

169 FERC ¶ 61,074  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Spire STL Pipeline LLC

Docket No. CP17-40-004

ORDER AMENDING CERTIFICATE

(Issued October 28, 2019)

1. On August 21, 2019, Spire STL Pipeline LLC (Spire) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> to amend its certificate of public convenience and necessity issued on August 3, 2018, authorizing Spire to construct and operate a new 65-mile-long natural gas pipeline system in Illinois and Missouri (Spire Project).<sup>3</sup> Spire proposes to revise its initial cost-based recourse rates to reflect changes in the cost of construction of the project. For the reasons discussed below, we approve Spire's requested amendment.

**I. Background and Proposal**

2. Spire, an indirect wholly-owned subsidiary of Spire Inc., does not currently own any existing interstate natural gas pipeline facilities and is not engaged in any jurisdictional natural gas transportation or storage operations. Upon commencement of the operations of the Spire Project, Spire will become a natural gas company within the meaning of section 2(6) of the NGA,<sup>4</sup> and, as such, will be subject to the jurisdiction of the Commission.

3. The Certificate Order authorized Spire to construct and operate the Spire Project, consisting of a 65-mile-long pipeline system originating in Scott County, Illinois, extending south through Greene and Jersey Counties, Illinois, then crossing the Mississippi River and extending east through St. Charles County, Missouri, to the Chain of Rocks Metering and Regulation Station in St. Louis County, Missouri. The project is

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<sup>1</sup> 15 U.S.C. § 717f(c) (2018).

<sup>2</sup> 18 C.F.R. pt. 157 (2019).

<sup>3</sup> *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (Certificate Order).

<sup>4</sup> 15 U.S.C. § 717a(6).

designed to provide up to 400,000 dekatherms (Dth) per day of firm transportation service.

4. In its application, Spire states that when it filed the original certificate application, it included a good faith estimate of the Spire Project costs. However, Spire explains, construction costs for the project have increased due to: (1) receiving its certificate authorization after December 1, 2017, which resulted in corresponding delays in Spire's construction schedule, resulting in the need to commence construction during the 2018-19 winter season and 2019 spring season; (2) unanticipated wet weather, including historic rainfall; (3) an unanticipated historic flood event of the Mississippi and Missouri Rivers, topping levees and directly impacting the project's right of way in St. Charles County, Missouri; (4) an unanticipated number of required road improvements; and (5) unanticipated costs associated with agricultural drain tile removal and replacement. Accordingly, Spire requests to revise its initial recourse rates to reflect higher construction costs.

5. Spire now estimates construction costs of \$286,919,366, an increase of 30.25 percent from the estimate of \$220,276,167 authorized in the Certificate Order.<sup>5</sup> According to Exhibit K, Spire's cost estimates include an increase of \$43,336,935 in Construction/Contractor Labor costs, \$14,047,865 in Engineering & Inspection costs, and \$11,830,635 in Allowance for Funds Used During Construction (AFUDC) costs. Spire's revised project costs include a contingency amount of \$2,200,000.<sup>6</sup>

6. In light of these adjustments, Spire proposes to revise its initial recourse rates for firm transportation service under Rate Schedule FTS, interruptible transportation service under Rate Schedule ITS, and park and loan service under Rate Schedule PALS. Spire's new proposed initial Rate Schedule FTS monthly reservation charge is \$10.8579 per Dth, compared to the reservation charge of \$8.3296 per Dth authorized in the Certificate

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<sup>5</sup> Certificate Order, 164 FERC ¶ 61,085 at PP 128, 130, 139. The initial cost estimates and rates approved by the Commission were filed by Spire on January 26, 2018, in response to a staff data request, to adjust the project cost of service to reflect changes in the federal tax code as per the Tax Cuts and Jobs Act of 2017, Pub. L. 115-97, 131 Stat. 2054 (2017), which became effective January 1, 2018.

<sup>6</sup> The Certificate Order approved estimated total project costs that included a contingency of \$17,126,393. *See* Certificate Order, 164 FERC ¶ 61,085 at PP 132-33. Spire is retaining a contingency amount because it anticipates continued uncertainty due to unanticipated weather conditions and outstanding final condemnation and county road repair settlements.

Order.<sup>7</sup> The new proposed initial Rate Schedule ITS and PALS charges are \$0.3570 per Dth, compared to the ITS and PALS charges of \$0.2738 per Dth authorized in the Certificate Order.<sup>8</sup> Spire's usage charge of \$0.000 per Dth will remain the same.<sup>9</sup>

## II. Notice and Interventions

7. Notice of Spire's amendment application was published in the *Federal Register* on August 30, 2019, with comments and interventions due by September 3, 2019.<sup>10</sup> On September 3, 2019, the Missouri Public Service Commission (Missouri PSC) filed a protest. No motions to intervene were filed.

8. Missouri PSC contends that Spire's increased recourse rate should not reflect both the increased construction costs and a 14 percent return on equity (ROE).<sup>11</sup> Missouri PSC reasons that the 14 percent ROE authorized in the Certificate Order was justified in large part by the risk of construction cost overruns.<sup>12</sup> Thus, Missouri PSC argues that Spire's rates already account for the materialized risk of increased construction costs, and it is unjustified and unnecessary to also increase the recourse rate to reflect those increased costs. Missouri PSC also states that to the extent that Spire under-recovers costs, it may file an NGA section 4 rate case to recoup those costs.<sup>13</sup>

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<sup>7</sup> Certificate Order, 164 FERC ¶ 61,085 at P 128.

<sup>8</sup> *Id.*

<sup>9</sup> On August 30, 2019, in Docket No. RP19-1530-000, Spire filed actual tariff records to place the Spire Project's rates into effect, consistent with ordering para. (G) of the Certificate Order and Part 154 of the Commission's regulations. 18 C.F.R. pt. 154 (2019). The filing includes the revised initial recourse rates as Spire's preferred tariff record option and the initial recourse rates authorized in the Certificate Order as an alternative option.

<sup>10</sup> 84 Fed. Reg. 45,747 (2019).

<sup>11</sup> Missouri PSC September 3, 2019 Comment at 5.

<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> *Id.* at 3.

### III. Discussion

9. Because revising the initial cost-based recourse rate requires amending the authorization issued in the Certificate Order, Spire's requests are subject to the Commission's jurisdiction and the requirements of NGA sections 7(c) and (e).<sup>14</sup>

10. The Certificate Order approved the Spire Project in accordance with the Commission's Certificate Policy Statement<sup>15</sup> and found that the project was required by the public convenience and necessity. Spire's proposal to revise its initial recourse rates does not alter this finding.

11. Spire filed amended Exhibits K, L, N, and P to support its revised cost of service and has provided a detailed description of the events that occurred that resulted in the proposed increased construction costs. Spire's revised Exhibit K reflects known costs at this stage of construction and provides a more accurate estimate of total project costs. Additionally, we find that Spire's adjustment to its AFUDC amount reflected in revised Exhibit K reflects a more accurate representation of AFUDC accrual.

12. The Commission has previously approved amendments to certificates to reflect updated construction costs and has not reassessed the pipeline's approved return in those proceedings.<sup>16</sup> With respect to Missouri PSC's contention that it is not just and reasonable for Spire to include both a 14 percent ROE and cost overruns in its initial rates, the approved ROE for the Spire Project is based on Commission policy to incentivize new pipeline companies, such as Spire, to enter the market, and to reflect the higher business risks new market entrants face when constructing a greenfield pipeline, including greater regulatory and contractual risk, as well as the risk of potential increased construction costs.<sup>17</sup> Specifically, the Commission takes into account the fact that

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<sup>14</sup> 15 U.S.C. § 717f(c), (e).

<sup>15</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

<sup>16</sup> See, e.g., *RH energytrans, LLC*, 168 FERC ¶ 61,004 (2019); *Transcontinental Gas Pipe Line Co., LLC*, 165 FERC ¶ 61,154 (2018).

<sup>17</sup> *City of Oberlin v. FERC*, No. 18-1248, slip op. at 18 (D.C. Cir. Sept. 6, 2019) (upholding the Commission's established policy allowing a 14 percent return on equity for greenfield pipelines because of the different risks facing existing pipelines and greenfield pipelines); see also Certificate Order, 164 FERC ¶ 61,085 at P 137 (citing *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, 115 FERC ¶ 61,343, at P 127 (2006) (explaining that existing pipelines who need only acquire

greenfield pipelines have no existing customer base or pipeline system from which to leverage, and may be constructing a significantly larger amount of facilities than existing pipelines typically do.<sup>18</sup> In addition, greenfield pipelines bear the financial risk for any unsubscribed capacity. Thus, contrary to Missouri PSC's assertions, the 14 percent ROE is not merely based on the fact that the costs underlying its rates are necessarily based on estimates, but rather on the overall higher risk faced by Spire as a new market entrant constructing a greenfield pipeline.<sup>19</sup>

13. The Certificate Order also requires Spire to file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based recourse rates, or alternatively file an NGA section 4 rate case.<sup>20</sup> Providing this relevant information will allow the Commission, as well as Missouri PSC, to determine if, and to what degree, the pipeline may be overearning its costs. We therefore disagree with Missouri PSC that the 14 percent ROE negates the need to increase Spire's recourse rates to reflect the increased cost of construction.

14. For these reasons, we approve Spire's proposed revised initial recourse rates for firm and interruptible transportation service and park and loan service under Rate Schedules FTS, ITS, and PALS for the Spire Project, as set forth in Spire's amendment application.

15. This order does not authorize any additional construction beyond what was authorized by the Certificate Order. Accordingly, the Commission's action herein qualifies for a categorical exclusion from the need for environmental review, as set forth in section 380.4(a)(27) of the Commission's regulations.<sup>21</sup>

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

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financing for incremental expansions face less risk than "a greenfield project undertaken by a new entrant in the market.")).

<sup>18</sup> See *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, at P 56 (2018).

<sup>19</sup> Certificate Order, 164 FERC ¶ 61,085 at P 137.

<sup>20</sup> Certificate Order, 164 FERC ¶ 61,085 at P 140.

<sup>21</sup> 18 C.F.R. § 380.4(a)(27) (2019).

The Commission orders:

(A) Spire's request to amend the Certificate Order is granted, as discussed in this order. In all other respects, the Certificate Order is unchanged.

(B) Revised initial rates for Rate Schedule FTS, ITS, and PALS are approved, as discussed in the body of this order.

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

( S E A L )

Kimberly D. Bose,  
Secretary.

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Spire STL Pipeline LLC

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(Issued October 28, 2019)

GLICK, Commissioner, *concurring*:

1. I dissented from the Commission's order issuing Spire STL Pipeline LLC (Spire STL) a certificate of public convenience and necessity because there was nothing in the record to indicate that the Spire Pipeline is needed.<sup>1</sup> If anything, the record was clear that there is no need for the Spire Pipeline. In addition, I was concerned that overbuilding the pipeline network in the St. Louis region would have adverse consequences for ratepayers on existing pipelines.<sup>2</sup>

2. Nothing in the intervening 15 months has alleviated those concerns. Indeed, now three major pipelines serving the region have proposed significant rate increases that are all due, at least in part, to the Spire Pipeline.<sup>3</sup> At no point to date has the Commission adequately considered the effects on existing customers when evaluating whether the Spire Pipeline is in the public interest or required by the public convenience and necessity. Accordingly, although I concur in today's order because I agree that Spire STL has adequately justified its proposed rate increase in this proceeding, I remain deeply concerned that the Commission's public interest analysis misses the forest for the trees in a manner that will only hurt consumers throughout the region.

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<sup>1</sup> *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (Glick, Comm'r, dissenting at 1-4).

<sup>2</sup> *Id.* (Glick, Comm'r, dissenting at 4-6).

<sup>3</sup> In addition, to the Spire Pipeline, MoGas Pipeline LLC (MoGas) and Enable Mississippi River Transmission, LLC (MRT) have also filed to increase their rates. *See* MRT Transmittal Letter, Docket No. RP18-923-00, at 3-4 (June 29, 2018) (proposing a rate increase primarily due to the decision by Spire STL's affiliate, Spire Missouri Inc., to shift its capacity reservations to the Spire Pipeline); MoGas Transmittal Letter, Docket No. RP18-877-000, at 2 (May 31, 2018) (explaining that a rate discount for Spire Missouri was one of the principal causes of its proposed rate increase); MoGas Answer, Docket No. RP18-877-000, at 4-5 (June 18, 2018) (explaining that MoGas was forced to offer Spire Missouri the discounted rate because of the Spire Pipeline).

For these reasons, I respectfully concur.

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Richard Glick  
Commissioner