BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Cause of the February	)	
2021 Cold Weather Event and its Impact	)	**File No. AO-2021-0264**
On Investor Owned Utilities	)	

RESPONSE OF CLEARWATER ENTERPRISES, L.L.C. PURSUANT TO COMMISSION ORDER DIRECTING RESPONSE

Pursuant to the *Order Directing Responses* issued by the Missouri Public Service Commission's ("Commission") on March 19, 2021, Clearwater Enterprises, L.L.C. ("Clearwater") submits this response[1] to the presentation and materials submitted by Spire Missouri, Inc. ("Spire") at the Commission's March 23, 2021 workshop.

INTRODUCTION

Clearwater is a natural gas retail sales, marketing, and investment company based in Oklahoma City, Oklahoma. Clearwater provides competitively priced natural gas to its customers, advising them on the current natural gas environment and enabling them to make educated decisions in purchasing their gas supply.

Clearwater's customers include end-users in Spire's Missouri West service territory (the former Missouri Gas Energy ("MGE") service territory). Clearwater serves as a "Customer's Agent" under the provisions of Spire's TRPR tariffs (P.S.C. MO. No. 8 Original SHEET No. 1, *et seq.*) ("Spire's Tariff"). Clearwater entered into an Agent Aggregation Service Agreement-LGS/LVS (the "Aggregation Agreement") with MGE in 2015 to allow Clearwater to aggregate

[1] Nothing contained herein should be considered an admission or denial of any fact nor a waiver or release of any claim or defense available to Clearwater, relative to any claims asserted against Clearwater in any pending litigation between Spire and Clearwater.

its authorizing customers' usages for purposes of nominating and balancing transportation deliveries on the Spire system. That agreement is still in effect between Clearwater and Spire. The Aggregation Agreement and Spire's Tariff provisions generally govern the commercial relationship between the two entities.

In February 2021, Clearwater served 43 locations for end-user customers in the Spire service territory, all of them served through the pipeline system of Southern Star Central Gas Pipeline, Inc. ("SSCGP"). As complies with the Aggregation Agreement, Clearwater has aggregated such customers into a single pool, denominated "Clearwater Enterprises LLC SSCGP Pool." Such customers include hospitals and medical centers, municipalities, YMCA centers, small manufacturers, restaurants, a candy store, a hardware store, a dry cleaners, and a wide range of other types of customers.

RESPONSE TO SPIRE

As noted at page 15 of its PowerPoint filed with the Commission on March 24, 2021 ("Spire's Slides"), Spire implemented a standard Operational Flow Order ("OFO") for the Spire West territory. Spire announced that OFO on February 10, and it went into effect on February 12 and terminated on February 18, 2021. Spire asserts that it implemented the OFO in part because "Marketers were reducing supply to end user transportation customers (commercial & industrial, and schools), and in some cases not providing any supply." (Spire's Slides, page 15.) At the time Spire announced the OFO on February 10, Clearwater had not reduced supply to any of its customers, and certainly was not failing to provide any supply. Clearwater has no information to indicate that whether any other marketers on Spire's West system were doing so.

During the period of the OFO, Clearwater was unfortunately – and despite extraordinary efforts – unable to deliver gas to Spire to meet all of Clearwater's customers' usage. Of the almost 35,000 MMBtus used by Clearwater's pool of end-users during the period of the OFO, Clearwater successfully sourced and supplied nearly 23,000 MMBtus, supplying gas every day.

In January, weather forecasts anticipated a normal February. Clearwater's first of the month nomination was 3,610 MMBtu/d, which was based on either a 3 year average for a customer or a customer's direct estimation. Clearwater's scheduler monitored its customers' usages, using volume reporting from Spire's nomination system, which lags two days behind current operations. Recognizing the significant increase in consumption for day 6 and anticipating colder weather that would linger, on February 8th, Clearwater started to purchase gas in the daily market. Additional gas was not available for "balance of the month" trades so instead Clearwater then executed trades for "daily gas", which was limited to the availability of what was in the marketplace on a daily basis. Clearwater succeeded in delivering some gas in excess of its first of the month nominations for days 9, 11, and 12. Even though Clearwater purchased daily gas for days 13 thru 17, such supplies failed to deliver at the volume level purchased. Clearwater's under deliveries to Spire were due to those upstream failures. Clearwater was unable to find alternative sources for such gas on SSCGP via either the Intercontinental Exchange (ICE) trading platform or through any other source. Starting on day 20, additional gas was again available in the marketplace. By the end of the month of February, Clearwater was able to deliver all of the gas to Spire to cover the consumption of its end-users.

Winter Storm Uri impaired natural gas production, gathering, and processing, reducing supply across the entire region. For example, as noted by the U.S. Energy Information Administration, "[i]n the wake of record-low temperatures affecting most of the country, dry natural gas production in the United States fell by 21.0 billion cubic feet per day (Bcf/d), declining from 90.7 Bcf/d on February 8 to about 69.7 Bcf/d on February 17, according to data from IHS Markit." (https://www.eia.gov/naturalgas/weekly/archivenew_ ngwu/2021/02_18/)

As acknowledged by Spire, western Missouri is served by predominantly one pipeline, SSCGP, and "[w]hen you're captive, you're limited to where you can buy gas." (Page 11, Lines 11-12, Transcript of Proceedings of March 23, 2021 Workshop before the Commission ("Transcript").) Supply available on SSCGP can be limited in ordinary times, but it was particularly illiquid during the storm. Indeed Spire has acknowledged that it "felt one point on Southern Star was illiquid", explaining that such illiquidity supports in part Spire's complaint to S&P Global Platts (the market reporting agency) challenging the propriety of using an illiquid market to establish the gas index price. (Page 24, Line 14-16, Transcript.)

Spire asserts that "[i]n some cases, the marketers have no firm transportation to their customers even though they are probably selling firm service to end-user customers." (Spire's Slides, Page 15.) However, SSCGP did not curtail transportation of any of Clearwater's gas during the period of the OFO, so firm transportation or any lack thereof had no bearing on Clearwater's ability to supply gas to its customers. The problem was available gas supply.

It is reasonable to assume that Spire was competing against Clearwater, along with other gas purchasers, to obtain limited gas supply. Further, Spire could have had the right to first call on available gas, making such gas unavailable to other purchasers in the marketplace, like Clearwater. Spire has also acknowledged that it accessed gas from storage to mitigate the effects of the limited supply of gas in the marketplace.

Spire's Tariff requires that "[a]ny 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." (Spire's Tariff TRPR B-2.) Further Spire's Tariff requires that Spire's "actions with respect to its OFO's shall be reasonable, objective, non-discriminatory and consistent with the General Terms and Conditions for Gas Service, R-16 Priority Service and R-17." (Spire's Tariff TRPR B-2.) Inconsistent with such obligations, Spire has assessed $195,000,000 in penalties for under-deliveries during the OFO to "a handful" of marketers. That value should stand out to the

Commission. If Spire has its way, an additional $195,000,000 on top of the extraordinary cost of gas will be imposed on Missouri customers. The cost of gas by itself will cause extreme hardship to many of those customers. Spire's imposition of $195,000,000 as a punitive measure will be devastating and will surely drive many of those customers out of business. To put that $195,000,000 in perspective, the Federal Energy Regulatory Commission (FERC) fined Ameren $15,000,000 for the catastrophic failure of the Taum Sauk upper reservoir in 2005. Spire – an investor-owned private company, not a governmental agency – now seeks to impose penalties 13 times greater than the FERC imposed for the Taum Sauk collapse.

Spire blithely asserts that these penalties will be borne by the marketers and not the customers. (Spire Presentation, page 15; Transcript page 18, line 14-17). This assertion is disingenuous at best because Spire likely recognizes that marketing contracts can and typically require customers to pay costs of purchased gas, including penalties imposed. Indeed, if Spire were to collect OFO penalties from Clearwater, Clearwater would be entitled to and would reasonably have no choice but to pass such costs on to its customer. Further, Spire's blithe assertions contradict its statements to Clearwater. In its February 24, 2021 letter to Clearwater, Spire demanded payment of OFO penalties then calculated at greater than $7 million (attached hereto as Exhibit A), stating: "If we are unable to reach payment terms by Friday, February 26, Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff." Spire's Tariff confirms that such end-users indeed have ultimate responsibility for OFO Penalties. (Spire's Tariff TRPR B-5-d.) Spire not only fully understands that the customers will bear the burden of the penalties that it seeks to impose, but also communicated its intention to bill the penalties directly to customers unless Clearwater paid Spire more than $7 million within two days.

Because Spire's February 24 letter clearly committed Spire to imposing penalties directly on the customers served by Clearwater, and as a matter of good customer service, Clearwater intentionally under-billed its customers supplied off SSCGP in the aggregate of about $3.5 million for the month of February, an amount that it otherwise has the contractual right to charge such customers. Clearwater understands that many of the Spire customers would suffer extreme hardship if faced with bills from Clearwater that include the full cost of gas actually incurred by Clearwater in February, and additionally face invoices from Spire charging OFO penalties. At the time of its February invoicing, Clearwater made the decision to forego such $3.5 million in gas costs, even though it was a direct and immediate hit to its bottom line, in order to cushion the blow of the historically high gas costs on its customers and in anticipation of Spire billing the end users directly for the OFO penalties.

Spire seeks to collect almost $200,000,000 from one specific group of customers (transportation customers served by a "handful" of marketers) claiming a benefit to all customers that are subject to PGA surcharges (or refunds).[2] As another way of putting this amount in perspective, by comparison Spire is seeking a rate increase of $65,000,000 in Case No. GR-2021-0108. This Commission should be very involved in Spire's decision to impose an amount triple that rate increase on one group of customers on its West system.

Spire asserts that the penalties it seeks to impose "include the cost of covering non-performance" (Spire Presentation, page 15), but that is incorrect. The penalties are authorized and computed from a formula: "Standard OFO Penalty: For each day of the Standard OFO, the greater of $5 or 2½ times the daily midpoint state on Gas Daily's Index for Southern Star Central Gas Pipeline (Oklahoma) times the MMBtu of Unauthorized Over- or Under-deliveries, that

[2] It is unlikely that Spire will pay any penalties to Southern Star, so any penalties that Spire does collect from marketers or customers will stay within the Spire system. Southern Star is actively seeking a waiver from the Federal Energy Regulatory Commission so that it will not collect any penalties. And in the event that Southern Star is unsuccessful, Spire "believes if there are any penalties, it [*sic*] would be immaterial." (Spire Presentation, page 20).

exceed the tolerance level applicable under Section B-5-a Tolerance Levels." Spire's cost of covering non-performance is not taken into account in any way in calculating the penalty. However, the disparity between any such cost and the penalty amount should be considered in evaluating the reasonableness of Spire's imposition of the penalty. While Clearwater does not have information to calculate Spire's actual cost of covering under-delivered volumes, in the absolute worst-case scenario (where Spire bought all the gas to serve Clearwater's customers at that day's spot price), Spire's cost would only be about 40% of the penalty it seeks to impose. Given Spire's access to storage, its compliance with Commission-mandated hedging practices, and its priority position as a Local Distribution Company, it seems likely that Spire was able to do better than the worst case scenario. It would certainly help the Commission's understanding of the February 2021 cold weather event and its impact on Spire to have Spire document its actual cost of covering under-delivered volumes in this investigation so that the Commission can compare Spire's actual cost to the $195,000,000 in penalties that it seeks to impose on customers.

It is unreasonable to impose penalties that are orders of magnitude greater than could have been expected under the penalty calculation. The purpose of the penalties is to incentivize customers and marketers to comply with the OFO; the Commission should not allow the penalties to be weaponized against customers and marketers who did everything they possibly could to comply in a truly extraordinary weather event. When the 2.5X penalty was created, no reasonable person would have considered that it might be applied to gas prices that were hundreds of times higher than any prices ever experienced. Note the penalty formula compares the greater of $5 and the computation. Surely the Commission never intended the computation would result in $195,000,000 in penalties. The Commission opened this investigation in part to find out whether customers would suffer extreme hardship as a result of OFOs leading to penalties to customers. This response should leave no doubt that customers will suffer extreme hardship if Spire is allowed to impose $195,000,000 in penalties.

Clearwater also requests the Commission take note that no other utility is charging an OFO penalty, even those other utilities who participated at the Commission's March 23, 2021 workshop, some of whom also serve end-users whose marketing companies under-delivered gas during the winter storm. It is unreasonable for Spire, in contrast to such similarly situated utilities, to elect to impose its OFO penalties, penalties calculated from unanticipated outrageous gas prices, bringing a huge windfall to Spire far in excess of even worst case scenario costs of coverage.

Dated this 8th day of April 2021.

Respectfully submitted,

By: _/s/ Jenny Thompson_
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list for this case on this 8th day of April, 2021.

/s/ Lewis Mills

Spire Missouri Inc.
700 Market Street
St. Louis, Missouri 63101

VIA EMAIL

February 24, 2021

Clearwater Enterprises, LLC
Ashley Orewiler (aorewiler@clearwaterenterprises.net)
5637 N Classen Blvd.
Oklahoma City, OK 73118

Re: OFO Penalties

Dear Ashley,

As you know, you serve as the natural gas marketer and appointed agent of various transportation customers on Spire's Missouri West distribution system.

Due to extreme weather and unprecedented demand for natural gas, this month we placed an operational flow order ("OFO") in effect on that system from Gas Day 12 through Gas Day 18.

During the OFO, many transportation customers consumed more natural gas than their marketer had nominated and confirmed for delivery for that day. Spire is required to assess OFO penalties in these situations. See Spire Missouri West Tariff Sheets 16.13-16.14. Pursuant to Spire's tariff rules, the standard OFO penalty is 2.5 times the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipeline (Oklahoma), multiplied by the MMBtu amount of the under-delivery that exceeds the Tolerance Levels.

Through February 18, 2021, Spire is assessing an OFO penalty to you in the amount of $7,329,801.39.

The amounts of your customers' pooled nominations, actual usage, and the applicable Gas Daily Index price for each day are included for your reference in the enclosed spreadsheet.

Pursuant to Spire's tariff rules, these penalties shall be billed to and collected from the agent representing the aggregated customers. Please consider this letter demand for payment of this amount, due immediately.

Please contact us right away to arrange payment. If we are unable to reach payment terms by Friday, February 26, Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff.

Sincerely,

Matt Aplington
General Counsel

cc: Jason Dye (jdye@clearwaterenterprises.net)
Jenny Thompson (jthompson@clearwaterenterprises.net);
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