the negotiated rate is less than the recourse rate yielding a return on equity less than the Commission-approved return. That is the case here where Spire Missouri is paying a negotiated rate of \$0.25 Dth/d, significantly lower than the approved recourse rate of \$0.357 Dth/d: Spire is earning a return on equity less than the maximum the Commission authorizes for either a greenfield pipeline, a 14% return on equity,⁹⁴ or an operating pipeline, a 10.55% return on equity.⁹⁵

36. In sum, as a result of the physical and operational changes described above, we find that the Spire STL Pipeline currently provides a number of additional benefits to both the shipper, Spire Missouri, and another interconnected interstate pipeline, MoGas, as well as their customers in the St. Louis area. As discussed above, these benefits include: (1) the greater pressure profiles delivered by the Spire STL Pipeline, which allowed MoGas to provide service to Spire Missouri to satisfy increasing demand west of St. Louis without the construction of its own new, extensive facilities and Spire Missouri to retire the aforementioned compressors at the Lange Storage Field because injections can now be made without the compression provided by those facilities;⁹⁶ (2) increased supply diversity, as the Spire STL Pipeline provides a direct connection to REX allowing Spire Missouri to access a liquid trading point for gas from the Marcellus and Utica plays;⁹⁷ and (3) improved reliability, by providing an alternative transportation path for

⁹⁴ See *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053, at P 58 (2018) (noting the Commission's approval of equity returns up to 14%); see also *Fla. Se. Connection, LLC*, 154 FERC ¶ 61,080 (2016) (approving a 14% return on equity after requiring the capital structure be modified to include at least 50% debt); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 27 (2008) (approving 14% return on equity based on 50% debt and 50% equity ratios); *Corpus Christi LNG, L.P.*, 111 FERC ¶ 61,081, at P 33 (2005) (approving a 14% return on equity based on 50% debt and 50% equity ratios); *Ga. Strait Crossing Pipeline LP*, 98 FERC ¶ 61,271, at 62,054 (2002) (approving 14% return on equity based on 70% debt and 30% equity ratios).

⁹⁵ In the absence of an NGA section 4 rate case, the Commission found it appropriate to use the most recent return on equity approved in a litigated NGA section 4 rate case. See, e.g., *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180 (2019). The last litigated Commission approved return on equity is 10.55%. *El Paso Nat. Gas Co.*, 145 FERC ¶ 61,040, at P 642 (2013).

⁹⁶ MoGas July 28, 2021 Motion to Intervene at 5, Docket No. CP17-40-007.

⁹⁷ MoPSC Staff Schumaker & Company May 27, 2022 Report at 15-16; Spire Nov. 12, 2021 Request to Reinstate Certificates at 28.

38% of Spire Missouri's supply capacity that does not cross the New Madrid Fault, which is the most active seismic area in the United States east of the Rocky Mountains.⁹⁸

37. In addition, as discussed in more detail below, we find that Spire is providing service to Spire Missouri at a fully delivered per Dth cost that is less than Spire Missouri would pay for service on MRT (\$6.36 and \$6.70 Dth/d, respectively). Moreover, we note that since the initial certificate proceeding, the Missouri PSC has begun evaluating the prudence of Spire Missouri's contract for gas transportation on the Spire STL Pipeline.⁹⁹ As part of the ongoing review, the Missouri PSC staff prepared a staff recommendation and report of Spire Missouri's October 1, 2019 through September 30, 2020 Actual Cost of Adjustment for billed revenues and actual gas costs.¹⁰⁰ After its review where, among other factors, "costs related to Spire Missouri Inc's contract with Spire STL Pipeline [were] considered,"¹⁰¹ the Missouri PSC staff determined that "the decision made by

⁹⁸ Although interstate pipelines are engineered to withstand seismic events and the Spire STL Pipeline would not be able to fully insulate Spire Missouri from service disruptions should MRT's facilities be negatively impacted by seismic activity along the New Madrid Fault, the alternative path provided by the Spire STL Pipeline still provides a tangible reliability benefit to Spire Missouri.

⁹⁹ The Missouri PSC states that Spire Missouri, an LDC, is subject to the jurisdiction of the Missouri PSC under Missouri state law. Missouri PSC Oct. 5, 2021 Reply Comments at 3. It maintains this Commission has no authority to regulate the actions of an LDC under section 1(b) of the NGA, and instead such regulations are within the Missouri PSC's purview. *Id.* The Missouri PSC also notes that EDF has intervened in the proceeding before it.

¹⁰⁰ On May 31, 2022, Spire filed a supplement to its request to reissue the certificates and included the Missouri PSC staff's recommendation and report. Spire May 31, 2022 Supplement to Request Reissuance of Certificates. There are three parts to the Missouri PSC staff's May 27, 2022 report—staff's recommendation, a memorandum, and a report prepared for the staff by a third party—all are included in Spire's May 31, 2021 filing.

¹⁰¹ Missouri PSC Staff May 27, 2022 Staff Recommendation and Report at P 7. The Missouri PSC staff memorandum notes that a key benefit of the contract with Spire was the decision to cap the transportation rate to \$0.25 Dth/d. The Missouri PSC staff noted that other proposals for service with unaffiliated vendors considered by Spire Missouri included rates that varied between \$0.20 and \$0.25 Dth/d "but were based upon initial construction estimates that were not intended to be capped and would ultimately have reflected actual construction costs." Missouri PSC Staff May 27, 2022 Memorandum at 5.

Spire to build the Spire STL pipe was reasonable and prudent.”¹⁰² It further noted that Missouri rate payers were shielded from cost overruns of the Spire STL Pipeline due to the terms of the precedent agreement.¹⁰³ The Missouri PSC has not yet acted upon its staff’s recommendations. While the recommendations of the Missouri PSC staff cannot be treated as findings by the Missouri PSC, they do have probative value and this Commission may consider them. The Missouri PSC staff’s report supports our conclusion, based on the record, that the construction and operation of the Spire STL Pipeline has not imposed excessive costs on Spire Missouri and its captive ratepayers.¹⁰⁴

38. Spire also relies on the Missouri PSC staff report to support its claim that its original precedent agreement was evidence of market need. EDF and Niskanen Center have raised, throughout this proceeding, concerns that in the absence of incremental market demand and cost benefits for the project, the main impetus behind the project was improper self-dealing between Spire and Spire Missouri. Spire disputes this claim.

39. It is unnecessary to decide what weight, if any, the Commission should have accorded the precedent agreement between Spire and Spire Missouri in issuing the original certificate for the Spire STL Pipeline. On remand, the Commission’s obligation is to consider evidence in the record to determine present and future need for the pipeline, and we have done so. The most salient fact is that Spire Missouri and its retail customers are reliant on the Spire STL Pipeline for natural gas transportation service and they have no plausible alternative source of service. Moreover, under its negotiated rate agreement with Spire, Spire Missouri has lowered its delivered cost of gas. Finally, the Spire STL Pipeline is providing other economic and operational benefits, as described above, including to MoGas and its customers. For all these reasons, we find that the Spire STL Pipeline is needed.

3. Impacts on Existing Pipelines and Their Customers

40. The commenters suggested that the Spire STL Pipeline will have an adverse impact on MRT and MoGas, who will lose Spire Missouri’s business to Spire. The commenters argue that Spire Missouri’s contracts on MRT and MoGas would expire and

¹⁰² Missouri PSC Staff May 27, 2022 Staff Recommendation and Report at P 10.

¹⁰³ *Id.*

¹⁰⁴ A core reason for looking behind an affiliate precedent agreement is to assure the proposed project will not impose excessive costs on the affiliate and its captive ratepayers. *See Env’tl. Def. Fund v. FERC*, 2 F.4th at 973 (citing *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009)). Where, as here, there is evidence that the project will result in lower delivery the affiliate and its ratepayers, the concerns raised in this case concerning costs to potential “self-dealing” are ameliorated.

Spire Missouri will turnback its capacity or decontract its capacity on these pipelines. They alleged that this decontracted capacity would lead to an increase in rates on MRT and MoGas. Ameren, another LDC in the St. Louis area and shipper on MRT, feared that the rates on MRT would increase dramatically if Spire Missouri decontracted.

41. Spire asserts that the impacts on MRT were overstated. Spire Missouri did turn back 180,000 Dth/d in 2018, but Spire Missouri remained the largest shipper on MRT with 630,779 Dth/d of firm transportation service.¹⁰⁵ Further, Spire states there is currently no upstream capacity available on MRT's system.¹⁰⁶ Spire asserts that MRT settled a rate case on a black box basis after the Spire STL Pipeline entered service, making it impossible to ascertain what, if any, impact the termination of Spire Missouri's service had on MRT's rates.¹⁰⁷ Further, Spire states any concerns that MRT and other upstream pipelines would be negatively impacted is unfounded because upstream capacity is largely unavailable.¹⁰⁸

42. MoGas supports the reissuance of the certificates and states that the interconnection with the Spire STL Pipeline has allowed MoGas to serve new areas of growth west of St. Louis.¹⁰⁹ In addition, MoGas filed a black box rate settlement after the Spire STL Pipeline entered service, and the settlement was uncontested.¹¹⁰

43. In the temporary certificate proceedings, the Commission examined whether there was available capacity to the St. Louis region and found that there was limited capacity on the interstate pipelines—MRT, MoGas, Trunkline Gas Company, LLC, and Natural Gas Pipeline Company of America, L.L.C.—able to deliver to the Spire Missouri city gate:¹¹¹ for example, MRT had 568 Dth/d available on its Mainline and approximately 135,000 to 181,000 Dth/d available on its East Line.¹¹² Nothing in the record here calls into question that finding. We find this conclusion informative as it demonstrates that the

¹⁰⁵ Spire Nov. 12, 2021 Request to Reinstate Certificates at 29.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 56.

¹⁰⁸ *Id.* at 5-6.

¹⁰⁹ MoGas Dec. 12, 2021 Comments at 5.

¹¹⁰ *MoGas Pipeline, LLC*, 168 FERC ¶ 61,099 (2019).

¹¹¹ Dec. 3 Temporary Certificate Order, 177 FERC ¶ 61,147.

¹¹² *Id.* PP 30, 44.

pipelines serving the St. Louis region are nearly fully subscribed and, while some capacity exists on these systems, it is not enough to accommodate the full transportation service Spire Missouri subscribed for on the Spire STL Pipeline. Additionally, MRT entered a recent black box settlement, making it impossible to ascertain if and how the Spire STL Pipeline affected the firm transportation rate paid by shippers on MRT's system.¹¹³ The shippers on MRT were amenable to the rate—97% of the subscribed firm transportation and storage service entitlements agreed to the settlement;¹¹⁴ thus, the record here does not suggest that the construction and operation of the Spire STL Pipeline has resulted in a rate increase on MRT that the shippers on that pipeline found to be unreasonable.¹¹⁵

44. As for MoGas, it protested the initial proceeding, but since that time it interconnected with the Spire STL Pipeline and has realized benefits of the interconnection as described above. It now supports the requested reissuance of the certificates. MoGas filed a recent black box settlement for its rates and the impacts, if any, of the Spire STL Pipeline on those rates cannot be ascertained.

45. Thus, we find that issuing a certificate for the Spire STL Pipeline will not result in substantial negative impacts on existing pipelines and their customers.

4. Impacts on Landowners and Communities

46. The Spire STL Pipeline includes approximately 65 miles of pipeline and three above-ground meter stations. The project's operational permanent right-of-way affects approximately 415 acres, most of which is agricultural land, defined as hayfields, pastures, and crop production land (for corn and soybeans).¹¹⁶ Approximately 15% of the pipeline route is adjacent to existing rights-of-way, and an additional 12% is parallel to, but offset from, existing rights-of-way at varying distances ranging from 30 to 90 feet.¹¹⁷

¹¹³ *Enable Miss. River Transmission, LLC*, 170 FERC ¶ 61,254 (2020).

¹¹⁴ *Id.* P 7.

¹¹⁵ During the original certificate proceeding MRT filed a notice of withdrawal of its request for rehearing, which was not opposed and MRT's request for rehearing was withdrawn.

¹¹⁶ Approximately 80% of the land required for the operation of the project is agricultural land (330 acres); the project also affects forested (35 acres), open (23 acres), and developed land (11 acres), as well as less than 8 acres each of land classified as wetlands and open water. Final EIS at 2-1; Appendix F (2017 EA) at 83.

¹¹⁷ Final EIS Appendix F (2017 EA) at 9.

Spire required the use of eminent domain to obtain rights-of-way from approximately 40% of the landowners along its route in Missouri and 30% of the landowners along the route in Illinois.¹¹⁸ In general, landowners with right-of-way easements are able to continue using the land for crop production.

47. During construction and restoration of the pipeline right-of-way, a number of landowners documented issues with restoration of the right-of-way impacting their ability to grow crops.¹¹⁹ The Commission does not take these impacts lightly. Commission staff, Spire, and landowners continue to keep the Commission apprised of restoration activities through inspections and reports filed in the docket for this project. Spire is required to restore the right-of-way and Commission staff will continue to inspect the right-of-way, and review the status reports, which Spire is required to file to ensure compliance. Below, in the environmental section we further discuss Spire's obligation to complete restoration of the right-of-way. Considering the entire record, we find while the project was designed in a manner intended to minimize adverse impacts to landowners, we acknowledge that adverse impacts to some landowners have occurred.

5. Certificate Policy Statement Conclusion

48. On balance, we find that the record before us at this stage of the Spire STL Pipeline's operation demonstrates the public benefits of the Spire STL Pipeline outweigh its adverse effects. The facts of this project are unique—the Spire STL Pipeline is in service and operating, and restoration of the right-of-way is ongoing—and on remand we have examined the full record before us, including decisions made by Spire Missouri and

¹¹⁸ *Spire STL Pipeline LLC v. 3.31 Acres of Land*, No. 4:2018-CV-1327 (RWS) (DDN), 2018 WL 7020807, at *4 (E.D. Mo. Nov. 26, 2018), *report and recommendation adopted as modified*, No. 4:2018-CV-1327 (RWS) (DDN), 2018 WL 6528667 (E.D. Mo. Dec. 12, 2018) (stating that Spire was able to reach agreements with roughly 60% of the relevant landowners before beginning condemnation proceedings); *Spire STL Pipeline, LLC v. Turman*, 2018 WL 6523087, at *2 (stating that Spire was able to reach agreements with roughly 70% of the relevant landowners before beginning condemnation proceedings).

¹¹⁹ See *Spire STL Pipeline LLC*, 174 FERC ¶ 61,219 (2021) (March 2021 Compliance Order). Spire and the Illinois Department of Agriculture signed an Agricultural Impact Mitigation Agreement requiring mitigation measures that Spire would implement during the construction of the Spire STL Pipeline on agricultural land in Scott, Greene, and Jersey Counties, Illinois. These mitigation measures were intended to minimize the negative impacts that may occur due to pipeline construction and to apply to construction activities occurring partially or wholly on privately owned agricultural land.

other relevant entities after the Commission's issuance of the original section 7 certificate.

49. The Spire STL Pipeline, as described above, provides public benefits to the St. Louis region and in particular, Spire Missouri and MoGas. The higher-pressure deliveries that the Spire STL Pipeline provides allows Spire Missouri and MoGas to provide additional service in the western St. Louis area. MoGas estimates this increased pressure allowed it to forgo a looping project that would have been needed to serve the western St. Louis area. Similarly, Spire Missouri states that it would need to build a reinforcement project to allow for the sufficient delivery pressures to the western and southwestern side of its distribution system. This construction would occur within populated suburban areas and would take years to complete. Other benefits of the Spire STL Pipeline include Spire Missouri's ability to retire compressors at the Lange Storage Field and its propane peaking facility, direct access to the REX pipeline and supplies from the Marcellus, Utica, Rockies and Denver Julesberg plays, and the development of an additional transportation path for Spire Missouri that avoids the New Madrid Fault.

50. Certification of the Spire STL Pipeline will not result in any substantial negative impacts on existing pipelines and their captive customers. This project has operated for three years and, as discussed above, MRT and MoGas each filed black box rate settlements during that time, reflecting the change occasioned by the project. Given that the vast majority of shippers on these pipelines did not oppose the settlements, it does not appear that the Spire STL Pipeline had a meaningful impact on the rates for these pipelines. We do recognize there is approximately 100,000 Dth/d of available capacity on the MRT East Line, but as we found in the temporary certificate proceeding, capacity to the St. Louis region is constrained and Spire Missouri, which has a firm transportation contract for 350,000 Dth/d of transportation on the Spire STL Pipeline, would not be able to support its needs without the service being provided by Spire.

51. Based on the above discussion, we find that there are demonstrated benefits of Spire STL Pipeline, and further, that certification of the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers. While we recognize that the project has had adverse economic effects on some landowners, we believe that overall, the project's economic benefits outweigh these effects. Therefore, we conclude based on the record before us today that the project is consistent with the criteria set forth in the 1999 Certificate Policy Statement.

C. Rates

52. Spire proposes to provide firm (Rate Schedules FTS), interruptible (Rate Schedule ITS), and interruptible parking and lending (Rate Schedule PALS) transportation services under Part 284 of the Commission's regulations at cost-based recourse rates, and also requests the authority to offer service at negotiated rates. While

the Certificate Order was on appeal, Spire filed an amendment to revise its initial cost-based recourse rates due to increased construction costs.¹²⁰ In the Rate Amendment Order, Spire proposed an initial Rate Schedule FTS monthly reservation charge of \$10.8579 per Dth, compared to the reservation charge of \$8.3296 per Dth authorized in the Certificate Order.¹²¹ It proposed initial Rate Schedule ITS and PALS charges of \$0.3570 per Dth and a usage charge of \$0.000 per Dth. We find the underlying calculations to remain unchanged; thus, the rates¹²² and the corresponding tariff previously approved will not be modified.¹²³

53. During the temporary certificate proceeding commenters asserted that the Commission should levy penalties against Spire due to alleged self-dealing between Spire and Spire Missouri.¹²⁴ Spire's construction and operation of the Spire STL Pipeline was pursuant to a then-valid certificate of convenience and necessity. Spire's service to its shippers has been, and will continue to be, provided at or below rates approved by the Commission. We find no evidence in the record to justify the imposition of any penalties.

54. Consistent with Commission precedent, Spire is required to file a cost and revenue study no later than three months after the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.¹²⁵ This filing is due no later than February 14, 2023. In its filing, the projected units of service should be no lower than those upon which Spire's approved initial rates are based.

¹²⁰ *Spire STL Pipeline LLC*, 169 FERC ¶ 61,074, at P 5 (2019).

¹²¹ *Id.* PP 6, 14.

¹²² *Id.* at ordering para. (B).

¹²³ *Spire STL Pipeline LLC*, Docket No. RP19-1530-000 (Oct. 30, 2019) (delegated order) (order approving tariff).

¹²⁴ Dec. 3 Temporary Certificate Order, 177 FERC ¶ 61,147 at PP 49, 60.

¹²⁵ See, e.g., *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180, at P 44; *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 29 (2010); *Ruby Pipeline, LLC*, 128 FERC ¶ 61,224, at P 57 (2009).

D. Environmental

55. On September 29, 2017, Commission staff issued an environmental assessment (2017 EA) to assess the potential environmental impacts that could result from the construction and operation of the Spire STL Pipeline.

56. On December 15, 2021, the Commission issued a Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Spire STL Pipeline Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review. The notice was published in the *Federal Register* and mailed to interested entities.¹²⁶ The Commission received approximately 45 comment letters during the scoping period and prior to issuance of the draft EIS. Commenters included the U.S. Environmental Protection Agency (EPA), two delegates from the Missouri State House of Representatives, and the Mayor of Jerseyville, Illinois. Five organizations (Spire Missouri, the Niskanen Center, Missouri Coalition for the Environment, Central Land Consulting, EDF, and Sierra Club – Missouri Chapter), and 18 individuals. Spire also filed comments.

57. Commission staff subsequently prepared a draft EIS, which was issued on June 16, 2022, and addressed all substantive environmental comments received prior to issuance. The draft EIS was filed with the EPA and the Commission issued a notice of availability on June 16, 2022. The notice was published in the *Federal Register* on June 24, 2022,¹²⁷ establishing a 45-day comment period on the draft EIS that ended on August 8, 2022.

58. In response to the draft EIS, we received 52 comment letters¹²⁸ from the EPA, the U.S. Department of the Interior, three Native American Tribes, two state elected officials from Illinois, five companies and non-governmental organizations, two individuals, as well as from Spire. Most comments related to the purpose and need of the project, the

¹²⁶ 86 Fed. Reg. 72,943 (Dec. 23, 2021). Subsequent to the issuance of the *Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Spire STL Pipeline Project*, it was determined that the NEPA document was more properly considered a “draft Environmental Impact Statement,” rather than a “supplemental” document.

¹²⁷ 87 Fed. Reg 37,852 (June 24, 2022).

¹²⁸ Many of the comment letters (37 out of 52) comments related to ongoing restoration of the right-of-way. The Commission’s environmental staff is actively addressing these ongoing restoration issues through the Commission’s compliance oversight program.

no-action alternative and systems alternatives, impacts on climate change and from GHG emissions, and impacts on environmental justice communities.

59. Commission staff issued the final EIS on October 7, 2022. The notice of the availability for the final EIS was published in the *Federal Register* on October 14, 2022.¹²⁹ The EIS assesses the environmental implications of the no-action alternative: under this scenario the Commission on remand would decline to reissue a certificate of public convenience and necessity to Spire allowing it to continue operation of the Spire STL Pipeline. This assessment included evaluation of potential alternative systems in the Spire market area that could support 400,000 Dth/d of firm gas transportation service. The EIS also evaluated impacts related to the continued operation of the pipeline on environmental justice communities and factors that could affect those communities, including long-term noise, air quality, land use, and visual effects; impacts on climate change and GHG emissions; and the project's contributions to cumulative impacts on environmental justice communities and climate change. Impacts on other resource areas from construction and the continued operations of the project, including geology and soils; water resources and wetlands; vegetation, fisheries, and wildlife; threatened and endangered species; land use, special use areas, and visual resources; air quality; noise; socioeconomics; safety; and cultural resources are unchanged from the 2017 EA and were thus not reevaluated in the EIS. The final EIS addressed all substantive environmental comments received on the draft EIS. The EPA and Niskanen Center filed comments on the Final EIS, which are discussed below.

1. Scope of the Commission's NEPA Review

60. The Niskanen Center, EDF, the Illinois Department of Agriculture (Illinois DOA), Central Land Consulting, and Phil and Zena Brown comment that the Commission should consider the impacts to landowners that resulted from the construction of the Spire STL Pipeline.

61. EDF states that the Commission should analyze the damage caused by construction and operation of the Spire STL Pipeline and the status of remediation efforts before it acts on remand.¹³⁰ EDF claims that the Commission cannot proceed without analysis of the impacts on landowners as it will be unable to address the adverse impacts through proper certificate conditions.¹³¹

¹²⁹ 87 Fed. Reg. 62,406 (Oct. 14, 2022).

¹³⁰ EDF Aug. 8, 2022 Comments at 17.

¹³¹ *Id.* at 19.

62. The Niskanen Center states that since the impacts on landowners are known, the EIS should have considered and disclosed those impacts rather than relying on the 2017 EA.¹³² It argues that the analysis in the EA is out of date and the anticipated pipeline harms have occurred and have been documented.¹³³ It also states that Spire has not acted in good faith and dealt fairly with landowners.¹³⁴ The Niskanen Center discusses impacts on drain tiles, issues with the grading of the right-of-way, topsoil/subsoil mixing, erosion on the right-of-way, water ponding, and loss of crop production.¹³⁵

63. The Illinois DOA asserts that the impacts on agricultural land use and soil are not minor as described in the 2017 EA.¹³⁶ The Illinois DOA included the results of a survey that was distributed to landowners along the right-of-way to gather information on the impacts, which found issues with the restoration including impacts on drain tiles and issues with soil compaction, water ponding, subsoil and topsoil mixing, and crop yield.¹³⁷

64. Central Land Consulting asserts that the EIS fails to properly establish the baseline conditions and that the Commission cannot “ignore the actual ‘conditions on the ground.’”¹³⁸ Central Land Consulting summarizes its filings documenting Spire’s restoration efforts on various landowners properties.¹³⁹ It argues that the construction of the Spire STL Pipeline impacted landowners’ farmland and Spire failed to properly restore the right-of-way including impacts on drain tiles, construction debris buried in the right-of-way, improper mixing of topsoil and soil compaction, erosion after construction, impacts on landowner’s farm equipment due to construction debris in the right-of-way, and impacts on crop production.¹⁴⁰

¹³² Niskanen Center Aug. 8, 2022 Comments at 3.

¹³³ *Id.* at 10.

¹³⁴ *Id.*

¹³⁵ *Id.* at 12.

¹³⁶ Illinois DOA Aug. 8, 2022 Comments at 1, 2.

¹³⁷ *Id.* at 4-5.

¹³⁸ Central Land Consulting Aug. 8, 2022 Comments at 5 (quoting *Nat. Desert Ass’n v. Rose*, 921 F.3d 1185, 1190 (9th Cir. 2019)).

¹³⁹ *Id.* at 9-12.

¹⁴⁰ *Id.* at 16-22.

65. The Browns comment that the EIS should not assume that Spire remains in compliance with its environmental conditions and all federal and state regulation and permitting requirements.¹⁴¹ They assert that the EIS fails to inform the Commission of the true state of the right-of-way.¹⁴²

66. Commission staff prepared an EIS for this remand proceeding to provide an update to the greenhouse gas (GHG) and environmental justice analyses. The Commission's process and procedure for analyzing other resource areas has not changed since the issuance of the 2017 EA; thus, staff did not update those resource areas further. Following an inspection of the entire mainline and some aboveground facility locations, Commission staff reported that restoration of the right-of-way, which is a process that can occur over multiple years, is proceeding satisfactorily.¹⁴³ That does not mean that restoration is complete. Commission staff has observed that some properties will require additional monitoring or further restoration and that on other properties restoration was successful.¹⁴⁴

67. This order reissues the certificates and requires compliance with the environmental conditions appended to the original certificate. Commission staff will continue to monitor the ongoing restoration activities. The Director of the Office of Energy Projects has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project.¹⁴⁵

2. Purpose and Need and Alternatives

68. The Niskanen Center states that the Commission's purpose and need statement in its NEPA document must encompass the broad public interest considerations under

¹⁴¹ Brown Aug. 8, 2022 Comment Letter at 2.

¹⁴² *Id.*

¹⁴³ Commission staff Nov. 17, 2022 Inspection Report at 3, 7.

¹⁴⁴ *Id.* at 3.

¹⁴⁵ Certificate Order, 164 FERC ¶ 61,085 Appendix at Environmental Condition 2 (The Director . . . has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of this order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project.).

section 7 of the NGA.¹⁴⁶ It alleges that the Commission’s purpose and need statement “uncritically parrot[s] Spire’s assertion of purpose and need for its pipeline without remedying the significant defects” leading to the D.C. Circuit vacatur.¹⁴⁷ EDF also argues that the Commission accepted the 400,000 Dth/d of demand as a given without analyzing whether there was a legitimate, justified need.¹⁴⁸ Niskanen Center argues that the purpose and need statement is overly narrow and will result in a preordained outcome.¹⁴⁹ It also argues that alternatives do exist to serve the Spire Missouri’s contracted capacity with Spire.¹⁵⁰

69. The Niskanen Center also alleges that the EIS analyzed the wrong alternatives, requesting that the alternatives include other capacity to serve Spire Missouri and that the No Action Alternative should examine whether there was incremental demand.¹⁵¹ In its comments it asserts that “there continues to be no need (or potentially some small, incremental demand) that couldn’t be met by existing system resources, and FERC should consider those accordingly in a full range of alternatives.”¹⁵²

70. Section 1502.13 of the Council on Environmental Quality’s (CEQ) NEPA regulations require an EIS to include a brief discussion of the need for the project, alternatives, and environmental impacts of the proposed action and the alternatives.¹⁵³ An agency uses the purpose and need statement to define the objectives of a proposed action and then to identify and consider legitimate alternatives.¹⁵⁴ When an agency is asked to consider a specific plan, the needs and goals of the parties involved in the

¹⁴⁶ Niskanen Center Nov. 4, 2022 Comments at 4.

¹⁴⁷ *Id.* at 6.

¹⁴⁸ EDF Aug. 8, 2022 Comments at 9.

¹⁴⁹ Niskanen Center Nov. 4, 2022 Comments at 3.

¹⁵⁰ Niskanen Center Aug. 8, 2022 Comments at 3.

¹⁵¹ *Id.* at 8.

¹⁵² *Id.* at 9.

¹⁵³ 40 C.F.R. § 1502.13 (2021) (requiring an EIS to “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action).

¹⁵⁴ *See Colo. Env'tl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

application should be taken into account.¹⁵⁵ Courts have upheld federal agencies' consideration of applicants' project purpose in evaluating alternatives.¹⁵⁶

71. We find that the EIS appropriately defined the project's purpose and need and considered a reasonable range of alternatives for this remand proceeding. As discussed above, capacity on other pipelines does not exist to provide Spire Missouri with transportation options that could replicate the Spire STL Pipeline.¹⁵⁷ Thus, the EIS evaluated alternatives to the Spire STL Pipeline, which included alternatives that would need to be constructed.¹⁵⁸

72. The Niskanen Center conflates the description of the purpose of and need for the project, required by NEPA, with the Commission's determination of "public need" under the public convenience and necessity standard of NGA section 7(c).¹⁵⁹ When deciding whether and under what terms to issue a certificate, the Commission balances public benefits, including need, against project impacts; whereas under NEPA the agency "shall briefly specify the underlying purpose and need to which [it] is responding in proposing the alternatives including the proposed action."¹⁶⁰ We agree with the explanation in the final EIS that it is not a "decision document," and that, under NGA section 7(c), the final determination of the need for the projects lies with the Commission.¹⁶¹

¹⁵⁵ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

¹⁵⁶ *E.g., City of Grapevine v. U.S. Dep't of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994); *Citizens Against Burlington, Inc.*, 938 F.2d at 199; (explaining that the evaluation of alternatives is "shaped by the application at issue and by the function that the agency plays in the decisional process.").

¹⁵⁷ *See supra* PP 41-45.

¹⁵⁸ Final EIS at 3-1 to 3-12.

¹⁵⁹ Compare NGA section 7(e), 15 U.S.C. § 717f(e) (providing that, apart from statutory exceptions, "a certificate shall be issued to any qualified applicant . . . if it is found that the applicant is able and willing properly to do the acts and perform the service proposed," including complying with "the requirements, rules and regulations of the Commission") with 40 C.F.R. § 1502.10(a)(4) (recommending that an EIS include a statement of "[p]urpose of and need for action").

¹⁶⁰ 40 C.F.R. § 1502.13.

¹⁶¹ Final EIS at 1-5.

3. Environmental Justice

73. In conducting NEPA reviews of proposed natural gas projects, the Commission follows Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (i.e., environmental justice communities).¹⁶² Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”¹⁶³ Environmental justice is “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹⁶⁴

¹⁶² Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations and guidance, and statutory duties. *See* 15 U.S.C. § 717f; *see also* 18 C.F.R. § 380.12(g) (2021) (requiring applicants for projects involving significant aboveground facilities to submit information about the socioeconomic impact area of a project for the Commission’s consideration during NEPA review); FERC, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

¹⁶³ Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Feb. 1, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also includes, but may not be limited to minority populations, low-income populations, or indigenous peoples. *See* EPA, EJ 2020 Glossary (Aug. 18, 2022), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

¹⁶⁴ EPA, *Learn About Environmental Justice*, (Sep. 6 2022), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.* In 2021, the Commission established the Office of Public

74. Consistent with CEQ¹⁶⁵ and EPA¹⁶⁶ guidance and recommendations, the Commission's methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities (e.g., minority or low-income populations)¹⁶⁷ exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.¹⁶⁸ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.¹⁶⁹

Participation (OPP) to support meaningful public engagement and participation in Commission proceedings. OPP provides members of the public, including environmental justice communities, with assistance in Commission proceedings—including navigating Commission processes and activities relating to the project.

¹⁶⁵ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.

¹⁶⁶ See generally EPA's Federal Interagency Working Group for Environmental Justice and NEPA Committee's publication, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*) https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

¹⁶⁷ See generally Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

¹⁶⁸ See *Promising Practices* at 21-25.

¹⁶⁹ Here, Commission staff selected Scott, Green, and Jersey counties, Illinois and St. Charles and St. Louis counties and the City of St. Louis, Missouri, as the comparable reference communities to ensure that affected environmental justice communities are properly identified. A reference community may vary according to the characteristics of the particular project and the surrounding communities.

75. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using *Promising Practices*' low-income threshold criteria method, low-income populations are identified as block groups where the percent of a low-income population in the identified block group is equal to or greater than that of the county.

76. To identify potential environmental justice communities during preparation of the EIS, Commission staff used 2020 U.S. Census American Community Survey data¹⁷⁰ for the race, ethnicity, and poverty data at the state, county, and block group level.¹⁷¹ Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.

77. Once Commission staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis in the EIS for the identified environmental justice communities and evaluated health or environmental hazards, the natural physical environment, and associated social, economic, and cultural factors to determine whether impacts were disproportionately high and adverse on environmental justice communities and also whether those impacts were significant.¹⁷² Commission staff assessed whether impacts to environmental justice communities are disproportionately high and adverse, consistent with EPA's recommendations in *Promising Practices*.¹⁷³

¹⁷⁰ U.S. Census Bureau, American Community Survey 2020 ACS 5-Year Estimates Detailed Tables, File# B17017, *Poverty Status in the Past 12 Months by Household Type by Age of Householder*, [https://data.census.gov/cedsci/table?q=B17017;File#B03002 Hispanic or Latino Origin By Race](https://data.census.gov/cedsci/table?q=B17017;File#B03002%20Hispanic%20or%20Latino%20Origin%20By%20Race), <https://data.census.gov/cedsci/table?q=b03002>.

¹⁷¹ Final EIS at 4-6 to 4-9.

¹⁷² See *Promising Practices* at 33 (stating that "an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA" and in other circumstances "an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA").

¹⁷³ *Id.* at 44-46 (explaining that there are various approaches to determining whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be "predominantly borne by minority populations or low-income populations"). We recognize that CEQ and EPA

78. In total, the Spire STL Pipeline affects 19 Census block groups in the states of Illinois and Missouri. The main pipeline of the Spire STL Pipeline crosses a total of nine block groups, three of which are environmental justice communities (two block groups with low-income populations and one block group with a minority population).

79. The North County Extension Pipeline extends from the Lange Delivery Station in St. Louis County and crosses five Census block groups in total, all of which are environmental justice communities. Of the five environmental justice block groups, there are three block groups with minority populations and two block groups with both minority and low-income populations.

80. The Lange Delivery Station is located within an environmental justice block group with a minority population and is approximately 0.5 mile west of another environmental justice block group with a minority population. The Chain of Rocks Delivery Station is located in an environmental justice block group with a minority and low-income population and is within 1 mile of four environmental justice communities with both minority and low-income populations.

81. Apart from the census block groups mentioned above, no other census block groups affected by the project are considered environmental justice communities and therefore are not discussed further regarding environmental justice impacts. In total, 11 of the 19 census block groups affected by project facilities are considered environmental justice communities.

82. The EIS disclosed impacts associated with pipeline operations and the operation of the Lange and Chain of Rocks Delivery Stations on the identified environmental justice community in proximity to the project including land use; air quality; noise; visual impacts; and greenhouse gases.¹⁷⁴ The analysis of operational impacts on environmental justice communities in the EIS supplements the analysis provided in the 2017 EA. The 2017 EA included disclosure of construction impacts, which are referenced below where appropriate. In general, the magnitude and intensity of the aforementioned impacts would be greater for individuals and residences closest to the project's facilities and would diminish with distance. Environmental justice concerns are not present for other resource areas such as geology, groundwater, surface water, wetlands, wildlife, or cultural resources due to the minimal overall impact operation of the project would have on these resources.

are in the process of updating their guidance regarding environmental justice and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

¹⁷⁴ Final EIS at 4-12.

a. **Land Use**

83. Pipeline operations affecting residents of environmental justice communities where the pipeline is located include routine vegetation maintenance along the right-of-way and restrictions on use within the pipeline easement. Operation of the pipeline might require vegetation maintenance in upland areas, which is performed along the pipeline right-of-way on an as-needed basis but no more than every three years.¹⁷⁵ Routine vegetation maintenance is typically not necessary in active agricultural, residential, or commercial areas. In other areas, such as open land, the right-of-way is maintained in an herbaceous state through mowing and it may have different vegetation than adjacent areas. Pipeline operations also have an impact on land use. Through the restrictions imposed by the permanent easement, affected landowners are unable to conduct certain activities such as the construction of permanent structures, including houses, house additions, trailers, tool sheds, garages, poles, patios, pools, septic tanks, or other objects not easily removable, or the planting of trees within the 50-foot-wide permanent easement. Compensation for these restrictions on land use is negotiated with the landowner through the easement acquisition process. As described in the 2017 EA, long term impacts on land use from pipeline operation would continue over the operating life of the project and would be minor.¹⁷⁶

84. The EIS did not identify adverse land use impacts on environmental justice communities associated with the operation of the Lange and Chain of Rocks Delivery Stations.¹⁷⁷

¹⁷⁵ See FERC, Upland Erosion Control, Revegetation, and Maintenance Plan at 17 (May 2013), <https://www.ferc.gov/sites/default/files/2020-04/upland-erosion-control-revegetation-maintenance-plan.pdf>.

¹⁷⁶ *Id.* app. F (2017 EA) at 81-93. The 2017 EA disclosed that temporary construction impacts on residences and businesses in proximity to the construction work areas could include disturbance or removal of lawns, trees, landscaped shrubs or similar vegetation; potential damage to existing septic systems or wells; and removal of aboveground structures within the pipeline right-of way. Spire filed site-specific residential construction plans for 10 residences found to be within 50 feet of construction work areas and upon review of the plans, staff found impacts on residences would be temporary and not significant. *Id.* app. F (2017 EA) at 82-86. This order reissues the certificates and requires Spire to comply with the environmental conditions appended to the original certificate. In issuing the certificate authority provided in this order, we are not making a finding that Spire has satisfactorily completed all required construction restoration.

¹⁷⁷ The 2017 EA noted that the Lange Delivery Station would be constructed

b. Air Quality

85. While continued operation of the project does not include compression facilities, the project does require operation of stationary sources in the form of pipeline heaters at the delivery meter stations and minor fugitive natural gas emissions occur from valve components. Emissions from meter stations typically include continuous fugitive losses and intermittent emissions from pneumatic devices such as pressure regulators during blowdowns. Fugitive emissions are associated with emissions of process fluid (gas or liquid) from process equipment. Fugitive and intermittent emissions from the stations typically include oxides of nitrogen (NO_x), carbon monoxide (CO), volatile organic compounds, particulate matter, and GHGs including methane, and nitrous oxides.¹⁷⁸ Spire estimated that each meter station would emit approximately 21.8 tons per year of methane and 544 tons per year of carbon dioxide equivalents (CO₂e).¹⁷⁹ The Laclede/Lange Delivery Station also includes two 10 metric million British thermal unit (MMBtu)/hour line heaters that would combust natural gas to prevent freezing in cold weather and odorization equipment.¹⁸⁰

86. The potential for odorant release is also possible; however, the potential is very low during normal operations of a natural gas meter station facility. The odorization of gas is done using industry accepted procedures and equipment and any operational-required releases of odorized gas, and fugitive emissions would be filtered through activated charcoal filters.¹⁸¹

87. Overall, the operation of the project would meet National Ambient Air Quality Standards (NAAQS) and not have a significant impact on regional air quality. The EPA has promulgated NAAQS to protect human health and welfare. The NAAQS include primary standards, which are designed to protect human health, including the health of sensitive subpopulations such as children and those with chronic respiratory problems. The NAAQS also include secondary standards designed to protect public welfare, including economic interests, visibility, vegetation, animal species, and other concerns not related to human health. Although no exceedances of NAAQS are anticipated to occur, and the NAAQS are designated to protect sensitive populations, we acknowledge

predominately on agricultural land and the Chain of Rocks Station would be constructed on a mix of open, developed, and forested land. *Id.* app. F (2017 EA) at 94.

¹⁷⁸ *Id.* at 4-14.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 4-15.

¹⁸¹ *Id.* at 4-15.

that NAAQS attainment alone may not assure there is no localized harm to such populations due to project emissions (in this case, fugitive and intermittent emissions only, as described above), as well as issues such as the presence of non-project related pollution sources, local health risk factors, disease prevalence, and access (or lack thereof) to adequate care. The EIS found that, overall, operational emissions from the project would not have significant adverse air quality impacts on the environmental justice populations in the project area.¹⁸²

c. Noise

88. The Lange and the Chain of Rocks Delivery Stations produce noise on a continuous basis (up to 24 hours per day) when operating. At the Laclede/Lange Station, operational noise would be generated by the gas-fired heaters, the meter skid, the flow control skid, and the odorant tank. Noise emissions at the Chain of Rocks Station would be from the meter and flow control skid, the filter/separator, and the liquid storage tank.

89. There are eight residential noise-sensitive receptors (NSA) within 0.5 mile¹⁸³ of the Lange Delivery Station, including two residences within 340 feet, a group of residences to the north at 570 feet, another group of residences at 1,100 feet to the south, and additional residences within 2,000 feet. The Chain of Rocks Delivery Station has a religious institution (Applied Scholastics International) approximately 265 feet to the north, a nursing and rehabilitation home 495 feet to the south, a group of residences at about 400 feet or more to the west, and a second cluster of residences approximately 700 feet northwest. All of these NSAs are within environmental justice block groups.

90. Commission staff's 2017 analysis determined, based on background noise, distance from the stations, and engineering controls, that the changes in sound at NSAs in the vicinity of Lange Delivery Station would not be perceptible during operations.¹⁸⁴ The Chain of Rocks Station is similar, except that attributable noise from operation of the

¹⁸² *Id.* at 4-15. The 2017 EA noted that emissions associated with construction activities include fugitive dust from soil disruption and combustion emissions from construction equipment. *Id.* app. F (2017 EA) at 110, 115-116. The EA further stated that the majority of emissions from the project would result from construction and noted that all construction and operations emissions would fall beneath the general conformity *de minimis* emissions threshold and would not cause, or significantly contribute to, a violation of any applicable ambient air quality standard. *Id.* at 114-116.

¹⁸³ A one-half mile radius was used for the noise evaluation as both noise impact modeling and operational measurements demonstrate that the Spire STL meter station noise effects are only discernable within one-half mile of each station.

¹⁸⁴ *Id.* app. F (2017 EA) at 121.

Chain of Rocks Station could reach an average noise level of 57.9 A-weighted decibels (dBA) over a 24-hour period (L_{dn})¹⁸⁵ at the nearest NSA, a residence 75 feet across Prigge Road from the station.¹⁸⁶ This would have exceeded the Commission's standard of 55 dBA.¹⁸⁷

91. Once the project was in operation Environmental Condition 21 of the Certificate Order required Spire to comply with the Commission's 55 dBA noise limitation and conduct noise monitoring at the stations to determine compliance. On February 28, 2022, Spire reported that it acquired the property across Prigge Road from the Chain of Rocks Station and that noise emissions from its receipt and delivery meter stations met the 55 dBA L_{dn} noise limit under the Commission's regulations.¹⁸⁸ The EIS concludes that the operational noise levels comply with our noise limitation and guidelines and that impacts on environmental justice communities would include continued less than significant adverse operational noise impacts.¹⁸⁹

¹⁸⁵ Day-night average sound level (L_{dn}) is the 24-hour average sound level, in decibels, obtained after the addition of 10 decibels to the sound levels occurring between 10 p.m. and 7 a.m. and is used for estimating sound impacts and establishing guidelines for compatible land uses.

¹⁸⁶ *Id.* app. F (2017 EA) at 122.

¹⁸⁷ In 1974, the EPA published its *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety* providing information for state and local regulators to use when developing their own ambient noise standards. The EPA has determined that an L_{dn} of 55 dBA protects the public from indoor and outdoor activity noise interference. An L_{dn} of 55 dBA is equivalent to a continuous sound level of 48.6 dBA. For comparison, normal speech at a distance of 3 feet averages 60 to 70 dBA 24-hour equivalent sound level. Where site-specific, ambient sound levels are above 55 dBA, sound impacts should be restricted to no more than 10 dBA over background levels. We have adopted this criterion and use it to evaluate the potential noise impact from operation of compressor and meter station facilities and certain construction related activities.

¹⁸⁸ Spire Feb. 28, 2022 Post-construction Noise Study at 1.

¹⁸⁹ Final EIS at 4-16. The 2017 EA stated that project construction would result in temporary increases in ambient sound levels. The EA stated that the required noise control measures were expected to reduce noise to below the 55 dBA threshold. *Id.* app. F (2017 EA) at 118.

d. Visual Resources

92. The Lange Delivery Station is within an area that can be characterized as rural with scattered single-family homes set back from tree lined two-lane roads, agricultural fields, and woodlands. While Spire implemented landscape vegetation planting and screening at this station, the station site has minimal landscaped buffer and is clearly visible from the adjacent Fort Bellefontaine Road and Blue Spruce Lane and passersby have unobstructed views of the meter station complex surrounded by a chain link fence in a former agricultural field. The three residences less than 300 feet across Blue Spruce Lane have a narrow row of trees along their properties providing some limited visual buffering of the site. The other residential parcels bordering the site are mostly wooded and views of the station from these neighboring residences are obscured by deciduous vegetation.

93. The Chain of Rocks Delivery Station is within an area that can be characterized as a low-density residential neighborhood with single family homes set back from tree lined two-lane roads. Two institutional facilities are in proximity; a religious institution 265 feet north of the facility and a nursing and rehabilitation center 495 feet to the south, while residences are to the west and northwest. The Chain of Rocks Delivery Station is directly adjacent to Prigge Road with no vegetation buffering on the west or south sides of the site. The west and south sides of the station are clearly visible from Prigge Road and can be seen by passersby and looks like industrial facilities surrounded by a chain link fence topped with barbed wire. The religious institution and nursing home have limited vegetation between them and the meter station, and with the differences in elevation and with leaves off the existing vegetation, the meter station is at least partially visible to these facilities. The residences 500 to 700 feet to the west and northwest have a strip of vegetation approximately 25 feet wide providing a visual buffer between the residences and the station.

94. If left unmitigated, impacts on the visual environment within the environmental justice communities would be substantial and would continue if a Certificate is granted or if the facilities were to remain in place after the project ceased operation. The 2017 EA recommended that, to minimize visual impacts from these facilities, Spire should use color schemes that are consistent with the surrounding environment and maintain existing vegetation where feasible.¹⁹⁰ However, given the proximity of the Lange and Chain of Rocks Delivery Stations to the nearest residences (between 300 and 500 feet) and because there is minimal vegetation screening of these two project aboveground facilities, the draft EIS included a recommendation that Spire file a visual screening plan for the Lange and Chain of Rocks delivery stations. On August 8, 2022, Spire submitted a

¹⁹⁰ *Id.* app. F (2017 EA) at 94.

Visual Screening Plan in response to staff's recommendation in the draft EIS.¹⁹¹ For the Lange Station the Visual Screening Plan would include additional landscape planting along Bellefontaine Road and installation of 75% privacy slatting on all chain link fence panels around the site. At the Chain of Rocks Station, Spire would install 75% privacy slats on the chain link fence surrounding the site and would plant hedgerow-type landscaping along Prigge Road, south of the entrance driveway.¹⁹² Commission staff has reviewed these plans and the final EIS concluded that Spire's proposed visual screening was acceptable, and we agree. Ordering Paragraph (B)(2) requires Spire to implement its Visual Screening Plan and file a report by May 31, 2023. We find that once the Visual Screening Plan is implemented, the Lange and Chain of Rocks Delivery Stations will continue to have an adverse but less than significant impact on environmental justice populations.¹⁹³

95. The Spire STL Pipeline includes limited aboveground facilities. The final EIS concluded that once fully restored and revegetated, the pipeline easement is generally not visually noticeable except for markers at roadway crossings or at areas where vegetation management has taken place.¹⁹⁴

¹⁹¹ *Id.* at 4-19.

¹⁹² *Id.*

¹⁹³ The 2017 EA noted that while each meter station is sited to connect to existing natural gas infrastructure, the addition of new meter stations represents new aboveground facilities that would permanently change the viewshed for nearby receptors. The 2017 EA concluded that with the mitigation, including using color schemes consistent with the surrounding environment and revegetation measures, visual impacts would not be significant.

¹⁹⁴ The 2017 EA stated that visual impacts would be greatest during construction of the Project because of the increased right-of-way needed for construction, the displaced soil, and the presence of personnel and construction equipment. Final EIS app. F (2017) EA at 93. The EA went on to state that after construction, temporary workspaces would be restored to pre-construction conditions. As noted above, restoration to pre-construction conditions is not yet complete. The Commission and our staff will continue to monitor restoration activities and will require full compliance with all environmental conditions appended to the certificate order.

e. **Greenhouse Gases**

96. As identified in the 2017 EA, operation of the Spire STL Pipeline was estimated to result in the emissions of 11,798 tons (10,701 metric tons) per year of CO_{2e}.¹⁹⁵ In May 2020, Spire reported that its actual CO_{2e} emissions for 2020 and 2021 were 2,817.4 and 1,365.5 tons, respectively,¹⁹⁶ less than 2017 EA's conservative estimate. Even so, the operation of the project would increase the atmospheric concentration of GHGs, in combination with past and future emissions from all other sources, and would contribute incrementally to future climate change impacts. While taken individually, the climate change impacts may be manageable for certain communities, the impacts of compound extreme events (such as simultaneous heat and drought, or flooding associated with high precipitation on top of saturated soils) may exacerbate preexisting community vulnerabilities and have a cumulative adverse impact on environmental justice communities. The EIS did not characterize the project's GHG emissions, including those on environmental justice communities, as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.¹⁹⁷

f. **Cumulative Impacts**

97. As part of the NEPA review, staff identified three projects that are within an environmental justice community impacted by the project or within one mile of an environmental justice community impacted by the project—the Otterville Road Reconstruction, U.S. 67 Highway Upgrades, and Central Stone Company Limestone Quarry.¹⁹⁸ The Otterville Road Reconstruction Project is within Census Tract 104.02, Block Group 2 in Jersey County, Illinois, which is an environmental justice (low income) community. The Otterville Road reconstruction project would have minor, short term effects on the visual environment during its construction period, adding cumulatively to the visual effects of the Spire STL right-of-way. The U.S. Highway 67 Upgrades and the Central Stone Company Limestone Quarry are both within 1 mile of the Laclede/Lange Delivery Station. The U.S. Highway 67 Upgrade project would have minor, short term effects on the visual environment from views of construction equipment during the construction period, adding cumulatively to the visual effects of the Laclede/Lange Delivery Station. The Central Stone Company Limestone Quarry is an active quarry

¹⁹⁵ *Id.* app. F (2017 EA) at 114.

¹⁹⁶ *Id.* at 4-20.

¹⁹⁷ *Consideration of Greenhouse Gas Emissions in Nat. Gas Infrastructure Project Revs.*, 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197.

¹⁹⁸ Final EIS at 4-22.

resulting in long term visual impacts adding cumulatively to meter station visual impacts on the surrounding area. Finally, as noted above, the project contributes to the atmospheric concentration of GHGs in the environment. Environmental justice communities could experience impacts associated with GHGs due to the impacts of compounded extreme events (such as simultaneous heat and drought, or flooding associated with high precipitation on top of saturated soils), which may exacerbate preexisting community vulnerabilities and have a cumulative adverse impact on environmental justice communities.

g. Environmental Justice Conclusion

98. The Spire STL Pipeline has a range of impacts on the environment and on individuals living in the vicinity of the project facilities, including environmental justice populations. Eleven out of the 19 block groups within the geographic scope of the project are considered environmental justice communities. In eight of the identified block groups, Spire's continued operation of the Spire STL Pipeline would continue to impose restrictions on land use and result in minor visual impacts; however, these are not disproportionately high and adverse as these impacts are borne by all properties with a pipeline easement across the entire project.

99. The continued operation of the Lange and Chain of Rocks Delivery Stations are each within environmental justice block groups, and five additional environmental justice block groups are within 0.5 mile of each station. As discussed above, these facilities will have adverse impacts to environmental justice communities with respect to air, noise, direct and cumulative visual impacts, and GHG impacts. The continued operation of the Lange and Chain of Rocks Delivery Stations would have disproportionately high and adverse impacts on environmental justice communities, because the impacts are predominately borne by the environmental justice communities within which they are located. Operational impacts on environmental justice communities associated with air and noise emissions meet applicable standards and guidelines and are less than significant. Direct and cumulative project impacts from these facilities on visual resources would be mitigated by the Visual Screening Plan required by Ordering Paragraph (B)(2) to a less than significant level.

100. The ongoing operation of the main pipeline and North County Extension pipeline would have adverse impacts on environmental justice communities with respect to land use. These impacts do not have disproportionately high and adverse impacts on environmental justice communities because all residents along the pipeline route would be similarly impacted and therefore, the impacts would not be predominately borne by environmental justice communities. These adverse impacts would be less than significant.

4. Greenhouse Gas Emissions and Climate Change

101. The CEQ defines effects or impacts as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable,” which include those effects that “occur at the same time and place” and those that “are later in time or farther removed in distance, but are still reasonably foreseeable.”¹⁹⁹ An impact is reasonably foreseeable if it is “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.”²⁰⁰ For this project, we find that the direct operational emissions and the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions.²⁰¹ In the 2017 EA, downstream emissions were calculated using the maximum approved capacity of the pipeline, although the EA stated that the capacity of the Spire STL Pipeline would replace existing capacity and not serve new demand. Since issuance of the 2017 EA, the capacity Spire Missouri released on the MRT Mainline has been remarketed; therefore, we find it appropriate here to conservatively estimate the downstream GHG emissions using the full capacity of the Spire STL Pipeline. In other words, the pipeline’s full downstream emissions are treated as an emissions increase.

102. The GHG emissions associated with operation of the Spire STL Pipeline were identified and quantified in the 2017 EA.²⁰² As estimated in the 2017 EA, continued operation of the new aboveground facilities would result in operational emissions of up to 11,798 tons per year (tpy) (10,701 metric tons) of CO₂e. These estimates for operational emissions are based on the additional meter station, valve, and pipeline fugitives resulting from the constructed project facilities, assuming 100% utilization, (i.e., the Spire facilities are operated at maximum capacity for 365 days/year, 24 hours/day). However, as Spire reported, the actual CO₂e emissions for 2020 and 2021 were 2,817.4 and 1,365.5 tons, respectively.²⁰³ As discussed above, Spire Missouri is an LDC delivering gas to

¹⁹⁹ 40 C.F.R. § 1508.1(g) (2021).

²⁰⁰ *Id.* § 1508.1(aa).

²⁰¹ *See Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017) (FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.”).

²⁰² Final EIS app. F (2017 EA) at 110-116.

²⁰³ *Id.* at 4-20.

residential, industrial and commercial end users in the St. Louis region;²⁰⁴ thus, we calculated the downstream GHG emissions from the project, assuming 100% utilization of the capacity of the Spire STL Pipeline, would result in up to 7.7 million metric tpy of CO₂e.²⁰⁵ And combustion of the currently subscribed capacity of 360,000 Dth/d out of the potential 400,000 Dth/d would result in 6.95 million metric tpy of CO₂e emissions.

103. As we have done in prior certificate orders, we compare estimated project GHG emissions to the total GHG emissions of the United States as a whole and at the state level. This comparison allows us to contextualize the projected emissions of the project. At a national level, 5,222.4 million metric tons of CO₂e were emitted in 2020 (inclusive of CO₂e sources and sinks).²⁰⁶ The operational and downstream emissions could potentially increase CO₂e emissions based on the 2020 national levels by 0.13%.

104. At the state level, the final EIS compares the project's GHG emissions to the state GHG inventories. At the state level, energy related carbon dioxide emissions in Missouri were 117 million metric tons of CO₂e in 2019.²⁰⁷ GHG emissions in Missouri would result from the project's operational and downstream emissions. Operational and downstream emissions from the project could potentially increase CO₂e emissions based on the Missouri 2019 levels by 6.1%. Energy-related carbon dioxide emissions in Illinois were 203.4 million metric tons of CO₂e in 2019. Operational emissions from the project could potentially increase CO₂e emissions based on the Illinois 2019 levels by 0.000006%.

105. Commission staff typically compares a project's operational and downstream emissions in the context of state GHG reduction goals.²⁰⁸ However, currently, Missouri has not set statewide goals for GHG emissions reduction targets. Illinois set an executive target in 2019 to reduce GHG emissions 26–28% below 2005 levels by 2025.

²⁰⁴ See *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041, at P 49 (2022).

²⁰⁵ Final EIS app. F (2017 EA) at 144.

²⁰⁶ EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020* at ES-4 (Table ES-2) (April 2022), <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf>.

²⁰⁷ U.S. Energy Information Administration, *U.S. Energy Mapping System* (2021). <https://www.eia.gov/state/maps.php?v=Natural%20Gas>. (last accessed December 2021).

²⁰⁸ U.S. State Greenhouse Emission Targets site for individual state requirements at: <https://www.c2es.org/document/greenhouse-gas-emissions-targets/>.

Operational emissions from the project could impact state reduction goals for CO₂e levels in the state by 0.000008%.²⁰⁹

106. By adopting the climate impact analysis in the EIS, we recognize that the project may release GHG emissions that contribute incrementally to future global climate change impacts,²¹⁰ and have identified climate change impacts in the region.²¹¹ In light of this analysis, and because we are conducting a generic proceeding to determine whether and how to Commission will conduct significance determinations for GHG emissions going forward, the Commission is not herein characterizing these emissions as significant or insignificant.²¹²

107. EPA and EDF recommended that the Commission estimate expected GHG emissions from methane leakage and operational events such as pigging and blowdowns, and consider potential best management practices to reduce amounts of operational methane from the proposal and if applicable, “potential actions” of the no-action alternative.²¹³ Beyond methane information reporting, sharing best practices under EPA’s Natural Gas STAR Program, and inspecting for leaks during scheduled operations and maintenance under Pipeline and Hazardous Materials Safety Administration regulations, the EPA also recommended the Commission identify practicable energy efficiency measures and project-specific best practices to reduce methane emissions during

²⁰⁹ The 2025 GHG emission target was estimated to be 148.4 million metric tons (assuming a 27% reduction).

²¹⁰ Final EIS at 4-175.

²¹¹ *Id.* at 4-174.

²¹² On February 17, 2022, the Commission issued the Updated Certificate Policy Statement and an Interim GHG Policy Statement. *Certification of New Interstate Natural Gas Facilities Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 178 FERC ¶ 61,197 (2022). The Interim GHG Policy Statement established a NEPA significance threshold of 100,000 tons per year of carbon-dioxide-equivalent (CO₂e) as a matter of policy, which was meant to serve as interim guidance for project applicants and stakeholders and the Commission sought public comment on the statement. On March 24, 2022, the Commission, upon further consideration, made both statements draft and stated that it would not apply either statement to pending or new projects until the Commission issues any final guidance after public comment. Interim GHG Policy Statement, 178 FERC ¶ 61,197 at P 2.

²¹³ EPA Jan. 14, 2022 Comments at 5-7; EDF Jan. 14, 2022 Comments at 9-10.

construction and operation.²¹⁴ On November 15, 2021, EPA issued a proposed rule, and supplemented it on November 11, 2022, to modify its emissions standards and monitoring requirements for methane and volatile organic compounds.²¹⁵ The Spire STL Pipeline Project would be subject to these standards and requirements upon issuance of a final rule.²¹⁶

108. The Sierra Club questioned why Commission staff used the Global Warming Potential (GWP) from the Intergovernmental Panel on Climate Change (IPCC)'s Fourth Assessment Report as opposed to the IPCC's Fifth Assessment Report.²¹⁷ The Sierra Club noted that pipelines leak, and direct emissions of natural gas (consisting primarily of methane) into the atmosphere have far greater climate impact than the burning of natural gas by the end user.²¹⁸

109. As discussed above, the emissions from pipeline operations were calculated in the 2017 EA. These calculations include an estimate of the fugitive emissions from valve components. To normalize calculations, Commission staff converted the various pollutants, including fugitive methane emissions, to CO₂e. Commission staff selected the GWP value for methane as 25 over a 100-year period because this is the value the EPA established for reporting of GHG emissions.²¹⁹ The EPA supported the 100-year time period over the 20-year period in its summary of comments and responses in the final rulemaking, *2013 Revisions to the Greenhouse Gas Reporting Rule and Final*

²¹⁴ EPA Jan. 14, 2022 Comments at 5-7.

²¹⁵ 86 Fed. Reg. 63,110 (Nov. 15, 2021). On November 11, 2022, the EPA issued a supplement to this rule, which would update, strengthen, and expand its November 15, 2021 proposal by achieving more comprehensive emissions reductions from oil and natural gas facilities by improving standards in the 2021 proposal and adding proposed requirements for sources not previously covered. EPA issued notice of the supplemental rulemaking and submitted it for publication in the *Federal Register*, but it has not yet been published.

²¹⁶ We anticipate that EPA's proposed Methane Rule would comprehensively mitigate methane within a continuing program under 40 C.F.R. pt. 60, subpts. OOOO, OOOOa, OOOOb, and OOOOc, of the New Source Performance Standards.

²¹⁷ Sierra Club Jan. 13, 2022 Comments at 4.

²¹⁸ *Id.* at 4.

²¹⁹ *See* 2013 Revisions to the Greenhouse Gas Reporting Rule and Final Confidentiality Determinations for New or Substantially Revised Data Elements, 78 Fed. Reg. 71,904, 71,909 (Nov. 29, 2013).

Confidentiality Determinations for New or Substantially Revised Data Elements, establishing the methane GWP at 25.²²⁰ Similarly, in this final rulemaking, the EPA supported the adoption of the published *Intergovernmental Panel on Climate Change's (IPCC) Fourth Assessment Report* GWP values over the Fifth Assessment Report values.²²¹ The EPA acknowledged the Fifth Assessment Report could lead to more accurate assessments of climate impacts in the future; however, when balanced with the benefit of retaining consistency across national and international programs, the EPA concluded that the possible gain in accuracy did not justify the loss of consistency in reporting.²²² Further, the EPA recognized that the loss of consistency would likely cause stakeholder confusion among the various GWPs used in different programs.²²³ Because the Fourth Assessment Report is the formal method adopted by the EPA in its rulemaking, Commission staff's analysis remains consistent with EPA's methodology relating to methane's GWP. The EPA noted that it may consider adoption of the Fifth Assessment Report GWPs in the future;²²⁴ at which time, Commission staff will revisit the use of any revised EPA GWP values in its NEPA evaluations. We agree with the selected GWP values and the estimates for the Spire STL Pipeline operational emissions. Whether the GWP value for methane is based on a 100-year or 20-year period, as reflected in the GWP values designated for GHGs, methane emissions have a greater climate impact than the emissions from combusting an equal quantity of natural gas in various end use sources, primarily consisting of CO₂ and water, and also including lesser or trace amounts of NO_x, nitrous oxides, fine particulate matter, and EPA-defined volatile organic compounds and hazardous air pollutants.

110. The EPA asks that the Commission assess the project's GHG emissions in the context of national and international GHG emissions reduction goals, including the U.S. 2030 Paris GHG reduction target and 2050 net-zero pathway and address the increasing conflict over time between continued GHG emissions and GHG emissions reduction

²²⁰ *Id.* at 71,913. The larger the value of GWP for a particular gas, the more it will warm the earth in comparison to carbon dioxide, over the particular time period being measured. U.S. Environmental Protection Agency, *Greenhouse Gas Emissions: Understanding Global Warming Potentials* (Feb. 14, 2017), <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>.

²²¹ 2013 Revisions to the Greenhouse Gas Reporting Rule and Final *Confidentiality Determinations for New or Substantially Revised Data Elements*, 78 Fed. Reg. 71,904, 71,909.

²²² *Id.* at 71,912.

²²³ *Id.*

²²⁴ *Id.*

goals over the project lifetime.²²⁵ The Commission is unable to determine how individual projects will affect international, national, or state-wide GHG emissions reduction targets or whether a project's GHG emissions comply with those goals or laws. However, as acknowledged in the final EIS, the project would increase the atmospheric concentration of GHGs, in combination with past and future emissions from all other sources, and would contribute cumulatively to climate change.²²⁶

111. The EPA and Sierra Club recommend that the Commission estimate and disclose upstream GHG emissions changes in the EIS.²²⁷ The EPA also recommended the EIS include an estimate of the lifecycle GHG emissions associated with the continued operation of the Spire STL Pipeline. They argue that upstream GHG emissions from production are reasonably foreseeable and are causally linked to natural gas transportation infrastructure and capacity for market access. The EPA further commented that upstream emissions would provide useful information to the public and decisionmakers as to the scale of the project's indirect impacts and the long-term public interests at stake, and that the Commission could use generic estimates for upstream GHG emissions from natural gas production developed by the Department of Energy's National Energy Technology Laboratory if estimates tied to the regional production basins and extraction technologies are unavailable.²²⁸ EPA stated that omitting such emissions would result in an underestimation of the proposal's indirect impacts.²²⁹

112. NEPA requires agencies to consider indirect effects or impacts that "are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."²³⁰ With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"²³¹ in order "to

²²⁵ EPA Jan. 14, 2022 Comments at 5.

²²⁶ Final EIS at 4-25.

²²⁷ Sierra Club Jan. 13, 2022 Comments at 3-4; EPA Jan. 14, 2022 Comments at 5; EPA Nov. 15, 2022 Comments at 2.

²²⁸ EPA Jan. 14, 2022 Comments at 5.

²²⁹ *Id.*

²³⁰ 40 C.F.R. § 1508.8(b) (1978). *See also* 40 C.F.R. § 1508.1(g)(2) (2021).

²³¹ *U.S. Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (*Pub. Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metro. Edison Co.*)).

make an agency responsible for a particular effect under NEPA.”²³² As the Supreme Court has explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”²³³ Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if “the causal chain is too attenuated.”²³⁴ Further, “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”²³⁵ Regarding reasonable foreseeability, courts have found that an impact is reasonably foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”²³⁶ Although courts have held that NEPA requires “reasonable forecasting,”²³⁷ an agency “is not required to engage in speculative analysis”²³⁸ or “to do the impractical, if not enough information is available to permit meaningful consideration.”²³⁹

113. The environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations, where the supply source is unknown.²⁴⁰ The specific source of natural gas to

²³² *Pub. Citizen*, 541 U.S. at 767.

²³³ *Id.*

²³⁴ *Metro. Edison Co.*, 460 U.S. at 774.

²³⁵ *Pub. Citizen*, 541 U.S. at 770.

²³⁶ *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citations omitted) (*EarthReports*); *see also Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

²³⁷ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation All. v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

²³⁸ *Id.* at 1078.

²³⁹ *Id.* (quoting *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)).

²⁴⁰ *See, e.g., Cent. N.Y. Oil & Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *pet. for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 F. App’x. 472, 474-75 (2d Cir. 2012) (unpublished opinion); *see also Adelpia Gateway, LLC*,

be transported via the Spire STL Pipeline is currently unknown and may change throughout the project's operation. The Spire STL Pipeline is designed to provide its shippers, including Spire Missouri, access to diversified natural gas supplies from the Marcellus, Utica, Rockies, and Denver Julesberg supply areas via Spire's interconnection to REX. Accordingly, we find that the indirect effects associated with upstream production of gas are not a reasonably foreseeable impact of this project and we will not consider the upstream GHG emissions caused by delivery of natural gas into the Spire STL Pipeline.²⁴¹

5. Cultural Resources

114. After the final EIS was issued, the Quapaw Nation requested copies of all State Historic Preservation Office (SHPO) correspondence received for the project.²⁴² The 2017 EA documents correspondence with the Missouri and Illinois SHPOs and the need for Spire to perform additional archeological and architectural surveys and to provide these surveys to the respective SHPO for review to determine if any adverse effects would occur.²⁴³ The 2018 Certificate Order required such.²⁴⁴ In its Implementation Plan, Spire included, as required by the order, its correspondences with the SHPO providing the additional surveys and receiving concurrences from the SHPOs that the project would not adversely affect archaeological resources or historical properties.²⁴⁵ Also in the Implementation Plan, Spire documents that the Quapaw Nation was provided a CD of all

169 FERC ¶ 61,220, at P 243 (2019), *order on reh'g*, 171 FERC ¶ 61,049, at P 89 (2020).

²⁴¹ See *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 109-11 (D.C. Cir. 2022) (accepting the Commission's conclusions that impacts from activities upstream and downstream of the Adelpia Gateway Project were not reasonably foreseeable); *Birkhead v. FERC*, 925 F.3d at 516-18 (accepting the Commission's decision not to consider upstream gas production because the record lacked information about the number and location of any additional natural gas wells); *Cent. N.Y. Oil & Gas Co., LLC*, 137 FERC ¶ 61,121 at PP 95-100 (declining to consider impacts from upstream gas production because it was unknown if or when any permitted wells would be drilled and with what associated infrastructure and related facilities), *order on reh'g*, 138 FERC ¶ 61,104 at PP 45-48 (same).

²⁴² Quapaw Nation Oct. 20, 2022 Letter.

²⁴³ Final EIS app. F (2017 EA) at 100-104, 109-110.

²⁴⁴ Certificate Order, 164 FERC ¶ 61,085 at Environmental Condition 19.

²⁴⁵ Spire Aug. 13, 2018 Implementation Plan, attach H.

SHPO correspondence in the proceeding.²⁴⁶ Given that the project has been constructed and thus our action here will have no new impacts, as noted above, the final EIS did not assess impacts on cultural resources and the analysis performed in the 2017 EA remains unchanged. Accordingly, the Quapaw Nation has received all the SHPO correspondence it requested.

6. Environmental Impacts Conclusion

115. We have reviewed the information and analysis contained in the final EIS regarding potential environmental effects of the project, as well as the other information in the record. As noted above, this order reissues the certificates, which requires Spire's compliance with all environmental conditions, including Environmental Condition 2, which provides the Director of the Office of Energy Projects with delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project.

116. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the final EIS and find that the project operations, if implemented as described in the final EIS, are an environmentally acceptable action.

E. Conclusion

117. We find there is a demonstrated need for the Spire STL Pipeline and, further, that certification of the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers. While we recognize that construction of the project has had adverse effects on some landowners, we believe that overall, the project's economic benefits outweigh these effects.

118. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and comments, and upon consideration of the record.

The Commission orders:

(A) The Commission reissues the authorizations issued to Spire STL Pipeline LLC in the Commission's August 3, 2018 Certificate Order, 164 FERC ¶ 61,085 (2018), and November 21, 2019 Rehearing Order, 169 FERC ¶ 61,134 (2019), subject to the discussion of this order.

²⁴⁶ *Id.* attach. H at 32, 487.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

(1) Spire's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations; and

(2) Spire's compliance with the environmental conditions of the August 3, 2018 Certificate Order and a new condition to implement a Visual Screening Plan, as detailed in its August 8, 2022 filing. By May 31, 2023, Spire must file with the Commission for review and approval a final report detailing how the Visual Screening Plan was implemented.

(C) Upon Spire's acceptance of this order, the authorization granted by the Commission's December 3, 2021 Temporary Certificate Order, 177 FERC ¶ 61,147 (2021), will be terminated.

By the Commission. Chairman Glick is concurring with a separate statement attached.

Commissioner Danly is concurring in part with a separate statement attached.

Commissioner Clements is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC

Docket No. CP17-40-006

(Issued December 15, 2022)

GLICK, Chairman, *concurring*:

1. Simply put, the Commission’s 2018 decision to grant the Spire STL Pipeline a certificate of public convenience and necessity was a mistake. As the U.S. Court of Appeals for the D.C. Circuit noted, the Commission’s conclusion that the project was needed was arbitrary and capricious and unsupported by the record.¹ In its original orders the Commission flat out refused to consider *anything* other than the single precedent agreement between Spire and its affiliate, Spire Missouri, notwithstanding the fact that the record was replete with red flags suggesting that the agreement might have been more an effort to enrich the affiliates’ shared corporate parent than an indication of need for the pipeline.² It was exactly the type of order that lent credence to the critique that the Commission approached its responsibilities pursuant to section 7 of the Natural Gas Act with a rubber stamp. In this case it was far worse than that.

2. The Chairman at the time chose to allow nearly 16 months to go by before permitting the Commission to act on the rehearing requests. In the intervening time, the Commission authorized Spire to begin construction of the pipeline and then to commence operation, all before opponents of the pipeline could even make it to the courthouse doors.³ By the time the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) heard argument on the Commission’s orders, the pipeline had been operating for 16 months and Spire Missouri had begun taking actions that would have the effect of establishing a need for the pipeline that simply did not exist at the time the Commission issued its certificate. The Commission’s treatment of the litigants opposed to the project

¹ *Envtl. Def. Fund v. FERC*, 2 F.4th 953, 976 (D.C. Cir. 2021) (vacating the certificate on those grounds).

² *See Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (2019) (Glick, Comm’r, dissenting at PP 3, 13); *see also Env’tl. Def. Fund*, 2 F.4th at 973 (noting that the Commission was presented with “strong arguments as to why the precedent agreement between Spire STL and Spire Missouri was insufficiently probative of market need and benefits of the proposed pipeline”).

³ Nov. 14, 2019 Authorization to Commence Service; Oct. 30, 2020 Authorization to Commence Service.

sticks out to this day as one of the starkest examples of its abuse of tolling orders before the D.C. Circuit ended the “Kafkaesque” practice in *Allegheny Defense*.⁴

3. The D.C. Circuit then rightly rejected the slipshod analysis upon which the Commission relied to grant the original certificate. As the Court explained, the Commission’s “conclusive” reliance on the single affiliated precedent agreement was inconsistent with its own policy statement and reflected a “fail[ure] to seriously engage” with a record that undermined its preferred conclusion.⁵ The Court ultimately vacated Spire’s certificate, finding that the “serious deficiencies” in the Commission’s analysis outweighed concerns regarding the significant disruption caused by vacatur.⁶

4. As a result, now the current Commission is left to pick up the pieces from the vacated orders. Because Spire Missouri had by that time retired other facilities needed to maintain reliable service, the Commission had no choice but to issue not one but two emergency certificates to ensure that customers did not lose access to natural gas during the winter heating season.⁷

5. Despite all that, we are where we are. As today’s order explains, the Spire STL Pipeline is now needed because of Spire Missouri’s post-certificate actions.⁸ In the three years since the Spire STL Pipeline entered service, Spire Missouri has both changed its physical infrastructure for receiving natural gas supply and dropped contracts with its prior (unaffiliated) service provider. As a result of those actions, as things stand today, I join my colleagues in concluding that the Spire STL Pipeline is needed to maintain

⁴ *Allegheny Def. Project v. FERC*, 964 F.3d 1, 15, 18-19 (D.C. Cir. 2020) (en banc) (holding that the Commission “has no authority to erase and replace the statutorily prescribed jurisdictional consequences of its inaction,” and its practice of issuing tolling orders cannot prevent a party from seeking judicial review under the Natural Gas Act’s judicial review provision); *Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (Glick, Comm’r, dissenting at P 34) (noting that “by relying on what Judge Millett correctly described as ‘twisted . . . precedent’ and a ‘Kafkaesque regime,’ the Commission has guaranteed substantial irreparable harm occurs before any party can even set foot in court” (quoting *Allegheny Def. Project v. FERC*, 932 F.3d 940, 948 (D.C. Cir. 2019) (Millett, J., concurring))).

⁵ *Envil. Def. Fund*, 2 F.4th at 973, 975-76.

⁶ *Id.* at 976.

⁷ *Spire STL Pipeline LLC*, 177 FERC ¶ 61,147 (2021); *Spire STL Pipeline LLC*, 176 FERC ¶ 61,160 (2021).

⁸ *Spire STL Pipeline LLC*, 181 FERC ¶ 61,232, at PP 25, 28 (2022).

reliable service of natural gas to Spire Missouri's customers. But, to state the obvious, the *post hoc* case for need cannot cure the serious—and in my view, embarrassing—deficiencies in the Commission's original orders.

6. The fact that Spire is now needed must be cold comfort to the many landowners whose property was condemned and disturbed to build the project.⁹ That is particularly so because—over three years after it first entered service—several landowners' properties still have not been adequately restored, notwithstanding a Commission order and efforts by Commission staff to ensure that Spire fulfills its obligations to remediate the land affected by the pipeline.¹⁰ I urge Spire to do everything in its power to finally restore that land adequately and expeditiously. Short of that, Spire should do the right thing and fairly compensate landowners so that they can do the work themselves. They should not be left holding the bag for Spire's failure to meet the mandatory conditions of its certificate and for this agency's mistakes.

For these reasons, I respectfully concur.

Richard Glick
Chairman

⁹ *Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (Glick, Comm'r, dissenting at P 32) (noting that the Spire had commenced eminent domain proceedings against more than 100 distinct entities, involving roughly 200 acres of privately owned land).

¹⁰ *See, e.g., Spire STL Pipeline LLC*, 174 FERC ¶ 61,219, at P 11 (2021) (directing further restoration work by Spire in response to a report from the Illinois Department of Agriculture and pursuant to an agreement between the Department and Spire); Commission Staff Nov. 17, 2022 Inspection Report at 7 (noting that areas requiring additional restoration efforts were previously observed and reported in multiple Commission staff inspections since the March 2021 Commission order, including in June 2021, April 2022, May 2022, and November 2022), accession no. 20221117-3059.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC

Docket No. CP17-40-006

(Issued December 15, 2022)

DANLY, Commissioner, *concurring in the result*:

1. I agree with the reissuance of a certificate of public convenience and necessity to Spire STL Pipeline LLC.
2. There are several issues that have been recurring in the Commission's recent Natural Gas Act (NGA) sections 7 and 3¹ issuances that appear in today's order. I have written on these issues extensively.² I will not spill ink on them here; instead, there are three areas worthy of discussion: (1) project need; (2) the Commission's finding that the downstream greenhouse gas emissions are reasonably foreseeable; and (3) the Commission's decision to prepare an Environmental Impact Statement after the remand.
3. *First*, the most important question in this proceeding is project need. In fact, it was the Commission's analysis of project need that was the basis of the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision to vacate and remand the certificate issued to Spire STL Pipeline LLC.³ As an initial matter, I agree

¹ 15 U.S.C. §§ 717b, 717f.

² See, e.g., *Gas Transmission Nw. LLC*, 180 FERC ¶ 61,056 (2022) (Danly, Comm'r, concurring in the judgment at P 2) (discussing the breadth of the public convenience and necessity standard under the NGA); *id.* (Danly, Comm'r, concurring in the judgment at P 3) (stating that the Commission should repudiate the eye-ball test established in *Northern Natural Gas Company*, 174 FERC ¶ 61,189 (2021) (*Northern*)); *id.* (Danly, Comm'r, concurring in the judgment at P 3) (explaining that there is no standard by which the Commission could, consistent with our obligations under the law, ascribe significance to a particular rate or volume of greenhouse gas (GHG) emissions).

³ See *Env't Def. Fund v. FERC*, 2 F.4th 953, 976 (D.C. Cir. 2021) (holding that "it was arbitrary and capricious for the Commission to rely solely on a precedent agreement to establish market need for a proposed pipeline when (1) there was a single precedent agreement for the pipeline; (2) that precedent agreement was with an affiliated shipper; (3) all parties agreed that projected demand for natural gas in the area to be served by the new pipeline was flat for the foreseeable future; and (4) the Commission neglected to make a finding as to whether the construction of the proposed pipeline would result in

with the court’s determination that we needed to look behind the precedent agreements in this case and I agree with the findings in the project need section of this order.⁴ I would like to reiterate my view, however, that precedent agreements are strong evidence of need⁵ and the Commission need not look further in most circumstances.

4. As I explained in my separate statement to the Commission’s now-draft Updated Certificate Policy Statement,⁶ I agree that, as a legal matter, the Commission may take into account considerations other than precedent agreements in its need determination when there is an affiliate precedent agreement. And it was appropriate to do so in this case. I also agree that there may be circumstances—such as when there is evidence of self-dealing in the execution of a precedent agreement with an affiliated shipper—where “the existence of precedent agreements may not be sufficient in and of themselves to establish need for the project.”⁷ But I disagree that the Commission must look beyond precedent agreements in every circumstance to determine need.

5. With regard to today’s order, the Commission barely acknowledges the precedent agreement and merely states that “Spire’s precedent agreement with Spire Missouri has been superseded by the execution of a long-term service agreement for 87.5% of the

cost savings or otherwise represented a more economical alternative to existing pipelines.”); *id.* (finding that “the Commission’s cursory balancing of public benefits and adverse impacts was arbitrary and capricious”).

⁴ I am generally skeptical of affiliate transactions and think that in most circumstances, the Commission should scrutinize agreements with an affiliate. As I have previously explained, I agree with the D.C. Circuit’s decision to remand the Commission’s orders and the court’s explanation for doing so in *Environmental Defense Fund v. FERC*, 2 F.4th 953. *See Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022) (Daly, Comm’r, dissenting at P 13 n.46) (Updated Certificate Policy Statement).

⁵ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,748 (1999) (stating that precedent agreements “constitute significant evidence of demand”).

⁶ Updated Certificate Policy Statement, 178 FERC ¶ 61,107 (Daly, Comm’r, dissenting at P 13). The Updated Certificate Policy Statement was converted to a draft on March 24, 2022. *See Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197, at P 2 (2022).

⁷ Updated Certificate Policy Statement, 178 FERC ¶ 61,107 at P 54.

project’s firm transportation service”⁸ and goes on to decide that “[i]t is unnecessary to decide what weight, *if any*, the Commission should have accorded the precedent agreement between Spire and Spire Missouri in issuing the original certificate for the Spire STL Pipeline.”⁹ To the extent that it is suggested, I disagree with the idea that the precedent agreement should not be given any weight in this proceeding.

6. Nonetheless, I agree with the approach taken in this order and note that because we are examining the need for a project that is currently in operation, we have probative evidence of reliance on the subscribed capacity.

7. *Second*, I disagree with the Commission’s determination that “the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions.”¹⁰ The Commission is wrong. The facts here, like in *Food & Water Watch v. FERC*,¹¹ involve a project that is serving a local distribution company. And I recognize that the court “concluded that the end use of the transported gas is reasonably foreseeable.”¹² Nonetheless, the court also stated that “[o]n remand, *the Commission remains free to consider whether there is a reasonable end-use distinction based on additional evidence, but it has not carried its burden before us at this stage,*” and the court “remand[ed] to the agency to perform a supplemental environmental assessment in which it must either quantify and consider the project’s downstream carbon emissions *or explain in more detail why it cannot do so.*”¹³ I am not convinced that the local distribution company involved here and the discrete, known generators at issue in *Sierra Club v. FERC (Sabal Trail)*¹⁴ are similar enough that the *Sabal Trail* precedent directly applies. We have not yet acted on remand and, even according to the court, the question remains open. Additionally, as I have said before, *Sabal Trail*, upon which *Food & Water Watch* applies, is inconsistent with the Supreme Court’s holding in *Department of Transportation v. Public Citizen (Public Citizen)*.¹⁵ My views are not idiosyncratic.

⁸ *Spire STL Pipeline LLC*, 181 FERC ¶ 61,232, at P 28 (2022).

⁹ *Id.* P 39.

¹⁰ *Id.* P 101.

¹¹ 28 F.4th 277 (D.C. Cir. 2022) (*Food & Water Watch*).

¹² *Id.* at 289.

¹³ *Id.* (emphasis added).

¹⁴ 867 F.3d 1357 (D.C. Cir. 2017).

¹⁵ 541 U.S. 752, 767 (2004) (“NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause. The Court

Both the partial dissenting statement in *Sabal Trail* and the Court of Appeals for the Eleventh Circuit agree.¹⁶

8. *Finally*, I do not think it was necessary for the Commission to have prepared an Environmental Impact Statement on remand. The court’s decision concerned project need and nothing in that decision calls into question the findings in the environmental document for the underlying certificate orders. The preparation of an additional environmental document only delayed Commission action in this proceeding.

For these reasons, I respectfully concur in the result.

James P. Danly
Commissioner

analogized this requirement to the ‘familiar doctrine of proximate cause from tort law.’”) (citation omitted).

¹⁶ See 867 F.3d at 1383 (Brown, J., concurring in part and dissenting in part) (“Thus, just as FERC in the [Department of Energy] cases and the Federal Motor Carrier Safety Administration in *Public Citizen* did not have the legal power to prevent certain environmental effects, the Commission here has no authority to prevent the emission of greenhouse gases through newly-constructed or expanded power plants approved by the Board.”); *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, 941 F.3d 1288, 1300 (11th Cir. 2019) (“[T]he legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.”).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC

Docket No. CP17-40-006

(Issued December 15, 2022)

CLEMENTS, Commissioner, *concurring*:

1. I concur with the decision to reissue a certificate of public convenience and necessity to Spire STL Pipeline LLC (Spire) for its already constructed pipeline primarily because approximately 650,000 retail natural gas customers in the St. Louis area depend on the pipeline's continued operation. The record shows that various developments over the four years since the Commission issued a certificate to Spire have left Spire's affiliated local distribution company, Spire Missouri, and its captive customers with no plausible alternative source of upstream gas transportation service.¹ I have concluded that this demonstrated need for, and other benefits of, continued operation of the Spire STL Pipeline outweigh its adverse impacts. I write separately to highlight key lessons this case teaches about how the Commission should evaluate future certificate applications predicated solely on affiliate precedent agreements.

2. The Spire STL Pipeline story is not a pretty one. The Commission issued a certificate to Spire in August 2018, relying almost exclusively on Spire's single precedent agreement with its affiliate Spire Missouri to find the pipeline was needed, notwithstanding credible allegations of self-dealing and evidence the pipeline was not needed.² Commissioners Glick and LaFleur issued strong dissents, persuasively explaining why the record did not support either of the two findings the Commission's 1999 Certificate Policy Statement³ calls on it to make: *first*, that the pipeline is needed, and *second*, on balance, the pipeline's potential benefits outweigh its potential adverse impacts.⁴ On rehearing, a majority of the Commission reaffirmed the Certificate Order,

¹ See *Spire STL Pipeline LLC*, 181 FERC ¶ 61,232, at P 34 (2022) (Order).

² See *Spire STL Pipeline LLC*, 164 FERC ¶ 61,058, at PP 72-87 (2018) (Certificate Order); *on reh'g* 169 FERC ¶ 61,134 (2019) (Rehearing Order).

³ *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) (Certificate Policy Statement).

⁴ Certificate Order, 164 FERC ¶ 61,058 (Glick, Comm'r, dissenting; LaFleur, Comm'r, dissenting).

insisting it “is not required to look behind precedent agreements to evaluate project need, regardless of the affiliate status of the project shipper.”⁵ That myopic approach paved the way to the 2021 decision of the D.C. Circuit Court of Appeals *vacating* the Certificate Order.⁶ By then, the pipeline was already operational and Spire Missouri had made various changes leaving it with no practical alternative upstream supplier. The D.C. Circuit recognized the “disruption” vacatur could cause, but nevertheless ordered vacatur because merely remanding would incentivize the Commission “to allow ‘build[ing] first and conduct[ing] comprehensive reviews later.’”⁷ To assure continuity of vital natural gas service to retail customers in the St. Louis area, the Commission took extraordinary steps to temporarily authorize the pipeline’s continued operation.⁸

3. The Commission should never go on such a perilous ride again. The D.C. Circuit’s 2021 decision tells us how to avoid it. The most basic lesson the decision teaches is that the Commission should follow its own Certificate Policy Statement. As the court explained, although precedent agreements generally are important evidence of need, “nothing in the Certificate Policy Statement suggests that a precedent agreement is conclusive proof of need” in the circumstances presented in this case.⁹ To the contrary, the policy provides for consideration of other evidence, including market studies, and that is particularly important in the affiliate context.¹⁰ Notably, Spire submitted a market study in support of its application for reissuance of the certificate.¹¹ As explained in today’s Order, we have considered the market study and other record evidence of need in reissuing Spire’s certificate.¹²

⁵ Rehearing Order, 169 FERC ¶ 61,134 at P 14.

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

⁷ *Id.* at 976 (quoting *Standing Rock Sioux Tribe v. Army Corps of Eng’rs*, 985 F.3d 1032, 1052 (D.C. Cir. 2021)).

⁸ *See* Order at PP 12-14.

⁹ 2 F.4th at 973 (explaining in this case there was no new load demand, no Commission finding the pipeline would reduce costs, only a single precedent agreement between affiliates, the affiliate agreement was for less than full capacity, and no shipper subscribed during the open season).

¹⁰ *Id.* at 972.

¹¹ *See* Order at P 33.

¹² *See* Order at PP 24-39.

4. Another important lesson is that the Commission must fully engage with arguments and evidence credibly challenging the probative value of a precedent agreement.¹³ The court found that the Commission’s failure to do so in the Certificate Order was not “reasoned decisionmaking,” but instead an “ostrich-like approach [that] flies in the face of the guidelines set forth in the Certificate Policy Statement.”¹⁴ Although it may be simple and expedient to look only at precedent agreements and ignore other record evidence, that shortcut came at very high cost to all parties in this case, including Spire.

5. I offer a final observation. The Commission’s duty under the Natural Gas Act to serve the public interest does not end with today’s Order. In particular, we must be vigilant in ensuring Spire fully satisfies its obligations under its certificate to restore the pipeline right-of-way. The Spire STL Pipeline has been in service for over three years, yet additional restoration work remains.¹⁵ The Commission must show through rigorous oversight – and imposition of any necessary corrective measures – that it does indeed take landowner impacts seriously.¹⁶ Finally, the Commission is responsible for assuring that Spire’s rates are just and reasonable. The cost and revenue study that Spire is required to submit in February 2023¹⁷ warrants close scrutiny, which I am confident our expert staff will provide.

For these reasons, I respectfully concur.

Allison Clements
Commissioner

¹³ 2 F.4th at 973.

¹⁴ *Id.* at 975.

¹⁵ *See, e.g.*, Commission Staff Nov. 17, 2022 Inspection Report at 7, accession no. 20221117-3059.

¹⁶ *See* Order at P 47.

¹⁷ *See* Order at P 54.