

# E&E Energywire

## D.C. Circuit battle escalates over FERC pipeline approval

BY MIRANDA WILLSON  
08/26/2021 07:09 AM EDT

**ENERGYWIRE** | An environmental group is calling for a federal court to uphold its decision to toss out a key approval for the embattled Spire STL pipeline in Missouri.

The Environmental Defense Fund urged the U.S. Court of Appeals for the District of Columbia Circuit this week to reject a request from Spire to reconsider its move to ax the pipeline's 2018 permit.

EDF's [brief](#) filed Tuesday is the latest development following a ruling in June that revoked the Federal Energy Regulatory Commission's approval of the pipeline, which has been supplying hundreds of thousands of customers in the St. Louis area with natural gas since coming online in 2019. In a unanimous decision, the D.C. Circuit concluded that FERC had overlooked evidence the pipeline wasn't needed ([E&E News PM](#), June 22).

The decision set off shock waves in the energy industry, and FERC observers said it could push the commission to overhaul how it determines whether a natural gas pipeline is needed.

The ruling also prompted Spire to [request](#) a temporary emergency certificate from FERC so that it could continue operating its pipeline until the independent agency responds in court. Earlier this month, Spire also appealed the federal court ruling, asking that the panel allow the pipeline to keep operating while FERC reassesses the need for the project.

Spire has argued that immediately shutting down the pipeline would compromise natural gas service for between 175,000 and 400,000 households in the St. Louis area this winter ([Energywire](#), July 27). In an appeal filed this month, Spire said the D.C. Circuit's ruling clashed with legal precedent to avoid "substantial" disruptive consequences ([Energywire](#), Aug. 6).

EDF disputed that notion in its brief, arguing that the court's decision was consistent with other cases. The group also said that FERC was the appropriate forum for addressing claims of gas service disruptions that could occur if the pipeline shuts down.

“FERC has the statutory authority, fact-finding tools, and procedural means to evaluate such claims, and to craft a remedy that balances the need to address any truly urgent problems with other public interests,” EDF wrote.

The D.C. Circuit is expected to issue a decision on Spire’s rehearing request in September or October, ClearView Energy Partners LLC wrote in a research note yesterday. The firm said it was “likely” that the court will reject Spire’s request, particularly since FERC didn’t join in the appeal.

“We do continue to think that FERC’s decision not to appeal the remedy hurts Spire STL’s prospects for success,” ClearView said.

## **Pipeline's future a guessing game**

Spire's request for an emergency certificate from FERC could offer another avenue for keeping the pipeline up and running, although the commission is still seeking more information from the company before it acts on the case.

Under the Natural Gas Act, FERC has the authority to grant short-term approvals for continuing gas deliveries. The agency has an “extensive history” of granting such requests, and a recent online search of the term “temporary certificates” yielded nearly 2,000 commission orders, a FERC spokesperson said.

In its application for emergency approval, Spire warned shutting down the project could lead to “serious service disruptions for the end-use customers of the St. Louis area, with potentially fatal consequences.”

Such a move could leave Spire Missouri Inc. — a natural gas utility affiliated with the pipeline company — with few options for ensuring gas service through the winter, according to the application.

“At the end of the day, there’s one set of people that are going to be impacted here, and those are the residents in eastern Missouri and businesses in eastern Missouri,” said Sean Jamieson, general counsel for Spire STL pipeline.

Several Missouri politicians, businesses and unions as well as the Missouri attorney general’s office have rallied to Spire’s defense, urging FERC to grant a temporary certificate. Last week, several industry trade associations and unions representing electric utility employees filed joint comments to FERC in support of Spire’s application.

EDF, however, [told](#) FERC that Spire’s application lacks key information and that the gas provider bears responsibility for failing to account for potential pipeline disruptions — charges Spire has vehemently denied.

“Spire Missouri and Spire STL took a number of actions that we have described as creating risk conditions,” said Erin Murphy, a senior attorney at EDF. “They’re basically creating challenges of their own making to continue providing service to their end users.”

FERC has asked Spire Missouri to provide a “detailed explanation” of the changes Spire Missouri made to its system since it connected with the Spire STL pipeline, among other information.

The request suggests that the commission expects more details to back up Spire’s claims, Murphy said.

“It’s important that FERC acts as a responsible regulator, thinks critically and reviews this application with a close eye,” Murphy said.

The stakes are high for all parties involved in the D.C. Circuit case, according to Gillian Giannetti, a senior attorney at the Natural Resources Defense Council’s Sustainable FERC Project.

“Everybody here is guessing about what’s going to happen next, because this case is so unprecedented,” Giannetti said. “The decisions that are made by the courts, FERC and the pipeline applicant itself will be exceptionally important because they’ll establish precedent for what happens when a pipeline that was never supposed to be approved gets approved.”