BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Spire Missouri, Inc. d/b/a Spire (East) Purchased Gas Adjustment (PGA) Tariff Filing	)))	File No. GR-2021-0127
In the Matter of Spire Missouri, Inc. d/b/a Spire (West) Purchased Gas Adjustment (PGA) Tariff Filing	)))	File No. GR-2021-0128

COMMENTS AND MOTION TO ESTABLISH PROCEDURAL SCHEDULE OF THE ENVIRONMENTAL DEFENSE FUND, OFFICE OF THE PUBLIC COUNSEL, MIDWEST ENERGY CONSUMERS GROUP, AND CONSUMERS COUNCIL OF MISSOURI

Environmental Defense Fund ("EDF"), Office of the Public Counsel ("OPC"), Midwest Energy Consumers Group ("MECG"), and Consumers Council of Missouri ("Consumers Council") provide these comments to the Missouri Public Service Commission ("Commission") pursuant to its Order issued November 2, 2020. EDF is a nonprofit membership organization whose mission is to preserve the natural systems on which all life depends. The OPC is a government agency tasked with protecting the interests of the public in matters before the Public Service Commission. MECG is an incorporated entity designed to represent the interests of large commercial and industrial customers. Consumers Council of Missouri is a non-governmental, nonpartisan, nonprofit corporation that is dedicated to educating and empowering consumers statewide and to advocating for their interests.

EDF, OPC, MECG and Consumers Council respectfully request that the Commission require Spire Missouri Inc. ("Spire Missouri" or "the Company") to file full support for its decision to enter into an affiliate transaction for new pipeline capacity with Spire STL Pipeline, LLC ("Spire STL") and to demonstrate the reasonableness of the costs associated with that transaction included in the proposed rates filed on October 30, 2020 in the above-captioned dockets. For the reasons detailed below, the Commission should establish a procedural schedule including interventions, testimony, and hearings, consistent with a contested proceeding. Additionally, if the Commission allows the tariff to go into effect, it should specify that the tariff rates be subject to refund pending the outcome of this proceeding.

I. INTRODUCTION

At issue in this case is the prudency and reasonableness of costs underlying the rates filed on October 30, 2020, including costs associated with a firm transportation capacity contract between Spire Missouri and its affiliate pipeline developer, Spire STL. Over objections from this Commission (Attachment A)[1] and despite no new load growth, Spire Missouri turned back lower cost legacy capacity on an existing pipeline in favor of its affiliate's project.[2] In a 3-2 decision, the Federal Energy Regulatory Commission ("FERC") narrowly approved construction of the pipeline based on the precedent agreement between the Spire affiliates, deferring any review of Spire Missouri's "private business decision" to this Commission. A narrow FERC majority affirmed that decision in a rehearing order that was approved via 2-1 vote. FERC's orders are currently being challenged before the United States Court of Appeals for the District of Columbia Circuit as arbitrary and capricious, and inconsistent with FERC's Certificate Policy Statement, Section 7 of the Natural Gas Act, and the record of the FERC proceeding.[3] Copies of EDF's Opening and Reply Briefs are provided as Attachments B and C.[4]

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[1] The Missouri Commission protested Spire STL's application before the Federal Energy Regulatory Commission in FERC Docket No. CP17-40. The Missouri Commission's protest is provided as Attachment A.

[2] The Spire STL Pipeline is a new, 65-mile long interstate natural gas pipeline system, extending from an interconnection with Rockies Express Pipeline LLC in Scott County, Illinois to interconnections with Spire Missouri and Enable Mississippi River Transmission, LLC (MRT) in St. Louis County, Missouri. The Spire STL Pipeline is designed to provide 400,000 dekatherms (Dth) per day of firm transportation service. Spire STL has entered into an agreement with Spire Missouri for 350,000 Dth per day of firm transportation service over a 20-year term.

[3] *Environmental Defense Fund v. FERC*, Case Nos. 20-1016 and 20-1017 (consolidated).

[4] *See* Attachments B and C.

In Spire Missouri's 2017 rate case,[5] EDF sought enhanced scrutiny of the affiliate transaction and safeguards against unreasonable shifting of risk to ratepayers. Rather than addressing the issues of the affiliate pipeline transaction in the rate case, before the costs were incurred and the pipeline was built, Staff of the Commission recommended, and the Company agreed, that the instant proceeding was the appropriate venue for review of the transaction between Spire Missouri and its affiliate. Thus, there is no dispute that this proceeding is the proper forum to address imprudent or unreasonable costs stemming from the affiliate transaction.

The Company has never before sought to recover the costs of an interstate, affiliate transportation agreement through the Purchased Gas Adjustment/Actual Cost Adjustment ("PGA/ACA") tariff. The Missouri Commission and Courts have acknowledged the increased risk in transactions between a public utility and its affiliates in case law and through enactment of regulations to prevent regulated utilities from subsidizing or providing preferential service to their non-regulated operations.[6] That risk is particularly acute in this transaction where there was no evidence of new load growth and Spire Missouri is merely transferring its transportation service from an existing pipeline to its affiliate's project. The Missouri Code of State Regulations thus provides the minimum evidentiary standards for affiliated transactions that Spire Missouri must meet in this case.[7]

The Company bears the burden of proof in this case to establish that rates are just and reasonable. Unlike in other cases where there may be a presumption of prudence, the costs associated with the affiliate transaction do not receive the benefit of such a presumption. The

[5] *In the Matter of the Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, *et al.*, File No. GR-2017-0215, *et al.*, Amended Report and Order (March 7, 2018). Spire Missouri was formerly known as Laclede Gas Company.
[6] 20 CSR 4240-40.015.
[7] 20 CSR 4240-40.015(3).

Company's filing in this case—a mere one page of PGA/ACA charges—does not come close to satisfying the Commission's affiliate transaction standard. If the Commission is to sufficiently fulfill its duty to protect against unreasonable rates and the inherent harms associated with affiliate transactions, it must ensure it has sufficient information upon which to make a reasoned decision. In order to meet the standards in the CSR and case law, promote transparency, and protect ratepayers from the potentially adverse impacts of the affiliate transaction, the Commission should open a robust investigation, with opportunities for intervention and hearings, to assess the reasonableness of the proposed tariff changes in this docket. This should begin with the Company providing evidence to demonstrate the prudency of the costs it seeks to recover through the rates in the tariff and compliance with the Commission's affiliate transactions rule.

II. BACKGROUND

In Spire Missouri's 2017 rate case, EDF proposed tariff revisions to proactively protect customers from the risks of affiliate contracting.[8] EDF intervened at that time to propose proactive regulatory safeguards for ratepayers given the risks of this affiliate contract. EDF proposed changes to Spire Missouri's PGA/ACA tariff as well as its Cost Allocation Manual ("CAM") to provide more comprehensive review of the Company's supply portfolio and clarify that the Standards of Conduct apply to natural gas transportation transactions. The Commission ultimately deferred any decision on the prudence of the affiliate contract with Spire STL Pipeline, finding that if the pipeline was approved by FERC, and if Spire Missouri entered into a transportation agreement with the pipeline, then the Commission would review the prudence of that decision in a future ACA case.[9]

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[8] Direct Testimony of Gregory Lander on behalf of Environmental Defense Fund, Case Nos. GR-2017-0215 and GR-2017-0216 (September 8, 2017).

[9] *In the Matter of the Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, *et al.*, File No. GR-2017-0215, *et al.*, Amended Report and Order (March 7, 2018) at 57.

Separately, FERC reviewed Spire STL's application for a certificate of public convenience and necessity ("CPCN") to construct, own, operate and maintain the Spire STL Pipeline under Section 7 of the Natural Gas Act.[10] Among other requirements, pipeline developers must establish market need in a CPCN application before gaining FERC approval.[11] In the FERC proceeding, Spire STL produced one precedent agreement as evidence of market need – an agreement with its regulated affiliate, Spire Missouri. EDF, this Commission, and numerous other parties protested the application.[12] Parties raised several objections to the application, including the risk that the precedent agreement, the sole evidence of market need, was not entered into at arm's length.[13] The evidence also suggested that Spire STL may have engaged in unfair competition by intermixing roles played by personnel within the Spire corporate structure.[14] Attachment D sets forth an example of this evidence.

Although FERC relied on the precedent agreement with Spire Missouri as evidence of market need and approved the pipeline, FERC held that its approval of the project "by no means signifies acceptance of any individual provision in the agreement…"[15] However, FERC held that it could not consider whether the Spire STL/Spire Missouri affiliate relationship tainted the evidentiary value of the precedent agreement, nor whether ratepayers should be protected from the adverse impacts of such, finding that it did not have jurisdiction over Spire Missouri's business decision to enter into a contract for natural gas transportation.[16] FERC stated that the extent to

[10] *Spire STL Pipeline LLC*, Order Issuing Certificates, Docket No. CP17-40-000, 164 FERC ¶ 61,085 (August 3, 2018) ("Certificate Order"); and *Spire STL Pipeline LLC*, Order on Rehearing, Docket No. CP17-40-002, 169 FERC ¶ 61,134 (November 21, 2019) ("Order on Rehearing").
[11] *See, e.g. Certification of New Interstate Nat. Gas Pipeline Facilities,* 88 FERC ¶ 61,227, 61,747-48 (1999).
[12] Certificate Order at P 17.
[13] *Id.* at P 18.
[14] FERC Docket No. CP17-40, Motion for Leave to Answer and Answer of Enable Mississippi River Transmission, LLC, at 8 (April 3, 2017), Attachment D hereto.
[15] Certificate Order, at P 190.
[16] *Id*. at P 32.

which it is appropriate for Spire Missouri to pass the costs of the affiliate transaction through to ratepayers is not within its jurisdiction,[17] and expressed concern that considering such would "interfere" with and "infringe" upon the Missouri Commission's jurisdiction.[18] FERC has continued to assert before the D.C. Circuit Court that it does not "second guess the business decisions" of local distribution companies and that this Commission has "jurisdiction to inquire into the 'prudence and reasonableness' of decisions by local distribution companies."[19] FERC's position underscores the critical nature of this Commission's oversight responsibility.

Recently, Missouri Commission Staff reaffirmed their position that this proceeding is the appropriate venue for consideration of the reasonableness of the costs of the transaction. In the 2019 PGA/ACA review of 2017-2018 costs, Staff noted "this is an affiliated pipeline" and the transactions between the affiliates "will be examined as part of the 2019-2020 ACA period review."[20] The Company agreed, stating that "the new transportation agreement between Spire East and Spire STL Pipeline should be addressed in the Company's next ACA proceeding."[21] Thus, there is no dispute that this proceeding is the proper forum to address imprudent or unreasonable costs stemming from the transaction.

This Commission previously held that it would review the affiliate contract between Spire STL and Spire Missouri if the pipeline was approved and the utility entered into a transportation agreement.[22] FERC narrowly approved the pipeline, and Spire Missouri entered into a transportation agreement with Spire STL and began taking service in November 2019. This docket

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[17] Order on Rehearing at P 26.
[18] *Id.* at P 27.
[19] Reply Brief for FERC at 10, *Envtl. Def. Fund v. FERC*, No. 20-1016 (D.C. Cir. Sept. 9, 2020) (Doc. No. 1860551).
[20] GR-2019-0119, Staff Memorandum regarding Staff's Recommendation for Case No. GR-2019-0119, at 2 (December 17, 2019).
[21] GR-2019-0119 Spire Response to Staff Recommendation and Memorandum Regarding Spire East's 2017-2018 Actual Cost Adjustment Filing, at 2 (January 31, 2020).
[22] *In the Matter of the Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, *et al.*, File No. GR-2017-0215, *et al.*, Amended Report and Order (March 7, 2018), at p. 57.

is the venue that the Commission, FERC, Staff, and the Company all agree is the appropriate time to analyze the reasonableness and prudence of costs associated with Spire Missouri's decision to strand capacity on an unaffiliated pipeline in order to enter into the transportation agreement with Spire STL. In order to do that, procedures for a full hearing with intervention, discovery and testimony are necessary to establish a full evidentiary record and for the Commission to make a decision in this case based on competent and substantial evidence.

Given the substantial concerns previously raised and the inherent risks of the affiliate transaction, the Commission should establish a procedural schedule that enables robust analysis, including intervention, testimony, evidence, and hearings to protect ratepayers from the risks of a non-competitive transportation agreement.

III. SPIRE MISSOURI BEARS THE BURDEN OF PROOF AND IT HAS NOT SATISFIED ITS BURDEN

The Commission's charge in this case is to review the reasonableness of Spire Missouri's charges by evaluating its gas acquisition practices during the relevant time period.[23] There is no question that the utility bears the burden of proof in showing that the gas costs passed on to ratepayers through the PGA/ACA tariff are just and reasonable.[24] In some instances the Commission may apply a presumption of prudence since it is assumed that the pressures of the competitive market will ensure the reasonableness of costs.[25]

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[23] *See Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 954 S.W.2d 520, 523 (Mo. App. W.D. 1997); *see also In the matter of tariffs filed by Western Resources, Inc., d/b/a Gas Service, a Western Resources Company, to reflect rate changes to be reviewed in the company's 1992-1993 Actual Cost Adjustment*, 3 Mo. P.S.C. 3d 480 (1995) (The ACA filing "provides interested parties an opportunity to review the prudence of decisions underlying gas costs passed on to ratepayers by gas utilities through use of the PGA provisions.").

[24] Mo. Rev. Stat. § 393.130.1; *In the matter of tariffs filed by Western Resources, Inc., d/b/a Gas Service, a Western Resources Company, to reflect rate changes to be reviewed in the company's 1992-1993 Actual Cost Adjustment*, 3 Mo. P.S.C. 3d 480 (1995) ("It is well settled that the utility . . . has the burden of showing that the gas costs passed on to ratepayers through operation of the PGA tariff are just and reasonable.")

[25] *Office of the Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 371, 376 (Mo 2013).

The same does not hold for an affiliate transaction. In *Office of the Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 371, 372 (Mo 2013), the Missouri Supreme Court reviewed a case involving the transactions of Atmos Energy Corporation with its affiliate, holding that "due to the inherent risk of self-dealing, the presumption of prudence utilized by the PSC when reviewing regulated utility transactions should not be employed if a transaction is between a utility and the utility's affiliate." *Id.*, at 372. The Court further held that:

> [G]reater risk inherent in affiliate transactions arises because agreements between a public utility and its affiliates are not made at arm's length or on an open market. They are between corporations, one of which is controlled by the other. As such they are subject to suspicion and therefore present dangerous potentialities.[26]

Therefore, in this case, where the Commission will review the prudence and reasonableness of costs for a transaction between affiliates, there is no presumption of prudence. Spire Missouri bears the burden of establishing prudence.

If Spire Missouri's decision to enter into a transportation agreement with its affiliate is as reasonable as Spire Missouri suggests, it should be able to present evidence to satisfy its heavy burden. Yet, the Company's initial filing on October 30, 2020 of simply a transmittal letter and proposed tariff sheet is not, by any measure, sufficient to carry its burden. First, the filing fails to comply with the Company's own tariff, which provides:

> The Company shall also file with the Commission, as soon as available, copies of any orders or other pertinent information applicable to the wholesale rate(s) charged the Company by its suppliers.[27]

Spire Missouri's filing is completely silent on its affiliate's role as pipeline developer—pertinent, if not critical, information applicable to the wholesale rate. The deficiencies of the filing are

[26] *Id*. at 377 (citations omitted).
[27] PGA Tariff, sheet 11.13, part E.(c).

further highlighted by the Company's failure to cite, let alone demonstrate, compliance with the Commission's affiliate transaction rules, discussed in further detail below.[28]

IV. SPIRE MISSOURI MUST DEMONSTRATE COMPLIANCE WITH MISSOURI'S AFFILIATE TRANSACTION RULES

Spire Missouri's sparse filing does not address, much less demonstrate, compliance with Missouri's Affiliate Transaction rules – a threshold standard for appropriate review in this case. The Affiliate Transactions rules set forth financial standards, evidentiary standards, and record-keeping requirements applicable to regulated gas utilities whenever that utility engages in a transaction with any affiliated entity.[29] In order to demonstrate that the costs associated with the affiliate contract between Spire STL and Spire Missouri are prudent and reasonable, Spire Missouri must present evidence that demonstrates it has complied with the Affiliate Transaction Rules.

The rules require that a gas utility shall not provide a financial advantage to an affiliated entity, including where it compensates an affiliated entity for goods or services above the fair market price.[30] A regulated utility also may not provide any preferential treatment to an affiliated entity over another party at any time.[31] The Affiliate Transaction Rules also set forth minimum evidentiary standards required in order for the Company to meet its burden under the rules. The Company must demonstrate that it:

1) Sought competitive bids, or demonstrate why competitive bids were neither necessary nor appropriate;

[28] 4 CSR 4240-40.015; *Office of the Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 371 (Mo. 2013).
[29] 4 CSR 4240-40.015.
[30] *Id.* at (2).
[31] *Id.*

2) Documented the fair market price of goods or services received by an affiliated entity (or the cost to the utility to provide those goods or services for itself); and

3) Considered all costs to complete the transactions; calculated the costs at times relevant to the transaction; appropriately allocated all joint and common costs; and adequately determined the fair market price for the goods or services obtained.

4) Alternatively, use of a Commission-approved CAM which sets forth cost allocation, market valuation and internal cost methods can constitute compliance.[32]

The extent to which the Company complied with the Affiliate Transaction Rules in contracting with Spire STL has bearing on the prudency and reasonableness of those costs. Close review of compliance would be required in any case; it is especially warranted here given the Company's history of non-compliance. In the 2017 rate case, a number of examples of non-compliance with the rules were presented by Staff and the Office of Public Counsel:[33]

- Staff repeatedly expressed concerns that Laclede's 2004 CAM – which a gas utility can use to demonstrate compliance with Affiliate Transaction Rules – did not did not comply with those rules. Eventually, Staff filed a complaint on October 6, 2010 (Case No. GC-2011-0098), alleging that Laclede's CAM failed to comply with the Commission's Affiliate Transaction Rules; that Laclede failed to obtain Commission approval of its CAM; and that Laclede failed to annually submit its CAM to Staff."[34]

- Testifying for the Office of Public Counsel, Mr. Charles Hyneman, a member of Staff's Auditing Department from 1993 to 2015, noted that during his time in the department "Staff had serious concerns with Laclede's failure to adhere to its transparency commitments made to the Commission related to its transactions with Laclede's affiliates…."[35]

- Mr. Hyneman also explained Staff's concerns regarding Laclede's refusal or inability to provide affiliate invoices for gas, including in GR-2005-0203.[36]

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[32] 4 CSR 4240-40.015.

[33] *See e.g.*, GR-2017-0215 Exhibit No. 425 (Hyneman Surrebuttal Testimony), Schedule CRH-S-7 at page 28; GR-2017-0215 Tr. at page 1885:7-10; Tr. at page 1910:2-8; GR-2017-0215 Schedule CRH-S-7 at page 23.

[34] GR-2017-0215 Exhibit No. 425 (Hyneman Surrebuttal Testimony), Schedule CRH-S-7 at page 28.

[35] *Id.* at page 28, lines 6-11.

[36] GR-2017-0215 Tr. at page 1910:2-8.

- In Laclede's 2010 general rate case, GR-2010-0171, Staff raised "Staff's Revenue Requirement Cost of Service Report in Laclede's 2010 general rate case, Case No. GR-2010-0171, Staff raised "serious concerns that the Company's policies, procedures and methods for its allocation of costs to its various affiliates is inadequate to prevent Laclede Gas' customers from paying expenses that are related to affiliates."[37]

- In Staff's Investigation Report in Case No. GM-2016-0342, Staff found that, among other violations, Spire and its family of corporation had not complied with the condition to "maintain records supporting its affiliated transactions for at least five years."[38]

- Staff witness Ms. Crowe detailed concerns regarding Laclede's documentation of the gas supply procured from their marketing affiliate at the time, LER.[39]

This history and pattern of non-compliance demonstrates heightened need to scrutinize whether the Company complied with the Affiliate Rules governing the transaction at issue in this proceeding.

The Commission cannot assess the reasonableness of the Company's affiliate transaction unless and until the Company provides the necessary information to assess its compliance with these rules. Spire Missouri did not, nor could it, demonstrate compliance in the simple cover letter and tariff sheets that it filed in this case. Only after Spire Missouri has met its initial burden to demonstrate compliance can parties reasonably respond to the filed tariffs.

V. SUBSTANTIAL EVIDENCE SUBMITTED TO FERC DEMONSTRATES A LACK OF NEED FOR THE PROJECT, FURTHER CASTING DOUBT ON THE PRUDENCY OF SPIRE MISSOURI'S DECISION

It is the Commission's duty to protect customers from unreasonable costs stemming from imprudent or unreasonable business decisions made by a regulated utility. The costs at issue in this proceeding are substantial. In Spire Missouri's 2017 rate case, Staff witness Anne Crowe

[37] GR-2017-0215 Exhibit No. 425 (Hyneman Surrebuttal Testimony) at page 28:12-16, *citing* GR-2010-0171 at page 53.
[38] *Id.*, Schedule CRH-S-7 at page 23.
[39] GR-2017-0215 Tr. at page 1885:7-10.

specifically highlighted the Spire STL/Spire Missouri contract costs in comparison to the overall costs flowed through the PGA/ACA tariff.[40] Since that time, the costs of the Spire STL Pipeline have increased from $220M to $286M,[41] and Spire STL has increased the negotiated rate for Spire Missouri from $0.23 to $0.25.[42] Over the duration of the twenty-year contract, this will amount to in excess of $600M in transportation costs to be paid by Missouri customers. Moreover, Spire STL has also included a provision in its negotiated rate tariff filing which would allow it to *further* increase the negotiated rate for any new tax responsibility.[43] Notably, it has precluded Spire Missouri from the ability to protest any such further rate increase. During this unprecedented time, customers can least afford unnecessary cost increases. Even in the face of a rate decrease in this case resulting from other factors, the issue is whether costs would have declined even further but for the affiliate contract. Lost savings are no less objectionable than unreasonable rate increases.

In addition to the significant costs associated with the Spire STL Pipeline, substantial evidence submitted in the FERC proceeding demonstrated a lack of need for the project, further casting doubt on the prudency of Spire Missouri's decision:

- This Commission stated that "the St. Louis market cannot support an additional 400,000 Dth of capacity."[44] In urging a more rigorous federal review, the Commission stated that it "disputes that competition between pipelines is or can be 'fair' when the pipelines are competing for the business of a single dominant customer and that customer is an affiliate of one of the pipelines."[45]

- FERC and all parties agreed that St. Louis is experiencing flat load growth.[46] Given this flat demand, "Spire Missouri is merely shifting its capacity subscription from an existing pipeline to a new one owned by its affiliate."[47]

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[40] GR-2017-0215 Exhibit No. 241 (Crowe Surrebuttal Testimony) at 5.
[41] FERC Docket No. CP17-40, Amendment of Spire STL Pipeline (August 21, 2019).
[42] FERC Docket No. RP20-70, Spire STL's Compliance Filing, App'x 2 (October 16, 2019).
[43] *Id.*
[44] *Spire STL Pipeline LLC*, Conditional Protest of the Missouri Public Service Commission, Docket No. CP17-40-000, at p. 13 (Feb. 27, 2017), included here as Attachment A.
[45] *Id.* at page 9, n.18.
[46] *Spire STL Pipeline*, 164 FERC ¶ 61,085 ¶ 107 (2018).
[47] *Spire STL Pipeline*, 169 FERC ¶ 61,134 (2019) (Comm'r Glick Dissent at 2-3).

- Although Spire STL held an open season, its Project was not born out of a competitive solicitation. No entities bid on the capacity and the precedent agreement resulted from "negotiations" within the Spire corporate family before the open season.[48]

- Intervenors raised significant concerns regarding affiliate abuse, including the fact that: (1) Spire STL shifted all risk for the construction of its project onto its shipper;[49] (2) an affiliated local distribution utility-shipper is incentivized to contract with an affiliate pipeline because the costs, including the 14% rate of return, are recoverable from captive ratepayers;[50] (3) the project would not be financially viable but for Spire Missouri's subscription;[51] (4) Spire STL received no capacity subscriptions as a result of its open season;[52] (5) Spire Missouri's evaluation process for new transportation was not transparent to third parties;[53] (6) Spire Missouri relied on certain project benefits which it refused to accept when associated with earlier non-affiliated projects;[54] (7) the precedent agreement includes terms more favorable to its affiliate than Spire Missouri was willing to offer an earlier non-affiliated project sponsor;[55] and (8) there was a demonstration of the intermixing of roles between Spire STL and Spire Missouri.[56]

- Existing pipeline Enable Mississippi River Transmission, LLC ("Enable MRT") has capacity in excess of 350,000 Dth/d from multiple points enhancing reliability relative to Spire's STL's single point access to Marcellus supplies at a lower cost than Spire STL.[57]

- Spire Missouri declined to support prior pipeline projects with unaffiliated sponsors that provided both additional capacity and a connection with REX.[58]

- The potential cost savings of the new pipeline was refuted in significant measure by Enable MRT expert Dr. Carpenter. No matter the scenario, and Dr. Carpenter analyzed twelve, Enable MRT found that "the Spire Project would result in increased costs to [Spire Missouri]."[59] Based on this robust analysis, Enable MRT submitted that the project is

[48] *Spire STL Pipeline*, 164 FERC ¶ 61,085 ¶ 77 (2018) ("[T]he precedent agreement was not the direct result of the open season, but stemmed from prior discussions between Spire [STL], Spire Missouri, and their corporate parents . . . .").
[49] *Id.* at P 33
[50] *Id.* at P 36.
[51] *Id.*
[52] *Id*.
[53] *Id*. at P 38.
[54] *Id*.
[55] *Id*.
[56] *Id*. at P 39.
[57] FERC Docket No. CP17-40, Motion for Leave to Answer and Answer of Enable Mississippi River Transmission, LLC at page 11 (July 31, 2017).
[58] *Spire STL Pipeline*, 164 FERC 61,085 at P 57.
[59] FERC Docket No. CP17-40, Enable Mississippi River Transmission, LLC and Enable Midstream Partners, LP Data Response at 1 (March 13, 2018), Attachment E hereto.

"fundamentally uneconomic" and that the additional cost impact to Spire Missouri could be "more than half a billion dollars."[60]

- FERC recognized that "price differentials between different pricing points reflect the convergence of gas prices across different supply areas in the U.S., as "price differentials between major gas pricing hubs have shrunk."[61] If producing basin prices are the same, that would argue against spending hundreds of millions of dollars on new facilities to access a more remote basin in lieu of another basin already accessible through substantially-depreciated facilities.

- Moreover, any "supply diversity" benefit depends on Spire Missouri's contractual rights on REX. To access Marcellus supplies, Spire Missouri must either have gas delivered to Spire STL by a third party or reserve capacity on REX. Spire Missouri only holds 20,000 Dth/day of east-to-west firm capacity on REX. Thus, to access Marcellus supplies on a firm basis for 20 years to match its 350,000 Dth/day commitment on Spire STL, Spire Missouri must access supplies held by existing shippers on REX, "exposing its ratepayers to 20-years of potentially changing market conditions in that area."[62]

- Spire Missouri claimed to FERC that it must replace its propane peaking facilities with Spire capacity despite the fact it only used those facilities three days out of the past five years. The actual costs of operating the propane facilities were never provided to FERC—they remain within Spire Missouri's closed books. When FERC asked the Spire Affiliates to compare the costs of the propane facilities and the proposed pipeline, the Spire Affiliates were unwilling (or unable) to respond.[63]

VI. THE COMMISSION MUST PROTECT CUSTOMERS AGAINST UNREASONABLE COSTS

Even prior to the global pandemic and resulting economic recession, many customers were in desperate need of financial relief from energy costs. Any costs above what they should be are particularly impactful for vulnerable customers. Especially heading into the cold winter months when customers are most reliant on natural gas to heat their homes, every dollar makes a

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[60] *Id*.
[61] *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 at P 108 (2018).
[62] FERC Docket No. CP17-40, Motion for Leave to Answer and Answer of Enable Mississippi River Transmission, LLC, Exhibit MRT-0044, 2 (April 10, 2017), Attachment D hereto.
[63] FERC Docket No. CP17-40, Spire STL Data Response at 26 (March 13, 2018) ("Spire Missouri does not have quantitative data illustrating the 'what if' scenario of Spire Missouri continuing to rely on the propane system.").

difference. Higher than necessary gas rates may lead to higher than necessary disconnections or may deter customers from using gas and force them to turn to unsafe alternatives for heating their homes. These are not acceptable outcomes. Economic conditions have only worsened energy insecurity for vulnerable households. Existing evidence that the costs of the affiliate transaction are unreasonable further underscores the importance of a thorough review process in this proceeding.

VII. MOTION FOR PROCEDURAL SCHEDULE

The Commission cannot fulfill its critical oversight responsibilities unless and until the Company provides sufficient information upon which to make a reasoned decision. Thus, a first step in the procedural schedule in the case should be to require evidence from the Company that, as an initial matter, satisfies the Company's burden of establishing prudence, including compliance with the Commission's affiliate transaction rules. In order to facilitate the review of the Company's actions and the costs proposed to be recovered through the tariffs, the Commission should also set procedures applicable to a contested case which enable parties to intervene, examine the evidence, conduct discovery, and present evidence.[64]

VIII. CONCLUSION

For these reasons, Environmental Defense Fund, Office of the Public Counsel, Midwest Energy Consumers Group and the Consumers Council of Missouri respectfully request that the Commission only allow the proposed tariffs to go into effect subject to refund, establish procedures consistent with a contested proceeding, beginning with evidence from the Company to demonstrate the prudency of the costs associated with the affiliate transaction and compliance with the Commission's affiliate standards. Spire Missouri cannot lawfully recover imprudent costs

[64] Mo. Rev. Stat. Section 393.150 permits the Commission to hold a hearing on the propriety of a utility's rates on its own motion, or upon complaint by any interested party.

associated with the affiliate transaction. A rigorous review of the prudency and reasonableness of costs associated with the affiliate contract is imperative in order to protect Spire Missouri's customers.

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Attachment A

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February 27, 2017

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: <u>Docket No: CP17-40: Request for Treatment as Protected Materials</u>

Dear Secretary Bose:

Pursuant to the Commission's regulations at 18 C.F.R. §§ 388.112 and 388.113, the Missouri Public Service Commission ("MoPSC") requests that a portion of the attached pleading be designated as Protected Materials. The MoPSC seeks this protection solely because the source of the information, Spire STL Pipeline LLC, the applicant in the above referenced Commission Docket, has designated the underlying information as Protected Materials. Accordingly, the MoPSC hereby requests that the attached pleading be exempted from public disclosure. The MoPSC has provided a redacted public version of this submission. The MoPSC is not providing a non-disclosure agreement because the applicant included a form non-disclosure agreement with its filing in this proceeding.

Please contact me if you have any questions regarding the request for treatment as Protected Materials.

Sincerely,

<u>/s/ *Stephen C. Pearson*</u>
Stephen C. Pearson
Attorney for the Missouri Public Service Commission

Attachment
cc: CP17-40 service list

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC	**)**	**Docket No. CP17-40-000**

CONDITIONAL PROTEST OF THE
MISSOURI PUBLIC SERVICE COMMISSION

Pursuant to Rule 211 of the Federal Energy Regulatory Commission ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. §385.211 (2016) and the procedures established by the Commission's February 6, 2017 Notice in this docket, the Missouri Public Service Commission ("MoPSC") hereby submits this conditional protest and requests the Commission place conditions on the approval of the Application in Docket No. CP17-40. As discussed below, the MoPSC has several concerns with respect to the application filed by Spire STL Pipeline LLC ("Spire"), which was filed on January 26, 2017, seeking authority to operate natural gas pipeline facilities and establish initial rates and tariffs.

I. DESCRIPTION OF SPIRE'S APPLICATION

On January 26, 2017 Spire filed an application for:

1. A certificate of public convenience and necessity authorizing Spire to construct, own, operate, and maintain a new natural gas pipeline system in the States of Illinois and Missouri for the purpose of transporting natural gas in interstate commerce ("Project") and, as its preferred proposal, to acquire and make minor modifications to an existing approximately 7-mile natural gas pipeline for use as part of the Project;

2. A blanket certificate pursuant to Part 157, Subpart F of the Commission's regulations authorizing certain routine construction, operation, and abandonment activities;

3. A blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations authorizing Spire to provide transportation service pursuant to an open access tariff and acceptance of Spire's *pro forma* FERC gas tariff ("Tariff");

4. Pre-approval of Spire's proposed terms of service afforded to the Project's Foundation Shipper that are not found in Spire's *pro forma* Rate Schedule FTS Service Agreement; and

5. Such other authorizations and waivers of certain regulatory requirements, including an extension of time to comply with certain North American Energy Standards Board ("NAESB") standards, as may be necessary to allow Spire to undertake the activities described in its Certificate Application.

Spire indicates that the purpose of the Project is to provide incremental firm pipeline capacity and access to competitively-priced and productive supply basins to serve homes and businesses in the St. Louis metropolitan area and surrounding counties in eastern Missouri.

The Project consists of approximately 59 miles of greenfield 24-inch-diameter pipeline facilities ("24-inch pipeline") originating at an interconnection with the Rockies Express Pipeline LLC ("REX") pipeline in Scott County, Illinois, extending southward and then west, tying into an existing natural gas pipeline facility ("Line 880") in St. Louis County, Missouri that is currently owned and operated by Laclede Gas Company ("Laclede"), an affiliate[1]. Spire is also seeking approval from the MoPSC in a separate state jurisdictional proceeding to purchase Line 880 from Laclede[2], including its appurtenant and ancillary facilities, and modifying that line before placing it into interstate service contemporaneously with the 24-inch pipeline. Line 880 consists of approximately 7 miles of existing 20-inch-diameter natural gas pipeline located in St. Louis County, Missouri including appurtenant and ancillary facilities, and it will connect the 24-inch pipeline to the existing Enable Mississippi River Transmission, LLC ("Enable MRT")

[1] *Spire is an indirect wholly-owned subsidiary of Spire, Inc.*

[2] *Verified Application of Laclede Gas Company for Authority to Sell Assets and for any necessary Variance from Certain Requirements of the Commission's Affiliate Transaction Rule* ("MoPSC Case"), MoPSC Case No. GM-2017-0018, 10-31-2016. *A stay of the action was requested by Laclede on February 16, 2017 advising that an alternate route for the pipeline may now be a possibility. The MoPSC denied the stay request on February 24, 2017.*

interstate natural gas pipeline along the western bank of the Mississippi River in St. Louis County, Missouri. The total length of the Project will be approximately 66 miles.

Spire's application indicates its proposed tariff rates are based on an annual cost-of-service of approximately $43 million. Spire's Application, "Exhibit N". Spire assumes a capital structure of 50% debt capital at a cost of 7% and 50% equity capital at a cost of 14% resulting in an overall rate of return of 10.5% on a $213,979,581 rate base. Application, "Exhibit N".

Spire has executed a Precedent Agreement with Laclede for firm transportation service for an initial term of twenty (20) years for 350,000 Dth/d, which represents 87.5 percent of the Project's total capacity. Spire is a new company and has not previously provided natural gas pipeline transportation service in interstate commerce. Spire also requests such other regulatory authorizations and waivers, including an extension of time to comply with certain NAESB standards, as may be necessary to allow Spire to undertake the activities described in its Application. Spire requests favorable Commission action on its Certificate Application by December 1, 2017 to allow for timely commencement of construction to meet the Project's in-service date of November 1, 2018.

II. CONDITIONAL PROTEST

The MoPSC is supportive of natural gas pipeline projects that can provide natural gas service to Missouri residential, commercial and industrial customers. Natural gas service is a key element in the promotion of economic development in the State of Missouri. The MoPSC is also supportive of its local distribution companies ("LDCs") providing gas service at just and reasonable prices to Missouri customers. However, the MoPSC files this conditional protest because of concerns about Spire's revenue requirement components for capital structure, debt, and return on equity, and whether the $43 million revenue requirement can be supported by customers. The MoPSC more importantly protests terms contained in the Precedent Agreement and any pre-approval of such terms. This Precedent Agreement is Spire's primary evidence of need for the pipeline. Therefore, the Commission should address those terms before it issues a certificate for this pipeline, along with the Commission's explicit finding that it is not approving or accepting the Precedent Agreement consistent with these types of cases. While the Commission does not approve precedent agreements that are filed with a certificate application,[3] those precedent agreements are fundamental to the application because the Commission will generally rely on precedent agreements as evidence of need for the pipeline.[4] (Of course, as explained in Part II.D, below, a precedent agreement is not always dispositive of need and does not eliminate the Commission's obligation to review the impacts of a new pipeline on, for example, captive customers of incumbent pipelines.) The MoPSC also wants to avoid any future arguments that the Commission's approval of the terms to the Firm Transportation Service Agreement contained within Spire's Precedent Agreement somehow preempts the MoPSC's jurisdiction relating to Laclede's charges to its Missouri retail customers.

More generally, the MoPSC requests the Commission thoroughly examine all of the circumstances and impacts of the proposed pipeline as the Commission determines whether Spire has shown that construction of the pipeline is in the public interest.[5] It is not clear that there is

[3] *See, e.g., Transcontinental Gas Pipe Line Co.*, 156 FERC ¶ 61,022, P 32 & n.42 (citing *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014), *distinguishing between service agreements which are filed and precedent agreements which are discloses, and stating that "Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement.").*

[4] *1999 Policy Statement at 61,748 ("if an applicant has entered into contracts or precedent agreements for the capacity, it will be expected to file the agreements in support of the project, and they would constitute significant evidence of demand for the project.").*

[5] *As FERC has previously stated : "All projects, of course, must be shown to be in the public interest to win approval, and, depending on the circumstances, more may be required for a greenfield pipeline to the extent it would have more significant environmental consequences or rely on eminent domain to acquire a right-of-way*." *Indep. Pipeline Co. ANR Pipeline Co. Nat'l Fuel Gas Supply Corp. Transcontinental Gas Pipe Line Corp., 89 FERC ¶ 61283, 61845 (Dec. 17, 1999)*

need for the project and requests the Commission carefully review this issue as explained in Part II.D below. The MoPSC notes that it has not yet made a determination in Laclede's state jurisdictional case before it[6] whether to approve the sale of Line 880 to Spire or to approve the requested variance of the MoPSC's "Affiliate Transaction Rule".[7] If any changes to the Precedent Agreement or revenue requirement result from the MoPSC Case decision, this may also create the need for additional comments from parties to this current Certificate case before Commission final approval.

A. Spire should not be allowed to shift the risk associated with construction of the Project to Laclede.

The Commission's 1999 Policy Statement[8] requires as a "threshold requirement" that the *pipeline* be prepared to financially support the project.[9] While the Commission made this statement in the context of ensuring that existing customers do not subsidize new customers, the principle that the pipeline must be prepared to shoulder the risk of its project extends to new pipelines as well. Of course, the pipeline need not shoulder all risk; the Commission clarified that risk can be *shared* with new customers.[10] But the Commission's use of the word "shared" necessarily means that the pipeline must retain substantial risk. The instant project, as proposed by Spire, impermissibly shifts the risk away from the pipeline and to Laclede.

[BEGIN PROTECTED MATERIALS] [redacted]

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[6] *Verified Application of Laclede Gas Company for Authority to Sell Assets and for any necessary Variance from Certain Requirements of the Commission's Affiliate Transaction Rule* ("MoPSC Case"), MoPSC Case No. GM-2017-0018, 10-31-2016.

[7] *See, Missouri Code of. State Regulations, 4 CSR 240-20.015.*

[8] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999).

[9] *Id.* at 61,746.

[10] *Id.*

[redacted] **[END PROTECTED MATERIALS]**

Accordingly, the MoPSC urges the Commission to require modification of the Precedent Agreement to properly allocate risk to Spire.

B. Spire's overall rate of return should be reduced to reflect a return on equity that is consistent with recent Commission decisions for new projects.

Spire has proposed a return on equity ("ROE") of 14% and a cost of debt of 7% in the calculation of its recourse rate. The proposed 14% is an extremely high rate of return and is premised upon an assumed Commission policy that greenfield pipelines receive a 14% ROE. The Commission's award of a 14% ROE dates back to at least 1997.[11] In many of these cases, the pipelines in question had highly leveraged capital structures, as much as 75% debt.[12] Spire has a much more balanced proposed capital structure. In addition, pipeline project risks have shifted over time and national economic circumstances have undergone dramatic shifts since 1997. The Commission's recent decisions on the appropriate ROE for electric transmission rates bear witness to the changing economic circumstances. For example, the Commission has reduced the just and reasonable MISO ROE from 12.38% approved in 2002 to 10.32% approved in 2016.[13] Accordingly, the Commission should evaluate present economic conditions—and the dramatic changes since 1997—before continuing to award a 14% ROE.

Spire also states that the proposed debt/equity ratio and capital structure is "consistent with recent Commission precedent" involving a recent greenfield pipeline project in *UGI Sunbury*[14] and appropriately reflects the business risks of the Project. But the Commission is required to evaluate each case on its own merits. In this case, Spire conducted an open season to identify interest in its proposed pipeline. That open season produced one foundational shipper, Laclede, which proposed to subscribe to 350,000 Dth of a pipe with a design capacity of

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[11] *Alliance Pipeline L.P.*, 80 FERC ¶ 61,149, at 61,592 (1997), *subsequent history omitted* (proposing a 12% base ROE with incentives enabling a maximum of 14% ROE).

[12] *See e.g.*, *Cross Bay*, 97 FERC ¶ 61,165, at 61,757-758 (2001), *vacated on other grounds*, 98 FERC ¶ 61,080 (2002) (awarding a 14% ROE with a 25% equity and 75% debt).

[13] *Association of Business Advocating Tariff Equity*, 156 FERC 61,234.

[14] *UGI Sunbury, LLC*, 155 FERC ¶61,115 at PP 20-23 (2016).

400,000. Spire and that single shipper have agreed to a negotiated rate that is less than the proposed maximum rate. Nonetheless, with a single customer paying less than the maximum rate, Spire has still agreed to go forward with the project. In other words, assuming the project is built, Spire has assessed the risk and accepted it. The Commission should reject Spire's claims that it has substantial risk that may only be mitigated by a 14% ROE when Spire proposes to go forward with a pipeline that is substantially subscribed at a rate that is lower than that produced by the 14% ROE.

C. Spire's request for FERC's pre-approval of the proposed terms of service to Laclede does not extend Commission approval to the terms of the Precedent Agreement.

The Precedent Agreement between Spire and Laclede is a significant piece of the Spire Application for a Certificate. As Exhibit A of the Precedent Agreement, Spire has included the Firm Transportation Service Agreement ("FTSA") and the agreement between Spire and Laclede detailing the negotiated rate that will apply to service under the FTSA are part of the Firm Transport Agreement. Spire has sought approval of the non-conforming agreement. Subject to the other issues raised in this pleading, the MoPSC does not object to the two non-conforming provisions offering Laclede a unilateral extension right for up to two five (5)-year terms and Laclede's ability to obtain Foundation Shipper status in the event of a future Spire project. However, the MoPSC does have concerns with other terms of the Precedent Agreement and requests that the Commission clearly state in its Order in this case that it is not approving the Precedent Agreement.

D. The Commission must carefully evaluate the potential negative impacts on the captive customers of other St. Louis area gas pipelines, MoGas Pipeline and Enable MRT, of the proposed Spire pipeline.

Spire must make an effort to eliminate or minimize any adverse effects on existing pipelines and landowners.[15] After such efforts are made, then the public benefits must outweigh the residual adverse effects. "This is essentially an economic test."[16] Spire emphasizes[17] the Commission's statement that the Commission "need not protect pipelines from the effects of competition, but it does have an obligation to ensure fair competition,"[18] However, Spire minimizes the Commission's obligation to consider the impact on captive customers of incumbent pipelines. Spire provides insufficient analysis of the impacts on captive customers. It is Spire's view that any impact on other pipelines is unduly speculative. The MoPSC urges the Commission to undertake a much more rigorous review. As explained below, over the last few years, numerous new projects have been proposed to serve the St. Louis area. All have failed. If the Commission certificates the instant project and it is built, but there is not 400,000 Dth of expanded gas demand in the region, Spire will not be impacted because it has its contract with its affiliate. Laclede will not be impacted because it has competitive alternatives and can demand discounted rates. But captive customers of Enable Mississippi River Transmission, LLC ("Enable MRT") and MoGas Pipeline, LLC ("MoGas") lack such a benefit. Those captive customers may be forced to make up revenues formerly sourced from Laclede. Accordingly, the

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[15] *Certificate of New Interstate Pipelines*, 88 FERC ¶ 61,227 (1999); *orders on clarification*, 90 FERC ¶ 61,128 (2000) and 92 FERC ¶ 61,094 (2000).

[16] *Id.*

[17] Application at 18-20.

[18] *Certification of New Interstate Pipelines*, 88 FERC ¶ 61,227 (1999); *orders on clarification*, 90 FERC ¶ 61,128 (2000) and 92 FERC ¶ 61,094 (2000*). The MoPSC disputes that a competition between pipelines is or can be "fair" when the pipelines are competing for the business of a single dominant customer and that customer is an affiliate of one of the pipelines.*

Commission must carefully review impacts on other facilities, and more importantly, the captive customers.

It is not clear from Spire's application that there is actually a need for the proposed Project given the application's failure to address the recent track record of failure of proposed projects to serve the St. Louis area. In Commission Docket No. RP12-955, Mississippi River Transmission (now Enable MRT) sought the Commission's approval of a rate increase. As part of the justification for filing, Enable MRT submitted testimony detailing projects proposed to serve St. Louis. Witness Trost testified (MRT-90 at 8-9):

> In February, 2011 the St. Louis Natural Gas Pipeline Company ("STLNGP") posted an open season to seek expressions of customer interest for a new 200,000 Dth/day capacity pipeline from NGPL's Glen Carbon delivery station into the St. Louis Metropolitan area with Laclede as the primary target customer (Exhibit No. MRT-93). STLNGP filed a complaint at the Missouri Public Service Commission ("MOPSC") requesting the MOPSC require Laclede to interconnect with STLNGP (Exhibit No. MRT-94). Public documents in the proceeding revealed Laclede had entertained a similar project from another company, and that yet a third company has proposed building a pipeline from the Rockies Express ("REX") Pipeline system in north central Missouri into the St. Louis area. Southern Star also indicated in its pleading in the STLNGP proceeding that it has "been actively pursuing additional ways to provide Laclede with access to additional supplies either through an increase in capacity directly connected to Southern Star, or via alternative routes through interconnects with other pipelines" (Exhibit No. MRT-95). Laclede subsequently agreed it would sign an interconnect agreement with STLNGP in the event that STLNGP's project obtained approval at the Commission.
>
> Unrelated to the STLNGP project, MRT has learned that Ameren Corporation has proposed a 200,000 Dth/day to 300,000 Dth/day interstate pipeline project to build from the REX Pipeline in Illinois into the St. Louis area that targets MRT customers including Laclede, US Steel, Ameren Missouri – Venice, and WRB Refining. All of this activity suggests that the St. Louis market area has and will continue to be highly competitive.

With the benefit of hindsight, the Commission can see that not one of these projects were built, none of which were as large as Spire, and several of which like Spire, proposed to bring gas from an interconnect with REX to the St. Louis area.

Nothing in Spire's application addresses this history of failed projects, and consequently Spire's application does not contain sufficient detail demonstrating an apparent need for capacity into the St. Louis market. If history is any indication, Laclede's contract for firm transportation of 350,000 Dth/day with Spire will almost certainly result in reductions in its firm transportation contracts on other pipelines providing service to the St. Louis area. Reductions in Laclede firm transportation contracts on MoGas and Enable MRT could lead to substantial rate increases to Missouri gas customers to cover the difference. As explained in previous cases, the St. Louis metropolitan area is a mature market. The population trends in the St. Louis area show slow growth with migration of residential and commercial customers from the city's core into the surrounding suburbs.[19] Thus, Spire's application for a new pipeline does not contain sufficient detail reflecting new demand for gas capacity.

While Spire dismissively asserts that any future decision by Laclede to turn back capacity is unknown and speculative, Spire's statements are inconsistent with the 1999 Policy Statement. In the 1999 Policy Statement, the Commission stated that it would consider the "potential impact" on captive customers of incumbent pipelines. The Commission stated:[20]

> The interests of the captive customers are slightly different from the interests of the incumbent pipeline. The captive customers are affected if the incumbent pipeline shifts to the captive customers the costs associated with its unsubscribed capacity. Under the Commission's current rate model captive customers can be asked to pay for unsubscribed capacity in their rates, but the Commission has indicated that it will not permit all costs resulting from the loss of market share to be shifted to captive customers.[15] Whether and to what extent costs can be shifted is an issue to be resolved in the incumbent pipeline's rate case, but the potential impact on these captive customers is a factor to be taken into account in the certificate proceeding of the new entrant.

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[19] *Direct Testimony of Robert A. Trost, Exhibit No. MRT-90, page 6, CenterPoint Energy-Mississippi River Transmission LLCMRT Rate Case 2012 to be Effective 10/1/2012,* Docket No. RP12-955.

[20] *1999 Policy Statement at 61,750*.

[15] *El Paso Natural Gas Company*, 72 FERC ¶ 61,083 (1995); *Natural Gas Pipeline Company of America*, 73 FERC ¶ 61,050 (1995).

In other words, the Commission is fully cognizant of the fact that it must examine the most probable consequences of the entry of new capacity into a market.

The Commission has received significant testimony in other proceedings that can help it evaluate the addition of 400,000 Dth of new capacity into the St. Louis market. In Commission Docket No. RP12-955, Enable MRT explained the state of demand for transportation capacity into St. Louis. Enable MRT stated that high levels of capacity release were being used as an alternative to interruptible transportation service[21] indicating that current firm transportation contracts were underutilized. At the time of the Enable MRT rate case in 2013, Laclede represented 73 percent of its traditional northbound contract demand.[22] Enable MRT is dependent on Laclede for its viability, and reductions in Laclede firm transportation contracts could lead to increased rates to Enable MRT customers.

Similarly, Laclede contracts for 67 percent of the Zone 1 firm transportation on MoGas. MoGas serves customers from the west side of St. Louis to Rolla, Missouri, including Fort Leonard Wood, municipal gas systems and Ameren Missouri. MoGas is the only natural gas pipeline serving these customers and therefore these customers are captive. Any reduction of Laclede's firm transportation contract with MoGas would likely lead to MoGas rate increases in the future. MoGas Zone 2 customers (located on the western leg of the pipeline extending from Sullivan, Missouri west to Fort Leonard Wood, Missouri) already pay a combined Zone 1 plus Zone 2 $22 MDQ rate, which is the highest rate in Missouri. The economic viability of natural

[21] *Filing Letter at 7.*

[22] *Id, page 9.*

gas service to this region of Missouri could be at risk if Laclede reduces its firm transportation contract on MoGas.

It is not clear from Spire's application that Laclede expects to have substantial new load growth in the St. Louis area that would require Laclede to increase its reserved transportation capacity by 350,000 Dth, a nearly 50 percent increase over what Laclede currently subscribes on the two other interstate pipelines that serve the St. Louis area.

As noted above, the 1999 Policy Statement was not intended to protect pipelines from competition. To the contrary, the Commission cited its *El Paso* decision, a decision in which the Commission placed an obligation on the pipeline to develop new business.[23] But as described above, recent history has shown that many projects have been proposed for the St. Louis area and all have failed. Given this track record of failed projects, the Commission should be skeptical about the ability of Enable MRT and MoGas to develop new business to make up for business lost to Spire. Thus, based on Spire's application, it appears that the St. Louis market cannot support an additional 400,000 Dth of capacity. Because Spire's application fails to demonstrate that circumstances have changed, a probable result is Laclede will turn back other capacity in favor of capacity on its affiliate's pipeline and captive customers on Enable MRT and MoGas will be forced to make-up the difference, creating the possibility of pipeline death spirals, whether because the pipelines cannot recover their revenue requirement or retail gas customers shun natural gas service in favor of other energy sources.

While the MoPSC supports Laclede's negotiation of the best possible gas transportation prices for its customers, the Commission must develop a full record regarding the need for capacity in the St. Louis area. The Commission must consider whether the additional capacity

[23] *El Paso Natural Gas Company*, 72 FERC ¶ 61,083, 61,441 (1995)

that would be provided by Spire would result in negative impacts on captive customers of other pipelines, especially when the St. Louis market is static and there is no demonstrated need at this time for this new capacity.

WHEREFORE, for the foregoing reasons, the MoPSC respectfully requests the Commission (1) not allow Spire to shift the risk of the construction of the project to Laclede, (2) explicitly state in any Orders or other rulings issued that it is not approving the terms of the Precedent Agreement, (3) examine Spire's proposed return on equity to ensure it is consistent with recent Commission decisions for new projects, (4) evaluate the potential negative impacts of this proposed project on other St. Louis area gas pipelines and their captive customers, and (5) for such other relief which may be just and proper.

Respectfully submitted,

/s/ *Rodney P. Massman*
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Attorneys for the Missouri Public Service Commission

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary of the Commission in this proceeding by either U.S. Mail or electronic service dated on this 27th day of February, 2017.

/s/ *Stephen C. Pearson*

Stephen C. Pearson

Law Offices of:
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Document Content(s)

Transmittal_Letter.PDF...1-1

MPSC_Conditional_Protect (Public).PDF.......................................2-16

Attachment B

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case Nos. 20-1016 and 20-1017 (Consolidated)

ENVIRONMENTAL DEFENSE FUND
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITIONS FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

INITIAL OPENING BRIEF OF PETITIONER ENVIRONMENTAL DEFENSE FUND

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Dated: June 26, 2020

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CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND RELATED CASES

Per Circuit Rule 28(a)(1), Petitioner Environmental Defense Fund ("EDF") files this certificate as to parties, rulings under review, and related cases.

A. Parties and Amici

EDF is the petitioner in Case No. 20-1016 and Juli Steck[1] is petitioner in Case No. 20-1017. The Federal Energy Regulatory Commission ("FERC") is the respondent in these consolidated proceedings. The following parties have served motions for leave to intervene upon EDF or are shown on the docket sheet of this Court as having moved to intervene in the instant consolidated proceedings:

Spire STL Pipeline, LLC

Spire Missouri Inc.

EDF understands that one or more entities may seek to participate as *amicus curiae*. However, as of the time of this brief, no entity has filed a notice of intent or motion for leave to file.

B. Rulings under Review

EDF seeks review of the following orders issued by FERC:

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[1] On June 23, 2020, Juli Viel filed a Notice to reflect a name change to Julie Steck.

1. *Spire STL Pipeline LLC*, Order Issuing Certificates, Docket No. CP17-40-000, 164 FERC ¶ 61,085 (August 3, 2018); and

2. *Spire STL Pipeline LLC*, Order On Rehearing, Docket No. CP17-40-002, 169 FERC ¶ 61,134 (November 21, 2019).

C. Certificate as to Related Cases

EDF is not aware of any related cases that raise the issues EDF is pursuing on appeal, i.e., (i) FERC's exclusive reliance on a precedent agreement between affiliates to support a finding of need under Natural Gas Act Section 7, despite substantial evidence demonstrating that the proposal was not needed, and (ii) FERC's fact-specific findings concerning public benefits and adverse impacts.

Respectfully submitted,

/s/ Jason Gray
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Attorneys for the Environmental Defense Fund

Dated: June 26, 2020

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules for the United States Court of Appeals for the District of Columbia Circuit, the Environmental Defense Fund is a non-profit organization and therefore does not issue stock to the public.

Respectfully submitted,

/s/ Jason Gray
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Term	Description
Certificate Order	*Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (August 3, 2018)
Certificate Policy Statement	*Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy*, 88 FERC ¶ 61,227, *modified by*, 89 FERC ¶ 61,040 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000)
Decl.	Declarations contained in the Environmental Defense Fund's Addendum on Standing
EDF	Environmental Defense Fund, Petitioner in Case No. 20-1016
Enable	Enable Mississippi River Transmission LLC
FERC	Federal Energy Regulatory Commission, Respondent in Case Nos. 20-1016 and 20-1017 (consolidated)
JA	Joint Appendix
Missouri Commission	Missouri Public Service Commission
P	Paragraph numbers in Federal Energy Regulatory Commission orders
Project	Spire STL Pipeline LLC's 65-mile-long pipeline in Illinois and Missouri
R	Citation to the Index of the Record filed in these proceedings on March 12, 2020
Rehearing Order	*Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (November 21, 2019)
Spire Missouri	Spire Missouri Inc., affiliate of Spire STL Pipeline LLC
Spire STL	Spire STL Pipeline LLC

INTRODUCTION

In the Natural Gas Act, Congress assigned the Federal Energy Regulatory Commission ("FERC") the responsibility for permitting new interstate gas pipeline facilities. 15 U.S.C. § 717f. Before approving an application to construct and operate a new interstate pipeline, FERC must determine that the pipeline "is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). FERC must evaluate "all factors bearing on the public interest." *Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 391 (1959); *see also Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy*, 88 FERC ¶ 61,227, 61,747, *modified by*, 89 FERC ¶ 61,040 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000) ("Certificate Policy Statement"). Before issuing a certificate, FERC must also find that a project's public benefits outweigh any adverse effects. Certificate Policy Statement, 61,749-50.

FERC's practice has been to accept precedent agreements—binding contracts between the pipeline developer and expected customers that commit to pay for capacity on the pipeline—as evidence of need for a project. FERC's rationale is that customers willing to invest in a project can be a reliable indicator of need. That rationale makes sense where unrelated parties rigorously negotiate the terms of a transaction and bear the risks of their investment decisions. However, that rationale does not hold where a utility with captive end-use customers enters into a precedent agreement with an affiliate developer (i.e., where two affiliates "negotiate" with themselves). In that scenario, the affiliate developer stands to earn revenues, including a generous return on equity, from captive end-use customers who foot the bill for transportation capacity on the pipeline for several decades, regardless of actual use. These types of transactions stifle competition, threaten market integrity, and harm consumers. Indeed, FERC has recognized the threat of this type of affiliate abuse in numerous other contexts.

By narrow majorities, FERC impermissibly failed to address those threats when it relied *exclusively* on Spire STL Pipeline LLC's ("Spire STL") precedent agreement with its affiliate gas utility, Spire Missouri, Inc. ("Spire Missouri") to find "need" for a 65-mile-long pipeline project in Illinois and Missouri ("Project"). R164, *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085, 73 (2018) ("Certificate Order"), R424, *order on reh'g*, 169 FERC ¶ 61,134, P 14 (2019) ("Rehearing Order"); [JA ___; ___]. Skirting its obligations to engage in reasoned decisionmaking and base its decisions on substantial evidence, FERC disclaimed the ability and jurisdiction to "look behind" the Spire STL/Spire Missouri precedent agreement and determine whether the affiliate relationship diminished the extent to which the precedent agreement was evidence of any genuine public need. R164, P 33; R424, P 15; [JA ___; ___].

FERC found that the affiliate-precedent agreement was dispositive of legitimate need despite a factual record showing the opposite. Demand for additional pipeline capacity to transport gas in St. Louis is flat. R164, P 107; [JA ___]. As such, "Spire Missouri is merely shifting its capacity subscription from an existing pipeline to a new one owned by its affiliate." R424, Commissioner Glick's Dissent, P 4; [JA ___]. Given these circumstances, the Missouri Public Service Commission ("Missouri Commission") asked for heightened review from FERC, demonstrating that "the St. Louis market cannot support" the Project's additional capacity. R21, 13; [JA ___]. A neighboring pipeline called the Project "fundamentally uneconomic," noting that costs to Spire Missouri could be "more than half a billion dollars." R139, 5; [JA ___]. Record evidence showed that, without Spire Missouri's ability to shift costs and risks to its captive customers, Spire STL would have no support for its Project. R123, 1-2; [JA ___-___]. In disregarding this evidence and blindly accepting the affiliate agreement as dispositive of genuine need, FERC failed to recognize that the interests of the Spire corporate family are not synonymous with the public interest.

FERC's deference to the "business judgment" of affiliates constitutes an abdication of its independent obligation to assess the need for new pipelines and to protect end-use customers—an obligation this Court has admonished FERC for ignoring in the past and a foundational legal error given the facts of the case. *See Tejas Power Corp. v. FERC*, 908 F.2d 998, 1000-01, 1003-05 (D.C. Cir. 1990). The unnecessary environmental and economic harm from this Project—which runs across a significant amount of private property that had to be taken with eminent domain—

graphically illustrate the costs of FERC's abdication. As put by one Commissioner, FERC's uncritical reliance on the mere existence of an affiliate-precedent agreement to find need for Spire STL's Project turns the Natural Gas Act's public-interest standard into a "meaningless check-the-box exercise." R424, Commissioner Glick's Dissent, PP 1, 7; [JA ___, ___]. Another Commissioner detailed the long-lasting consequences flowing from the Majority's approval, including "a significant risk of overbuilding into a region that cannot support additional pipeline infrastructure." R164, Commissioner LaFleur's Dissent, 6-7; [JA ___-___].

FERC's errors were compounded by its failure to comply with the Certificate Policy Statement's requirement to balance a project's public benefits against its adverse effects. That balancing analysis mandates that a project may not be deemed to be in the public interest unless FERC first finds that public benefits outweigh any adverse effects. Here, FERC engaged in no comparison or quantification whatsoever. Instead, it ignored or minimized the Project's harm, which includes significant environmental impacts, massive use of eminent domain to condemn private land for this unnecessary Project, and very substantial adverse economic and operational impacts on existing pipelines and end users. It also cited no record evidence to support its findings of purported but illusory benefits. R164, P 123; [JA ___]. FERC then summarily concluded that the Project's vague public benefits outweighed its tangible adverse effects. *Id.* Such an arbitrary, subjective approach epitomizes unreasoned decisionmaking.

In relying exclusively on the Spire STL/Spire Missouri precedent agreement to find need, and disregarding evidence showing a lack of need, FERC approved an unnecessary project. Such approval contravenes section 7 of the Natural Gas Act, Supreme Court precedent, FERC's own Certificate Policy Statement, and the substantial record in this proceeding. As such, the Court should vacate FERC's clearly deficient orders as patently arbitrary and capricious.

JURISDICTIONAL STATEMENT

On January 26, 2017, as amended on April 21, 2017, Spire STL applied for a FERC certificate for the Project. R1; R49; [JA ___-___; ___-___]. On May 23, 2017, as amended on May 24, 2017, EDF filed a motion to intervene and protest, challenging Spire STL's reliance on the Spire Missouri precedent agreement to demonstrate need. R57; R58 [JA ___-___; ___-___]. FERC granted EDF's motion to intervene. R164, P 16; [JA ___]. FERC's August 3, 2018 Certificate Order approved Spire STL's application. *Id.*, P 2; [JA___]. On September 4, 2018, EDF timely sought rehearing per Natural Gas Act section 19(a), 15 U.S.C. § 717r(a), and FERC Rules 207 and 713, 18 C.F.R. §§ 385.207, 385.713, challenging FERC's reliance on the Spire STL/Spire Missouri precedent agreement as evidence of need and failure to balance benefits and adverse effects. R179, 2-22; [JA ___-___]. FERC's

November 21, 2019 Rehearing Order rejected EDF's arguments. R424, PP 11-38; [JA ___-___].

EDF timely petitioned this Court for review on January 21, 2020. Jurisdiction is proper under section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b), which authorizes any party "aggrieved" by FERC's orders to seek review by filing a petition in this Court within 60 days of FERC's rehearing order.

STATUTES AND REGULATIONS

Pertinent statutory and regulatory authorities are contained in the attached addendum.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether it was arbitrary and capricious and contrary to law for FERC to:

(1) rely solely on a precedent agreement between affiliated companies to find need for the Project, particularly given challenges to whether the affiliate relationship diminished the agreement's probative value, as well as substantial record evidence demonstrating lack of genuine need; and

(2) find, based on this record, that the Project's public benefits outweigh its adverse effects.

STATEMENT OF THE CASE

Statutory and Regulatory Background. Section 7(c) of the Natural Gas Act permits construction and operation of interstate gas pipelines only if FERC first grants a "certificate of public convenience and necessity." 15 U.S.C. § 717f(c). Section 7(e) provides that a certificate application "shall be denied" unless FERC finds a project "is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). Section 7(e) "requires [FERC] to evaluate all factors bearing on the public interest." *Atl. Ref.*, 360 U.S. at 391. This evaluation is critical because pipelines are substantial infrastructure investments that have the potential to negatively impact customers, landowners, and the environment.

FERC's Certificate Policy Statement establishes the criteria by which FERC determines whether a proposed project is needed and whether the proposed project will serve the public interest. R164, P 26 (citing Certificate Policy Statement); [JA ___]. FERC first determines whether the project can proceed without a subsidy from the applicant's existing customers. Certificate Policy Statement, 61,745-46. Next, FERC assesses potential adverse effects on the applicant's existing customers, neighboring pipelines and their captive customers, landowners and communities, and the environment. *Id.*, 61,747-50; *see City of Oberlin, Ohio v. FERC*, 937 F.3d 599, 602 (D.C. Cir. 2019). If FERC identifies adverse effects, it may only approve the project upon an affirmative finding that public benefits outweigh adverse effects. Certificate Policy Statement, 61,750.

The amount of evidence required to demonstrate need for any particular project depends on the extent of that project's adverse effects. *Id.*, 61,748. Relatively less evidence may be required where a project has few or no adverse impacts. In contrast, "more may be required" if a proposed pipeline has significant environmental consequences or relies on eminent domain to acquire rights-of-way. *See Indep. Pipeline Co.*, 89 FERC ¶ 61,283, 61,845 (1999).

Factual History. For nearly two decades, natural gas consumption in Missouri has been flat. R24, 4; [JA ___]. Numerous pipelines serve the St. Louis region, with excess capacity available. R123, 6; [JA ___]. The region has a failed track record of proposals to build new pipelines. R24, 32-38; [JA ___-___]. In response to one prior proposal, Spire Missouri explained that it "did not make operational or economic sense for either the Company or its customers." R24, 34; [JA ___].

Despite these circumstances, Spire STL announced on August 1, 2016 its intent to build a new pipeline to serve St. Louis. R1, 4; [JA ___]. The only customer willing to execute a precedent agreement was Spire STL's affiliate, Spire Missouri. *Id.*, 3; [JA ___]. But Spire Missouri did not need new capacity. R164, P 107; [JA ___]. It simply proposed to transfer its existing load from a competitor to Spire STL under the pretense of replacing propane facilities and accessing diverse gas supplies. R20, 2-4; [JA ___-___].

FERC Proceeding. Spire STL filed its certificate application on January 26, 2017. R1; [JA ___-___]. The precedent agreement with Spire Missouri was the only evidence of need Spire STL produced. *Id.*, 8-10; [JA ___-___].

Numerous parties protested the application, including EDF; the Missouri Commission; Enable Mississippi River Transmission LLC ("Enable"), an existing pipeline serving Spire Missouri; and Ameren Service Company, Enable's second-largest customer. R57; R21; R24; R25; [JA ___-___; ___-___; ___-___; ___-___]. Protestors cast material doubt on whether the Spire STL/Spire Missouri precedent agreement constituted evidence of genuine market need. *See, e.g.*, R57, 2-12; R24, 31-32; [JA ___-___; ___-___]. Protestors also demonstrated that: (1) there is no demand for new pipeline capacity; (2) the Project would have adverse impacts on Spire Missouri's captive customers, remaining customers of Enable, landowners, and communities within the proposed route; and (3) the adverse impacts outweighed public benefits. *See, e.g.*, R57, 6-8; R24, 32-37; [JA ___-___; ___-___].

FERC Staff issued an Environmental Assessment on September 29, 2017, documenting the Project's extensive impact on the environment, landowners, and communities. R94; [JA ___]. Specifically, the Environmental Assessment acknowledged that the Project would cross over 100 water bodies, including two major rivers that support state and federally listed threatened and endangered species; require a 50-foot right-of-way over 65 miles, with additional land used and occupied during construction; and use drilling methods that could expose nearby waterbodies to lost-drilling fluid. *Id.*, 9, 34, 47, 49; [JA ___, ___, ___, ___].

On August 3, 2018, FERC approved Spire STL's application by a 3-2 vote. R164; [JA ___]. The majority relied exclusively on the existence of the Spire STL/Spire Missouri precedent agreement to establish need. *Id.*, P 73; [JA ___]. Rather than consider whether the affiliate relationship diminished the probative value of the Spire STL/Spire Missouri precedent agreement regarding the question of need, FERC declared it was "not in the position to evaluate Spire Missouri's business decision." *Id.*, P 33; [JA ___]. Accordingly, FERC disregarded: (1) undisputed evidence of flat demand in St. Louis; (2) adverse impacts that Enable and its captive customers would face if Spire Missouri transferred its load from Enable to Spire STL; (3) the absence of market studies by Spire STL to support its assertion of need; (4) prior unsuccessful projects proposed by non-affiliates (and Spire Missouri's lack of interest in those projects); and (5) the lack of "materially significant" cost savings to Spire Missouri's captive customers. *Id.*, PP 81, 84, 107-08; [JA ___, ___, ___-___].

Concerning the Certificate Policy Statement, FERC recognized the adverse impacts on captive customers of existing pipelines. *Id.*, PP 107, 115; [JA ___, ___]. It also found that Spire STL had not finalized easement agreements with affected landowners for "most of the land required for the [P]roject." *Id.*, P 119; [JA ___]. Without these agreements, Spire STL would need to exercise its FERC-enabled authority to seize private property through disruptive condemnation proceedings. Despite this evidence of substantial harm, which FERC never quantified, the majority summarily concluded "that the benefits that the Spire STL Project will provide to the market, enhanced access to diverse supply of resources and the fostering of competitive alternatives, outweigh the potential adverse effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities." *Id.*, P 123; [JA ___].

Several parties, including EDF and Missouri resident Juli Steck,[1] sought rehearing of the Certificate Order. R179; R177; [JA ___-___; ___-___]. With rehearing requests still pending, FERC authorized Spire STL to begin construction and, ultimately, commence service. R195; R198; [JA ___]. Thus, Spire STL seized land through condemnation proceedings before landowners and affected parties could seek judicial review of FERC's actions. On November 21, 2019, more than one year after parties sought rehearing and one week after Spire STL commenced service, FERC denied all rehearing requests, again by divided vote. The two-commissioner majority affirmed the exclusive reliance on the Spire STL/Spire Missouri precedent agreement as evidence of need without questioning whether the affiliate relationship undermined such uncritical reliance. *See* R424, PP 15, 22-24; [JA ___, ___-___]. It also affirmed the prior ruling that FERC appropriately balanced adverse impacts and

[1] On June 23, 2020, Juli Viel filed a Notice to reflect a name change to Julie Steck.

public benefits. *Id.*, PP 29-37; [JA ___-___]. Commissioner Glick dissented, noting that "there is nothing in the record to suggest" that the Project is needed. R424, Commissioner Glick's Dissent, P 1; [JA ___].

SUMMARY OF THE ARGUMENT

The Natural Gas Act's "primary aim" is "to protect consumers against exploitation at the hands of natural gas companies." *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). "The [Natural Gas Act's] certificate provisions 'form the heart of the Act,' and are the means by which [FERC] effectuates" that primary aim. *Great Lakes Gas Transmission Ltd. P'ship v. FERC*, 984 F.2d 426, 431-32 (D.C. Cir. 1993) (quoting *Atl. Ref.*, 360 U.S. at 388). Specifically, sections 7(c) and (e) prohibit FERC from authorizing construction and operation of unnecessary pipelines. 15 U.S.C. §§ 717f(c), (e).

Before FERC, EDF argued that Spire STL failed to meet its burden of demonstrating a need for its proposed Project. EDF's submissions cast substantial doubt on the probative value of the only evidence Spire STL produced to demonstrate need—i.e., the Spire STL/Spire Missouri precedent agreement. EDF also demonstrated that Spire STL's Project was not needed, and that its adverse effects outweighed any public benefits. R57, 6-12; R179, 2-17; [JA ___-___; ___-___].

In the challenged orders, FERC relied on two internally inconsistent rationales to reject EDF's challenge. First, FERC refused to consider whether the Spire STL/Spire Missouri affiliate relationship tainted the evidentiary value of the precedent agreement, claiming that it "is not in the position to evaluate Spire Missouri's business decision." R164, P 33; R424, P 15; [JA ___; ___]. To support that decision, FERC cited its policy not to "look behind" precedent agreements. R164, P 75; R424, P 14; [JA ___; ___]. FERC also asserted that looking behind the Spire STL/Spire Missouri precedent agreement would "interfere" with, or "infringe" upon, the Missouri Commission's jurisdiction. R164, P 87; R424, P 27; [JA ___; ___].

Second, despite claiming not to be in a "position" to evaluate Spire Missouri's "business decision" for self-dealing, and not to have jurisdiction over that issue, FERC also took the opposite position, stating it "evaluated the record and did not find evidence of impropriety or self-dealing to indicate anti-competitive behavior or affiliate abuse." R424, P 15; [JA ___].

The Court should not let FERC have it both ways—both declining to consider evidence of self-dealing and then claiming that it considered the effect of the affiliate relationship on the determination of need. Nonetheless, neither of these rationales has merit. As this Court has explained, FERC's obligations under the Natural Gas Act do not permit uncritical reliance on customer acquiescence because the customer's interests may not be aligned with the interests of end users. *See Tejas*, 908

F.2d at 1000; *see also Mo. Pub. Serv. Comm'n v. FERC*, 337 F.3d 1066, 1076 (D.C. Cir. 2003). It was critical that FERC satisfy its independent obligation here because protestors raised legitimate challenges to whether the Spire STL/Spire Missouri precedent agreement was probative of genuine need. FERC disregarded those challenges in contravention of its obligations to respond meaningfully, engage in reasoned decisionmaking, and base its decisions on substantial evidence. *PPL Wallingford, LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005); 15 U.S.C. 717r(b).

FERC also violated its Certificate Policy Statement by failing to perform any meaningful evaluation of the Project's public benefits and its adverse impacts. Attempting to minimize the Project's adverse effects, FERC claimed that adverse effects on existing customers are the result of Spire Missouri's business decision and that it is not required to protect customers from such decisions. R424, P 31; [JA ___]. FERC is obligated to consider all adverse effects—there is no exception for adverse effects caused by business decisions. R424, Commissioner Glick's Dissent, P 27; [JA ___]. FERC's "analysis" of adverse effects on landowners, communities, and the environment was inadequate, including a failure to address the impacts of eminent domain. *Id.*, Commissioner Glick's Dissent P 25; [JA ___-___].

Concerning benefits, FERC claimed, without any citation to the record, that that the Project's benefits included "enhanced access to diverse supply of resources and the fostering of competitive alternatives." R164, P 123; [JA ___]. The record does not support that finding.

Compounding these deficiencies, FERC never quantified adverse effects and benefits or meaningfully compared the two. Rather, it summarily concluded that public benefits outweigh adverse effects. *Id.*; [JA ___]. FERC's "fail[ure] to seriously weigh the meager evidence of the need for the pipeline against harms caused by its construction," including harms to "landowners, communities[,] and the environment," was arbitrary and capricious. R424, Commissioner Glick's Dissent, P 28; [JA ___].

These errors demonstrate that FERC had no lawful basis for issuing a certificate to Spire STL. Consequently, the Court should vacate the challenged orders.

STANDING

EDF members and their families own, live, and recreate on land that is transected by Spire STL's pipeline. FERC's certificate orders confer on Spire STL the right to exercise eminent domain to acquire "any land necessary to the project's completion" and permit Spire STL to construct and operate the pipeline. *City of Oberlin*, 937 F.3d at 602; 15 U.S.C. § 717f(h). Construction of the pipeline and its continued presence and operation causes concrete injury to EDF members. *See* Addendum on Standing, Declaration of Jacob Gettings, Jr. ("Gettings Decl."); *id.*, Declaration of Greg Stout ("Stout Decl."); *id.*, Declaration of Kenneth Davis ("Davis Decl."); *id.*, Declaration of Patrick Parker ("Parker Decl.").

EDF members own property along the route of the pipeline and have been subject to condemnation actions brought by Spire STL, using its FERC-conferred eminent domain authority. *Id.*, Gettings Decl. ¶¶ 4-5, 11-12; *id.*, Stout Decl. ¶¶ 3, 12-13; *id.*, Davis Decl. ¶¶ 4-5, 10-11; *id.*, Parker Decl. ¶¶ 4, 11-12. These members suffer a cognizable injury. *Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 271-72 (D.C. Cir. 2015) (citing *B&J Oil & Gas v. FERC*, 353 F.3d 71, 74-75 (D.C. Cir. 2004)) ("[A] landowner made subject to eminent domain by a decision of the Commission has been injured in fact because the landowner will be forced either to sell its property to the pipeline company or to suffer the property to be taken through eminent domain.").

EDF members have experienced diminished enjoyment of recreational activities and decreased aesthetic benefit of natural spaces due to degradation caused by the pipeline. Addendum on Standing, Davis Decl. ¶¶ 13-15 (describing decreased use and enjoyment of land for hunting due to disruption of hunting grounds from pipeline construction, deforestation, and damage to soil by pipeline developer); *id.*, Parker Decl. ¶¶ 20-23 (describing decreased enjoyment of land for outdoor recreation due to disruption of pipeline); *id.*, Stout Decl. ¶¶ 15, 18, 25 (explaining that his conservation prairie is partially destroyed by construction and presence of pipeline, resulting in loss of prairie plant species and butterflies and other pollinators that he enjoyed on the property; and tree removal has caused aesthetic harm to his enjoyment of the land). *See Friends of the Earth v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000) (quoting *Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972)) (stating that individuals show injury in fact when they "aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity").

EDF members are coping with damage to soil and other land features, caused by the Project, that negatively affects their use of the land for agriculture and cattle grazing. Addendum on Standing, Parker Decl. ¶¶ 14-19; *id.*, Gettings Decl. ¶¶ 16-21. *See Sierra Club v. FERC*, 827 F.3d 36, 44 (D.C. Cir. 2016) (stating that an individual experiencing "disruption of daily activities" suffers concrete, particularized injury). The soil damage caused by the construction process is enduring and requires significant investment to rectify. *Id.*, Stout Decl. ¶¶ 19-20, 23; *id.*, Gettings Decl. ¶¶ 22, 24. EDF members are concerned that this harm will be ongoing and that additional damage could recur in the future while the pipeline is present on their land. *Id.*, Parker Decl. ¶ 18; *id.*, Stout Decl. ¶¶ 15, 25.

EDF members are concerned about living or spending time in close proximity to an operational pipeline, out of fear that a rupture or other pipeline failure could result in a dangerous explosion on their land. *Id.*, Gettings Decl. ¶¶ 14-15, 22; *id.*, Parker Decl. ¶¶ 21, 24. Some members have modified their plans for future use of the land, or are reassessing whether to pursue such plans, due to concerns about the presence of an operational pipeline crossing their property. *Id.*, Davis Decl. ¶¶ 20-21; *id.*, Gettings Decl. ¶ 15.

The injuries-in-fact to EDF members are traceable to the challenged orders because those orders issued the certificate of public convenience and necessity that allowed Spire STL to proceed with eminent domain proceedings, preconstruction and construction activities, and operation of the unnecessary pipeline. Harm to EDF's members is redressable by a ruling from this Court vacating the challenged orders. *See Gunpowder Riverkeeper*, 807 F.3d at 272. EDF therefore has standing.

ARGUMENT

FERC's orders represent an abdication of its statutory obligation to protect the public by ensuring that new interstate pipelines will serve a genuine need. Instead of rigorously analyzing whether the public interest will be served, FERC performed an illusory "analysis" that rubber-stamped an unnecessary pipeline based solely on the existence of an affiliate precedent agreement that required captive ratepayers to support a project that benefits the affiliates' owner. The aligned interests of the affiliates, and the ability to pass costs through to captive customers, would put any reasonably vigilant regulator on high alert. At a minimum, it would warrant FERC's performing *some* analysis of whether the affiliate relationship diminished the evidentiary value of the precedent agreement when evaluating need. But a majority ignored the potential for affiliate abuse entirely. Rather than fulfill FERC's obligation to protect the public interest, the majority facilitated harm to the public interest by allowing an unnecessary pipeline to negatively impact customers, landowners, and the environment. The certificate should have been denied, and FERC's orders should be vacated.

A. Standard of Review.

The Court must set aside FERC's orders if they are arbitrary and capricious or otherwise contrary to law. *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 358 (D.C. Cir. 2017); 5 U.S.C. § 706(2)(A). To survive review under that standard, FERC must engage in "reasoned decisionmaking, which requires it to "examine the relevant data and articulate a satisfactory explanation for its actions, including a 'rational connection between the facts found and the choice made.'" *Motor Vehicles Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43, 52 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Court only accepts FERC's factual findings as conclusive if they are supported by substantial evidence. 15 U.S.C. § 717r(b).

B. It Is Patently Arbitrary and Capricious and Contrary to Law to Authorize Construction and Operation of Unnecessary Pipelines.

The Natural Gas Act's "primary aim" is "to protect consumers against exploitation at the hands of natural gas companies." *Hope*, 320 U.S. at 610. The

Natural Gas Act's certificate provisions—sections 7(c) and 7(e), 15 U.S.C. §§ 717f(c), (e)—"form the 'heart of the Act,' and are the means by which [FERC] effectuates" that primary aim. *Great Lakes Gas*, 984 F.2d at 431-32 (quoting *Atl. Ref.*, 360 U.S. at 388). Those two provisions work in tandem to define the showing applicants must make to obtain a certificate and the evidentiary findings necessary for FERC to conclude that a proposed pipeline is needed. The determination of need is critical given the drastic consequences these projects can have on customers, landowners, and the environment. Consequently, robust analysis is required to assure the public that sufficient benefits exist to outweigh those negative impacts. Without that assurance, FERC runs the risk of certificating unnecessary pipelines, which would be a violation of sections 7(c) and 7(e) and, therefore, arbitrary and capricious.

C. FERC's Uncritical, Exclusive Reliance on the Spire STL/Spire Missouri Precedent Agreement to Find Need is Arbitrary and Capricious.

To fulfill its duty as the "guardian of the public interest," *FPC v. Transcon. Gas Pipeline Corp.*, 365 U.S. 1, 7 (1961), FERC must "evaluate all factors bearing on the public interest" in assessing certificate applications. *Atl. Ref.*, 360 U.S. at 391; Certificate Policy Statement, 61,747. Despite the requirement to consider all relevant factors reflecting on the prospective need for a project, FERC's actual practice is to rely heavily, if not exclusively, on only one factor—i.e., the existence of precedent agreements. *See Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,042, P 35 (2018). This Court has affirmed FERC's reliance on precedent agreements to support a finding of need because, "[i]f there were no objective market demand for the additional gas, no rational company would spend money to secure the excess capacity." *See Twp. of Bordentown, N.J. v. FERC*, 903 F.3d 234, 262-63 (D.C. Cir. 2018). But that logic does not apply where, as here, there is only one precedent agreement and it is between affiliates, with costs borne by captive customers.

Rather than negotiate "rigorously" and "selfishly" in their own best interest, affiliates have incentives to pursue transactions that benefit the corporate enterprise. *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,048, P 96 (2014). For these reasons, affiliate transactions—as FERC itself has previously found—require greater scrutiny. *See Am. L.A. Pipe Line Co.*, Opinion No. 387, 29 F.P.C. 932, 935-36 (1963); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, P 49 (2009); *TECO Power Servs. Corp. and Tampa Elec. Co.*, 52 FERC ¶ 61,191, 61,697 (1990).

Here, Spire Missouri has little incentive to avoid costs from Spire STL—in fact, it has a strong incentive to incur them. Utilities such as Spire Missouri pass the costs of interstate transportation service on to their retail customers. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 967-68 (1986). Under the agreement, Spire Missouri will pay Spire STL for transportation capacity every hour of every day for the next 20 years regardless of whether Spire Missouri in fact uses that capacity. While FERC's reliance on "business judgment" may warrant some deference when the transaction is between unaffiliated parties, the mere invocation of a "business decision" without more "is simply a talismanic phrase that does not advance reasoned decision making" when the business judgement is tainted by affiliated interests.[2] R424, Commissioner Glick's Dissent, P 23 (citation omitted); [JA ___].

Protestors demonstrated the skewed incentives underpinning the Spire STL/Spire Missouri precedent agreement. As evidence of the lack of arm's-length negotiations, they showed there was no meaningful distinction between Spire STL and Spire Missouri—but rather that they acted together to advance a shared corporate goal. *See* R38, 8 (where Spire STL speaks for Spire Missouri's business decision); *id.*, 12-13 (where Spire STL purports to address Spire Missouri's "operational considerations" and its "goal of enhancing supply path diversity"); [JA ___]. Because no reasonable company would subscribe to capacity on a new pipeline when demand is flat, existing capacity is sufficient, and the new pipeline does not offer cost savings, protestors explained that advancing the corporate enterprise's interests is the only

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[2] Contradicting its prior statement that it was not in the position to evaluate Spire Missouri's "business decision," FERC accepted Spire Missouri's claim that it must replace its propane peaking facilities with Spire STL capacity. *See* R164, P 108; [JA ___]. Record evidence made clear that Spire Missouri used the propane peaking facilities on only three days out of the past five years, severely undercutting this justification. R137, 26; [JA___].

rational explanation for Spire Missouri's decision. *See, e.g.*, R164, P 18 (summarizing protests); R424, Commissioner Glick's Dissent, P 14; (noting doubts about whether unaffiliated parties would have entered the same agreement); [JA ___; ___]. Namely, revenue that Spire Missouri collects from its captive ratepayers for service on Spire STL would go to Spire-family shareholders, not shareholders of the unaffiliated neighboring pipeline. R146, 11 n.47; [JA ___]. As Commissioner Glick explained, "[t]he record is replete with evidence suggesting that the [Project] is a two-hundred-million-dollar effort to enrich Spire's corporate parent rather than a needed piece of energy infrastructure." R424, Commissioner Glick's Dissent, P 3; [JA ___].

FERC disregarded this evidence, claiming that it was "not in the position to evaluate Spire Missouri's business decision to enter into a contract with Spire [STL]." R424, P 15; [JA ___]. FERC provided two reasons for its refusal to engage that critical issue, neither of which has merit.

1. The Court Should Reject FERC's Blind Adherence to Its Policy Not to Look Behind Any Precedent Agreement.

FERC claimed that the sole, dispositive question is whether a precedent agreement is long-term and binding. R164, P 75 n.136 (citing *Millennium Pipeline Co., L.P.*, 100 FERC ¶ 61,244, P 57(2002)); R424, P 14 n.39 (same); [JA ___; ___]. If those conditions are present, FERC disclaimed the ability to "look behind" precedent agreements and consider whether they are demonstrative of legitimate need, even when between affiliates. R164, P 75; R424, P 14; [JA ___; ___]. FERC claimed this

Court affirmed that approach in four cases: (1) *Minisink Residents for Environmental Preservation and Safety v. FERC*, 762 F.3d 97 (D.C. Cir. 2014); (2) *Myersville Citizens for a Rural Community v. FERC*, 783 F.3d 1301 (D.C. Cir. 2015); (3) *City of Oberlin*; and (4) *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019) (unpublished). *See* R164, PP 72, 75; R424, PP 14-15; [JA ___, ___; ___-___].

None of the Court's prior decisions support findings that (i) a single precedent agreement with an affiliate is dispositive of need, (ii) FERC need not consider evidence that calls into question the probative value of the affiliate-precedent agreement, or (iii) the existence of the affiliate-precedent agreement permits FERC to disregard record evidence of lack of need.

First, none of the four cases on which FERC relied addressed the situation here—i.e., FERC's exclusive reliance on a developer's precedent agreement with an affiliate with captive customers to find need. Indeed, rather than provide a basis for sustaining FERC's actions, the prior decisions demonstrate that FERC's uncritical reliance on the Spire STL/Spire Missouri precedent agreement as the sole evidence of need is arbitrary and capricious. In *Minisink*, FERC did not rely exclusively on the existence of a precedent agreement to find need. Rather, the Court noted FERC's analysis of benefits like "increased capacity to customers in the high-demand northeast market." *Minisink*, 762 F.3d at 104. Similarly, in *Myersville*, the Court noted FERC's analysis, and rejection, of studies that purportedly showed declining demand in the area. *Myersville*, 783 F.3d at 1311. There are no similar findings or benefits here. It is undisputed that load is flat and existing capacity is sufficient to serve Spire Missouri's demand. R164, P 107; R424, P 24; [JA ___; ___].

Likewise, *City of Oberlin* cited FERC's finding that existing pipelines could not meet demand to be served by the new project. *City of Oberlin*, 937 F.3d at 605. Here, an existing pipeline could meet, and in fact was meeting, Spire Missouri's demand. *City of Oberlin* also noted FERC's affirmative finding, which no petitioner challenged, that there was no self-dealing. *Id.* Here, FERC declined to engage in a similar analysis, citing its policy of not looking behind precedent agreements. In addition, multiple parties challenged the probative value of the Spire STL/Spire Missouri precedent agreement.

FERC's reliance on the unpublished opinion in *Appalachian Voices* is similarly misplaced. There, "neither any existing or proposed pipeline nor any pipeline customers have suggested that the…[p]roject would have negative impacts on them, as one would expect them to do if they anticipated being burdened with the cost of unused capacity." *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, P 42 (2017). Further, the applicant provided a market study to support its assertion that the project was needed. Those facts are absent here.

None of these cases supports a finding that precedent agreements "always represent accurate, impartial, and complete evidence of need." R164, Commissioner

Glick's Dissent, 2; [JA ___]. Rather, they demonstrate the type of analysis that is required of FERC—analysis that FERC did not engage in here despite unrebutted evidence of the absence of genuine need. Absent that analysis, the Natural Gas Act's public interest requirement and the Certificate Policy Statement's analytical framework would be meaningless. The Court should avoid this result by vacating the orders.

2. State Commission Reviews Do Not Relieve FERC of Its Independent Statutory Obligation to Protect the Public Interest.

FERC also claimed that it lacked jurisdiction to analyze whether the affiliate relationship diminished the probative value of the Spire STL/Spire Missouri precedent agreement. *See* R164, P 33 ("Spire Missouri's business decision to enter into a contract with Spire [STL] . . . will be evaluated by the state commission."); R424, P 16 ("[L]ooking behind the precedent agreements . . . would infringe upon the role of state regulators in determining the prudence of expenditures by the utilities that they regulate."); [JA ___; ___]. FERC's claims ignore the Natural Gas Act's consumer-protection aim and FERC's independent obligation to protect the public interest. This Court has chastised FERC for blindly accepting agreements entered into by retail gas utilities, noting the ability of those utilities to pass costs on to captive customers. In *Tejas*, the Court found that FERC did not satisfy the substantial evidence standard where it "failed to justify its heavy reliance upon the [customers'] having agreed to its terms." *Tejas*, 908 F.2d at 1000-01. Articulating a rationale that applies equally here, the Court explained that FERC's "rel[iance] upon the [customers'] agreement" calls into question the evidentiary value of that agreement, "a question made salient by the possibility that, as utilities subject to cost-based price regulation, the [customers] might with reason assume that they can recover from end users any costs they incur under this settlement." *Id.*, 1005. Moreover, "before relying on contracts between a pipeline and its wholesale customers, FERC must 'address the question of whether' the interests of those customers 'are sufficiently likely to be congruent with those of ultimate consumers' that 'will bear the cost' of the agreed-upon rates in their monthly energy bills." *Mo. Pub. Serv. Comm'n*, 337 F.3d at 1076 (quoting *Tejas*, 908 F.2d at 1003-04). Orders that "do not consider these relevant factors [are] arbitrary and capricious." *Id.* (citing *N. Mun. Distribs. Group v. FERC*, 165 F.3d 935, 941 (D.C. Cir. 1999)).

Critically, *Spire Missouri's captive ratepayers*, not Spire Missouri, are the end-users responsible for the costs of the Project over the 20-year term of the affiliate agreement. Given the shifting of risk to captive ratepayers, Spire Missouri's business decision to enter into an affiliate agreement should not be dispositive of need.

Even a cursory review of the evidence below should have prompted FERC to conclude that the affiliate relationship and the ability to pass costs to Spire Missouri's captive customers diminish the evidentiary value of the Spire STL/Spire Missouri precedent agreement in the need determination. Spire Missouri *conceded* that the

Project would not be financially viable without the ability to recover costs from its captive customers. R123, 1-2; [JA ___-___]. Record evidence showed that the ability to pass costs through to retail customers, including the 14% rate-of-return for new-entrant pipelines, is a powerful incentive for utilities to contract with their affiliates and generate revenues for the parent corporation. *See, e.g.*, R24, 31-32; [JA ___-___]. This evidence should have triggered heightened scrutiny of the merits (and demerits) of the Spire STL/Spire Missouri precedent agreement, just as similar concerns trigger heightened scrutiny in other contexts. *See Boston Edison Co.*, 55 FERC ¶ 61,382, 62,168 (1991); *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 122 FERC ¶ 61,155, P 4 (2008). But FERC took a different approach and ignored whether the affiliate relationship diminishes the Spire STL/Spire Missouri agreement's probative value.

Moreover, the state regulator in this case, the Missouri Commission, specifically requested a "much more rigorous review" given the affiliate relationship and the ability to pass costs on to retail customers. R21, 9-10; [JA ___-___]. In making that request, the Missouri Commission "dispute[d] that competition between pipelines is or can be 'fair' when the pipelines are competing for the business of a single dominant customer and that customer is an affiliate of one of the pipelines." *Id.*, 9 n.18; [JA ___]. Rather, the Missouri Commission's express position in this case demonstrates the insufficiency of FERC's deferral to the Missouri Commission's processes to address concerns that the Spire STL/Spire Missouri precedent agreement is not evidence of genuine need.

Finally, FERC's purported concern about "infring[ing] upon the role of state regulators in determining the prudence of expenditures by the utilities that they regulate" (R424, P 16; [JA ___]) is undermined by FERC's practice in other cases. For example, *Cove Point LNG* involved a state-regulated entity's purchase of liquefied natural gas peaking services from an affiliate. The applicant claimed that state-commission regulation mitigated any risk of self-dealing. FERC rejected that claim because state commission prudency hearings provided limited relief and could be "lengthy, resource-consuming and uncertain in their outcome." *Cove Point LNG Ltd. P'ship*, 68 FERC ¶ 61,128, 61,619 (1994); *see also Boston Edison*, 55 FERC ¶ 61,382, 62,169-70 (disagreeing that FERC "need not worry about self-dealing because the [state regulator] ultimately will have to approve the…project," and recognizing FERC's "independent responsibility to protect against affiliate abuse."). The same rationale applies here and undermines FERC's strained reliance on state regulation to avoid its obligations under the Natural Gas Act.

If affirmed, the "practical effect" of FERC's orders "is that no regulatory body would ever be able to conduct a holistic assessment of the need for a proposed pipeline simply by virtue of the fact that Congress divided jurisdiction over the natural gas sector between the federal and state governments." R424, Commissioner Glick's

Dissent, P 20; [JA ___]. The Court should vacate the orders because the Natural Gas Act does not permit that result.

3. FERC Erred by Disregarding Overwhelming Record Evidence Demonstrating Lack of Need.

As explained above, FERC justified its refusal to analyze the Spire STL/Spire Missouri precedent agreement by claiming that it was "not in the position to evaluate Spire Missouri's business decision." R164, P 33; R424, P 15 [JA ___; ___]. Remarkably, FERC also took the opposite position, claiming that it had performed the very evaluation it was in no position to perform. According to FERC, it "evaluated the record and did not find evidence of impropriety or self-dealing to indicate anti-competitive behavior or affiliate abuse." R424, P 15; [JA ___]. The record does not show that FERC performed any such analysis. The cites that FERC provided at footnote 45 of the Rehearing Order to support its claim—i.e., "*Id.*, PP 77, 83, & 86."— appear to be erroneous and there is no other evidence of such a review. What the orders do contain is FERC's refusal to "look behind" the affiliate-precedent agreement. The arbitrary and capricious standard does not permit FERC to affirmatively deny the existence of evidence it declined to look for.

Had FERC performed such an analysis, it would have been compelled to either reject the application as unsupported or, at a minimum, determine that the Spire STL/Spire Missouri precedent agreement is not, in itself, dispositive of need. FERC's majority acknowledged the Project is not needed to serve new load. R164, P 107; [JA

___]. Thus, "the record does not contain any evidence—let alone substantial evidence—suggesting a need for additional interstate natural gas pipeline capacity in the St. Louis region." R424, Commissioner Glick's Dissent, P 4; [JA ___]. Treating it as dispositive that Spire STL entered into an affiliate-precedent agreement with Spire Missouri was plainly insufficient.

FERC's Certificate Policy Statement acknowledges this very situation: "A project that has precedent agreements with multiple new customers may present a greater indication of need than a project with only a precedent agreement with an affiliate." Certificate Policy Statement, 61,748. Consistent with Supreme Court precedent, FERC's Certificate Policy Statement addresses this situation by requiring FERC to "consider all relevant factors reflecting…need" instead of "relying on only one test." *Id.*, 61,747; *Atl. Ref.*, 360 U.S. at 391. The proper evaluation would have required consideration of evidence such as "demand projections, potential cost savings to consumers, or comparison of projected demand with the amount of capacity currently serving the market." R164, Commissioner LaFleur's Dissent, 2 (citing *id.*, P 72); R424, Commissioner Glick's Dissent, P 14; [JA ___; ___].

Had FERC considered such evidence, it would have been compelled to conclude that the Project is not needed. It is an undisputed (and indisputable) fact that load growth in St. Louis is flat. R164, P 107; [JA ___]. As such, "Spire Missouri is merely shifting its capacity subscription from an existing pipeline to a new one owned by its affiliate." R424, Commissioner Glick's Dissent, P 4; [JA ___-___]. FERC conceded that any cost savings to consumers are negligible at best. *See* R164, P 108; [JA ___]. These two considerations—alone—call into question need for the pipeline. *See Empire Pipeline, Inc.*, 166 FERC ¶ 61,172 (2018) (Glick, Comm'r, dissenting, P 6) ("[I]f a proposed pipeline neither increases the supply of natural gas available to consumers nor decreases the price that those consumers would pay, it is hard to imagine why that pipeline would be 'needed' in the first place.").

But FERC then ignored additional record evidence submitted by Enable's expert finding—across 12 scenarios—that the Project is "fundamentally uneconomic" and "would result in increased costs to [Spire Missouri]." R139, 5; [JA ___]. Record evidence detailed the failed track record of prior, unsuccessful projects. R24, 32-38; [JA ___-___]. Remarkably, when presented with these facts, FERC found no need to consider anything other than whether Spire STL and Spire Missouri entered into a precedent agreement.

FERC ignored substantial record evidence demonstrating an abject lack of need for the Project and challenging the probative value of the affiliate agreement in FERC's evaluation of need. Those actions constitute reversible error.

D. There is No Support for FERC's Conclusion that the Project's Public Benefits Outweigh Its Adverse Effects.

FERC arbitrarily and capriciously concluded that Spire STL's Project is in the public interest despite record evidence of significant adverse effects and illusory public benefits. FERC must evaluate all factors bearing on the public interest in its review of a certificate application, and it may only approve a project if the public benefits outweigh the adverse effects. *Atl. Ref.*, 360 U.S. at 391; *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017); Certificate Policy Statement, 61,750. Adverse effects may include "a deleterious environmental impact on the surrounding community," *City of Oberlin*, 937 F.3d at 599, "increased rates for preexisting customers, degradation in service, unfair competition, or negative impact on the environment or landowners' property," *Myersville*, 783 F.3d at 1309. Public benefits extend beyond just the benefits to the pipeline developer and can include access to new supplies and lower costs to consumers. *Certification of New Interstate Natural Gas Pipeline Facilities*, 90 FERC ¶ 61,128, 61,396 (2000).

Here, FERC disregarded record evidence and summarily concluded that the Spire STL Project provided benefits that "outweigh the potential adverse effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities." R164, P 123; [JA ___]. FERC failed to "examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs.*, 463 U.S. at 43. FERC's finding is arbitrary and capricious because it is not supported by substantial evidence nor any meaningful comparative analysis of public benefits and adverse effects.

Furthermore, FERC embraces a proportional approach in its Certificate Policy Statement, where the amount of evidence required to establish need will depend on the potential adverse effects of the proposed project. *Id.* 61,748; *see, e.g.*, *Arlington Storage Co., LLC*, 128 FERC ¶ 61,261, PP 11-13 (2009) (demanding heightened demonstration of need where evidence shows adverse effects to landowners). Because the record here indicates that the Project will have significant adverse effects, FERC should have demanded a heightened demonstration of need for the project.

1. FERC's Assessment of Adverse Effects Disregards Substantial Record Evidence.

The record establishes that the Project's adverse effects on existing pipelines and their customers, landowners, and the environment are sweeping and severe. *See, e.g.*, R24, 11-19, 48-51; R179, 19-21; R172, 1-2; [JA ___-___, ___-___; ___-___; ___-___]. FERC either minimized or disregarded those adverse effects, and failed to engage in any meaningful comparison of adverse effects and benefits, as required by the Certificate Policy Statement. R424; Commissioner Glick's Dissent, PP 24-28; [JA ___-___]. FERC's failure to meaningfully address the Project's adverse impacts requires vacatur.

Harm to Landowners, Communities, and the Environment. In assessing pipeline certificate applications, FERC's objectives include avoiding "unnecessary environmental and community impacts" and "the unneeded exercise of eminent domain." Certificate Policy Statement, 61,737, 61,743. FERC must consider those adverse effects in determining whether a project is in the public interest and may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment." *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019).

FERC's finding that Spire STL had taken adequate steps to minimize adverse impacts on landowners and surrounding communities is simply untethered from the record evidence. R424, P 34; [JA ___]. When FERC issued the Certificate Order, Spire STL had not reached agreements with affected landowners for "most of the land required for the project," R164, P 119; [JA ___], indicating opposition to the pipeline and that Spire STL would have to seize private property against the will of landowners. When FERC issued its Rehearing Order, Spire STL had prosecuted eminent domain actions against over 100 people and entities involving hundreds of acres of privately-owned land.[3] Rather than minimize adverse impacts, record

[3] Spire STL has brought condemnation actions against roughly 405 acres of land in three federal district courts in Missouri and Illinois. *See* Docket, *Spire STL Pipeline LLC v. 3.31 Acres of Land*, No. 4:2018-CV-1327 (RWS) (DDN) (E.D. Mo.) (listing consolidated condemnation actions against roughly 150 acres of land); *Spire STL Pipeline LLC v. 3.31 Acres of Land*, No. 4:2018-CV-1327 (RWS) (DDN), 2018 WL 6528667, *8 (E.D. Mo. Dec. 12, 2018) (granting Spire STL's motion to condemn the land in the consolidated actions); Memorandum Supporting Second Motion for a Preliminary Injunction, No. 4:2018-CV-1327 (Feb. 8, 2019), Exh. A (describing an additional roughly 30 acres of land that Spire STL sought to condemn); *Spire STL Pipeline LLC v. 3.31 Acres of Land*, No. 4:2018-CV-1327 (RWS) (DDN), 2019 WL 1232026, *2 (E.D. Mo. Mar. 15, 2019) (granting Spire STL's second motion); Verified Complaint for Condemnation of Pipeline Easements, No. 3:18-CV-1502 (NJR) (SCW) (S.D. Ill. Aug. 15, 2018) (listing consolidated condemnation actions against roughly 80 acres); *Spire STL Pipeline LLC v. Turman*, No. 3:18-CV-1502 (NJR) (SCW),

evidence shows that Spire STL exacerbated them by an "unethical" lack of communication with the impacted communities. R172, 2; [JA ___].

The severe impact of this Project on local communities is distinct from other instances where FERC has approved certificates. FERC has found that benefits outweighed adverse effects where record evidence established that a pipeline developer did not need to exercise eminent domain to acquire any of the property. *Millennium Pipeline Co. L.L.C.*, 145 FERC ¶ 61,007, P 28 (2013) (finding that the developer had taken appropriate steps to minimize impacts to landowners and communities where the developer "purchased all of the property rights necessary for its project from willing sellers and will not need to exercise eminent domain to acquire any of the property rights it will need for the project"). And FERC has found a project to be in the public interest where the proposed facilities would be constructed on existing rights-of-way or on land owned by the pipeline. *Transcon. Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,152, P 18 (2013). The circumstances involving Spire STL are not comparable. Spire STL's heavy reliance on the momentous, disruptive power

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2018 WL 6523087, *13 (S.D. Ill. Dec. 12, 2018) (granting Spire STL's motion); Verified Complaint for Condemnation of Pipeline Easements, No. 3:18-CV-03204 (SEM) (TSH) (C.D. Ill. Aug. 15, 2018) (listing consolidated condemnation actions against roughly 145 acres); Order, *Spire STL Pipeline LLC v. Betty Ann Jefferson*, No. 3:18-CV-03204 (SEM) (TSH), 2018 WL 8244004, *11 (C.D. Ill. Dec. 14, 2018) (granting Spire STL's motion for a preliminary injunction for immediate possession of land).

of eminent domain highlights FERC's failure to ensure that the Project satisfies the public interest standard of the Natural Gas Act.

FERC's consideration of the Project's environmental impacts was likewise insufficient. In the single sentence in the Certificate Order finding that the benefits of the project outweigh the harms, FERC fails to even mention environmental impacts. R164, P 123; [JA ___]. And its subsequent "Environmental Analysis" is dedicated only to an assertion that it fulfilled its obligations under the National Environmental Policy Act. *Id.*, PP 202, 242; [JA ___, ___]. FERC's Environmental Assessment details a broad range of environmental harms that are ignored in FERC's balancing "analysis." R94, 9, 22, 34, 47, 49; [JA ___, ___, ___, ___, ___].

FERC provided no rationale for its disregard of environmental impacts beyond a non-sequitur: "Spire STL filed a written statement affirming that it executed contracts for service at the levels provided for in the precedent agreements as required by the Certificate Order, thus ensuring avoidance of unnecessary environmental impacts." R424, P 37; [JA ___]. That conclusory statement does not constitute reasoned decisionmaking. As then-Commissioner LaFleur opined, "[g]iven the lack of demonstrated need for the project, this environmental harm can be avoided altogether." R164, Commissioner LaFleur's Dissent, 7; [JA ___].

Harm to Existing Pipelines and their Customers. FERC considers whether a proposed project is intended to replace service on other pipelines and whether affected pipelines have protested the application. *See* Certificate Policy Statement, 61,748; *PennEast Pipeline Co. LLC*, 162 FERC ¶ 61,053, P 37 (2018) ("PennEast's project is not intended to replace service on other pipelines, and no pipelines or their customers have filed adverse comments regarding PennEast's proposal."); *Mountain Valley Pipeline,* 161 FERC ¶ 61,043, P 56 (because "[n]o transportation service provider or captive customer…protested this project," FERC found the "no adverse impact on existing pipelines or their captive customers"). Both factors were present here but FERC arbitrarily disregarded them based on the existence of the Spire STL/Spire Missouri precedent agreement.

Enable, the neighboring pipeline, demonstrated that the Project would have adverse effects on it, its customers, Spire Missouri's customers, and all consumers of natural gas around St. Louis. R24, 11-19; [JA ___-___]. FERC acknowledged these impacts, but dismissed them to avoid second-guessing Spire Missouri's business decision. R164, P 115; [JA ___]. According to FERC, review of adverse impacts "is not synonymous with protecting incumbent pipelines from the risk of loss of market share to a new entrant." R424, P 31; R164, P 122; [JA ___; ___]. Regardless of whether an adverse impact is the result of a business decision, FERC must still consider it to ensure that only projects in the public interest are approved. FERC is obligated to protect captive shippers on existing pipelines from adverse impacts of certificating new pipelines for which no incremental demand has been demonstrated.

Certificate Policy Statement, 61,747-50. The existence of an affiliate agreement does not allow FERC to disregard that obligation.

Moreover, FERC suggested that it would only review adverse impacts of Spire Missouri's business decision if there was "evidence of anticompetitive behavior." R164, P 122; [JA ___]. But the record contains substantial evidence of anticompetitive behavior and self-dealing, and FERC found it was "not in the position to evaluate Spire Missouri's business decision." R424, P 33; [JA ___].

Enable detailed the operational impacts that would occur on its system if FERC approved the Spire STL pipeline. R24, 11-19, 48-50; [JA ___-___, ___-___]. After issuing a request for additional information from Enable, FERC stated it could not verify the claims and then ultimately concluded that the extent of any impacts are speculative. R164, PP 110, 115; [JA ___, ___]. When FERC fails to consider the very evidence that would trigger a more meaningful review, its protection is illusory and its certificate orders are arbitrary and capricious.

2. The Record Does Not Support FERC's Finding of "Benefits," or Demonstrate a Meaningful Comparison of Benefits and Adverse Effects.

The record of this proceeding shows that FERC abdicated its duty to make a determination of public benefit grounded in facts. All FERC could conjure to show benefits was the affiliate precedent agreement and a vague reference to "enhanced access to diverse supply sources and the fostering of competitive alternatives." *Id.*, P

123; [JA ___]. In a region already served by numerous pipelines, with flat or decreasing demand, this perfunctory assertion of benefits cannot balance out the significant adverse impacts of the pipeline. FERC simply made conclusory statements unsupported by record evidence. *See* R424, Commissioner Glick's Dissent, P 25 ("The Certificate Order included a single conclusory sentence stating that the benefits outweigh the potential impacts and [the Rehearing Order] reaches the same conclusion in a similarly terse fashion.") (footnotes omitted); [JA ___].

Assuming, *arguendo*, that there were record support for FERC's conclusory statements, FERC still failed to engage in reasoned decisionmaking because it provided no meaningful comparison of benefits and adverse impacts. Rather, FERC skipped that critical step and summarily concluded that the vague benefits outweigh the distinctly identified adverse impacts. R164, P 123; R424, P 24; [JA ___; ___]. The public convenience and necessity and the arbitrary and capricious standard require a more fulsome analysis before a project may be deemed necessary. *See* Certificate Policy Statement, 61,748. ("Vague assertions of public benefits are not sufficient"). Absent a transparent weighing of costs and benefits, FERC has no basis for concluding that the Project's benefits outweighed its adverse effects. This deficiency further demonstrates that the certificate orders lack merit and should be vacated.

CONCLUSION

The Court should vacate the Federal Energy Regulatory Commission's orders.

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CERTIFICATE OF COMPLIANCE

Per Fed. R. App. P. 29(a)(4)(G), Fed. R. App. P. 29(a)(5), and the Court's March 19, 2020 order, I certify that this Initial Brief complies with the type-volume limitations because its textual portions, including headings, footnotes, and quotations contain 9,486 words of the 16,000 total words allocated to Petitioners, as counted by the "Word Count" feature of Microsoft Word 2010, the program with which this brief was prepared. This word count excludes: (1) the cover page; (2) the table of contents; (3) the Rule 26.1 corporate disclosure statement; (4) certificates; (5) the glossary of abbreviated terms and terms of art; and (6) the signature block.

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ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Case Nos. 20-1016 and 20-1017 (Consolidated)

**ENVIRONMENTAL DEFENSE FUND
Petitioner,**

v.

**FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.**

**ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION**

PETITIONER ENVIRONMENTAL DEFENSE FUND'S STATUTORY ADDENDUM

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5 USCS § 706, Part 1 of 3

Current through Public Law 116-145, approved June 17, 2020.

United States Code Service > TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES (§§ 101 — 11001) > Part I. The Agencies Generally (Chs. 1 — 9) > CHAPTER 7. Judicial Review (§§ 701 — 706)

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1)compel agency action unlawfully withheld or unreasonably delayed; and

(2)hold unlawful and set aside agency action, findings, and conclusions found to be—

(A)arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B)contrary to constitutional right, power, privilege, or immunity;

(C)in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D)without observance of procedure required by law;

(E)unsupported by substantial evidence in a case subject to sections 556 and 557 of this title [*5 USCS §§ 556* and *557*] or otherwise reviewed on the record of an agency hearing provided by statute; or

(F)unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

15 USCS § 717f

Current through Public Law 116-145, approved June 17, 2020.

United States Code Service > TITLE 15. COMMERCE AND TRADE (Chs. 1 — 116) > CHAPTER 15B. NATURAL GAS (§§ 717 — 717z)

§ 717f. Construction, extension, or abandonment of facilities

(a) Extension or improvement of facilities on order of court; notice and hearing. Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided,* That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) Abandonment of facilities or services; approval of Commission. No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) Certificate of public convenience and necessity.

(1)

(A) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

(B) In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(2) The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses, as defined, by rule, by the Commission, in the case of—

(A)natural gas sold by the producer to such person; and

(B)natural gas produced by such person.

(d) Application for certificate of public convenience and necessity. Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Granting of certificate of public convenience and necessity. Except in the cases governed by the provisos contained in subsection (c)(1) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act [*15 USCS §§ 717* et seq.] and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the isssuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) Determination of service area; jurisdiction of transportation to ultimate customers.

(1) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization; and

(2) If the Commission has determined a service area pursuant to this subsection, transportation to ultimate consumers in such service area by the holder of such service area determination, even if across State lines, shall be subject to the exclusive jurisdiction of the State commission in the State in which the gas is consumed. This section shall not apply to the transportation of natural gas to another natural gas company.

(g) Certificate of public convenience and necessity for service of area already being served. Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) Right of eminent domain for construction of pipelines, etc. When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided,* That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

15 USCS § 717r

Current through Public Law 116-145, approved June 17, 2020.

United States Code Service > TITLE 15. COMMERCE AND TRADE (Chs. 1 — 116) > CHAPTER 15B. NATURAL GAS (§§ 717 — 717z)

§ 717r. Rehearing and review

(a) Application for rehearing; time. Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act [*15 USCS §§ 717* et seq.] to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act [*15 USCS §§ 717* et seq.].

(b) Review of Commission order. Any party to a proceeding under this Act [*15 USCS §§ 717* et seq.] aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the [circuit] court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in *section 2112 of title 28, United States Code* [*28 USCS § 2112*]. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendations, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended [*28 USCS § 1254*].

(c) Stay of Commission order. The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of

18 CFR 385.207

This document is current through the June 19, 2020 issue of the Federal Register with the exception of the amendment appearing at 85 FR 37250. Title 3 is current through June 5, 2020.

Code of Federal Regulations > TITLE 18 -- CONSERVATION OF POWER AND WATER RESOURCES > CHAPTER I -- FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY > PART 385--RULES OF PRACTICE AND PROCEDURE PART 385 -- > SUBPART B -- PLEADINGS, TARIFF AND RATE FILINGS, NOTICES OF TARIFF OR RATE EXAMINATION, ORDERS TO SHOW CAUSE, INTERVENTION, AND SUMMARY DISPOSITION

§ 385.207 Petitions (Rule 207).

(a) General rule. A person must file a petition when seeking:

(1) Relief under subpart I, J, or K of this part;

(2)A declaratory order or rule to terminate a controversy or remove uncertainty;

(3) Action on appeal from a staff action, other than a decision or ruling of a presiding officer, under Rule 1902;

(4)A rule of general applicability; or

(5) Any other action which is in the discretion of the Commission and for which this chapter prescribes no other form of pleading.

(b) Declarations of intent under the Federal Power Act. For purposes of this part, a declaration of intent under section 23(b) of the Federal Power Act is treated as a petition for a declaratory order.

(c) Except as provided in § 381.302(b), each petition for issuance of a declaratory order must be accompanied by the fee prescribed in § 381.302(a).

18 CFR 385.713

This document is current through the June 19, 2020 issue of the Federal Register with the exception of the amendment appearing at 85 FR 37250. Title 3 is current through June 5, 2020.

Code of Federal Regulations > TITLE 18 -- CONSERVATION OF POWER AND WATER RESOURCES > CHAPTER I -- FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY > PART 385--RULES OF PRACTICE AND PROCEDURE PART 385 -- > SUBPART G -- DECISIONS

§ 385.713 Request for rehearing (Rule 713).

(a) Applicability.

(1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;

(iv) On review of an initial decision without exceptions under Rule 712; and

(v) On any other action designated as a final decision by the Commission for purposes of rehearing.

(3) For the purposes of rehearing under this section, any initial decision under Rule 709 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision is initiated under Rule 712.

(b) Time for filing; who may file. A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

(c) Content of request. Any request for rehearing must:

(1) State concisely the alleged error in the final decision or final order;

(2) Conform to the requirements in Rule 203(a), which are applicable to pleadings, and, in addition, include a separate section entitled "Statement of Issues," listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and

(3) Set forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.

(d) Answers.

(1) The Commission will not permit answers to requests for rehearing.

(2) The Commission may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.

(e) Request is not a stay. Unless othewise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order.

(f) Commission action on rehearing. Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.

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ON PETITIONS FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

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DECLARATION OF JACOB GETTINGS, JR.

I, Jacob Gettings, Jr., declare as follows:

1. My name is Jacob Gettings, Jr. I am over the age of 18 and competent to give this declaration. The following information is based on my experience and personal knowledge.

2. I am a member of Environmental Defense Fund. I have been a member since before the commencement of this lawsuit.

3. I primarily reside at 3471 Lollar Branch Road, Sullivan, Missouri.

4. I reside part-time in Jerseyville, Illinois, where I own a home that is connected to my family farm. I own the home on six acres of land, and my wife Patricia Gettings and I are part owners—through a family trust—of a 280-acre tract of land that has been in the family since 1965 (with the exception of 20 acres that we purchased later in the 1960s). In consultation with my parents and siblings, I oversee the day-to-day management of the land. My wife and I stay at our Jerseyville home three to four times per month. We check on the property to make sure things are running smoothly on the farm and we enjoy visiting our home.

5. The Spire STL Pipeline crosses our Jerseyville property for a distance of approximately half a mile. When I first heard about the project, I was opposed to the pipeline crossing my land because it would disrupt farming, violate the integrity of the property by transecting the land, negatively affect my family's

future plans for the land, and pose a safety risk to me, my family, my house, and my land. Those concerns have become a reality, and in some ways the construction process was even more disruptive and harmful to my property than I expected. I continue to be opposed to the Spire STL Pipeline crossing my land and suffer continuing harms from the presence of the pipeline on my land.

History and Use of the Property

6. The property has historically been used for agriculture. In my experience it is highly productive farmland with high-quality topsoil. My family has grown corn, soybeans, and wheat on the property. We have been good stewards of the land, and I did everything I could to build our soil productivity. I began implementing organic practices and crop rotations in the 1990s, and we previously maintained a section of the farm where we grew certified organic soybeans and corn.

7. Currently, an individual leases most of the land from me and farms it. He grows corn and soybeans. I have great confidence that our tenant exercises care and attention to be a good steward of our agricultural land.

8. In the future, I expect that the property will become part of a solar farm. I entered an agreement with Orion Renewable Energy Group in 2016, a company that is planning to develop a solar energy generation field in southwest Illinois. It is my understanding that Orion is in the process of finalizing its

approvals and funding for the solar project. When the project is fully approved and funded, Orion will install solar panels on my family property and it will be part of a 1,000-acre solar field. Under the agreement with Orion, the developer will lease my land for at least 30 years, with the option to extend for another 20 years. I am excited to see my family's land contribute to the production of clean energy.

Effect of the Spire STL Pipeline

9. I was first approached by a representative of Spire STL in spring 2018. The representative offered a contract to buy out the section of my land where Spire STL planned to build the pipeline. I did not want to sell because I did not want my property to be disrupted by the construction process and the ongoing operation of a pipeline. The representative emphasized to me from the beginning that Spire STL could file an eminent domain lawsuit to take my land if I declined to sell it to them outright. I was upset and concerned.

10. From my research and knowledge as a resident of this region, it does not seem like a new pipeline was necessary to serve St. Louis. I am not opposed to all pipelines, but I do not think my land should be damaged to construct something that is not actually needed.

11. Because I am opposed to the pipeline crossing my property, I did not allow Spire STL staff or contractors onto my land to conduct surveys or any other work until I was required to. I am aware that the Federal Energy Regulatory

Commission approved Spire STL's application to build the pipeline in August 2018. I am aware that later that month, Spire STL filed a condemnation action in the U.S. District Court for the Southern District of Illinois, seeking possession of my land and the land of others in the area who did not want to accept the developer's buyout offer. Through the condemnation action, Spire STL seeks to take title to approximately seven acres of land on my family's property.

12. I am aware that on December 12, 2018, the court issued an order granting Spire STL's request for a preliminary injunction, allowing the developer to take immediate possession of parcels of land. As a result of that order, Spire STL was allowed to take possession of a section of my land, 90 feet wide and about half a mile long. The 90-foot width includes a 50-foot permanent easement and a 40-foot temporary easement for use during construction.

13. Spire STL began construction of the pipeline on my property in March 2019, and the work was ongoing until September 2019. The construction process caused long-term damage to the land that I continue to cope with now, and the presence of the pipeline is harmful.

14. The pipeline route is within approximately 200 feet of my home and grain storage bins located next to the house. I feel uneasy knowing that a pipeline is that close to my house. Especially now that I am aware there is gas running through the pipeline, I do not feel comfortable being there. I am worried about the

possibility, even if unlikely, of a catastrophic pipeline failure. If such a failure occurred, I am worried that the explosion could damage or destroy my house and grain bins, and result in death or serious injury to anyone inside the house. Since the Spire STL Pipeline was constructed across my family's farmland, this is a new risk I have to live with that wasn't there before.

15. The pipeline crosses my property along the edge near Grafton Lane, a county road. My family has considered the idea of developing that segment of our land into residences or businesses that could be sectioned off into smaller lots and sold. It would make sense to do this along Grafton Lane because houses or businesses there would be easily accessible from the road, and it would be easy to section off that area on the edge of our property into individual lots. As long as the pipeline is on our land, we cannot pursue this opportunity. The route of the pipeline is close to Grafton Lane, and therefore poses safety concerns. I also do not think it would be a good investment because I would not expect potential buyers to be interested in purchasing a home or business in such close proximity to a natural gas pipeline, due to safety concerns. This section of our property is now essentially unavailable for development.

16. Additionally, most of the Spire STL pipeline route on my property cuts through farmland, and the construction of the pipeline caused a significant loss of topsoil on the fields. The topsoil on my land has accumulated over decades, and

is important to its health, productivity, and value as farmland. Topsoil is where nutrient transfer takes place between soil and plants, and the roots of crops will grow deeper if there is a deeper layer of topsoil with more organic matter.

17. Spire STL did not preserve topsoil or otherwise restore the land to its prior condition, as I understand they were required to do. Based on assessments of my soil conducted in January 2019 with assistance from the local farm cooperative, and in June 2020 with assistance from the Illinois Department of Agriculture, I have approximately 21 to 28 inches of topsoil on my undamaged land—approximately two feet. I observed the construction crew set aside a much smaller depth of topsoil in piles along the pipeline route—ostensibly so that it could be added back as the top layer of soil after the pipeline was installed in the ground. But this process was not completed correctly, causing the topsoil to be mixed in with the other soil layers and lost. I conducted additional soil assessments in April and May 2020 at several points along the pipeline route, with the assistance of a soil scientist and land consultant, and those assessments show that in the aftermath of the Spire STL construction I have less than a foot of topsoil remaining.

18. The construction process also resulted in serious soil compaction along the path of the pipeline. Compacted soil contains less organic activity, making it less productive for crops. Additionally, compacted soil cannot absorb water, and can cause flooding in surrounding areas as water flows away from the

most compacted area to find a place to go. In periods of rainfall, for example, the land along either side of the pipeline route is adversely affected by this deluge of water. It makes the surrounding soil vulnerable to erosion and flooding.

19. The photo below, which was taken in November 2019, shows compacted soil and a large area of standing water on my property along the path of the Spire STL pipeline:

20. Additionally, we have subsurface drain tiles installed on my farm. The installation cost tens of thousands of dollars, and the tiles ensure good water flow across my property and prevent crops from being flooded, improving the productivity of our farmland. The tiles were installed every 50 feet, and each tile extends about a quarter of a mile across the fields. Spire STL damaged our

subsurface drain tiles where it dug into the earth and installed the pipeline. Although Spire STL installed a "bridge" that is supposed to reconnect my drain tiles across the pipeline, I do not expect the bridge to be effective in the long term as the pipeline settles into the ground.

21. The damage to the drain tiles causes me to expect that the land on either side of the pipeline will be less productive for crops. Furthermore, Orion, the solar developer that has contracted to lease my land and install a solar field in the coming years, was impressed by the subsurface drain tile system. I know that Orion viewed my drain tiles as a positive attribute of the land, because it is important to avoid standing water in the area where the solar panels will be installed. I am concerned that the damage to my drain tiles caused by Spire STL could create complications for the installation of solar panels in the future.

22. I feel that the presence of the pipeline on my family's property is invasive and harmful. The path of the pipeline is a scar on the land, a muddy dirt track where plants are only growing in very slowly right now. It will take years to return that soil to its natural state. And I feel less safe on my own property, staying at my house, because I know that a pipeline with natural gas flowing through it is buried in my backyard. For these reasons, among others, the pipeline is interfering with my enjoyment of my land.

23. Because of the ongoing injury I am dealing with from the Spire STL pipeline, I am opposed to the pipeline. I believe that the withdrawal of Spire STL's certificate under the Natural Gas Act would reduce or eliminate the risk of a pipeline rupture that could harm me, my family, and property. I would sleep better at night knowing that there is not gas flowing through the pipeline.

24. I am aware that the condemnation action, whereby Spire STL has taken possession and seeks to take title to an easement across my land, is premised upon FERC having issued a Certificate of Public Convenience and Necessity for the project. I am concerned that the harms I have detailed to the farmland—loss of topsoil, soil compaction, and damage to drain tiles—could recur in the future because the Certificate and corresponding condemnation action allow Spire STL to access its easement across my property at any time. Even if the soil is remediated in the near term, the damage could recur if Spire STL drives equipment on the pipeline route to conduct repairs or monitor the pipeline.

25. I anticipate that I will be in a better position to regain full possession of my land and avoid losing any property through condemnation if the FERC certificate is vacated. I anticipate that I will be in a better position to seek remediation of the damage to my farmland if the FERC certificate is vacated. My family and I will be in a better position to make full use and enjoyment of the land if there is no longer an easement and an active pipeline crossing the property. We

will feel much safer staying at our house, we will have more land available to use for the solar farm, and it will be easier to restore proper drainage to the fields and develop the land close to Grafton Lane.

I declare that the foregoing is true and correct.

Jacob Gettings Jr

Dated: June 23, 2020

Jacob Gettings, Jr.

DECLARATION OF GREGORY STOUT

I, Gregory Stout, declare as follows:

1. My name is Gregory Stout. I am over the age of 18 and competent to give this declaration. The following information is based on my experience and personal knowledge.

2. I am a member of Environmental Defense Fund. I have been a member since before the commencement of this lawsuit.

3. My wife, Connie Stout, and I own 40 acres of land in Jersey County, Illinois. We purchased the property in 1995, built our home, and have lived and farmed there ever since. The property includes a conservation prairie area, a pond, a barn, the house, and a wooded area behind the house. Our driveway is about half a mile long, and the house is set back from the road, making it secluded and peaceful.

4. The property is essentially made up of two parts: the front half is a conservation prairie area, and the back half consists of a yard around the house, a barn, and an approximately one-acre pond. The driveway runs the length of the property, from front to back.

5. The Spire STL Pipeline runs across the front of our property along the road, bisecting the conservation prairie and our driveway, including a stand of trees that I planted along the driveway for our aesthetic enjoyment. I have been opposed

to the pipeline crossing my land because of the damage to the conservation prairie area—including the underlying soil—and the disruption the construction has caused to my family. After the Federal Energy Regulatory Commission (FERC) issued the Certificate approving the pipeline, Spire STL has been dismissive of my concerns and requests for remediation. I remain opposed to the pipeline and my wife and I suffer continuing harms from the presence of the pipeline on our land.

Front of Property: Conservation Prairie Area

6. The front tract, closest to the road, was historically used for agriculture. We used to grow corn and soybeans, and occasionally leased the land to tenants who continued to use it for agriculture, growing similar crops. In 2015, we converted that section of our property to a conservation prairie area through programs with the United States Department of Agriculture (USDA) that compensate landowners who create and maintain habitat areas for pollinators. Of the 20 acres, a 19-acre tract is enrolled in a conservation prairie program with USDA, and a separate one-acre tract is part of a different USDA program to promote monarch butterfly populations. The distribution of plant species in these areas is similar, but we grow more milkweed in the one-acre tract since monarch caterpillars rely on milkweed as a food source.

7. I invested considerable time, energy, and resources to convert our farmland to a conservation prairie. I reviewed guidance from the USDA and took

classes to learn how to develop the conservation prairie in order to ensure compliance with the USDA's regulations, including traveling to a nursery in Minnesota for a training class. Now I also help to train other people who want to participate in the USDA Conservation Reserve program. I started preparing my land for the conservation prairie program months in advance, dedicating a growing season to preparing the soil by tilling it through the spring and summer, preventing weed growth, and then planting oats and rye at the end of summer to prevent erosion. The following winter I planted the seeds for the prairie. I used a seed mix that contains about 30 different plant species, with a few grasses and primarily flowering forbs, which are good for the pollinators. During the first year that the prairie plants sprouted, they only grew to a few inches tall, so it was very important to control the weeds during the summer. I spent up to two hours each day, five days a week, weeding the land with my hands during the first summer the prairie plants were growing. Some of the plant species take several years to start blooming, and therefore the prairie on my property was improving year-over-year before the pipeline was built. For example, last year—before construction began on the pipeline—one of my compass plants, a prairie wildflower that is native to Illinois, bloomed for the first time.

8. I am proud of my work and it is important to me to continue to maintain the conservation prairie and provide habitat for native plants and

pollinators. Plants on the prairie typically start blooming as early as May, and different species will bloom sequentially through October or until the first frost. As my conservation prairie tract has developed, I see more pollinators, including several native bee species, monarch butterflies, other butterfly species, and hummingbirds. The property is along a monarch butterfly migration route that runs along the Mississippi River, and last year we saw populations of monarchs pass through our prairie as late as the first week of October heading south.

9. The USDA provides compensation on an annual basis through the Conservation Reserve program for the acreage that I maintain up to the agency's standards for pollinator-friendly prairie land. Regardless of my continued eligibility and participation in the USDA program, I would like to maintain the prairie habitat on my land for its aesthetic and ecological value.

Rear of Property: House, Pond, Driveway

10. On the back half of the property, we have our home, barn, and a pond. From the front of the house, you can see across the pond to the prairie, and around the sides and back of the house is forested. We like that our home provides a peaceful retreat. When our kids were younger, they would fish in the pond out front. Our driveway runs from the house out to the road, and about 20 years ago I planted tulip poplar trees to line either side of the driveway for their aesthetic

value, to create shade, and because tulip poplars are great trees for pollinators, producing abundant nectar and pollen.

11. My wife and I purchased this land with the intent of keeping it in the family and passing it on to our children, but we have discussed whether to sell it as a result of the harms we have experienced and continue to experience, described herein. On the other hand, we feel concerned that the presence of an operational pipeline running through the property would lower the property value and make it more challenging to sell.

Impact of Spire STL Pipeline

12. I am aware that FERC approved Spire STL's application to build the pipeline in August 2018. I am aware that later that month, Spire STL filed a condemnation action in the U.S. District Court for the Southern District of Illinois, seeking possession of my land and the land of others in the area who did not want to accept the developer's buyout offer. Through the condemnation action, Spire STL seeks to take title to approximately three acres of land out of my family's property.

13. I am aware that on December 12, 2018, the court issued an order granting Spire STL's request for a preliminary injunction, allowing the developer to take immediate possession of parcels of land. As a result of that order, Spire STL was allowed to take possession of a piece of my land that is 115 feet wide,

which includes a 50-foot permanent easement and a 65-foot wide temporary easement and workspace for use during construction. Spire STL's temporary easement on my property is narrower at the point where it crosses the driveway, but is otherwise 65 feet wide.

14. When Spire STL initially contacted me about the project, the company promised not to cut the tulip poplar trees down, committed to bore underneath the driveway and avoid damaging it, and committed to remediate any impact to the prairie caused by construction. Representatives of Spire STL assured me that the construction process would not change the look of the property. But Spire STL never put those commitments in their written offers to purchase my land, which, in addition to the fact that I did not want a pipeline to cut across my property, was part of why I did not want to accept their offers. Ultimately, Spire STL failed to follow through on its commitments, and the construction process has unquestionably altered the appearance of the land and threatens my eligibility for the USDA programs.

15. Spire STL began construction on my property in early May 2019. On the very first day Spire STL representatives were on my property for construction, they cut down eight of the tulip poplar trees. Because I had planted all of those poplars at the same time twenty years ago, we had a beautiful line of trees that were all approximately the same size and height along the length of the driveway.

The loss of those trees is a harm to my enjoyment of the land and the aesthetics that my family and I cultivated on the property. Spire STL has not replaced these trees. Even if Spire STL did so, it would take years for the trees to grow to the size and height of the trees that Spire STL cut down—and the replaced trees would never match the size of the original tulip poplars that I planted twenty years ago. Furthermore, as long as Spire STL has an easement across my land, I will be concerned that they could return with construction equipment and harm or remove any replacement trees that are planted.

16. On multiple occasions during the construction of the Spire STL pipeline, I saw large construction equipment parked or driving on my paved driveway, including once when the contractor had parked a large crane on my driveway well outside of the designated easement granted to the company. On several occasions, I arrived home and there was construction equipment blocking my driveway, so I had to sit and wait for the crew to move out of the way before I could get to my house, disrupting access to my own property.

17. As a result of the practices of Spire STL and its construction crew, my driveway was damaged and has not been adequately repaired, with the result that it is now in worse condition than before the pipeline was built. Spire STL's heavy equipment penetrated my driveway up to a foot and a half deep during construction of the pipeline. They later repaved a section of the driveway with an asphalt patch,

but as a former manager of design and construction projects at Boeing, I believe that Spire STL's repairs are not up to the standards that I would have followed. There are cracks in the driveway and it is no longer even in certain parts. In my assessment, my driveway now needs to be dug out and the base needs to be recompacted. I anticipate that this will cost tens of thousands of dollars. Additionally, I am concerned that damage to my driveway could happen again because the FERC Certificate and corresponding condemnation action allow Spire STL to access its easement across my property at any time.

18. The process of constructing the Spire STL pipeline and its aftermath also caused significant, long-term damage to the conservation prairie on the front section of my property. This is distressing, because my wife's and my enjoyment of the conservation prairie has been disrupted, and our participation in the USDA conservation program could be threatened in the long term. The path of the pipeline through the conservation prairie we have been cultivating is now a roadway of compacted soil, mud, standing water, and weeds. This path of destruction is at least 95 feet wide, and wider in some parts. Because a large section of the conservation prairie area was destroyed by Spire STL crews, there is less habitat available for pollinator species such as monarch butterflies.

19. The topsoil on my land is important because it is nutrient-rich soil that facilitates growth of agricultural crops or, more recently, native prairie species that

support pollinators. I am aware that the Spire STL construction crew was required to make a separate pile of the topsoil while digging to lay the pipeline so that they could restore the topsoil layer after the pipe was installed. The construction crew did separate about 6-8 inches of topsoil, but they failed to till the topsoil mound to prevent weeds from going to seed, and when the soil was restored after the pipeline had been laid in the ground, the construction crew mixed all of the topsoil in with the subsoil during the grading process.

20. A soil scientist working with Diamond Consulting recently visited my property to test the soil in February 2020. The test indicated that I have an average of 8 inches of topsoil in the prairie that was undamaged by the pipeline, and that I have zero inches of topsoil where the soil is disturbed due to the pipeline. As a result of the pipeline construction and related activities, I lost valuable topsoil that was mixed with the subsoil, and all of the soil along the pipeline route was compacted. This has resulted in an ongoing problem of standing water on the front land tract. It also means that the soil will have to go through a considerable restoration process before it can grow prairie plants that were previously thriving.

21. Below is a photo of the front section of my property—the conservation prairie area—taken in September 2017 before the pipeline was built.

22. Below is a photo of the same area, taken in January 2020 after the Spire STL pipeline was constructed and went into operation.

23. The construction crew appeared to complete construction on my property in June 2019, but they continued to use the easement as a roadway to travel on with heavy equipment through late September 2019. Thus, the blooming season was lost and I also lost time that could have been spent restoring the soil. That ongoing traffic was disruptive to my use and enjoyment of my property.

24. More recently, in April 2020, a representative of Spire STL came out and planted seeds in the easement area, using a tractor and a seed drill. This is presumably part of Spire STL's effort to restore my land as they are required to, but the effort has been unhelpful and incomplete. First, because Spire STL previously neglected the soil, weeds have already gone to seed, which is a major obstacle to re-growing the prairie plants that were destroyed by the pipeline construction. Furthermore, the Spire STL representative used a seed drill, which plants the seeds too deep and not properly dispersed. Finally, I don't know what seeds were planted, so I don't know if the seeds are the correct prairie plant seed mix that I requested the company replant on my land. I tried to approach the tractor operator as he was seeding and he waved me away and would not stop—it was hard to tell what he was saying, but I perceived that he was unwilling to speak with me directly. Since those seeds were planted in April I have walked the land ten times and have seen only a few dozen prairie plants come up—while there should be roughly 60,000 plants over the three acres of Spire STL's easement. This is an

indication that Spire STL's construction process caused long-term damage to my prairie that is not being remediated.

25. I am concerned that this disruption of my land—soil compaction, soil mixing, and destruction of the prairie—could recur in the future. Spire STL has a continuing right to access my property under the Certificate and the condemnation action, and I worry that any restoration efforts I might undertake could be undermined if representatives of the pipeline reentered my property to conduct maintenance, repairs, or other activities related to the operation of the pipeline. As I stated previously, I purchased my property because I wanted a peaceful and quiet place that my family and I enjoy. For many years, it was just that. But the construction of the Spire STL pipeline disrupted our daily life as we dealt with the presence of heavy equipment and construction crews, and the operation of the pipeline feels like a constant unwelcome presence on my land.

26. I am aware that the condemnation action, whereby Spire STL has taken possession and seeks to take title to an easement across my land, is premised upon FERC having issued a Certificate of Public Convenience and Necessity for the project. I anticipate that my wife and I will be in a better position to regain full possession of our land and avoid losing any property through condemnation if the FERC Certificate is vacated. I anticipate that my family and I will be able to make full use of the land if there is no longer an easement and an active pipeline crossing

the property. We will be able to pursue restoration of the section of the conservation prairie that has been destroyed and continue to improve that habitat for pollinators, and we will be able to pursue restoration of our tulip poplars through replanting of the lost trees.

I declare that the foregoing is true and correct.

Dated: June 25, 2020

Gregory Stout

DECLARATION OF KENNETH DAVIS

I, Kenneth Davis, declare as follows:

1. My name is Kenneth Davis. I am over the age of 18 and competent to give this declaration. The following information is based on my experience and personal knowledge.

2. I am a member of Environmental Defense Fund. I have been a member since before the commencement of this lawsuit.

3. I reside in Scott County, Illinois.

4. My wife Kelly and I own a 40-acre property in Scott County, Illinois that I, along with family and friends, use for hunting and other outdoor recreation. I live just up the road, about six miles away, so I frequently visit the property. We purchased this tract of land 14 years ago because I wanted to be able to have my own land for hunting, and because Kelly and I planned to eventually build a home here in a more secluded area.

5. The Spire STL Pipeline crosses our property for a distance of approximately 1,500 feet, and the pipeline route runs through the middle of the property. I am opposed to the pipeline crossing my land. The presence of the Spire STL pipeline affects my use and enjoyment of the land because the construction process altered my hunting grounds and damaged the soil, and my wife and I have abandoned our plans to build a home on this land due to the presence of the

pipeline. I don't feel comfortable going back to the land the way I used to before the pipeline was installed and went into operation, and I would prefer that the pipeline be removed and my land restored.

History and Use of the Property

6. I am an outdoorsman who loves to be in the timber or out on the water. I love deer hunting, turkey hunting, and bass fishing. When I first started hunting, I could go anywhere in Scott County, but over the years access to property has become more restricted as more people lease out land specifically for hunting. I decided that it would be best to be able to enjoy my own land, so I bought the 40-acre property. It is primarily wooded, which is ideal for hunting, and there are some open fields that I essentially use as food plots for the deer. I typically invite a friend to mow the fields for hay three times per year, because mowing exposes the clover and chicory underneath, which are rich in nutrients and attract deer.

7. I use the property for bow hunting and shotgun hunting for deer during October through January. I usually take two or three does each year for meat, though my main passion is buck hunting. In the spring I go turkey hunting on the property. In the summer I like to hike around on the land, especially with my grandchildren.

8. My family also uses and enjoys the land. My uncle and cousins go foraging for mushrooms, and my two young grandsons have also come mushroom

hunting. I taught my 16-year-old and 8-year-old granddaughters to hunt on this property, and they come with me occasionally. I try to introduce my grandchildren to nature, and we walk around and find snakes and turtles. They like to walk through the creek that runs through the property and collect rocks to bring home. I am also teaching them to recognize itchweed and poison ivy. I derive great enjoyment from spending time outdoors on the land with my family.

Effect of the Spire STL Pipeline

9. I was first approached by a land agent on behalf of Spire STL in 2016, and was subsequently approached by other representatives of the company. The land agent and representatives offered to buy an easement on the section of my land where Spire STL planned to build the pipeline. I did not accept any offer because I did not want a pipeline constructed on my land. Representatives of Spire STL began accessing my land to conduct surveys in 2017, before Spire STL had received approval from FERC to construct the pipeline. They arrived to conduct the surveys without advance notice during deer season. I informed the crews that I did not want them on the property during hunting season, because I was frequently using the land at that time and their presence was both disruptive and unsafe.

10. I am aware that the Federal Energy Regulatory Commission approved Spire STL's application to build the pipeline in August 2018. I am aware that later that month, Spire STL filed a condemnation action in the U.S. District Court for

the Central District of Illinois, seeking possession of my land and the land of others in the area who did not want to accept the developer's buyout offer. Through the condemnation action, Spire STL seeks to take title to approximately 3.6 acres of land on my property.

11. I am aware that on December 14, 2018, the court issued an order granting Spire STL's request for a preliminary injunction, allowing the developer to take immediate possession of parcels of land. As a result of that order, Spire STL was allowed to take possession of a 1,500-foot-long strip of land across my property ranging from 90 to 140 feet wide. This includes a 50-foot permanent easement and a temporary easement ranging from 40 feet to 90 feet in width for use during construction.

12. Spire STL began construction of the pipeline on my property in January 2019, and the work was ongoing until June 2019. Spire STL construction crews have continued to access my land occasionally after construction appeared to be done. The construction process has caused long-term damage to the land. I feel less safe visiting my land when I know that the pipeline is present and operating.

13. My use and enjoyment of the land for its recreational and aesthetic value is diminished by the Spire STL pipeline. I love this land, but it does not feel the same to spend time here now that the pipeline is present. The construction of the pipeline resulted in significant deforestation, soil compaction, and

destabilization of land formations on my property. For example, there is a ridge on the property that was perfect for buck hunting. Deer have an excellent sense of smell, so it is important to be able to position yourself where they won't smell you while you are hunting. On the ridge, I had a good spot to watch an acorn patch where the bucks like to gather but they were unlikely to catch my scent. In that spot, I used to be able to see up to 20 bucks in one day. Now, as a result of the construction process and the presence of the pipeline, my hunting grounds are diminished because many of the trees in that area were removed and there is a big open strip of land through the middle of the woods. The exposed open air makes it easier for the bucks to catch my scent. The pipeline route goes along the acorn patch, so the wooded area where I would stake out and watch for bucks is exposed as a result of the deforestation.

14. The quality of my hunting experience has diminished since the Spire STL pipeline was built. When I am on the land, I prefer to stay away from the pipeline route because I find it sad and upsetting to look at, so now I try to hunt on other sections of the property. During the 2019-2020 hunting season, I never got close to a big buck. One day earlier this year, for example, I went buck hunting and only saw three bucks. I was watching a doe when a Spire STL helicopter flew low overhead—I am aware that they do flyovers sometimes to monitor the pipeline—and scared off the doe. I didn't see another deer for hours.

15. The construction of the pipeline was highly damaging to my land and soil. I tried to convince Spire STL to at least choose a different route across my property that would be less damaging to my hunting grounds and the trees, but they declined to do so; and Spire STL did not provide the 45-day notice that I understand they were required to provide before cutting down trees on the property. I believe that at least 90 large trees were removed from my property, in addition to some small trees.

16. The photo below, taken in January 2020, shows the open land where the pipeline runs through my property. The area that is now open, empty ground used to be forested.

17. The Spire STL construction crews also failed to preserve the topsoil on my land during the construction process, so the topsoil was mixed in with the

subsoil, which makes it harder for new plants to grow and hold the soil in place. Additionally, the Spire STL crews used a bulldozer to flatten the soil after the pipeline was covered up, resulting in severe soil compaction. Because the soil is so compacted, there is often standing water in the fields along the route of the pipeline that is unable to drain for days at a time. Another result of the compacted soil is that all of the standing water creates deep voids in the ground, because the water has to flow somewhere and forms channels and ditches that continue to deepen over time. When I was turkey hunting this spring, I fell into one of the ditches. I am concerned about the worsening condition of the ground, which could continue to destabilize over time.

18. The photo below, taken in January 2020, shows an area where standing water is sitting on the heavily compacted soil.

19. There is a creek that runs through my property, and the bank on one side of the creek is eroding and slipping because the Spire STL construction crews removed the trees that were helping to hold the bank in place. Part of the bank has already come off since the Spire STL crews removed the nearby trees, and now the bank is very steep. I am concerned that the bank will continue to erode, which will alter the landscape of my property and could interrupt the flow of the creek.

20. My wife Kelly and I have decided not to move forward with building a home on our 40-acre property because of the presence of the Spire STL pipeline. We had a water line installed on the property about 10 years ago because we were planning to build a house and live on this property full time. There is a road that

provides access to an open field on the north end of the property, and we had the water line installed there because we intended to build the house in the field near the road. The Spire STL pipeline crosses that road and the water line is roughly 50 feet from the pipeline, just barely outside the permanent easement. My wife and I have decided not to build a house here because we would not feel safe living in such close proximity to an operational pipeline. It makes me sad to think about the plans we had for a secluded home on this land, but it would not be the same to build a house here now that the pipeline is here. I am concerned that there could be a catastrophic failure of the pipeline that could cause harm to me and my family if we were living nearby.

21. I have decided not to build any permanent structures on the property due to the presence of the Spire STL pipeline. There is currently a lean-to shed on the property, but I had planned to build a nicer shed to house my tractor. Now that the pipeline crosses my land, I am reluctant to spend money to construct any permanent structure, and I am reluctant to store my nice tractor nearby because I am concerned about the possibility of a gas explosion. I am also concerned that the land has lost its value due to the presence of the pipeline, limiting my ability to sell it if I no longer derive enjoyment from the land.

22. I am opposed to the Spire STL pipeline. I believe that the withdrawal of Spire STL's certificate under the Natural Gas Act would reduce or eliminate the risk of a pipeline rupture that could harm me, my family, and property.

23. I am aware that the condemnation action, whereby Spire STL has taken possession and seeks to take title to an easement across my land, is premised upon FERC having issued a Certificate of Public Convenience and Necessity for the project. I am concerned that loss of trees, loss of topsoil, soil compaction, and erosion could all worsen in the future because the Certificate and corresponding condemnation action allow Spire STL to access its easement across my property on an ongoing basis. Even if the soil was remediated and cover crops were planted, the damage could recur if Spire STL drives equipment on the pipeline route to conduct repairs or monitor the pipeline. And there is no way for me to replant the trees that were removed from my property as long as the pipeline is present with a permanent easement.

24. I anticipate that I will be in a better position to regain full possession of my land and avoid losing any property through condemnation if the FERC certificate is vacated. I anticipate that I will be in a better position to seek remediation of the damage to my land if the FERC certificate is vacated. I love this land and I do not want to give up on it. The property is a place where I enjoy spending time outside in the woods, and I enjoy exploring with my family. But I

don't feel comfortable going to the property the way I used to, and every time I visit, I think about the pipeline. My family and I will be able to enjoy the land more fully again if there is no longer an easement and an active pipeline crossing the property.

I declare that the foregoing is true and correct.

Ken Davis

Dated: June 23, 2020 Kenneth Davis

DECLARATION OF PATRICK PARKER

I, Patrick Parker, declare as follows:

1. My name is Patrick Parker. I am over the age of 18 and competent to give this declaration. The following information is based on my experience and personal knowledge.

2. I am a member of Environmental Defense Fund. I have been a member since before the commencement of this lawsuit.

3. I primarily reside in Jersey County, Illinois.

4. I am one of the owners of a 350-acre tract of land in Jersey County, Illinois. The property is held in a limited liability company, or LLC, owned by myself, my wife Mary, and our three sons. My family and I have been farming in the area since 1973, and we acquired this property more than 20 years ago. We also own and farm other property in the area, but we refer to this 350-acre tract as the Home Place because it is central to our farming operation and our family life. It is a place where we oversee farming operations and also where we gather to enjoy the land and explore.

5. The Spire STL pipeline has disrupted my and my family's enjoyment of the land for its beauty and recreation, as well as our use of the land for ranching and farming. I am opposed to the pipeline. It makes me sad to see the path of the pipeline cutting across our property as far as the eye can see.

History and Enjoyment of the Land

6. The property consists of a house; fields used for agriculture; grain bins to store crops; machine sheds for equipment; grazing pasture for our cattle; loafing sheds for the cattle to shelter from bad weather; a climate-controlled finishing barn where we wash and prepare cattle for shows; and a pond, wooded areas, and several creeks that we enjoy for recreation.

7. My son, Pat Parker, Jr., and his wife and kids live in the house on the property, which we built about eight years ago. The pond is close to the house, and the kids—my grandchildren—use the pond for recreation, such as occasionally hunting ducks there. I live just up the road, about three miles away, so I am regularly at the Home Place to help work on the farm or to visit the family.

8. We keep between 50 to 90 head of Herford cattle on the land at any given time. They are well-bred show cattle, and the bulls are worth about $30,000 each. We do not butcher our cattle, we take them to shows and sell them as breeding stock. Generally, the cattle are free-range and grazing out in the fields, and sometimes we won't see them for a few days. We bring the cattle into the finishing barn when preparing them for shows, and they can come and go from the loafing sheds to get out of the rain or snow. We recently had high-tensile fences

installed to keep the cattle in the pasture areas, which is expensive, high-quality fencing.

9. The farmland is used to grow corn, soybeans, and hay. We used to farm it ourselves, but we got so busy with the cattle that we leased out the farmland to a friend who lives close by. He grows the same crops that we used to grow.

10. In addition to farming and managing cattle, the Home Place is where my family can gather and enjoy the land. There is a dirt road that runs from the house down along the back of the pasture to a beautiful wooded area with walnut and chestnut trees. The grandkids will ride four wheelers down the road to the wooded area. I like to hunt deer back there, and my kids and grandkids also use that area for hunting. There are creeks back there that are fun to explore, and you can find arrowheads. This is basically our family's big backyard.

Effects of the Spire STL Pipeline

11. I am aware that the Federal Energy Regulatory Commission approved Spire STL's application to build the pipeline in August 2018. I am aware that later that month, Spire STL filed a condemnation action in the U.S. District Court for the Southern District of Illinois, seeking possession of my land and the land of others in the area who did not want to accept the developer's buyout offer. Through the condemnation action, Spire STL seeks to take title to approximately eleven acres of land on my family's property.

12. I am aware that on December 12, 2018, the court issued an order granting Spire STL's request for a preliminary injunction, allowing the developer to take immediate possession of parcels of land. As a result of that order, Spire STL was allowed to take possession of a piece of my land that is 90 feet wide, which includes a 50-foot permanent easement and a 40-foot temporary easement for use during construction. In some sections, the temporary easement is even wider than 40 feet.

13. Spire STL first contacted my family in November 2017 looking to purchase the right of way through a section of our property. They offered us about $65,000 for an easement that would cut right through the middle of the property. This is not about the money for me: I decided not to sell an easement to Spire STL

because this land is important to me and my family and I didn't want to see it divided up by construction.

14. The route of the Spire STL pipeline cuts through the middle of our pastures and farmland. The pipeline construction caused long-term damage to our soil and pasture. First, it took a long time for Spire STL to get the pipeline covered up—for months the construction crew left open trenches across our land with the pipeline exposed in the trench. This disrupted my family's aesthetic enjoyment of the land as well as our cattle operation. Second, when Spire STL finally covered the pipeline, the soil along the pipeline route and surrounding areas is compacted and looks very muddy. Due to the construction crew's handling of our soil—letting the soil sit for a long time while the trenches were open, mixing the soil layers, failing to seed the soil with a cover crop—we have lost topsoil throughout our farm and have to deal with removing weeds. It's a big deal that the construction crew let the weeds go to seed in the soil and grow out. We previously invested thousands of dollars to regularly apply herbicide to keep our cropland and pastureland free of weeds. My family has had to mow down the weeds that Spire STL and its construction crew left behind.

15. Spire STL began construction on our property in spring 2019. Spire STL was supposed to notify me when construction crews would be accessing the property. Instead, Spire STL representatives came onto our land without advance

notice and cut through the high-tensile fence that we recently had installed. Our cattle were grazing in the pasture where the Spire STL representatives cut the fence, so the cattle dispersed, and we had to track them down because they had wandered to different parts of the property. One heifer was injured and broke her leg, which devalued her as a show cattle and we had to give her up for slaughter.

16. My family put up a temporary fence around the front section of the pasture, at our own expense, to replace the high-tensile fence that was damaged by the Spire STL construction crew. We are still using the temporary fence.

17. Due to the pipeline construction and the resulting unstable soil, my family was unable to use the back section of pasture beyond the pipeline for many months. We kept our cattle within the smaller front pasture area bounded by the temporary fence. During construction, there was no way for us to use the back pasture because the cattle could not walk across the open trenches. And even with pipeline construction complete, the land still has not been restored to its original state. The soil is muddy and compacted along the pipeline route, and there is no cover crop so it cannot be used as pasture for the cattle. For a long time it was dangerous for the cattle to walk across because there was a risk that the cattle might break a leg or suffer another injury in the mud. Only recently have we been able to start bringing the cattle across the pipeline.

18. Some of our high-tensile fencing has been damaged by the ongoing erosion of soil resulting from the pipeline construction. The ground is less stable because there is so much bare, compacted soil along the route of the pipeline. In one section, several fenceposts were displaced. Spire STL representatives ostensibly repaired the fence, but their repair work was inadequate—our high-tensile fence is partially electrified, but their repairs failed to restore the electrification to that section of the fence, so we ended up fixing it ourselves. I am concerned that this issue will recur in the future because there continues to be erosion on the land that could undermine our fencing. Weaknesses in the fencing of our pastures can result in loose cattle, which means the cattle could be lost or get injured. This is a source of ongoing stress for me and my family to deal with.

19. In addition to the disruptions caused to our cattle operation, agriculture has also been disrupted by the pipeline, particularly because of the open construction trenches, soil compaction, and loss of topsoil. Spire STL built a sort of temporary wooden bridge to allow our tenant farmer to drive equipment over the pipeline to access the back section of farmland that was cut off by the pipeline route. This made it more challenging for our tenant farmer to access that land. And there were a few smaller sections of farmland that became too challenging to access with the pipeline in place, so our tenant farmer let those areas go and did not attempt to plant crops there.

20. Overall, the Spire STL pipeline has a lasting, detrimental effect on my and family's enjoyment and use of our land. As I have described, the construction and presence of the pipeline across the property disrupted our cattle ranching activities and disrupted our tenant's farming activities. But this isn't just about the economic harms that we suffer. Our experiences on the land—the Home Place—as a family feel different now. My sons and I don't even like going back there to see the pipeline route. The grandkids used to get on four-wheelers and take the road along the pasture to the forest where we hunt and explore. Now, to access that part of our property we have to cross the pipeline, and it isn't the same. It doesn't feel like it did before, and it makes me sad to go to that section of our land and see the destruction caused by the pipeline. Our land is cut in two. You can stand where the pipeline is, look in both directions, and all you can see for miles is the path of the Spire STL pipeline.

21. There is a lot of history on this land, for my own family and before us. The people that owned this property before us farmed it for their entire lifetimes. I want to be able to enjoy the land, and I wanted the Home Place to stay in our family for as long as possible. I recognize that my grandkids might not want to continue farming and ranching, and I always figured that they might decide to sell the land. I expect that the presence of the Spire STL pipeline has reduced the value of the property if future generations in my family choose to sell it.

22. I understand that, under the FERC certificate and the permanent easement granted to Spire STL by the court, construction crews can continue to come onto our land and access the pipeline in the future. I also understand that there is a possibility Spire STL could use the easement across our land to install additional pipelines in the future. The possibility of having to deal with further disruptions and construction, which would harm my family's recreation and enjoyment of the land as well as our cattle operation, is of great concern to me.

23. As I described, the Home Place is my family's backyard. It is a source of income and a place of sanctuary for us to gather. All of that has been negatively affected by the operation of the Spire STL pipeline on our land. My use and enjoyment of the land continues to be negatively affected by the Spire STL pipeline.

24. I am aware that the condemnation action, whereby Spire STL has taken possession and seeks to take title to an easement across my land, is premised upon FERC having issued a Certificate of Public Convenience and Necessity for the project. I anticipate that my family and I will be in a better position to regain full possession of our land and avoid losing any property through condemnation if the FERC Certificate is vacated. I anticipate that we will be able to make full use of the land if there is no longer an easement and an active pipeline crossing the property.

I declare that the foregoing is true and correct.

Dated: June 23, 2020

Patrick Parker

CERTIFICATE OF SERVICE

Pursuant to Rule 25(d) of the Federal Rules of Appellate Procedures and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have this 26th day of June 2020, I served the foregoing Initial Opening Brief of Petitioner Environmental Defense Fund, by first class mail, postage prepaid or electronic mail through the Court's CM/ECF system upon the parties to the proceeding below as listed in the Service Preference Report.

Respectfully submitted,

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Attachment C

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Case Nos. 20-1016 and 20-1017 (Consolidated)

ENVIRONMENTAL DEFENSE FUND,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

**ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION**

INITIAL REPLY BRIEF OF PETITIONER ENVIRONMENTAL DEFENSE FUND

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GLOSSARY OF ABBREVIATED TERMS AND TERMS OF ART

Term	Description
Br.	Brief
Certificate Order	*Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018)
Certificate Policy Statement	*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *modified by*, 89 FERC ¶ 61,040 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000)
Decl.	Declarations contained in the Environmental Defense Fund's Addendum on Standing to its Opening Brief
EDF	Petitioner Environmental Defense Fund
Enable	Enable Mississippi River Transmission, LLC
FERC	Respondent Federal Energy Regulatory Commission
JA	Joint Appendix
Missouri Commission	Missouri Public Service Commission
P	Paragraph numbers in Federal Energy Regulatory Commission Orders
p.	Page numbers in Federal Energy Regulatory Commission Orders
R	Citation to the Index of the Record filed in these proceedings on March 12, 2020 by the Federal Energy Regulatory Commission
Rehearing Order	*Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (2019)
REX	Rockies Express Pipeline
Spire Affiliates	Spire STL Pipeline LLC and Spire Missouri, Inc.
Spire Missouri	Spire Missouri, Inc.
Spire STL	Spire STL Pipeline LLC

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Federal Energy Regulatory Commission's ("FERC") principal defense is that Spire STL Pipeline LLC's ("Spire STL") agreement with its utility-affiliate, Spire Missouri, Inc. ("Spire Missouri"), was sufficient evidence that the pipeline is "required by the present or future public . . . necessity." But this Court has *never* held a single precedent agreement with a utility-affiliate is, *ipso facto*, evidence of public need. Agreements between affiliates are markedly different from arm's-length agreements between parties that bear the risk of investment decisions. That distinction is even more significant where, as here, the transaction involves a utility-affiliate that can pass the costs of the agreement to captive customers. FERC's treatment of the utility-affiliate agreement as *sufficient* proof of need is an egregious failure to fulfill its statutory responsibility, turning what Congress intended to be a serious, independent investigation of need into a "meaningless check the box exercise." R424, *Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (2019) ("Rehearing Order"), Commissioner Glick's Dissent, P 1; [JA ___].

FERC's rubber-stamp certification subjects landowners and the environment to substantial—and unnecessary—impacts associated with the construction and operation of a duplicative pipeline. If a corporation's internal decision to saddle captive customers with millions in costs by shifting load from an existing pipeline to one it owns is automatically deemed to be *required* by "public necessity," FERC's obligation to serve as the "guardian of the public interest in determining whether certificates of convenience and necessity shall be granted" is rendered meaningless. *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 7 (1961).

This Court should reject FERC's attempt to punt its own obligations under the Natural Gas Act to Missouri utility regulators. State regulators have authority to conduct "prudence" reviews (though, as a practical matter, only after pipelines are built), but they cannot alter FERC-approved rates that utilities are committed to; and they lack jurisdiction to adjudicate market need or evaluate an unnecessary pipeline project's adverse impacts on property rights, the environment, and burdens on other consumers.

Consistent with Supreme Court precedent, FERC's Certificate Policy Statement[1] explicitly requires a fact-specific evaluation of all factors bearing on the public interest, *see* Certificate Policy Statement, pp. 61,737, 61,745-50, and states that a stronger showing of need is required in the face of "potential adverse effects." *Id.*, p. 61,747. FERC's claim that the Certificate Policy Statement does "not compel any additional showing beyond precedent agreements" to justify a finding of market need is wrong. FERC Br., 27. The facts here vividly show a *lack* of need: There is no new gas demand in St. Louis. The Project provides no material cost savings to customers. There is

[1] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 ("Certificate Policy Statement"), *modified by*, 89 FERC ¶ 61,040 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 ("Order Clarifying Certificate Policy Statement"), *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000).

available, excess capacity in the region on multiple different pipelines. FERC and the Spire Affiliates' attempts at *post hoc* justifications of need are unavailing.

FERC disregarded the pipeline's significant adverse effects, which demanded a probing review. Ignoring its independent obligations as the guardian of the public interest, FERC allowed a "private business decision" to override the wide-sweeping *public interest* ramifications on the Spire Missouri's captive customers, the viability of neighboring pipelines, the degradation of the environment, and the persistent and invasive seizure of private property by eminent domain.

FERC's orders are arbitrary and capricious, inconsistent with the Certificate Policy Statement, this Court's precedent, Section 7 of the Natural Gas Act, and the record in this proceeding. The Court should therefore vacate the orders.

ARGUMENT

A. Jurisdiction Is Proper

FERC does not challenge this Court's jurisdiction. But the Spire Affiliates contend (Spire Affiliates Br., 1-2) the petitions for review are untimely because *Allegheny Defense Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc) overturned precedent allowing "tolling orders" to stave off judicial review. *See* 15 U.S.C. § 717r(a) (petitions for rehearing "may be deemed to have been denied" and thus reviewable when FERC does not act within 30 days).

The Spire Affiliates' argument is meritless. *Allegheny* interprets Section 717r(a), the "deemed denied" provision, 964 F.3d at 16, and does not hold petitions that are filed 60 days after a rehearing order are untimely. Indeed, *Allegheny* forecloses such a claim: The en banc Court reviewed on the merits petitions challenging a rehearing order issued eight months after the "deemed denied" date. 964 F.3d at 8-9, 19. None of the cases the Spire Affiliates cite comes close to holding that a right to review agency action that, under then-governing circuit precedent *could not* have been challenged earlier, is extinguished by a party's "failure" to take that futile and forbidden step. It is doubtful that due process could countenance any such regime, and this Court's precedents show a healthy intolerance for such "pervers[e]" theories. *See Sam Rayburn Dam Elec. Coop. v. FPC*, 515 F.2d 998, 1007 (D.C. Cir. 1975).

B. Treating a Single Utility-Affiliate Agreement As, *Ipso Facto*, Evidence of Public Necessity Is Contrary to Applicable Law and Unsupported by Relevant Precedent

FERC's brief reiterates that its orders' finding of market need was based solely on Spire STL's contract with its utility-affiliate. *See* FERC Br., 9 (FERC "deemed that contract valid evidence of need for the Project"); *id.*, 13 (FERC "found a market need for a proposed pipeline project based on a contract between the certificate applicant (Spire) and its affiliate (Spire Missouri) for nearly 90 percent of the project's capacity."). FERC contends this Court has approved that rationale, citing decisions upholding FERC's reliance upon precedent agreements as evidence of need. *Id.,* 19. The law—including this Court's precedents—does not support FERC's reliance on the Spire agreement.

First, *none* of the cases FERC relies upon holds that a single precedent agreement with a pipeline's utility-affiliate is sufficient to establish need. *See* EDF Opening Br., 23-26. Indeed, FERC's Certificate Order acknowledges that "there has never [been] a proposal" where need was based on a single precedent agreement with a utility-affiliate with captive customers. R164, *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085, P 78 (2018) ("Certificate Order"); [JA ___]. The presence of a utility-affiliate creates powerful incentives that require close regulatory scrutiny. EDF Opening Br., 21-23. This Court has held that FERC must consider "whether the [utility's] interests are sufficiently likely to be congruent with those of ultimate consumers that it may rely upon the [utility's] agreement as dispositive of the consumers' interests." *Laclede Gas Co. v. FERC*, 997 F.2d 936, 946 (D.C. Cir. 1993). FERC's refusal to consider those interests is legal error, and FERC has gone astray to the extent it has misread this Court's decisions as allowing FERC to decree *any* precedent agreement, regardless of the circumstances, sufficient to support a finding of necessity.

In addition to lacking support in judicial precedent, FERC's reliance on the Spire Affiliates' contract alone is inconsistent with multiple, overlapping legal obligations. The Natural Gas Act requires FERC to analyze whether a pipeline is required by a present or future public convenience and necessity. EDF Opening Br., 1, 20. That analysis requires consideration of "all factors bearing on the public interest." *Atl. Ref. Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 391 (1959); *see also Permian Basin Area Cases*, 390 U.S. 747, 784 (1968) ("Although the Natural Gas Act is premised upon a continuing system of private contracting, [FERC] has plenary authority to limit or to proscribe contractual arrangements that contravene the relevant public interests.") (citations omitted). The inherent risks posed by a contract with the applicant's utility-affiliate merit serious analysis, not perfunctory box-checking.

FERC's deficient approach also contravenes its own Certificate Policy Statement, which requires case-specific analysis. Certificate Policy Statement, pp. 61,737, 61,748-50. Consistent with the Supreme Court's holding in *Atlantic Refining*, that analysis involves consideration of "all relevant factors reflecting on the need for the project." Certificate Policy Statement, p. 61,747. The Certificate Policy Statement expressly rejects any "[b]right line test" based on one factor. *Id.*, p. 61,749.

To survive review under the arbitrary and capricious standard, FERC must also "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 52 (1983) (citation omitted). Given the inherent risks posed to the utility-affiliate's captive customers, and record evidence demonstrating a clear *lack* of need, FERC's blinkered reliance upon a single utility-affiliate precedent agreement flunks basic requirements of reasoned decisionmaking.

In sum, FERC was obligated to perform a fact-specific examination of need. It flouted that obligation, issuing a certificate after nothing more than a "meaningless check the box exercise." R424, Rehearing Order, Commissioner Glick's Dissent, P 1; [JA ___].

Perhaps recognizing its deficient "analysis" of need, FERC offers a *post hoc* justification that, beyond the precedent agreement, it relied on "extra-contractual evidence in the record" that was "enough in [FERC's] view to overcome concerns of overbuilding." FERC Br., 21-22 (citing the ability to access multiple supply areas, the inability of existing pipelines to provide as much gas as the Project, and replacement of expiring contracts and aging facilities). FERC's *post hoc* claim is undermined by the Certificate Order, where FERC declined to review these issues because they "fall within the scope of the business decision of a shipper," R164, Certificate Order, P 83; [JA ___]; and the Rehearing Order, where FERC characterized these issues as "benefits" for consideration in the public interest balancing analysis, R424, Rehearing Order, P 24; [JA ___]. EDF therefore addresses these purported "benefits" in discussing the balancing test in Section F below.

C. The Utility-Affiliate Agreement Required Heightened Scrutiny Given FERC's Primary Statutory Duty to Guard the Public Interest Against Pipeline Abuses

Affiliate contracts pose significant threats not presented by other kinds of contracts. EDF Opening Br., 21-22; Tierney Amicus Br., 10-14; Antitrust Amicus Br., 8-13. Concerns with affiliate agreements are particularly pronounced where an affiliate is a regulated utility, which can pass costs on to captive retail customers. EDF Opening Br., 1-2, 27.

Because FERC determined that the existence of the utility-affiliate agreement obviated the need for meaningful analysis, it did not consider whether and how the Spire Affiliates' relationship compromised the precedent agreement's value as an indicator of objective market need. Rather, FERC insists it may indiscriminately lump all precedent agreements into one category, drawing no distinction "between long-term binding contracts with affiliated or unaffiliated shippers, so long as there is no evidence of undue discrimination or anticompetitive behavior." FERC Br., 28.

FERC itself, however, has previously recognized that contracts between affiliates are fundamentally different from arm's-length transactions where each party rigorously negotiates in its own economic interest. *Seaway Crude Pipeline Co.*, 154 FERC ¶ 61,070, PP 92-93 (2016). Furthermore, some affiliate contracts pose a higher degree of risk than others. An affiliated marketer or producer that risks its own capital to capture benefits is fundamentally different from a utility-affiliate that can pass the risks of the contract on to captive customers. With affiliated marketers or producers, there is more of an assurance of legitimate need than there is for the latter because utility-affiliates have incentives to execute capacity contracts when they can recover the costs from captive customers. *See Millennium Pipeline Co.*, 100 FERC ¶ 61,277, P 57 (2002); Tierney Amicus Br., 11-14, 19; Antitrust Amicus Br., 8-13.

Here, the very structure and terms of the deal—a retail utility with captive customers saddled with over $600 million in reservation charges for the next 20 years while the affiliate pipeline developer earns a hearty return for developing duplicative facilities—underscored FERC's obligation to protect the public interest and fulfill its consumer-protection obligation. But FERC refused to engage with the issue. *See* FERC Br., 30-31 (explaining that FERC did not "look behind" the utility-affiliate agreement).

FERC claims that EDF's request for greater scrutiny of affiliate transactions "tosses out [FERC] policy," describing EDF's citations as "irrelevant or outdated." *Id.*, 29. But just last week FERC issued a Proposed Policy Statement that expressed the same concern and relied upon the authorities it now brushes aside as "outdated." *See Oil Pipeline Affiliate Contracts*, Proposed Policy Statement, 173 FERC ¶ 61,063, P 9 n.18 (2020) (citing *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,048, P 100 (2014), which was cited in EDF's Opening Br., 21). FERC recognizes the harm affiliate arrangements can pose and acknowledges that it has "adopted policies in these other contexts to mitigate concerns that affiliates may coordinate in ways that involve self-dealing and anti-competitive behavior to the detriment of other customers." *Id.*, P 9. Contrary to FERC's brief, concerns about affiliate abuse are not outdated or inapplicable to certificate applications—they are highly relevant, indeed critical, to FERC's fulfillment of its statutory responsibilities.

In other matters involving affiliate agreements, FERC has not demanded "additional evidence" of anticompetitive behavior, as it suggests was needed here, to trigger heightened review. Rather, FERC determined that heightened review was necessary based on the fact that competitive market forces do not exist between affiliated parties that share the same parent company. *Tapstone Midstream, LLC*, 150

FERC ¶ 61,016, P 15 (2015); *TECO Power Servs. Corp.*, 52 FERC ¶ 61,191, p. 61,697 (1990) ("Although sales between affiliates are not necessarily unduly discriminatory or unduly preferential, these agreements provide the potential for preferential pricing" and, therefore, FERC "must carefully scrutinize them."). FERC's uncritical reliance on the Spire Affiliates' utility-affiliate agreement as dispositive of need is arbitrary and capricious.

If the Court accepts FERC's claim that nothing more is needed under these facts, "private business decisions" (FERC Br., 22) will—contrary to the role Congress assigned to FERC in the Natural Gas Act—define "the public interest." *See Permian Basin Area Cases*, 390 U.S. at 784; *Mo. Pub. Serv. Comm'n v. FERC*, 601 F.3d 581, 582-83 (D.C. Cir. 2010).

D. State Commissions' Separate Prudence Reviews Do Not Relieve FERC of Its Independent Statutory Obligation to Protect the Public from Unneeded Pipelines

In a failed attempt to justify its lack of meaningful examination of the utility-affiliate agreement, FERC points to the separate review by the Missouri Public Service Commission ("Missouri Commission"), claiming such review would implicate limits on FERC's "jurisdiction." FERC Br., 36-38. The Missouri Commission's state-law responsibility to review "excessive retail rates and to disallow costs not justified under state law" (FERC Br., 37) is distinct from, and no substitute for, the congressionally-prescribed inquiry under Natural Gas Act Section 7, which charges *FERC* with determining whether the public necessity requires pipelines. *See* R164, Certificate

Order, P 86 ("The Missouri [Commission's] mechanisms are not meant to address … issues of pipeline need."); [JA ___]. If FERC can rely on utility-affiliate precedent agreements as sufficient proof of "need," it must examine their substance, rather than pretend that state commissions' review will somehow satisfy FERC's obligations to protect the public interest.

As Commissioner Glick explained, the "practical effect" of FERC's position is that "no regulatory body would ever be able to conduct a holistic assessment of the need for a proposed pipeline simply by virtue of the fact that Congress divided jurisdiction over the natural gas sector between the federal and state governments." R424, Rehearing Order, Commissioner Glick's Dissent, P 20; [JA ___].

Even if the Natural Gas Act did not forbid it, punting FERC's review to state commissions would be untenable. "[A]lthough the Missouri [Commission] has authority to conduct a prudence review of Spire Missouri's decision to take service from Spire STL rather than another pipeline, that review takes the [FERC-jurisdictional] rates as a given and will not necessarily be able to address whether it was prudent to build the pipeline in the first place." *Id.*, Commissioner Glick's Dissent, P 19; [JA ___]; Tierney Amicus Br., 24 (noting that state commissions "cannot undo a [FERC] approval for [pipeline] construction"). Factors including limitations on state's legal authority, resource constraints, and other challenges demonstrate the insufficiencies of retroactive state regulator review. *See generally* Tierney Amicus Br., 26-27.[2]

In the Natural Gas Act, Congress required the "necessity" inquiry to *precede* pipeline certification and construction. *See* 15 U.S.C. § 717f(c)(1)(A) (no "construction or extension" of gas facilities without a certificate from FERC). FERC must determine whether the applicant met its burden to make the necessary showings. *Id.* § 717f(e). Even if state-commission review ultimately found a utility's agreement with a pipeline applicant was imprudent under state law, that finding would not remedy the myriad public harms resulting from construction and operation of an unnecessary pipeline. Nor should it. The Natural Gas Act charges FERC with protecting the public interest.

E. The Court Should Reject the Spire Affiliates' *Post Hoc* Rationalizations and Consider the Actual Basis for FERC's Determination of Need, i.e., the Affiliate Agreement

Attempting to salvage FERC's unfounded decisions, the Spire Affiliates present numerous *post hoc* rationalizations, implying that FERC's repeated references to its exclusive reliance on the utility-affiliate agreement (FERC Br., 3, 13, 27-28) do not accurately capture the basis for the finding of need. Spire Affiliates Br., 15-23. The

[2] Nor is FERC's abdication excused by the Missouri Commission's decision not to appeal. FERC Br., 37. The Missouri Commission is not charged with ensuring faithful execution of FERC's statutory duties and, in fact, urged a "much more rigorous review" than what FERC performed. R21, 9-10; *see also* R424, Rehearing Order, Commissioner Glick's Dissent, P 19 (noting that the Missouri Commission "expressly argued that a precedent agreement will not always be dispositive of need and that [FERC] must 'carefully review' the need for the Spire Pipeline"); [JA ___; ___].

Court may not consider theories on which FERC did not rely on below. *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 839 (D.C. Cir. 2006). In any event, the Spire Affiliates' revisionist characterization of FERC's actions fails on its own terms.

The Spire Affiliates repeatedly trumpet the "open season" as if that process provided some degree of protection against affiliate abuse. Spire Affiliates Br., 3, 11, 15. Although Spire STL held an open season, its Project was not born out of a competitive solicitation. No entities bid on the capacity and the precedent agreement resulted from "negotiations" within the Spire corporate family *before* the open season. R164, Certificate Order, P 77 ("[T]he precedent agreement was not the direct result of the open season, but stemmed from prior discussions between Spire [STL], Spire Missouri, and their corporate parents . . . ."); [JA ___]. That fact should have been material to FERC's analysis. *See Millennium*, 100 FERC ¶ 61,277, p. 62,141 (discussing FERC's rationale for finding a precedent agreement that "was not the result of, or related to," an open season "did not constitute reliable evidence of market need"). No protections against affiliate abuse were in effect when the Spire Affiliates executed their contract. R164, Certificate Order, P 104 (Spire STL claimed it would be "unduly burdensome" to separate its "pipeline development personnel" and "gas supply and operations personnel"); [JA ___].

Complaining that "St. Louis ratepayers will not cover even the rate of return that FERC allowed," the Spire Affiliates cite their negotiated rate compliance filing. Spire Affiliates Br., 21. That filing is outside the administrative record and, indeed, did not exist when FERC issued its orders. In any event, the filing undermines FERC's claim that no further analysis is needed because it allows Spire STL to *increase* the negotiated rate paid by captive customers and specifies that Spire Missouri "will not oppose [Spire STL's] filing." FERC Docket No. RP20-70, Spire STL's Compliance Filing, App'x 2 (October 16, 2019). That the affiliates—acting in complete and admitted unity of interest (Spire Affiliates Br., 16)—forbid the utility to voice concerns on behalf of captive customers highlights the anticompetitive concerns with the utility-affiliate contract FERC relied on to certificate the Project.

F. FERC Misapplied Its Own Certificate Policy Statement

Implementing the requirement that it evaluate "all factors bearing on the public interest," *Atl. Ref.*, 360 U.S. at 391, FERC adopted a balancing test whereby the public benefits of a project must outweigh any adverse effects. Certificate Policy Statement, pp. 61,749-50. FERC offers no persuasive response to our demonstration that FERC's orders here failed to adhere to this standard. EDF Opening Br., 32-39.

FERC claims it applied the Certificate Policy Statement's criteria, FERC Br., 9, 29, and criticizes EDF for demanding "some mathematical tally" of benefits and adverse impacts not required by the Act. *Id.*, 42; *but see id.* (recognizing FERC's obligation to engage in "mathematical analysis"). But FERC policy expressly embraces a proportional inquiry, whereby the "amount of evidence necessary to establish the need for a proposed project will depend on the potential adverse effects of the proposed project on the relevant interests." Certificate Policy Statement, p. 61,748. FERC's orders failed to identify record evidence of need sufficient to overcome the extensive evidence of adverse effects. FERC's attempt to justify its unreasoned decision with boilerplate references to "broad discretion" and "value judgment[s]," FERC Br., 42, cannot satisfy its responsibility to actually "examine the relevant data and articulate a satisfactory explanation for its action." *State Farm*, 463 U.S. at 43.

1. FERC Failed to Examine Supposed Project "Benefits"

The sole basis for FERC's determination of market need—and thus the core of FERC's finding of public benefit—is the utility-affiliate precedent agreement. *See* FERC Br., 9. A single precedent agreement with a utility-affiliate, however, is not a reliable indicator of need, particularly where record evidence demonstrates a *lack* of need. EDF Opening Br., 30-32. Commissioner LaFleur described the Project as "the unusual case of a pipeline application that squarely fails the threshold economic test." R164, Certificate Order, Commissioner LaFleur's Dissent, p 2. And under FERC's proportional approach, even *if* the Spire Affiliates' contract had been appropriate to establish market need, analysis of the Project's potential benefits is still required to ensure they outweigh the adverse effects. FERC violated its Certificate Policy Statement by neglecting that analysis.

FERC argues that it considered "the Project's other benefits—both physical and contractual," FERC Br., 44, but the record evidence demonstrates the purported benefits are illusory. Recitation of statements by the Spire Affiliates contained in the Certificate Order cannot justify FERC's decision, *see* R164, Certificate Order, PP 68, 107-08—especially since FERC similarly recited EDF's arguments but ultimately rejected them. *Id.,* P 69; [JA ___, ___; ___].

Moreover, FERC expressly declined to consider these "benefits" in its public interest analysis in the Certificate Order. *Id.*, P 83; [JA ___] (stating that the issues "fall within the scope of the business decision of a shipper"). The Rehearing Order identifies several "benefits," R424, Rehearing Order, P 24; [JA ___], which FERC now attempts to claim as the basis for its determination of need: (1) the Project allowed access to multiply supply areas via a more direct path; (2) the Project would not cross an earthquake zone; (3) existing pipelines were unable to provide as much gas; and (4) Spire Missouri needed to replace expiring contracts and aging facilities. FERC Br., 22. FERC admits, however, that it did not meaningfully investigate or require Spire STL to substantiate these claims. *Id.* (FERC "decline[d] to inquire into these sorts of private business decisions"). Had it bothered to inquire, FERC would have found persuasive evidence undercutting each *ipse dixit* justification.

First, multiple pipelines already provide Spire Missouri access to natural gas from the Marcellus Shale via the Rockies Express ("REX") pipeline—Spire STL is simply another pipeline that can do so. Spire Affiliates Br., 6 n.1 (MoGas Pipeline, LLC, which connects to REX, supplies Spire Missouri). The Spire Affiliates tout the "benefits" of "connecting the St. Louis area to the REX pipeline and its cheap, abundant gas." *Id.*, 3, 6. But price data in the record shows "existing [Enable Mississippi River

Transmission, LLC's ("Enable")] facilities provide similar or better economic alternatives than REX." R42, Enable's Answer, 11; [JA ___].[3]

Second, the Spire Affiliates' emphasis on a "path without crossing an earthquake zone" is little more than bluster. Portions of Spire Missouri's own service territory are within the seismic zone, rendering illogical the notion that a pipeline supplying the region must avoid that zone to be reliable. R24, Enable's Protest, 42 ("portions of [Spire Missouri's] own service territory are within the New Madrid seismic zone and the St. Louis area could also be affected by earthquakes"); [JA ___]. Moreover, the chance of a large earthquake in the region is infinitesimally small. *Id.*, Exhibit MRT-0037, 1; [JA ___].

Third, invocation of the "inability of existing pipelines to provide as much gas as the Project" (FERC Br., 22) is, under the circumstances, nonsensical. Spire Missouri has not even signed up for the total amount of available capacity on the Project—and of course, neither has anyone else. The material question is whether there is sufficient existing capacity in the region to serve Spire Missouri's needs, and the answer the record

[3] Any "supply diversity" benefit depends on Spire Missouri's contractual rights on REX. To access Marcellus supplies, Spire Missouri must either have gas delivered to Spire STL by a third party or reserve capacity on REX. Spire Missouri only holds 20,000 Dth/day of east-to-west firm capacity on REX. R24, Enable's Protest, Exhibit MRT-0003, 5; [JA ___]. Thus, to access Marcellus supplies on a firm basis for 20 years to match its 350,000 Dth/day commitment on Spire STL, Spire Missouri must access supplies held by existing shippers on REX, "exposing its ratepayers to 20-years of potentially changing market conditions in that area." R42, Enable's Answer, Exhibit MRT-0044, 2; [JA ___].

yields is a resounding yes. R24, Enable's Protest, 15 (detailing available, unsubscribed capacity on four pipelines in St. Louis); [JA ___].

Fourth, FERC's embrace of Spire Missouri's *post hoc* "aging propane facility" rationale is the epitome of unreasoned decisionmaking. FERC Br., 22 n.5. The actual costs of operating the propane facilities are not in the record—they remain within Spire Missouri's closed books. When FERC asked the Spire Affiliates to compare the costs of the propane facilities and the proposed pipeline, the Spire Affiliates were unwilling (or unable) to respond. R137, Spire STL Data Response, 26 ("Spire Missouri does not have quantitative data illustrating the 'what if' scenario of Spire Missouri continuing to rely on the propane system."); [JA ___]. Meanwhile, record evidence shows that on the three days when Spire Missouri used the propane facilities over the past five years, R24, Enable's Protest, Exhibit MRT-0003, 6-12; [JA ___], Spire Missouri released capacity on existing pipeline Enable that would have satisfied the demand served by the propane facilities. R148, Exhibit Answer to Data Responses, 8; [JA ___].

2. FERC's Review of Adverse Effects Was Inadequate

In addition to failing to meaningfully analyze public benefits, FERC violated its Certificate Policy Statement by minimizing or disregarding record evidence of adverse effects to existing pipelines and their customers, nearby landowners and communities, and the environment. *See, e.g.*, R424; R24, 11-19, 48-51; R179, 19-21; R172, 1-2; [JA ___; ___-___, ___-___; ___-___; ___-___].

Existing Pipelines and their Customers. FERC and the Spire Affiliates admit, as they must, that the Project has negative economic effects on existing pipelines. FERC Br., 41; Spire Affiliates Br., 23. The Spire Affiliates maintain this harm is a necessary byproduct of "healthy competition" and FERC insists it has no obligation to protect incumbents against losing market share. FERC Br., 42. Neither position satisfies the requirement that FERC "ensure fair competition." Certificate Policy Statement, p. 61,748. "Fair" in this context means a "regulatory environment in which no gas seller has a competitive advantage over another gas seller." *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, F.E.R.C. Stats. & Regs. (CCH) p. 30,939, p. 30,393 (1992).

Record evidence demonstrated that when faced with a choice to either take service from: (1) a neighboring pipeline and provide 100% of its transportation costs to that pipeline, or (2) its affiliate pipeline and send approximately 50% of the money it collects from captive ratepayers to its own shareholders, a profit-maximizing firm such as Spire STL will choose the latter. R146, EDF's Answer, 11 n.47; [JA ___].

Record evidence also demonstrated that Spire STL would have (and did have) a competitive advantage over other suppliers seeking to sell gas to Spire Missouri. For example, another neighboring pipeline was "forced to offer Spire Missouri [a] discounted rate because of the Spire Pipeline." R424, Rehearing Order, Commissioner

Glick's Dissent, n.70 (citation omitted); [JA ___]. This situation is anything but "fair competition."

Neither FERC nor the Spire Affiliates meaningfully rebut EDF's arguments about FERC's failure to protect captive customers of existing pipelines. But before FERC even issued the Certificate Order, three major pipelines serving the St. Louis region had already proposed significant rate increases, due at least in part, to the Spire STL Pipeline (R164, Certificate Order, Commissioner Glick's Dissent, p. 2)—yet another significant, adverse effect of the Project.

Landowners and Communities. FERC contends that its "finding on landowners was firmly tethered to the record." FERC Br., 41. But FERC's statement that Spire STL sought to minimize construction and operational impacts by locating a mere 15% of the route along existing rights-of-way disregarded the many route segments where Spire STL was unable to reach agreement with landowners due to their opposition to the Project and concerns over its environmental impacts. *Id.*, 40. Under FERC policy, Spire STL's inability to acquire most of the land "by negotiation" is a negative effect FERC should account for in assessing "public benefits and adverse consequences." Order Clarifying Certificate Policy Statement, 90 FERC ¶ 61,128, p. 61,398. FERC's selective review of the record, and refusal to grapple with evidence of harmful impacts to many landowners, does not constitute the required examination of "relevant data" and "satisfactory explanation for its action." *State Farm*, 463 U.S. at 43. Because the record here indicates that the Project would have significant adverse effects, FERC's Certificate Policy Statement demanded a heightened demonstration of need and FERC erred by refusing to require it.

Environment. FERC and the Spire Affiliates focus on the economic aspects of the balancing analysis to the exclusion of environmental harms the pipeline inflicts, *see* FERC Br., 39; Spire Affiliates Br., 23, further demonstrating that FERC's evaluation "entirely failed to consider an important aspect of the problem." *State Farm*, 463 U.S. at 43. FERC's consideration of adverse effects of a project must include "deleterious environmental impact on the surrounding community," *City of Oberlin v. FERC*, 937 F.3d 599, 602 (D.C. Cir. 2019), and FERC's Certificate Policy Statement recognizes that "the interests of the landowners and the surrounding community have been considered synonymous with the environmental impacts of a project." Certificate Policy Statement, p. 61,748; *see also* Order Clarifying Certificate Policy Statement, p. 61,396. Adverse environmental effects must be considered within FERC's public interest determination, and this requirement is not satisfied by the separate analysis required under the National Environmental Policy Act. *See City of Oberlin*, 937 F.3d at 602.

FERC's uncritical reliance on the mere existence of an affiliate utility precedent agreement to find need, and its failure to meaningfully consider the adverse effects of the Project, would, if blessed by this Court, render meaningless the Natural Gas Act's public interest standard.

G. Vacatur Is the Appropriate Remedy

EDF's requested remedy, vacatur of the FERC Certificate Orders, is wholly appropriate and warranted. "[U]nsupported agency action normally warrants vacatur." *Advocs. for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 429 F.3d 1136, 1151 (D.C. Cir. 2005). The Spire Affiliates assert that vacatur is inappropriate because it would be "quite disruptive" to the now operational pipeline. Spire Affiliates Br., 42. But the construction and operation of an unneeded and legally unjustifiable pipeline has been and continues to be highly "disruptive" to EDF's members, and the Court should grant the remedy sought. EDF Opening Br., Gettings Decl. ¶¶ 14, 21-23; *id.*, Stout Decl. ¶¶ 25-26; *id.*, Davis Decl. ¶¶ 20-24; *id.*, Parker Decl. ¶¶ 21-23. It is bad enough that (as here) pipelines are often largely or completely constructed, and landowners' property "irreparably transformed," before challengers have their day in court. *See Allegheny*, 964 F.3d at 20 (Griffith, J., concurring). FERC's unlawful efforts to delay judicial review for as long as possible cannot also become a basis for denying relief to prevailing challengers.

CONCLUSION

The Court should vacate FERC's unlawful orders.

Respectfully submitted,

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Dated: October 23, 2020

CERTIFICATE OF COMPLIANCE

Per Fed. R. App. P. 29(a)(4)(G), Fed. R. App. P. 29(a)(5), and the Court's March 19, 2020 order, I certify that this Initial Brief complies with the type-volume limitations because its textual portions, including headings, footnotes, and quotations contain 5,397 words of the 8,000 total words allocated to Petitioners, as counted by the "Word Count" feature of Microsoft Word 2010, the program with which this brief was prepared. This word count excludes: (1) the cover page; (2) the table of contents; (3) certificates; (4) the glossary of abbreviated terms and terms of art; and (5) the signature block.

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CERTIFICATE OF SERVICE

Pursuant to Rule 25(d) of the Federal Rules of Appellate Procedures and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have this 23rd day of October 2020, I served the foregoing Initial Reply Brief of Petitioner Environmental Defense Fund, by first class mail, postage prepaid or electronic mail through the Court's CM/ECF system upon the parties to the proceeding below as listed in the Service Preference Report.

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Attachment D

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Spire STL Pipeline LLC	)	Docket No. CP17-40-000
	)	

MOTION FOR LEAVE TO ANSWER AND ANSWER OF ENABLE MISSISSIPPI RIVER TRANSMISSION, LLC

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] Enable Mississippi River Transmission, LLC ("MRT")[2] hereby moves for leave to answer and answers Spire STL Pipeline LLC's ("Spire") Motion for Leave to Answer and Answer to Comments and Protests ("Spire Answer").[3]

In support hereof, MRT respectfully states:

I. INTRODUCTION

Spire's Answer reinforces the impression that the primary impetus of this Project is to increase rate base (in the form of the Spire STL Project), and commensurate earnings thereon, that must be supported by the captive retail ratepayers of its affiliate Laclede. Spire's Answer does nothing to substantively resolve the questions raised in the protests. In fact, Spire's Answer highlights the project's many shortcomings, as discussed in greater detail below.

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1 18 C.F.R. §§ 385.212, 213 (2016).

2 MRT moved to intervene in this proceeding on February 2, 2017. Motion to Intervene of Enable Mississippi River Transmission, LLC, *Spire STL Pipeline LLC*, Docket No. CP17-40-000 (filed Feb. 2, 2017).

3 Motion for Leave to Answer and Answer of Spire STL Pipeline LLC to Protests and Comments, *Spire STL Pipeline LLC*, Docket No. CP17-40-000 (filed Mar. 17, 2017) ("Spire Answer" or "March 17 Answer"). Because Laclede Gas Company ("Laclede") filed an answer in the captioned docket later (*i.e.*, March 22) than Spire's Answer, MRT reserves its rights to respond to the Laclede March 22 filing subsequent to this pleading.

Spire's Project represents a monopsonist's effort to use its market power in the interstate transmission market serving St. Louis. Spire is a new greenfield project proposed for a market with flat average day, and falling peak day, demand. *See* Part II.A. *infra*. In addition to unnecessary incremental capital costs to serve the flat demand in the St. Louis gas markets of Spire's affiliated local distribution company, Laclede, Spire is precipitating and will further precipitate the shifting of costs, previously collected from Laclede, to other ratepayers on existing interstate pipeline systems. Spire's Answer simply punts on its affiliate's confirmation[4] that Laclede will be letting go of its capacity commitments on existing pipelines if Spire is approved. This means that on a unit cost basis, Spire will be increasing the cost of taking service on Spire's competitors. Spire's Project will be back-stopped by Laclede's captive retail ratepayers. Given the conscription of Laclede's retail ratepayers to backstop Spire, and cost consequences on other pipelines, Spire will unavoidably increase costs to consumers and its competitors. In a market that already features flat demand, increased costs occasioned by Spire will prove another challenge to remarketing de-contracted capacity, and will decrease demand for natural gas, contrary to claims advanced by Spire.

That challenge will be further compounded by Spire's unfair competitive posture. Fair competition is a goal of not only the Commission, but MRT as well. MRT seeks fair competition and much of the balance of this pleading discusses impediments to effective and fair competition. Because of overlap between Spire personnel and personnel in affiliated enterprises, Spire has access to information, afforded to no other pipeline, about opportunities in St. Louis. Spire personnel also will be privy to, and participate in,

[4] Protest of Enable Mississippi River Transmission, LLC, *Spire STL Pipeline LLC*, Docket No. CP17-40-000, at p. 11 (filed Feb, 27, 2017) ("MRT Protest").

discussions regarding the reassignment of costs and resulting rates associated with capacity on existing pipelines that previously had served Spire's affiliates, which costs subsequently will have to be paid by entities not affiliated with Spire. These discussions and decision-making roles will leave Spire personnel in a uniquely advantageous position for Spire, and means pipelines not affiliated with Spire face unfair competition. While Spire and Laclede are acting in a unitary fashion, furthering the financial interest of their common owner, their actions are harming unaffiliated entities and retail ratepayers, as well as impeding competition. *See* Parts II.B., and II.J., *infra*.

Given the increase in costs that Spire will cause for Laclede's ratepayers, the increase in costs for ratepayers not affiliated with Spire on other pipelines serving St. Louis, and the complete absence of incremental demand to justify an expensive new greenfield pipeline, there is only one obvious reason to build Spire -- to expend capital to create rate base in the form of the Spire STL Project at the wholesale level backstopped by Laclede's retail ratepayers.

Additionally, Spire's Answer demonstrates that its original Application ignored the realities of natural gas commodity markets. Contrary to repeated assertions in Spire's initial Application that its proposed project will help satisfy growing gas demand, St. Louis natural gas demand is (Spire now admits) flat. *See* Part II.E., *infra.* Moreover, reports indicate that Appalachian export transmission capacity is beginning to exceed production. The consequence is that any presumed price benefit associated with accessing Marcellus supplies is illusory. *See* Part II.C., *infra*.

Spire's Answer also fails to cite any instance in which a pipeline that featured all of the combined deficiencies inherent in its Project was approved by the Commission.

Instead, Spire improperly strings together select portions of various cases in an attempt to justify or mitigate all of the problems associated with its proposed pipeline. *See* Part II.H., *infra*. Spire's case law citations highlight that protections in other cases against unilateral decision-making by a monopsonist are missing here. The relevant state commission has emphasized that it is concerned about Spire's project. *See* Part II.D., *infra*. A large end-user in St. Louis has raised serious questions about Laclede's strategy of shifting costs to other interstate pipeline ratepayers as part of Spire Inc.'s drive to increase rate base through the Spire STL Project. Existing pipelines and their ratepayers will be — indeed, already have been — harmed by Spire. Spire Inc. personnel's multiple roles frustrate fair competition. The combination of these features was *not* present in any case cited by Spire, and indicate why this proposal is fundamentally different than those that have come before. *See* Part II.H., *infra*.

In sum, Spire has categorically failed to support the need for its proposed pipeline, and has not cited any evidence that adequately justifies or mitigates the severe deficiencies associated with the Project. Spire's Application should therefore be rejected.

II.
ANSWER

A. Spire's Affiliation With Laclede Raises Significant Market Power and Affiliate Concerns

Spire's Answer contends that there is no unfair competition for the Commission to consider.[5] This contention is clearly wrong. The course of this proceeding, and the conduct of Spire and its affiliates, refute Spire's contention.

5 Spire Answer at pp. 17-18.

As a threshold matter, the Spire Answer fails to acknowledge directly what is increasingly obvious as a critical problem with its Project: the affiliation of Spire and Laclede. Spire's Answer simply does not explicitly meet the merits of the issue, although implicitly Spire's Answer is quite telling.

Spire and Laclede are, from a practical perspective, acting in a unitary fashion. Both are wholly owned by their common corporate parent, Spire, Inc. In the March 17 Answer, Spire appears to be speaking for Laclede.[6] The unity of purpose and action sheds light on why Laclede has not filed comments on any aspect of the Spire tariff (or on the cost of service).[7] It also explains Spire's ability to obtain Laclede's apparently uncritical agreement to pledge Laclede's captive retail ratepayers to bear additional responsibility for cost overruns during construction and generally underwrite the cost of Spire. In contrast, in dealing with unaffiliated projects, Laclede insisted that:

> Laclede and its customers would not be responsible for any costs, including any unanticipated cost overruns, incurred in constructing the interconnection facilities. This primarily would be accomplished by imposing on [the unaffiliated project sponsor], rather than Laclede, the obligation to pay the contractor who would be installing the facilities, subject to Laclede's specifications, monitoring and approval.[8]

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6 *See e.g.*, Spire Answer at p. 8 (Spire asserts "*Laclede* has made a business decision…" (emphasis added); *id*., at pp. 12-13 (purporting to address Laclede's "operational considerations" and its "goal of enhancing supply path diversity"). *See also* Spire Application at p. 18 (Spire appears to be speaking for Laclede regarding the amount of capacity Laclede will be turning back).

7 The symbiotic relationship between Laclede and Spire is again displayed regarding the NAESB implementation issue. Laclede apparently has excused Spire, from compliance with NAESB standards (*see* Spire Answer at pp. 30-32) and asks that the Commission do likewise. In lieu of meeting NAESB standards, Spire proposes to communicate via email. *See* Spire Answer at p. 31. Spire does not describe in any meaningful way how it would propose to implement an alternative of NAESB at interconnecting pipelines, such as REX and MRT. Operational balancing agreements and other features required by NAESB will be necessary at points of interconnection between those pipes and Spire if it is to be treated on a non-discriminatory basis with other industry participants.

8 *See* Exhibit No. MRT-0034 (at p. 6) to MRT's Protest.

Of course, Laclede could have Spire do its bidding, if it desired, because of Laclede's role in the St. Louis retail market. "Laclede Gas…is the largest natural gas distribution utility system in Missouri, serving more than 1.1 million residential, commercial and industrial customers…."[9] "Laclede Gas is the only distributor of natural gas within its franchised service territory…."[10] But instead of Laclede using its monopsony power as gatekeeper of St. Louis retail loads to lower captive retail customers' costs, it is being used to underwrite the Spire Project to build unnecessary and uneconomic pipeline capacity.

The Natural Gas Act "protects the public against the monopsony power of shippers."[11] Laclede is strong-arming existing interstate pipelines serving St. Louis (*e.g.*, MoGas), to shift costs away from Laclede, to other customers on those legacy systems. The Commission cannot simply presume that fair competition is currently taking place and it has an obligation to ensure that monopsonist market power is not being exercised. As disclosed by MoGas, effective March 1, 2017, Laclede amended its existing firm transportation agreement with MoGas. As of October 31, 2018—the proposed in-service date of Spire—the rate under the MoGas-Laclede agreement will drop from a monthly maximum recourse rate of $12.385/Dth to $6.386/Dth, resulting in $4.5 million of annual costs that may be shifted from the Laclede contract to other billing determinants on MoGas' system.[12]

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9 Spire Inc. 2016 Annual Report at p. 2, attached as Exhibit No. MRT-0040.

10 *Id.* at p. 3.

11 *Maritimes & Northeast Pipeline, LLC*, 154 FERC ¶ 61,084 at P 31 (2016).

12 *See* Exhibit No. MRT-0041 hereto (CorEnergy Infrastructure Trust, Inc. Form 8-K (3/1/17) at p. 2).

Consequently, the facts have overtaken and refuted Spire's contention that "Laclede's contractual commitments will be unaffected by approval of the Project."[13] Ameren, as a MoGas customer, has noted that it will face MoGas' request to increase rates to deal with Spire's impacts:[14] this would include cost shifts occasioned by the amendment of the MoGas–Laclede contract. Moreover, Laclede's amendment of its existing MoGas contract, without modification of its full MDQ level, enhances the likelihood that Laclede will decrease its level of subscription on *other* pipelines serving St. Louis from the current level of service contracted to Laclede. This is just the beginning—not the end—of Laclede shifting costs away from itself to other customers in the wake of Laclede's own actions.

The excessive design capacity of Spire has an important impact. The more decontracted capacity there is on existing pipelines serving St. Louis, the greater the cost re-assignment that may result to the remaining billing determinants on such systems, and the easier it will be to market not only Spire's uncontracted 50,000 Dth/d of capacity, but any expansion of Spire's capacity (resulting in an increase in Spire, Inc. rate base and Spire, Inc.'s earnings therefrom).[15] The ability to raise costs to competitors is important:

> [R]aising rivals' costs has obvious advantages . . . . It is better to compete against high cost firms than low cost ones. Thus, raising rivals' costs can be profitable even if the rival does not exit from the market. Nor is it necessary to sacrifice profits in the short-run for "speculative and indeterminate" profits in the long-run. A higher cost rival quickly reduces output, allowing the predator to immediately raise price or marketshare . . . These elements combine to make cost-increasing strategies more credible . .

13 Spire Application at p. 18.

14 *See* Ameren Protest at p. 7.

15 Spire initially would be built without any compression (thus affording the option of cheap expansibility).

> . . Because these strategies do not require a sacrifice of profits in the short-run, but allow profits to be increased immediately, the would-be predator has every incentive to carry out its threats.[16]

Despite arguing that it is "pure speculation," "highly unlikely," and "unknown"[17] whether Laclede will de-contract from its capacity commitments on existing pipelines, Spire did not contest the public confirmation of Spire Inc.'s CEO that Laclede will be "letting go" of capacity on other pipelines serving the St. Louis market after Spire goes into service. *See* MRT Answer at p. 11. In fact, Spire's Answer does not address such comments at all. Clearly, Spire's unsupported assertions regarding Laclede's intentions are erroneous.

B. Spire's Staffing and Organization Mean That Fair Competition Has Not Occurred

Spire is engaged in unfair competition. This is the only reasonable conclusion given the intermixing of roles played by personnel within the Spire family. Two individuals, each serving as Spire STL executives, also served as the *lead negotiators in representing Laclede Gas Company in contract negotiations with MRT*. One of these individuals that negotiated with MRT is described on Spire Inc.'s website as leading "the optimization of Spire's gas supply assets, including midstream and upstream projects"; he "also guides the company's non-regulated business units, including its natural gas marketing affiliate, Spire Energy Marketing."[18] It is not clear whether this two-person negotiation team also is dealing with other existing pipelines serving St. Louis. These circumstances raise serious questions.

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[16] "Raising Rivals' Costs", Steven Salop and David Scheffman, *American Economic Review*, Vol. 73, No. 2 (May 1983) at pp. 267-68.

[17] Spire Answer at pp. 12, 14.

[18] *See* Exhibit No. MRT-0043 attached hereto.

In light of the overlapping job duties of personnel of Spire, Laclede, Spire Energy Marketing and Spire, Inc. and chains of command within those organizations, it is simply impossible for other unaffiliated pipelines to have the same knowledge regarding the goals of Laclede that Spire enjoys. *First*, the two individuals referenced in the foregoing paragraph will be instrumental in deciding how and under what terms Spire STL capacity should be marketed to non-Laclede loads. This includes the 50,000 Dth/d of currently unsubscribed Spire STL capacity, plus any decision regarding whether and under what conditions its capacity should be expanded. *Second*, given their other responsibilities, one or both of the two referenced individuals who are spearheading Spire STL also will be aware of offers by others to use existing capacity on non-Spire systems held by Laclede and Spire Energy Marketing and the terms under which such unaffiliated capacity could be released. This will influence their assessment of offers to acquire Spire capacity and plans to market Spire expansion capacity. *Third*, the referenced individuals have been involved in negotiating the terms and extent of Laclede's retention of capacity on MRT (as noted above) and perhaps other existing pipelines, such as MoGas, as well as Natural Gas Pipeline Company of America ("NGPL"), Trunkline, Panhandle Eastern and Rockies Express Pipeline ("REX"), in anticipation of the commencement of Spire's operations. *Fourth*, they are in a position to influence decisions regarding what capacity on existing pipelines should be turned back by Spire Energy Marketing. Consequently, these two individuals will have an important voice in how competing pipelines' rates are established to account for costs of capacity that Spire Inc. subsidiaries had previously held, and procurement (or relinquishment) of unaffiliated interstate pipeline capacity into the St. Louis market.

The conflicted role of these two individuals helps to explain the decision to pursue an oversized, excessively costly 66 mile long greenfield project for 400,000 Dth/d (*cf.* Spire Answer at 10), which inflates rate base to serve a natural gas market that has only flat demand. A smaller pipeline—for instance a line capitalizing on the NGPL facilities only 11 miles from Laclede's facilities—would shorten the greenfield construction involved by 83%, thereby decreasing the cost of new facilities and the impact on retail ratepayers. That is true regardless of whether such a project is under consideration today or was considered in 2010. But a smaller project would also diminish the achievement of increased rate base.

These circumstances present troubling issues for Laclede's captive ratepayers and for other shippers on unaffiliated pipelines serving the St. Louis area, and competition generally. These circumstances insure that fair competition *cannot* result.

C. Rising Prices In The Appalachian Basin Undermine, And Will Continue To Undermine, Contentions Of Spire's Proponents

Spire claims that its proposed pipeline will provide "substantial economic benefits" by sourcing gas from various regions, including the Appalachian Basin, for delivery to the St. Louis market.[19] However, previously depressed Appalachian Basin prices have risen significantly this year, which undermines, and will continue to undermine, the purported economic benefits associated with Spire's proposed pipeline.[20]

According to the Inside FERC Pipeline Market Tracker's report on pipeline capacity serving Marcellus production:

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[19] *Id.* at pp. 10, 16.

[20] *See* S&P Global Platts, *Inside FERC Pipeline Market Tracker*, "Producer guidance on 2017 growth falls short of pipeline expansion capacity" (Mar. 20, 2017).

> new expansions are unlikely to be filled with new production, but rather will follow a pattern similar to the experience of Rockies Express's Zone 3 Capacity Enhancement project, whereby existing production is rerouted to the expansion capacity. Such a phenomenon, should it play out, will be supportive of basis strengthening at Northeast supply hubs, such as Dominion south and Texas Eastern Transmission M2.

This market evolution follows the path described in Dr. Carpenter's Affidavit to MRT's Protest.[21] Production basins that had been export capacity-constrained, for instance previously in the Rockies and for much of the past decade in Appalachia, reach a point where infrastructure development de-bottlenecks the region and previously depressed gas prices equilibrate with other basins. That now appears to be occurring for Marcellus production. "As even more capacity is placed into service in the region, Dominion South could strengthen even further, trading within variables of its downstream markets,"[22] According to *Inside FERC Gas Pipeline Market Tracker*, this is expected to place "upward pressure on Dominion South prices, which have traditionally traded at a heavy discount to Henry Hub, and tighten spreads between Dominion South and downstream markets."[23] Moreover, in addition to the 18 Bcf/d of capacity to be constructed to transport Marcellus production identified in MRT's Protest,[24] Transcontinental Gas Pipe Line recently announced another 400 MMcf/d of capacity "that would boost supplies to the New York City area. . . ."[25] This project will "help[ ] relieve bottlenecks in a region that often sees higher prices during periods of heavy

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[21] *See* Exhibit No. MRT-0003 to MRT's Protest at pp. 12-17, 18-19.

[22] *See* n.19, *supra.*

[23] *Id*.

[24] MRT Protest at 22 and Appendices A and B thereto.

[25] S&P Global Platts, *Megawatt Daily*, "Transco project targets NYC power gen demand" (March 28, 2017).

demand because of insufficient pipeline infrastructure."[26] Rising prices in the Appalachian Basin undercut Spire's contention that the proposed pipeline will bring competitively priced Marcellus production to the St. Louis market.

Alternatively, Spire's claim of benefits for the Project now apparently is shifting to the availability and price of supplies in REX Zone 3, rather than its earlier references to Marcellus supplies. Laclede, as noted in MRT's Protest, only holds 20,000 Dth/d of capacity on REX;[27] consequently Spire is relying on Laclede acquiring additional volumes in the upper Midwest where Spire would interconnect with REX. The price at which such supplies would trade will approximate the price of supplies at other pipeline interconnects in the upper Midwest between MRT's East Line and NGPL and Trunkline. Thus, any claimed pricing opportunities available to buyers at the former point are available to buyers at the latter points as well. There is no material commodity price benefit to buying gas at REX Zone 3 prices, relative to buying gas at Chicago citygate prices, at which volumes are priced at the NGPL/MRT East Line interconnection.[28]

D. After-The-Fact Review By The Missouri Public Service Commission Is Insufficient to Protect Captive Customers

The posture of the Missouri Public Service Commission in this case is very different than the posture of state commissions in other proceedings cited by Spire's pleadings. According to Spire, the Missouri Commission does not have "the opportunity for an advance review and pre-approval of" Laclede's commitment to Spire.[29] Regardless of whether that statement is entirely accurate, no doubt Laclede could obtain

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[26] *Id.*

[27] *See* Exhibit No. MRT-0003 at 21 (P39) to MRT's Protest.

[28] *See* MRT Protest at p. 25 n.91.

[29] Spire Answer at p. 19.

and consider the Missouri Commission's input in advance of constructing Spire should Laclede so desire. At a minimum it is clear that the Missouri Commission has concerns with terms of the Precedent Agreement ("PA") between Spire and Laclede.[30] The Missouri Commission requests that this Commission "thoroughly examine all of the . . . impacts of the proposed pipeline."[31] The Office of Public Counsel in Missouri has noted that an after-the-fact review of the Spire Project will be far more disadvantageous to consumers than prospective scrutiny of the Project.[32] That conclusion is implicitly reinforced by Spire's allowance that in "future MPSC proceedings…*the MPSC…can confirm that Laclede's commitment here was reasonable*…."[33] Apparently, Spire posits only ratification of a *fait accompli*, not meaningful protection of Laclede's captive customers and a review of its inter-affiliate arrangement. Meaningful regulatory review involves more than simply "confirm[ing]" the affiliates' deal after the fact.

These circumstances stand in stark contrast to cases Spire seeks to rely on. In those cases, state commissions either found that additional pipeline capacity should be constructed to serve growing demands following careful study of the market, or had approved the LDCs' contracts with the pipeline.[34] Neither circumstance applies here.

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30 Conditional Protest of the Missouri Public Service Commission, *Spire STL Pipeline LLC*, Docket No. CP17-40-000, at p. 8 ("Missouri Commission Conditional Protest").

31 *Id.* at p. 4.

32 Exhibit No. MRT-0026 to MRT's Protest at pp. 4-5 and PP 8-9 ("*Motion to Compel*," *In the Matter of Laclede Gas Co*., Missouri Public Service Commission Case No. GM-2017-0018 at PP 8-9 (filed Feb.23, 2017)).

33 Spire Answer at p. 19 (emphasis added).

34 *Ruby Pipeline LLC*, 128 FERC ¶ 61,224 at P 37 (2009); *Guardian Pipeline L.L.C.*, 91 FERC ¶ 61,285 at 61,966-68, 61,971-72 (2000) (explaining that the LDC's decision was approved by the appropriate state regulatory body); *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080 at P 85 (2016) ("*Florida Southeast Connection*") (the Florida Commission "issued an order finding that [the utility] had demonstrated a need for additional capacity").

E. Spire's Answer Contradicts Assertions Spire Made In Its Application Regarding Demand In The St. Louis Market

Spire seeks leave to file an unauthorized answer in part by claiming to "provide information that aids in clarifying the relevant facts."[35] Spire's Answer could only be considered to "provide information that aids in clarifying the relevant facts" in the sense that it contradicts Spire's prior assertions that Spire will create benefits.

For instance, Spire's Application originally indicated that the Project would lead to "additional natural gas conversions"[36] and "support potential growth in demand in the industrial and power generation sectors."[37] Yet Spire's Answer heads in a different direction, admitting that "this Project was not developed to serve new demands."[38] The fact that Ameren, the only major power generator in the region to be served by Spire, has filed a protest in this proceeding, is clear evidence that claims of large opportunities to grow methane demand in the power generation segment are not credible. Spire now acknowledges "the fact that the St. Louis area and surrounding communities…are not anticipated to increase their demand for natural gas…"[39] Obviously, the Application's claim that incremental demand will arise as end users convert from other fuels to methane cannot be reconciled with admissions that the region will not increase its demand for natural gas. Nor can non-existent demand growth be used to justify a new greenfield pipeline project. The weakness in demand for natural gas in St. Louis will likely be further compounded by the significant unit cost increases that the Spire Project will trigger -- not only from the capital costs of the Project itself, but the unit cost

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35 *See e.g.* Spire Answer at p.4 n.6.

36 Spire Application at pp. 10, 20; *see also id*. at pp. 5, 23.

37 *Id.* at p. 25.

38 Spire Answer at p. 10.

39 *Id*.

consequences on other pipelines resulting from Spire's construction.[40] While Spire's Application tried to bootstrap a demand growth story off of natural gas displacing coal as an electric generation fuel,[41] an executive order signed by President Trump on March 28, 2017, rolls back the Clean Power Plan and whatever impact that would have had in prompting coal-to-methane conversions of power plants.

Another inconsistency on display arises from Spire's multiple positions about the importance of supply diversity. Spire's Application extolled the virtues of access to Marcellus production, which Spire associated with its Project.[42] Yet Spire's Answer demonstrates that that supply source already is available to Laclede.[43] Furthermore, Spire Inc.'s subsidiary, Laclede, dismissed the allegations of benefits from Marcellus supplies when aggressively opposing the St. Louis Natural Gas Pipeline L.L.C. ("SLNGP"), stating:

> Existing pipeline transporters that currently deliver gas to Laclede today already provide the Company with access to the same gas supplies on the Rocky Mountains Express pipeline. . . that would be sourced through the Complainant's proposed pipeline, but without the proposed pipeline's incremental cost.[44]

Laclede stated that SLNGP's

> assertions regarding the supposed superiority of its pipeline project all rest on the assumption that its proposed interconnection with NGPL will provide Laclede with cheaper access to gas sourced off the REX pipeline. Laclede already has access to gas from REX through NGPL and . . . Mississippi River Transmission at a more

40 *See* pp. 6-7 and 9-10, *supra*.

41 Spire Application at p. 25.

42 Spire Application at pp. 9, 22-23.

43 Spire Answer, Attachment B (where MRT states that "We bring Marcellus gas into our east line now.").

44 Exhibit No. MRT-0031 to MRT's Protest at p. 22.

> favorable rate and without the incremental cost of Complainant's proposal.[45]

Consequently Laclede affirmed that:

> [SLNGP's project] would have added nothing of value for Laclede or its customers. . . . Laclede and its customers would have received nothing more than redundant pipeline access to the same gas supplies that Laclede can already access through the . . . MRT East line.[46]

In its March 17 Answer, Spire excuses itself from acknowledging its prior rejection of the claimed benefits of the diversity of supply by asserting it "will not encumber the record…with further discussion of that contentious matter."[47] If Laclede was truly looking to diversify, the STLNGP and other projects would have provided access to the Marcellus at lower costs to Laclede ratepayers. An 11-mile pipeline project from the NGPL St. Louis lateral to the Laclede storage facility sized to displace the peaking capability of the propane facility would achieve better economics for Laclede, and Spire does not argue otherwise. However, those alternatives obviously would not have met the level of investment in pipeline infrastructure Spire requires to grow earnings, a clear driver in the non-arms-length relationship behind Spire. *See* MRT Protest at pp. 31-32.

F. Contrary To Spire's Assertions, Past Remarks By Enable Executives Clearly Reflect The Negative Consequences of Spire

Spire cites earnings call statements by Enable executives that MRT is well positioned to potentially capture opportunities to move Marcellus supplies southward to

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45 *Id.* at p. 2 n.1.

46 Exhibit No. MRT-0034 to MRT's Protest at 2 (P 3) and n.2 ("Laclede Gas Company Response To Staff Report," St. Louis Natural Gas Pipeline LLC v. Laclede Gas Co., Missouri Public Service Commission Case No. GC-2011-0294 at 2 and n. 2 (filed July 11, 2011)).

47 Spire Answer at pp. 10-11.

Perryville, that contract expirations can be part of normal recontracting, and that Enable MRT is looking at ways to "mitigate" Spire's effects.[48]

None of the statements cited by Spire denies that MRT will experience harm from de-subscription. Clearly the quoted remarks reflect the negative consequences of Spire: successful enterprises rarely seek to "mitigate" trends that are beneficial to their business. Instead, they show that MRT, like El Paso in Opinion No. 528 (where the Commission allowed all costs of de-subscribed capacity and discounted rate contracts to be recovered from remaining billing determinants on the system), is looking at all reasonable options to re-market capacity and "mitigate" the harm that Spire will create.[49] This will be especially challenging given that Laclede's peak day needs are *declining*.[50] The EIA data show methane demand in the relevant census region as flat for about 10 years.[51] These facts do not refute the existence of the harm described by MRT; it shows MRT should be reviewing options about how to cope with that harm in a difficult market environment.[52] The mitigation of the harm to MRT from Spire may take the form of increased rates on MRT. Consequently, the Spire Project as proposed is not "a positive development"[53] on a net basis for MRT, Laclede's retail ratepayers, or other consumers taking gas from existing pipelines serving St Louis.

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48 Spire Answer at pp. 13, 15 & Attachments A and B.

49 MRT will make all reasonable efforts to resell capacity that Spire Inc.'s executive confirmed Laclede will be "letting go." MRT Protest at 11; Exhibit No. MRT-0003 at p. 24.

50 *See* MRT Protest at p. 15, Table 1 and Exhibit No. MRT-0016.

51 *See id.* at p. 14.

52 Laclede's Answer attempts to dismiss the de-contracting consequences for MRT of the Spire Project by referring to MRT's prior efforts to potentially lease capacity, but fails to note that the lease was never consummated. Laclede Answer at p. 19. In like fashion, Laclede points to MRT's efforts to plan for negative consequences of other new projects that could displace demand for MRT services, but does not disclose those projects were never constructed. *Id.*

53 Spire Answer at p. 16.

Further, the Enable earnings conference noted that at present, MRT does "bring Marcellus gas into our east line."[54] MRT's interconnections with NGPL, Trunkline and MoGas already provide access to that supply source, indicating that the Spire Project is simply duplicative. Each of NGPL, Trunkline and MoGas already have interconnections with REX.[55] Laclede could have sourced their entire MoGas capacity entitlement (at any time since 2010) from REX if there was actual value to do so. Obviously, they have not done so. Thus, Laclede did not and does not need the Spire project to obtain Marcellus volumes. The uncontroverted fact that Laclede already has access to Marcellus supplies demonstrates that Spire is a rate base increase (in the form of the Spire STL investment) in search of a justification.

G. Spire's Proposed Interconnection At Chain Of Rocks Raises Operational Difficulties For MRT

Spire's ostensible plans for interconnection at Chain of Rocks ("COR") are peculiar.[56] Spire proposes to spend at least $7 million on a bi-directional meter at COR. Yet Spire repeatedly contends that the COR interconnect will only be used for displacement, in essence reducing use of the $7 million bidirectional meter to an accounting tool -- where volumes available on one side of the interconnection can offset in an accounting sense volumes on the other side of the meter, but never be physically transferred to that side of the meter. $7 million seems a high price tag for that accounting tool.

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54 Spire Answer, Attachment B.

55 On March 29, 2017, MoGas noticed an open season to expand its capacity based upon "recent changes on the REX system [that] have allowed access to Marcellus shale gas" and thus MoGas is soliciting bids for service of up to 60,000 Dth/d of new capacity. *See* Exhibit No. MRT-0042 attached hereto.

56 Spire Answer at p. 27

Alternatively, if the COR interconnect is to physically receive firm volumes from Spire into MRT facilities, MRT will have to spend millions more to ameliorate the consequences to MRT's system.[57] Spire does not submit any proof to the contrary.[58]

The Spire Application proposes to establish two points for physical deliveries directly into Laclede's distribution facilities.[59] In that case, if Spire's "deliveries" at COR are dependent upon displacement related to east-to-west flow on the East Line delivered to COR (which may not be nominated/scheduled on any given day) as Spire suggests,[60] then the remaining two delivery points from Spire, into Laclede's system, must be able to accommodate the full 400,000/day capacity. Conversely, if those two alternative delivery points directly connecting with Laclede are not able to accept the full 400,000/day, Spire is offering non-affiliated shippers an illusory service.

H. Spire Cites No Instance In Which The Commission Approved A Pipeline That Suffered From The Same Cumulative Aggregation of Deficiencies As Spire's Proposed Project

To justify approval of the Project, Spire has "cherry-picked" isolated features from other cases where a specific individual negative attribute of the project it cites was offset by additional factors that mitigated or outweighed the negative factor; but Spire cites no instance in which a pipeline was approved where there was an aggregation of all

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[57] MRT's Witness Dr. Kytomaa has testified without substantive challenge by Spire that "keeping the current supplies unchanged at Trunkline and NGPL prevents any supply of gas at the Chain of Rocks interconnection" from being received from Spire into MRT on a firm basis. Docket No CP17-40, Exhibit No. MRT-001 (Affidavit of Dr. Kytomaa) at P 8. In fact, simply terminating deliveries from MRT to Laclede at COR in some operating situations would increase pressures in other parts of MRT's system in excess of MAOP and still require substantial increases in deliveries at other delivery points. *Id*.

[58] Spire suggests that MRT's operational concerns are not made in good faith. Spire Answer at pp. 26-28 and nn.43, 46 & 47. Spire provides absolutely no evidence to counter MRT's affidavit. Spire's aspersions regarding MRT's uncontested engineering evidence are unsupported and unwarranted.

[59] Spire Application at p. 12; Spire Answer at p. 26.

[60] *See* Spire Answer at p. 27.

of the same deficiencies associated with the proposed pipeline in this case. The deficiencies associated with Spire include: (i) less than 90 percent of the pipeline's capacity is subscribed, (ii) Spire has not contracted with any unaffiliated firm shipper; (iii) no shipper on the pipeline has agreed to pay maximum recourse rates; (iv) captive residential customers of Spire's affiliate have been made the financial backstop of the Project; (v) demand in the market is flat; (vi) there has been no prospective state commission review or finding of need; and (vii) no market study has been provided.[61] Spire, in an attempt to argue away each of these deficiencies, cites to various cases in which the Commission approved projects that suffered from only one or a few similar deficiencies, not one project advanced in the face of *all* of these deficiencies.[62] Spire ignores the fact that none of the projects in these previous cases was encumbered by the array of deficiencies present in Spire's Application.

For example, Spire points to *Eastern Shore Natural Gas Company* to argue that (i) the Commission gives equal weight to contracts between affiliates and non-affiliates, and (ii) 100 percent of the project's capacity need not be subscribed.[63] Spire then cites to different case law to support its position that having only one shipper under contract "has no bearing on the need determination[.]"[64] Spire points to yet another case to justify its

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[61] MRT has thoroughly discussed each of these issues in its Protest. *See, e.g.,* MRT Protest at pp. 5-6, 9-10, 13-16, 28-29, 38-39, 43-45. MRT will not reiterate those arguments here.

[62] *See*, *e.g.*, Spire Answer at p. 6 n.10 (regarding subscription by only one shipper), 7 n.12 (regarding subscriptions for less than 100 percent of total capacity), 7 n.14 (regarding shipper affiliation with project sponsor), 9 nn.16-18 (regarding the need for a market study), 13 nn. 26 & 28 (regarding harm to existing pipelines).

[63] *See id.* at pp. 7-8.

[64] *Id.* at p. 6 n.10 (citing *Equitrans, L.P.*, 153 FERC ¶ 61,381 (2015); *Northwest Pipeline GP*, 129 FERC ¶ 61,136 (2009); *Entrega Gas Pipeline, Inc.*, 112 FERC ¶ 61,177, *order on reh'g*, 113 FERC ¶ 61,327 (2005)).

failure to include a market study in its Application.[65] Spire's piecemeal reliance on these cases, none of which addresses the totality of problems associated with Spire's project, highlights the fact that Spire's proposed project is uniquely problematic.

Nonetheless, ignoring for the moment Spire's questionable piecemeal approach, the cases on which Spire relies also feature mitigating factors *not* present in this proceeding. For example, in *Eastern Shore*, the Commission found that there was a "lack of any identified significant adverse effects on Eastern Shore's existing customers, other existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline[.]"[66] There is no such lack of negative effects here. As discussed throughout this answer and in MRT's Protest, Spire has failed to demonstrate that the multiple problems associated with its project are adequately mitigated, or that its proposed project, and the market and financial conditions surrounding it, are sufficiently analogous to projects approved in other cases. Therefore, the Commission should reject Spire's Application.

I. The Commission Should Permit MRT To Review The Substance of Spire's And The Missouri Commission's Claims Regarding The Precedent Agreement

Because the substance of the PA, and the Missouri Commission's discussion of the PA, are not part of the public record, concerns about the PA cannot be analyzed in a meaningful manner. The basis for the Missouri Commission's protest with respect to the PA is redacted from the Missouri Commission's pleading.[67] The unavailability of the PA is particularly troubling given that the PA is Spire's only contractual support for the new

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65 *Id.* at p. 9 (citing *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 at P 28 (2014), *reh'g denied in relevant part*, 154 FERC ¶ 61,046 at P 19 (2016), *appeal pending sub nom. Catskill Riverkeepers v. FERC*, 2d Cir. Case No. 16-345 (filed Feb. 5, 2016)).

66 *Eastern Shore*, 132 FERC ¶ 61,024 at P 33.

67 Missouri Commission Conditional Protest at pp. 3-4.

pipeline. There is simply no foundation for the claim that Spire is the "best alternative" when the terms of that alternative cannot be known or tested. From the public record, as discussed in this filing and MRT's February 27 Protest, Spire has no claim to the status of best alternative.

In any event, the negotiated rate agreement between Laclede and Spire will have to be publicly filed pursuant to the Commission's rules if and when Spire commences service.[68] Because disclosure in that instance will occur, MRT should be permitted to review the PA and the substance of the Missouri Commission's claims at this crucial stage. MRT has expressed to Spire that it would be willing to review this material subject to a protective agreement. The Commission in several contexts has found that a protective agreement can appropriately balance, on the one hand, a party's need to protect confidential information, with, on the other hand, other parties' need for the material to develop the record.[69] Spire has not adequately explained why the PA would not be sufficiently protected by a protective agreement. Moreover, it is impossible to reconcile the access of Spire STL executives to the details described above in Part II.B., including negotiations with other pipelines, such as MRT, as well as the PA, while other entities are

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[68] *See Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *clarifying decision on denial of reh'g*, 114 FERC ¶ 61,042 (2006), *dismissing reh'g*, 114 FERC ¶ 61,304 (2006); *Gulf South Pipeline Co.*, 132 FERC ¶ 61,058 (2010).

[69] *See West Deptford Energy, LLC*, 134 FERC ¶ 61,189 (2011); *Aero Energy, LLC*, 118 FERC ¶ 61,047, at P 10 (2007) ("While the information may be of a sensitive commercial and financial nature that is privileged and confidential, that does not mean that it should not be released to Aero Energy or another party under a protective order. Protective orders are used so that confidential business information will be protected while simultaneously protecting the due process rights of another party to challenge relevant information relied upon by the party seeking confidentiality. Such protective orders prevent broader dissemination of the sensitive information for business purposes or commercial advantage.") (internal citations omitted); *Mojave Pipeline Co.*, 38 FERC ¶ 61,249, at 61,842 (1987) ("Since in most instances a protective order can protect against harmful disclosure, a party claiming that confidential materials should be withheld entirely will be expected to show that a protective order will not adequately safeguard its interests and this this concern outweighs the need for the material to develop the record.").

denied access to that same type of information. This is a textbook illustration of a tilted playing field and unfair competition.

J. Spire's Non-Compliance With The Commission's Tariff Policies Gives Spire An Improper Advantage Over Competitors

Spire erroneously claims that "there is no inconsistency between [its proposed tariff provisions regarding the reservation of capacity for future expansion pipeline projects] and Commission policy."[70] However, its discussion of its tariff fails to (1) refer to any Commission policy regarding the reservation of capacity for future expansion pipeline projects, (2) discuss any of the Commission orders identified in the analysis of Spire's tariff contained in MRT's Protest, or (3) cite to a single Commission order supporting its tariff provisions. Spire should comply with the Commission's tariff policies, including those associated with the reservation of capacity for future expansion pipeline projects. Spire's non-compliance with Commission policy, as detailed in MRT's Protest,[71] would provide Spire with a competitive advantage over other pipelines serving the St. Louis market.

III.

MOTION FOR LEAVE TO ANSWER

MRT respectfully requests a waiver of the Commission's rule prohibiting answers to answers.[72] The Commission permits answers to an answer when doing so facilitates the decision-making process, assists in clarifying complex issues, or helps to ensure a full and complete record.[73] MRT's answer clarifies the issues and will aid the Commission's

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[70] Spire Answer at p. 32.

[71] MRT Protest at pp. 53-56.

[72] *See* 18 C.F.R. § 385.213(a)(2).

[73] *See Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,022, at P 12 (2014) ("We will accept MISO's answer because it has provided information that has assisted us in our decision-making

decision-making process. Moreover, MRT submits that this answer will help ensure that the Commission has a complete record upon which to base its decision. Therefore, there is good cause to waive the Commission's prohibition in Rule 213(a)(2) against answers to answers.

IV.
CONCLUSION

WHEREFORE, for the foregoing reasons, MRT respectfully requests that the Commission (1) accept this Answer, and (2) deny Spire's Application as more fully described above.[74]

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process."); *Ameren Servs. Co.*, 100 FERC ¶ 61,135, at P 15 (2002) ("[G]iven the complex nature of this proceeding and because the answer aids in clarifying certain issues, we will accept GridAmerica's answer."); *Cottonwood Wind Project, LLC v. Neb. Pub. Power Dist., Inc.*, 155 FERC ¶ 61,285, at P 26 (2016).

[74] On March 15, 2017, Spire indicated that it no longer intends to seek authorization to acquire Line 880 from Laclede, but instead, will construct an additional six miles of greenfield pipeline to interconnect its proposed pipeline to MRT. Spire's new route may affect the impact that Spire's pipeline has on MRT's facilities and operations, as well as any cost comparisons of the project to alternatives, as well as other issues. Therefore, MRT reserves its right to provide further comments regarding the Spire project after examining Spire's amended Certificate Application.

Respectfully submitted,

/s/ Mark F. Sundback

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** Licensed to practice in Massachusetts. Not licensed to practice in the District of Columbia

April 3, 2017

Exhibit No. MRT-0040

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

FORM 10-K

(Mark One)

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended September 30, 2016

or

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to

Commission File Number	Registrant, Address and Telephone Number	State of Incorporation	I.R.S. Employer Identification Number
1-16681	Spire Inc. 700 Market Street St. Louis, MO 63101 Telephone Number 314-342-0500	Missouri	74-2976504
1-1822	Laclede Gas Company 700 Market Street St. Louis, MO 63101 Telephone Number 314-342-0500	Missouri	43-0368139
2-38960	Alabama Gas Corporation 2101 6th Avenue North Birmingham, Alabama 35203 Telephone Number 205-326-8100	Alabama	63-0022000

Securities registered pursuant to Section 12(b) of the Act:

	Title of each class	Name of each exchange on which registered
Spire Inc.	Common Stock $1.00 par value	New York Stock Exchange
Laclede Gas Company	None	Not applicable
Alabama Gas Corporation	None	Not applicable

Securities registered pursuant to Section 12(g) of the Act:

Spire Inc.	Yes [ ]	No [X]
Laclede Gas Company	Yes [ ]	No [X]
Alabama Gas Corporation	Yes [ ]	No [X]

Indicate by check mark whether each registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Spire Inc.	Yes [X]	No [ ]
Laclede Gas Company	Yes [ ]	No [X]
Alabama Gas Corporation	Yes [ ]	No [X]

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the act.

Spire Inc.	Yes [ ]	No [X]
Laclede Gas Company	Yes [ ]	No [X]
Alabama Gas Corporation	Yes [ ]	No [X]

Item 1. Business

OVERVIEW

Spire Inc. (Spire or the Company) was formerly The Laclede Group, Inc., an entity formed in 2000 that, effective October 1, 2001, became the public utility holding company for Laclede Gas Company (Laclede Gas or the Missouri Utilities). Laclede Gas was founded in 1857 as The Laclede Gas Light Company and it was listed on the New York Stock Exchange (NYSE) in 1889, making the Company successor to the eighth longest listed stock on the NYSE. The Laclede Gas Light Company was renamed Laclede Gas Company in 1950.

Spire is committed to transforming its business and pursuing growth by 1) growing its gas utility business through prudent investment in infrastructure upgrades and organic growth initiatives, 2) acquiring and integrating gas utilities, 3) modernizing its gas assets, and 4) investing in innovation.

The Company has two key business segments: Gas Utility and Gas Marketing.

The Gas Utility segment includes the regulated operations of Laclede Gas, Alabama Gas Corporation (Alagasco), and EnergySouth, Inc. (EnergySouth) (collectively, the Utilities). The business of the Utilities is subject to seasonal fluctuations with the peak period occurring in the winter heating season, typically November through April of each fiscal year. Laclede Gas, a public utility engaged in the purchase, retail distribution and sale of natural gas, is the largest natural gas distribution utility system in Missouri, serving more than 1.1 million residential, commercial and industrial customers, and is headquartered in St. Louis, Missouri. Laclede Gas serves St. Louis and eastern Missouri and, through Missouri Gas Energy (MGE), Kansas City and western Missouri. Alagasco is a public utility engaged in the purchase, retail distribution and sale of natural gas principally in central and northern Alabama, serving more than 0.4 million residential, commercial and industrial customers with primary offices located in Birmingham, Alabama. The Company purchased 100% of the common shares of Alagasco from Energen Corporation (Energen) effective on August 31, 2014. Mobile Gas Service Corporation (Mobile Gas) and Willmut Gas and Oil Company (Willmut Gas) are utilities engaged in the purchase, retail distribution and sale of natural gas to 0.1 million customers in southern Alabama and south central Mississippi. Mobile Gas and Willmut Gas are wholly owned subsidiaries of EnergySouth. The Company purchased 100% of the common shares of EnergySouth from Sempra U.S. Gas & Power, LLC, a subsidiary of Sempra Global (Sempra), on September 12, 2016.

The Gas Marketing segment includes Laclede Energy Resources, Inc. (LER), a wholly owned subsidiary engaged in the marketing of natural gas and related activities on a non-regulated basis.

As of September 30, 2016, Spire had 3,296 employees, Laclede Gas had 2,229 employees, and Alagasco had 825 employees.

Consolidated operating revenues contributed by each segment for the last three fiscal years are presented below. For more detailed financial information regarding the segments, see Note 14, Information by Operating Segment, of the Notes to Financial Statements in Item 8.

(In millions)	2016*	2015	2014**
Gas Utility	$ 1,457.2	$ 1,891.8	$ 1,462.6
Gas Marketing and other	80.1	84.6	164.6
Total Operating Revenues	$ 1,537.3	$ 1,976.4	$ 1,627.2

* 2016 Gas Utility operating results include EnergySouth revenues since the September 12, 2016 acquisition date.
** 2014 Gas Utility operating results include Alagasco revenues for the month of September only.

Spire's common stock is listed on the NYSE and trades under the ticker symbol "SR." The following table reflects Spire shares issued during the two most recent fiscal years:

	2016	2015
Common Stock Issuance	2,185,000	—
Dividend Reinvestment and Stock Purchase Plan (DRIP)	22,878	31,166
Equity Incentive Plan	107,752	125,441
Total Shares Issued	2,315,630	156,607

During fiscal 2016 and 2015, shares were issued at historically consistent levels for Spire's DRIP and Equity Incentive Plan. Shares were issued during 2016 to effect the EnergySouth acquisition.

The fiscal year 2016 peak day send out for Alagasco was 0.5 Bcf on January 23, 2016, when the average temperature was 30 degrees Fahrenheit in Birmingham, of which 100% was met with supplies transported through Southern Natural Gas, Transco and intrastate facilities, while supplies from Alagasco's four LNG peak shaving facilities were not required.

Mobile Gas' distribution system is directly connected to interstate pipelines, natural gas processing plants and gas storage facilities. Mobile Gas buys from a variety of producers and marketers, with BP Energy Company being the primary supplier.

Natural Gas Storage

For its eastern service area, Laclede Gas has a contractual right to store 21.6 Bcf of gas in MRT's storage facility located in Unionville, Louisiana, and for its western service area 16.3 Bcf of gas storage in Southern Star's system storage facilities located in Kansas and Oklahoma, as well as 1.4 Bcf of firm storage on PEPL's system storage. MRT's tariffs allow injections into storage from May 16 through November 15 and require the withdrawal from storage of all but 2.1 Bcf from November 16 through May 15. Southern Star tariffs allow both injections and withdrawals into storage year round with ratchets that restrict the associated flows dependent upon the underlying inventory level per the contracts.

In addition, in eastern Missouri, Laclede Gas supplements pipeline gas with natural gas withdrawn from its own underground storage field located in St. Louis and St. Charles Counties in Missouri. The field is designed to provide approximately 0.3 Bcf of natural gas withdrawals on a peak day and maximum annual net withdrawals of approximately 4.0 Bcf of natural gas based on the inventory level that Laclede Gas plans to maintain.

Alagasco has a contractual right to store 12.5 Bcf of gas with Southern Natural Gas, 0.2 Bcf of gas with Transco and 0.2 Bcf of gas with Tennessee Gas Pipeline. In addition, Alagasco has 1.8 Bcf of LNG storage that can provide the system with up to an additional 0.2 Bcf of natural gas daily to meet peak day demand.

Gulf South Pipeline Company, LP, at multiple interconnections, provides No-Notice Service which includes 240,000 Dth of storage capacity to Mobile Gas. Through a direct connection with Sempra's Bay Gas Storage, Mobile Gas has 800,000 Dth of maximum storage and 80,000 Dth of maximum daily withdrawal.

Regulatory Matters

For details on regulatory matters, see Note 15, Regulatory Matters, of the Notes to Financial Statements in Item 8.

Other Pertinent Matters

Laclede Gas is the only distributor of natural gas within its franchised service areas, while Alagasco is the main distributor of natural gas in its service areas. The principal competition for the Utilities comes from the local electric companies. Other competitors in the service areas include suppliers of fuel oil, coal, propane, natural gas pipelines that can directly connect to large volume customers, for the Missouri Utilities, district steam systems in the downtown areas of both St. Louis and Kansas City, and for Alagasco, from municipally or publicly owned gas distributors located adjacent to its service territory. Coal is price competitive as a fuel source for very large boiler plant loads, but environmental requirements for coal have shifted the economic advantage to natural gas. Oil and propane can be used to fuel boiler loads and certain direct-fired process applications, but these fuels require on-site storage, thus limiting their competitiveness. In certain cases, district steam has been competitive with gas for downtown St. Louis and Kansas City area heating users.

Laclede Gas' residential, commercial, and small industrial markets represented approximately 91% of its operating revenue for fiscal 2016. Alagasco's residential, commercial, and small industrial markets represented approximately 78% of its operating revenue for the twelve months ended September 30, 2016. Given the current level of natural gas supply and market conditions, the Utilities believe that the relative comparison of natural gas equipment and operating costs with those of competitive fuels will not change significantly in the foreseeable future, and that these markets will continue to be supplied by natural gas. In new multi-family and commercial rental markets, the Utilities' competitive exposures are presently limited to space and water heating applications. Certain alternative heating systems can be cost competitive in traditional markets.

Laclede Gas offers gas transportation service to its large-user industrial and commercial customers. The tariff approved for that type of service produces a margin similar to that which the Missouri Utilities would have received under their regular sales rates. Alagasco's transportation tariff allows it to transport gas for large commercial and industrial customers rather than buying and reselling it to them and is based on Alagasco's sales profit margin so

Exhibit No. MRT-0041

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): March 1, 2017

CorEnergy Infrastructure Trust, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Maryland	**001-33292**	**20-3431375**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1100 Walnut, Ste. 3350, Kansas City, MO	**64106**
(Address of Principal Executive Offices)	(Zip Code)

(816) 875-3705
(Registrant's Telephone Number, Including Area Code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

MoGas Pipeline : Effective March 1, 2017, CorEnergy's wholly-owned subsidiary, MoGas Pipeline LLC successfully amended and extended its Firm Transportation Services Agreement with Laclede Gas Company ("Laclede"), which currently accounts for approximately 56% of MoGas' revenue. The agreement extends the termination date from October 31, 2017 to October 31, 2030 and Laclede will continue to hold 62,800 dekatherms per day of firm transportation capacity on MoGas. This service will continue at the full tariff rate of $12.385 per dekatherm per month until October 31, 2018, at which time the rate will be reduced to $6.386 per dekatherm per month for the remainder of the agreement, resulting in a $4.5 million reduction in annual revenues. MoGas, a wholly owned subsidiary of the Company, operates the pipeline network, unlike the majority of CorEnergy's assets which are leased to an operator under a triple-net participating lease.

CorEnergy expects to offset at least $3 million of the reduction in revenue from Laclede before the reduced rate becomes effective in November 2018. The initiatives to recoup revenues include potential pipeline extensions, leveraging MoGas' multiple pipeline connections, exploring different supply basin optionality, and other revenue enhancement strategies.

Outlook

CorEnergy believes acquisitions enhance the stability of its operations, reducing risk to existing stockholders because of the diversification benefits and added potential for dividend growth. The Company is evaluating a broad set of infrastructure opportunities and anticipates transacting on one to two acquisitions per year in 2017 and 2018, with a target range of $50 to $250 million per project. CorEnergy intends to finance these acquisitions through the use of capacity on its revolver, partnerships with co-investors, portfolio level debt, and if beneficial to existing stockholders, prudent preferred or common equity issuances. There can be no assurance that any of these acquisition opportunities will result in consummated transactions.

CorEnergy intends to continue paying quarterly dividends of $0.75 per share ($3.00 annualized) based on rents received, pending any unforeseen (i) adverse outcomes of the Ultra Petroleum bankruptcy in 2017, or (ii) inability to materially recoup revenues from the reduction in rates for Laclede's utilization of the MoGas Pipeline by the end of 2018. The Company targets revenue growth of 1-3% annually from existing contracts. Based on low inflation and current production levels, CorEnergy does not anticipate significant inflation-based or participating rents in 2017.

"CorEnergy remains well-positioned with critical assets supported by long-term contracts, ample liquidity for future transactions, and the willingness of our manager to waive incentive fees if necessary

Exhibit No. MRT-0042

MoGas Pipeline LLC
Capacity Upgrade Project
Non-Binding Open Season

Introduction

MoGas Pipeline LLC ("MoGas") owns and operates a natural gas pipeline with receipt points at an interconnection with Enable Mississippi River Transmission, LLC ("MRT") on the east end of the system (Madison County, Illinois) and interconnections with Panhandle Eastern Pipe Line Company, LP ("PEPL") and Rockies Express Pipeline LLC ("REX") on the western end of the system (Pike County, Missouri). MoGas operates over 260 miles of interstate natural gas pipeline throughout Missouri and Illinois. Deliveries are made mostly to local distribution companies and industrial customers in the following Missouri counties – Pike, Lincoln, Franklin, St. Charles, Pulaski, Phelps, Dent, Crawford, and Gasconade.

Project Description

MoGas is conducting a non-binding open season to solicit interest for firm transportation service which would become available through the facilities described below. The recent changes on the REX pipeline have allowed access to Marcellus shale gas to be transported on MoGas. MoGas is soliciting shipper interest in a path from REX receipt point to the MoGas MRT interconnect. MoGas will also consider interest in all Zone 1 and Zone 2 receipt and delivery points on its system.

1. MoGas may install pipeline looping on the west end of the system from the interconnections with REX and PEPL to a point on MoGas. The result of this looping will provide an additional 60,000 dekatherms per day of new capacity, for delivery to MRT. MoGas is open to discussions on providing higher volumes at similar rates should shippers show interest, by looping other segments of its Zone 1 system for delivery to MRT or elsewhere in Zone 1. See map showing proposed path for looping on Attachment A to this Non-Binding Open Season.

2. MoGas may install additional facilities on the east end of the system at the MRT meter, if it determines that they are needed to support pipeline looping facilities on the west end of MoGas' system.

Together, the proposed facilities described above will allow up to 60,000 Dth/d of firm transportation service to flow from REX or PEPL to MRT.

Contract Term

The minimum contract term is ten (10) years after the in-service date of the project.

Transportation Rates

Transportation service utilizing the proposed project facilities will be subject to the applicable Zone 1 and Zone 2 recourse rates. Potential shippers may bid the recourse reservation rate, a negotiated reservation rate or a discounted reservation rate. Bids will be evaluated based on the rate, the contract term, and the quantity. In addition to the reservation rate, project shippers also will pay all other applicable tariff rates and charges, including, without limitation, commodity charges, ACA, and fuel. These rates will be assessed as set forth in MoGas' FERC Gas Tariff.

Open Season

This Non-Binding Open Season will begin at 9:00 AM Central Time, April 1, 2017 and will close at 5:00 PM Central Time, June 30, 2017. Bids must be received by 5:00 PM Central Time. Bids must contain the following information as set forth on the attached Bid Form:

- Shipper name with company contact information
- Maximum daily quantity (Dth/d)
- Rate (per Dth/d)
- Primary Receipt and Primary Delivery Points
- Contract term

Bids are non-binding on requesting shippers. This solicitation is not an offer. MoGas shall not be deemed to have accepted any bid until the parties have executed binding Precedent Agreements.

MoGas may extend, modify, or terminate this Non-Binding Open Season or waive any provision of the Non-Binding Open Season on a non-discriminatory basis.

After the close of this Non-Binding Open Season, MoGas will follow-up with parties submitting bids. MoGas reserves the right to negotiate with prospective shippers on a non-discriminatory basis following the Non-Binding Open Season and to execute binding Precedent Agreements for transportation on MoGas.

MoGas reserves the right to hold a follow-up open season or to proceed with the project without holding another open season. MoGas also reserves the right to decline to proceed with the project in its sole judgment.

Questions concerning this Non-Binding Open Season should be directed to:

Cy Zebot, Senior Vice President MoGas Pipeline, LLC
Phone: 636-856-8035 or 772-766-4013
czebot@mogaspipe.com

Submission of Bids

To respond to this Non-Binding Open Season, a completed and executed Bid Form (in the form attached) must be submitted to and received by MoGas prior to the close of the of the Non-Binding Open Season. The Bid Form should be submitted by e-mail to Cy Zebot at czebot@mogaspipe.com.

Prospective shippers are permitted to submit multiple Bid Forms. An executed Bid Form must be submitted for each individual bid.

MoGas reserves the right to remove from consideration non-conforming bids, bids that have contingencies, or bids that fail to meet the minimum contract term of ten (10) years.

MoGas will evaluate all bids to determine whether or not there is sufficient interest in the firm transportation services offered to move forward.

MoGas Pipeline LLC
Non-Binding Open Season

Bid Form

Company Name: ____

Company Contact: ____

Title: ____

E-Mail Address: ____

Telephone Number: ____

Maximum Daily Quantity (Dth/d): ______________________________________

Rate (per Dth/day):

Maximum Recourse Rate (check, if applicable): _______________
OR
Monthly Reservation Rate (insert rate, if applicable): _______________

Primary Receipt Point(s): ____

____

Primary Delivery Point(s): ____

____

Contract Term: ____

Please e-mail completed Bid Forms to czebot@mogaspipe.com.

Attachment A

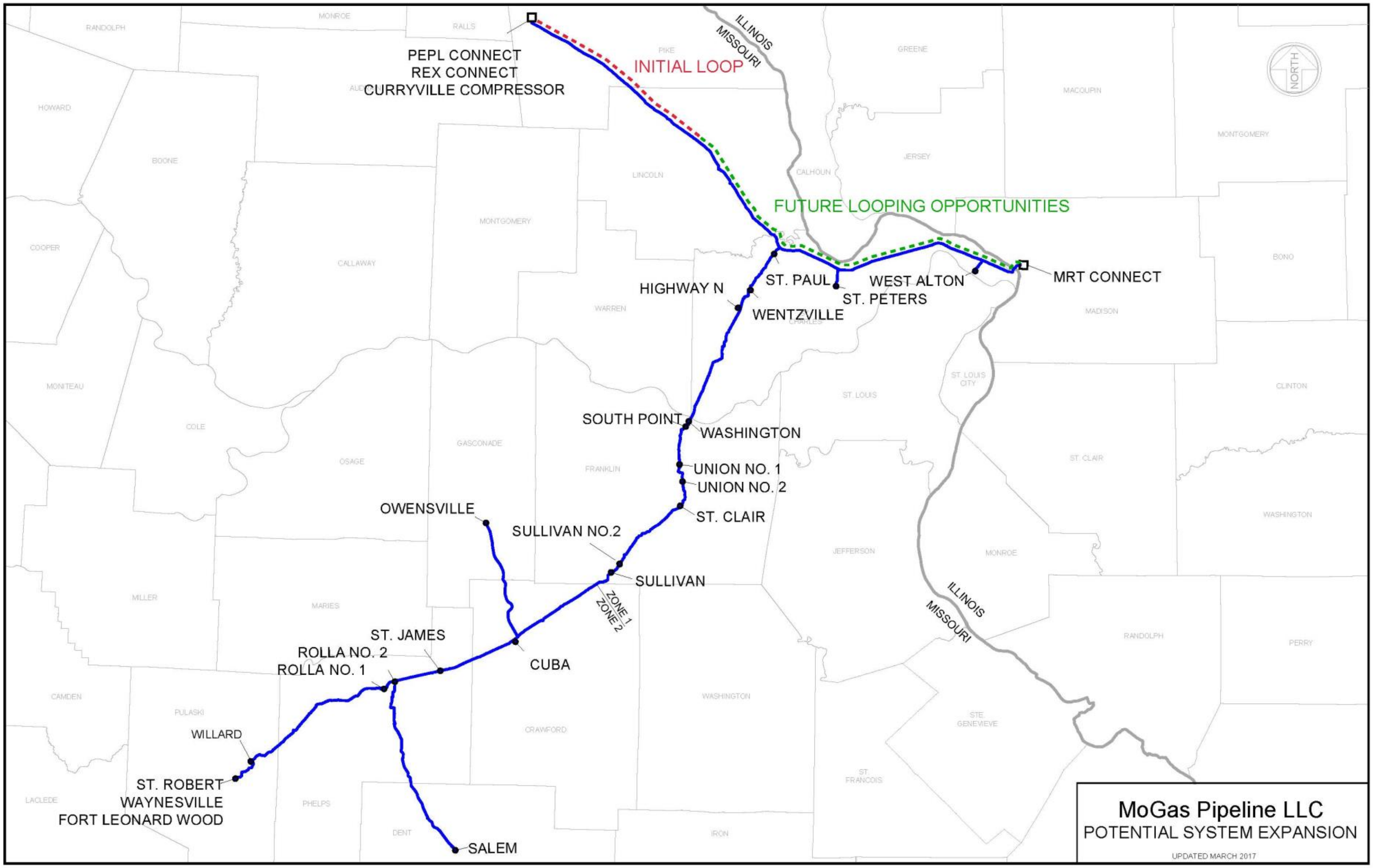


Exhibit No. MRT-0043

Michael C. Geiselhart

Senior Vice President, Strategic Planning and Corporate Development, Spire

Michael Geiselhart is the senior vice president of strategy and corporate development for Spire Inc. In this role, he is responsible for strategic planning, mergers and acquisitions, and integration of utilities and other businesses acquired as part of the company's growth strategy. In addition, he leads the optimization of Spire's gas supply assets, including midstream and upstream projects. Mike also guides the company's non-regulated business units, including its natural gas marketing affiliate, Spire Energy Marketing, and its innovation activities, including emerging technology businesses like Spire CNG. Finally, Mike is responsible for human resources, business process improvement and supply chain.

Mike has more than 30 years of experience on strategic transactions and projects, predominantly in the gas/electric utility and cable/telecom industries. Before joining Spire, Mike was chief financial officer for two telecom startups and an executive-in-residence for private equity firms. Previously, he held senior positions in corporate development, finance and regulatory compliance at a national cable operator (now part of Comcast) and as a cost-of-service witness at a major New England electric utility (now part of National Grid). He began his career as a CPA with a Big 4 accounting firm, and subsequently as an M&A advisor at a boutique investment bank.

Mike has a bachelor's degree in accounting, magna cum laude, from Siena College in Loudonville, New York. He also holds an MBA in finance with honors from the University of North Carolina at Chapel Hill. He was formerly licensed as a CPA in New York.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 3rd day of April 2017, via electronic or U.S. mail, caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Andrew Mina
Andrew Mina

Document Content(s)

Answer of MRT.PDF...1-42

Attachment E

P.O. Box 1336
Houston, TX 77251-1336
(346) 701-2539

March 13, 2018

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington DC 204226

Re: Spire STL Pipeline LLC
Docket Nos. CP17-40-000 and 001
Response to Data Request

CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION

Dear Ms. Bose:

On February 21, 2018, the Commission issued a Data Request to Mississippi River Transmission, LLC ("MRT") in this proceeding, with a response due within 20 days of that date. MRT herein submits the attached responses. MRT's responses include hydraulic models that should be treated as CRITICAL ENERGY INFRASTRUCTURE INFORMATION ("CEII").

The attached materials designated as CEII comprise or contain specific technical information pertaining to MRT's pipeline facilities and nearby energy infrastructure, the disclosure of which could be useful to a person planning an attack on this infrastructure. Accordingly, and pursuant to the Commission's regulations and filing instructions, MRT requests treatment of these materials as Critical Energy Infrastructure Information, and it is marked "CUI//CEII CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE."

In addition, the hydraulic flow model information submitted herewith is highly competitively sensitive, proprietary data, the disclosure of which could cause MRT material harm. Accordingly, MRT requests treatment of that material as both CEII as well as Privileged and Confidential, and it is marked "CUI//CEII/PRIV CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE."

Questions concerning this request for privileged treatment should be submitted to:

Jonathan Christian
Assistant General Counsel
Enable Midstream Partners
1111 Louisiana Street
Houston, TX 77002
Tel: (346) 701-2146
Email: jonathan.christian@enablemidstream.com

Please contact the undersigned if you have any questions regarding this matter.

Very truly yours,

/s/ Jonathan Christian

Jonathan Christian
Assistant General Counsel
Enable Midstream Partners
1111 Louisiana Street
Houston, TX 77002
Tel: (346) 701-2146
Email: jonathan.christian@enablemidstream.com

cc: All parties on the Service List
Mr. Howard J. Wheeler, Project Manager, Division of Pipeline Certificates, Certificates Branch 1, Federal Energy Regulatory Commission Office of Energy Projects

CERTIFICATE OF SERVICE

I hereby certify that on this, the 13th day of March, 2018, I have caused a copy of the foregoing document to be served, by electronic mail, upon all parties listed on the service list compiled by the Office of Secretary, Federal Energy Regulatory Commission for the above-referenced proceeding.

/s/ William M. Rappolt
William M. Rappolt

1. To support MRT's assertion that Spire's proposed pipeline would not result in a lower delivered cost of gas to the St. Louis area, provide projections of the cost of gas delivered to Laclede on the MRT system (including Main Line, MRT East, and Illinois Intrastate Transmission (IIT)) annually over a 20-year period. Break out the costs into relatively known costs, such as the cost to transport gas along the MRT system; and lesser known costs, such as the cost to purchase gas in relevant supply basins and trading hubs where Laclede's gas enters the MRT system. Provide the projections on a per dekatherm basis annually. For gas purchase costs provide specific references to the publications or sources cited and the location from which supplies would be purchased, and detail methods and assumptions behind any price projections. For pipeline transportation costs use either the maximum tariff rate or the actual contract rate, if lower.

Response:

The attached affidavit of Dr. Paul Carpenter (Attachment 1(A)) provides projections of the cost of gas delivered to Laclede on the MRT system annually over the 2018-2040 period. Dr. Carpenter's affidavit also provides an analysis of the delivered cost of gas to Laclede under various scenarios if and after the Spire STL pipeline were to be built. The key points are that: based on the facts now in existence, taking service from MRT is the lower cost option relative to using Spire STL; thus, the Spire STL Project is uneconomic now; and Spire adds more costs as capacity is turned back and other capacity becomes operationally unavailable.

Dr. Carpenter's analysis of the "with Spire" and "without Spire" cases shows that Laclede's commitments to Spire STL increases its overall gas supply portfolio costs. The total additional cost impact of the Spire STL project to Laclede ranges from slightly under a quarter billion dollars, to more than half a billion dollars. See Figures 12 and 13, Scenarios 12 and 4. Dr. Carpenter's Affidavit describes the results of the analyses and the assumptions underlying each and demonstrates that, if the Spire STL project is built, Laclede's cost will increase.

Dr. Carpenter analyzed a dozen different scenarios. In each, the Spire Project would result in increased costs to Laclede. The robustness of this outcome across multiple different circumstances signals that the Spire STL Project is fundamentally uneconomic.

Dr. Carpenter's Affidavit (which is designated Attachment 1(A) to this response) presents annual projections of the cost of gas delivered to Laclede for sources using MRT's mainlines as well as the MRT East Line, which includes the facilities formerly owned by Illinois Intrastate Transmission ("IIT"). (As of January 1, 2018, IIT was acquired by MRT, and IIT no longer exists as a separate entity. This collapsing of IIT into MRT was done in part to respond to market signals, eliminating the rate pancaking that could result when IIT and MRT were distinct entities). The Affidavit of Dr. Carpenter, appended as Attachment 1(A), describes the sources of the data. Generally, the commodity price forecasts come from a model used by market participants and the base case forecasts are those of the model's sponsor without modification. The annual data reflect the pattern within the year of Laclede's gas purchases as shown in Figure 3 of Attachment 1(A).

The data contained in Attachment 1(A) show that based on current circumstances (e.g., presuming that there are no cost overruns on Spire STL notwithstanding potential construction cost increases and tariff changes for steel products), MRT is more economically attractive than Spire. See Attachment 1(A) Paragraph 17. The data in Figure 1 of Attachment 1(A) reflect MRT's current rate design and costs. So that they are stated on a comparable basis, both the Spire transportation cost and the MRT transportation cost do not reflect changes that would occur by virtue of the 2017 Tax Cuts and Jobs Act.

Attachment 1(A) details the supply costs to Laclede of a gas supply portfolio with Spire STL, including the cost consequences of capacity that may remain available for sale for firm service on MRT that becomes de-subscribed as a result of Spire. The results of such cost impacts to Laclede's gas supply portfolio are shown in Figure 12 of Attachment 1(A). Attachment 1(A) includes scenarios that reflect the cost consequences to Laclede of the de-subscription of roughly 190,000 Dth/d, 350,000 Dth/d and 437,000 Dth/d of MRT capacity (MRT provided post-turnback rates to Dr. Carpenter reflecting these de-subscription scenarios). The 190,000 Dth/d de-subscription corresponds to the minimum de-subscription level Spire has put forth in its pleadings in Docket No. CP17-40-000. The 350,000 Dth/d de-subscription corresponds to the level of service Laclede has contracted for on the Spire STL project. The 437,000 Dth/d de-subscription corresponds to the amount of capacity that Laclede has under contract on MRT and that Laclede terminated effective August 1, 2018. See Attachment No. 1(B) to this response. The cost of such de-subscribed capacity is re-assigned to the billing determinants remaining on MRT in the 12 rate scenarios MRT provided to Dr. Carpenter and which were used in his analysis (the results of which are summarized in Figure 12). Figure 12 of Attachment 1(A) shows that the cost of Laclede's aggregate gas supply portfolio will increase by between $229 million and $555 million, if Laclede underwrites the Spire Project. These figures demonstrate that the Spire STL project will result in significant increases in the delivered cost to Laclede for gas supply.

The foregoing data are understated for at least 2 reasons. First, the data do not reflect the de-subscription of storage capacity. MRT expects that Laclede, upon commencement of service on Spire, may terminate or reduce contractual commitments to storage capacity on MRT. That contract reduction may yield higher storage rates. Second, while data in Figure 12 incorporates it, some of the cost data in Attachment 1(A) do not reflect the revenue requirements associated with capacity that would become operationally unavailable on MRT's East Line upon commencement of Spire service as more fully described in response to requests 2 and 3 attached hereto. The revenue requirement of about $700,000 annually associated with the East Line capacity that will become operationally unavailable because of the Spire STL Project properly is attributed to those parties. See MRT's response to request nos. 2 and 3 hereto and MRT's Feb. 27, 2017 filing in this docket at pp.52-53.

Figure 14 of Attachment 1(A) reflects the gas price forecasts taken by Dr. Carpenter from the projections of GPCM, a simulation model commonly used by market participants. Dr. Carpenter's analysis assumed Laclede's gas purchases during 2018-2040 will be similar to Laclede's purchasing patterns in calendar year 2017. The assumptions regarding Laclede's capacity holdings and volumes on MRT and Spire in Dr. Carpenter's analysis are provided in Figure 11 of Attachment 1(A).

Attachment 1(A) Figure 10 identifies scenarios including those that reflect the attribution of responsibility for costs of MRT's East Line firm capacity that becomes unavailable, as a result of the Spire Project, for sale on a firm basis, for the reasons described by MRT in its pleadings in Docket No. CP17-40 and in the response nos. 2 and 3 attached hereto. The East Line will no longer be able to transport on a firm basis approximately 100 MMscf/d from interconnects with NGPL and Trunkline to St. Louis citygate interconnections as described in the referenced materials. Thus, the proportion of East Line costs attributable to the decrease in firm service caused by Spire STL is re-assigned to Spire/Laclede and shown in the calculation of costs associated with the Spire Project (in Figure 12). The revenue requirements of operationally inaccessible capacity on the East Line are attributed directly to Laclede/Spire given that the changes contemplated at Chain of Rocks by those entities will render the 100 MDth/d unavailable to be marketed on a firm basis. Once again, these calculations demonstrate that

Spire STL is not economic for Laclede's captive retail ratepayers. The results highlight the fact that the Project is the product of unfair competition.

Prepared by:

Mark Sundback, one of counsel for MRT
202-662-2755

Date: March 13, 2018

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC	)	Docket No. CP17-40-000

MARCH 13, 2018 AFFIDAVIT OF
PAUL R. CARPENTER

March 13, 2018

I. Introduction and Assignment

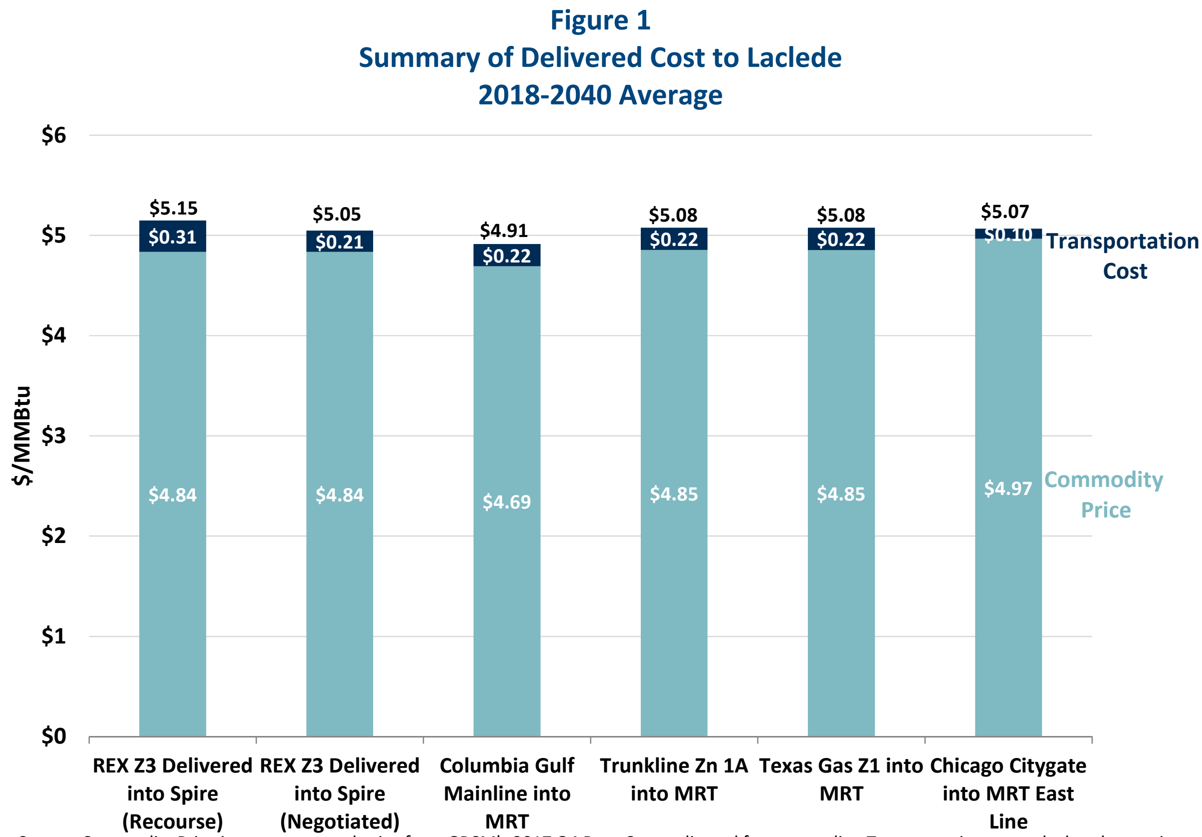
1. My name is Paul R. Carpenter. I am an economist and Principal of The Brattle Group. I previously provided affidavits in this proceeding on February 27, 2017, April 10, 2017 and July 31, 2017.

2. I have been asked by Enable Mississippi River Transmission, LLC ("MRT") to review and offer a response to Question No. 1 of the data request issued by the Office of Energy Projects ("OEP") on February 21, 2018. Question No. 1 asks MRT to "provide projections of the cost of gas delivered to Laclede on the MRT system (including Main Line, MRT East, and Illinois Intrastate Transmission ("IIT")) annually over a 20-year period." It also asks to break out the costs into 1) "the cost to transport gas along the MRT system" and 2) "the cost to purchase gas in relevant supply basins and trading hubs where Laclede's gas enters the MRT system."[1] Finally, it asks for the projections to be provided on a per dekatherm basis annually. MRT has also asked me to provide a projection of the cost of gas delivered to Laclede from the proposed Spire STL pipeline and to compare the delivered cost of gas to Laclede both with the Spire STL project (and Laclede's 350,000 Dth/D commitment to it) and without the Spire STL project (maintaining the status quo with Laclede's current commitment to MRT).

II. Comparison of Long-Term Per Unit Delivered Cost of Gas

3. I have compared the forecasted long-term average delivered cost of gas to Laclede from various locations on the MRT system and from the proposed Spire STL pipeline during 2018-2040. A summary of this comparison is shown in Figure 1 below. In this figure, the light blue segments show the commodity cost of gas purchased at upstream supply locations and the dark blue segments show the cost to transport that gas to Laclede's citygate in St. Louis. I rely on commodity price forecasts from RBAC's GPCM 2017 Q4 base case, as further discussed below.

[1] See OEP data request dated February 21, 2018.



Source: Commodity Price is average annual price from GPCM's 2017 Q4 Base Case, adjusted for seasonality. Transportation cost calculated assuming 100% load factor, and includes pipeline reservation rate, usage cost, fuel cost, and lost gas. Delivered cost may not equal sum of transportation and commodity price due to rounding.

4. The bars in Figure 1 depicted as Columbia Gulf Mainline, Trunkline Zone 1A, and Texas Gas Zone 1 represent the cost of gas purchased at the southern end of the MRT system (at the Perryville Hub[2]) and transported on MRT to Laclede's citygate while the bar depicted as Chicago Citygate[3] represents the cost of gas purchased at the northern end of the MRT system and transported on MRT to Laclede's citygate. Figure 1 also shows the cost of gas purchased at Rockies Express ("REX") Zone 3 and delivered to Laclede by Spire STL which are the bars labeled as "REX Z3 Delivered into Spire (Recourse)" (using Spire's

2 While I present three different prices as a proxy for the price of gas at the Perryville Hub, I note that Mr. Woley (Vice President of Gas Supply and Operations at Laclede Gas Company) used Columbia Gulf Mainline as his pricing point to represent the cost of gas at the Perryville Hub. See Affidavit of Scott E. Woley, p. 8 (and Attachment F, note 1) submitted in CP17-40, March 22, 2017.

3 The Chicago Citygate price is used as a proxy for the cost of gas entering MRT's northern system from NGPL. This assumption is consistent with similar calculations performed by Mr. Ditzel in Exhibit No. MRT-0025. See Affidavit of Christopher T. Ditzel, p. 5 (and MRT-0025) submitted in CP17-40, February 22, 2017.

recourse rate[4]) and "REX Z3 Delivered into Spire (Negotiated)" (assuming Laclede's negotiated rate is 2/3rd of Spire's recourse rate[5]). As shown in the figure, the long-term (2018-2040) average delivered cost of gas on the MRT system ($4.91-$5.08/MMBtu) compares favorably to the average cost of gas delivered from the Spire STL pipeline ($5.05/MMBtu - $5.15/MMBtu).

5. I derived the delivered cost of gas to Laclede (from both MRT and Spire STL) by adding the forecasted commodity cost of gas at relevant upstream hubs (using RBAC Inc.'s GPCM Base Case price forecasts) to the cost of transporting those gas supplies to Laclede's citygate in St. Louis (using the reservation, commodity, fuel, and lost & unaccounted for charges) on MRT and Spire STL. My analysis accounts for the fact that supplies can be purchased both on the northern and southern portions of the MRT system (whereas supplies purchased on Spire STL take place at one location). It also accounts for the fact that transportation charges vary depending on the specific location of the purchases (as I describe below).

6. The forecasted commodity cost of gas is from RBAC Inc.'s GPCM 2017Q4 long-term natural gas base case price projections. GPCM is a widely used model that forecasts North American natural gas pipeline capacity, flowing gas quantities and prices.[6] According to RBAC Inc., "GPCM is used by over 30 of the most prominent producers, pipelines, storage operators, utilities and consulting companies in North America."[7] GPCM's base case forecast, which is updated on a quarterly basis, includes projections of monthly

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4 The Spire STL rates I used were included in its January 26, 2017 certificate application. In the application, Spire indicated that the recourse rate for rate schedule FTS would be $9.1092/Dth/month, which translates to a daily rate of $0.2999/Dth/day (assuming a 100% load factor). Spire also proposed a volumetric usage charge of $0.000/Dth, a fuel charge of 0%, and a lost & unaccounted for charge of 0.25%. See Application of Spire STL Pipeline LLC for Certificates of Public Convenience and Necessity, *Spire STL Pipeline LLC*, Docket No. CP17-40-000 (filed Jan. 26, 2017), p. 28-30.

5 Laclede's negotiated rate with Spire is not publicly available.

6 See the description of GPCM natural gas forecasting model at: https://rbac.com/wp-content/uploads/2015/08/GPCM-Natural-Gas-Market-Forecasting-System-Briefing-2016.pdf.

7 See the frequently asked questions related to GPCM at: https://rbac.com/wp-content/uploads/2015/08/GPCM-FAQ-2017.pdf.

prices until 2050 at over 90 market locations throughout North America.[8] GPCM's forecast includes new pipeline expansion projects currently under development or announced, and GPCM's "auto-expand" feature adds capacity on existing pipeline paths when it is economic to do so. GPCM's current base case forecast does not include the proposed Spire STL pipeline. GPCM's forecast of the REX Zone 3 commodity price is likely a conservative estimate of the prices at this location since the demand at REX Zone 3 that would accompany the proposed Spire STL project is not reflected in GPCM's base case forecast. All else equal, REX Zone 3 prices would likely be higher if GPCM had included the Spire STL project in its base case forecast.

7. Figure 2 shows the monthly commodity prices forecasted by GPCM during 2018-2040 for REX Zone 3, Columbia Gulf Mainline, and Chicago Citygate. These prices move together and reflect seasonality in gas markets (with winter prices higher than summer prices). The fact that the prices are so close (and track each other so closely) makes economic sense. One would not expect there to be significant price differences over the long term between gas purchased in the north (on MRT or Spire) and gas purchased in the south (on MRT at Perryville) given the availability of pipeline capacity connecting the two regions. As an example of this, it is understood that Marcellus production is now flowing not only east on the Rockies Express pipeline (toward the proposed interconnect with Spire STL Pipeline) but also south (toward the Perryville Hub which can be accessed by MRT).[9] Finally, it's worth emphasizing that Laclede will not have access to any of the locations in the Marcellus (e.g., Dominion South) that are now experiencing significant price discounts as a result of constrained takeaway capacity (since Laclede is not proposing to procure 350,000 Dth/d of pipeline capacity upstream of Spire STL all the way back to the producing basin).[10] However, even the low prices that exist now at some locations in the

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8 See the description of GPCM natural gas forecasting model at: https://rbac.com/wp-content/uploads/2015/08/GPCM-Base-Case-Briefing-2016.pdf.

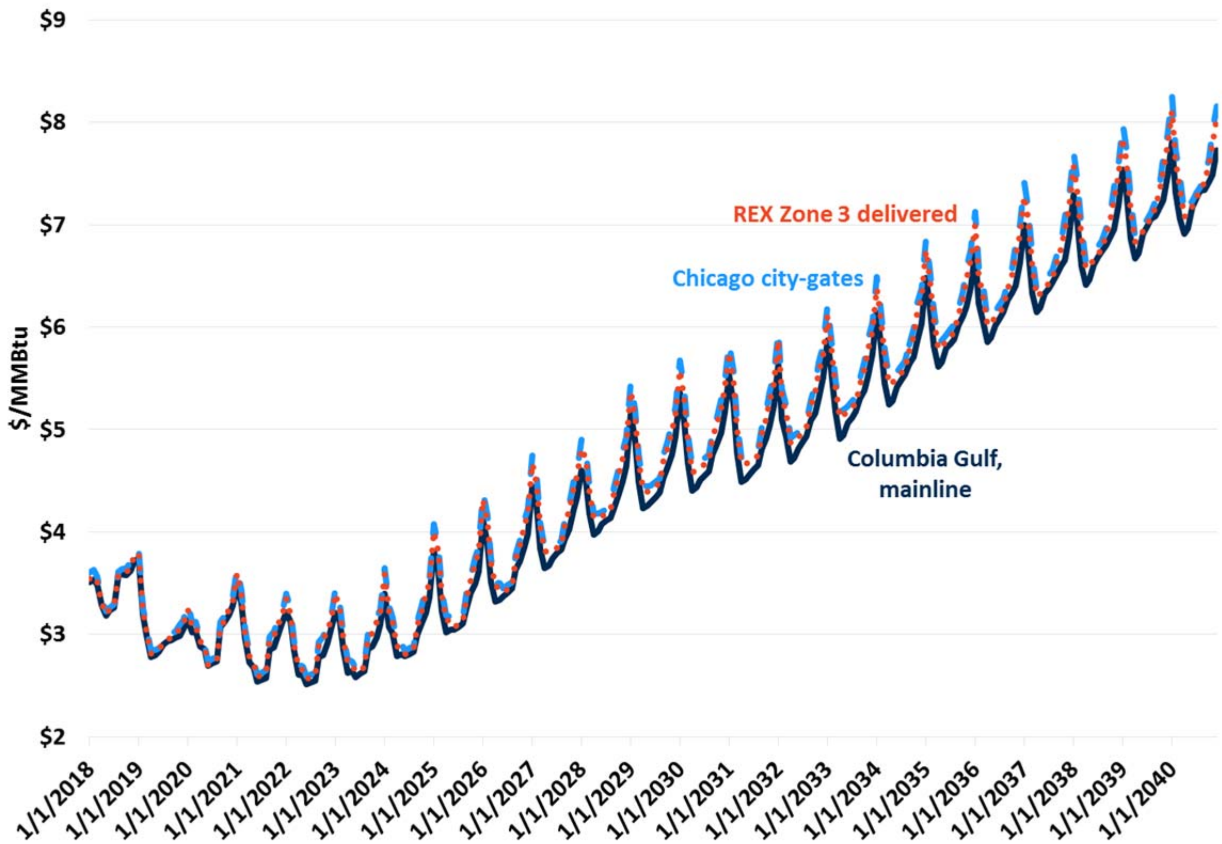
9 Laclede's consultant in this docket (Concentric) acknowledges that various pipeline reversals have allowed Marcellus supplies to reach both the Perryville Hub (which MRT accesses directly) and MRT's east line (which accesses REX and therefore Marcellus supplies via NGPL and Trunkline). See Concentric report submitted in Docket CP17-40, July 14, 2017, p. 16, 21-24.

10 As explained in my February 27, 2017 affidavit (p. 12), Laclede holds only a negligible amount of pipeline capacity on Rockies Express relative to the 350,000 Dth/d of capacity it proposes to acquire on the Spire project. Laclede has only contracted for 20,000 Dth/d of REX east to west capacity for

Continued on next page

Marcellus are not expected to persist as new takeaway pipeline capacity is expected to come on line that will reduce and/or eliminate these discounts (as I discussed in my earlier affidavits).[11]

Figure 2
GPCM Forecasted Monthly Commodity Prices
January 2018- December 2040



Source: GPCM's 2017 Q4 Base Case

Continued from previous page

delivery to Spire. Specifically, Laclede's small existing east to west contract has a duration of 15 years with a receipt point in Monroe County, Ohio (where REX receives Appalachian supplies from Equitrans L.P.'s Ohio Valley Connector Project) and a delivery point in Moultrie County, Illinois (where REX interconnects with Natural Gas Pipeline Company of America or NGPL). Laclede's contract with REX notes its plan to change the delivery point from NGPL at Moultrie to the new interconnect with Spire when Spire becomes operational.

11 See my February affidavit in CP17-40 at p. 14-20.

8. Since GPCM provides a monthly forecast of gas commodity prices at different locations, I have computed weighted average annual gas commodity prices that take account of the fact that Laclede purchases more gas in the peak winter months than it does in the off-peak summer months. I have derived these monthly weighting factors by examining the pattern of Laclede's purchases on the MRT system during 2017. The annual gas commodity prices I present in this affidavit are all weighted average prices using the weighting factors (based on Laclede's purchases in 2017) shown in Columns [4], [6], and [8] of Figure 3 below.

Figure 3
Monthly Price Weighting Factors
Derived from Seasonality in Laclede's Gas Purchases on Enable MRT
(% of Total Gas Purchased in 2017)

Month		West Line Purchases	Main Line Purchases	Total West/ Main Line Purchases	% of Annual West/Main Line Purchases	East Line Purchases	% of Annual East Line Purchases	Total Monthly Gas Purchases	% of Total Annual Purchases
		[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
Jan-17	[a]	0.5	5.1	5.7	13.1%	0.2	3.3%	5.8	11.9%
Feb-17	[b]	0.4	3.1	3.5	8.2%	0.4	7.3%	3.9	8.0%
Mar-17	[c]	0.2	0.7	0.9	2.1%	0.2	3.1%	1.1	2.2%
Apr-17	[d]	0.0	0.0	0.0	0.1%	0.0	0.0%	0.0	0.1%
May-17	[e]	0.2	2.6	2.7	6.3%	0.3	5.0%	3.0	6.2%
Jun-17	[f]	0.2	3.8	4.0	9.3%	0.0	0.1%	4.0	8.2%
Jul-17	[g]	0.2	4.6	4.8	11.1%	0.2	2.8%	5.0	10.1%
Aug-17	[h]	0.2	3.8	4.0	9.2%	0.8	14.5%	4.8	9.9%
Sep-17	[i]	0.2	4.2	4.3	10.0%	0.2	3.8%	4.6	9.3%
Oct-17	[j]	0.2	3.9	4.1	9.5%	1.1	18.7%	5.2	10.6%
Nov-17	[k]	0.3	3.3	3.7	8.5%	0.6	10.8%	4.3	8.7%
Dec-17	[l]	0.4	5.1	5.5	12.7%	1.8	30.5%	7.3	14.8%
Total	[m]	**2.7**	**40.5**	**43.2**	**100.0%**	**5.8**	**100.0%**	**49.0**	**100%**

Sources/Notes:
Laclede's monthly gross gas receipts provided by MRT.
[3]=[1]+[2]
[4]=[3]/[3][m]
[6]=[5]/[5][m]
[7]=[3]+[5]
[8]=[7]/[7][m]

9. My transportation cost estimates for both MRT and Spire STL (shown in Figure 1) include reservation charges, usage costs, fuel costs, and lost & unaccounted for charges. I converted the monthly reservation charges for both MRT and Spire STL into per unit

charges assuming a load factor of 100 percent.[12] Since the fuel and lost & unaccounted for charges are expressed as a percentage of the volume transported, I calculated the annual per unit cost for fuel and lost & unaccounted for gas by multiplying the percentages by the relevant annual weighted average commodity cost of gas.

10. For the MRT system, the transportation costs in Figure 1 are based on its existing FTS recourse rates for the Field zone and Market zone. The Field zone rates are applicable for service on the southern end of MRT's system from Louisiana to the border between Arkansas and Missouri while the Market zone rates are applicable for service on the northern end of its system covering Missouri and Illinois. For gas purchased at the Perryville Hub, I added the transportation charges associated with MRT's Field and Market zones and for the gas purchased on the northern end of the MRT system, I add only the transportation charges associated with MRT's Market zone.[13] Figure 1 shows the delivered cost of Spire STL using both Spire STL's recourse rate and an estimate of its negotiated rate (assuming Laclede's negotiated rate is 2/3rd of Spire's recourse rate).

11. In calculating the results in Figure 1, I keep the reservation charges, usage charges, and fuel and lost & unaccounted percentages constant over time for both MRT and Spire. In order to compare MRT and Spire STL's delivered costs on a consistent basis, I did not use the recourse rate Spire recently recalculated to reflect recent changes to the income tax

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[12] While it's understood that Laclede utilizes its pipeline capacity at levels much lower than 100%, I use the 100% load factor assumption in Figure 1 for both MRT and Spire STL for illustrative purposes and to be consistent. In the comparisons I make in Section III below, I allow for much lower utilization levels for Laclede's MRT and Spire capacity.

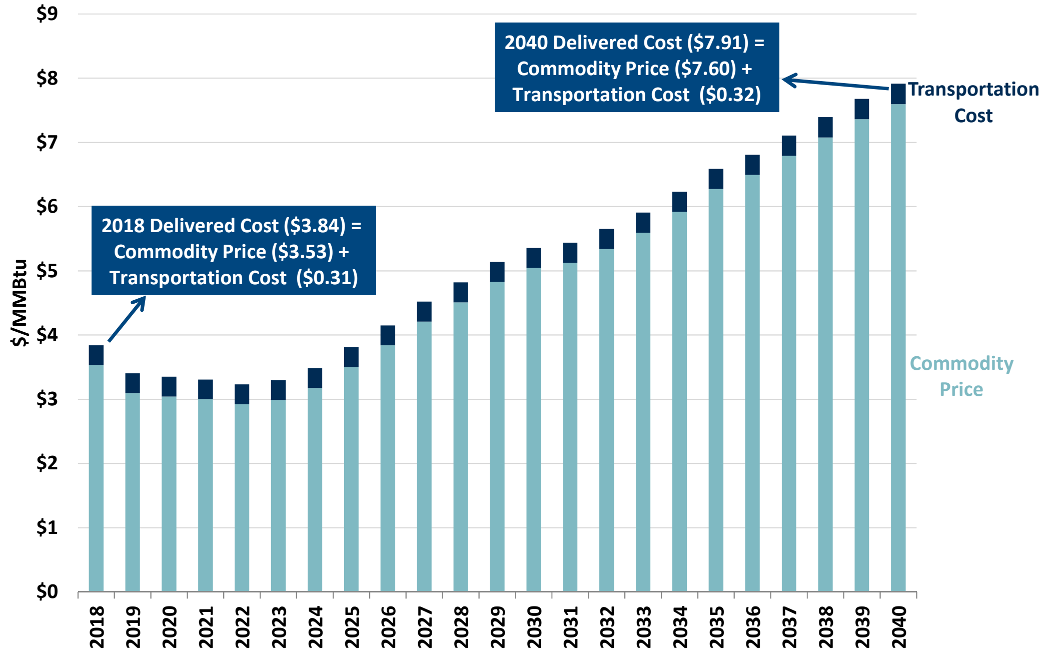
[13] MRT's existing reservation rates for the Field zone and the Market zone are \$3.20/Dth/month and \$2.11/Dth/month, respectively. Assuming a 100 percent load factor and an average of 30.4 days in a month, the Field zone rate translates to a daily rate of \$0.105/Dth/day and the Market zone rate translates to a daily rate of \$0.069/Dth/day for a total of \$0.174/Dth/day for both the Field and Market zones combined. In addition to the reservation charges, MRT also imposes a volumetric usage charge of \$0.0049/Dth in the Field zone and \$0.0051/Dth in the Market zone. Shippers on the MRT system also incur a fuel charge of 0.29% in the Field zone and 0.25% in the Market zone, and a lost and unaccounted for charge of 0.27% (in both the Field zone and the Market zone).

rate[14] because the current MRT recourse rates I used for this comparison have not been similarly adjusted.

12. Figure 4 through Figure 9 show the forecasted annual delivered cost of gas to Laclede on Spire STL and MRT during 2018-2040 broken down into the commodity costs of purchasing gas at upstream hubs as well as the cost to transport that gas to Laclede's citygate in St. Louis (again using the 100% load factor assumption). Figure 4 and Figure 5 show the forecasted annual delivered cost of gas on the Spire pipeline. Figure 6, Figure 7, and Figure 8 show the forecasted annual delivered cost of gas on the MRT system for gas sourced at the Perryville Hub using the price at Columbia Gulf Mainline, Trunkline Zn 1A, and Texas Gas Z1, respectively as proxies for the price of gas at the Perryville Hub. Figure 9 shows the forecasted annual delivered cost of gas purchased on the northern end of the MRT system (using the Chicago Citygate price as a proxy for gas purchased in that area). As can be seen in these figures, the commodity costs are by far the largest component of the overall delivered costs and therefore are the main drivers of the increasing trend in delivered costs over the next 20 years. Figure 4 through Figure 9 also show that GPCM's base case (which does not reflect the Spire STL project) is forecasting a general decline in gas commodity prices in the 2018-2022 period with a general increase in gas commodity prices from 2023-2040.

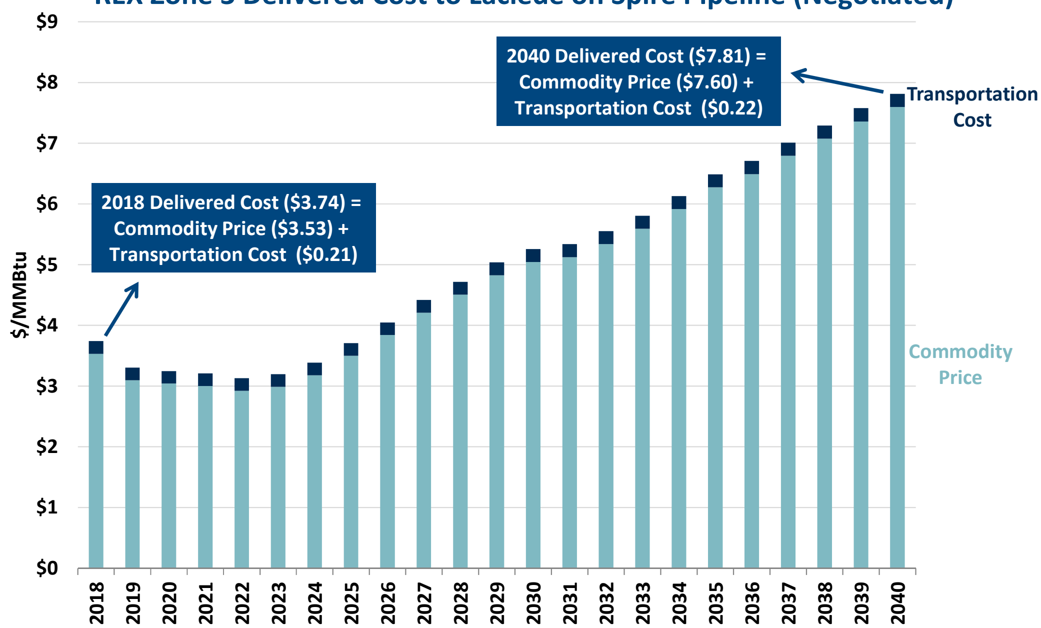
[14] See Spire STL's January 26, 2018 response to the Office of Energy Market Regulation's January 25, 2018 data request.

Figure 4
REX Zone 3 Delivered Cost to Laclede on Spire Pipeline (Recourse)



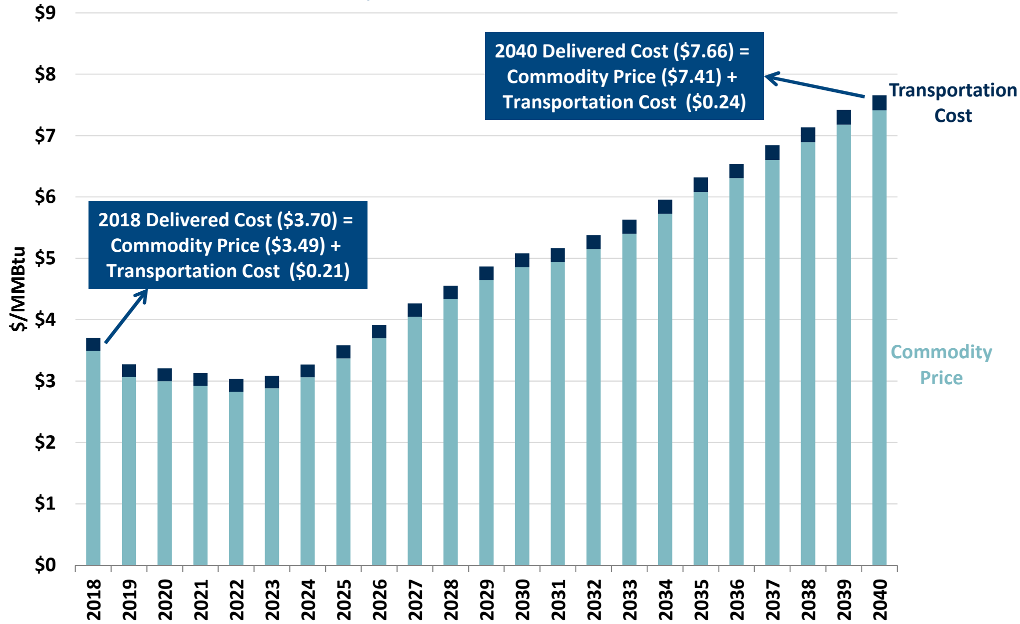
Source: Commodity Price is average annual price from GPCM's 2017 Q4 Base Case, adjusted for seasonality. Transportation cost calculated assuming 100% load factor, and includes Spire recourse rate and lost gas. Delivered cost may not equal sum of transportation and commodity price due to rounding.

Figure 5
REX Zone 3 Delivered Cost to Laclede on Spire Pipeline (Negotiated)



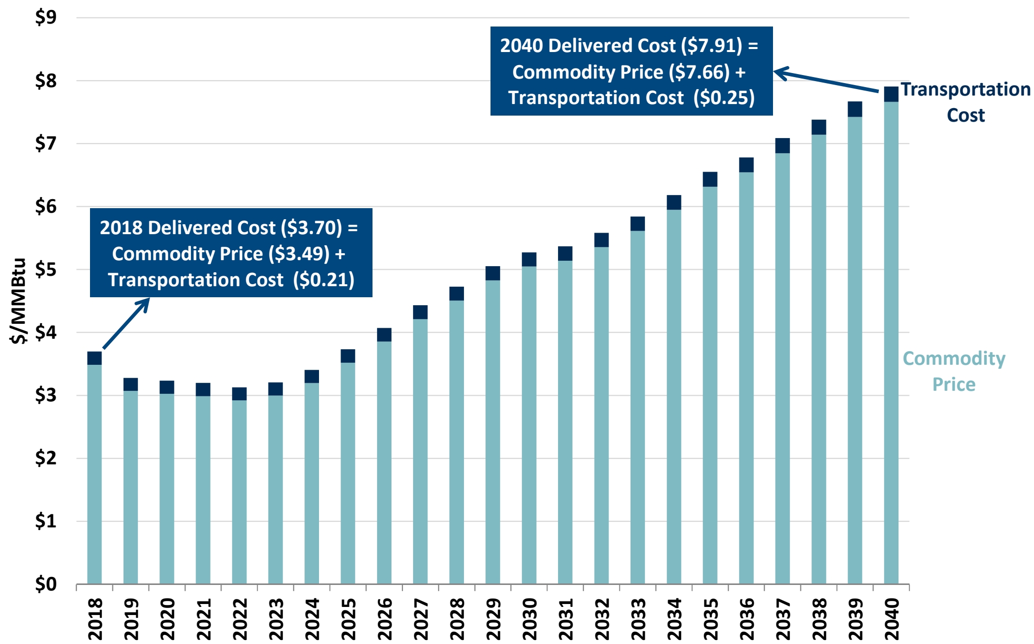
Sources/Notes: Commodity Price is average annual price from GPCM's 2017 Q4 Base Case, adjusted for seasonality. Transportation cost calculated assuming 100% load factor and negotiated reservation rate of 2/3 max recourse rate; transporation cost includes cost associated with lost gas. Delivered cost may not equal sum of transportation and commodity price due to rounding.

Figure 6
Columbia Gulf, Mainline Delivered Cost to Laclede on MRT



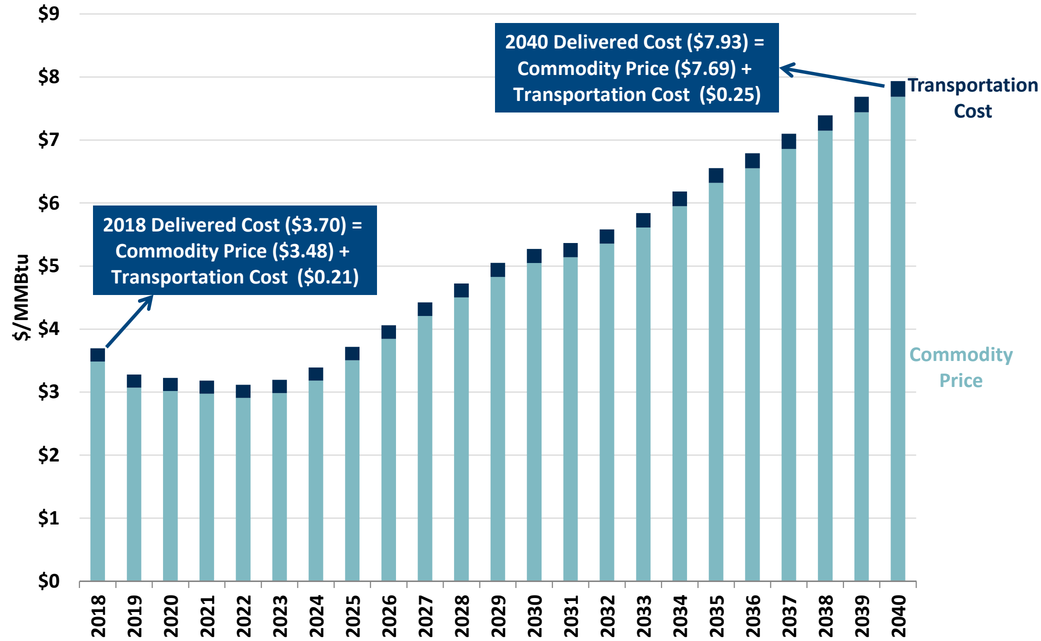
Source: Commodity Price is average annual price from GPCM's 2017 Q4 Base Case, adjusted for seasonality. Transportation cost calculated assuming 100% load factor, and includes MRT Field and Market reservation rate, usage cost, fuel cost, and lost gas. Delivered cost may not equal sum of transportation and commodity price due to rounding.

Figure 7
Trunkline Zone 1A Delivered Cost to Laclede on MRT



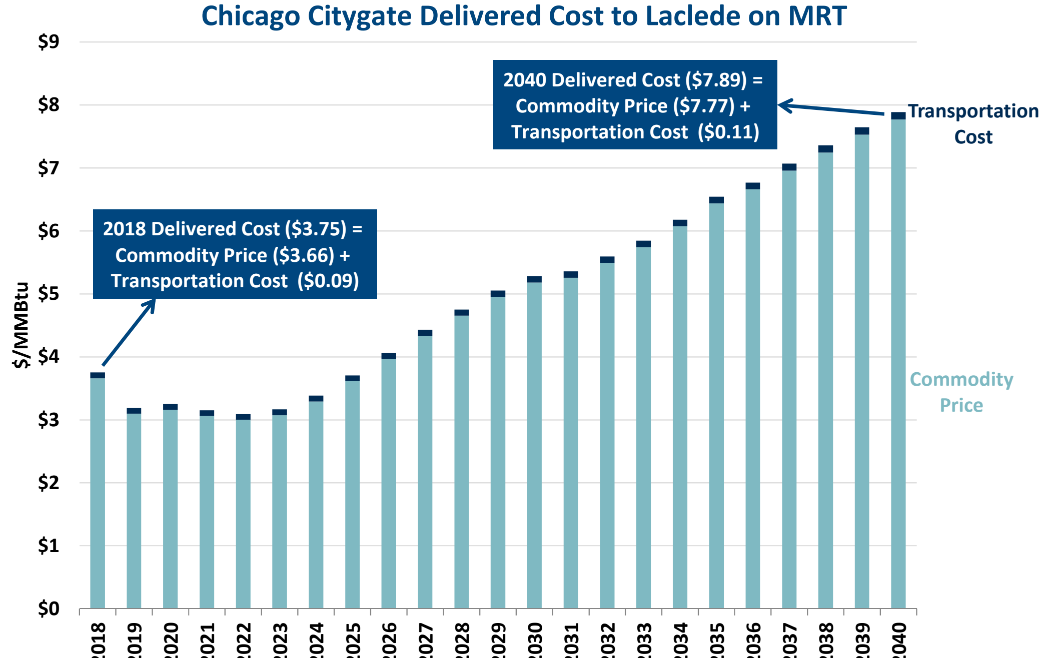
Source: Commodity Price is average annual price from GPCM's 2017 Q4 Base Case, adjusted for seasonality. Transportation cost calculated assuming 100% load factor, and includes MRT Field and Market reservation rate, usage cost, fuel cost, and lost gas. Delivered cost may not equal sum of transportation and commodity price due to rounding.

Figure 8
Texas Gas Zone 1 Delivered Cost to Laclede on MRT



Source: Commodity Price is average annual price from GPCM's 2017 Q4 Base Case, adjusted for seasonality. Transportation cost calculated assuming 100% load factor, and includes MRT Field and Market reservation rate, usage cost, fuel cost, and lost gas. Delivered cost may not equal sum of transportation and commodity price due to rounding.

Figure 9
Chicago Citygate Delivered Cost to Laclede on MRT



Source: Commodity Price is average annual price from GPCM's 2017 Q4 Base Case, adjusted for seasonality. Transportation cost calculated assuming 100% load factor, and includes MRT Market reservation rate, usage cost, fuel cost, and lost gas. Delivered cost may not equal sum of transportation and commodity price due to rounding.

III. Spire STL's Impact on the Cost of Laclede's Gas Supply Portfolio

13. MRT has asked me to evaluate the total dollar impact to Laclede of its decision to commit 350,000 Dth/d to the Spire project rather than maintain the status quo of Laclede's current contracting on the MRT system. In performing this analysis, I have relied on MRT's estimates of the rates on its system assuming that Spire is constructed and Laclede turns back a portion of its pipeline capacity (which leads to higher rates on MRT's system due to fewer billing determinants post-turnback). My conclusion that the Spire STL project is uneconomic was tested across a dozen different scenarios, and the results consistently demonstrate that Laclede will incur higher costs using Spire STL.

14. MRT has provided me with 12 alternative rate scenarios, reflecting:

    - 4 alternative cost of service scenarios: each of which makes different assumptions about (i) whether the cost of service for Illinois Intrastate Transmission ("IIT") is included, (ii) whether a portion of the East Line cost of service related to operationally inaccessible capacity is included.[15]

    - For each of the 4 cost of service scenarios, there are 3 scenarios reflecting alternative assumptions about the amount of MRT capacity that may be turned back by Laclede in the Field and Market zones.

15. In performing this analysis I have made the following assumptions:

- Laclede's use of storage on MRT does not change with the addition of Spire.

- Laclede's capacity turnback in each scenario is assumed to reduce a portion of the contractual holdings under Laclede's MRT contract #3310 (for roughly 660,000

[15] See MRT's response to OEP Question Nos. 2 and 3 with regard to the operationally inaccessible capacity on the MRT East Line resulting from the Spire STL project.

Dth/d). All other Laclede contract holdings and its remaining supply portfolio are assumed to remain unchanged.

- Laclede's West Line and Main Line purchases are all made at the Perryville price (as represented by Columbia Gulf, Mainline).

- Laclede's East Line purchases are all made at the Chicago Citygate price.

- Within each scenario, MRT's reservation rates, usage rates, fuel and lost & unaccounted for percentages are held constant over the 2018-2040 period (no change in rates to reflect any change in the cost of service).

- The Spire negotiated rate is 67% of the recourse rate (with fuel and commodity charges assumed to be the same as those for Spire's recourse rates). I have assumed no change in the negotiated rate over the 2018-2040 period.

- For each scenario, the ratio of the remaining MRT capacity (of the 660,000 Dth/d) held by Laclede post-turnback to Laclede's total capacity on Spire and MRT is used to allocate Laclede's purchase volumes between MRT and Spire.

- Overall monthly gas purchases over the forecast horizon are assumed to be equal to Laclede's monthly purchases during 2017 and Laclede's annual purchases are assumed to be equal to Laclede's annual purchases in 2017 of 49 Bcf (no volume growth over the 2018-2040 period).[16]

- Laclede's projected monthly volumes on MRT are allocated between the East Line and West Line/Main Line based on the actual ratio of Laclede's purchases on these paths during 2017.

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16 Laclede's annual purchases are likely understated since the weather during 2017 was warmer than normal, and my use of 2017 volume information makes my analysis conservative. Substituting higher volumes in lieu of the 2017 volumes in my analysis would have resulted in Laclede's costs being even higher in the scenarios "with Spire" compared to the status quo "without Spire."

16. A summary of the scenarios is shown below in Figure 10. A summary of the Laclede capacity holdings and volumes transported on MRT and Spire is shown below in Figure 11.

Figure 10
Summary of Scenarios

Scenario	Cost of Service	MRT Capacity Turnback
[1]	Excludes IIT COS/Includes EL COS	Low
[2]	Excludes IIT COS/Includes EL COS	Medium
[3]	Excludes IIT COS/Includes EL COS	High
[4]	Excludes IIT COS/Excludes EL COS	Low
[5]	Excludes IIT COS/Excludes EL COS	Medium
[6]	Excludes IIT COS/Excludes EL COS	High
[7]	Includes IIT COS/Includes EL COS	Low
[8]	Includes IIT COS/Includes EL COS	Medium
[9]	Includes IIT COS/Includes EL COS	High
[10]	Includes IIT COS/Excludes EL COS	Low
[11]	Includes IIT COS/Excludes EL COS	Medium
[12]	Includes IIT COS/Excludes EL COS	High

Notes:
Scenarios [4]-[6] and [10]-[12] assume 108,000 Dth/d of operationally inaccessible capacity on MRT's East Line.

Figure 11
Summary of Laclede Capacity Holdings &
Volumes Transported on MRT & Spire
(MMBtu/d)

	Spire Capacity	Spire Volumes	MRT Market + Field Capacity	MRT Market Only Capacity	MRT Main/West Line Volumes	MRT East Line Volumes	Total MRT Volumes	MRT System + Spire Volumes
No Spire	0	0	490,000	170,000	118,344	15,831	134,175	134,175
With Spire								
Scenario 1	350,000	57,270	390,000	80,000	67,832	9,074	76,905	134,175
Scenario 2	350,000	71,154	230,000	80,000	55,586	7,436	63,022	134,175
Scenario 3	350,000	81,991	142,760	80,000	46,027	6,157	52,184	134,175
Scenario 4	350,000	58,555	390,000	62,000	66,698	8,922	75,620	134,175
Scenario 5	350,000	73,149	230,000	62,000	53,826	7,200	61,027	134,175
Scenario 6	350,000	84,652	142,760	62,000	43,681	5,843	49,524	134,175
Scenario 7	350,000	57,270	390,000	80,000	67,832	9,074	76,905	134,175
Scenario 8	350,000	71,154	230,000	80,000	55,586	7,436	63,022	134,175
Scenario 9	350,000	81,991	142,760	80,000	46,027	6,157	52,184	134,175
Scenario 10	350,000	58,555	390,000	62,000	66,698	8,922	75,620	134,175
Scenario 11	350,000	73,149	230,000	62,000	53,826	7,200	61,027	134,175
Scenario 12	350,000	84,652	142,760	62,000	43,681	5,843	49,524	134,175

17. Figure 12 summarizes the total costs for each scenario (undiscounted over the 2018-2040 period) in both the "with Spire" and "without Spire" cases. The "with Spire" costs for scenarios 4-6 and 10-12 include the roughly $700,000 per year cost-of-service associated with the operationally inaccessible East Line capacity resulting from the Spire STL project (which is assumed to be directly charged to Laclede). As shown Laclede's Spire commitment will increase costs to Laclede by $229 million to $555 million over the period (or $0.20/MMBtu to $0.49/MMBtu). These results are likely conservative in that the REX Zone 3 commodity price (the assumed purchase price for Spire STL supplies) may be understated since GPCM's base case forecast excludes the Spire STL pipeline (as described above). The results are also conservative due to the use of 2017 volume information (since 2017 was warmer than normal).

Figure 12
Summary of Delivered Costs to Laclede
2018-2040

	Total $ (Millions)			$/MMBtu		
Scenario	With Spire	No Spire	Difference	With Spire	No Spire	Difference
Scenario 1	$6,742	$6,189	$552	$5.98	$5.49	$0.49
Scenario 2	$6,617	$6,189	$428	$5.87	$5.49	$0.38
Scenario 3	$6,505	$6,189	$316	$5.78	$5.49	$0.28
Scenario 4	$6,744	$6,189	$555	$5.99	$5.49	$0.49
Scenario 5	$6,618	$6,189	$429	$5.88	$5.49	$0.38
Scenario 6	$6,505	$6,189	$316	$5.78	$5.49	$0.28
Scenario 7	$6,917	$6,383	$534	$6.14	$5.67	$0.47
Scenario 8	$6,756	$6,383	$373	$6.00	$5.67	$0.33
Scenario 9	$6,615	$6,383	$232	$5.87	$5.67	$0.21
Scenario 10	$6,917	$6,383	$535	$6.14	$5.67	$0.47
Scenario 11	$6,755	$6,383	$373	$6.00	$5.67	$0.33
Scenario 12	$6,612	$6,383	$229	$5.87	$5.67	$0.20

18. Figure 13 provides additional detail on the cost differences in the “with Spire” and “without Spire” cases. The reservation cost differences shown reflect the influence of three factors – 1) the higher reservation charges on Spire STL in relation to MRT’s existing rates (commodity price differentials are less pronounced), 2) the capacity turnback levels in 4 out of the 12 alternative scenarios are less than Laclede’s incremental 350,000 Dth/d of capacity on Spire STL (leading to Laclede reserving a higher level of combined capacity on MRT and Spire than currently on MRT in 4 scenarios), and 3) higher MRT reservation rates post-turnback in the scenarios with Spire for the capacity Laclede retains on MRT.

Figure 13
Breakdown of Difference in Delivered Costs to Laclede
2018-2040

	Difference (With Spire Minus No Spire)				
Scenario	Commodity	Reservation	Variable Transport	East line Removal	Total
Scenario 1	$54	$513	-$16	$0	$552
Scenario 2	$68	$379	-$19	$0	$428
Scenario 3	$78	$260	-$22	$0	$316
Scenario 4	$56	$499	-$16	$16	$555
Scenario 5	$70	$363	-$19	$16	$429
Scenario 6	$81	$242	-$22	$16	$316
Scenario 7	$54	$495	-$16	$0	$534
Scenario 8	$68	$325	-$19	$0	$373
Scenario 9	$78	$176	-$22	$0	$232
Scenario 10	$56	$480	-$16	$16	$535
Scenario 11	$70	$307	-$20	$16	$373
Scenario 12	$81	$156	-$23	$16	$229

19. I provide additional information as follows in accordance with the data requested by the OEP:

- Figure 14 provides annual per unit projections of commodity costs (excluding transportation) for purchases (i) on the MRT Main Line and West Line (using Perryville prices), (ii) on the MRT East Line (using Chicago Citygate prices), (iii) on MRT in aggregate, and (iv) on Spire (using REX Zone 3 delivered prices). The costs shown in Figure 14 do not vary by scenario.

- Figure 15 and Figure 16 provide annual per unit projections of the cost of gas delivered to Laclede on the MRT system, broken down by commodity and transportation costs, for the “No Spire” scenario (excluding IIT) and the “No Spire” scenario (including IIT), respectively.

- Figure 17-Figure 20 provide annual per unit projections of the cost of gas delivered to Laclede on the MRT system (for all gas purchased on the MRT system), broken down by commodity and transportation costs, for scenarios 1-3, 4-6, 7-9, and 10-12 respectively.

- Figure 21-Figure 24 provide annual per unit projections of the cost of gas delivered to Laclede on the Spire system, broken down by commodity and transportation costs, for scenarios 1-3, 4-6, 7-9, and 10-12 respectively.

- Figure 25-Figure 28 provide annual per unit projections of the cost of gas delivered to Laclede in aggregate (on both the MRT and Spire systems), broken down by commodity and transportation costs, for scenarios 1-3, 4-6, 7-9, and 10-12 respectively.

- Figure 29 and Figure 30 provide annual per unit projections of the cost of gas delivered to Laclede on the MRT Main/West Lines and East Line (respectively), broken down by commodity and transportation costs, for the "No Spire" scenario (excluding IIT).

- Figure 31 and Figure 32 provide annual per unit projections of the cost of gas delivered to Laclede on the MRT Main/West Lines and East Line (respectively), broken down by commodity and transportation costs, for the "No Spire" scenario (including IIT).

- Figure 33-Figure 36 each provide annual per unit projections of the cost of gas delivered to Laclede on the MRT Main and West Lines, broken down by commodity and transportation costs, for scenarios 1-3, 4-6, 7-9, and 10-12 respectively.

- Figure 37-Figure 40 each provide annual per unit projections of the cost of gas delivered to Laclede on the MRT East Lines, broken down by commodity and transportation costs, for scenarios 1-3, 4-6, 7-9, and 10-12 respectively.

Figure 14
Annual Projections of Commodity Costs
($/MMBtu)

	MRT Main/West Line (Perryville)	MRT East Line/IIT (Chicago Citygate)	MRT Combined Weighted Price	Spire- Scott County (REX Z3)
2018	$3.49	$3.66	$3.51	$3.53
2019	$3.06	$3.10	$3.07	$3.10
2020	$3.00	$3.16	$3.02	$3.04
2021	$2.92	$3.06	$2.94	$3.00
2022	$2.83	$3.00	$2.85	$2.92
2023	$2.88	$3.08	$2.90	$2.99
2024	$3.06	$3.29	$3.09	$3.18
2025	$3.37	$3.61	$3.40	$3.50
2026	$3.70	$3.96	$3.73	$3.84
2027	$4.05	$4.33	$4.08	$4.21
2028	$4.34	$4.65	$4.37	$4.51
2029	$4.65	$4.96	$4.68	$4.83
2030	$4.86	$5.18	$4.90	$5.04
2031	$4.94	$5.26	$4.98	$5.12
2032	$5.15	$5.49	$5.19	$5.34
2033	$5.40	$5.74	$5.44	$5.59
2034	$5.73	$6.07	$5.77	$5.92
2035	$6.08	$6.44	$6.13	$6.27
2036	$6.31	$6.66	$6.35	$6.49
2037	$6.61	$6.96	$6.65	$6.79
2038	$6.89	$7.25	$6.93	$7.08
2039	$7.18	$7.53	$7.22	$7.36
2040	$7.41	$7.77	$7.45	$7.60

Figure 15
Cost of Gas Delivered to Laclede on the MRT System
No Spire Scenario (Excluding IIT)
($/MMBtu)

	No Spire Scenario		
	Commodity	Transport	Total
2018	$3.51	$0.76	$4.27
2019	$3.07	$0.76	$3.83
2020	$3.02	$0.76	$3.78
2021	$2.94	$0.76	$3.70
2022	$2.85	$0.76	$3.61
2023	$2.90	$0.76	$3.66
2024	$3.09	$0.76	$3.85
2025	$3.40	$0.76	$4.16
2026	$3.73	$0.76	$4.49
2027	$4.08	$0.77	$4.85
2028	$4.37	$0.77	$5.14
2029	$4.68	$0.77	$5.45
2030	$4.90	$0.77	$5.67
2031	$4.98	$0.77	$5.75
2032	$5.19	$0.77	$5.97
2033	$5.44	$0.78	$6.22
2034	$5.77	$0.78	$6.55
2035	$6.13	$0.78	$6.91
2036	$6.35	$0.78	$7.13
2037	$6.65	$0.79	$7.43
2038	$6.93	$0.79	$7.72
2039	$7.22	$0.79	$8.01
2040	$7.45	$0.79	$8.25

Figure 16
Cost of Gas Delivered to Laclede on the MRT System
No Spire Scenario (Including IIT)
($/MMBtu)

	No Spire Scenario		
	Commodity	Transport	Total
2018	$3.51	$0.93	$4.45
2019	$3.07	$0.93	$4.00
2020	$3.02	$0.93	$3.95
2021	$2.94	$0.93	$3.87
2022	$2.85	$0.93	$3.78
2023	$2.90	$0.93	$3.83
2024	$3.09	$0.93	$4.02
2025	$3.40	$0.93	$4.33
2026	$3.73	$0.93	$4.66
2027	$4.08	$0.94	$5.02
2028	$4.37	$0.94	$5.31
2029	$4.68	$0.94	$5.62
2030	$4.90	$0.94	$5.84
2031	$4.98	$0.94	$5.92
2032	$5.19	$0.95	$6.14
2033	$5.44	$0.95	$6.39
2034	$5.77	$0.95	$6.72
2035	$6.13	$0.95	$7.08
2036	$6.35	$0.96	$7.30
2037	$6.65	$0.96	$7.60
2038	$6.93	$0.96	$7.89
2039	$7.22	$0.96	$8.18
2040	$7.45	$0.96	$8.42

Figure 17
Cost of Gas Delivered to Laclede on the MRT System
With Spire Scenarios 1-3
($/MMBtu)

	Scenario 1			Scenario 2			Scenario 3		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.51	$1.19	$4.70	$3.51	$1.19	$4.70	$3.51	$1.16	$4.67
2019	$3.07	$1.19	$4.25	$3.07	$1.19	$4.25	$3.07	$1.16	$4.22
2020	$3.02	$1.19	$4.20	$3.02	$1.19	$4.20	$3.02	$1.16	$4.17
2021	$2.94	$1.18	$4.12	$2.94	$1.19	$4.12	$2.94	$1.15	$4.09
2022	$2.85	$1.18	$4.03	$2.85	$1.18	$4.03	$2.85	$1.15	$4.00
2023	$2.90	$1.18	$4.09	$2.90	$1.19	$4.09	$2.90	$1.15	$4.06
2024	$3.09	$1.19	$4.27	$3.09	$1.19	$4.27	$3.09	$1.16	$4.24
2025	$3.40	$1.19	$4.59	$3.40	$1.19	$4.59	$3.40	$1.16	$4.56
2026	$3.73	$1.19	$4.92	$3.73	$1.19	$4.92	$3.73	$1.16	$4.89
2027	$4.08	$1.19	$5.28	$4.08	$1.19	$5.28	$4.08	$1.16	$5.25
2028	$4.37	$1.20	$5.57	$4.37	$1.20	$5.57	$4.37	$1.17	$5.54
2029	$4.68	$1.20	$5.88	$4.68	$1.20	$5.88	$4.68	$1.17	$5.85
2030	$4.90	$1.20	$6.10	$4.90	$1.20	$6.10	$4.90	$1.17	$6.06
2031	$4.98	$1.20	$6.18	$4.98	$1.20	$6.18	$4.98	$1.17	$6.15
2032	$5.19	$1.20	$6.39	$5.19	$1.20	$6.39	$5.19	$1.17	$6.36
2033	$5.44	$1.20	$6.65	$5.44	$1.20	$6.65	$5.44	$1.17	$6.61
2034	$5.77	$1.21	$6.97	$5.77	$1.21	$6.97	$5.77	$1.18	$6.94
2035	$6.13	$1.21	$7.34	$6.13	$1.21	$7.34	$6.13	$1.18	$7.30
2036	$6.35	$1.21	$7.56	$6.35	$1.21	$7.56	$6.35	$1.18	$7.53
2037	$6.65	$1.21	$7.86	$6.65	$1.21	$7.86	$6.65	$1.18	$7.83
2038	$6.93	$1.22	$8.15	$6.93	$1.22	$8.15	$6.93	$1.19	$8.12
2039	$7.22	$1.22	$8.44	$7.22	$1.22	$8.44	$7.22	$1.19	$8.41
2040	$7.45	$1.22	$8.67	$7.45	$1.22	$8.67	$7.45	$1.19	$8.64

Figure 18
Cost of Gas Delivered to Laclede on the MRT System
With Spire Scenarios 4-6
($/MMBtu)

	Scenario 4			Scenario 5			Scenario 6		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.51	$1.19	$4.70	$3.51	$1.20	$4.71	$3.51	$1.18	$4.69
2019	$3.07	$1.18	$4.25	$3.07	$1.19	$4.26	$3.07	$1.17	$4.24
2020	$3.02	$1.18	$4.20	$3.02	$1.19	$4.21	$3.02	$1.17	$4.19
2021	$2.94	$1.18	$4.12	$2.94	$1.19	$4.13	$2.94	$1.17	$4.11
2022	$2.85	$1.18	$4.03	$2.85	$1.19	$4.04	$2.85	$1.17	$4.02
2023	$2.90	$1.18	$4.09	$2.90	$1.19	$4.10	$2.90	$1.17	$4.08
2024	$3.09	$1.18	$4.27	$3.09	$1.19	$4.28	$3.09	$1.17	$4.26
2025	$3.40	$1.19	$4.58	$3.40	$1.20	$4.59	$3.40	$1.18	$4.57
2026	$3.73	$1.19	$4.92	$3.73	$1.20	$4.93	$3.73	$1.18	$4.91
2027	$4.08	$1.19	$5.27	$4.08	$1.20	$5.28	$4.08	$1.18	$5.26
2028	$4.37	$1.19	$5.57	$4.37	$1.20	$5.58	$4.37	$1.18	$5.56
2029	$4.68	$1.20	$5.88	$4.68	$1.21	$5.89	$4.68	$1.19	$5.87
2030	$4.90	$1.20	$6.09	$4.90	$1.21	$6.10	$4.90	$1.19	$6.08
2031	$4.98	$1.20	$6.18	$4.98	$1.21	$6.19	$4.98	$1.19	$6.17
2032	$5.19	$1.20	$6.39	$5.19	$1.21	$6.40	$5.19	$1.19	$6.38
2033	$5.44	$1.20	$6.64	$5.44	$1.21	$6.65	$5.44	$1.19	$6.63
2034	$5.77	$1.20	$6.97	$5.77	$1.21	$6.98	$5.77	$1.19	$6.96
2035	$6.13	$1.21	$7.33	$6.13	$1.22	$7.34	$6.13	$1.20	$7.32
2036	$6.35	$1.21	$7.56	$6.35	$1.22	$7.57	$6.35	$1.20	$7.55
2037	$6.65	$1.21	$7.86	$6.65	$1.22	$7.87	$6.65	$1.20	$7.85
2038	$6.93	$1.21	$8.15	$6.93	$1.22	$8.16	$6.93	$1.20	$8.14
2039	$7.22	$1.21	$8.43	$7.22	$1.23	$8.44	$7.22	$1.20	$8.42
2040	$7.45	$1.22	$8.67	$7.45	$1.23	$8.68	$7.45	$1.21	$8.66

Figure 19
Cost of Gas Delivered to Laclede on the MRT System
With Spire Scenarios 7-9
($/MMBtu)

	Scenario 7			Scenario 8			Scenario 9		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.51	$1.46	$4.97	$3.51	$1.45	$4.97	$3.51	$1.41	$4.92
2019	$3.07	$1.46	$4.53	$3.07	$1.45	$4.52	$3.07	$1.40	$4.47
2020	$3.02	$1.46	$4.47	$3.02	$1.45	$4.47	$3.02	$1.40	$4.42
2021	$2.94	$1.46	$4.39	$2.94	$1.45	$4.39	$2.94	$1.40	$4.34
2022	$2.85	$1.46	$4.30	$2.85	$1.45	$4.30	$2.85	$1.40	$4.25
2023	$2.90	$1.46	$4.36	$2.90	$1.45	$4.35	$2.90	$1.40	$4.31
2024	$3.09	$1.46	$4.55	$3.09	$1.45	$4.54	$3.09	$1.41	$4.49
2025	$3.40	$1.46	$4.86	$3.40	$1.45	$4.85	$3.40	$1.41	$4.81
2026	$3.73	$1.46	$5.19	$3.73	$1.45	$5.18	$3.73	$1.41	$5.14
2027	$4.08	$1.46	$5.55	$4.08	$1.46	$5.54	$4.08	$1.41	$5.50
2028	$4.37	$1.47	$5.84	$4.37	$1.46	$5.83	$4.37	$1.42	$5.79
2029	$4.68	$1.47	$6.15	$4.68	$1.46	$6.14	$4.68	$1.42	$6.10
2030	$4.90	$1.47	$6.37	$4.90	$1.46	$6.36	$4.90	$1.42	$6.31
2031	$4.98	$1.47	$6.45	$4.98	$1.46	$6.44	$4.98	$1.42	$6.40
2032	$5.19	$1.47	$6.66	$5.19	$1.47	$6.66	$5.19	$1.42	$6.61
2033	$5.44	$1.48	$6.92	$5.44	$1.47	$6.91	$5.44	$1.42	$6.86
2034	$5.77	$1.48	$7.24	$5.77	$1.47	$7.24	$5.77	$1.43	$7.19
2035	$6.13	$1.48	$7.61	$6.13	$1.47	$7.60	$6.13	$1.43	$7.55
2036	$6.35	$1.48	$7.83	$6.35	$1.48	$7.82	$6.35	$1.43	$7.78
2037	$6.65	$1.48	$8.13	$6.65	$1.48	$8.12	$6.65	$1.43	$8.08
2038	$6.93	$1.49	$8.42	$6.93	$1.48	$8.41	$6.93	$1.43	$8.37
2039	$7.22	$1.49	$8.71	$7.22	$1.48	$8.70	$7.22	$1.44	$8.66
2040	$7.45	$1.49	$8.94	$7.45	$1.48	$8.94	$7.45	$1.44	$8.89

Figure 20
Cost of Gas Delivered to Laclede on the MRT System
With Spire Scenarios 10-12
($/MMBtu)

	Scenario 10			Scenario 11			Scenario 12		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.51	$1.46	$4.97	$3.51	$1.46	$4.98	$3.51	$1.43	$4.95
2019	$3.07	$1.46	$4.52	$3.07	$1.46	$4.53	$3.07	$1.43	$4.50
2020	$3.02	$1.46	$4.47	$3.02	$1.46	$4.48	$3.02	$1.43	$4.45
2021	$2.94	$1.46	$4.39	$2.94	$1.46	$4.40	$2.94	$1.43	$4.37
2022	$2.85	$1.45	$4.30	$2.85	$1.46	$4.31	$2.85	$1.43	$4.28
2023	$2.90	$1.46	$4.36	$2.90	$1.46	$4.36	$2.90	$1.43	$4.33
2024	$3.09	$1.46	$4.54	$3.09	$1.46	$4.55	$3.09	$1.43	$4.52
2025	$3.40	$1.46	$4.86	$3.40	$1.46	$4.86	$3.40	$1.43	$4.83
2026	$3.73	$1.46	$5.19	$3.73	$1.47	$5.20	$3.73	$1.43	$5.16
2027	$4.08	$1.46	$5.55	$4.08	$1.47	$5.55	$4.08	$1.44	$5.52
2028	$4.37	$1.47	$5.84	$4.37	$1.47	$5.84	$4.37	$1.44	$5.81
2029	$4.68	$1.47	$6.15	$4.68	$1.47	$6.16	$4.68	$1.44	$6.12
2030	$4.90	$1.47	$6.37	$4.90	$1.48	$6.37	$4.90	$1.44	$6.34
2031	$4.98	$1.47	$6.45	$4.98	$1.48	$6.45	$4.98	$1.44	$6.42
2032	$5.19	$1.47	$6.66	$5.19	$1.48	$6.67	$5.19	$1.45	$6.64
2033	$5.44	$1.47	$6.92	$5.44	$1.48	$6.92	$5.44	$1.45	$6.89
2034	$5.77	$1.48	$7.24	$5.77	$1.48	$7.25	$5.77	$1.45	$7.22
2035	$6.13	$1.48	$7.61	$6.13	$1.48	$7.61	$6.13	$1.45	$7.58
2036	$6.35	$1.48	$7.83	$6.35	$1.49	$7.83	$6.35	$1.46	$7.80
2037	$6.65	$1.48	$8.13	$6.65	$1.49	$8.14	$6.65	$1.46	$8.10
2038	$6.93	$1.49	$8.42	$6.93	$1.49	$8.42	$6.93	$1.46	$8.39
2039	$7.22	$1.49	$8.71	$7.22	$1.49	$8.71	$7.22	$1.46	$8.68
2040	$7.45	$1.49	$8.94	$7.45	$1.49	$8.95	$7.45	$1.46	$8.92

Figure 21
Cost of Gas Delivered to Laclede on the Spire System
With Spire Scenarios 1-3
($/MMBtu)

	Scenario 1			Scenario 2			Scenario 3		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.53	$1.23	$4.76	$3.53	$0.99	$4.52	$3.53	$0.86	$4.39
2019	$3.10	$1.23	$4.32	$3.10	$0.99	$4.09	$3.10	$0.86	$3.96
2020	$3.04	$1.23	$4.27	$3.04	$0.99	$4.03	$3.04	$0.86	$3.90
2021	$3.00	$1.23	$4.23	$3.00	$0.99	$3.99	$3.00	$0.86	$3.86
2022	$2.92	$1.23	$4.15	$2.92	$0.99	$3.91	$2.92	$0.86	$3.78
2023	$2.99	$1.23	$4.22	$2.99	$0.99	$3.98	$2.99	$0.86	$3.85
2024	$3.18	$1.23	$4.41	$3.18	$0.99	$4.17	$3.18	$0.86	$4.04
2025	$3.50	$1.23	$4.73	$3.50	$0.99	$4.49	$3.50	$0.86	$4.36
2026	$3.84	$1.23	$5.07	$3.84	$0.99	$4.83	$3.84	$0.86	$4.70
2027	$4.21	$1.23	$5.44	$4.21	$0.99	$5.20	$4.21	$0.86	$5.07
2028	$4.51	$1.23	$5.74	$4.51	$0.99	$5.50	$4.51	$0.86	$5.37
2029	$4.83	$1.23	$6.06	$4.83	$0.99	$5.82	$4.83	$0.86	$5.69
2030	$5.04	$1.23	$6.28	$5.04	$0.99	$6.04	$5.04	$0.86	$5.91
2031	$5.12	$1.23	$6.36	$5.12	$0.99	$6.12	$5.12	$0.87	$5.99
2032	$5.34	$1.23	$6.57	$5.34	$1.00	$6.33	$5.34	$0.87	$6.20
2033	$5.59	$1.23	$6.83	$5.59	$1.00	$6.59	$5.59	$0.87	$6.46
2034	$5.92	$1.23	$7.15	$5.92	$1.00	$6.91	$5.92	$0.87	$6.78
2035	$6.27	$1.24	$7.51	$6.27	$1.00	$7.27	$6.27	$0.87	$7.14
2036	$6.49	$1.24	$7.73	$6.49	$1.00	$7.49	$6.49	$0.87	$7.36
2037	$6.79	$1.24	$8.03	$6.79	$1.00	$7.79	$6.79	$0.87	$7.66
2038	$7.08	$1.24	$8.31	$7.08	$1.00	$8.08	$7.08	$0.87	$7.95
2039	$7.36	$1.24	$8.60	$7.36	$1.00	$8.36	$7.36	$0.87	$8.23
2040	$7.60	$1.24	$8.84	$7.60	$1.00	$8.60	$7.60	$0.87	$8.47

Figure 22
Cost of Gas Delivered to Laclede on the Spire System
With Spire Scenarios 4-6
($/MMBtu)

	Scenario 4			Scenario 5			Scenario 6		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.53	$1.20	$4.73	$3.53	$0.96	$4.50	$3.53	$0.83	$4.37
2019	$3.10	$1.20	$4.30	$3.10	$0.96	$4.06	$3.10	$0.83	$3.93
2020	$3.04	$1.20	$4.24	$3.04	$0.96	$4.00	$3.04	$0.83	$3.87
2021	$3.00	$1.20	$4.20	$3.00	$0.96	$3.96	$3.00	$0.83	$3.83
2022	$2.92	$1.20	$4.12	$2.92	$0.96	$3.89	$2.92	$0.83	$3.76
2023	$2.99	$1.20	$4.19	$2.99	$0.96	$3.95	$2.99	$0.83	$3.82
2024	$3.18	$1.20	$4.38	$3.18	$0.96	$4.14	$3.18	$0.83	$4.01
2025	$3.50	$1.20	$4.70	$3.50	$0.96	$4.46	$3.50	$0.83	$4.33
2026	$3.84	$1.20	$5.04	$3.84	$0.96	$4.81	$3.84	$0.84	$4.68
2027	$4.21	$1.20	$5.41	$4.21	$0.97	$5.18	$4.21	$0.84	$5.05
2028	$4.51	$1.20	$5.71	$4.51	$0.97	$5.47	$4.51	$0.84	$5.34
2029	$4.83	$1.21	$6.03	$4.83	$0.97	$5.79	$4.83	$0.84	$5.66
2030	$5.04	$1.21	$6.25	$5.04	$0.97	$6.01	$5.04	$0.84	$5.88
2031	$5.12	$1.21	$6.33	$5.12	$0.97	$6.09	$5.12	$0.84	$5.96
2032	$5.34	$1.21	$6.55	$5.34	$0.97	$6.31	$5.34	$0.84	$6.18
2033	$5.59	$1.21	$6.80	$5.59	$0.97	$6.56	$5.59	$0.84	$6.43
2034	$5.92	$1.21	$7.12	$5.92	$0.97	$6.89	$5.92	$0.84	$6.76
2035	$6.27	$1.21	$7.48	$6.27	$0.97	$7.24	$6.27	$0.84	$7.11
2036	$6.49	$1.21	$7.70	$6.49	$0.97	$7.46	$6.49	$0.84	$7.33
2037	$6.79	$1.21	$8.00	$6.79	$0.97	$7.76	$6.79	$0.84	$7.63
2038	$7.08	$1.21	$8.29	$7.08	$0.97	$8.05	$7.08	$0.84	$7.92
2039	$7.36	$1.21	$8.57	$7.36	$0.97	$8.33	$7.36	$0.84	$8.20
2040	$7.60	$1.21	$8.81	$7.60	$0.97	$8.57	$7.60	$0.84	$8.44

Note: The per unit costs shown do not reflect the roughly $700,000 per year cost-of-service associated with the operationally inaccessible East Line capacity resulting from the Spire STL project.

Figure 23
Cost of Gas Delivered to Laclede on the Spire System
With Spire Scenarios 7-9
($/MMBtu)

	Scenario 7			Scenario 8			Scenario 9		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.53	$1.23	$4.76	$3.53	$0.99	$4.52	$3.53	$0.86	$4.39
2019	$3.10	$1.23	$4.32	$3.10	$0.99	$4.09	$3.10	$0.86	$3.96
2020	$3.04	$1.23	$4.27	$3.04	$0.99	$4.03	$3.04	$0.86	$3.90
2021	$3.00	$1.23	$4.23	$3.00	$0.99	$3.99	$3.00	$0.86	$3.86
2022	$2.92	$1.23	$4.15	$2.92	$0.99	$3.91	$2.92	$0.86	$3.78
2023	$2.99	$1.23	$4.22	$2.99	$0.99	$3.98	$2.99	$0.86	$3.85
2024	$3.18	$1.23	$4.41	$3.18	$0.99	$4.17	$3.18	$0.86	$4.04
2025	$3.50	$1.23	$4.73	$3.50	$0.99	$4.49	$3.50	$0.86	$4.36
2026	$3.84	$1.23	$5.07	$3.84	$0.99	$4.83	$3.84	$0.86	$4.70
2027	$4.21	$1.23	$5.44	$4.21	$0.99	$5.20	$4.21	$0.86	$5.07
2028	$4.51	$1.23	$5.74	$4.51	$0.99	$5.50	$4.51	$0.86	$5.37
2029	$4.83	$1.23	$6.06	$4.83	$0.99	$5.82	$4.83	$0.86	$5.69
2030	$5.04	$1.23	$6.28	$5.04	$0.99	$6.04	$5.04	$0.86	$5.91
2031	$5.12	$1.23	$6.36	$5.12	$0.99	$6.12	$5.12	$0.87	$5.99
2032	$5.34	$1.23	$6.57	$5.34	$1.00	$6.33	$5.34	$0.87	$6.20
2033	$5.59	$1.23	$6.83	$5.59	$1.00	$6.59	$5.59	$0.87	$6.46
2034	$5.92	$1.23	$7.15	$5.92	$1.00	$6.91	$5.92	$0.87	$6.78
2035	$6.27	$1.24	$7.51	$6.27	$1.00	$7.27	$6.27	$0.87	$7.14
2036	$6.49	$1.24	$7.73	$6.49	$1.00	$7.49	$6.49	$0.87	$7.36
2037	$6.79	$1.24	$8.03	$6.79	$1.00	$7.79	$6.79	$0.87	$7.66
2038	$7.08	$1.24	$8.31	$7.08	$1.00	$8.08	$7.08	$0.87	$7.95
2039	$7.36	$1.24	$8.60	$7.36	$1.00	$8.36	$7.36	$0.87	$8.23
2040	$7.60	$1.24	$8.84	$7.60	$1.00	$8.60	$7.60	$0.87	$8.47

Figure 24
Cost of Gas Delivered to Laclede on the Spire System
With Spire Scenarios 10-12
($/MMBtu)

	Scenario 10			Scenario 11			Scenario 12		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.53	$1.20	$4.73	$3.53	$0.96	$4.50	$3.53	$0.83	$4.37
2019	$3.10	$1.20	$4.30	$3.10	$0.96	$4.06	$3.10	$0.83	$3.93
2020	$3.04	$1.20	$4.24	$3.04	$0.96	$4.00	$3.04	$0.83	$3.87
2021	$3.00	$1.20	$4.20	$3.00	$0.96	$3.96	$3.00	$0.83	$3.83
2022	$2.92	$1.20	$4.12	$2.92	$0.96	$3.89	$2.92	$0.83	$3.76
2023	$2.99	$1.20	$4.19	$2.99	$0.96	$3.95	$2.99	$0.83	$3.82
2024	$3.18	$1.20	$4.38	$3.18	$0.96	$4.14	$3.18	$0.83	$4.01
2025	$3.50	$1.20	$4.70	$3.50	$0.96	$4.46	$3.50	$0.83	$4.33
2026	$3.84	$1.20	$5.04	$3.84	$0.96	$4.81	$3.84	$0.84	$4.68
2027	$4.21	$1.20	$5.41	$4.21	$0.97	$5.18	$4.21	$0.84	$5.05
2028	$4.51	$1.20	$5.71	$4.51	$0.97	$5.47	$4.51	$0.84	$5.34
2029	$4.83	$1.21	$6.03	$4.83	$0.97	$5.79	$4.83	$0.84	$5.66
2030	$5.04	$1.21	$6.25	$5.04	$0.97	$6.01	$5.04	$0.84	$5.88
2031	$5.12	$1.21	$6.33	$5.12	$0.97	$6.09	$5.12	$0.84	$5.96
2032	$5.34	$1.21	$6.55	$5.34	$0.97	$6.31	$5.34	$0.84	$6.18
2033	$5.59	$1.21	$6.80	$5.59	$0.97	$6.56	$5.59	$0.84	$6.43
2034	$5.92	$1.21	$7.12	$5.92	$0.97	$6.89	$5.92	$0.84	$6.76
2035	$6.27	$1.21	$7.48	$6.27	$0.97	$7.24	$6.27	$0.84	$7.11
2036	$6.49	$1.21	$7.70	$6.49	$0.97	$7.46	$6.49	$0.84	$7.33
2037	$6.79	$1.21	$8.00	$6.79	$0.97	$7.76	$6.79	$0.84	$7.63
2038	$7.08	$1.21	$8.29	$7.08	$0.97	$8.05	$7.08	$0.84	$7.92
2039	$7.36	$1.21	$8.57	$7.36	$0.97	$8.33	$7.36	$0.84	$8.20
2040	$7.60	$1.21	$8.81	$7.60	$0.97	$8.57	$7.60	$0.84	$8.44

Note: The per unit costs shown do not reflect the roughly $700,000 per year cost-of-service associated with the operationally inaccessible East Line capacity resulting from the Spire STL project.

Figure 25
Cost of Gas Delivered to Laclede on the MRT and Spire Systems
With Spire Scenarios 1-3
($/MMBtu)

	Scenario 1			Scenario 2			Scenario 3		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.52	$1.21	$4.73	$3.52	$1.08	$4.61	$3.52	$0.98	$4.50
2019	$3.08	$1.20	$4.28	$3.08	$1.08	$4.17	$3.09	$0.97	$4.06
2020	$3.03	$1.20	$4.23	$3.03	$1.08	$4.11	$3.03	$0.97	$4.01
2021	$2.97	$1.20	$4.17	$2.97	$1.08	$4.05	$2.98	$0.97	$3.95
2022	$2.88	$1.20	$4.08	$2.89	$1.08	$3.97	$2.89	$0.97	$3.87
2023	$2.94	$1.20	$4.14	$2.95	$1.08	$4.03	$2.96	$0.97	$3.93
2024	$3.13	$1.20	$4.33	$3.14	$1.08	$4.22	$3.14	$0.98	$4.12
2025	$3.44	$1.21	$4.65	$3.45	$1.08	$4.54	$3.46	$0.98	$4.44
2026	$3.78	$1.21	$4.98	$3.79	$1.09	$4.87	$3.80	$0.98	$4.78
2027	$4.14	$1.21	$5.35	$4.15	$1.09	$5.24	$4.16	$0.98	$5.14
2028	$4.43	$1.21	$5.64	$4.44	$1.09	$5.53	$4.46	$0.98	$5.44
2029	$4.74	$1.21	$5.96	$4.76	$1.09	$5.85	$4.77	$0.98	$5.75
2030	$4.96	$1.21	$6.17	$4.97	$1.09	$6.07	$4.99	$0.98	$5.97
2031	$5.04	$1.21	$6.26	$5.06	$1.09	$6.15	$5.07	$0.98	$6.05
2032	$5.25	$1.22	$6.47	$5.27	$1.09	$6.36	$5.28	$0.98	$6.27
2033	$5.51	$1.22	$6.72	$5.52	$1.09	$6.62	$5.53	$0.99	$6.52
2034	$5.83	$1.22	$7.05	$5.85	$1.10	$6.94	$5.86	$0.99	$6.85
2035	$6.19	$1.22	$7.41	$6.20	$1.10	$7.30	$6.22	$0.99	$7.20
2036	$6.41	$1.22	$7.63	$6.42	$1.10	$7.52	$6.44	$0.99	$7.43
2037	$6.71	$1.22	$7.93	$6.72	$1.10	$7.82	$6.74	$0.99	$7.73
2038	$6.99	$1.23	$8.22	$7.01	$1.10	$8.11	$7.02	$0.99	$8.01
2039	$7.28	$1.23	$8.51	$7.29	$1.10	$8.40	$7.30	$0.99	$8.30
2040	$7.51	$1.23	$8.74	$7.53	$1.10	$8.63	$7.54	$0.99	$8.54

Figure 26
Cost of Gas Delivered to Laclede on the MRT and Spire Systems
With Spire Scenarios 4-6
($/MMBtu)

	Scenario 4			Scenario 5			Scenario 6		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.52	$1.19	$4.71	$3.52	$1.07	$4.59	$3.52	$0.96	$4.48
2019	$3.08	$1.19	$4.27	$3.08	$1.07	$4.15	$3.09	$0.96	$4.04
2020	$3.03	$1.19	$4.22	$3.03	$1.07	$4.10	$3.03	$0.96	$3.99
2021	$2.97	$1.19	$4.16	$2.97	$1.07	$4.04	$2.98	$0.96	$3.94
2022	$2.88	$1.19	$4.07	$2.89	$1.07	$3.96	$2.90	$0.96	$3.85
2023	$2.94	$1.19	$4.13	$2.95	$1.07	$4.02	$2.96	$0.96	$3.92
2024	$3.13	$1.19	$4.32	$3.14	$1.07	$4.20	$3.14	$0.96	$4.10
2025	$3.44	$1.19	$4.64	$3.45	$1.07	$4.52	$3.46	$0.96	$4.42
2026	$3.78	$1.19	$4.97	$3.79	$1.07	$4.86	$3.80	$0.96	$4.76
2027	$4.14	$1.20	$5.33	$4.15	$1.07	$5.22	$4.16	$0.96	$5.13
2028	$4.43	$1.20	$5.63	$4.45	$1.07	$5.52	$4.46	$0.96	$5.42
2029	$4.75	$1.20	$5.94	$4.76	$1.08	$5.84	$4.77	$0.97	$5.74
2030	$4.96	$1.20	$6.16	$4.98	$1.08	$6.05	$4.99	$0.97	$5.96
2031	$5.04	$1.20	$6.24	$5.06	$1.08	$6.14	$5.07	$0.97	$6.04
2032	$5.26	$1.20	$6.46	$5.27	$1.08	$6.35	$5.28	$0.97	$6.25
2033	$5.51	$1.20	$6.71	$5.52	$1.08	$6.60	$5.54	$0.97	$6.51
2034	$5.83	$1.21	$7.04	$5.85	$1.08	$6.93	$5.86	$0.97	$6.83
2035	$6.19	$1.21	$7.40	$6.21	$1.08	$7.29	$6.22	$0.97	$7.19
2036	$6.41	$1.21	$7.62	$6.43	$1.08	$7.51	$6.44	$0.97	$7.41
2037	$6.71	$1.21	$7.92	$6.73	$1.09	$7.81	$6.74	$0.97	$7.71
2038	$7.00	$1.21	$8.21	$7.01	$1.09	$8.10	$7.02	$0.98	$8.00
2039	$7.28	$1.21	$8.49	$7.30	$1.09	$8.38	$7.31	$0.98	$8.28
2040	$7.52	$1.21	$8.73	$7.53	$1.09	$8.62	$7.54	$0.98	$8.52

Note: The per unit costs shown do not reflect the roughly $700,000 per year cost-of-service associated with the operationally inaccessible East Line capacity resulting from the Spire STL project.

Figure 27
Cost of Gas Delivered to Laclede on the MRT and Spire Systems
With Spire Scenarios 7-9
($/MMBtu)

	Scenario 7			Scenario 8			Scenario 9		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.52	$1.36	$4.88	$3.52	$1.21	$4.73	$3.52	$1.07	$4.60
2019	$3.08	$1.36	$4.44	$3.08	$1.21	$4.29	$3.09	$1.07	$4.16
2020	$3.03	$1.36	$4.39	$3.03	$1.21	$4.24	$3.03	$1.07	$4.10
2021	$2.97	$1.36	$4.32	$2.97	$1.21	$4.18	$2.98	$1.07	$4.05
2022	$2.88	$1.36	$4.24	$2.89	$1.20	$4.09	$2.89	$1.07	$3.97
2023	$2.94	$1.36	$4.30	$2.95	$1.21	$4.15	$2.96	$1.07	$4.03
2024	$3.13	$1.36	$4.49	$3.14	$1.21	$4.34	$3.14	$1.07	$4.21
2025	$3.44	$1.36	$4.80	$3.45	$1.21	$4.66	$3.46	$1.07	$4.53
2026	$3.78	$1.36	$5.14	$3.79	$1.21	$5.00	$3.80	$1.08	$4.87
2027	$4.14	$1.36	$5.50	$4.15	$1.21	$5.36	$4.16	$1.08	$5.24
2028	$4.43	$1.37	$5.80	$4.44	$1.21	$5.66	$4.46	$1.08	$5.53
2029	$4.74	$1.37	$6.11	$4.76	$1.21	$5.97	$4.77	$1.08	$5.85
2030	$4.96	$1.37	$6.33	$4.97	$1.22	$6.19	$4.99	$1.08	$6.07
2031	$5.04	$1.37	$6.41	$5.06	$1.22	$6.27	$5.07	$1.08	$6.15
2032	$5.25	$1.37	$6.63	$5.27	$1.22	$6.49	$5.28	$1.08	$6.36
2033	$5.51	$1.37	$6.88	$5.52	$1.22	$6.74	$5.53	$1.08	$6.62
2034	$5.83	$1.37	$7.20	$5.85	$1.22	$7.06	$5.86	$1.08	$6.94
2035	$6.19	$1.38	$7.57	$6.20	$1.22	$7.43	$6.22	$1.09	$7.30
2036	$6.41	$1.38	$7.79	$6.42	$1.22	$7.65	$6.44	$1.09	$7.52
2037	$6.71	$1.38	$8.09	$6.72	$1.22	$7.95	$6.74	$1.09	$7.82
2038	$6.99	$1.38	$8.38	$7.01	$1.23	$8.23	$7.02	$1.09	$8.11
2039	$7.28	$1.38	$8.66	$7.29	$1.23	$8.52	$7.30	$1.09	$8.40
2040	$7.51	$1.38	$8.90	$7.53	$1.23	$8.76	$7.54	$1.09	$8.63

Figure 28
Cost of Gas Delivered to Laclede on the MRT and Spire Systems
With Spire Scenarios 10-12
($/MMBtu)

	Scenario 10			Scenario 11			Scenario 12		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.52	$1.35	$4.87	$3.52	$1.19	$4.71	$3.52	$1.06	$4.58
2019	$3.08	$1.35	$4.43	$3.08	$1.19	$4.27	$3.09	$1.05	$4.14
2020	$3.03	$1.34	$4.37	$3.03	$1.19	$4.22	$3.03	$1.05	$4.09
2021	$2.97	$1.34	$4.31	$2.97	$1.19	$4.16	$2.98	$1.05	$4.03
2022	$2.88	$1.34	$4.23	$2.89	$1.19	$4.08	$2.90	$1.05	$3.95
2023	$2.94	$1.34	$4.29	$2.95	$1.19	$4.14	$2.96	$1.05	$4.01
2024	$3.13	$1.35	$4.47	$3.14	$1.19	$4.33	$3.14	$1.05	$4.20
2025	$3.44	$1.35	$4.79	$3.45	$1.19	$4.65	$3.46	$1.05	$4.52
2026	$3.78	$1.35	$5.13	$3.79	$1.19	$4.98	$3.80	$1.06	$4.86
2027	$4.14	$1.35	$5.49	$4.15	$1.19	$5.35	$4.16	$1.06	$5.22
2028	$4.43	$1.35	$5.78	$4.45	$1.20	$5.64	$4.46	$1.06	$5.52
2029	$4.75	$1.35	$6.10	$4.76	$1.20	$5.96	$4.77	$1.06	$5.83
2030	$4.96	$1.36	$6.32	$4.98	$1.20	$6.17	$4.99	$1.06	$6.05
2031	$5.04	$1.36	$6.40	$5.06	$1.20	$6.26	$5.07	$1.06	$6.13
2032	$5.26	$1.36	$6.61	$5.27	$1.20	$6.47	$5.28	$1.06	$6.35
2033	$5.51	$1.36	$6.86	$5.52	$1.20	$6.72	$5.54	$1.06	$6.60
2034	$5.83	$1.36	$7.19	$5.85	$1.20	$7.05	$5.86	$1.07	$6.93
2035	$6.19	$1.36	$7.55	$6.21	$1.20	$7.41	$6.22	$1.07	$7.29
2036	$6.41	$1.36	$7.77	$6.43	$1.21	$7.63	$6.44	$1.07	$7.51
2037	$6.71	$1.36	$8.07	$6.73	$1.21	$7.93	$6.74	$1.07	$7.81
2038	$7.00	$1.37	$8.36	$7.01	$1.21	$8.22	$7.02	$1.07	$8.09
2039	$7.28	$1.37	$8.65	$7.30	$1.21	$8.51	$7.31	$1.07	$8.38
2040	$7.52	$1.37	$8.88	$7.53	$1.21	$8.74	$7.54	$1.07	$8.62

Note: The per unit costs shown do not reflect the roughly $700,000 per year cost-of-service associated with the operationally inaccessible East Line capacity resulting from the Spire STL project.

Figure 29
Cost of Gas Delivered to Laclede on the MRT Main/West Line
No Spire Scenario (Excluding IIT)
($/MMBtu)

	No Spire Scenario		
	Commodity	Transport	Total
2018	$3.49	$0.76	$4.25
2019	$3.06	$0.76	$3.82
2020	$3.00	$0.76	$3.76
2021	$2.92	$0.76	$3.68
2022	$2.83	$0.76	$3.58
2023	$2.88	$0.76	$3.64
2024	$3.06	$0.76	$3.82
2025	$3.37	$0.76	$4.13
2026	$3.70	$0.76	$4.46
2027	$4.05	$0.77	$4.81
2028	$4.34	$0.77	$5.10
2029	$4.65	$0.77	$5.42
2030	$4.86	$0.77	$5.63
2031	$4.94	$0.77	$5.71
2032	$5.15	$0.77	$5.93
2033	$5.40	$0.78	$6.18
2034	$5.73	$0.78	$6.50
2035	$6.08	$0.78	$6.87
2036	$6.31	$0.78	$7.09
2037	$6.61	$0.79	$7.39
2038	$6.89	$0.79	$7.68
2039	$7.18	$0.79	$7.97
2040	$7.41	$0.79	$8.20

Figure 30
Cost of Gas Delivered to Laclede on the MRT East Line
No Spire Scenario (Excluding IIT)
($/MMBtu)

	No Spire Scenario		
	Commodity	Transport	Total
2018	$3.66	$0.77	$4.43
2019	$3.10	$0.77	$3.86
2020	$3.16	$0.77	$3.93
2021	$3.06	$0.77	$3.83
2022	$3.00	$0.77	$3.77
2023	$3.08	$0.77	$3.84
2024	$3.29	$0.77	$4.06
2025	$3.61	$0.77	$4.38
2026	$3.96	$0.77	$4.73
2027	$4.33	$0.77	$5.11
2028	$4.65	$0.77	$5.43
2029	$4.96	$0.78	$5.73
2030	$5.18	$0.78	$5.96
2031	$5.26	$0.78	$6.03
2032	$5.49	$0.78	$6.27
2033	$5.74	$0.78	$6.52
2034	$6.07	$0.78	$6.86
2035	$6.44	$0.78	$7.22
2036	$6.66	$0.78	$7.44
2037	$6.96	$0.79	$7.74
2038	$7.25	$0.79	$8.03
2039	$7.53	$0.79	$8.32
2040	$7.77	$0.79	$8.56

Figure 31
Cost of Gas Delivered to Laclede on the MRT West/Main Line
No Spire Scenario (Including IIT)
($/MMBtu)

	No Spire Scenario		
	Commodity	Transport	Total
2018	$3.49	$0.94	$4.43
2019	$3.06	$0.93	$4.00
2020	$3.00	$0.93	$3.93
2021	$2.92	$0.93	$3.85
2022	$2.83	$0.93	$3.76
2023	$2.88	$0.93	$3.81
2024	$3.06	$0.93	$3.99
2025	$3.37	$0.94	$4.31
2026	$3.70	$0.94	$4.64
2027	$4.05	$0.94	$4.99
2028	$4.34	$0.94	$5.28
2029	$4.65	$0.95	$5.59
2030	$4.86	$0.95	$5.80
2031	$4.94	$0.95	$5.89
2032	$5.15	$0.95	$6.10
2033	$5.40	$0.95	$6.35
2034	$5.73	$0.95	$6.68
2035	$6.08	$0.96	$7.04
2036	$6.31	$0.96	$7.26
2037	$6.61	$0.96	$7.57
2038	$6.89	$0.96	$7.86
2039	$7.18	$0.97	$8.14
2040	$7.41	$0.97	$8.38

Figure 32
Cost of Gas Delivered to Laclede on the MRT East Line
No Spire Scenario (Including IIT)
($/MMBtu)

	No Spire Scenario		
	Commodity	Transport	Total
2018	$3.66	$0.91	$4.57
2019	$3.10	$0.91	$4.01
2020	$3.16	$0.91	$4.07
2021	$3.06	$0.91	$3.97
2022	$3.00	$0.91	$3.91
2023	$3.08	$0.91	$3.98
2024	$3.29	$0.91	$4.20
2025	$3.61	$0.91	$4.52
2026	$3.96	$0.91	$4.88
2027	$4.33	$0.92	$5.25
2028	$4.65	$0.92	$5.57
2029	$4.96	$0.92	$5.87
2030	$5.18	$0.92	$6.10
2031	$5.26	$0.92	$6.18
2032	$5.49	$0.92	$6.41
2033	$5.74	$0.92	$6.66
2034	$6.07	$0.92	$7.00
2035	$6.44	$0.93	$7.36
2036	$6.66	$0.93	$7.59
2037	$6.96	$0.93	$7.89
2038	$7.25	$0.93	$8.18
2039	$7.53	$0.93	$8.46
2040	$7.77	$0.93	$8.70

Figure 33
Cost of Gas Delivered to Laclede on the MRT Main/West Line
With Spire Scenarios 1-3
($/MMBtu)

	Scenario 1			Scenario 2			Scenario 3		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.49	$1.24	$4.74	$3.49	$1.19	$4.68	$3.49	$1.09	$4.58
2019	$3.06	$1.24	$4.30	$3.06	$1.18	$4.25	$3.06	$1.08	$4.15
2020	$3.00	$1.24	$4.24	$3.00	$1.18	$4.18	$3.00	$1.08	$4.08
2021	$2.92	$1.24	$4.16	$2.92	$1.18	$4.11	$2.92	$1.08	$4.01
2022	$2.83	$1.24	$4.07	$2.83	$1.18	$4.01	$2.83	$1.08	$3.91
2023	$2.88	$1.24	$4.12	$2.88	$1.18	$4.06	$2.88	$1.08	$3.96
2024	$3.06	$1.24	$4.30	$3.06	$1.18	$4.25	$3.06	$1.08	$4.15
2025	$3.37	$1.24	$4.61	$3.37	$1.19	$4.56	$3.37	$1.09	$4.46
2026	$3.70	$1.24	$4.94	$3.70	$1.19	$4.89	$3.70	$1.09	$4.79
2027	$4.05	$1.25	$5.30	$4.05	$1.19	$5.24	$4.05	$1.09	$5.14
2028	$4.34	$1.25	$5.59	$4.34	$1.19	$5.53	$4.34	$1.10	$5.43
2029	$4.65	$1.25	$5.90	$4.65	$1.20	$5.84	$4.65	$1.10	$5.74
2030	$4.86	$1.25	$6.11	$4.86	$1.20	$6.06	$4.86	$1.10	$5.96
2031	$4.94	$1.25	$6.20	$4.94	$1.20	$6.14	$4.94	$1.10	$6.04
2032	$5.15	$1.26	$6.41	$5.15	$1.20	$6.35	$5.15	$1.10	$6.25
2033	$5.40	$1.26	$6.66	$5.40	$1.20	$6.60	$5.40	$1.10	$6.50
2034	$5.73	$1.26	$6.99	$5.73	$1.21	$6.93	$5.73	$1.11	$6.83
2035	$6.08	$1.26	$7.35	$6.08	$1.21	$7.29	$6.08	$1.11	$7.19
2036	$6.31	$1.27	$7.57	$6.31	$1.21	$7.52	$6.31	$1.11	$7.42
2037	$6.61	$1.27	$7.87	$6.61	$1.21	$7.82	$6.61	$1.11	$7.72
2038	$6.89	$1.27	$8.16	$6.89	$1.22	$8.11	$6.89	$1.12	$8.01
2039	$7.18	$1.27	$8.45	$7.18	$1.22	$8.39	$7.18	$1.12	$8.30
2040	$7.41	$1.27	$8.69	$7.41	$1.22	$8.63	$7.41	$1.12	$8.53

Figure 34
Cost of Gas Delivered to Laclede on the MRT Main/West Line
With Spire Scenarios 4-6
($/MMBtu)

	Scenario 4			Scenario 5			Scenario 6		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.49	$1.26	$4.75	$3.49	$1.23	$4.72	$3.49	$1.15	$4.64
2019	$3.06	$1.26	$4.32	$3.06	$1.22	$4.29	$3.06	$1.14	$4.21
2020	$3.00	$1.26	$4.26	$3.00	$1.22	$4.22	$3.00	$1.14	$4.14
2021	$2.92	$1.26	$4.18	$2.92	$1.22	$4.14	$2.92	$1.14	$4.06
2022	$2.83	$1.26	$4.08	$2.83	$1.22	$4.05	$2.83	$1.14	$3.97
2023	$2.88	$1.26	$4.14	$2.88	$1.22	$4.10	$2.88	$1.14	$4.02
2024	$3.06	$1.26	$4.32	$3.06	$1.22	$4.28	$3.06	$1.14	$4.20
2025	$3.37	$1.26	$4.63	$3.37	$1.23	$4.60	$3.37	$1.15	$4.52
2026	$3.70	$1.26	$4.96	$3.70	$1.23	$4.93	$3.70	$1.15	$4.85
2027	$4.05	$1.27	$5.32	$4.05	$1.23	$5.28	$4.05	$1.15	$5.20
2028	$4.34	$1.27	$5.60	$4.34	$1.23	$5.57	$4.34	$1.15	$5.49
2029	$4.65	$1.27	$5.92	$4.65	$1.24	$5.88	$4.65	$1.16	$5.80
2030	$4.86	$1.27	$6.13	$4.86	$1.24	$6.09	$4.86	$1.16	$6.01
2031	$4.94	$1.27	$6.21	$4.94	$1.24	$6.18	$4.94	$1.16	$6.10
2032	$5.15	$1.27	$6.43	$5.15	$1.24	$6.39	$5.15	$1.16	$6.31
2033	$5.40	$1.28	$6.68	$5.40	$1.24	$6.64	$5.40	$1.16	$6.56
2034	$5.73	$1.28	$7.00	$5.73	$1.24	$6.97	$5.73	$1.17	$6.89
2035	$6.08	$1.28	$7.37	$6.08	$1.25	$7.33	$6.08	$1.17	$7.25
2036	$6.31	$1.28	$7.59	$6.31	$1.25	$7.55	$6.31	$1.17	$7.48
2037	$6.61	$1.29	$7.89	$6.61	$1.25	$7.86	$6.61	$1.17	$7.78
2038	$6.89	$1.29	$8.18	$6.89	$1.25	$8.15	$6.89	$1.17	$8.07
2039	$7.18	$1.29	$8.47	$7.18	$1.26	$8.43	$7.18	$1.18	$8.35
2040	$7.41	$1.29	$8.70	$7.41	$1.26	$8.67	$7.41	$1.18	$8.59

Figure 35
Cost of Gas Delivered to Laclede on the MRT Main/West Line
With Spire Scenarios 7-9
($/MMBtu)

	Scenario 7			Scenario 8			Scenario 9		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.49	$1.53	$5.02	$3.49	$1.45	$4.95	$3.49	$1.33	$4.82
2019	$3.06	$1.53	$4.59	$3.06	$1.45	$4.52	$3.06	$1.32	$4.39
2020	$3.00	$1.53	$4.53	$3.00	$1.45	$4.45	$3.00	$1.32	$4.32
2021	$2.92	$1.53	$4.45	$2.92	$1.45	$4.37	$2.92	$1.32	$4.24
2022	$2.83	$1.53	$4.35	$2.83	$1.45	$4.28	$2.83	$1.32	$4.15
2023	$2.88	$1.53	$4.41	$2.88	$1.45	$4.33	$2.88	$1.32	$4.20
2024	$3.06	$1.53	$4.59	$3.06	$1.45	$4.51	$3.06	$1.32	$4.38
2025	$3.37	$1.53	$4.90	$3.37	$1.45	$4.82	$3.37	$1.32	$4.70
2026	$3.70	$1.53	$5.23	$3.70	$1.46	$5.15	$3.70	$1.33	$5.03
2027	$4.05	$1.54	$5.58	$4.05	$1.46	$5.51	$4.05	$1.33	$5.38
2028	$4.34	$1.54	$5.87	$4.34	$1.46	$5.80	$4.34	$1.33	$5.67
2029	$4.65	$1.54	$6.19	$4.65	$1.46	$6.11	$4.65	$1.34	$5.98
2030	$4.86	$1.54	$6.40	$4.86	$1.47	$6.32	$4.86	$1.34	$6.19
2031	$4.94	$1.54	$6.48	$4.94	$1.47	$6.41	$4.94	$1.34	$6.28
2032	$5.15	$1.54	$6.70	$5.15	$1.47	$6.62	$5.15	$1.34	$6.49
2033	$5.40	$1.55	$6.95	$5.40	$1.47	$6.87	$5.40	$1.34	$6.74
2034	$5.73	$1.55	$7.27	$5.73	$1.47	$7.20	$5.73	$1.34	$7.07
2035	$6.08	$1.55	$7.64	$6.08	$1.48	$7.56	$6.08	$1.35	$7.43
2036	$6.31	$1.55	$7.86	$6.31	$1.48	$7.78	$6.31	$1.35	$7.65
2037	$6.61	$1.56	$8.16	$6.61	$1.48	$8.09	$6.61	$1.35	$7.96
2038	$6.89	$1.56	$8.45	$6.89	$1.48	$8.37	$6.89	$1.35	$8.25
2039	$7.18	$1.56	$8.74	$7.18	$1.48	$8.66	$7.18	$1.36	$8.53
2040	$7.41	$1.56	$8.97	$7.41	$1.49	$8.90	$7.41	$1.36	$8.77

Figure 36
Cost of Gas Delivered to Laclede on the MRT Main/West Line
With Spire Scenarios 10-12
($/MMBtu)

	Scenario 10			Scenario 11			Scenario 12		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.49	$1.56	$5.05	$3.49	$1.50	$5.00	$3.49	$1.40	$4.89
2019	$3.06	$1.55	$4.62	$3.06	$1.50	$4.57	$3.06	$1.40	$4.46
2020	$3.00	$1.55	$4.55	$3.00	$1.50	$4.50	$3.00	$1.40	$4.40
2021	$2.92	$1.55	$4.47	$2.92	$1.50	$4.42	$2.92	$1.40	$4.32
2022	$2.83	$1.55	$4.38	$2.83	$1.50	$4.33	$2.83	$1.40	$4.22
2023	$2.88	$1.55	$4.43	$2.88	$1.50	$4.38	$2.88	$1.40	$4.28
2024	$3.06	$1.55	$4.61	$3.06	$1.50	$4.56	$3.06	$1.40	$4.46
2025	$3.37	$1.55	$4.93	$3.37	$1.50	$4.87	$3.37	$1.40	$4.77
2026	$3.70	$1.56	$5.26	$3.70	$1.51	$5.20	$3.70	$1.40	$5.10
2027	$4.05	$1.56	$5.61	$4.05	$1.51	$5.56	$4.05	$1.41	$5.45
2028	$4.34	$1.56	$5.90	$4.34	$1.51	$5.85	$4.34	$1.41	$5.74
2029	$4.65	$1.57	$6.21	$4.65	$1.51	$6.16	$4.65	$1.41	$6.06
2030	$4.86	$1.57	$6.42	$4.86	$1.52	$6.37	$4.86	$1.41	$6.27
2031	$4.94	$1.57	$6.51	$4.94	$1.52	$6.46	$4.94	$1.41	$6.35
2032	$5.15	$1.57	$6.72	$5.15	$1.52	$6.67	$5.15	$1.41	$6.57
2033	$5.40	$1.57	$6.97	$5.40	$1.52	$6.92	$5.40	$1.42	$6.82
2034	$5.73	$1.57	$7.30	$5.73	$1.52	$7.25	$5.73	$1.42	$7.14
2035	$6.08	$1.58	$7.66	$6.08	$1.53	$7.61	$6.08	$1.42	$7.51
2036	$6.31	$1.58	$7.88	$6.31	$1.53	$7.83	$6.31	$1.42	$7.73
2037	$6.61	$1.58	$8.19	$6.61	$1.53	$8.14	$6.61	$1.43	$8.03
2038	$6.89	$1.58	$8.48	$6.89	$1.53	$8.42	$6.89	$1.43	$8.32
2039	$7.18	$1.59	$8.76	$7.18	$1.53	$8.71	$7.18	$1.43	$8.61
2040	$7.41	$1.59	$9.00	$7.41	$1.54	$8.95	$7.41	$1.43	$8.84

Figure 37
Cost of Gas Delivered to Laclede on the MRT East Line
With Spire Scenarios 1-3
($/MMBtu)

	Scenario 1			Scenario 2			Scenario 3		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.66	$0.79	$4.45	$3.66	$1.20	$4.86	$3.66	$1.69	$5.35
2019	$3.10	$0.79	$3.88	$3.10	$1.20	$4.30	$3.10	$1.68	$4.78
2020	$3.16	$0.79	$3.94	$3.16	$1.20	$4.36	$3.16	$1.68	$4.84
2021	$3.06	$0.78	$3.85	$3.06	$1.20	$4.26	$3.06	$1.68	$4.74
2022	$3.00	$0.78	$3.79	$3.00	$1.20	$4.20	$3.00	$1.68	$4.68
2023	$3.08	$0.78	$3.86	$3.08	$1.20	$4.27	$3.08	$1.68	$4.76
2024	$3.29	$0.79	$4.08	$3.29	$1.20	$4.49	$3.29	$1.68	$4.98
2025	$3.61	$0.79	$4.40	$3.61	$1.20	$4.81	$3.61	$1.69	$5.30
2026	$3.96	$0.79	$4.75	$3.96	$1.20	$5.17	$3.96	$1.69	$5.65
2027	$4.33	$0.79	$5.13	$4.33	$1.21	$5.54	$4.33	$1.69	$6.02
2028	$4.65	$0.79	$5.45	$4.65	$1.21	$5.86	$4.65	$1.69	$6.34
2029	$4.96	$0.79	$5.75	$4.96	$1.21	$6.16	$4.96	$1.69	$6.65
2030	$5.18	$0.80	$5.98	$5.18	$1.21	$6.39	$5.18	$1.69	$6.88
2031	$5.26	$0.80	$6.05	$5.26	$1.21	$6.47	$5.26	$1.69	$6.95
2032	$5.49	$0.80	$6.29	$5.49	$1.21	$6.70	$5.49	$1.70	$7.19
2033	$5.74	$0.80	$6.54	$5.74	$1.21	$6.96	$5.74	$1.70	$7.44
2034	$6.07	$0.80	$6.87	$6.07	$1.21	$7.29	$6.07	$1.70	$7.77
2035	$6.44	$0.80	$7.24	$6.44	$1.22	$7.65	$6.44	$1.70	$8.14
2036	$6.66	$0.80	$7.46	$6.66	$1.22	$7.88	$6.66	$1.70	$8.36
2037	$6.96	$0.81	$7.76	$6.96	$1.22	$8.18	$6.96	$1.70	$8.66
2038	$7.25	$0.81	$8.05	$7.25	$1.22	$8.47	$7.25	$1.70	$8.95
2039	$7.53	$0.81	$8.34	$7.53	$1.22	$8.75	$7.53	$1.71	$9.24
2040	$7.77	$0.81	$8.58	$7.77	$1.22	$8.99	$7.77	$1.71	$9.48

Figure 38
Cost of Gas Delivered to Laclede on the MRT East Line
With Spire Scenarios 4-6
($/MMBtu)

	Scenario 4			Scenario 5			Scenario 6		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.66	$0.62	$4.28	$3.66	$0.97	$4.63	$3.66	$1.39	$5.05
2019	$3.10	$0.62	$3.72	$3.10	$0.97	$4.06	$3.10	$1.39	$4.49
2020	$3.16	$0.62	$3.78	$3.16	$0.97	$4.13	$3.16	$1.39	$4.55
2021	$3.06	$0.62	$3.68	$3.06	$0.97	$4.03	$3.06	$1.39	$4.45
2022	$3.00	$0.62	$3.62	$3.00	$0.97	$3.97	$3.00	$1.39	$4.39
2023	$3.08	$0.62	$3.70	$3.08	$0.97	$4.04	$3.08	$1.39	$4.47
2024	$3.29	$0.62	$3.91	$3.29	$0.97	$4.26	$3.29	$1.39	$4.68
2025	$3.61	$0.62	$4.24	$3.61	$0.97	$4.58	$3.61	$1.39	$5.01
2026	$3.96	$0.63	$4.59	$3.96	$0.97	$4.94	$3.96	$1.39	$5.36
2027	$4.33	$0.63	$4.96	$4.33	$0.97	$5.31	$4.33	$1.40	$5.73
2028	$4.65	$0.63	$5.28	$4.65	$0.98	$5.63	$4.65	$1.40	$6.05
2029	$4.96	$0.63	$5.59	$4.96	$0.98	$5.93	$4.96	$1.40	$6.35
2030	$5.18	$0.63	$5.82	$5.18	$0.98	$6.16	$5.18	$1.40	$6.58
2031	$5.26	$0.63	$5.89	$5.26	$0.98	$6.23	$5.26	$1.40	$6.66
2032	$5.49	$0.63	$6.13	$5.49	$0.98	$6.47	$5.49	$1.40	$6.89
2033	$5.74	$0.64	$6.38	$5.74	$0.98	$6.72	$5.74	$1.40	$7.15
2034	$6.07	$0.64	$6.71	$6.07	$0.98	$7.06	$6.07	$1.41	$7.48
2035	$6.44	$0.64	$7.08	$6.44	$0.99	$7.42	$6.44	$1.41	$7.84
2036	$6.66	$0.64	$7.30	$6.66	$0.99	$7.65	$6.66	$1.41	$8.07
2037	$6.96	$0.64	$7.60	$6.96	$0.99	$7.95	$6.96	$1.41	$8.37
2038	$7.25	$0.64	$7.89	$7.25	$0.99	$8.24	$7.25	$1.41	$8.66
2039	$7.53	$0.64	$8.18	$7.53	$0.99	$8.52	$7.53	$1.41	$8.94
2040	$7.77	$0.65	$8.42	$7.77	$0.99	$8.76	$7.77	$1.41	$9.19

Figure 39
Cost of Gas Delivered to Laclede on the MRT East Line
With Spire Scenarios 7-9
($/MMBtu)

	Scenario 7			Scenario 8			Scenario 9		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.66	$0.94	$4.60	$3.66	$1.44	$5.10	$3.66	$2.03	$5.69
2019	$3.10	$0.93	$4.03	$3.10	$1.44	$4.53	$3.10	$2.02	$5.12
2020	$3.16	$0.93	$4.09	$3.16	$1.44	$4.60	$3.16	$2.02	$5.18
2021	$3.06	$0.93	$3.99	$3.06	$1.44	$4.50	$3.06	$2.02	$5.08
2022	$3.00	$0.93	$3.94	$3.00	$1.44	$4.44	$3.00	$2.02	$5.02
2023	$3.08	$0.93	$4.01	$3.08	$1.44	$4.51	$3.08	$2.02	$5.10
2024	$3.29	$0.94	$4.23	$3.29	$1.44	$4.73	$3.29	$2.02	$5.32
2025	$3.61	$0.94	$4.55	$3.61	$1.44	$5.05	$3.61	$2.03	$5.64
2026	$3.96	$0.94	$4.90	$3.96	$1.44	$5.40	$3.96	$2.03	$5.99
2027	$4.33	$0.94	$5.28	$4.33	$1.44	$5.78	$4.33	$2.03	$6.37
2028	$4.65	$0.94	$5.60	$4.65	$1.44	$6.10	$4.65	$2.03	$6.69
2029	$4.96	$0.94	$5.90	$4.96	$1.45	$6.40	$4.96	$2.03	$6.99
2030	$5.18	$0.95	$6.13	$5.18	$1.45	$6.63	$5.18	$2.03	$7.22
2031	$5.26	$0.95	$6.20	$5.26	$1.45	$6.70	$5.26	$2.04	$7.29
2032	$5.49	$0.95	$6.44	$5.49	$1.45	$6.94	$5.49	$2.04	$7.53
2033	$5.74	$0.95	$6.69	$5.74	$1.45	$7.19	$5.74	$2.04	$7.78
2034	$6.07	$0.95	$7.02	$6.07	$1.45	$7.52	$6.07	$2.04	$8.11
2035	$6.44	$0.95	$7.39	$6.44	$1.45	$7.89	$6.44	$2.04	$8.48
2036	$6.66	$0.95	$7.61	$6.66	$1.45	$8.11	$6.66	$2.04	$8.70
2037	$6.96	$0.95	$7.91	$6.96	$1.46	$8.41	$6.96	$2.04	$9.00
2038	$7.25	$0.96	$8.20	$7.25	$1.46	$8.70	$7.25	$2.05	$9.29
2039	$7.53	$0.96	$8.49	$7.53	$1.46	$8.99	$7.53	$2.05	$9.58
2040	$7.77	$0.96	$8.73	$7.77	$1.46	$9.23	$7.77	$2.05	$9.82

Figure 40
Cost of Gas Delivered to Laclede on the MRT East Line
With Spire Scenarios 10-12
($/MMBtu)

	Scenario 10			Scenario 11			Scenario 12		
	Commodity	Transport	Total	Commodity	Transport	Total	Commodity	Transport	Total
2018	$3.66	$0.74	$4.40	$3.66	$1.16	$4.82	$3.66	$1.68	$5.34
2019	$3.10	$0.74	$3.84	$3.10	$1.16	$4.26	$3.10	$1.67	$4.77
2020	$3.16	$0.74	$3.90	$3.16	$1.16	$4.32	$3.16	$1.67	$4.83
2021	$3.06	$0.74	$3.80	$3.06	$1.16	$4.22	$3.06	$1.67	$4.73
2022	$3.00	$0.74	$3.74	$3.00	$1.16	$4.16	$3.00	$1.67	$4.68
2023	$3.08	$0.74	$3.82	$3.08	$1.16	$4.23	$3.08	$1.67	$4.75
2024	$3.29	$0.74	$4.03	$3.29	$1.16	$4.45	$3.29	$1.68	$4.97
2025	$3.61	$0.74	$4.36	$3.61	$1.16	$4.77	$3.61	$1.68	$5.29
2026	$3.96	$0.74	$4.71	$3.96	$1.16	$5.13	$3.96	$1.68	$5.64
2027	$4.33	$0.75	$5.08	$4.33	$1.17	$5.50	$4.33	$1.68	$6.02
2028	$4.65	$0.75	$5.40	$4.65	$1.17	$5.82	$4.65	$1.68	$6.34
2029	$4.96	$0.75	$5.70	$4.96	$1.17	$6.12	$4.96	$1.68	$6.64
2030	$5.18	$0.75	$5.93	$5.18	$1.17	$6.35	$5.18	$1.68	$6.87
2031	$5.26	$0.75	$6.01	$5.26	$1.17	$6.43	$5.26	$1.69	$6.94
2032	$5.49	$0.75	$6.24	$5.49	$1.17	$6.66	$5.49	$1.69	$7.18
2033	$5.74	$0.75	$6.50	$5.74	$1.17	$6.92	$5.74	$1.69	$7.43
2034	$6.07	$0.76	$6.83	$6.07	$1.18	$7.25	$6.07	$1.69	$7.76
2035	$6.44	$0.76	$7.19	$6.44	$1.18	$7.61	$6.44	$1.69	$8.13
2036	$6.66	$0.76	$7.42	$6.66	$1.18	$7.84	$6.66	$1.69	$8.35
2037	$6.96	$0.76	$7.72	$6.96	$1.18	$8.14	$6.96	$1.69	$8.65
2038	$7.25	$0.76	$8.01	$7.25	$1.18	$8.43	$7.25	$1.70	$8.94
2039	$7.53	$0.76	$8.29	$7.53	$1.18	$8.71	$7.53	$1.70	$9.23
2040	$7.77	$0.76	$8.54	$7.77	$1.18	$8.95	$7.77	$1.70	$9.47

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC	)))	Docket No. CP17-40-000

MARCH 13, 2018 AFFIDAVIT OF DR. PAUL R. CARPENTER

Paul R. Carpenter, being first duly sworn, on oath states that he is the witness whose testimony appears on the preceding pages entitled "March 13, 2018 Affidavit of Dr. Paul R. Carpenter"; that, if asked the questions which appear in the text of said testimony, he would give the answers that are therein set forth; and that affiant adopts the aforesaid testimony as Paul R. Carpenter's sworn testimony in this proceeding.

Paul R. Carpenter

Subscribed and sworn to before me, a Notary Public in and for the Commonwealth of Massachusetts, this 13h day of March, 2018.

Notary Public

JENNIFER M. OSSEN
MY COMMISSION EXPIRES FEB. 17, 2023
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS

My Commission expires:
2/17/2023

JENNIFER M. OSSEN
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
February 17, 2023

Laclede Gas Company

700 Market St.
St. Louis MO, 63101
July 27, 2017

VIA FEDEX and Electronic Mail

Mike Stoll
Sr. Director-Commercial T&S
Enable Mississippi River Transmission, LLC ("MRT")
14805 North Outer 40 Road
Suite 230
St. Louis, MO 63017

Re: Termination Notification Contract Number 3310 MDQ#2

Dear Mike:

As described in Section 1 in the Firm Transportation Service Agreement Contract No. 3310 dated August 1, 2016, Laclede Gas Company is providing twelve month termination notification for all the capacity included in MDQ#2 (437,240 Dth/D), for termination effective July 31, 2018. This termination notification is provided to avoid an automatic extension of the contract at MRT's maximum rate beyond August 1, 2018.

Sincerely,

Scott E Woley

Scott E. Woley
Vice President Gas Supply & Operations

2. MRT has stated that significant modifications would be required on its system in order to accommodate potential future bi-directional flows, that is gas delivered to MRT from Spire at the Chain of Rocks interconnect. Specify what new facilities would be required and list all assumptions used. Provide two sets of engineering flow diagrams and corresponding hydraulic models: (1) for the existing operating conditions and (2) for the post-Spire operating conditions to support your assumptions.

Response:

Please see the attached materials.

Attachment 2-A(1), p. 1 contains a flow diagram reflecting existing operations. Attachment 2-A(2) contains a power point presentation prepared by Exponent. Page 7 of that Attachment summarizes the "Base Case" circumstances. Page 8 of that Attachment summarizes the operational consequences of changing MRT's current Chain of Rocks point of delivery into Laclede's facilities into a location with little or no flow out of MRT. Page 9 of that Attachment summarizes the consequences of changing the Chain of Rocks interconnection point to receive into MRT 150 MMscf/d. The result theoretically requires that two compressors on the East Line, Shattuc and St. Jacob, would be shut down, creating the circumstances that would lead to compressor surges, which is inconsistent with good operational practice. In sum, receipt of 150 MMscf/d on a firm basis into MRT at Chain of Rocks would require that demand would rise by 34% elsewhere on MRT's system. Even eliminating deliveries by MRT into Laclede at Chain of Rocks (to say nothing of changing to receipts from Spire at that point) would produce operating pressures on MRT in excess of MAOP and still presume an increase in demand of 30% at MRT's Arlee Street delivery point, a presumption for which there is no basis. In any event, receipt of 150 MMscf/d at Chain of Rocks into MRT would eliminate the ability of MRT to receive on a firm basis significant receipts at the other end of the East Line, from NGPL and Trunkline.

Attachment 2-A(3) contains the Base Case hydraulic model. Attachment 2-A(4) contains the post-Spire hydraulic model. These simulations and Attachment 2-A(7) were run using DNV-GL Synergi Gas ver. 4.9.05. Attachments 2-A(1), 2-A(3), 2-A(4) and 2-A(7), constitute CEII and MRT requests that the models be treated accordingly. In addition, the hydraulic flow model information submitted herewith is highly competitively sensitive, proprietary data, the disclosure of which could cause MRT material harm. Accordingly, MRT requests treatment of that material as both CEII as well as Privileged and Confidential, and it is marked "CUI//CEII/PRIV CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE."

The simulations and hydraulic models provided demonstrate that the receipt of volumes from Spire at Chain of Rocks into the MRT system on a firm basis would dramatically impact the MRT system. MRT estimates that the cost of creating the ability to receive at least 150,000 Dth/d at Chain of Rocks on a firm basis would be approximately $ 8 million. *See* Attachment 2-A(5) hereto. That is not the entirety of the cost attributable to Spire, however. To accommodate receipt of volumes at Chain of Rocks and ultimately transport at least 150 MMscf/d south of Glendale on a firm basis would require investments in the range of $161 million-$233 million. *See* Attachment 2-A(6). Effectively, the direction of flow on a significant portion of the MRT system may have to be reversed. This reversal is the result of projected changed operations at Chain of Rocks and related changes at other points on the MRT system.

Attachment 2-A(7) contains a copy of a flow diagram for post-Spire operations. As noted above, MRT requests treatment of that material as both CEII as well as Privileged and

Confidential, and it is marked “CUI//CEII/PRIV CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE.”

Prepared by:

Dr. Harri Kytomaa as to Attachment 2-(A) 2

Kerry Smith, Senior Director, Asset Management of MRT as to remaining attachments.

Counsel as to the narrative text of response no. 2.

Exponent
(508) 652-8519
Kerry Smith
(346)701-2133
Counsel for MRT
(202)662-2700

Date: March 13, 2018

Attachment No. 2-A(1)

Exponent

QMS: 1701285.000 - 9755

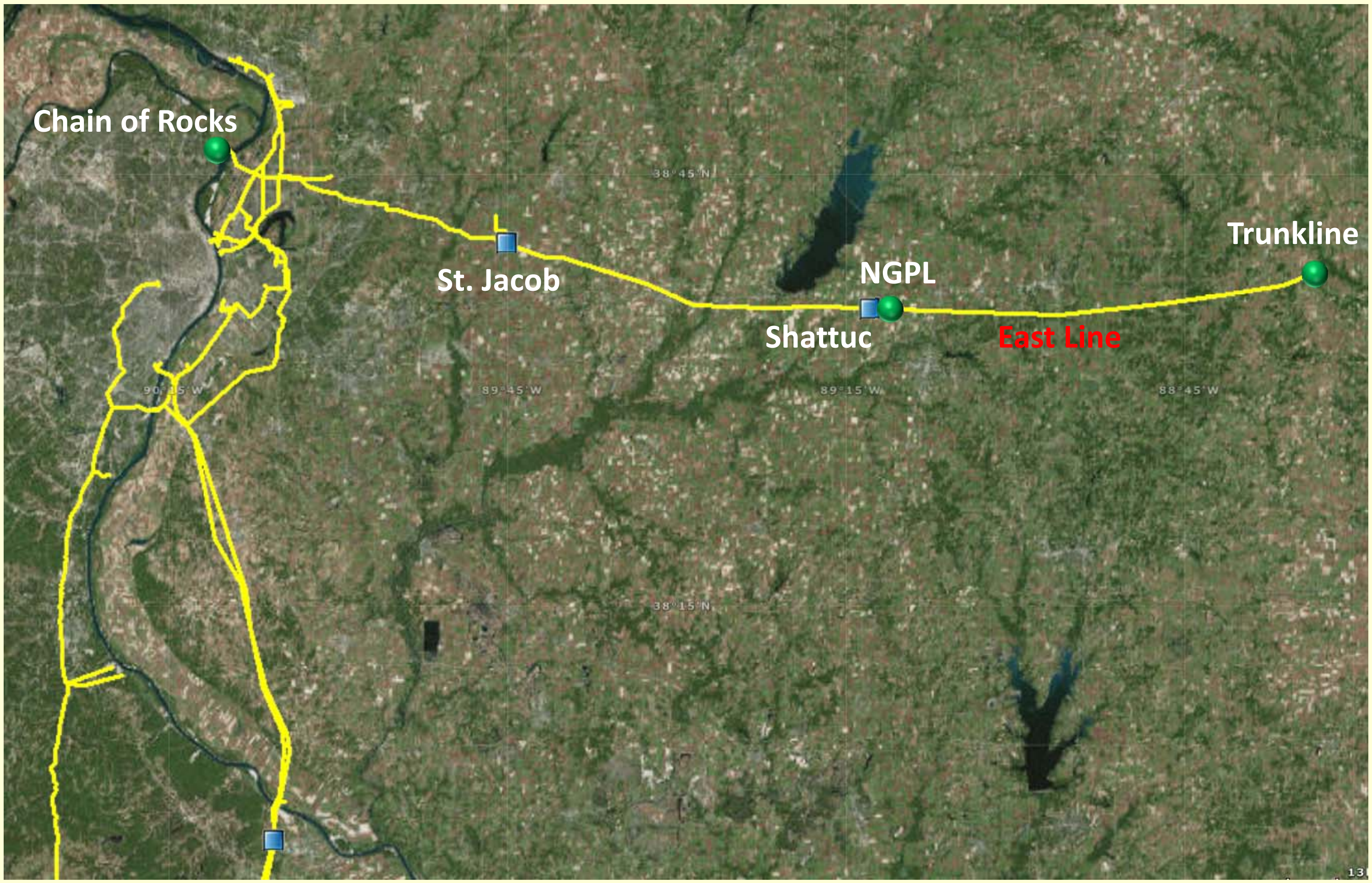
Enable MRT

Exponent Analysis

March 13, 2018

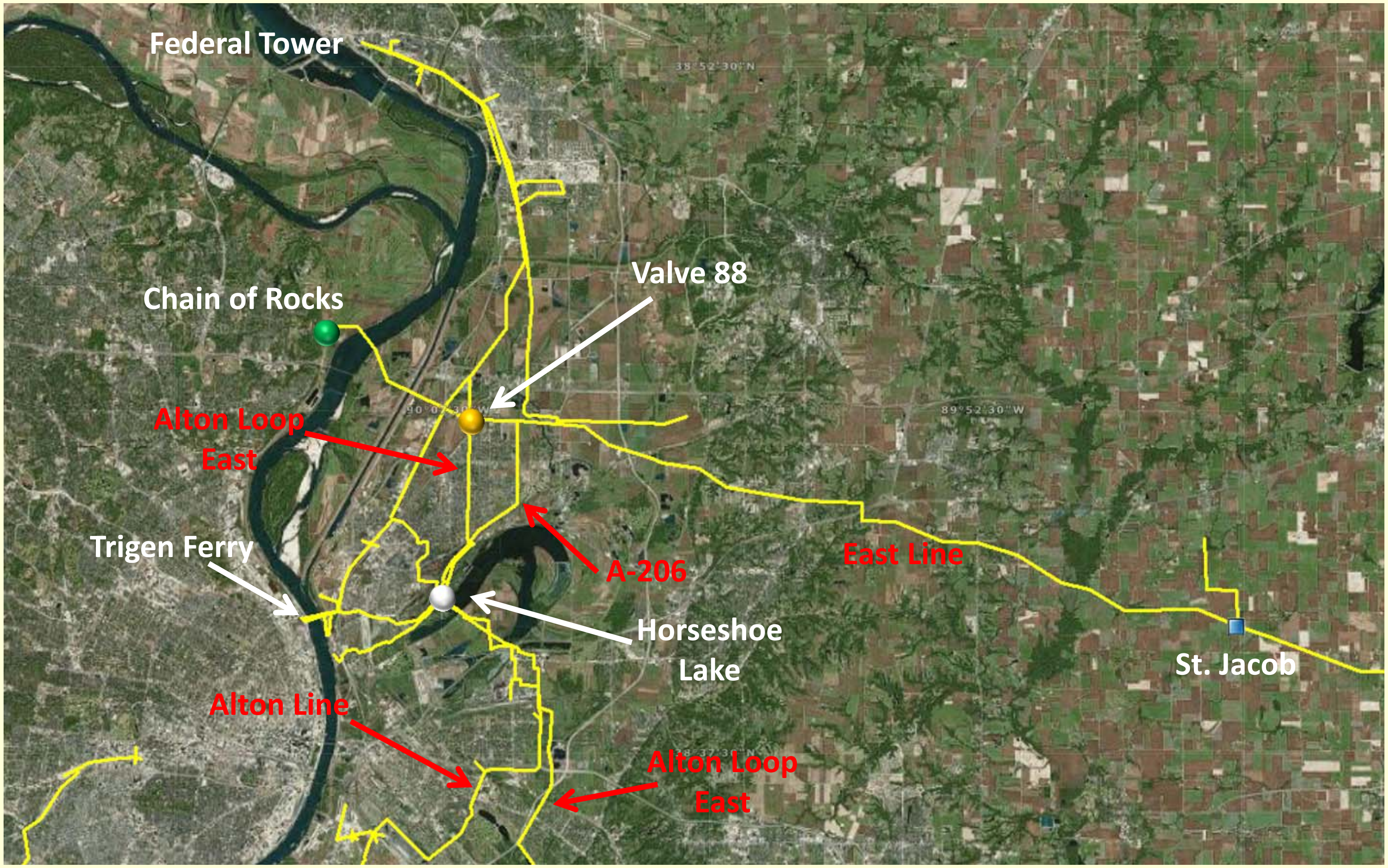
QMS: 1701285.000 - 9755

Schematic of the pipeline network



QMS: 1701285.000 - 9755

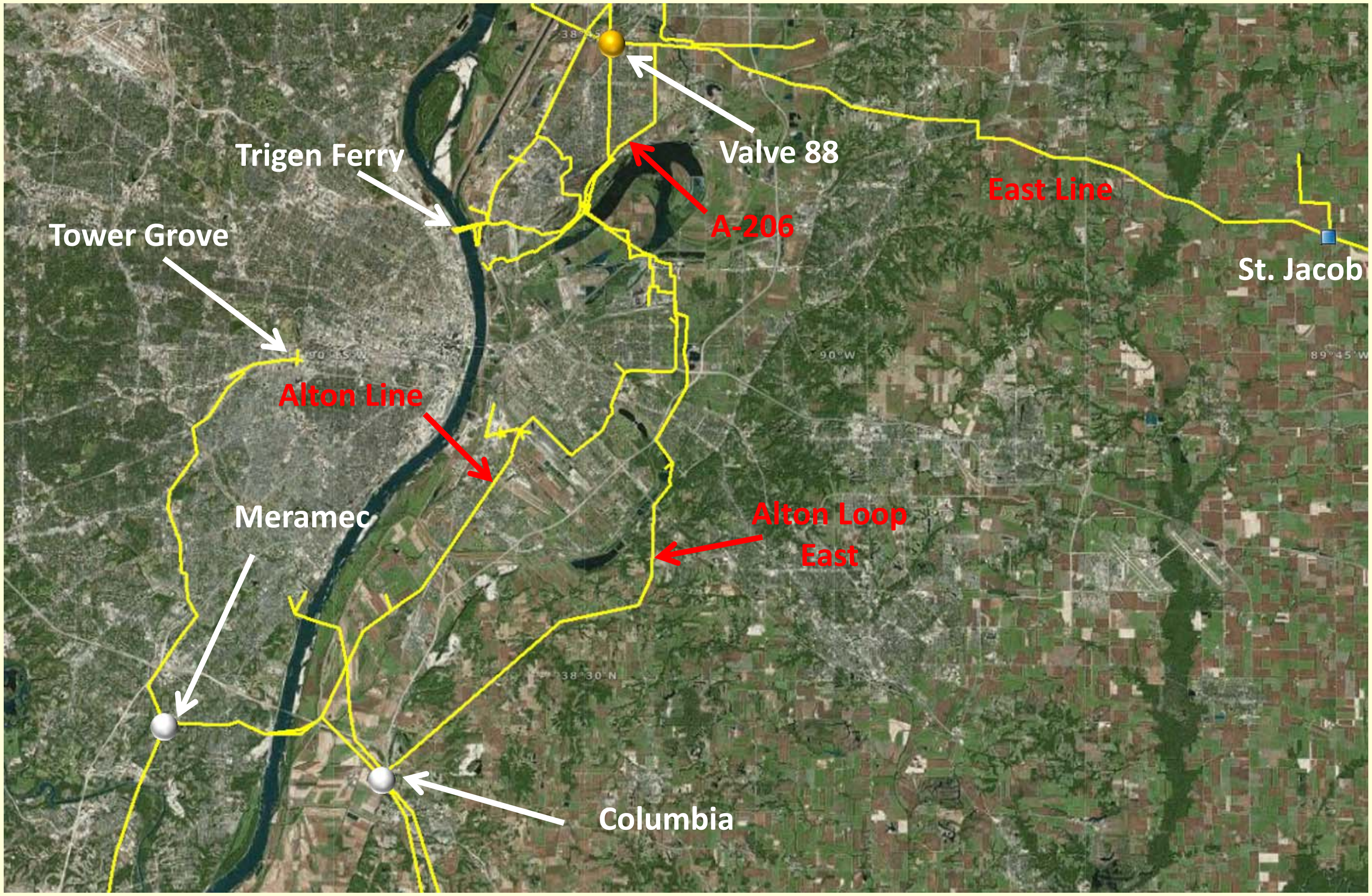
Schematic of the pipeline network



Exponent®

QMS: 1701285.000 - 9755

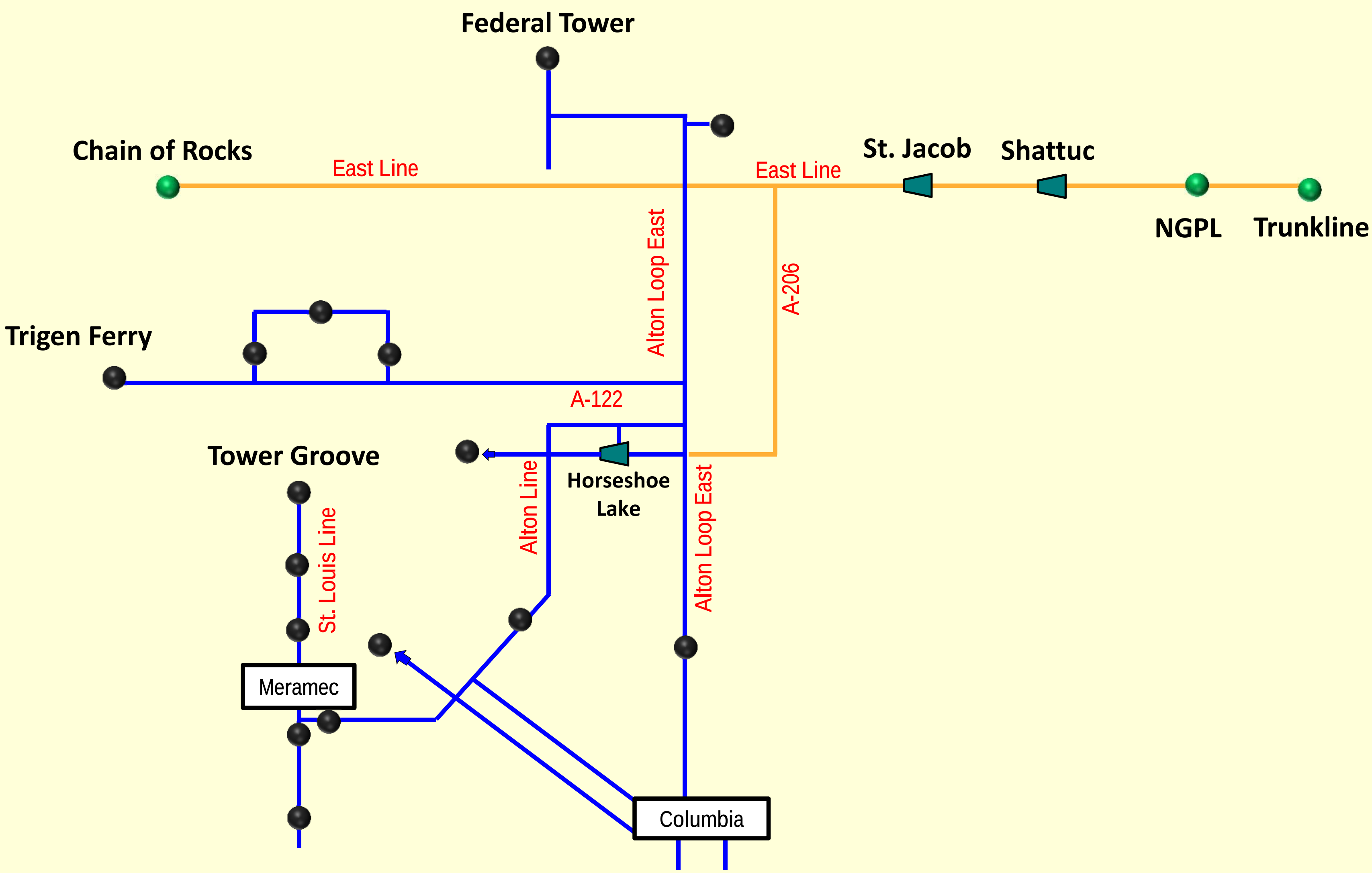
Schematic of the pipeline network



Exponent®

QMS: 1701285.000 - 9755

Simplified pipeline network



Exponent®

QMS: 1701285.000 - 9755

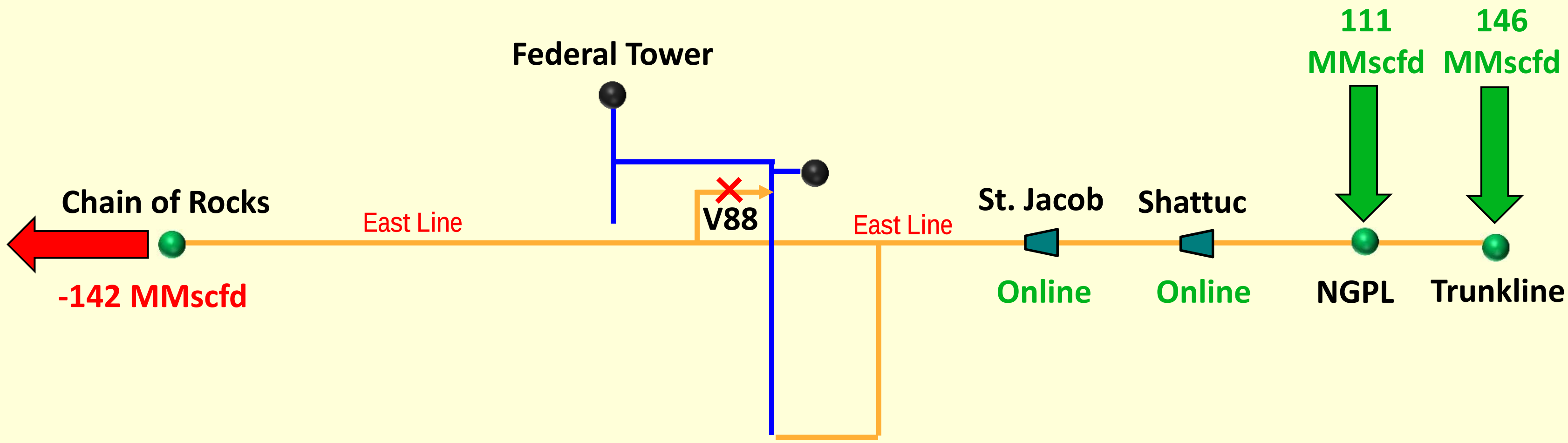
Background

- Exponent oversaw multiple Synergy runs (winter delivery configuration) including:
  - Case 1 (Base Case)
    - 257 MMscfd supplied at NGPL and Trunkline
    - 142 MMscfd delivered by MRT at Chain of Rocks (COR)
  - Case 2:
    - 257 MMscfd supplied at NGPL and Trunkline
    - Reduced gas deliveries from MRT at COR to approximately 0 MMscfd
  - Case 3:
    - No supply at NGPL and Trunkline
    - 150 MMscfd supplied from Spire at COR (per Exponent's Affidavit dated February 23rd 2017, paragraph 2)

Scenario description (1)

- Case 1 – base case

Simplified Network Schematic



Inputs:

- 257 MMscfd supplied at NGPL and Trunkline
- 142 MMscfd delivered by MRT at COR

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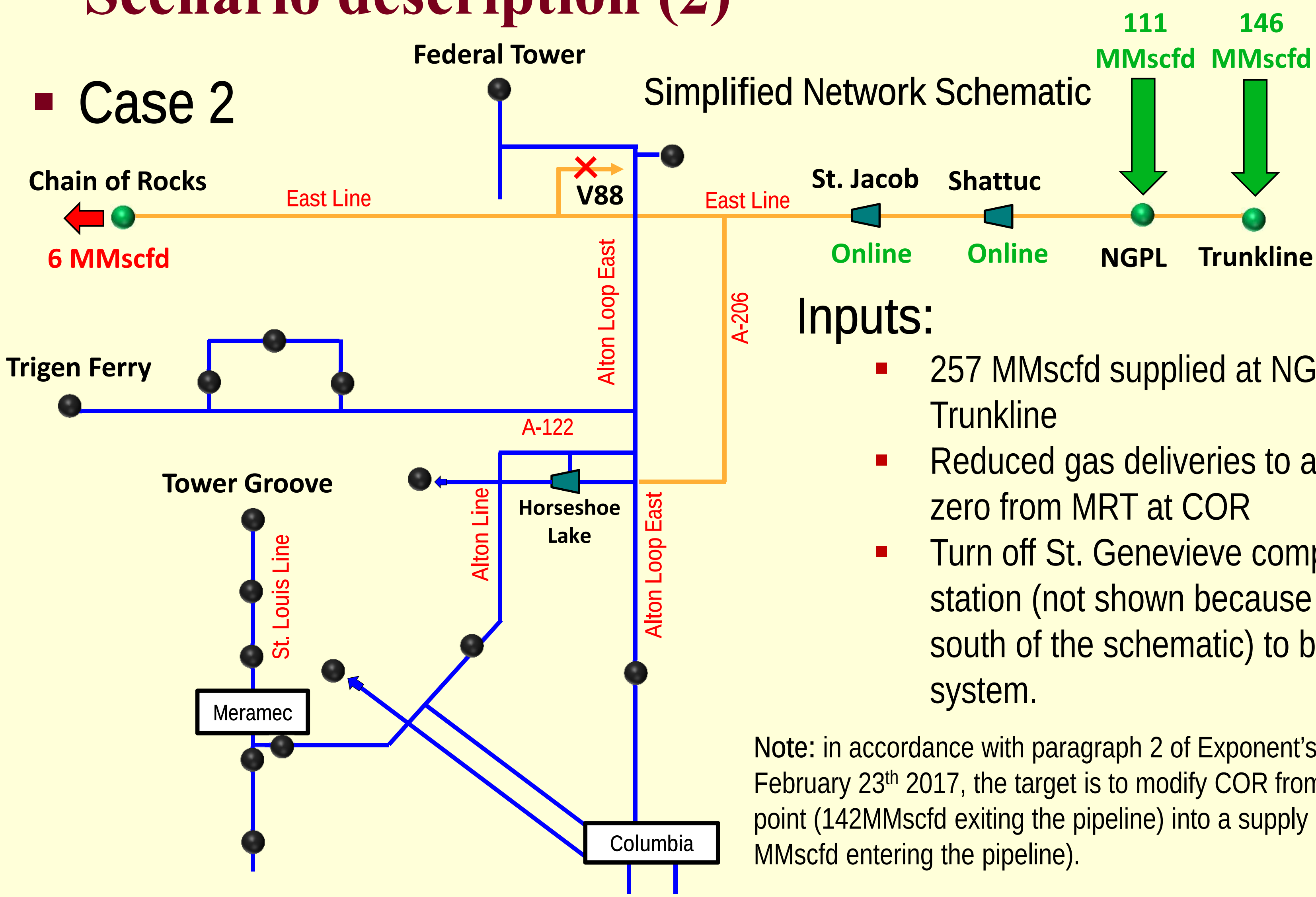
QMS: 1701285.000 - 9755

Scenario description (2)

- Case 2

Simplified Network Schematic



Inputs:

- 257 MMscfd supplied at NGPL and Trunkline
- Reduced gas deliveries to approx. zero from MRT at COR
- Turn off St. Genevieve compressor station (not shown because located south of the schematic) to balance the system.

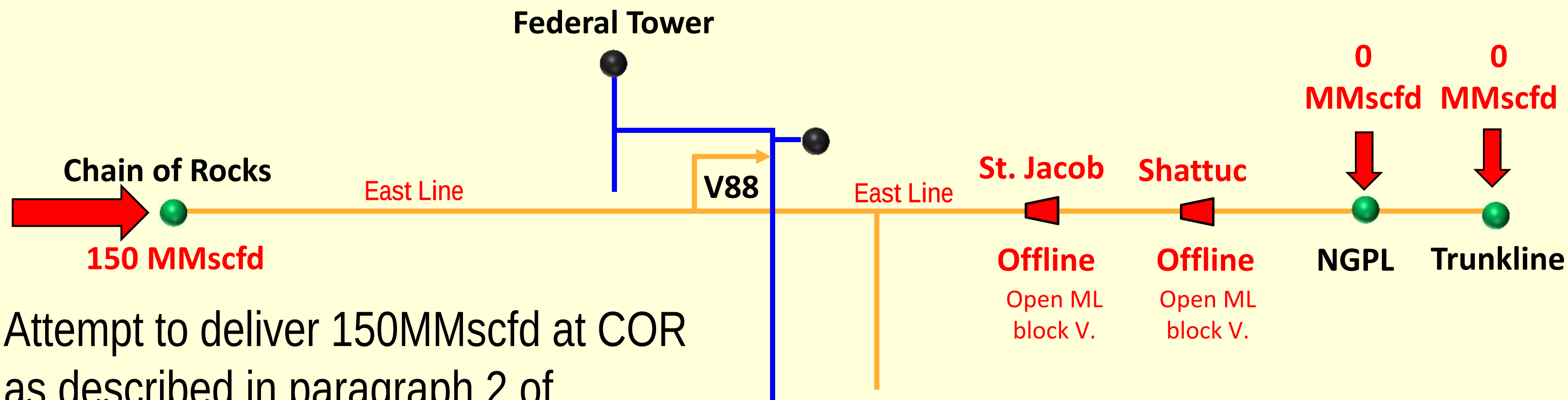
Note: in accordance with paragraph 2 of Exponent's Affidavit dated February 23th 2017, the target is to modify COR from being a delivery point (142MMscfd exiting the pipeline) into a supply point (150 MMscfd entering the pipeline).

QMS: 1701285.000 - 9755

Scenario description (3)

- Case 3

Simplified Network Schematic



- Attempt to deliver 150MMscfd at COR as described in paragraph 2 of Exponent's affidavit dated February 23rd, 2017.
- Inputs
  - No supply at NGPL and Trunkline
  - 150 MMscfd supplied from Spire at COR
  - Turn off Shattuc compressor
  - Turn off St. Jacobs compressor
  - Open Valve 88 to deliver gas from East Line to the Alton Loop East

Note: Exponent understands that reducing the compressor flow at St. Jacob and Shattuc is not possible due to the risk of compressor surging.

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Conclusions

- In the current configuration:
  - MRT delivers 142 MMscfd at COR
  - MRT's current total firm northbound Field Zone only, Field to Market and Market Zone deliverability sums to approximately 992 MMscfd, which when reduced by 142 MMscfd at COR, leaves 850 MMscfd (the Relevant Capacity).
- Changing COR to a supply point per Spire's proposal (*i.e.* supplying 150MMscfd):
  - results in a net change for the pipeline of 292 MMscfd (34% of Relevant Capacity)
  - to balance the system without limiting the other supply points, the demand elsewhere on MRT would need to increase by 34% with respect to the Relevant Capacity.

Conclusions

- Exponent analysis confirmed that:
  - Reducing the demand at COR without limiting the supplies at NGPL and Trunkline, results in:
    - 5 miles of pipeline south of Horseshoe lake having operating pressure above MAOP.
    - the header at Horseshoe lake having operating pressure above MAOP.
- Furthermore:
  - The demand at Arlee St. needs to increase by 30%.
  - The supply at ML2 and ML3 needs to be reduced.
  - Converting COR to a supply point would further exacerbate these issues.

QMS: 1701285.000 - 9755

Conclusions

- Exponent understands that the supply at NGPL and Trunkline cannot be dropped significantly without surging compressors (stations at St. Jacob and Shattuc)
- Accepting the 150MMscfd at COR probably requires
  - full shutdown of the compressors.
  - refusal of any supply from the east end of the East Line (NGPL and Trunkline).

Attachment No. 2-A(3)

Attachment No. 2-A(4)

Flow 150 to 210 mm/d from Chain of Rocks to Glendale

	Location	Work to be done	Estimated Cost
1.)	Chain of Rock	New Bi-directional Meter 225 mm/d	$ 6,790,814
2.)	Horseshoe Lake	Install a 24" mainline valve between v2 and v33	$ 158,000
3.)	Columbia Meter Station	Make the meter station bi-directional	$ 1,158,000
4.)	Modify Piping at Compressor Station to allow North to South Compression - St. Gen, Biggers and Twelve Mile Stations		$ 4,929,000
6.)	Modify Valve 88 (regulator)	No work required	$ -
7.)	Glendale Piping	No work required to be able to compress the Mainline from North to South	$ -
8.)	Automate St. Gen, 12 Mile, Tuckerman, and Glendale	Automate 2 units at St. Gen, 3 units at 12 Mile, 2 units at Tuckerman, none at Glendale (2 have already been done)	1,400,000.00

Total $ 14,435,814

New Line 20-Inch 1,200# MAOP Glendale to Delhi, LA
200 MMDth/d Receipt from discharge of Glendale station to MRT Perryville

	Flow / HP	Cost ($ millions)
Pipeline		
44 miles - 20 inch 1,200 MAOP (Glenadale to Fountain Hill)		$ 62.0
46 miles - 20 inch 1,200 MAOP (Fountain Hill to Perryville)		$ 64.9
	Subtototal	$ 126.9
Delivery Meters		
Delivery meter	200 MM/d	$ 2.2
(Intangible Meter Costs)		$ 1.0
Compressors		
Glendale Booster (T-60) with Coolers	7,700hp	$ 31.8
Total		**$ 161.9**

New Line 20-Inch 1,200# MAOP Glendale to Delhi, LA
200 MMDth/d Receipt from discharge of Glendale station to PVH Header

	Flow / HP	Cost($millions)
Pipeline		
44 miles - 20 inch 1,200 MAOP (Glenadale to Fountain Hill)		$ 62.0
46 miles - 20 inch 1,200 MAOP (Fountain Hill to Perryville)		$ 64.9
39 miles - 20 inch 1,200 MAOP (Perryville to PVH Header)		$ 55.0
	Subtototal	$ 181.9
Delivery Meters		
EGT PVH Hdr	200 MM	$ 2.2
(Intangible Meter Costs)		$ 1.0
Compressors		
Glendale Booster (T-60)	7700hp	$ 30.3
Fountain Hill Booster (C-40)	4700hp	$ 18.3
Utilized Fuel	1477 dth/d	
Total		**$ 233.7**

Attachment No. 2-A(7)

3. Provide an engineering flow diagram and corresponding hydraulic model to support the statement in paragraph 8 in the affidavit of Dr. Harri K. Kytomaa, filed in Exhibit No. MRT-0001 on February 27, 2017, regarding the effects of removing the current gas deliveries from MRT to Laclede at Chain of Rocks.

Response:

The requested information is attached as Attachment 3(A). See also response to request no. 2. Please note that this information is Critical Energy/Electric Infrastructure Information ("CEII"). The information is labeled "CEII" and MRT respectfully requests that the information be treated accordingly. In addition, the hydraulic flow model information submitted herewith is highly competitively sensitive, proprietary data, the disclosure of which could cause MRT material harm. Accordingly, MRT requests treatment of that material as both CEII as well as Privileged and Confidential, and it is marked "CUI//CEII/PRIV CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE."

Prepared by:

Narrative response prepared by Mark Sundback, one of counsel for MRT
(202)662-2700

Date: March 13, 2018

Attachment No. 3-(A)

4. Provide a map that shows the IIT pipeline, including interconnects, maximum capacities, and contracted capacities.

Response:

Attachment 4(A) contains a map of the facilities previously owned by IIT pipeline.

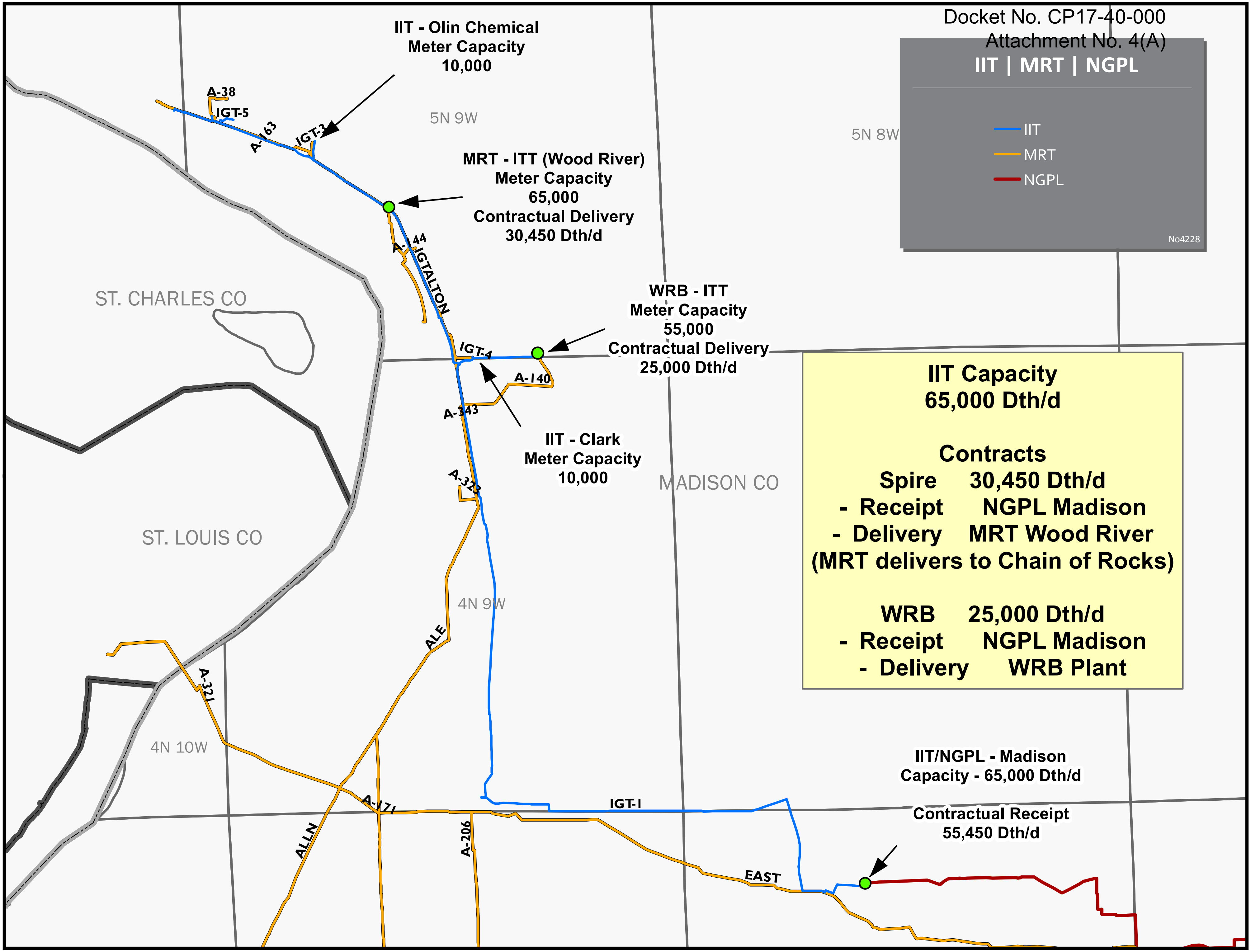
As to maximum capacities, the former IIT pipeline itself is capable of transporting up to 65,000 Dth/d in its current configuration on a direct haul basis. The data provided in this response do not include potential expansion capability of the former IIT pipeline. For instance, there presently is no compression on the IIT facilities. There is a single receipt point into the former IIT pipeline, the Madison receipt point, at an interconnect with Natural Gas Pipeline Company of America that is capable of receiving up to 65,000 Dth/d under optimal operating conditions. There are four delivery points from the former IIT facilities: (1) the WRB Refinery, LP ("WRB") point, capable to delivering 55,000 Dth/d; (2) the Clark point, capable of delivering 10,000 Dth/d; (3) the Wood River point, an interconnect with MRT's Alton Line, capable of delivering 65,000 Dth/d from the former IIT facilities into the Alton line; and (4) the Olin point, capable of delivering 10,000 Dth/d.

The contracts currently in place for primary firm service on the facilities formerly owned by IIT are: (1) a firm contract with WRB Refinery for 25,000 Dth/d with a primary receipt at the Madison receipt point and primary delivery at the WRB plant; and (2) a firm contract for 30,450 Dth/d with Spire Missouri with a primary receipt at the Madison receipt point and primary delivery at the MRT Chain of Rocks delivery point.

Prepared by: Counsel

202-662-2700

Date: March 13, 2018


Docket No. CP17-40-000
Attachment No. 4(A)
IIT | MRT | NGPL
IIT
MRT
NGPL
No4228
IIT - Olin Chemical
Meter Capacity
10,000
MRT - ITT (Wood River)
Meter Capacity
65,000
Contractual Delivery
30,450 Dth/d
WRB - ITT
Meter Capacity
55,000
Contractual Delivery
25,000 Dth/d
IIT - Clark
Meter Capacity
10,000
IIT Capacity
65,000 Dth/d
Contracts
Spire 30,450 Dth/d
- Receipt NGPL Madison
- Delivery MRT Wood River
(MRT delivers to Chain of Rocks)
WRB 25,000 Dth/d
- Receipt NGPL Madison
- Delivery WRB Plant
IIT/NGPL - Madison
Capacity - 65,000 Dth/d
Contractual Receipt
55,450 Dth/d
A-38
IGT-5
A-163
IGT-3
5N 9W
5N 8W
IGTALTON
IGT-4
A-140
A-343
A-323
ST. CHARLES CO
ST. LOUIS CO
MADISON CO
4N 9W
4N 10W
ALE
A-321
A-171
ALLN
A-206
IGT-I
EAST