

177 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Spire STL Pipeline LLC

Docket No. CP17-40-007

ORDER ISSUING TEMPORARY CERTIFICATE

(Issued December 3, 2021)

1. On July 26, 2021, Spire STL Pipeline LLC (Spire) filed an application under section 7(c)(1)(B) of the Natural Gas Act (NGA)¹ for a temporary certificate of public convenience and necessity to assure maintenance of service to Spire's customers while the Commission addresses the issues on remand from the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *Environmental Defense Fund v. FERC*.² As discussed below, we grant a temporary certificate of public convenience and necessity, subject to the conditions herein.

I. Background

A. Commission's Certificate Proceeding

2. On January 26, 2017, Spire filed an application pursuant to section 7(c) of the NGA³ and Part 157 of the Commission's regulations⁴ requesting authorization to construct and operate the Spire STL Pipeline Project (Spire STL Pipeline), a new, 65-mile-long interstate natural gas pipeline system, extending from an interconnection with Rockies Express Pipeline LLC (REX) in Scott County, Illinois, to interconnections with both Spire Missouri Inc. (Spire Missouri)⁵ and Enable Mississippi River

¹ 15 U.S.C. § 717f(c)(1)(B).

² 2 F.4th 953 (D.C. Cir 2021).

³ 15 U.S.C. § 717f(c).

⁴ 18 C.F.R. pt. 157 (2020).

⁵ Spire Missouri, a local gas distribution company, was formerly known as Laclede Gas Company.

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

3. On August 3, 2018, the Commission issued Spire a certificate of public convenience and necessity under section 7(c) of the NGA⁶ to construct and operate the Spire STL Pipeline.⁷ The Environmental Defense Fund (EDF), Missouri Public Service Commission, MRT, and Juli Steck⁸ each filed timely requests for rehearing, and, on November 21, 2019, the Commission issued an order on rehearing addressing the arguments raised and dismissing, rejecting, or denying the rehearing requests.⁹ EDF and Juli Steck each petitioned for review with the D.C. Circuit. The project was constructed and placed into service while the appeal was pending.

B. D.C Circuit's Opinion Vacating the Commission Orders

4. On June 22, 2021, the D.C. Circuit issued a decision granting EDF's petition and vacating the Commission's Certificate and Rehearing Orders authorizing the Spire STL Pipeline and remanding to the Commission for further proceedings.¹⁰ The court found that the Commission improperly granted a certificate to Spire because it relied upon a single precedent agreement with an affiliated shipper, Spire Missouri, to establish need

⁶ 15 U.S.C. § 717f(c).

⁷ *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (Certificate Order).

⁸ Juli Steck was known as Juli Viel earlier in the Commission's certificate proceeding.

⁹ *Spire STL Pipeline LLC*, 169 FERC ¶ 61,134 (2019) (Rehearing Order).

¹⁰ *Env't Def. Fund v. FERC*, 2 F.4th 953. The court found that Juli Steck lacked standing to pursue her claims. *Id.* at 970.

and failed to weigh the project benefits against the adverse effects.¹¹ Specifically, the court stated that:

nothing in the Certificate Policy Statement suggests that a precedent agreement is conclusive proof of need in a situation in which there is no new load demand, no Commission finding that a new pipeline would reduce costs, only a single precedent agreement in which the pipeline and shipper are corporate affiliates, the affiliate precedent agreement was entered into privately after no shipper subscribed during an open season, and the agreement is not for the full capacity of the pipeline.¹²

5. The court held that the Commission failed to engage with “plausible evidence of self-dealing” offered by EDF¹³ and that the challenges raised were more than enough to require the Commission to “look behind” the precedent agreement in determining whether there is market need for the new pipeline. The court also faulted the Commission for failing to examine meaningfully the purported benefits of the project (i.e., retiring of Spire Missouri’s propane peaking facilities, access to natural gas supplies from the Marcellus region, avoiding the New Madrid Fault¹⁴) even though EDF and others challenged whether the benefits were likely to occur.¹⁵

6. Applying the *Allied-Signal* test,¹⁶ the court determined that it was appropriate to vacate the certificate given the “serious deficiencies” underlying the Commission’s prior orders.¹⁷

¹¹ *Id.* at 973.

¹² *Id.*

¹³ *Id.* at 975.

¹⁴ The New Madrid Fault stretches 150 miles from Cairo, Illinois, through Hayti, Caruthersville, and New Madrid in Missouri.

¹⁵ *Id.* at 973-74.

¹⁶ Under *Allied-Signal, Inc. v. NRC*, the court’s decision to vacate “depends on the seriousness of the order’s deficiencies (and thus the extent of doubt whether the agency chose correctly) and the disruptive consequences of an interim change that may itself be changed.” 988 F.2d 146, 150-51 (D.C. Cir. 1993).

¹⁷ *Env’t Def. Fund v. FERC*, 2 F.4th at 976. The court further opined that “remanding without vacatur under these circumstances would give the Commission

7. On August 5, 2021, Spire filed a petition for panel rehearing or rehearing *en banc*, asserting that vacatur would cause service disruptions during the 2021-2022 winter heating season.¹⁸ The court denied Spire's petitions for rehearing and rehearing *en banc*,¹⁹ and, on September 13, 2021, Spire filed a motion for stay of the mandate pending its petition for a writ of certiorari before the Supreme Court of the United States. On September 23, 2021, EDF filed a motion in opposition to the stay and Spire answered on September 30, 2021. The D.C. Circuit denied Spire's motion for stay of the mandate on October 1, 2021, and issued the mandate on October 8, 2021. Spire subsequently filed an application for stay of the D.C. Circuit's mandate with the Supreme Court, which was denied on October 15, 2021.

8. Following the D.C. Circuit's mandate and remand, the Commission's orders and Spire's authorization under those orders are no longer valid and Spire's January 26, 2017 application for a certificate of public convenience and necessity is now pending before the Commission.

C. Spire's Temporary Certificate Application

9. On July 26, 2021, Spire filed an application for a temporary certificate under NGA section 7(c)(1)(B)²⁰ or in the alternative a limited-term certificate under sections 7 and 16.²¹ Spire requests that the Commission issue a temporary or limited term certificate, to allow Spire Missouri to continue transporting gas on the project during the 2021-2022 winter heating season and avoid potentially curtailing service to 175,000 of its 650,000 customers.

10. In its application, Spire states that changes by Spire Missouri to its system since the Spire STL Pipeline went into service cannot be reversed prior to the 2021-2022 winter heating season. It further notes that Spire Missouri has allowed some of its

incentive to allow 'build[ing] first and conduct[ing] comprehensive reviews later.'" *Id.* (quoting *Standing Rock Sioux Tribe v. Army Corps of Eng'rs*, 985 F.3d 1032, 1052 (D.C. Cir. 2021)).

¹⁸ Spire Aug. 5, 2021 Petition for Rehearing at 7, D.C. Cir. Nos. 20-1016, 20-1017.

¹⁹ Sept. 7, 2021 Order Denying Petition for Rehearing, D.C. Cir. Nos. 20-1016, 20-1017; Sept. 7, 2021 Order Denying Petition for Rehearing *En Banc*, D.C. Cir. Nos. 20-1016, 20-1017.

²⁰ 15 U.S.C. § 717f.

²¹ *Id.* §§ 717f, 717o.

contracts on MRT's Mainline and the upstream pipelines that connect with MRT to expire. Spire also provides information regarding the availability of transportation service on other pipelines²² and states that since the Spire STL Pipeline commenced service most of the market participants in eastern Missouri made substantial physical and operational changes and improvements that are now irreversible. Spire claims that, as a result, other pipelines in the region would be unable to offer Spire Missouri transportation service similar to what it previously had. Specifically, Spire asserts that: (1) MRT's Mainline has only 568 Dth/d of available firm transportation capacity; (2) Spire Missouri no longer connects directly to MRT's East Line (Spire Missouri volumes flowing on MRT's East Line are now delivered to an interconnection with the Spire STL Pipeline, for subsequent delivery by Spire to Spire Missouri); and (3) MoGas Pipeline LLC (MoGas) has only 10,000 Dth/d of additional firm service available.²³ Thus, Spire concludes that in order for Spire Missouri to maintain service to its customers through the 2021-2022 winter heating season, a temporary certificate authorization for Spire is needed.

11. Spire also sets forth the purported benefits of its project to Spire Missouri including: (1) access to the Marcellus and Rocky Mountain supply basins via REX; (2) the retiring of Spire Missouri's propane peaking facilities; (3) the retirement of three compressor stations at the Lange Storage Field, which is behind the city gate; and (4) increases in delivery pressures that Spire asserts have allowed Spire Missouri to forgo other necessary improvements to its system.

12. Spire further claims that the Spire STL Pipeline allowed Spire Missouri to maintain service during the February 2021 weather event (Winter Storm Uri) that led to extensive outages in the southern United States because the Spire STL Pipeline provided access to the Marcellus supply region. Spire states that during Winter Storm Uri the project allowed Spire Missouri to avoid service disruptions to 133,000 customers and saved Spire Missouri customers a total of approximately \$300 million, or between \$170 and \$345 per customer.

D. Commission's *Sua Sponte* Temporary Certificate

13. On September 14, 2021, in advance of the D.C. Circuit's mandate and to avoid an emergency from the immediate cessation of service by Spire, the Commission, *sua*

²² Spire includes an affidavit from Scott Carter to support assertions in its temporary certificate application, Spire Missouri's President. Spire Application at 3.

²³ During construction of the Spire STL Pipeline, MRT abandoned its East Line Chain of Rocks interconnection with Spire Missouri.

sponte, issued a temporary certificate for 90 days²⁴ while it evaluated Spire's temporary certificate application.²⁵ On October 14, 2021, the Landowner's Group and Niskanen Center filed requests for rehearing and Spire filed a request for clarification. The Commission, on November 18, 2021, issued an order granting clarification and addressing the requests for rehearing.²⁶

II. Notice, Comments, Interventions, and Protests

14. On August 6, 2021, the Commission issued a Notice of Application for Spire's Temporary Certificate Application. The notice established September 7, 2021, as the deadline for initial comments and interventions, with reply comments due by October 5, 2021. The Commission received over 100 comments and reply comments from various stakeholders regarding Spire's application. Several commenters support Spire's application, reiterating the necessity of a temporary certificate for the 2021-2022 winter heating season, while others oppose the application, reiterating the findings of the D.C. Circuit.

15. The following entities filed timely motions to intervene: 35 landowners (Landowner Group);²⁷ 4 landowners, 10 individuals, and the Niskanen Center²⁸ (jointly,

²⁴ The temporary certificate would expire on December 13, 2021.

²⁵ *Spire STL Pipeline LLC*, 176 FERC ¶ 61,160 (2021) (Sept. 14 Temporary Certificate Order).

²⁶ *Spire STL Pipeline LLC*, 177 FERC ¶ 61,114 (2021) (Nov. 18 Rehearing Order).

²⁷ The Landowner Group includes: Betty and Keith Jefferson; Kenneth Davis; William and Alice Ballard; Anne and Matthew Clayton; Hart Farms, LLC; Jo Ann Mansfield; Bernard H. Meyer Trust #9-11; Mary Lois Meyer Trust #9-11; Jacob D. Gettings; Mildred L. Gettings; Jacob "Jay" Gettings; TTE Land Trust; Dannie Malone; Sinclair Family Farm, LLC; 4850 Longhorn, LLC; Greg and Connie Stout; Sheila Segraves; Dennis and Virginia Schaeffer; Cletus Kampmann Jr.; Eugene and Joyce Weidner; Corgaf LLC; Cori Patricia Christiansen; Barry Michael Corona; Kathleen Ann Corona-Bittick; Karin Gaut; Alan and Barbara Schlemmer; Margaret G. Bell; Marc Steckel; and Phil Brown.

²⁸ The four landowners include: Forrest Jones; ST Turman Contracting, LLC; Scott Turman (both individually and as sole member of ST Turman Contracting, LLC); and Kenneth "Rusty" Willis. The individuals, who own land along the Atlantic Coast Pipeline, include: Dawn Averitt; William Barr; Melissa Barr; Carolyn Fischer; Demian

Niskanen Center); Natural Resources Defense Council and Sustainable FERC Project, jointly (NRDC); New Jersey Conservation Foundation and Sierra Club, jointly (Sierra Club); American Gas Association; MoGas; Symmetry Energy Solutions, LLC; Natural Gas Supply Association; Spire Marketing Inc.; and Southern Star Central Gas Pipeline, Inc. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.²⁹ St. Charles County, Missouri and International Paper Company and WestRock Company each filed a late motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, we grant the late motion to intervene.³⁰

16. The Landowner Group, EDF, and NRDC and Sierra Club, jointly, each protest Spire's application for a temporary certificate. Spire filed answers to the Landowner Group's and EDF's protests. EDF filed an answer to the Missouri PSC's October 5, 2021 reply comments Spire filed an answer and opposition to EDF's answer, and Spire Missouri filed an answer to EDF. Although the Commission's Rules of Practice and Procedure generally do not permit answers to protests,³¹ we will accept the answers here because they provide clarification and information that has assisted in our decision-making.

17. On August 6, 2021, Commission staff issued a data request to Spire requesting information on: (1) the specific capacity available on other pipelines in the region; (2) changes that Spire Missouri made to its system since the Spire STL Pipeline went into service and how long those changes would take to reverse; (3) support for assertions made by Spire that the pipeline saved St. Louis ratepayers hundreds of millions of dollars during Winter Storm Uri; (4) impacts on MoGas if the Spire STL Pipeline were to cease operations; and (5) impacts on landowners if the pipeline were to cease operations. Spire filed its response to the data request on September 7, 2021.

18. The comments, reply comments, answers, and protests, as well as the response to the data request, have been fully considered and are discussed below.

K. Jackson; Louis Ravina; Victor Baum; Lora Baum; Horizons Village Property Owners Association, Inc.; and Kenneth E. Høglund (in his capacity as President of Horizons Village Board).

²⁹ 18 C.F.R. § 385.214 (2020).

³⁰ *Id.* § 385.214(d).

³¹ 18 C.F.R. § 385.213(a)(2) (2020).

III. Discussion

A. Section 7(c)(1)(B) of the Natural Gas Act

19. Section 7(c)(1)(B) of the NGA states that “the Commission may issue a temporary certificate in cases of emergency, to ensure maintenance of adequate services or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate”³² Further, section 157.17 of the Commission’s regulations implements section 7(c)(1)(B) and provides that:

[i]n cases of emergency and pending the determination of any application on file with the Commission for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, application may be made for a temporary certificate authorizing the construction and operation of extensions of existing facilities, interconnections of pipeline systems, or sales of natural gas that may be required to assure maintenance or adequate service, or to service particular customers.³³

20. Courts have interpreted section 7(c)(1)(B) in only a few instances.³⁴ The Fifth Circuit, in *Hunt Oil Co. v. FPC*,³⁵ found that the Commission had authority under section 7(c)(1)(B) to issue a temporary certificate in light of its finding that an emergency existed—i.e., consumers were dependent on the supply of natural gas provided under the original certificates.³⁶ In addition, the First Circuit, in *Algonquin Gas Transmission Co. v. FPC*,³⁷ affirmed the Commission’s decision to deny a company’s application for a temporary certificate so that it could complete construction of facilities needed to provide

³² 15 U.S.C. § 717f(c)(1)(B).

³³ 18 C.F.R. § 157.17 (2020).

³⁴ The Supreme Court has addressed temporary certificates in two instances involving section 7(e) and producer-to-pipeline sales pending permanent authorizations. *See Atlantic Refining Co. v. Pub. Serv. Comm’n*, 360 U.S. 378 (1959); *FPC v. Hunt*, 376 U.S. 515 (1964). However, these cases do not provide guidance in construing section 7(c)(1)(B) in this proceeding.

³⁵ 334 F.2d 474 (5th Cir. 1964).

³⁶ *Id.* at 479-80.

³⁷ 201 F.2d 334 (1st Cir. 1953).

new service to a region that previously did not have natural gas service.³⁸ The court reviewed the legislative history of section 7(c) to determine what emergencies the temporary certificate provision was intended to cover, finding that “[t]he crucial phrases are ‘to assure maintenance of adequate service’ and ‘to serve particular customers,’” and determined that “[i]t is for the Commission to find as a matter of fact whether the requisite emergency exists.”³⁹ The court concluded that Congress did not intend to authorize the Commission to issue temporary certificates in cases where customers were awaiting new service, but rather that “[m]aintenance of adequate (natural gas) service’ seems to imply some pre-existing natural gas service which is to be kept up”⁴⁰ and that “‘to serve particular customers’ might . . . be read as meaning that the proposed service must be to existing customers, i.e., to consumers now receiving natural gas service from the applicant for the temporary certificate.”⁴¹

21. In *Pennsylvania Gas and Water Co. v. FPC*,⁴² the D.C. Circuit vacated a temporary certificate because the applicants did not demonstrate an emergency as contemplated by Congress.⁴³ The Commission issued a temporary certificate to two companies to allow coordination of their operations while their section 7 application was pending.⁴⁴ The court held this did not constitute an emergency and instead the matter

³⁸ *Id.* at 337.

³⁹ *Id.* at 339.

⁴⁰ *Id.* In reaching this conclusion the court relied in part on the legislative history regarding the inclusion of the limiting phrase “to assure maintenance of adequate service or to serve particular customers.” The court found that the purpose of the emergency provision is not to “authorize the granting of temporary certificates for the purpose of enlarging a market but merely for . . . maintaining adequate service within the market that is already being served.” *Id.* (quoting Hearings before the Committee on Interstate and Foreign Commerce on H.R. 5249, 77th Cong., 1st Sess. 6 (1941)).

⁴¹ *Id.* Prior to Algonquin seeking the temporary certificate, it had obtained a permanent certificate from the Commission, and the Commission’s order had been reversed by the Court of Appeals for the Third Circuit. The *Algonquin* court noted, in *dicta*, that it “was not clear” whether a temporary certificate would have been appropriate had, as posed hypothetically by Algonquin, the court decision required termination of existing service, and that it did not have that case before it. *Id.* at 341.

⁴² 427 F.2d 568 (D.C. Cir. 1970).

⁴³ *Id.* at 569.

⁴⁴ *Id.* 571-72.

should be set for hearing and proceed under section 7.⁴⁵ The court provided an overview of the legislative history of section 7(c)(1)(B), finding that the initial drafting of this provision included broad authority to issue temporary certificates in case of emergency, but that ultimately it was narrowed to read “issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers.”⁴⁶ The court cited to comments provided by the Commission to the House that “the (original) language in subsection (c) (relating to the grant of temporary certificates) was put in the bill primarily to provide for emergency interconnection of pipe lines, which are sometimes necessary to make it possible to maintain adequate service in cases of extraordinary peak demands, breakdowns, and so forth.”⁴⁷ The court concluded that Congress did not intend for a complete new pipeline system to be constructed under the temporary certificate provision, and instead intended to limit a temporary certificate to emergency situations involving only comparatively minor extension or enlargement of the facilities of an existing system.⁴⁸ The court did not discuss whether the emergency provision extends to already constructed facilities requiring interstate authorization.

22. Next, in *Consumer Federation of America v. FPC*,⁴⁹ the D.C. Circuit reviewed a series of Commission orders exempting companies from the certification requirements of section 7 of the NGA for certain sales of natural gas for 180 days without becoming a natural gas company subject to the Commission’s jurisdiction and relying on the temporary emergency certification provision of the NGA.⁵⁰ The court found, after reviewing the legislative history, that the section “was designed as a narrow exception to enable the companies and the Commission to grapple with temporary emergencies and minor acts or operations, like emergency interconnections to cope with breakdowns or sporadic excess demand for gas.”⁵¹ In its decision, the court noted that “the legislative history makes plain that it was never contemplated that the modest emergency provision

⁴⁵ *Id.* at 575.

⁴⁶ *Id.* at 574 (citing H.R. 5249, 77th Cong., 1st Sess., 82, 83-84).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 515 F.2d 347 (D.C. Cir. 1975).

⁵⁰ *Id.* at 352.

⁵¹ *Id.* at 353.

in [section] 7 for orders without hearings would be employed to excise large volume, long-duration, widespread deliveries of gas.”⁵²

23. The Commission’s previous use of temporary certificates also has been limited. In *Texas-Ohio Pipeline, Inc.*,⁵³ the Commission issued a temporary certificate to an intrastate pipeline company, which was transporting gas in interstate commerce without authorization, to continue interstate service to prevent bottlenecks during winter heating season and avoid forcing customers to purchase gas at higher prices.⁵⁴

24. In the late 2000s and early 2010s, the Commission issued a number of Orders Granting Exemption for Temporary Acts and Operations to companies to drill wells to determine the feasibility of developing underground natural gas storage facilities.⁵⁵ In these orders, the Commission interpreted section 7(c)(1)(B) to allow exemption of:

certain temporary acts or operations from the certificate requirements that would otherwise apply, if we find that such an exemption is in the public interest. Previously, we have granted such exemptions to allow operations of a temporary nature that have no effects on ratepayers, on the quality of service provided by a natural gas company, or on the public as a whole.⁵⁶

25. Finally, although the Commission has not defined “emergency” for the purpose of applying NGA section 7(c)(1)(b), the Commission’s regulations do define emergency for other actions. Specifically, section 157.202(b)(13) defines an emergency to be a “sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of

⁵² *Id.* at 355.

⁵³ 58 FERC ¶ 61,025 (1992).

⁵⁴ *Id.* at 61,059.

⁵⁵ See *Perryville Gas Storage LLC*, 133 FERC ¶ 61,201 (2010); *Sawgrass Storage LLC*, 133 FERC ¶ 61,146 (2010); *D’Lo Gas Storage, LLC*, 133 FERC ¶ 61,088 (2010); *Ryckman Creek Resources, LLC*, 133 FERC ¶ 61,056 (2010); *Wabash Gas Storage LLC*, 132 FERC ¶ 61,205 (2010).

⁵⁶ *Perryville Gas Storage LLC*, 133 FERC ¶ 61,201 at P 8.

interrupted service for protection of life or health or for maintenance of physical property.”⁵⁷

26. As discussed below, we find that, consistent with the NGA and legislative history of section 7(c)(1)(b), an emergency exists and the public convenience and necessity requires issuance of a temporary certificate to Spire.

B. Necessity for a Temporary Certificate

27. Spire asserts that, without a temporary certificate to operate the Spire STL Pipeline, its shippers would be unable to meet their peak day demand throughout the 2021-2022 winter heating season. Spire Missouri, the Missouri Public Service Commission (Missouri PSC), and other commenters agree and support Spire’s request. Similarly, in its reply comments, EDF avers that a temporary certificate is needed to prevent a disruption of gas service in St. Louis for the 2021-2022 winter heating season.⁵⁸

28. Commenters argue that the potential supply issues that Spire Missouri faces are of its own making.⁵⁹ EDF questions how long it will take Spire Missouri to remedy the supply issue.⁶⁰ The Niskanen Group contends that Spire and Spire Missouri’s assertions regarding the catastrophic effects of the pipeline ceasing to provide service may not be plausible given Spire’s cursory treatment of possible vacatur before the D.C. Circuit on brief.⁶¹ NRDC and Sierra Club claim that an emergency certificate should only be allowed for unforeseeable or emergency circumstances, and that here the decisions of Spire and Spire Missouri created the precarious reliance on a single pipeline.⁶²

⁵⁷ 18 C.F.R. § 157.202(b)(13) (2020); *see also* 18 C.F.R. 284.262 (2020) (defining an emergency).

⁵⁸ EDF Oct. 5, 2021 Reply Comments at 1. EDF initially questioned whether Spire and Spire Missouri accurately represent the situation, for example, asking why Spire Missouri represented to the Missouri PSC that the propane peaking assets could be placed back in service and stating that the Missouri PSC staff recommended that it do so in Spire Missouri’s pending rate case. EDF Aug. 5, 2021 Protest at 22.

⁵⁹ EDF Aug. 5, 2021 Protest at 31; NRDC and Sierra Club Sept. 7, 2021 Comments and Protest at 7.

⁶⁰ EDF Aug. 5, 2021 Protest at 28.

⁶¹ Niskanen Center Sept. 7, 2021 Intervention and Protest at 7.

⁶² NRDC and Sierra Club Sept. 7, 2021 Comments 4-5.

29. In its response to Commission staff's August 6, 2021 data request, Spire provides information regarding Spire Missouri's past and current contracted capacity and the availability of capacity into the St. Louis region. Spire states that Spire Missouri allowed the expiration of contracts for 180,000 Dth/d of firm transportation service on MRT⁶³ and 170,000 Dth/d of firm upstream transportation service on Natural Gas Pipeline Company of America LLC (NGPL) and Trunkline Gas Company, LLC (Trunkline) which service was used, in part, to deliver Spire Missouri's gas supply to MRT for transportation to Spire Missouri's city gate interconnection with MRT.⁶⁴

30. To support its claim that there is limited available capacity for the upcoming winter, Spire provides information from the electronic bulletin boards (EBB) or email correspondence with MRT, MoGas, Trunkline, and NGPL. Specifically, Spire asserts that, as of the time it prepared its response, the following transportation capacity was available at the Spire Missouri city gate:

Table 1: Available Capacity to the Spire Missouri City Gate⁶⁵

Pipeline System	Available Capacity (Dth/d) ⁶⁶
MoGas	100,000
MRT Mainline	568
MRT East Line	135,548 to 181,402
Trunkline (Upstream to MRT)	100,000 to 180,000
NGPL (Upstream to MRT)	17 to 34,109

31. Spire states that Spire Missouri cannot use much of the available capacity to serve its load due to pressure delivery issues between the upstream NGPL and Trunkline

⁶³ Prior to expiration of its contract on MRT, Spire Missouri held 660,329 Dth/d of firm transportation service to its city gate.

⁶⁴ Spire Sept. 7, 2021 Response to Data Request at 13 (Spire Response to Data Request).

⁶⁵ *Id.* at 3-4.

⁶⁶ The quantity of available gas differs depending on whether obtained from the EBB or pipeline staff.

pipelines and the MRT East Line.⁶⁷ However, it does acknowledge that Trunkline, in September 2021, announced via its EBB a proposed project to address the pressure issues, and that project was completed and went into service on November 1, 2021.⁶⁸ As for capacity release, Spire states that Spire Missouri and Ameren Missouri (Ameren)⁶⁹ are the primary shippers into the region and, given the nature of their loads, any capacity to be released would be from these shippers and be recallable on peak days and thus would essentially be unavailable on those days.⁷⁰ Spire also provides data indicating that no firm transportation service is expiring in the near term on MRT or MoGas.⁷¹

32. Spire states that Spire Missouri receives deliveries into its system from Spire over three transportation paths: (1) direct delivery to the Spire Missouri city gate (189,400 Dth/d); (2) gas flowing from Spire STL Pipeline to MoGas for further delivery to the western side of Spire Missouri's system (90,600 Dth/d); and (3) gas flowing from Spire STL Pipeline to MRT for further delivery to the southern part of Spire Missouri's system (70,000 Dth/d).⁷²

33. Spire states that if the Spire STL Pipeline is removed from service Spire Missouri's total firm transportation service under contract would decrease from 1,273,079 to 923,079 Dth/d.⁷³ By moving its receipt point on MRT from Spire's Chain of Rocks to Trunkline or NGPL, Spire asserts that Spire Missouri could offset 70,000 Dth/d of its current transportation service on the Spire STL Pipeline.⁷⁴ This would allow for gas that is currently transported to Spire Missouri's southern city gate delivery points via the Spire

⁶⁷ Spire Response to Data Request at 5.

⁶⁸ This modification included construction of a new control valve near the Tuscola compressor station that will enable Trunkline to compress gas flowing to MRT from points north or south of this interconnect, providing increased pressures to allow firm delivery commitments into MRT. Trunkline Sept. 3, 2021 Reliability Modifications Notice ID 9145; Trunkline Nov. 3, 2021 Reliability Modifications Notice ID 25874.

⁶⁹ Ameren is the largest electric power provider in Missouri.

⁷⁰ We note that there would be no benefit to Spire Missouri releasing capacity to itself.

⁷¹ Spire Response to Data Request at 4.

⁷² *Id.* at 18.

⁷³ *Id.* at 10.

⁷⁴ *Id.*

STL Pipeline to Chain of Rocks and to MRT's Mainline to be shipped via NGPL or Trunkline for delivery through MRT's Mainline.⁷⁵ However, Spire avers that without the Spire STL Pipeline Spire Missouri would have 60,000 Dth/d of firm contracted natural gas supply from REX Zone 3 stranded without a transportation path to its city gate.⁷⁶ Spire also asserts that suppliers are reluctant to sell firm supply for this winter given the disruptions during last winter.

34. Spire also discusses the changes that Spire Missouri made to its system after interconnecting with the Spire STL Pipeline. It states that Spire Missouri contracted for an additional 82,800 Dth/d of service on MoGas to transfer gas from the Spire STL Pipeline to the western and southwestern parts of Spire Missouri's distribution system, which allowed Spire Missouri to forgo construction of a large diameter, high-pressure pipeline.⁷⁷ Additionally, Spire states that Spire Missouri retired the compressors at its Lange Storage Field, and, although Spire Missouri believes they could be returned to service within a few months, the compressors are 70 years old, and without additional sources of supply to allow for injection into the storage field, restoring that compression would be of little benefit.⁷⁸ Spire Missouri states that it also decommissioned its propane peaking equipment, which supplied 160,000 Dth/d and previously enabled Spire Missouri to cover its peak-day capacity requirements.⁷⁹ The propane facilities at Spire Missouri's Catalan propane injection point have been disconnected and, in addition, there are issues with obtaining a supply of propane at this location due to the abandonment of the line that supplied the propane by the operator.⁸⁰ Further, under present circumstances, the increased pressure on MoGas resulting from its interconnection with the Spire STL

⁷⁵ *Id.*

⁷⁶ *Id.* at 11.

⁷⁷ *Id.* at 20. MoGas built an interconnection with the Spire STL Pipeline, which improved the pressure profile on the MoGas system and increased the supply volumes available to Spire Missouri's key western points. MoGas July 28, 2021 Comments at 3-5.

⁷⁸ Spire Missouri also notes that it has repurposed the Lange equipment as a natural gas heater and would need to modify the equipment and obtain a St. Louis County air permit to put the Lange facility back into service. Spire Response to Data Request at 21, 22.

⁷⁹ Spire Application Carter Affidavit at 44.

⁸⁰ Spire Response to Data Request at 21.

Pipeline has rendered construction of Spire Missouri's previously contemplated system reinforcements unnecessary.⁸¹

35. With respect to whether Spire Missouri could reestablish⁸² a direct connection with MRT at or near Chain of Rocks (the location of an interconnect between Spire, Spire Missouri, and MRT), Spire Missouri estimates that it would take 9 to 12 months to construct the equipment⁸³ to reestablish an interconnect and that MRT could not construct a new interconnection that could be used this winter.⁸⁴ It further notes that MRT's old Chain of Rocks interconnection facility was located in a floodplain and has experienced flooding since it was abandoned and is no longer usable.⁸⁵ Should Spire Missouri reestablish an interconnect with MRT, gas would need to flow onto Spire Missouri's Line 880, which it states would need to be pressure-tested for integrity reasons and that the testing would likely not be completed by this winter.⁸⁶

36. Spire states that it could be possible for the Chain of Rocks station to be sold and transferred from Spire to Spire Missouri, assuming MRT could deliver gas to the station at a pressure of 350 psig.⁸⁷ Under this scenario, Spire Missouri would also have to acquire the North County Extension and Lange Station from Spire⁸⁸ and Spire notes that Spire Missouri would need to independently secure any easements that Spire has not fully acquired. Spire Missouri states that after acquiring the Chain of Rocks station it would

⁸¹ *Id.* at 20.

⁸² The prior interconnection between the MRT and Spire Missouri was abandoned. *Id.*

⁸³ Spire states this would include flow and pressure control, measurement, a natural gas heater, odorant injection, flood control, and associated piping and appurtenances. Spire believes that a floodplain permit would be required, but likely not an air permit. *Id.* at 6.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 7.

⁸⁷ *Id.*

⁸⁸ The Chain of Rocks station has a book value of \$20,600,000, and the North County Extension and Lange Station have a combined book value of \$33,300,000. *Id.* at 7-8.

need to integrate the facilities into its control system and train its staff to operate them, asserting that it would take 3-4 months for all these steps to be implemented.⁸⁹

37. Assuming a winter heating season similar to 2020-2021, Spire Missouri estimates that without the Spire STL Pipeline its customers would lose service for up to eight days.⁹⁰ Spire states that, even if Spire Missouri physically shut off all its interruptible customers recalled all its capacity that may have been released into the secondary market, and ignored the supply issues on MRT and upstream systems, it would still have lost service during Winter Storm Uri without the Spire STL Pipeline.⁹¹ Spire describes the impacts of a mass gas outage caused by curtailments during a peak day and estimates that, if Spire Missouri were to lose gas service, 400,000 customers would be without gas, and that it may take up to 100 days to reestablish service to all of its customers, depending on how many technicians are available to work on the outage.⁹²

38. Spire Missouri filed comments and reply comments in support of Spire. It asserts that the firm natural gas supplies provided via the Spire STL Pipeline are essential to meeting its winter season and peak day design, and that uncertainty around the Spire STL Pipeline complicates its planning.⁹³ Spire Missouri reiterates the benefits of the Spire STL Pipeline, including the higher operating pressures of the pipeline and the benefits from the interconnection with MoGas.

39. In reply comments, Spire Missouri documents steps it has taken since Spire's certificate was vacated, including acquiring 10,000 and 568 Dth/d of capacity on MoGas and the MRT Mainline, respectively.⁹⁴ It further notes that it may shift its primary receipt point on the MRT East Line from the interconnection with the Spire STL Pipeline to Trunkline or NGPL, but it remains uncertain about delivery pressures on the upstream

⁸⁹ *Id.* at 8.

⁹⁰ *Id.* at 24.

⁹¹ *Id.* at 24. Spire notes that, during Winter Storm Uri, Spire Missouri did not use all of its firm capacity on the Spire STL Pipeline, but the weather experienced during this time was 13 degrees warmer and demand was 200,000 Dth/d less than the planned peak day temperature *Id.* at 12.

⁹² Spire Application Carter Affidavit at 8-12; Spire Response to Data Request at 14.

⁹³ Spire Missouri Oct. 5, 2021 Reply Comments at 2.

⁹⁴ *Id.* at 4.

pipelines.⁹⁵ Spire Missouri states that it is exploring the potential for receiving deliveries of LNG by truck that would be re-vaporized into its distribution system, but this would be expensive, and supplies are uncertain. Spire Missouri states that it has reserved LNG vaporization equipment should the Spire STL Pipeline cease operations, but these supplies who not be adequate to completely replace the Spire STL Pipeline.⁹⁶ Further, as described above, Spire Missouri states it explored re-commissioning the Catalan propane injection point, but the propane lateral serving Catalan was in the process of being abandoned by the operator and to place it back in service would require inspection and potential repairs.⁹⁷

40. Finally, Spire Missouri documents its efforts to coordinate with the St. Louis community regarding the potential for large-scale outages if the Spire STL Pipeline is removed from service. Spire Missouri estimates it may spend approximately \$5,000,000 in preparing for the potential for the upcoming winter heating season without service on Spire, including the costs of reserving incremental transportation and the costs for alternative supply, and states that preparation to pursue these options began in October.⁹⁸

41. The Missouri PSC in its comments notes that, under Missouri law, Spire Missouri must furnish and provide service that is safe and adequate to those who desire service.⁹⁹ The Missouri PSC Staff Investigation Report of Spire STL Pipeline's Application for a Temporary Certificate notes that "Spire Missouri has made itself currently particularly reliant on Spire STL [Pipeline] and the interstate pipelines interconnected with Spire STL [Pipeline] to deliver gas and support pressure in parts of the distribution system."¹⁰⁰ Specifically, Missouri PSC staff's analysis of winter firm demand suggests that Spire Missouri could meet gas volume needs of a typical winter with current transportation capacity on pipelines other than the Spire STL Pipeline and its on-system underground storage, but this does not obviate potential concerns for peak or high demand days.¹⁰¹ Further, the Missouri PSC report acknowledges Spire Missouri cannot reconfigure or restore older service components for the 2021-2022 winter heating season and that

⁹⁵ *Id.* at 4-5, nn.9, 12.

⁹⁶ *Id.* at 5-6.

⁹⁷ *Id.*

⁹⁸ *Id.* at 7 n.15.

⁹⁹ *Id.* at 5.

¹⁰⁰ Missouri PSC Staff Report at 3.

¹⁰¹ *Id.*

capacity is not readily available on existing pipelines into St. Louis.¹⁰² In its reply comments the Missouri PSC reiterated its staff finding that “there is a real risk of natural gas outages during the winter of 2021-2022 absent the availability of Spire STL [Pipeline] capacity from both a flow and pressure standpoint.’[] This constitutes an “emergency” under the NGA.”¹⁰³

42. MoGas filed comments confirming that the interconnection with the Spire STL Pipeline allowed MoGas to forgo a 50-mile-long looping project, estimated to cost \$100 million.¹⁰⁴ MoGas also details how, although demand in the St. Louis region is flat, demand within the region is shifting—increased demand in the western suburbs and a corresponding decrease in demand in St. Louis proper. MoGas asserts that it could not meet new demand in the western suburbs without the Spire STL Pipeline.¹⁰⁵ MoGas also documents other benefits from its interconnection with the Spire STL Pipeline, such as the fact that increased delivery pressure allows for greater line pack, which increases its operational reliability. MoGas attests that the Spire STL Pipeline allowed it to better meet the demands during Winter Storm Uri.¹⁰⁶ It asserts that a cessation of operation of the Spire STL Pipeline would cause customers to lose service and MoGas to pursue the 50-mile looping project, which would take multiple years to develop and construct.¹⁰⁷

43. Ameren Services Company filed a letter supporting the temporary certificate, noting that regulatory certainty allows pipelines to make investment decisions.

Commission Determination

44. Upon issuance of the D.C. Circuit’s mandate, Spire lacked the necessary authority required by the NGA to operate the Spire STL Pipeline, jeopardizing Spire Missouri’s ability to obtain adequate gas supply. The September 14 Temporary Certificate Order provided Spire with the authorization to operate for 90 days while we evaluated Spire’s application for a temporary certificate. Although Spire Missouri may be able to obtain approximately 180,000 Dth/d of firm transportation capacity from MRT for the 2021-

¹⁰² *Id.* at 3, 4.

¹⁰³ Missouri PSC Oct. 5, 2021 Reply Comments at 2 (quoting Missouri PSC Staff Report).

¹⁰⁴ MoGas July 28, 2021 Comments at 6.

¹⁰⁵ *Id.* at 5.

¹⁰⁶ *Id.* at 9.

¹⁰⁷ *Id.* at 10.

2022 winter heating season, the upstream pipelines, NGPL, and Trunkline cannot commit to delivering gas to MRT at the pressures needed for Spire Missouri to operate its system under its current conditions. Even though Trunkline announced a project on its EBB to remedy the pressure issues, Trunkline could not commit to the required delivery pressures.¹⁰⁸ Therefore, the record indicates that alternative firm interstate transportation for Spire Missouri to replace the Spire STL Pipeline is not available.

45. Additionally, the record reflects that Spire Missouri cannot construct replacements for the facilities that it removed from service or decommissioned in time to meet its obligations for this winter heating season. For example, to construct and place in service a new interconnection at the Chain of Rocks facility would take 9-12 months, and Spire Missouri would need to rely on a transmission line (Line 880) that would need to undergo pressure testing to transfer gas from Chain of Rocks to its distribution system. Similarly, it would take approximately 3-4 months to effectuate the sale and transfer of Spire's Chain of Rocks interconnection between Spire Missouri and MRT and of Spire's North County Extension, an approximately 7-mile-long pipeline connecting Chain of Rocks to Spire Missouri, a transaction that would obviate the need to return Line 880 to service. Finally, although the compressors at the Lange Storage Field could be brought back to service within a few months, the compressors are 70 years old and Spire Missouri lacks additional sources of supply for the storage field. The Missouri PSC's report corroborates these findings, stating that "Spire Missouri cannot reasonably reconfigure its system to replace or restore former capacity, or replace reliance on [the] Spire STL [Pipeline] for transportation before or during the Winter of 2021-2022."¹⁰⁹

46. Commenters argue that the present situation is of Spire Missouri's own making and not an emergency. We do not, at this time, take a position on who is responsible for the current situation. It is sufficient for these purposes to determine that an emergency exists that requires granting a temporary certificate to allow maintenance of service, particularly during the winter heating season. Issues related to the prudence of Spire's decisions are best considered in the remand from the D.C. Circuit and related proceedings.

47. Under NGA section 7(c)(1)(B), "the Commission may issue a temporary certificate in cases of emergency, to ensure maintenance of adequate services or to serve particular customers"¹¹⁰ Here, as detailed above, the record demonstrates that without a temporary certificate, Spire's customer, Spire Missouri, will experience a loss of gas supply potentially impacting hundreds of thousands of homes and business during

¹⁰⁸ See Spire Response to Data Request attach. 2.a.3 at 57-60.

¹⁰⁹ Missouri PSC Staff Report at 3.

¹¹⁰ 15 U.S.C. § 717f(c)(1)(B).

the winter heating season. Therefore, we find that an emergency exists¹¹¹ and will issue Spire a temporary certificate.

C. Recourse Rates, Negotiated Rates, and Operations

48. Commenters request that the Commission condition the temporary certificate to limit the profits that Spire can recover by adjusting Spire's rate structure. EDF argues that the Commission, under its broad NGA section 16 authority,¹¹² should protect ratepayers and limit profits to Spire and Spire Missouri by requiring Spire to shift 50% of its return and income taxes from its reservation charge to its usage charge. EDF avers that the Commission could further insulate Spire Missouri's ratepayers by requiring Spire Missouri to contract for interruptible service at the 100% load factor of the redesigned recourse rate.¹¹³ EDF also suggests that the Commission require Spire to limit the use of the Spire STL Pipeline to instances where the use of the pipeline would only be for Spire Missouri to avoid curtailment.¹¹⁴ EDF argues these measures would limit Spire from reaping benefits for a pipeline that is not demanded by the marketplace and allow for profits to be tied to transportation service actually provided, unlike a reservation charge which guarantees profits regardless of volumes shipped.¹¹⁵ EDF further contends this would help to protect against self-dealing.¹¹⁶

49. NRDC and Sierra Club similarly argue that Spire should not be able to reap the rewards of having built a pipeline prior to the conclusion of judicial review. They ask that the Commission levy economic penalties against Spire and transfer those funds into

¹¹¹ As stated in the September 14 Temporary Certificate Order, the precedent for the court cases examining section 7(c)(1)(B) are not dispositive here for determining whether an emergency exists. *See* Sept. 14 Temporary Certificate Order, 176 FERC ¶ 61,160 at P 10.

¹¹² EDF Aug. 5, 2021 Protest at 25 (quoting *Gulf Oil Corp. v. FPC*, 563 F.2d 588, 606 (3rd Cir. 1977)).

¹¹³ *Id.* at 42.

¹¹⁴ *Id.* at Lander Affidavit at 28. EDF further clarified this position in its reply comments by stating that Spire should be allowed to keep the pipeline "fully pressured." EDF Oct. 5, 2021 Reply Comments at 10.

¹¹⁵ *Id.* at 41.

¹¹⁶ *Id.*

an account to assist Spire Missouri's ratepayers.¹¹⁷ NRDC and Sierra Club argue that once vacated, any rate the Commission approved in conjunction with the Spire STL Pipeline, including the approved negotiated rate agreement with Spire Missouri, would no longer be valid as the pipeline is unauthorized.¹¹⁸

50. In its answer, Spire states that a condition requiring it to only operate to the extent necessary to avoid curtailment "may not be operationally feasible, and would violate the Commission's policies on open access, standards of conduct, and non-discrimination."¹¹⁹ Spire questions under what conditions it would be allowed to transport gas and how far in advance of Spire Missouri facing curtailment would Spire be allowed to transport gas, arguing that determining the exact set of conditions that the Commission would allow Spire to operate its pipeline is difficult to establish due to the many variables that dictate demand for an LDC (e.g., weather, time of day, etc.). Spire includes a few hypotheticals such as: (1) who determines when supply is low enough to require the use of the Spire STL Pipeline; (2) how is it determined that the supply will be needed; and (3) how far in advance of an impending curtailment may Spire Missouri move gas on the Spire STL Pipeline.

51. In its October 5, 2021 reply comments, the Missouri PSC requests that the Commission "not impose any conditions on a temporary certificate that would increase either the costs or the risk of service curtailments to Spire Missouri customers."¹²⁰ The Missouri PSC notes its exclusive authority to regulate and control Missouri LDCs, like Spire Missouri, and thus, the Commission has no authority to direct Spire Missouri to act in a certain manner or require any remedies that would appear to grant pre-approval of Spire Missouri's actions or cost recovery. Further, the Missouri PSC states that it can determine whether Spire Missouri imprudently incurred costs related to the Spire STL Pipeline, and that its staff is currently conducting a prudency review, in which EDF has intervened.¹²¹

52. The Missouri PSC also raises concerns with the conditions proposed by EDF. With respect to EDF's proposed condition that the Commission limit the usage of the Spire STL Pipeline to those instances "strictly necessary to avoid service disruption to

¹¹⁷ NRDC and Sierra Club Sept. 7, 2021 Comments at 9.

¹¹⁸ *Id.*

¹¹⁹ Spire Aug. 20, 2021 Answer to EDF at 12.

¹²⁰ Missouri PSC Oct. 5, 2021 Reply Comments at 2.

¹²¹ *Id.* at 5.

Spire Missouri firm customers,”¹²² Missouri PSC argues that it remains unclear when or how Spire Missouri and its customers would be allowed to use capacity on the Spire STL Pipeline and such a condition might result in Spire Missouri purchasing gas at more expensive rates. The Missouri PSC also questions how EDF’s proposed re-designed rate would compare to Spire Missouri’s negotiated rate and asks that the Commission impose no condition that would cause Spire Missouri’s customers to pay more than they would under its current rate agreement with Spire. Further, it wonders how the Commission could establish such a rate as there is no cost of service study for the Spire STL Pipeline.

53. EDF, in its October 20, 2021 answer, states that establishing a new rate for the temporary certificate would be consistent with the D.C. Circuit’s finding that self-dealing occurred between Spire and Spire Missouri as there are no other competing shippers to create a reasonable cost benchmark; therefore it argues that the proposed rate structure would shift the related charges from a guaranteed monthly reservation charge to a usage charge based on the actual use of the Spire STL Pipeline. EDF prepared a comparison of the costs to Spire Missouri for the winter heating season using: (1) EDF’s proposed rate structure; (2) Spire Missouri’s scheduled quantities for last year; and (3) Spire Missouri using all available capacity on the MRT East Line before using its Spire STL Pipeline capacity.¹²³ EDF estimated this would save Spire Missouri approximately \$600,000 (\$9,900,000 total shipping cost using the redesigned rate and MRT East Line compared to \$10,500,000 using the Spire STL Pipeline filed reservation rate and the Spire STL Pipeline).¹²⁴

54. Spire states that the Temporary Certificate Application proceeding is not the appropriate place to alter the pipeline’s rates. In any event, Spire asserts that the negotiated rate between Spire and Spire Missouri is approximately 33% less than the recourse rate for the Spire STL Pipeline and that the actual overall return on equity is approximately 8%.¹²⁵ Spire argues that EDF’s proposed rate condition violates section 5 of the NGA because, it alleges, that EDF must file a complaint and show that the currently effective rates, including the negotiated rate with Spire Missouri, are unjust and unreasonable and propose an alternative just and reasonable rate.¹²⁶ Spire states that EDF’s proposal is akin to the Commission’s ratemaking policy before Order No 636, at

¹²² *Id.* at 5 (citing EDF Aug. 5, 2021 Protest, Lander Affidavit at P 6).

¹²³ EDF Oct. 20, 2021 Answer to Missouri PSC at 11-13.

¹²⁴ EDF notes that its calculation did not factor in the possibility of a lower negotiated rate on MRT.

¹²⁵ *Id.* at 15.

¹²⁶ Spire Aug. 20, 2021 Answer to EDF at 14.

which point the Commission employed Straight Fixed-Variable (SFV) ratemaking.¹²⁷ Spire asserts that EDF's proposal predates the Commission's current policy of using SFV rates and should not be used. Spire also states it would be amenable to filing its 3-year cost of service study based on the original date of operation.¹²⁸

55. Spire Missouri also filed comments in response to EDF, stating that the “fundamental assumption—that Spire Missouri could toggle its gas supplies between MRT/upstream pipelines and the Spire SLT Pipeline, and swing back and forth reliably during the winter to keep Spire STL Pipeline deliveries to an arbitrary maximum volume—is operationally irrational and infeasible. . . .”¹²⁹ Spire Missouri also details how the total cost of delivered gas is higher on the MRT East Line when compared with the Spire STL Pipeline.¹³⁰

Commission Determination

56. As the Commission explained in Order No. 636, when it required the unbundling of sales and transportation services, the Commission's role under the NGA is to:

protect the consumers of natural gas from the exercise of monopoly power by pipelines . . . in order to ensure consumers access to an adequate supply of gas at a reasonable price. . . . This mission must be undertaken by balancing the interests of the investors in the pipeline, to be compensated for the risks they have assumed, and the interests of consumers . . . and in the light of current economic, regulatory, and market realities.¹³¹

¹²⁷ Spire Oct. 25, 2021 Answer to EDF at 3.

¹²⁸ *Id.* at 2-3.

¹²⁹ Spire Missouri Oct. 29, 2021 Answer to EDF at 3.

¹³⁰ *Id.* at 4.

¹³¹ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, at 13,269 (cross-referenced at 59 FERC ¶ 61,030), *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950 (cross-referenced at 60 FERC ¶ 61,102), *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Dist. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996),

57. When considering whether to fashion a new rate or rate design for Spire under a temporary certificate, we evaluated these factors, in particular consumers access to adequate supply of gas at reasonable prices, and find that the continuation of Spire's currently effective rates is in the public interest.

58. EDF asks that the Commission establish a rate using the Commission's *Seaboard* rate design from the 1950's when natural gas sales and transportation were bundled.¹³² Under this rate design, 50% of return and income taxes would be moved from the reservation to the usage charge. Although such a rate design could potentially limit the profits Spire receives from reservation charges and reduce Spire's earnings when the pipeline is not used, it would be inconsistent with Order No. 636, where the Commission elected to use straight fixed variable (SFV) ratemaking¹³³ and noted that "any party (or parties) advocating something other than SFV carries a heavy burden of persuasion."¹³⁴ EDF's proposed *Seaboard* rate design is thus not consistent with our policy. Nor can we require the exact operating scenario EDF proposes—i.e., requiring Spire Missouri to contract for additional capacity on MRT and use all available capacity on MRT before using its Spire STL Pipeline capacity¹³⁵—because the Commission cannot mandate the conditions under which Spire Missouri uses its capacity on the Spire STL Pipeline. Accordingly, the intent of EDF's proposal to use the *Seaboard* rate design to limit profits to Spire cannot be accomplished and we will not alter Spire's rate design.

59. Next, EDF asks that the Commission require Spire to only operate the Spire STL Pipeline when Spire Missouri cannot obtain adequate capacity elsewhere. First, we note that the Commission does not have jurisdiction over Spire Missouri and cannot mandate how Spire Missouri meets its customers' needs. Further, as Spire notes, such a restriction would be difficult to administer as it would require the Commission to independently

order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

¹³² Under the *Seaboard* design, 50% of fixed costs are classified to the demand or reservation charge and 50% are classified to the commodity or usage charge, and 100% of the variable costs are classified to the commodity or usage charge. Commission Jun. 1999 Cost-of-Service Rates Manual at 31.

¹³³ Under the SFV rate design all fixed costs are classified to the demand or reservation charge and all variable costs are classified to the commodity or usage charge. *Id.* at 32.

¹³⁴ Order No. 636, 59 FERC ¶ 61,030 at P 48.

¹³⁵ See supra P 53.

forecast demand in the St. Louis market and available natural gas supplies to St. Louis to determine when a curtailment may occur. We believe that Spire Missouri is the

appropriate entity to make such determinations because it is best positioned to forecast its demand and make arrangements to ensure its customers have access to natural gas.¹³⁶

60. With respect to NRDC and Sierra Club's request that the Commission levy economic penalties on Spire, we find that such an action would not be appropriate under these circumstances, particularly as no entity alleges that Spire violated the NGA, the Commission's regulations, or the terms of its certificate when it was effective. We are mindful of the D.C. Circuit's concerns regarding the potential that Spire engaged in self-dealing and the Commission's failure to seriously examine those concerns.¹³⁷ Nevertheless, these matters have been remanded to the Commission, and are best addressed on remand.

D. Term of Temporary Certificate

61. Spire requests that the temporary certificate be for a limited duration of time, until the Commission can act on remand.¹³⁸ Spire also states that the temporary certificate will "ensure [its] customers can continue receiving service through the upcoming winter."¹³⁹ EDF, in its initial August 5 comments, argues that the Commission should include a clear end date for the temporary certificate to not extend beyond the 2021-2022 winter heating season, and require Spire to file information with the Commission regarding how long it will take to remedy the emergency conditions that Spire asserts in its application.¹⁴⁰ EDF, in its October 20 comments replying to the Missouri PSC, states that if the Commission issues a temporary certificate it should "be put in place for the period of time that is the greater of a) December 1, 2021 through March 31, 2022 or b) from December 1, 2021, until the Commission determines the final disposition of the remand proceeding or a potential new certificate application."¹⁴¹ The Missouri PSC filed a response to the Temporary Certificate Application requesting that the Commission grant

¹³⁶ See Missouri PSC Oct. 5, 2021 Reply Comments at 3 (noting that the Commission lacks authority to direct the business decisions of an LDC—Spire Missouri).

¹³⁷ *Env't Def. Fund v. FERC*, 2 F.4th at 975.

¹³⁸ Spire Aug. 20, 2021 Answer to EDF at 11.

¹³⁹ Spire Application at 1.

¹⁴⁰ EDF Aug. 5, 2021 Protest at 28.

¹⁴¹ EDF Oct. 5, 2021 Answer at 6.

Spire's request until the Commission acts on remand or Spire Missouri implements a contingency plan to serve its customers without the Spire STL Pipeline.¹⁴²

Commission Determination

62. To ensure that there are no disruptions to supply during the pendency of the remand proceeding, and as requested by Spire in its application and consistent with comments from the Missouri PSC and EDF, this temporary certificate will remain in effect until the Commission issues its order on remand.¹⁴³

E. Eminent Domain Authority

63. The Landowner Group, Niskanen Center, and EDF each assert that Spire still lacks title to certain tracts of land, and after the D.C. Circuit's mandate, Spire's ability to rely on eminent domain to gain title to these properties will cease.¹⁴⁴

64. The Landowner Group's protest focuses on the eminent domain proceedings that remain ongoing. In particular, the Landowner Group details how Spire gained possession through preliminary injunctions while the eminent domain proceedings wind their way through court system¹⁴⁵ and assert that Spire has yet to obtain legal title to some easements necessary to operate the project because the amount of just compensation has not been set by the court. Because of this, the Landowner Group argues that once the certificate is vacated, Spire will not be able to acquire these properties through eminent domain and must negotiate rights for these properties.¹⁴⁶ The Landowner Group claims that section 7(h) of the NGA does not confer eminent domain authority upon temporary certificate holders and the Commission should condition the temporary certificate accordingly. It also alleges that Spire continues to fail to properly restore the impacted

¹⁴² Missouri PSC July 30, 2021 Comments at 4.

¹⁴³ The Commission may issue a temporary certificate "pending the determination of an application or a certificate." 15 U.S.C. § 717f(c)(1)(B). *See, e.g., Texas-Ohio Pipeline, Inc.*, 58 FERC ¶ 61,025 (temporary certificate will expire upon the issuance of a final Commission order).

¹⁴⁴ Spire in its recent compliance filings states it cannot complete some of the restoration due to a lack of access on some properties and it would need to exercise eminent domain to regain the temporary access roads used during construction. *See e.g., Spire Nov. 1, 2021 Corrective Action Status Report.*

¹⁴⁵ Landowner Group Aug. 5, 2021 Protest at 7.

¹⁴⁶ *Id.* at 9.

properties and requests that Spire not receive a temporary certificate until it has resolved all previous restoration obligations.

65. The Niskanen Center notes that Spire's characterization of the impacts on landowners and surrounding communities is inaccurate and questions why Spire and Spire Missouri did not act sooner and with expediency to address the impacts of vacatur.

66. CLC and seven landowners, Greg Stout, Sheila Seagraves, Larry Meyer, Ray Sinclair, Pat Parker, Kenneth Davis, and Jay Gettings, filed similar letters documenting impacts to their property from the Spire STL Pipeline. The filings ask that the Commission make sure Spire takes all necessary actions to honor the restoration requirements previously mandated by the Commission.

67. Tim Brown, an impacted landowner, filed a comment requesting that the Commission reject Spire's temporary certificate application. He further alleges that his property value has decreased and the proximity of his home to the pipeline is unsafe.

68. Phil and Zena Brown, impacted landowners, filed comments and a protest of Spire's temporary certificate application asserting that Spire filed an injunction on June 15, 2021, to obtain access to remedy incomplete restoration work and that Spire did not communicate with the landowners prior to seeking the injunction. They further state that Spire offered the Browns an option to perform "self-restoration," but that the amount offered was not enough to remedy the issues.

69. Spire states that it engaged landowners in negotiations prior to initiating eminent domain proceedings¹⁴⁷ and has continued to try to engage landowners to negotiate easements. Further, it notes that the attorneys for the landowners have requested delays in determining just compensation.¹⁴⁸ As for restoration, Spire states that it files status reports tracking and addressing restoration and revegetation issues, which the Commission reviews. Further, Spire avers that it will work with all landowners to address any issues not identified in the Commission's March 18, 2021 Order.¹⁴⁹ Last, Spire contends that eminent domain should be granted to temporary certificate holders,¹⁵⁰

¹⁴⁷ Spire Aug. 26, 2021 Answer to Landowners at 5.

¹⁴⁸ *Id.* at 6.

¹⁴⁹ *Id.* at 9.

¹⁵⁰ *Id.* at 10.

noting that court and Commission precedent precludes the Commission from determining whether eminent domain authority extends to a certificate.¹⁵¹

Commission Determination

70. We reiterate our findings from the November 18, 2021 Rehearing Order regarding eminent domain authority and temporary certificates. As stated in that order, while courts have repeatedly held that Congress gave the Commission no authority to deny or restrict a certificate-holder's exercise of the statutory right of eminent domain in a certificate issued pursuant to the procedures laid out in section 7(e), they have not had occasion to address whether the same holds in the case of a temporary certificate issued without those procedures. Accordingly, we believe that issue, which goes to the scope of section 7(h)—a provision that gives courts a particular implementing role—is better resolved by the courts than the Commission.¹⁵²

71. This authorization does not permit Spire to engage in any construction or to provide any new service. As a condition of accepting this certificate, Spire must continue all restoration activities along the project right-of-way.¹⁵³

F. Other Issues

72. Consistent with the November 18 Rehearing Order, Spire may provide transportation services under existing and new contracts with existing and new customers, so long as those services are consistent with the terms, conditions, and authorizations previously issued by the Commission, including Spire's approved tariff.¹⁵⁴

¹⁵¹ *Id.* at 11 (citing *Berkley v. Mountain Valley Pipeline, LLC*, 896 F.3d 624 (4th Cir. 2018) (citing *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000)); *Limiting Authorizations to Proceed with Construction Activities Pending Reh'g*, Order No. 871-B, 175 FERC ¶ 61,098, at P 45 (2021).

¹⁵² Nov. 18 Rehearing Order, 177 FERC ¶ 61,114 at PP 9-10.

¹⁵³ Spire has stated that it would not construct any new facilities and would continue to perform restoration, as required by the Commission, under any temporary certificate it received. Spire Aug. 26, 2021 Answer to Landowners at 11, 12.

¹⁵⁴ Nov. 18 Rehearing Order, 177 FERC ¶ 61, 114 at P 7.

73. Under section 380.4(27) of the Commission's regulations,¹⁵⁵ our issuance of this temporary certificate is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

The Commission orders:

(A) A temporary certificate of public convenience and necessity is issued to Spire STL Pipeline LLC (Spire) to continue to operate the facilities proposed in its application, as amended by Spire and the Commission, in Docket Nos. CP17-40-000 and CP17-40-001 and constructed that are currently in service, under the earlier terms, conditions, and authorizations, including its tariff. This temporary certificate does not authorize the construction of any additional facilities. As a condition of accepting this certificate, Spire must continue restoration activities along the project right-of-way.

(B) Spire must indicate its acceptance of this certificate, in writing, within three business days of the date of this order. Upon acceptance of this order, the authorization granted by the Commission's September 14, 2021 Temporary Certificate Order will be terminated.

(C) This certificate will be effective until the Commission acts on remand on Spire's pending certificate application.

(D) The motions for late intervention filed by St. Charles County, Missouri and International Paper Company and WestRock Company are granted.

By the Commission. Commissioner Danly is concurring in part and dissenting in part with a separate statement attached.
Commissioner Phillips is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵⁵ 18 C.F.R. § 380.4(27) (2020).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Spire STL Pipeline LLC

Docket No. CP17-40-007

(Issued December 3, 2021)

DANLY, Commissioner, *concurring in part and dissenting in part*:

1. I concur in today's order issuing a temporary certificate to Spire STL Pipeline LLC (Spire) to allow it to continue operating while the Commission considers what action to take on remand.¹ Having recently discovered the Fifth Circuit case, *Hunt Oil Company v. FPC*,² I now conclude that the case law interpreting the scope of the Commission's authority is not as one-sided as I had earlier thought it to be.³ Since the Commission's action here constitutes at least a plausible exercise of our authority, is not explicitly prohibited, and Spire's shipper Spire Missouri Inc. (Spire Missouri) is, from the record now in hand, evidently in dire need of service, I support the issuance of a temporary certificate.

2. While I concur with the issuance of a certificate under section 7(c), I dissent insofar as the Commission has again⁴ refused to address whether section 7(h) of the Natural Gas Act (NGA) confers eminent domain authority upon temporary certificate

¹ *Spire STL Pipeline LLC*, 177 FERC ¶ 61,147 (2021) (December 2021 Order).

² 334 F.2d 474, 480 (5th Cir. 1964) ("There is no indication that, at the time the temporary certificates were issued, the emergency no longer existed. In fact, at that time, the emergency had become bilateral. Consumers were then dependent on the supplies of gas provided pursuant to the original certificates. Under the circumstances, the Commission was authorized by [section] 7(c) of the Act to issue temporary authorization 'in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of (the) application for a certificate.'").

³ See *Spire STL Pipeline LLC*, 176 FERC ¶ 61,160 (Danly, Comm'r, dissenting at PP 2-4) (September 2021 Order).

⁴ *Spire STL Pipeline LLC*, 177 FERC ¶ 61,114 (2021) (Danly, Comm'r, dissenting at PP 7-17).

holders.⁵ It is a complicated question. The Commission should announce its view on the matter in the first instance.

3. While pleased that the Commission has authorized Spire to continue service, I remain troubled by how this entire proceeding has been handled. Although undoubtedly challenging, the Commission's prosecution of this matter has suffered a number of self-inflicted wounds. The first of which was the Chairman's decision not to seek rehearing of the court's vacatur of Spire's certificate, a decision taken in the face of a majority of the Commission deciding otherwise.⁶

4. The unforced errors continued with the Chairman's unprecedented decision to notice Spire's request for a temporary emergency certificate for a 60-day comment period ending October 5, 2021,⁷ despite Spire noting the court's mandate could be issued as soon as August 13, 2021.⁸ It is not typical Commission practice to establish such a long comment period; they are almost invariably set at 21 days.⁹

⁵ December 2021 Order, 177 FERC ¶ 61,147 at P 70.

⁶ See September 2021 Order 176 FERC ¶ 61,160 (Danly, Comm'r, dissenting at P 9 & n.17).

⁷ See September 2021 Order 176 FERC ¶ 61,160 (Danly, Comm'r, dissenting at P 7 n.11).

⁸ Spire STL Pipeline LLC July 26, 2021 Application, Docket No. CP17-40-007, at 3 n.9.

⁹ Standard practice is to notice a certificate application for a 21-day comment and intervention period. See, e.g., Commission Staff September 7, 2021 Notice of Applications and Establishing Intervention Deadline in ANR Pipeline Company Docket No. CP21-488-000 (21-day comment and intervention deadline); Commission Staff September 1, 2021 Notice of Amendment to Application and Establishing Intervention Deadline in Roaring Fork Interstate Gas Transmission, LLC Docket No. CP21-462-000 (21-day comment and intervention deadline); Commission Staff August 26, 2021 Notice of Application Establishing Intervention Deadline in Diversified Midstream, LLC Docket No. CP21-484-000 (21-day comment and intervention deadline); Commission Staff August 26, 2021 Notice of Petition for Declaratory Order in Northern States Power Company Docket No. CP21-486-000 (21-day comment and intervention deadline); Commission Staff August 2, 2021 Notice of Applications and Establishing Intervention Deadline in Rover Pipeline, LLC Docket No. CP21-474-000 (21-day comment and intervention deadline).

5. The Chairman then allowed unnecessary urgency to build by directing FERC's lawyers to neither seek delay of the issuance of the court's mandate nor to support Spire's request to do so. Though true that the "legal dream team"¹⁰ failed to persuade the court to reconsider its ruling, nothing could have been lost by the Commission making such a request. And knowing that nothing could have been lost by asking for a stay or by supporting Spire's request for one, I can only imagine how the silence of the Commission (the agency charged with ensuring the continuity of service) was perceived.

6. The Commission then further complicated matters by issuing a temporary emergency certificate *sua sponte* to avoid a potential cessation of service to Spire Missouri and to buy time to "complete its assessment of the validity of [Spire's] claims and determine an appropriate course of action."¹¹ Not only did this order allow the Commission to (temporarily) rescue the people of St. Louis from a trap that the Commission itself laid down, but it was logically unjustifiable. When reduced to its essence, the order amounted to a finding that there would be an emergency while at the same time explicitly reserving to the Commission the right to determine at a later date whether, in fact, there would be an emergency. Worst of all, the Commission—who issued this order *sua sponte* and could establish its contents according to its whim—set the temporary emergency certificate to expire in the middle of winter, on December 13, 2021, ginning up the artificial urgency leading to today's issuance.

7. The most recent failure came again today with the Commission's second refusal to interpret whether temporary emergency certificates holders are entitled to exercise eminent domain authority under NGA section 7(h). As I stated before, "[t]o require the parties to go to court in order to learn whether NGA section 7(h) confers eminent domain authority upon temporary certificate holders is irresponsible and unnecessary."¹²

¹⁰ Tom Tiernan, *Glick disputes Danly, defends tweak to FERC litigation policy*, THE ENERGY DAILY, Oct. 26, 2021.

¹¹ September 2021 Order, 176 FERC ¶ 61,160 at P 8.

¹² *Spire STL Pipeline LLC*, 177 FERC ¶ 61,114 (2021) (Danly, Comm'r, dissenting at 8). *See also* Carolyn Elefant on behalf of landowners along the Spire STL Pipeline November 24, 2021, Docket No. CP17-40-004, Comments at 2 ("If these issues are not resolved, the landowners will be forced to invest even more time and money to seek appeal of court decisions such as the one attached . . . Although courts have played fast and easy with landowners' property rights under the Natural Gas Act, there is no precedent that would allow a company to take rights in perpetuity under a temporary certificated intended to operate as a short-term, backstop measure to avoid disruption that would otherwise flow from the invalidated authorization.").

8. The impacts of this mismanagement should not be minimized. First responders and the public in St. Louis expended significant resources to prepare for a potential state of emergency (loss of service from Spire starting December 13, 2021), despite there being “many more pressing issues that require[d] [their] time, attention, and money.”¹³ Likewise, Spire Missouri prepared for a potential emergency by “investigating and acquiring alternative sources of supply.”¹⁴ Spire Missouri stated it may “spend \$5 million or more in preparation for the upcoming winter heating season without STL Pipeline service. . . . Spire Missouri will likely need to decide whether to incur these incremental costs in October, which would be unnecessary in the absence of uncertainty regarding Spire STL service”¹⁵ It is now December. In addition, it is likely that commercial and industrial customers prudently hedged their positions by acquiring alternative sources of natural gas to ensure that they would be able to meet their contractual requirements.

9. Some may argue that these expenditures were unnecessary as it was unlikely that the Commission would allow St. Louis to lose natural gas service for the winter. That may be true. However, when one has a duty to serve the public or an obligation to fulfill the terms of a contract, one cannot simply rely on likelihoods. This is especially true here, given the extraordinarily unusual treatment of Spire’s request,¹⁶ the Commission’s surprise issuances,¹⁷ and the fact that neither the Commission nor any commissioner (to

¹³ Missouri Police Chief Association Oct. 28, 2021, Docket No. CP17-40-000, Comments at 1.

¹⁴ Spire Missouri Oct. 5, 2021 Comments at 7.

¹⁵ *Id.* at 7 n.15.

¹⁶ *See supra* note 10.

¹⁷ *See, e.g.*, ANR Pipeline Company et al., Commission Staff Notice of Intent to Prepare an Environmental Impact Statement, Docket Nos. CP20-484-000 and CP20-485-000 (July 7, 2021); Tennessee Gas Pipeline Company, L.L.C., et al., Commission Staff Notice of Intent to Prepare an Environmental Impact Statement, Docket Nos. CP20-50-000 and CP20-51-000 (June 30, 2021); North Baja Pipeline, LLC, Commission Staff Notice of Intent to Prepare an Environmental Impact Statement, Docket No. CP20-27-000 (May 27, 2021); Iroquois Gas Transmission System, L.P., Commission Staff Notice of Intent to Prepare an Environmental Impact Statement, Docket No. CP20-48-000 (May 27, 2021); Tennessee Gas Pipeline Company, L.L.C., Notice of Intent to Prepare an Environmental Impact Statement, Docket No. CP20-493-000 (May 27, 2021); Columbia Gulf Transmission, LLC, Notice of Intent to Prepare an Environmental Impact Statement, Docket No. CP20-527-000 (May 27, 2021); Adelphia Gateway, LLC, Notice of Intent to Prepare an Environmental Impact Statement, Docket No. CP21-14-000 (May 27, 2021); *see also N. Nat. Gas Co.*, 175 FERC ¶ 61,189 (2021) (Danly, Comm’r, concurring in part

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my knowledge) committed to act before the December 13 expiration until November 18, 2021.¹⁸

For these reasons, I respectfully concur in part and dissent in part.

James P. Danly
Commissioner

and dissenting in part at P 1) (discussing the “new ‘standard’—referred to (by some) as the ‘eyeball’ test—for determining the significance of a project’s emissions” set forth in *Northern Natural Gas Company*, 174 FERC ¶ 61,189 (2021)); *Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126 (2021) (reopening the Atlantic Bridge Project certificate order).

¹⁸ See Miranda Wilson, *FERC meeting: Pipelines, blackouts and ‘fearmongering,’* ENERGYWIRE, Nov. 19, 2021 (“Although FERC did not take action yesterday to extend the company’s temporary certificate, Glick said it was his ‘intent’ for the commission to act on Spire’s application before Dec. 13.”).

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