

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

Spire STL Pipeline LLC

)

Docket No. CP17-40-007

**MOTION TO INTERVENE OF THE NATURAL RESOURCES DEFENSE COUNCIL
AND THE SUSTAINABLE FERC PROJECT**

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC),¹ Natural Resources Defense Council (NRDC) and the Sustainable FERC Project (SFP) respectfully move to intervene in the above-captioned proceeding. For the reasons stated below, the Commission should grant this motion to intervene and confer party status on NRDC and SFP.

I. COMMUNICATIONS

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II. BACKGROUND

On January 26, 2017, Spire STL submitted its application to the Commission to construct a new interstate gas pipeline in the St. Louis area. On August 3, 2018, in a 3-2 decision, the Commission authorized the Spire STL project.² In dissent, then-Commissioner Cheryl LaFleur argued that the “Spire Project is the unusual case of a pipeline application that squarely fails the

¹ 18 C.F.R. § 385.214.

² *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018), *order amending certificate*, 169 FERC ¶ 61,074, *order on reh'g*, 169 FERC ¶ 61,134 (2019), *pet. for review granted in part, vacating decision sub nom., Environmental Defense Fund v. FERC*, 2 F.4th 953 (D.C. Cir. 2021).

threshold economic test. The record does not demonstrate a sufficient need for the project.”³ Similarly, Chairman (then Commissioner) Glick characterized the record as “patently insufficient” to find that the project was required by the public convenience and necessity, “as there is neither evidence that the Spire Project is needed nor that its limited benefits outweigh its harms.”⁴ Chairman Glick further expressed that he was “particularly disappointed with the order because it lends credence to the critique that the Commission does not meaningfully review section 7 applications.”⁵ Nevertheless, on November 21, 2019, in another split decision—and after a lengthy tolling window during which the Commission authorized Spire STL to build the pipeline—the Commission issued an order on rehearing affirming its approval of the project.⁶

On June 22, 2021, the U.S. Court of Appeals for the District of Columbia Circuit, in a unanimous opinion, found that the Commission had applied an “ostrich-like”⁷ review that failed to “seriously engage with nonfrivolous arguments” challenging the need for the project, “ignored record evidence of self-dealing and failed to seriously and thoroughly conduct the interest-balancing required by its own Certificate Policy Statement.”⁸ The court vacated the order authorizing the project, finding that “it is far from certain that FERC ‘chose correctly,’ in issuing a Certificate to Spire STL.”⁹ On August 5, 2021, Spire STL sought rehearing from the court;¹⁰

³ *Id.* at P3 (Comm’r LaFleur, dissenting).

⁴ *Id.* at P1 (Comm’r Glick, dissenting).

⁵ *Id.*

⁶ *Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (2019), *pet. for review granted in part, vacating decision sub nom., Environmental Defense Fund v. FERC*, 2 F.4th 953 (D.C. Cir. 2021).

⁷ *Environmental Defense Fund*, 2 F.4th at 975.

⁸ *Id.* at 960.

⁹ *Id.* at 976 (citation omitted).

¹⁰ Petition for Rehearing, or Rehearing En Banc, *Environmental Defense Fund v. FERC*, No. 20-1016 (D.C. Cir), Aug. 5, 2021.

the court has withheld issuance of the mandate pending rehearing.¹¹ On July 26, 2021, in the instant docket, Spire STL filed an Application for a Temporary Emergency Certificate (Application), asking the Commission to allow the pipeline to continue to operate pending remand notwithstanding the court's vacatur.

III. MOTION FOR LEAVE TO INTERVENE

NRDC is a national non-profit membership organization with more than three million members and engaged community participants worldwide. As of July 2021, NRDC has 3,938 members in Missouri (including over 1,000 in St. Louis) and 12,734 members in Illinois. NRDC is committed to the preservation and protection of the environment, public health, and natural resources. To this end, NRDC conceives and develops policies that reduce greenhouse gas emissions and other forms of pollution and that accelerate the deployment of energy efficiency and renewable energy. NRDC has a longstanding and active interest in ensuring need-based development of energy infrastructure, protecting consumers from stranded assets, expanding clean energy resources, and protecting the public—particularly vulnerable communities—from environmental threats. The Application squarely relates to this core mission: namely, in reviewing the Application, the Commission will have to assess the need for the Spire STL pipeline, both today and in the future.

SFP is an education and advocacy initiative that represents a consortium of national and regional environmental, consumer, and energy policy non-governmental organizations with members throughout the United States, including in Missouri and Illinois. SFP focuses its efforts on accelerating the development of renewable energy. SFP also has a record of advocating for

¹¹ Order, *Environmental Defense Fund v. FERC*, No. 20-1016 (D.C. Cir), June 22, 2021.

need-based and environmentally just energy development. SFP has participated in multiple Commission proceedings and in stakeholder processes related to gas development.

Accordingly, both NRDC and SFP have interests in this proceeding which may be materially affected by the outcome, and no other intervening party can properly represent those interests. These interests are further shared by the public at large.

Both NRDC and SFP expect their positions to evolve throughout this proceeding; however, per Rule 214, NRDC and SFP share their initial position on the Application. The Commission must ensure that any energy consumers who may be affected by the court's decision continue to have resilient and reliable energy; it should, not, however, double-down on its initial error to greenlight the Spire STL project without properly analyzing the evidence. The instant Application lacks the data necessary to analyze the requested Commission action, appears to be an attempt to circumvent the court's clear directive of vacatur, and could significantly undermine the core findings of the court regarding the need for the Spire STL project.

The Commission did not assign a new base docket number for the Application, instead assigning it to a sub-docket. The Commission also has not issued a notice establishing a date for filing interventions in response to the Application. NRDC and SFP contend that the Application is more analogous to a new certificate application and should be treated as such with respect to interventions. However, to the extent the Commission considers this intervention untimely under Rule 214, NRDC and SFP should still be granted intervenor status.

Under Rule 214, when considering whether to grant an untimely intervention, the Commission may consider whether: (i) there is "good cause" for failing to file the motion in the originally prescribed time; (ii) there will be any disruption from the movant's participation; (iii) the movant's interest is adequately represented in the proceeding; (iv) any prejudice to, or

burdens upon, the existing parties may result from permitting the intervention; and (v) the motion conforms to the content requirements under the Commission's rules.¹²

NRDC and SFP file this motion in response to Spire STL's July 26, 2021 Application—not the original certificate application filed in 2017. NRDC and SFP are filing this motion well within the 21-day-window often afforded for interventions when notices are issued. Furthermore, there will be little to no disruption caused by granting this motion, because NRDC and SFP are willing to accept the underlying certificate record as it stands and the record for the July 26 Application is 12 days old. For the same reasons, no party will be prejudiced by NRDC's and SFP's participation and granting intervention will not delay Commission action, because NRDC and SFP do not seek to participate in the underlying certificate docket, but rather the sub-docket Application for which the Commission has yet to render any decision.

Further, rejecting NRDC's and SFP's interventions here would be inconsistent with recent Commission decisions that have granted untimely interventions, including after issuance of a certificate decision, when the docket may result in a significant change in Commission policy.¹³

For the above reasons, NRDC and SFP respectfully request that the Commission grant intervenor status to NRDC and SFP in Docket CP17-40-007.

Respectfully submitted,

Gillian R. Giannetti

Gillian R. Giannetti

Date: August 6, 2021

¹² 18 CFR § 385.214(d).

¹³ See, e.g., "Order Granting Late Intervention," *N. Nat. Gas Co.*, CP20-487-000, Apr. 15, 2021.