

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of The Empire)
District Gas Company d/b/a Liberty for a)
Certificate of Convenience and Necessity to)
Construct, Install, Own, Operate, Maintain, and) Case No. GA-2023-0110
Otherwise Control and Manage a Natural Gas)
Distribution System in and Around Platte County,)
Missouri as an Expansion of its Existing Certified)
Areas.)

APPLICATION FOR REHEARING

COMES NOW Spire Missouri Inc. (“Spire Missouri”), pursuant to 20 CSR 4240-2.160 and Mo. Rev. Stat. 386.500, and respectfully submits this *Application for Rehearing* (“Rehearing Application”) in Case No. GA-2023-0110, requesting that the Missouri Public Service Commission vacate its January 25, 2023 Order granting the Empire District Gas Company d/b/a Liberty (“EDG”) a certificate of convenience and necessity (“CCN”) for six sections in Platte County and reopen the record, stating the following:

PROCEDURAL HISTORY

1. On September 21, 2022, EDG filed with the Missouri Public Service Commission (“Commission”) its *Application for a Certificate of Convenience and Necessity and Request for Waiver* (“CCN Application”) for approval of a CCN for six sections in Platte County (“CCN Area”).
2. On January 9, 2023, Staff of the Commission (“Staff”) completed its investigation and issued its Memorandum, recommending approval of the CCN Application, subject to Staff’s conditions.
3. As no intervention requests were received, and no party requested a hearing, the Commission did not hold a hearing on EDG’s CCN Application.

4. On January 25, 2023, the Commission issued its *Order Granting Certificate of Convenience and Necessity* (“Order”), approving EDG’s CCN Application, with an effective date of February 25, 2023.

5. While Spire Missouri has not requested nor been granted intervention in this case, should the Commission grant its request for rehearing, Spire Missouri will apply for intervention by right because, as discussed below, it has property interests in and around the CCN Area that have not and cannot be represented by any party already involved in this case.

6. Spire Missouri also states that it was unaware, nor had reason to know, that the CCN was filed before the Commission issued its Order. Spire Missouri only recently discovered that the CCN was filed because Hunt Midwest (“HMW”), the developer and owner of the KCI Logistics Park (“Park”) that EDG is primarily seeking to serve, alerted Spire Missouri that the CCN Application had been approved by the Commission. Upon information and belief, HMW itself was only contacted for the first time by EDG after the Commission issued its Order.

7. Spire Missouri has an interest in this CCN Application because it has active facilities and is serving customers in the CCN Area. Additionally, Spire Missouri and HMW have been in discussions for over a year to provide natural gas service to multiple projects in and around the CCN Area.

REQUEST FOR REHEARING

8. Spire Missouri submits this Rehearing Application because the record on which the Commission has issued its Order is incomplete. This is primarily because Spire Missouri has active facilities and is serving customers within the area requested by EDG. This fact has not been provided to the Commission up to this point, as it was neither noted by EDG in its application nor by Staff in its report.

9. In determining whether a CCN application is “necessary or convenient for the public service,” the Commission examines five criteria. *In Re Tartan Energy Co.*, 3 Mo. P.S.C. 173 (1994). As nothing in the record discusses Spire Missouri’s facilities and customers in the CCN Area, Spire Missouri submits that three of the five *Tartan* criteria must be reanalyzed by the Commission: (1) whether service is needed, (2) whether the applicant’s proposal is economically feasible, and (3) does the service promote the public interest. Without considering Spire Missouri’s facilities and customers served in the CCN Area, the Commission’s Order is insufficiently supported.

**SPIRE MISSOURI ALREADY HAS ACTIVE FACILITIES AND IS PROVIDING
NATURAL GAS SERVICE IN THE PROPOSED SERVICE AREA.**

10. In its CCN Application, EDG states that “it’s EDG’s belief that there is no natural gas service available in the described area at the present time” and that “the area is in need of gas service, and a delay in filing this [CCN Application] would delay construction and the ultimate provision of service.” In analyzing whether service is needed, Staff states that the CCN Application is expected to attract warehousing and manufacturing businesses and residential developments. However, contrary to EDG’s statements in its CCN Application, Spire Missouri does have facilities and is serving customers in the areas requested, which should be considered by the Commission in determining whether service is needed.

11. Spire Missouri’s facilities in the CCN Area consist of 5949 feet of 6 inch main, 3563 feet of 4 inch main, and services in Sections 1 and 2 of T52NR34W and Sections 35 and 36 of T53R34W in Platte County. These facilities are represented in **Exhibit A**, with purple lines representing mains and green lines representing services. These facilities were installed in 1997 and 2004 by Missouri Gas Energy (“MGE”), and MGE started providing gas service utilizing these facilities between 2000 to 2011. Spire Missouri, then the Laclede Gas Company, subsequently

acquired MGE. Spire Missouri continued serving these customers, justifiably relying on the fact that MGE was serving these customers prior to the acquisition. There are currently two residential customers and one industrial customer in Section 2 of T52N R34W and two residential customers in Section 36 of T53N R34W.

12. With the record missing any discussion of Spire Missouri's existing facilities, the Commission should grant Spire Missouri's rehearing request as the Staff's and the Commission's finding as to whether service is in fact needed is unsupported.

13. Additionally, in reviewing the docket, Spire Missouri would note its concerns with the due diligence performed by EDG in assessing the status of natural gas service in the area, and its representations to the Commission and to Staff.

14. In its CCN Application, EDG states its belief that there was no natural gas service in the area. As required by the Commission's Rules, EDG provided a list of the names and addresses of ten or more residents or landowners located within the proposed service area. Having applicants provide this list requires applicants to actually assess the need for service. While Staff found that EDG met this requirement, Spire Missouri is concerned that none of its existing customers, especially the large industrial customer, were contacted by EDG. Had EDG contacted this customer to assess its need for natural gas service, EDG would have been alerted to Spire Missouri's presence in the area. This concern is compounded by the fact that Staff notes multiple commercial businesses that are located near the Park, yet makes no reference to the large industrial customer within it.

15. Further, Spire Missouri would note that the lack of communication from EDG to Spire Missouri is concerning. The Park, pending the outcome of this Rehearing Application, stretches across both utilities' existing CCN areas. While another utility's relationship to a

developer would not normally be relevant to an analysis of a CCN application, Spire Missouri questions how its relationship with Hunt Midwest and the Park was not further investigated, outside of communicating with Hunt Midwest directly. From the map provided by EDG with its application, attached as **Exhibit B**, it is clear that nearly half of the Park is in the service territory of Spire Missouri. However, in response to Staff data requests, it appears that EDG merely notes that Spire Missouri's service territory is directly south of the requested area, and that EDG is "unfamiliar with the exact location of Spire Missouri's infrastructure."¹ With the Park that EDG is seeking to serve already being in another utility's service territory, EDG, and Staff, should have been prompted to inquire further into whether Spire Missouri was already serving a part of the Park and where its existing infrastructure may have been located.

**PROVISION OF SERVICE FROM SPIRE MISSOURI MAY BE MORE
ECONOMICALLY FEASIBLE**

16. As Spire Missouri has existing facilities in the requested CCN area, it submits that the Commission must also reexamine its analysis on the economic feasibility of the project. In its Application, EDG states that the "cost of the project will be paid for by Applicant or customer supplied funds pursuant to EDG's extension policy." While Spire Missouri does not suggest that EDG's proposal is not economically feasible for EDG, we would note that the proposal may not be the most economically feasible proposal for current and future customers throughout the service area.

17. Spire Missouri already has facilities in the sections requested, including within the Park, which are already able to serve and support the needs of both residential and industrial customers. Having these major facilities already installed would certainly reduce the costs borne by future customers to receive natural gas service, including those in the Park. More importantly,

¹ Staff Memorandum filed January 9, 2023, p.2-3.

unnecessary costs should not be forced on customers already receiving natural gas service from Spire Missouri. These customers have already contributed to the infrastructure currently serving them, and, should EDG provide them natural gas service under this CCN, they would have to contribute to new infrastructure.

18. Finally, in its Memorandum, Staff states that its findings on the *Tartan* criteria are based on not only its conditions to approval, but also on the realization of expected EDG customer additions. While not necessarily the fault of Staff, Spire Missouri would note at least two deficiencies in Staff's considerations. The first is that the 3,300-acre park will not solely be served by EDG. Nearly half of the Park is located within Spire Missouri's service territory, yet it is not clear that the feasibility analysis considers the possibility that Spire Missouri would serve a large portion of the Park. The second is EDG's ability to fully present a feasibility study for its CCN Application, when, again, subject to Spire Missouri's present information and belief, EDG had not yet contacted the Park developer until after the Application was filed. Spire Missouri finds it hard to believe that the feasibility study was possible without knowing the needs and timelines of the development EDG seeks to serve.

19. As the economic feasibility analysis by EDG, Staff, and the Commission was made with insufficient support and information, the Commission should grant this rehearing request so that its order is based on a complete record.

DOES THE SERVICE PROMOTE THE PUBLIC INTEREST?

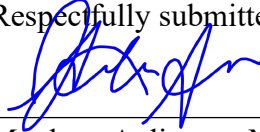
20. The final *Tartan* criteria that Spire Missouri contends is not sufficiently addressed by the record is whether the service by EDG would promote the public interest. In the *Tartan* case, the Commission determined that there was no specific standard as to whether a proposal is in the public interest, deciding instead that the positive findings on the other four criteria would support

a finding that the proposal would promote the public interest. Here, because the record is clearly incomplete as to whether service is needed and whether the proposal is economically feasible for the reasons set forth above, the record would also be lacking as to whether the proposal is in the public interest, necessitating that the Commission grant this rehearing request.

21. In addition, the public interest is not served by the haphazard approach by EDG in preparing this CCN Application. EDG did not appear to have done sufficient due diligence in assessing the presence of natural gas service in the area and did not contact Spire Missouri, the other utility with the Park in its service territory, to determine their existing infrastructure in the area. Instead of assessing customers' needs beforehand, EDG appears to have attempted to seize the opportunity to serve the logistics park with minimal notice to the affected parties. This approach risks overbuilding natural gas distribution infrastructure in these sections, adding unnecessary costs to both the current and future customers inside and outside of the Park.

WHEREFORE, as Spire Missouri has active and existing facilities in the CCN Area that were not considered by the Commission in approving this CCN, Spire Missouri respectfully requests that the Commission suspend EDG's Second Revised Sheet No. 4 filed on January 26, 2023 pending its decision on this Rehearing Application, grant this Rehearing Application, vacate its January 25, 2023 Order granting EDG's CCN Application, and any other relief as just and reasonable.

Respectfully submitted,



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ATTORNEYS FOR SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail to all counsel of record on this 24th day of February, 2023.

/s/ Lew Keathley

Lew Keathley