

No. 21-848

In the Supreme Court of the United States

SPIRE MISSOURI INC., ET AL., PETITIONERS

v.

ENVIRONMENTAL DEFENSE FUND, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**BRIEF FOR THE FEDERAL RESPONDENT
IN OPPOSITION**

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QUESTION PRESENTED

Whether the court of appeals erred in vacating orders of the Federal Energy Regulatory Commission upon remand to the agency to consider whether to issue a certificate of public convenience and necessity under the Natural Gas Act, 15 U.S.C. 717f(c).

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OPINIONS BELOW

The opinion of the court of appeals (Pet App. 1a-40a) vacating and remanding to the Federal Energy Regulatory Commission is reported at 2 F.4th 953. The orders of the Commission (Pet. App. 41a-257a, 258a-267a, 268a-353a) that were under review are reported at 164 FERC ¶ 61,085, 169 FERC ¶ 61,074, and 169 FERC ¶ 61,134.

The order of the Commission (Pet. App. 354a-370a) on remand granting a temporary certificate of public convenience and necessity for 90 days is reported at 176 FERC ¶ 61,160. A later order of the Commission granting a temporary certificate for the duration of the remand is reported at 177 FERC ¶ 61,147. Additional orders of the Commission denying rehearing or a stay are reported at 177 FERC ¶ 61,114 and 178 FERC ¶ 61,109.

JURISDICTION

The judgment of the court of appeals was entered on June 22, 2021. A petition for rehearing was denied on September 7, 2021 (Pet. App. 371a-374a). The petition for a writ of certiorari was filed on December 3, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Natural Gas Act (NGA or Act), ch. 556, 52 Stat. 821 (15 U.S.C. 717 *et seq.*), provides the Federal Energy Regulatory Commission (FERC or Commission) with exclusive authority to regulate wholesale sales and transportation of natural gas in interstate commerce. 15 U.S.C. 717(b); see *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300-301 (1988). That authority includes determining whether to approve proposed interstate natural gas pipeline facilities. See 15 U.S.C. 717f(c). To construct, operate, or expand an interstate pipeline facility, a company must first obtain from FERC a “certificate of public convenience and necessity.” *Schneidewind*, 485 U.S. at 302 (quoting 15 U.S.C. 717f(c)(1)(A)). FERC generally may issue such a certificate only if it finds that the proposed facility “is or will be required by the present or future public convenience and necessity.” 15 U.S.C. 717f(e).

At the time relevant to this case, the Commission applied a “Certificate Policy Statement,” first issued in 1999, to determine whether a proposed pipeline project satisfied the public convenience and necessity standard. Pet. App. 7a; see *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (Sept. 15, 1999), clarified, 90 FERC ¶ 61,128 (Feb. 9, 2000), further clarified, 92 FERC ¶ 61,094 (July 28, 2000); see also, *e.g.*, *City of Oberlin v. FERC*, 937 F.3d 599, 602

(D.C. Cir. 2019); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015).¹

Under the Certificate Policy Statement, “[t]he threshold requirement in establishing the public convenience and necessity for existing pipelines proposing an expansion project [was] that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers.” 88 FERC ¶ 61,227, at 61,746. To satisfy that requirement, an applicant was required to show a “market need for the project,” such that the project could “‘stand on its own financially’ through investment by the applicant and support from new customers,” rather than subsidization from existing customers. *Myersville Citizens*, 783 F.3d at 1309 (quoting 88 FERC ¶ 61,227, at 61,746). If the Commission found a market need, it would then proceed to “balance[] the ‘public benefits against the potential adverse consequences’ of the proposal.” *Ibid.* (quoting 88 FERC ¶ 61,227, at 61,745).

2. In January 2017, petitioner Spire STL Pipeline LLC (Spire STL) applied to the Commission for a certificate of public convenience and necessity to construct and operate a natural gas pipeline between Scott County, Illinois, and St. Louis County, Missouri. Pet. App. 4a; see *id.* at 41a-42a. The proposed pipeline was designed to transport natural gas to petitioner Spire Missouri Inc. (Spire Missouri), a local distribution company affiliated with Spire STL. *Id.* at 42a. Spire

¹ The Commission recently adopted an Updated Certificate Policy Statement, which applies in any pending or future case in which a certificate has not already been issued. *Updated Policy Statement on Certification of New Interstate Natural Gas Facilities*, 178 FERC ¶ 61,107, 2022 WL 509076 (Feb. 18, 2022); see 87 Fed. Reg. 11,548, 11,562 (Mar. 1, 2022).

Missouri “provides natural gas distribution service to approximately 650,000 customers in the St. Louis metropolitan area and surrounding counties in eastern Missouri.” *Id.* at 42a-43a. As evidence of market need, Spire STL submitted a preconstruction contract (known as a “precedent agreement”) with Spire Missouri, subscribing to 87.5% of the proposed pipeline’s transport capacity of natural gas. *Id.* at 4a. Spire STL maintained that the project was “intended to connect the St. Louis area to competitively priced and productive natural gas supply areas in the eastern and western United States,” which would in turn “increase the reliability of Spire Missouri’s system and the security of its supply, as well as result in access to lower-priced gas supplies.” *Id.* at 46a-47a.

The Commission granted the requested certificate. Pet. App. 41a-232a. As relevant here, the Commission determined that Spire STL had made the necessary showing of market need for the project based on the precedent agreement with Spire Missouri. *Id.* at 88a-102a. The Commission also found that “the benefits that the Spire STL Project will provide to the market, including enhanced access to diverse supply sources and the fostering of competitive alternatives, outweigh the potential adverse effects on existing shippers, other pipelines and their captive customers, and landowners or surrounding communities.” *Id.* at 129a-130a. After conducting an environmental review of the proposed project, see *id.* at 175a-215a, the Commission issued Spire STL a certificate of public convenience and necessity to construct and operate the pipeline subject to certain environmental conditions, *id.* at 216a; see *id.* at 219a-232a. Commissioners LaFleur and Glick dissented. See *id.* at 233a-243a, 244a-257a. The Commission later

amended the certificate in light of revised cost estimates. *Id.* at 258a-265a.

Several parties to the agency proceedings, including respondent Environmental Defense Fund (EDF), filed timely requests for rehearing. Pet. App. 268a. The Commission dismissed or denied those requests, thus adhering to its prior order granting the certificate. *Id.* at 268a-321a. In particular, the Commission rejected EDF's argument that relying on the precedent agreement between Spire STL and Spire Missouri to find market need was inconsistent with the Certificate Policy Statement or the NGA. See *id.* at 275a-283a. Commissioner Glick again dissented. *Id.* at 322a-353a.

When the Commission denied rehearing, Spire STL had already "completed virtually all construction of the pipeline." Pet. App. 19a. The pipeline has been in operation since 2019. See *ibid.*

3. EDF and a private landowner petitioned for review in the D.C. Circuit, and petitioners intervened to support the Commission's orders. Pet. App. 4a-5a; see 20-1016 C.A. Order 1 (Mar. 13, 2020). The court of appeals dismissed the landowner's petition for lack of standing, granted EDF's petition, vacated the Commission's orders, and remanded. Pet. App. 1a-40a.

In the court of appeals' view, the Commission acted arbitrarily and capriciously in relying on the precedent agreement to demonstrate market need and in balancing the public benefits of the project against possible adverse impacts. Pet. App. 31a-38a. The court acknowledged that "precedent agreements are 'always . . . important evidence of demand for a project,'" and that "such agreements may demonstrate both market need and benefits that outweigh adverse effects of a new pipeline." *Id.* at 31a (quoting *Minisink Residents for*

Env'tl. Pres. & Safety v. FERC, 762 F.3d 97, 111 n.10 (D.C. Cir. 2014)). But it nonetheless found that the Commission had erred in treating the precedent agreement between Spire STL and Spire Missouri as sufficient to show market need in this particular case, in light of what the court considered “strong arguments” undercutting the probative force of the agreement, *id.* at 32a—including “plausible evidence of self-dealing” between the two corporate affiliates, *id.* at 37a. The court stated that, on this record, the Commission was required “to ‘look behind’ the precedent agreement in determining whether there was market need.” *Ibid.*

Petitioners had argued that, in the event the court of appeals granted EDF’s petition, it should nonetheless “[r]emand without vacatur” to avoid disrupting the operation of the pipeline. Pets. C.A. Intervenor Br. 42. The court declined to do so. Pet. App. 39a-40a. The court observed that, under its precedent, “[t]he decision whether 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.” *Id.* at 39a (quoting *Allied-Signal, Inc. v. United States Nuclear Regulatory Comm’n*, 988 F.2d 146, 150-151 (D.C. Cir. 1993)). Applying those factors here, the court determined that “vacatur is appropriate” in light of what the court perceived as “serious deficiencies” in the Commission’s orders. *Ibid.* The court also stated that “remanding without vacatur under these circumstances would give the Commission incentive to allow ‘building first and conducting comprehensive reviews later.’” *Id.* at 40a (quoting *Standing Rock Sioux Tribe v. United States Army Corps of Eng’rs*, 985

F.3d 1032, 1052 (D.C. Cir. 2021), cert. denied, No. 21-560 (Feb. 22, 2022)) (brackets omitted).

4. The result of vacating the Commission's orders would have been to deprive petitioners of a lawful basis for operating the Spire STL pipeline. After the panel decision in the court of appeals, petitioners pursued a number of avenues for avoiding that result, which they argued would threaten the supply of natural gas to existing customers in the St. Louis area. The court of appeals and the Chief Justice denied petitioners' requests for emergency relief, but, as explained below, the Commission exercised its authority to ensure that the pipeline may continue to operate during the remand.

The court of appeals entered judgment on June 22, 2021. Pet. App. 1a. In July 2021, Spire STL filed an application to the Commission for a temporary certificate of public convenience and necessity pending remand. Pets. Supp. Br. 2. Under the NGA, the Commission may "issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate." 15 U.S.C. 717f(c)(1)(B). The Commission gave public notice of Spire STL's application and established a schedule for intervention and public comments. 176 FERC ¶ 61,160, 2021 WL 4192131, at *2.

On August 5, 2021, petitioners requested panel or en banc rehearing in the court of appeals. Pets. C.A. Reh'g Pet. 1-4. The court denied petitioners' rehearing requests on September 7. Pet. App. 371a-372a, 373a-374a. On September 13, petitioners moved in the court of appeals for stay of the appellate mandate while the Commission considered petitioners' request for a temporary

certificate of public convenience and necessity during remand. Pets. C.A. Mot. to Stay Mandate 1-2.

The following day—*i.e.*, September 14, 2021—the Commission acted on its own motion to issue a temporary certificate for 90 days. Pet. App. 354a-361a. The Commission explained that, when the appellate mandate ultimately issued, petitioners would “lack authorization to operate the Spire STL Pipeline[,] potentially jeopardizing Spire Missouri’s ability to obtain adequate supply, a situation that could be dire during the upcoming winter heating season.” *Id.* at 358a. The Commission also explained that some of the comments it had received to date “suggest that an abrupt cessation of service on the Spire STL Pipeline could negatively impact customers in the St. Louis region, especially during extreme weather events.” *Ibid.* Commissioner Danly dissented. *Id.* at 362a-370a. The Commission later denied rehearing or a stay of its September 14 order, while clarifying its scope—again, over Commissioner Danly’s dissent. 177 FERC ¶ 61,114.

On October 1, 2021, the court of appeals denied petitioners’ motion to stay issuance of the appellate mandate. On October 4, petitioners filed an application in this Court to stay the issuance of the mandate pending the filing and disposition of a petition for a writ of certiorari. No. 21A56. On October 15, the Chief Justice denied petitioners’ application. *Ibid.*

The petition for a writ of certiorari was filed on December 3, 2021. Later that day (see Pets. Supp. Br. 2), the Commission issued a temporary certificate authorizing the pipeline to continue to operate “until the Commission acts on remand on Spire’s pending certificate application.” 177 FERC ¶ 61,147, 2021 WL 5757281, at *19. The Commission explained that it had “received

over 100 comments and reply comments from various stakeholders” and had permitted numerous interested parties to intervene and be heard. *Id.* at *4. On the basis of that record, the Commission again determined that the standard for issuing a temporary certificate “in cases of emergency” was satisfied. *Id.* at *5 (quoting 15 U.S.C. 717f(c)(1)(B)). In particular, the Commission explained that “alternative firm interstate transportation for Spire Missouri to replace the Spire STL Pipeline is not available,” *id.* at *12, and that Spire Missouri could not feasibly replace facilities that it had removed from service in reliance on the Spire STL pipeline project, *ibid.* The temporary certificate was therefore necessary “to allow maintenance of service, particularly during the winter heating season.” *Id.* at *13. Indeed, the Commission found that, without a temporary certificate, Spire Missouri would “experience a loss of gas supply potentially impacting hundreds of thousands of homes and business[es] during the winter heating season.” *Ibid.* Commissioner Danly concurred in part and dissented in part. *Id.* at *19-*20.

Various parties, including EDF, sought rehearing or a stay of the Commission’s December 3 order granting a temporary certificate pending remand. 178 FERC ¶ 61,109, 2022 WL 500802, at *1. On February 17, 2022, the Commission denied those requests, while modifying the discussion in its prior order to “continue to reach the same result.” *Ibid.* EDF had argued that any temporary certificate should “impose conditions * * * to address the concerns of self-dealing between Spire [STL] and Spire Missouri raised by the D.C. Circuit.” *Id.* at *4. The Commission explained that it would address those concerns “when [it] acts on remand on Spire’s pending certificate application,” but that the

only issue before it at that juncture was “whether to issue a temporary certificate in the heart of winter where the health and welfare of hundreds of thousands of customers is at stake.” *Ibid.* And with respect to that question, the Commission adhered to its prior determination that an “emergency exists and that the temporary certificate is needed to stave off the potential of gas shortages.” *Ibid.* Commissioner Danly again concurred in part and dissented in part. *Id.* at *5-*6.

The remand proceedings are ongoing. The Commission is considering whether the Spire STL pipeline project satisfies the public convenience and necessity standard under 15 U.S.C. 717f(c), in light of the court of appeals’ decision. The Commission has also given notice that it intends to prepare a supplemental environmental impact statement concerning the project. 86 Fed. Reg. 72,943, 72,943 (Dec. 23, 2021).

ARGUMENT

Petitioners contend (Pet. 14-23) that the court of appeals erred in vacating the Commission’s orders pending remand, and that the decision below departs from the approach other courts have taken to the issue of remand without vacatur. Those contentions do not warrant further review, particularly in this case. The petition for a writ of certiorari was filed on December 3, 2021. On that same day, the Commission granted a temporary certificate of public convenience and necessity for the duration of the remand proceedings. See 177 FERC ¶ 61,147, 2021 WL 5757281, at *18-*19. Accordingly, the question presented has no current practical significance to petitioners’ ability to operate the pipeline. This Court recently denied a petition for a writ of certiorari raising a similar question. See *Dakota*

Access, LLC v. Standing Rock Sioux Tribe, No. 21-560 (Feb. 22, 2022). The same course is warranted here.

1. As petitioners recognize (Pet. 14), the court of appeals has “traditionally articulated two factors to guide its determination of whether to vacate” an agency action pending a remand to the agency for further proceedings. Those factors are “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.” *Allied-Signal, Inc. v. United States Nuclear Regulatory Comm’n*, 988 F.2d 146, 150-151 (D.C. Cir. 1993) (quoting *International Union, United Mine Workers of Am. v. Federal Mine Safety & Health Admin.*, 920 F.2d 960, 967 (D.C. Cir. 1990)); see, e.g., *Apache Corp. v. FERC*, 627 F.3d 1220, 1223 (D.C. Cir. 2010) (Kavanaugh, J.).

The court of appeals applied those factors here and determined that “vacatur is appropriate.” Pet. App. 39a. The court stated that “it is far from certain that FERC ‘chose correctly,’” given the “serious deficiencies” that the court perceived in the Commission’s orders. *Ibid.* (quoting *Allied-Signal*, 988 F.2d at 150). The court acknowledged that “the pipeline is operational” and that vacatur could cause “disruption.” *Ibid.* But it deemed the “second *Allied-Signal* factor” insufficient to outweigh the first on this particular record. *Id.* at 39a-40a (citation omitted). The court also stated that “remanding without vacatur under these circumstances” could create perverse incentives that would encourage pipeline developers to complete as much of an

authorized project as possible before judicial review. *Id.* at 40a.²

Petitioners contend (Pet. 19) that the court of appeals “transform[ed] * * * the *Allied-Signal* test” in this case by applying an “overwhelming presumption in favor of vacatur.” But the court did not purport to recognize any such “across-the-board presumption.” Pet. 21. Although the court stated that “vacatur ‘is the normal remedy,’” Pet. App. 39a (quoting *Brotherhood of Locomotive Eng’rs & Trainmen v. Federal R.R. Admin.*, 972 F.3d 83, 117 (D.C. Cir. 2020)) (brackets omitted), that observation is consistent with statements in earlier decisions and does not, standing alone, suggest any novel transformation of the *Allied-Signal* factors. See, e.g., *Allina Health Servs. v. Sebelius*, 746 F.3d

² The pipeline construction that occurred in this case during the agency proceedings, before judicial review, predated two significant developments. First, in 2020, the Commission revised its regulations so that “authorization to proceed with construction” of a new pipeline facility will not be granted until the Commission acts on any timely request for rehearing filed in opposition to the project. 18 C.F.R. 157.23(b); see *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, 171 FERC ¶ 61,201, 2020 WL 3072333 (June 9, 2020), clarified, 175 FERC ¶ 61,098, 2021 WL 1773133 (May 4, 2021) (clarifying the new rule and announcing a general policy of presumptively staying certificate authorizations to prevent use of eminent domain pending resolution of timely requests for rehearing by landowners). Second, in *Allegheny Defense Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc), the court of appeals held that the Commission’s former practice of issuing tolling orders with respect to applications for rehearing did not constitute “act[ing] upon” the applications and therefore did not operate to preclude the applicants from seeking judicial review under the provisions of the NGA deeming an application for rehearing to have been denied when the Commission fails to act on it within 30 days. 15 U.S.C. 717r(a); see *Allegheny Def.*, 964 F.3d at 9-19.

1102, 1110 (D.C. Cir. 2014) (“[A]lthough vacatur is the normal remedy, we sometimes decline to vacate an agency’s action.”); *Advocates for Highway & Auto Safety v. Federal Motor Carrier Safety Admin.*, 429 F.3d 1136, 1151 (D.C. Cir. 2005) (“While unsupported agency action normally warrants vacatur, this court is not without discretion.”) (citation omitted). Accordingly, petitioners fail to show that the decision below reflects or establishes any new “powerful presumption in favor of vacatur.” Pet. 23.

Petitioners also contend (Pet. 16-18) that the decision below conflicts with the decisions of other courts of appeals. That contention, however, rests on the premise that the decision below applied an “overriding presumption in favor of vacatur.” Pet. 16. As explained above, that premise is unsound. The court of appeals applied the *Allied-Signal* factors to the particular facts of this case without announcing any “overriding presumption” of vacatur, and petitioners themselves appear to view the *Allied-Signal* factors as consistent with the approaches that other circuits have adopted. *Ibid.*; see, e.g., *Texas Ass’n of Mfrs. v. United States Consumer Prod. Safety Comm’n*, 989 F.3d 368, 389 n.186 (5th Cir. 2021) (citing *Allied-Signal*); *Prometheus Radio Project v. FCC*, 824 F.3d 33, 52 (3d Cir. 2016) (citing *Allied-Signal*); *Black Warrior Riverkeeper, Inc. v. United States Army Corps of Eng’rs*, 781 F.3d 1271, 1290 (11th Cir. 2015) (citing *Allied-Signal*). Petitioners thus fail to identify any substantial division of authority warranting this Court’s review.

Petitioners also err in suggesting (Pet. 15) that the court of appeals has effectively foreclosed the possibility of remand without vacatur in cases “challenging agency authorizations for the construction and

operation of oil and gas pipelines.” The only such decision that petitioners invoke need not be read so broadly, and this Court recently declined to review it. See *Standing Rock Sioux Tribe v. United States Army Corps of Eng’rs*, 985 F.3d 1032, 1050-1053 (D.C. Cir. 2021), cert. denied, No. 21-560 (Feb. 22, 2022). And in two other recent cases involving FERC orders, the court of appeals determined that remand without vacatur was appropriate in light of the same *Allied-Signal* factors applied in this case. See *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1332 (D.C. Cir. 2021) (finding that “both [*Allied-Signal*] factors weigh against vacatur,” where it was “reasonably likely that on remand the Commission can redress its failure of explanation * * * while reaching the same result,” and “vacating the orders would needlessly disrupt completion of the projects”) (emphasis omitted); *City of Oberlin v. FERC*, 937 F.3d 599, 611 (D.C. Cir. 2019) (remanding without vacatur after finding “it plausible that the Commission will be able to supply the explanations required”).

At bottom, the court of appeals made a fact-bound, case-specific determination that remand without vacatur was inappropriate under its precedent. Although that determination is reasonably debatable, it does not support petitioners’ theory that the court has transformed the *Allied-Signal* factors or has established any novel presumption in favor of vacatur. And, as explained below, the Commission has already taken steps to protect the public from any harms that vacatur otherwise threatened. Further review is not warranted.

2. In any event, this case would be an unsuitable vehicle in which to address the question presented because proceedings on remand before the Commission

have deprived that question of any current practical significance. After the court of appeals declined to remand without vacatur, the Commission exercised its authority under 15 U.S.C. 717f(c)(1)(B) to issue a temporary certificate to permit continued operation of the pipeline during the remand. See pp. 8-10, *supra*. Accordingly, whether the court erred in vacating the Commission's prior orders is now largely academic in this particular case. Petitioners have a legal basis for continuing to operate the Spire STL pipeline while the Commission considers their application on remand.

In a supplemental brief filed after the Commission granted the temporary certificate, petitioners argue (Supp. Br. 3-7) that the question presented nonetheless warrants review. As the party invoking this Court's jurisdiction, petitioners bear the burden of demonstrating a continuing case or controversy with respect to vacatur of the Commission's prior orders. See, *e.g.*, *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (explaining that "Article III demands that an 'actual controversy' persist throughout all stages of litigation" to permit the exercise of federal jurisdiction, including on appeal) (citation omitted); see also *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) (intervenor standing). Petitioners argue (Supp. Br. 3) that the vacatur controversy is not moot for two reasons. But the existence of such a threshold jurisdictional question would complicate the Court's review and is itself a further basis for denying the petition.

Petitioners' arguments also do not provide any compelling basis for further review at this time. Petitioners first contend (Supp. Br. 4-5) that the temporary certificate granted by the Commission may itself be set aside on rehearing or judicial review. But after the filing of

petitioners' supplemental brief, the Commission denied rehearing. 178 FERC ¶ 61,109, 2022 WL 500802; see pp. 9-10, *supra*. If an aggrieved party with standing petitions for judicial review of the Commission's order granting a temporary certificate, petitioners will have an opportunity to intervene in the appellate proceedings and could seek this Court's review of any adverse decision. Moreover, no party to the rehearing proceedings challenged the Commission's statutory authority to issue the temporary certificate, so no such challenge could now be properly raised in a petition for review. See 15 U.S.C. 717r(b) ("No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing[.]").

Petitioners further contend (Supp. Br. 5-6) that the vacatur question remains practically significant because some landowners have argued that a temporary certificate of public convenience and necessity does not permit the certificate holder to exercise the power of eminent domain under 15 U.S.C. 717f(h). The Commission itself declined to address that issue in its order on rehearing, see 178 FERC ¶ 61,109, 2022 WL 500802, at *2-*4, but two district courts have concluded that the temporary certificate issued to Spire STL confers the same eminent-domain authority as the original, now-vacated certificate. See *Spire STL Pipeline LLC v. 3.31 Acres of Land*, No. 18-cv-1327, 2021 WL 5492897, at *1, *3 (E.D. Mo. Nov. 23, 2021); *Spire STL Pipeline LLC v. Jefferson*, No. 18-cv-3204, 2021 WL 6931807, at *2 (C.D. Ill. Oct. 28, 2021), amended in part, 2022 WL 475205 (C.D. Ill. Jan. 7, 2022). The speculative possibility that a future court might reach a different conclusion does not justify further review of the vacatur question

petitioners seek to present here—a question that is fact-bound in this case and that, at this time, has no practical consequences for the continued operation of petitioners’ pipeline.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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