

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

Spire STL Pipeline LLC)
)

Docket No. CP17-40-006

**COMMENTS OF THE ENVIRONMENTAL DEFENSE FUND
REGARDING THE DRAFT ENVIRONMENTAL
IMPACT STATEMENT FOR THE SPIRE STL PROJECT PIPELINE**

Pursuant to the Draft Environmental Impact Statement for the Spire STL Pipeline Project (“Draft EIS”) issued by the Office of Energy Projects of the Federal Energy Regulatory Commission (“Commission” or “FERC”) on June 16, 2022, the Environmental Defense Fund (“EDF”) respectfully submits the following comments regarding the Draft EIS’s discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The Draft EIS should be modified to include: 1) an assessment of alternatives served by Spire STL Pipeline Project (“Spire Pipeline” or “the Pipeline”) that more thoroughly considers what actual need exists for the project and how alternatives could meet that need; 2) a more robust greenhouse gas (“GHG”) assessment; 3) an evaluation of the impacts of potential expansions to service; and 4) an examination of the impacts the Pipeline has and is expected to continue to have on landowners such that the Commission can consider appropriate remediation measures.

Consistent with the request for comment in the Draft EIS, these comments focus on issues related to the evaluation of the environmental impact of the Pipeline, including potential alternatives. As noted in the Draft EIS, the Pipeline is currently operating under a temporary Certificate of Public Convenience and Necessity (“Certificate”) because the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) vacated and remanded the

Commission’s 2018 Certificate Order¹ approving the Spire Pipeline as well as the 2019 Rehearing Order² affirming that approval.³ The Commission therefore must consider Spire STL’s pending certificate application on remand and decide whether to grant the Spire Pipeline a permanent Certificate and, if so, under what conditions or, if not, in what manner the Pipeline’s retirement should proceed.

The D.C. Circuit vacated the 2018 Certificate Order and 2019 Rehearing Order because the Commission had: (1) failed to find sufficient evidence that there was need for the pipeline;⁴ (2) ignored evidence of self-dealing;⁵ and (3) ignored a lack of concrete evidence for project benefits and failed to adequately consider whether the Pipeline’s adverse impacts outweighed its benefits.⁶ All of these findings were based on insufficiencies of the 2018 Certificate Order and 2019 Rehearing Order, not the Environmental Assessment conducted in advance of those orders, and none of these deficiencies can be cured through a new or supplemental evaluation of environmental impacts. As recognized in then-Commissioner Glick’s dissent to the Certificate

¹ *Order Issuing Certificates for CP17-40-000 and CP17-40-001* (FERC eLibrary accession no. 20180803-43074) (August 3, 2018) (“2018 Certificate Order”).

² *Order on Rehearing for CP17-40-000 and CP17-40-001* (FERC eLibrary Accession No. 20191121-3092) (“2019 Rehearing Order”).

³ *Environmental Defense Fund v. FERC*, 2 F.4th 953 (D.C. Cir. 2021) (“*EDF v. FERC*”).

⁴ *Id.* at 973 (“[T]he Commission was presented with strong arguments as to why the precedent agreement between Spire STL and Spire Missouri was insufficiently probative of market need and benefits of the proposed pipeline. . . . But rather than engaging with these arguments, the Commission seemed to count the single precedent agreement between corporate affiliates as conclusive proof of need. Nothing in the Certificate Policy Statement endorses this approach.”)

⁵ *Id.* at 975 (“Because the Commission declined to engage with EDF’s arguments and the underlying evidence regarding self-dealing, its decisionmaking was arbitrary and capricious.”)

⁶ *Id.* at 973 (“Moreover, in this case the Commission failed to adequately balance public benefits and adverse impacts.”)

Order, a Certificate may only be issued whether the Commission finds “both that the pipeline is needed, and that, on balance, the pipeline’s potential benefits outweigh its potential adverse impacts” but “[t]he record in [the Spire STL Pipeline] proceeding is patently insufficient to make these determinations, as there is neither evidence that the Spire Project is needed nor that its limited benefits outweigh its harms.”⁷

Recognizing the Commission’s discretion to manage the remand process, EDF has not submitted comments in the remand proceeding related to the need for the Pipeline, evidence of self-dealing, or the benefits and adverse impacts of the Pipeline, or responded to the various filings that the Spire companies⁸ have made related to those issues, as the Commission has not yet solicited comments on those topics. However, EDF anticipates that any final action by the Commission in this remand proceeding will be preceded by an express opportunity for stakeholders to file comments regarding those issues, which formed the basis of the D.C. Circuit’s vacatur of the 2018 Certificate Order and 2019 Rehearing Order.

I. BACKGROUND

In 2016, despite flat demand for natural gas and a history of failed pipeline proposals in the St. Louis region, Spire STL Pipeline, LLC (“Spire STL”), a newly formed affiliate of local distribution company Spire Missouri, proposed a new natural gas pipeline running from Illinois to St. Louis. On January 26, 2017, Spire STL filed an application for a certificate of public convenience and necessity for the proposed pipeline with the Commission. To provide the

⁷ 2018 Certificate Order, Glick, C. Dissenting at 1; *see also* 2019 Rehearing Order, Glick, C., Dissenting at 6 (“In my view, the record in this proceeding indicates that Spire STL has not met its burden to show that the pipeline is required by the public convenience and necessity.”)

⁸ *See, e.g.*, Request of Spire STL Pipeline LLC for Expedited Reissuance of Certificates (November 10, 2021) (FERC eLibrary accession no. 20211112-5086).

evidence of need required by the Natural Gas Act (“NGA”) and the Commission’s Certificate Policy Statement, Spire STL presented one piece of evidence: an agreement with Spire Missouri for most of the pipeline’s capacity that was negotiated and signed between the affiliates behind closed doors (the “Precedent Agreement”). Spire STL had held an open season in an attempt to attract other shippers but none had been interested.

On October 26, 2016, the Commission issued a Notice of Intent to Prepare an Environmental Assessment; subsequently, following the filing by Spire STL of a pipeline route alternative, the Commission issued a Supplemental Notice of Intent to Prepare an Environmental Assessment on March 3, 2017. On September 29, 2017, the Commission issued the Spire STL Pipeline Project Environmental Assessment (“EA”), along with a notice setting a 30-day comment period. Multiple parties filed comments arguing that the EA was deficient, including EDF.

The Commission granted Spire STL’s application in the 2018 Certificate Order,⁹ rejecting arguments that the Environmental Assessment was insufficient as well as protests on other grounds, including that Spire STL had failed to demonstrate a need for the Pipeline or benefits outweighing adverse impacts and that the Precedent Agreement was the result of self-dealing. EDF and several other intervenors requested rehearing of the 2018 Certificate Order, which the Commission denied on November 21, 2019, after the Spire Pipeline had gone into service, in its 2019 Rehearing Order.¹⁰

EDF and Juli Steck, a landowner, petitioned the D.C. Circuit for review of the Certificate and Rehearing Orders. A unanimous D.C. Circuit panel declared the Orders unlawful in a June

⁹ 164 FERC ¶ 61,085.

¹⁰ 169 FERC ¶ 61,134.

22, 2021 decision.¹¹ The Court found that the Commission had failed to find sufficient evidence that there was need for the pipeline.¹² The Court further found “that the Commission ignored record evidence of self-dealing.”¹³ The Court then stated that the Orders also “failed to seriously and thoroughly conduct the interest-balancing required by [the] Certificate Policy Statement,” instead conducting a balancing exercise that “consisted largely of *ipse dixit*” with “no concrete evidence” in support.¹⁴ The D.C. Circuit vacated the Certificate and Rehearing Orders and remanded the matter to the Commission. The Commission subsequently issued orders on September 14, 2021 and December 3, 2021 providing for the Pipeline’s operation under a temporary certificate while consideration of the matter on remand proceeds.¹⁵

The Commission is considering Spire STL’s January 26, 2017 application for a certificate of public convenience and necessity on remand from the D.C. Circuit.¹⁶ On December 15, 2021, the Commission issued a Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Spire STL Pipeline Project (“EIS Notice”).¹⁷ The EIS Notice explained that Commission Staff “will prepare a supplemental environmental impact statement [] that will

¹¹ *EDF*, 2 F.4th 953. The D.C. Circuit found that Ms. Steck did not have standing and as such did not evaluate her claims, which generally related to the Environmental Assessment.

¹² *Id.* at 972-3.

¹³ *Id.* at 960-1, 974.

¹⁴ *Id.* at 973-4.

¹⁵ *Order Issuing Temporary Certificate* for Spire STL Pipeline LLC under CP17-40-009 (September Order) (FERC eLibrary accession no. 20210914-3000); *Order Issuing Temporary Certificate* for Spire STL Pipeline LLC under CP17-40-007 (December Order) (FERC eLibrary accession no. 20211203-3063).

¹⁶ *See EDF*, 2 F.4th 953.

¹⁷ Commission Staff later decided to issue an environmental impact statement rather than a supplemental environmental impact statement.

discuss the environmental impacts related to the continued operation of the Spire STL Pipeline” and requested comments on the scope of the EIS. EDF filed a comment¹⁸ and supplemental comment¹⁹ regarding the scope of the EIS, as did other stakeholders, including the City of Jerseyville.²⁰

EDF’s initial and supplemental scoping comments outline four major considerations to be included in the EIS. First, the EDF Scoping Comments explain that the EA improperly accepted, without analysis, that the purpose and need for the Pipeline is to provide 400,000 Dth/day of increased capacity.²¹ This unjustified finding influenced the Commission’s conclusion that a no-action alternative or the use of other pipelines to meet need should not be adopted.²² Second, the EDF Scoping Comments ask for a detailed assessment of GHG emissions that includes direct and indirect effects, notably downstream emissions resulting from the use of transported gas, as well operational GHG emissions, including methane emissions from leaks and related mitigation practices.²³ Finally, the Comments explain that the EIS must evaluate and address continuing impacts on landowners of pipeline construction and remediation failures. Because the EIS is being drafted after completion and during the operation of the Spire Pipeline, the document

¹⁸ Docket CP17-40-006, *Comments of the Environmental Defense Fund Regarding Scope of Supplemental Environmental Impact Statement* (filed January 14, 2022) (“EDF Scoping Comments”).

¹⁹ Docket CP17-40-006, *Supplemental Comments of the Environmental Defense Fund* (filed February 16, 2022) (“EDF Supplemental Scoping Comments”).

²⁰ Docket CP17-40-006, *Spire STL Pipeline LLC, City of Jerseyville Letter* (filed January 14, 2022) (“Jerseyville Letter”).

²¹ EDF Scoping Comments at 4 (citing the Environmental Assessment and the Certificate and Rehearing Orders as making this assumption).

²² *Id.* at 4.

²³ *Id.* at 7-9.

should assess how remediation efforts and programs have affected and will continue to affect landowners.²⁴

The EDF Supplemental Scoping Comments were filed in response to the Jerseyville Letter and call for possible expansions of Spire STL’s service to be addressed in the EIS. The Jerseyville Letter expresses support for developing a new service tap to provide gas supply for a new industrial development planned by the city.²⁵ Failure to consider the new service tap in the EIS would be segmentation²⁶ which courts have regularly found to be a basis to overturn agency decisions.²⁷

On June 16, 2022, the Commission issued the Draft EIS, concluding that the impacts from the continued operation of the Spire STL would be “less than significant, with the exception of climate change impacts resulting from GHG emissions that are not characterized as significant or insignificant.”²⁸

II. COMMENTS

The National Environmental Policy Act (“NEPA”) “declares a broad national commitment to protecting and promoting environmental quality” and requires that the operations of the federal government reflect that commitment.²⁹ The statute “commands agencies to imbue their decisionmaking, through the use of certain procedures, with our country’s commitment to

²⁴ *Id.* at 13.

²⁵ Jerseyville Letter at 1.

²⁶ Segmentation is an agency’s failure to consider connected, cumulative, or similar actions in a single EIS, instead dividing such connected actions into separate environmental analyses.

²⁷ EDF Supplemental Scoping Comments at 4.

²⁸ Draft EIS at ES-5.

²⁹ *Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017) (citing *Robertson v. MethowValley Citizens Council*, 490 U.S. 332, 348 (1989)).

environmental salubrity.”³⁰ The Commission’s consideration of a Section 7 application triggers environmental review under NEPA, generally requiring the preparation of an environmental assessment or environmental impact statement.³¹ When undertaking such reviews, the Commission must take a “hard look” at the environmental consequences of the proposed action and disclose its analyses to the public.³² An important component of the Commission’s environmental review is an analysis of the effects of the proposed action on communities and individuals that will suffer adverse impacts, including environmental justice communities as well as individuals who live, work, and own land in proximity to the proposed project.³³

The Commission has an obligation to then consider the prepared environmental review when granting Section 7 certificates as it “evaluate[s] all factors bearing on the public interest,” including considering whether environmental impacts of the facilities require the Commission to place conditions on the certificate that will mitigate or remediate those impacts.³⁴ However, the Draft EIS does not take a sufficiently “hard look” at the environmental consequences of the Spire Pipeline and therefore fails to include sufficient information for the Commission can effectively evaluate all factors bearing on public interest, including appropriate certificate conditions, as it considers Spire STL’s Section 7 application on remand. Therefore, to comply with NEPA and

³⁰ *Id.* (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 193-94 (D.C. Cir. 1991)).

³¹ 42 U.S.C. 4321-4370j.

³² *Id.* 4332(2)(C); 40 CFR 1500.1-1508.1; *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (discussing the twin aims of NEPA—to consider environmental impacts and to disclose the agency’s consideration to the public).

³³ Executive Order 12,898, § 6-609, 59 Fed. Reg. 7,629 at 7,632-33 (1994); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330 (D.C. Cir. 2021).

³⁴ *Atl. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959) (describing the Commission’s obligations under Section 7(e)).

aid the Commission in fulfilling its duty under NEPA and the NGA, the Draft EIS must be modified in the ways detailed below.

A. The Draft EIS Fails to Sufficiently Analyze the Need for the Project and Potential of Alternatives

Any NEPA analysis must begin with a definition of the project purpose that reflects reasonable need.³⁵ This is key to the analysis of alternatives, “the heart of the environmental impact statements,”³⁶ because the adverse impacts and benefits of the project can only be compared to the adverse impacts and benefits of alternatives, including the no-action alternative, in light of the project’s purpose.³⁷ The Draft EIS fails this critical task by accepting Spire STL’s statement that “the need for the Spire Pipeline is to provide up to 400,000 Dth/d of firm transportation service access to natural gas from both the Rocky Mountain and Appalachian Basins to the St. Louis metropolitan area, eastern Missouri, and southwestern Illinois.”³⁸ The Draft EIS therefore assumes, without analysis, that 400,000 Dth per day of increased capacity from a new source of supply was a legitimate, justified need. EDF’s Draft Scoping Comments explain how the need for the natural gas provided by the Spire Pipeline, if it existed at all, was far more limited than that 400,000 Dth per day figure.³⁹

In the No-Action Alternative analysis, the Spire STL project would no longer be authorized to transport natural gas and therefore its 400,000 Dth/day capacity would no longer be

³⁵ 42 U.S.C. § 4321 *et seq.*; 40 C.F.R. § 1502.13; *see Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1225 (9th Cir. 1988).

³⁶ 40 C.F.R. § 1502.14.

³⁷ *Bob Marshall All.*, 852 F.2d at 1225.

³⁸ Draft EIS at 1-4.

³⁹ *See* EDF Draft Scoping Comments at 4.

available.⁴⁰ However, the section oscillates between analyzing scenarios in which 400,000 Dth/d of capacity is replaced and scenarios in which 350,000 Dth/d of supply, the portion of its capacity actually under contract, is replaced. Scenario 3 discusses ways to replace the 350,000 Dth/d of subscribed gas provided by the Pipeline.⁴¹ The total capacity of 400,000 Dth/d provided by the Pipeline is not discussed. In Scenario 2B, however, the Draft EIS rejects use of the MoGas Pipeline, LLC system in part because the system’s total firm capacity is “less than the 400,000 Dth/d of the STL pipeline.”⁴² Finally, in Scenario 2A, it appears as if the proposed alternative would replace only the subscribed capacity of Spire STL, but the Draft EIS is not fully clear. In the scenario, the Natural Gas Pipeline Company of America, LLC (“NGPL”) would “replicate the firm service of Spire STL” and “meet the Project volume needs.”⁴³ Meeting “volume” needs and replicating “firm service” suggests that 350,000 Dth/d of supply (or possibly less, if Spire Missouri’s actual needs were analyzed) would be replaced because Spire STL has only contracted for 350,000 Dth/d of supply.⁴⁴ The Final EIS must clearly indicate whether an alternative is replacing Spire STL’s total capacity, subscribed capacity, or both.

The analysis of alternatives also fails to quantify the unsubscribed capacity of a pipeline that could replace some of Spire STL’s capacity. In Scenario 2A, the EIS considers whether NGPL could contract with Spire Missouri to replace Spire STL’s capacity but notes that Spire Missouri stated that the amount of unsubscribed, north-to-south firm capacity on NGPL needed

⁴⁰ Draft EIS at 3-1.

⁴¹ *Id.* at 3-9–3-11.

⁴² Draft EIS at 3-7.

⁴³ *Id.* at 3-5.

⁴⁴ The EA strongly suggests NGPL would only replace the 350,000 Dth/d of subscribed capacity. EA at 150 (“[B]ecause NGPL’s system does not currently have 350,000 Dth/d of available capacity, additional system upgrades would be required. . .”).

for its system is not available.⁴⁵ No number is given as to how much capacity is available, just that there is not enough. Knowing the amount of available capacity could inform an analysis of alternatives that combines strategies from different scenarios, as well as how those alternatives relate to any actual need for new capacity. The Final EIS should give the exact amount of unsubscribed north-to-south firm capacity on NGPL and consider whether that capacity, alone or in combination with other alternatives, could fill the need served by Spire STL.

The Draft EIS relegates a major failure in its analysis of alternatives to a footnote. The footnote states that “FERC staff has not been able to confirm Spire Missouri’s statements of its feasibility/infeasibility to undertake upgrades and modifications, and procure other sources for its natural gas supply.”⁴⁶ According to CEQ regulations, FERC must “[r]igorously explore and objectively evaluate all reasonable alternatives,” and “[d]evote substantial treatment to each . . . so that reviewers may evaluate their comparative merits.”⁴⁷ Failure to confirm Spire Missouri’s statements demonstrates a lack of rigor and failure to devote substantial treatment to alternatives. The Final EIS must independently confirm Spire Missouri’s statements to have an adequate alternatives analysis.

B. The EIS Should Include a More Detailed Assessment of GHG Emissions

The Draft EIS builds out its GHG assessment, but the analysis still lacks satisfactory rigor. As the D.C. Circuit has instructed⁴⁸ and the Commission has acknowledged in recent

⁴⁵ Draft EIS at 3-5.

⁴⁶ Draft EIS at 3-9 n. 32.

⁴⁷ 40 C.F.R. § 1502.14(a), (b).

⁴⁸ *Food & Water Watch v. FERC*, 28 F.4th 277 (D.C. Cir. 2022); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321; *Sierra Club v. FERC*, 867 F.3d 1357, 1371-5 (D.C. Cir. 2017); *see also Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019).

orders,⁴⁹ environmental reviews of proposed natural gas infrastructure must include an assessment of the GHG emissions that will result from the project as both direct and indirect effects, including downstream emissions resulting from the use of the transported gas. This assessment must include evaluation of methane release, carbon dioxide emissions, and emissions of other air pollutants, covering both near-term impacts and cumulative impacts, and identify whether the best available mitigation practices have been incorporated into the proposal.

The Commission's decision to estimate certain emissions and monetize their impact is a positive development. The Draft EIS quantifies annual GHG emissions from continued operation of Spire STL and emissions from downstream combustion of 400,000 Dth/d of gas.⁵⁰ Unlike the EA,⁵¹ the Draft EIS rightly does not characterize downstream emissions as merely replacing emissions that would have come from elsewhere if the Spire Pipeline was not operating. The Draft EIS then, in response to EPA recommendations,⁵² quantifies the social cost of operational and downstream GHG emissions using methods and values contained in the Interagency

⁴⁹ See, e.g., *Northern Natural Gas Company*, Order Issuing Certificate and Approving Abandonment, 174 FERC ¶ 61,189 at 11-14 (March 22, 2021).

⁵⁰ Draft EIS at ES-4.

⁵¹ EA at 144–5 (“[T]he majority of the natural gas provided by the Spire STL Pipeline Project would be replacing, not adding to, other fuel sources that are currently contributing GHGs to the atmosphere. Therefore, we do not anticipate that the end-use would represent new GHG emissions.”).

⁵² EPA also recommended the Commission monetize the impact of each individual GHG gas. The Commission declined. Docket CP17-40-006, *Scoping – Spire STL Pipeline Project, Scott, Greene, and Jersey Counties, Illinois and St. Charles and St. Louis Counties, Missouri*, Environmental Protection Agency, Region 5 at 6 (filed January 14, 2022) (FERC eLibrary accession no. 20220114-5144).

Working Group’s current draft guidance.⁵³ These emission and cost estimates will help the Commission as they consider Spire STL’s certificate application.

The Draft EIS declines, without explanation, to estimate expected GHG emissions from methane leakage and operational events.⁵⁴ The Statement cursorily acknowledges EDF and EPA’s comments recommending methane emissions be estimated but does not explain why these recommendations are not followed. The Draft EIS does justify the Global Warming Potential Value selected for methane⁵⁵ but this selection is largely irrelevant without an estimate of how much methane is emitted by the Pipeline. Furthermore, the Final EIS’s methane estimates should be based on actual measurable emissions coming from the project. The Pipeline has been fully operational since 2019 and commercially available advanced leak detection technologies⁵⁶ should be used to obtain methane emissions estimates.

The Draft EIS also inadequately considers potential best management practices to reduce methane. The Draft EIS cites Spire STL’s participation in voluntary programs such as EPA’s Methane Challenge Program and the Natural Gas STAR program as sufficient evidence that Spire STL has considered and taken practicable steps for reducing methane emissions.⁵⁷ The Final EIS should assess the efficacy of those programs on reducing methane emissions and

⁵³ Draft EIS at 4-28 (citing *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, February 2021).

⁵⁴ Draft EIS at 4-24.

⁵⁵ *Id.* at 4-24–4-25 (selecting 25 as the Global Warming Potential Value).

⁵⁶ See Highwood Emissions Management, Leak detection methods for natural gas gathering, transmission, and distribution pipelines (January 12, 2022), available at <https://highwoodemissions.com/wp-content/uploads/2022/01/HighwoodPipelineLeakDetection2022.pdf>.

⁵⁷ Draft EIS at 4-25.

include other mitigation actions Spire STL could adopt. As a ONE Future Commitment Partner in EPA’s Methane Challenge Program, Spire STL must submit a methane intensity target and an implementation plan and annually report data relevant to achieving that target.⁵⁸ The Final EIS should include the intensity target Spire STL has submitted, an analysis of Spire’s implementation plan, and an assessment of whether Spire is on track to achieving its target. The other program Spire STL participates in, the Natural Gas STAR program, encourages consideration of EPA’s recommendations for mitigating blowdowns.⁵⁹ The Final EIS should include a discussion of whether Spire STL has actually adopted any of those recommendations.

C. The EIS Must Evaluate Potential Expansions to the Spire Pipeline to Avoid Inappropriate and Unlawful Segmentation of NEPA Review

NEPA and its implementing regulations require that the scope of an EIS include not just the directly proposed action, but also: “[c]onnected actions,” which are “closely related” because they “[a]utomatically trigger other actions,” “[c]annot or will not proceed unless other actions are taken previously or simultaneously,” or [a]re interdependent parts of a larger actions”; “[c]umulative actions, which when viewed with other proposed actions have cumulatively significant impacts”; and “[s]imilar actions,” which “have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”⁶⁰ They also require that the agency consider the “[c]umulative impact,” which is the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions

⁵⁸ Methane Challenge Program Partnership Agreement ONE Future Emissions Intensity Commitment, available at <https://www.epa.gov/system/files/documents/2021-12/mc-one-future-commitment-partnership-agreement2021-12.pdf>.

⁵⁹ <https://www.epa.gov/natural-gas-star-program/methane-emissions-transmission-and-distributionpipeline-blowdowns> (accessed 7/7/2022).

⁶⁰ 40 CFR 1508.25(a).

...”⁶¹ Segmentation is an agency’s failure to consider connected, cumulative, or similar actions in a single EIS, instead dividing such connected actions into separate environmental analyses. Segmentation is impermissible under NEPA and courts have regularly found this practice to be a basis to overturn agency decisions.⁶² A failure to consider cumulative impacts similarly renders an environmental analysis defective, even where the cumulative impacts arise from actions that lack a direct connection.⁶³

The Draft EIS does not consider the environmental impacts of potential expanded service into the City of Jerseyville. According to the Draft EIS, Ameren Illinois is working with Jerseyville to build out the gas distribution network required for the city’s proposed development and Spire STL has been in discussion with Jerseyville since 2020 regarding the installation of a service tap for the city’s proposed development.⁶⁴ The potential expansion of Spire STL’s service contemplated thereby is a “connected action,” a “cumulative action,” and a “similar action” to the Spire Pipeline certificate application currently under review. The expansion would also have “cumulatively significant impacts.”⁶⁵ The Draft EIS states that appropriate environmental reviews will be conducted when Spire STL expands or modifies service.⁶⁶

⁶¹ 40 CFR 1508.7.

⁶² *See, e.g., Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313-19 (D.C. Cir. 2014) (remanding order granting certificate of public convenience and necessity where the pipeline developer had filed separate applications for four upgrade projects related to one pipeline system and the Commission had analyzed each project separately) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)); *Hammond v. Norton*, 370 F. Supp. 2d 226, 244 (D.C. Cir. 2005).

⁶³ *Natural Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288, 297 (D.C. Cir. 1988) (remanding oil and gas leasing schedule where the agency had failed to consider the cumulative impacts of leases in the Pacific and Alaskan regions).

⁶⁴ Draft EIS at 2-1.

⁶⁵ *See* EDF Scoping Comments at 4–5.

⁶⁶ Draft EIS at 2-1.

Portioning out environmental reviews in this way is unlawful segmentation. The Final EIS should include an estimate of the potential volume of demand from Jerseyville that would be met by a service tap and a discussion of the facility or operational changes that could occur if service is expanded to Jerseyville.

The Draft EIS also does not consider the environmental impacts of the Jerseyville expansion because “the volume of new gas demand, if any, is unknown at this time.”⁶⁷ Lack of certainty is not sufficient justification to not consider an environmental impact. NEPA analysis necessarily involves some “reasonable forecasting” that requires the need to rely on “educated assumptions.”⁶⁸ The more than two years of discussion described in the Draft EIS likely have resulted in Spire STL gathering sufficient information to support the development of “educated assumptions” of potential demand on which reasonable forecasts could be based. Commission Staff should request such information from Spire STL and use it to develop an analysis of potential impacts of service expansion.

D. The EIS Must Evaluate and Address the Continuing Impacts on Landowners of Pipeline Construction and Remediations Failures

Spire STL has an obligation under the law to remediate the land disturbed by construction. When the Commission considers whether to issue the Spire Pipeline a permanent certificate or to direct its retirement, it will have the opportunity and the responsibility to determine what conditions related to remediation should be attached to any certificate. As demonstrated by the Commission’s recent action on the ACP Rehearing Order,⁶⁹ when a pipeline

⁶⁷ *Id.*

⁶⁸ *Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017).

⁶⁹ Docket No. 15-554-010 et al., *Atlantic Coast Pipeline, LLC*, Order on Rehearing and Directing Compliance (July 28, 2022) (FERC eLibrary accession no. 20220728-3096) (“ACP Rehearing Order”).

project that has already been partially or fully constructed is before the Commission for approval of further actions, the Commission has a continuing obligation to apply conditions that will ensure remediation of land impacted by construction and operation of the Pipeline.⁷⁰ The ACP Rehearing Order also recognizes that it is appropriate to consider the remediation preferences of the owners of impacted land and even to require the Pipeline developer to modify remediation actions based on those preferences.⁷¹

The Draft EIS fails to adequately analyze the ongoing and unremediated damage caused by the Spire Pipeline on and adjacent to easements. Instead of evaluating that damage, the Draft EIS states that Spire STL's remediation obligations are under either the "oversight" of other parties or "legal/contractual issues that are outside the scope of this environmental review."⁷² This ignores the Commission's responsibility to consider all impacts of the Spire Pipeline on remand and to apply conditions to any certificate issuance that will mitigate or remediate those impacts where appropriate. The Commission should have a full analysis of the damage caused by construction and operation of the Spire Pipeline and the current status of remediation efforts before it so that it can consider appropriate conditions to address ongoing and unremediated damage.

Furthermore, the Draft EIS also improperly assumes without review that Spire STL will fully comply with all certificate conditions and federal, state, and local regulations, such that environmental impacts and damage to property will be limited by those conditions and regulations. The D.C. Circuit's recent decision in *Sierra Club v. Federal Energy Regulatory*

⁷⁰ *Id.* at 16.

⁷¹ *Id.* at 14 (requiring the pipeline developer to plant tree seedlings as remediation only when the landowner prefers that it does so).

⁷² Draft EIS at 1-9-1-10.

*Commission*⁷³ recognized that where empirical data from related activities is available, it is appropriate for the Commission to consider that data in the subsequent decision involving the same issues.⁷⁴ The EA and the 2018 Certificate Order were issued based on a prospective analysis of what environmental impacts construction and operation of the Pipeline was anticipated to cause and what remediation would be performed based on an assumption that Spire STL would fully comply with representations made in its filings and with the certificate conditions. Since the EA was prepared and the 2018 Certificate Order was issued, substantial new information has become available on the actual damage caused by construction and operation of the Pipeline and the failure of Spire STL to conduct appropriate remediation, including failure to comply with the certificate conditions. The Draft EIS must consider and analyze this information to ensure that the Commission has all relevant information to make a decision, including on what certificate conditions are needed. Instead, the Draft EIS fails to consider the actual environmental impacts of the Pipeline’s construction and operation and assumes without analysis that Spire STL is complying with certificate conditions and federal, state, and local regulations.⁷⁵

In preparing the Final EIS, Commission Staff should consider the evidence that many landowners have presented demonstrating that the Pipeline has caused significant damage to their land which Spire STL has failed to properly remediate,⁷⁶ as well as the findings by state

⁷³ 38 F.4th 220 (D.C. Cir. 2022).

⁷⁴ *Id.* at 17-19.

⁷⁵ Draft EIS at 4-1 (“For this EIS analysis of environmental justice and climate change, continued operations of the Spire STL assumes the project is in compliance with the FERC Certificate and all federal and state regulations and permit requirements.”)

⁷⁶ *See, e.g.,* See Environmental Defense Fund’s Addendum on Standing, *EDF v. FERC*, Case No. 20-1016, Docket No. 1849117 (D.C. Cir., filed June 26, 2020) (containing declarations of EDF members and landowners impacted by the pipeline, Jacob Gettings,

regulators and the Commission that Spire STL failed to comply with mitigation requirements incorporated into the Certificate Order.⁷⁷ When a pipeline developer has repeatedly demonstrated a lack of respect for the properties along which it is constructing a project, repeatedly caused unnecessary property damage, and then failed to remediate the damage in a meaningful way, the Commission cannot simply assume without analysis that placing compliance responsibility with the pipeline developer, without additional protections or review, will be adequate to ensure remediation.

Spire STL has consistently failed to sufficiently remediate damage to properties along the Pipeline. The Final EIS must address these issues, including a detailed assessment of the damage to the properties to date. Whether the Pipeline continues to operate, is retired in place, or is retired and removed, Spire STL must properly remediate the land it has damaged, as well as conduct continued remediation when additional work is done on the land. As part of developing the Final EIS, Commission Staff should communicate with these landowners, determine what remediation actions are needed, and incorporate appropriate remediation requirements into its recommendations to ensure the properties are restored to the landowners' satisfaction. This will enable the Commission to consider and adopt appropriate certificate conditions to address the adverse impacts of the Pipeline on landowners.

Jr., Greg Stout, Kenneth Davis, and Patrick Parker), <https://www.edf.org/sites/default/files/documents/EDFFiledBrief20-10166.26.20.pdf>; Docket CP17-40-006, Letter of Ray Sinclair, Letter of Jacob D. Gettings, Letter of Larry Meyer, Letter of Gerald Scott Turman, Letter of Matt Clayton, Letter of Pat Parker, Letter of Sheila Segraves (filed January 12, 2022); Letter of Phil Brown and Zena Brown, Letter of Marc Steckel, Letter of Greg Stout (filed January 13, 2022).

⁷⁷ *Spire STL Pipeline LLC*, Order on Environmental Compliance, 174 FERC ¶ 61,219 (March 18, 2021) (“Environmental Compliance Order”); Docket CP17-40-000, *Spire STL Pipeline LLC*, Illinois Department of Agriculture Letter Regarding Site Inspections (filed August 14, 2020) (“AIMA Report”).

III. CONCLUSION

EDF respectfully recommends that the Final Environmental Impact Statement be prepared consistent with the above recommendations.

Dated: August 8, 2022

Respectfully submitted,

/s/ Ted Kelly

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding by electronic service.

Dated at Washington, D.C., this 8th day of August, 2022.

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