

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

Symmetry Energy Solutions, LLC,)	
)	
Complainant,)	
)	
v.)	File No. GC-2022-0062
)	
The Empire District Gas Company)	
)	
Respondent.)	

ANSWER OF THE EMPIRE DISTRICT GAS COMPANY

Pursuant to Missouri Public Service Commission (the “Commission”) Rule 20 CSR 4240-2.070(9) and the Commission’s August 31, 2021 Notice of Complaint and Order to Not Discontinue Service, The Empire District Gas Company d/b/a Liberty Utilities or Liberty (“Empire”), by and through its undersigned counsel, hereby answers the August 30, 2021 Complaint filed by Symmetry Energy Solutions, LLC (“Symmetry”).

Under the terms of Empire’s Tariff on file with the Commission and the parties’ Marketer/Aggregator Agreement, Symmetry’s Complaint must be denied. Throughout Winter Storm Uri and its aftermath Empire acted appropriately and consistent with its Tariff to preserve its gas distribution system and ensure that its customers (and Symmetry’s) were able to continue to burn gas during the extreme winter weather. The same cannot be said for Symmetry. When Empire called an Operational Flow Order (“OFO”) and ordered Symmetry to adjust its “nominations to ensure you are NOT SHORT,” Symmetry did the opposite. It nominated only nominal amounts of gas while the OFO was in effect. Meanwhile Symmetry’s customers in some cases *increased* their gas consumption. Symmetry’s actions jeopardized Empire’s system and

forced it to cover for Symmetry by purchasing gas on its behalf—at times when the price reached over \$600 Mcf—and depleting its own storage reserves. Symmetry did not, as its Complaint alleges, act cooperatively and collaboratively. Rather its conduct was the exact sort of conduct that OFO penalties are intended to deter. Yet in filing this Complaint, Symmetry seeks to evade all responsibility for its patently irresponsible conduct and shift the enormous costs Empire incurred on its behalf to Empire’s retail customers.

In imposing OFO penalties on Symmetry, Empire has followed the exact terms of its Tariff. Empire provides bundled natural gas service to its retail customers pursuant to its Tariff. In connection with this retail service, Empire holds interstate natural gas transportation and storage capacity on Southern Star Central Gas Pipeline, Inc. (“Southern Star”). Empire also provides a transportation only service that allows non-residential customers to contract with natural gas marketers (like Symmetry) for the purchase of natural gas that will then be delivered over Empire’s local gas distribution system. Marketers are responsible for keeping their accounts in balance by nominating or delivering as much gas as their customers burn. If a marketer fails to keep its account in balance it is required, under the terms of the Tariff, to pay penalties associated with the imbalance.

In situations where the “operational integrity” of Empire’s system is jeopardized—as it was with Winter Storm Uri—Empire’s Tariff allows it to call an OFO and impose OFO penalties on marketers who fail to comply with the OFO instructions. The Tariff grants Empire broad discretion to issue an OFO when in its “sole judgment” it is necessary to maintain system reliability, including when transmission system pressures or other unusual conditions jeopardize the operation of Empire’s system, its transportation, storage and supply resources are being used at or near their maximum rate deliverability, and any of Empire’s transporters or suppliers call the

equivalent of an OFO or Critical Day. The OFO call will include an instruction to either not burn more gas than is being delivered (i.e. an unauthorized delivery) or to not deliver more gas than is being burned (i.e. an unauthorized receipt).

As forecasts began warning the Midwest and Southern U.S. about Winter Storm Uri, on February 9, 2021, Empire called an OFO (which it subsequently extended on February 11, 2021) and instructed Symmetry (as well as all other marketers on its system) that “OFO Penalties will apply to unauthorized deliveries,”—that is burning more gas than it nominates. Empire’s OFO coincided with a separate OFO called by Southern Star for its interstate pipeline. Rather than complying with Empire’s OFO, Symmetry nominated little or no gas on several critical OFO days while its customers burned increasing amounts of gas as the OFO period went on. To make matters worse, Symmetry went silent and failed to respond for several days to Empire’s repeated requests as to how it planned to make up for the major shortfall between its gas nominations and customers’ use. To address Symmetry’s failures and ensure the stability of its system, Empire was forced to purchase additional gas (at a significant cost) to meet its retail customers’ needs as well as the needs of Symmetry’s customers. Following the OFO period, Empire billed Symmetry for the OFO penalties it incurred pursuant to the terms of the Tariff.

Symmetry is now requesting that Commission excuse its utter failure to comply with Empire’s OFO and shift its non-compliance costs to Empire’s retail customers despite there being no basis for such excuse in the Tariff, the parties’ Marketer/Aggregator Agreement, or Missouri law. Symmetry instead points to a Federal Energy Regulatory Commission (“FERC”) proceeding in which FERC granted a request by Southern Star to waive OFO penalties for its interstate pipeline based upon a waiver provision contained in Southern Star’s FERC-jurisdictional Tariff as the primary basis for excusing its failure to comply with Empire’s Missouri Tariff. Empire’s Tariff,

however, does not have an OFO waiver provision like Southern Star's FERC Tariff has. And even if Empire's Tariff did have such a provision, there is no requirement that it seek a waiver for its OFO penalties which are separate and distinct (just as Empire's OFO was) from any penalties Southern Star could have imposed. In short, FERC's decision to waive Southern Star's OFO penalties has no bearing on this proceeding and, as this Commission has made clear, "FERC has no jurisdiction over LDCs which come under the authority of their respective state regulatory commissions." *Mo. Pub. Service Co.*, Opinion, File No. GR-89-104, 30 Mo. P.S.C. (N.S.) 39, 1989 Mo. PSC LEXIS 19, at 5 (Oct. 19, 1989).

Aside from the fact that an OFO waiver is not allowed under the Tariff, Symmetry's behavior far from justifies one. Symmetry nominated little or no gas throughout the duration of the OFO. Its customers continued to burn gas as if Symmetry had failed to inform them that it was not delivering gas for their account. And it refused to even communicate with Empire for much of the OFO regarding what its plans were for addressing the widening gap between its gas nominations and customers' use. When Winter Storm Uri struck Symmetry essentially washed its hands of all responsibilities leaving Empire to address its major imbalance and keep Symmetry's own customers burning. OFO penalties were designed to deter exactly the sort of irresponsible behavior that Symmetry engaged in and to let it off the hook in this instance would only incentivize similar bad behavior in the future.

Symmetry's argument that it brought its account into balance by the end of February—when gas prices had significantly declined—and "made Empire whole" should also be rejected. The purpose of an OFO is to maintain system integrity during extreme events like Winter Storm Uri by keeping accounts in balance on an hourly or daily basis. That is why the Tariff clearly imposes penalties on marketers for burning "more than the hourly or daily amount being

received...” To let marketers wait until an OFO ends and gas prices decline to bring their accounts into balance would defeat the purpose of an OFO. It would also not reduce the burden placed on Empire’s retail customers who would be forced to shoulder the costs when Empire is required to buy gas at its highest price point in order to cover Symmetry’s customers.

As with many other aspects of its Complaint, Symmetry ignores the terms of the Tariff in claiming that Empire had threatened to terminate Symmetry’s access to Empire’s system if it failed to pay the OFO penalties. Empire has made no such threat. Empire only informed Symmetry that if it did not receive the properly assessed OFO penalty payment it would—as it is first required to do under the terms of the Tariff—provide notice that it was terminating Symmetry’s access to its system. That has not occurred yet and thus Symmetry’s alarmism is unwarranted.

The Tariff is clear that OFO penalties apply when a marketer fails to nominate as much gas as its customers burn while an OFO is in effect. That is what Symmetry did and Empire has imposed the associated OFO penalties in accordance with the Tariff. There is no basis under the Tariff, the parties’ Marketer/Aggregator Agreement, or Missouri law that allows, much less requires, the OFO penalties be waived. FERC’s decision to grant a waiver to interstate pipeline Southern Star pursuant to a waiver provision contained in its Tariff for OFO penalties that were separately incurred for a different OFO has no relevance to this proceeding. Even if the OFO penalties at issue could be waived, Symmetry’s behavior far from justifies it. The penalty is also necessary to ensure that Empire’s residential customers do not bear the costs of Symmetry’s irresponsible actions; it is not a windfall to Empire. For the above reasons, Symmetry’s Complaint should be dismissed.

Empire specifically responds to the allegations contained in the Complaint in the corresponding enumerated paragraphs as follows:

1. Empire admits that it has billed Symmetry—pursuant to the plain terms of its Tariff on file with the Commission—for over \$11 million in Operational Flow Order (“OFO”) penalties that Symmetry incurred. Empire informed Symmetry that if it did not pay all amounts due under Empire’s Tariff and the Marketer/Aggregator Agreement between Empire and Symmetry by August 31, 2021, it would provide notice to terminate Symmetry’s transportation service. Empire, however, has not provided such notice. Empire denies each and every other allegation contained in paragraph 1 of the Complaint.

2. Empire admits that it issued the OFO in question in connection with the February 2021 winter storm event known as Winter Storm Uri. Empire admits that The Empire District Electric Company protested a waiver sought by the interstate pipeline company Southern Star from the FERC for a separately issued OFO with penalties and tariff provisions entirely distinct from those of Empire’s. FERC’s order speaks for itself, but is irrelevant to this proceeding and all references to it should be struck pursuant to Commission Rule 20 CSR 4240-2.070(7). Empire denies each and every other allegation contained in paragraph 2 of the Complaint.

3. Empire admits that its Tariff states that “Any OFO, along with associated conditions and penalties, shall be limited, as practicable to address only the problem(s) giving rise to the need for the OFO.” Empire denies each and every other allegation contained in paragraph 3 of the Complaint.

4. Empire admits that it has billed Symmetry for its OFO violations consistent with the Tariff, has provided Symmetry with multiple explanations (both in writing and verbally) as to the over \$11 million it owes in penalties, and has provided Symmetry with detailed calculations for the OFO penalties. Empire denies each and every other allegation contained in paragraph 4 of the Complaint.

5. Empire admits that The Empire District Electric Company filed a protest regarding Southern Star's request for FERC to waive penalties for an OFO that it issued under its Tariff. Empire did not participate in such proceeding and it has no bearing on the OFO and associated penalties that Empire separately issued under its Tariff to protect its local gas distribution system that is subject to this Commission's jurisdiction and not that of FERC's. Empire denies each and every other allegation contained in paragraph 5 of the Complaint.

6. Empire denies each and every allegation contained in paragraph 6 of the Complaint.

7. Empire affirmatively states that it has provided no notice to Symmetry (or its customers) that it would be terminating access to Empire's distribution system. Symmetry has engaged in blatant violations of Empire's Tariff. Empire denies each and every allegation contained in paragraph 7 of the Complaint.

8. Empire admits that it is a wholly-owned subsidiary of The Empire District Electric Company.

9. Empire admits its jurisdictional status.

10. Empire admits that Symmetry is a natural gas marketer. Empire is without sufficient information or belief to admit or deny each and every other allegation contained in paragraph 10 of the Complaint and therefore denies the same.

11. The Commission's Rules of Practice and Procedure speak for themselves.

12. Empire admits that a representative from Symmetry communicated with Empire that it was filing the Complaint.

13. The State of Missouri's Statutes and the Commission's Rules of Practice and Procedure speak for themselves.

14. The State of Missouri's Statutes speak for themselves.

15. Empire admits the allegations contained in paragraph 15 of the Complaint.

16. The terms of Empire's Tariff speak for themselves.

17. The terms of Empire's Tariff speak for themselves. Empire has broad discretion to issue an OFO. Empire denies each and every allegation contained in paragraph 17 of the Complaint that attempts to give the Tariff's terms any meaning other than their plain meaning.

18. Empire denies the allegations contained in paragraph 18 of the Complaint to the extent it construes OFO penalties as something that "may" be imposed. Empire's Tariff provides that a customer, aggregator, or marketer that takes unauthorized deliveries "shall be charged a penalty..." The terms of Empire's Tariff speak for themselves.

19. The terms of Empire's Tariff speak for themselves. Empire denies that any one Tariff term is more or less important than the other terms.

20. Empire admits the allegations contained in paragraph 20 of the Complaint.

21. Empire is without sufficient knowledge or belief to admit or deny the allegations contained in paragraph 21 of the Complaint and therefore denies the same.

22. Empire admits that it receives a portion of its gas from Southern Star.

23. Empire admits that Southern Star issued an OFO for its interstate pipeline on February 9, 2021 and that it remained in effect from February 11 to February 17, 2021. Empire admits that it issued its own OFO on February 9, 2021. However, both Southern Star and Empire subsequently issued new OFOs that extended until Gas Day February 19, 2021. The documents and Tariff provision cited in paragraph 23 of the Complaint speak for themselves. Empire either denies or is without sufficient knowledge or belief to admit or deny the other allegations contained in paragraph 23 of the Complaint and therefore denies the same.

24. Empire admits that it sent letters to Symmetry’s customers on March 30, 2021. The letters speak for themselves. Empire denies each and every other allegation contained in paragraph 24 of the Complaint.

25. Empire admits that it sent letters to Symmetry on April 15, 2021 and that the letters speak for themselves.

26. Empire admits that it received an April 29, 2021 letter from Symmetry and that the letter speaks for itself.

27. Empire admits that FERC waived OFO penalties for Southern Star, but denies each and every other allegation contained in paragraph 27 of the Complaint.

28. Empire admits that Southern Star submitted a waiver request on March 11, 2021 and that FERC granted the waiver request for Southern Star (subject to rehearing) on April 9, 2021. The waiver request and FERC’s order speak for themselves.

29. FERC’s order speaks for itself.

30. Southern Star’s waiver request speaks for itself.

31. The documents filed in FERC Docket No. RP21-618, including The Empire District Electric Company’s protest speak for themselves.

32. Empire admits that FERC granted Southern Star’s waiver request and did so for the reasons stated in FERC’s order, including that Southern Star has authority under its tariff “to waive penalties incurred by shippers as a result of an OFO violation”—something that Empire’s Tariff is lacking. Empire denies each and every other allegation contained in paragraph 32 of the Complaint.

33. FERC’s order speaks for itself. Empire denies each and every other allegation contained in paragraph 33 of the Complaint.

34. Empire denies each and every allegation contained in paragraph 34 of the Complaint.

35. The terms of Empire's Tariff speak for themselves and do not allow, much less require, that Symmetry's OFO penalties be waived because an interstate pipeline called its own separate OFO that subjected its own customers to OFO penalties under the terms of its own Tariff that were ultimately waived by a federal agency that has no jurisdiction over Empire's local gas distribution system. Empire denies each and every other allegation contained in paragraph 35 of the Complaint.

36. Empire denies each and every allegation contained in paragraph 36 of the Complaint. Empire affirmatively asserts that FERC made no finding as to the integrity of its local gas distribution system during Empire's OFO.

37. Empire denies each and every allegation contained in paragraph 37 of the Complaint.

38. Empire admits that Symmetry had balanced its deliveries by the end of February, but that does not excuse its failure to comply with the Tariff while Empire's OFO was in effect. Empire denies each and every other allegation contained in paragraph 38 of the Complaint.

39. Empire denies each and every allegation contained in paragraph 39 of the Complaint.

Any allegation not specifically admitted herein is denied by Empire. Empire respectfully requests that the Commission deny Symmetry's Complaint.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted and therefore must be dismissed.

2. The Complaint requests relief that is beyond the statutory authority of the Commission to grant since Empire has no Tariff provision allowing for a waiver of OFO penalties.

WHEREFORE, The Empire District Gas Company submits this Answer and respectfully requests an order of the Commission denying Symmetry's Complaint. Empire requests such additional relief as is just and proper under the circumstances.

/s/ Elizabeth W. Whittle

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Dated: September 17, 2021

Certificate of Service

I hereby certify that this document was filed in EFIS, with notice sent to all counsel of record, and also sent by email to Staff, OPC, and all other counsel of record.

Dated this 17th day of September 2021.

/s/ Diana Carter

Diana Carter