

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Constellation NewEnergy-Gas Division, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2021-0315
Spire Missouri, Inc. and its operating unit Spire Missouri West	)	
	)	
Respondent;	)	
	)	
Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	
Spire Missouri, Inc. and its operating unit Spire Missouri West	)	Case No. GC-2021-0316
	)	
	)	
Respondent;	)	
	)	
Constellation NewEnergy-Gas Division, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2021-0353
Spire Missouri, Inc. and its operating unit Spire Missouri West	)	
	)	
	)	
Respondent;	)	

**CONSTELLATION’S RESPONSE TO SPIRE’S MOTION FOR PROTECTION**

Constellation NewEnergy-Gas Division, LLC (“CNEG”) files this Response to the Motion for Protection filed by Spire Missouri, Inc. and its operating unit Spire Missouri West (“Spire”) on Feb. 2, 2022 (the “Motion”).

**I. SUMMARY**

Spire’s Motion seeks to preclude CNEG from taking the sworn testimony of its President and the individual responsible for implementing Spire Missouri’s document retention policy and best positioned to address the fact that key documents, including responsive email, ICE Chat, and Microsoft Teams Chat, have not been retained (or at least not produced in this proceeding).

Spire seeks to prevent the deposition of its President, Scott Carter, merely because it finds it inconvenient,<sup>1</sup> despite the fact that Mr. Carter was personally consulted on the key decisions to:

1. Issue the OFO,
2. Withdraw the OFO, and
3. Sell 500,000 dekatherms of gas out of Spire's storage to a third party (at a substantial profit) while simultaneously feigning concern about gas supply.

If Mr. Carter was not too busy to be “doing a lot of radio interviews”<sup>2</sup> and other media appearances<sup>3</sup> regarding the Winter Storm and the impact on gas costs for Missouri customers, he cannot be too busy to provide sworn testimony to the marketers from whom his company seeks \$195 million in costs and ultimately to this Commission and the people of Missouri. Mr. Carter's failure to provide his sworn testimony should be taken with a negative inference drawn against Spire Missouri's position on those issues in which he was involved. *See generally, Bernat v. State*, 2005 WL 221450, 2 (Ct. App. E.D., February 1, 2005) (“Generally, in civil proceedings, an opponent may draw an adverse inference against a party, knowledgeable of the facts in controversy, who fails to testify; and an opponent may argue such failure to testify to the jury.” *Pasternak v. Mashak*, 428 S.W.2d 565, 568 (Mo. 1967)).

In addition, Spire seeks to preclude the deposition of its Manager of Records Retention based on its conclusory assurance that no documents were lost and destroyed. But Spire's production of such documents is glaringly deficient and inconsistent. For example, Spire has simultaneously claimed that certain types of ICE Chats are not retained and yet has produced at least one such ICE Chat, albeit between Spire personnel and Symmetry, producing no such chats

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<sup>1</sup> Spire's Motion at 8 (“Forcing Mr. Carter to give a deposition would impose significant annoyance and burden upon Spire and Mr. Carter”).

<sup>2</sup> Exhibit A, Deposition of George Godat (“Godat Depo”), 203:10-13.

<sup>3</sup> *See* <https://www.youtube.com/watch?v=IOddRuVEX8I> (Feb. 15, 2021 Interview with NBC 5 St. Louis); [https://www.youtube.com/watch?v=6\\_Y6hSRUAW8](https://www.youtube.com/watch?v=6_Y6hSRUAW8) (Feb. 15, 2021 Interview with Fox 2 St. Louis).

with regard to CNEG. Similarly, Spire has produced only a handful of emails to CNEG, which consist primarily of email communication between Spire and CNEG itself and show no indication of the types of email communication that an event of the magnitude of the Winter Storm would generate among operation groups such as gas supply and gas control. Spire has produced virtually no communication between employees and groups which were directly affected and would monitor the Winter Storm conditions and communicate with other groups and employees extensively under the circumstances. These deficiencies are subject to CNEG's Motion to Compel, which has been separately filed.

## II. ARGUMENT & AUTHORITIES

### A. **Spire's motion to shield its President from a deposition in this proceeding should be denied.**

1. Spire's President was personally involved in issues relevant to this proceeding; this alone justifies his deposition.

Spire's motion to permanently shield its President, Scott Carter, from being subject to any questioning in this proceeding should be denied. Spire cannot credibly claim that Mr. Carter has no personal knowledge of the total \$195 million in OFO penalties issued by the company he runs in February 2021, including the approximately \$35 million it assessed against Missouri customers served by CNEG. Not only does Spire acknowledge that Mr. Carter was personally consulted on Spire's decision to issue an OFO,<sup>4</sup> Spire acknowledges that Mr. Carter was at the same time "doing a lot of radio interviews" and media appearances on issues related to the Winter Storm and pricing (which of course include OFO penalties) that required coordination with Mr. Godat and Mr.

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<sup>4</sup> Exhibit A, Deposition of George Godat ("Godat Depo"), 44:23-45:8.

Powers,<sup>5</sup> the two employees who claim responsibility for implementing Spire’s OFO decision.<sup>6</sup> Mr. Carter also consulted on Spire’s decision to sell 500,000 dekatherms of gas out of storage to a third party<sup>7</sup> at a substantial profit<sup>8</sup> at the same time Spire was claiming an insufficient supply of gas that supposedly threatened its system integrity and justify an OFO.<sup>9</sup> Even accepting Mr. Godat’s version of events at face value, Mr. Carter was personally involved in issues central to this proceeding.<sup>10</sup> That alone justifies his deposition. Our system of justice has long recognized that the public “has a right to every man’s evidence.”<sup>11</sup> Mr. Carter is no exception.

The primary case relied upon by Spire to attempt to permanently shield its President from having to give sworn testimony in this proceeding is *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602 (Mo. 2002). That case expressly noted that “[o]pposing litigants may depose top-level executives who have discoverable information.” *Id.* at 606. Merely applying the logic of *Messina*

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<sup>5</sup> Ex. A, Godat Depo, 201:16-203:19.

<sup>6</sup> If Mr. Carter is not too annoyed or burdened to sit down with the media to discuss these issues, surely he can spare a few hours to explain to Spire’s customers served by the Complainants (and this Commission) his knowledge and understanding of \$195 million in OFO penalties.

<sup>7</sup> Ex. A, Godat Depo 75:17-76:10; 76:18 (Q. And so that was 500 dekatherms? A. 500,000 dekatherms .... Q: Do you know the price? A. \$200 per dekatherm.”).

<sup>8</sup> Ex. A, Godat Depo 275:7-276:7; 278:4-278:14.

<sup>9</sup> Exhibit B, Spire’s Response to CNEG’s Data Request No. 1.

<sup>10</sup> To be clear, neither CNEG nor the other Complainants nor this Commission, is compelled to accept on its face Mr. Godat’s characterization of Mr. Carter’s involvement in the decision to issue the OFO, the information presented and relied upon, or the integrity of Spire’s system during the relevant time period. CNEG is entitled to test the veracity of Mr. Godat’s testimony in light of all of the available evidence, including the testimony of Mr. Carter and Mr. Powers, the other two witnesses Mr. Godat acknowledges were contemporaneously aware of, apprised, and otherwise involved in the decision. Spire presents Mr. Godat’s testimony as if it were conclusive proof whereas it is simply one witnesses’ testimony among many who have relevant first-hand knowledge of the events at issue in this proceeding.

<sup>11</sup> *United States v. Bryan*, 339 U.S. 323, 331 (1950) (quoting 7 J. WIGMORE, EVIDENCE § 2192 (McNaughton rev. 1961)); see *Jiang v. Porter*, No. 4:15-CV-1008 (CEJ), 2016 WL 3015163, at \*2 (E.D. Mo. May 26, 2016) (“[t]he Supreme Court also has recognized as a “fundamental maxim that the public...has a right to every man's evidence”). While these cases address testimonial privileges at trial, the same logic compels its application here, where Spire seeks to shield even the development of such testimony at a much earlier stage, in discovery.

to the facts in this case, Spire's Motion must be denied. Mr. Carter has discoverable information. CNEG is therefore entitled to depose him.

In addition, Spire omits from its Motion any discussion of *Cox v. Kansas City Chiefs Football Club, Inc.*, 473 S.W.3d 107 (Mo. 2015),<sup>12</sup> a more recent, and more directly applicable decision by the Missouri Supreme Court. In *Cox*, the Missouri Supreme Court held that the trial erred in quashing the deposition order issued to the Chiefs' chairman and chief executive officer. *Cox*, 473 S.W.3d at 127–28. The Court in *Cox* considered and rejected an argument similar to the one advanced by Spire in this proceeding. In *Cox*, as in this case, the chief executive officer was a proper deponent because he was personally involved.

Indeed, elsewhere Missouri courts have described the right of a party to take depositions of individuals with potentially relevant knowledge as an "absolute one" because it materially affects the merits of the action. *See State ex rel. Von Pein v. Clark*, 526 S.W.2d 383, 385–86 (Mo. App. 1975) ("without question, the right of a party to depose witnesses and as such adverse parties is an absolute one"); *Norkunas v. Norkunas*, 480 S.W.2d 92, 94 (Mo.App.1972) (holding that it was reversible error to prevent a party from deposing witnesses because the error materially affected the merits of the action); *State ex rel. Meeks v. Reaves*, 416 S.W.3d 351, 353 (Mo. Ct. App. 2013) (vacating trial court's order denying motion to compel deposition of petitioner in proceeding for adult order of protection); Mo. R. Civ. P. 57.03 ("After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination"). Spire relies upon an exception to this general rule which must be strictly applied<sup>13</sup>

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<sup>12</sup> A copy of the *Cox* decision is attached as "Appendix A" to this pleading.

<sup>13</sup> Rule 56.01 provides that "[u]pon the motion of any party or on its own, the court must limit the frequency or extent of discovery if it determines that: (A) The discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;" Mo. Sup. Ct. R. 56.01(2)(A).

to prevent the exception from swallowing the rule and preventing a party from obtaining the liberal discovery provided for by Missouri law<sup>14</sup> so that disputes may be decided based upon what is revealed and not hidden.

2. Less burdensome methods of discovery

As indicated above, Mr. Carter has personal knowledge relevant to this proceeding which justifies the proper notice of his deposition and the denial of Spire's Motion on that ground alone. However, to the extent the Commission considers the *Messina* factors relied upon by Spire, Spire's Motion fails to meet that standard as well.

Spire argues that Missouri law requires that CNEG must demonstrate that Mr. Carter's testimony would be absolutely unique and definitively show that he alone possesses the ability to testify about the OFO issued by Spire and the resulting penalties. This is not the correct standard. As other courts have held in addressing this issue, "exhaustion of other discovery methods is an important, but not dispositive, consideration for a court to take into account in deciding how to exercise its discretion." *Finisar Corp. v. Nistica, Inc.*, No. 13-CV-03345-BLF(JSC), 2015 WL 3988132, at \*2 (N.D. Cal. June 30, 2015); *Hunt v. Continental Cas. Co.*, No. 13-cv-05966-HSG, 2015 WL 1518067, at \*2 (N.D. Cal. Apr. 3, 2015).<sup>15</sup>

Spire seeks to permanently prohibit CNEG from taking Mr. Carter's deposition at a time when CNEG has had an opportunity to depose only one other witness. As Spire's first witness has

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<sup>14</sup> *Sims v. Harmon*, 22 S.W.3d 253, 257 (Mo. Ct. App. 2000) ("Pre-trial discovery performs important and legitimate functions. The benefits are numerous: liberal discovery aids in the ascertainment of truth, early disclosure promotes early settlement, surprise is eliminated, issues are narrowed, trial preparation is facilitated, and "relevant" information is obtained."); *State ex rel. State v. Riley*, 992 S.W.2d 195, 197 (Mo. 1999) (same)

<sup>15</sup> Missouri courts have recognized that interpretations of Federal Rule of Civil Procedure 26(c) by federal courts are a persuasive guide for the construction of Missouri Rule of Civil Procedure 56.01(c) because the Missouri rule is modeled after Federal Rule of Civil Procedure 26(c). *Stortz by Stortz v. Seier*, 835 S.W.2d 540, 541 (Mo. Ct. App. 1992); *State ex rel. Vanderpool Feed & Supply Co., Inc. v. Sloan*, 628 S.W.2d 414, 416 (Mo.App.W.D. 1982).

already acknowledged, Mr. Carter was personally consulted on Spire's decision to issue an OFO, was doing media and radio media appearances related to the OFO, was consulted on the decision to sell 500,000 dekatherms of gas out of storage to a third party during the OFO, and was consulted on the decision to withdraw the OFO. Mr. Carter was personally involved in these events. He has his own subjective experience, recollection, and reaction to these events. As the President of Spire, Mr. Carter was in a unique position not only to direct and coordinate Spire's actions during the OFO but to understand the implications, and therefore motives, for the company as a whole. In its annual report issued shortly before the events at issue, Spire reported consolidated net income of \$88.6 million fiscal year 2020 compared to \$184.6 million in fiscal year 2019.<sup>16</sup> As the President of Spire Missouri, Mr. Carter was no doubt aware of the financial performance of the divisions he runs and the impact that collecting an additional \$195 million in OFO penalties from the marketers would have for his bottom line.

Any discovery involves a certain amount of burden. Requiring Mr. Carter to take a day out of his schedule to explain his version of these events cannot be characterized as unduly burdensome, particularly in light of the demand by his company for an additional \$195 million from Missouri customers served by the marketers. Courts have required as least as much, if not more, of executives running far larger and more complex operations than Mr. Carter.<sup>17</sup>

Here, CNEG has already attempted to avail itself of other discovery methods, including the deposition of a corporate representative and a limited number of Spire employees, each of whom appear to have relevant knowledge and testimony regarding issues in this case. Mr. Carter is simply

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<sup>16</sup> Spire Reports Solid FY20 Results (Nov. 18, 2020), available at <https://investors.spireenergy.com/news/news-details/2020/Spire-Reports-Solid-FY20-Results/default.aspx>

<sup>17</sup> *In re Apple iPhone Antitrust Litigation*, Case No. 4:11-cv-06714-YGR, Dkt No. 396 (Jan. 26, 2021) (ordering deposition of Apple CEO, Tim Cook); *Tesla, Inc. v. Martin Tripp*, Case No. 3:18-cv-00296-MMD-CLB, Dkt. No. 126 (Dec. 13, 2019) (ordering deposition of Tesla CEO Elon Musk).

one such witness and is not entitled to an exemption from discovery because of his position at the company, in fact, the opposite is true.

3. Mr. Carter’s testimony is not only necessary (although ‘necessity’ is not a requirement), but may be helpful to the Commission

Spire also alleges that Mr. Carter’s deposition is “unnecessary” as a basis to preclude the marketers from obtaining his testimony. Spire’s hand selected corporate representative contends that Mr. Carter was not the decision maker on the issuance of the OFO, whether to continue it or lift it, calculate the penalties, or provide notice to Complainants. Thus, Spire argues that any testimony he may have would not be unique and therefore Spire is entitled to shield whatever knowledge he may have from discovery. This is not the standard. The broad test for discovery under Missouri law is not whether or not the information is sought is relevant, but whether it could reasonably lead to the discovery of admissible evidence. Mo. R. Civ. P. 56.01(b); *State ex rel. Ford v. Adolf*, 724 S.W.2d 612, 614 (Mo. Ct. App. 1986) (holding that even if only “net worth” is admissible, discovery of defendants' assets are discoverable because they could be combined with discovery of defendants' liabilities to lead to a determination of net worth); *see also Finisar Corp. v. Nistica, Inc.*, No. 13-CV-03345-BLF(JSC), 2015 WL 3988132, at \*2 (N.D. Cal. June 30, 2015) (“the party seeking to take the deposition need not prove conclusively that the deponent certainly has unique non-repetitive information”); *Grateful Dead Prods. v. Sagan*, No. C 06–7727(JW) PVT, 2007 WL 2155693, at \*1 n.5 (N.D.Cal. 2007); *Powertech Techs., Inc. v. Tessera*, No. C 11–6121 CW, 2013 WL 3884254, at \*1 (N.D.Cal. July 26, 2013) (noting that the party seeking the deposition “was not required to prove that [the deponent] certainly has [relevant] information”).

It is regrettable that Mr. Carter is not eager to engage in this regulatory process and assist the Commission in its job of protecting the public interest. The Winter Storm was a natural disaster with consequential public policy implications; from the functioning of gas supply markets to the



system integrity of critical infrastructure, to how gas costs resulting from a catastrophic event should be allocated. The interplay between these policy considerations and the relevant portion of Spire's tariff is a major issue and is discussed in the testimony of Raymond Gifford on behalf of CNEG. Mr. Carter's desire to not be inconvenienced by this proceeding and pose as a know-nothing figurehead should not be accepted as a legitimate reason to avoid giving his sworn testimony.

4. Forcing Mr. Carter to give a deposition is not an unreasonable annoyance and burden upon Spire or Mr. Carter.

Incredibly, Spire also seeks to exempt Mr. Carter from providing evidence in this proceeding on the ground that “[f]orcing Carter to sit for a deposition would impose a significant annoyance and burden upon Spire.” This is an outrageous argument for a public utility such as Spire to make given its duties to the public at large in addition to its responsibilities as a litigant. Mr. Carter is not protected from having to answer questions, even ones he feels are annoying or burdensome. It is entirely appropriate for Mr. Carter to answer questions about why Spire is entitled to collect \$195 million in OFO penalties (including \$35 million from customers served by CNEG) when there is no credible evidence of issues of system integrity justifying the OFO in the first place. With all due respect to Mr. Carter's busy schedule, he does not preside over a corporate juggernaut like Ford, which had 300,000 employees at the time of the *Messina* decision. With 1,576 employees, Spire currently is 0.53% the size of Ford at that time. Neither Spire's nor Mr. Carter's unreasonable annoyance or perceived burden of having Spire's President deign to sit for a deposition is a sufficient ground to preclude that deposition.

**B. Spire's motion to shield its manager of document retention should be denied.**

As an initial matter, in seeking to shield Bob McKee, its manager of document retention, from giving testimony in this proceeding, Spire relies on the novel argument that in order for Mr.

McKee's potential testimony regarding spoliation to be relevant CNEG would have had to allege "that Spire violated its Tariff as a result of a failure to properly retain documents associated with the February OFO." This is a specious argument.

Given the amounts at issue and the attention received by all parties regarding the impact of the Winter Storm, there is a glaring absence in Spire's production to date of any contemporaneous emails, chat messages, or other written correspondence regarding concerns as to system integrity, discussion of whether or not to implement the OFO, the necessity of maintaining the OFO in place, when to withdraw the OFO, or the potential impact of the OFO and its attendant penalties on Missouri customers given the historic run-up in gas prices while Spire had the OFO in place. The dearth of internal communication produced to-date by Spire regarding the Winter Storm and its impact on Spire's operations and decision-making is clearly relevant to this proceeding. Mr. McKee's deposition testimony regarding Spire's adherence or lack thereof to its document retention policies and processes during this time. As previously stated for Mr. Carter, and equally applicable to Mr. McKee – Spire's failure to produce these witnesses and attempt to shield them from providing sworn testimony should draw a negative inference from the Commission on those issues on which they could have testified. For Mr. McKee – should he fail to testify – it is entirely logical and just for the Commission to infer a negative inference as to whether Spire adhered to its document retention policy and its motivation for destruction of such communication.

CNEG's preference would be to simply obtain production of these documents and it has separately filed a motion to compel do to so. Spire's corporate representative has testified that the relevant groups such as gas supply and gas control primarily used email to communicate. Yet Spire has only produced 21 emails to CNEG, which consist primarily of email communication between Spire and CNEG itself and show no indication of the types of email communication that an event

of the magnitude of the Winter Storm would generate among groups such as gas supply and gas control, which were directly affected and would reasonably be expected to be monitoring those conditions and communicating with other groups and employees quite extensively under the circumstances. Those documents are simply missing from Spire's production despite being well within the retention window under Spire's stated document retention policy. CNEG is entitled to discovery about this lack of production beyond its unsworn assurances of counsel, which are not evidence, and are no longer credible in light of its paltry production.

Similarly, Spire also acknowledged using chat software in the course of its business, including ICE Chat and Microsoft Teams. Counsel for Spire has indicated that Microsoft Teams chats and logs are not retained and no such chats exist to be produced. In fact, no such chats have been produced. As counsel's advisement on such issues is not evidence, CNEG has sought definitive answers on the apparent lack of retention of Microsoft Chat documents from the individual identified by Spire's corporate representative as having knowledge of those issues which the corporate representative himself lacked. More troubling, CNEG received a similar explanation for the lack of ICE Chat, yet despite this representation as to Spire's supposed policy of not retaining any ICE Chats, at least one ICE Chat actually has been produced by Spire. The sole chat produced by Spire was between Justin Power of Spire and someone at Symmetry. No internal ICE Chats have been produced nor have any ICE Chats regarding CNEG been produced. Accordingly, there is strong circumstantial evidence that at least some ICE Chats are retained, otherwise Spire could not have produced the one that it did produce. Given the discrepancies in the production of these documents, CNEG must insist on discovery to establish, in admissible form, what documents existed at the time of the events at issue in this proceeding, the thoroughness

of Spire's search, collection, review, and collection process, and a determination of whether or not such documents have been lost or destroyed, and if so, how.

CNEG originally sought testimony on documents via a corporate representative. Spire designated George Godat to testify for the company on all issues, including those regarding documents relevant to this proceeding. Mr. Godat himself identified Bob McKee as an individual with relevant knowledge on the subject of document retention. In fact, Mr. Godat met with Mr. McKee in preparation to testify on these issues on behalf of the company. Mr. McKee therefore appears to be the individual with the most knowledge regarding these issues. To the extent Spire's Motion disclaims, on behalf of Mr. McKee, any personal knowledge on those issues, it may be that there exists a better person to resolve these questions, but Mr. McKee was the one identified by Spire's corporate representative. It is not enough for Spire to simply fail to produce responsive documents, obscure what has been withheld or simply not searched for or collected on the basis of overbroad objections (subject to CNEG's separate motion to compel), and then claim ignorance on the part of its witnesses and thus frustrate a legitimate discovery into correspondence regarding key issues in this proceeding.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should deny Spire's Motion.

Respectfully submitted,

By: /s/ Richard A. Howell

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LLC*

### CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February 2021, a copy of the foregoing **Response** has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

/s/ Richard A. Howell

Richard A. Howell

# EXHIBIT A

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1	BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI	1	Exhibit 13 Spire Missouri Schedule of 261
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3	Constellation NewEnergy-Gas ) Division, LLC, )	3	Exhibit 14 Clearwater notice of 283
4	Complainants, )	4	deposition
5	vs. ) Case No. ) GC-2021-0315	5	Exhibit 15 Clearwater complaint 322
6	Spire Missouri, Inc. and its ) operating unit Spire Missouri West, )	6	
7	Respondents. )	7	(The original exhibits were retained by the court
8	Symmetry Energy Solutions, LLC. )	8	reporter to be attached to the original and copies
9	Complainants, )	9	of the transcript.)
10	vs. ) Case No. ) GC-2021-0316	10	
11	Spire Missouri, Inc. and its ) operating unit Spire Missouri West, )	11	
12	Respondents. )	12	
13	Clearwater Enterprises, LLC. )	13	
14	Complainants, )	14	
15	vs. ) Case No. ) GC-2021-0353	15	
16	Spire Missouri, Inc. and its ) operating unit Spire Missouri West, )	16	
17	Respondents. )	17	
18	VIDEO-RECORDED DEPOSITION OF GEORGE E. GODAT	18	
19	(Corporate Representative of Spire Missouri, Inc. and its operating unit Spire Missouri West)	19	
20	TAKEN ON BEHALF OF THE COMPLAINANTS	20	
21	DECEMBER 13, 2021	21	
22	(Starting time of the deposition: 8:08 a.m.)	22	
23		23	
24		24	
25		25	

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1	I N D E X	1	VIDEO-RECORDED DEPOSITION OF GEORGE E. GODAT
2	QUESTIONS BY: PAGE	2	as the Corporate Representative of Spire Missouri,
3	MR. BAUER 13	3	Inc. and its operating unit Spire Missouri West,
4	MR. HOWELL 146	4	produced, sworn and examined on December 13, 2021,
5	MS. BELL 284	5	between the hours of eight o'clock in the forenoon
6	MR. BAUER 337	6	and eight o'clock in the evening of that day, at the
7		7	offices of Dowd Bennett LLP, 7733 Forsyth Blvd.,
8	E X H I B I T S	8	19th Floor, St. Louis, Missouri 63105, before
9	EXHIBIT PAGE	9	William L. DeVries, a Certified Court Reporter (MO),
10	Exhibit 1 Notice of deposition 16	10	Registered Diplomate Reporter, and Certified
11	Exhibit 2A Binder 1 of materials 93	11	Realtime Reporter, in certain causes now pending
12	Exhibit 2B Binder 2 of materials 93	12	before the Public Service Commission of the State of
13	Exhibit 3 2-17-21 Spire correspondence 112	13	Missouri, between Constellation NewEnergy-Gas
14	Exhibit 4 PowerPoint presentation 129	14	Division, LLC; Symmetry Energy Solutions, LLC;
15	Exhibit 5 Murray & Trettel document 130	15	and Clearwater Enterprises, LLC, Complainants, vs.
16	Exhibit 6 9-9-21 e-mail chain 131	16	Spire Missouri, Inc. and its operating unit Spire
17	Exhibit 7 2-29-21 e-mail chain 135	17	Missouri West, Respondents; taken on behalf of the
18	Exhibit 8 MOW Transportation Comms 136	18	Complainants.
19	2-17-21	19	
20	Exhibit 9 2-10-21 Payne e-mail 138	20	
21	Exhibit 10 2-17-21 e-mail chain 139	21	
22	Exhibit 11 2-24-21 Spire letter to 140	22	
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1                   A P P E A R A N C E S  
2  
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1           Also present:  
2           Mr. Matt Aplington, Spire Missouri  
3           Ms. Rachel Niemeier, Spire (via Zoom)  
4           Ms. Jenny Thompson, Clearwater (via Zoom)  
5           Mr. Jim Cantwell, Constellation expert  
6           (via Zoom)  
7  
8           Mr. Ryan Gray, Videographer (via Zoom)  
9           Alaris Litigation Services  
10          711 North Eleventh Street  
11          St. Louis, Missouri 63101  
12          (314) 644-2191  
13          1-800-280-3376  
14  
15  
16  
17          Court Reporter:  
18          William L. DeVries, RDR/CRR  
19          Missouri CCR #566  
20          Alaris Litigation Services  
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1           For Constellation NewEnergy-Gas Division, LLC:  
2           Mr. Richard A. Howell (via Zoom)  
3           Ms. Amy L. Baird (via Zoom)  
4           Jackson Walker, LLP  
5           1401 McKinney St., Suite 1900  
6           Houston, Texas 77010  
7           (713) 752-4200  
8           rahowell@jw.com  
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10  
11          Mr. Joshua Harden (via Zoom)  
12          Collins & Jones, PC  
13          1010 West Foxwood Drive  
14          Raymore, Missouri 64083  
15          (816) 318-9966  
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17          For Clearwater Enterprises, LLC:  
18          Ms. Stephanie S. Bell  
19          Ellinger & Associates  
20          308 East High Street, Suite 300  
21          Jefferson City, Missouri 65101  
22          (573) 750-4100  
23          sbell@ellingerlaw.com  
24  
25          Ms. Sarah C. Miller (via Zoom)  
                Hall Estill  
                320 South Boston Avenue, Suite 200  
                Tulsa, Oklahoma 74103-3706  
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                smiller@hallestill.com  
                For Missouri Public Service Commission:  
                Mr. Curt Stokes (via Zoom)  
                Ms. Karen Bretz (via Zoom)  
                Ms. Jamie Myers (via Zoom)  
                Mr. Dave Sommerer (via Zoom)  
                Missouri Public Service Commission  
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                jamie.myers@psc.mo.gov  
                david.sommerer@psc.mo.gov

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1                   IT IS HEREBY STIPULATED AND AGREED by  
2           and between all counsel that this deposition may be  
3           taken in shorthand by William L. DeVries, RDR/CRR, a  
4           Certified Court Reporter and Certified Shorthand  
5           Reporter, and afterwards transcribed into  
6           typewriting; and the signature of the witness is  
7           expressly reserved.  
8                   \* \* \* \* \*  
9                   GEORGE E. GODAT,  
10          of lawful age, produced, sworn and examined on  
11          behalf of the Complainants, deposes and says:  
12          (Starting time of the deposition: 8:08 a.m.)  
13          VIDEOGRAPHER: We are on the record.  
14          Today's date is December 13th, 2021 and the time is  
15          8:08 a.m. This is the video-recorded deposition of  
16          corporate representative George Godat in the matter  
17          of Symmetry Energy Solutions, LLC, versus Spire  
18          Missouri Incorporated, et al., Case  
19          Number GC-2021-0316, before the Public Service  
20          Commission of the State of Missouri.  
21          This deposition is being held at Dowd  
22          Bennett. The reporter's name is Bill DeVries. My  
23          name is Ryan Gray. I'm the legal videographer. We  
24          are with Alaris Litigation Services.  
25          Will the attorneys present please



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1 introduce themselves and the parties they represent?  
 2 MR. BAUER: Okay. So good morning.  
 3 This is Steve Bauer and Rachel Bosley. We are from  
 4 Latham & Watkins, and we represent Symmetry Energy  
 5 Solutions.  
 6 MR. HOWELL: This is Richard Howell via  
 7 Zoom. Also here with me for Constellation is Amy  
 8 Baird and Josh Harden, as well as an expert witness  
 9 Jim Cantwell.  
 10 MS. WHIPPLE: Peggy Whipple and Doug  
 11 Healy from Healy Law Offices for Symmetry.  
 12 MS. BELL: Okay. Stephanie Bell with  
 13 Ellinger & Associates on behalf of Clearwater.  
 14 MR. GORE: We got all the complainants?  
 15 This is Gabe Gore and Becky McLaughlin here on  
 16 behalf of Dowd Bennett, LLP. Dean, I'll let you  
 17 announce.  
 18 MR. COOPER: Dean Cooper from the law  
 19 firm of Brydon, Swearingen & England, PC on behalf  
 20 of Spire Missouri, Inc.  
 21 MR. APLINGTON: This is Matt Aplington  
 22 from Spire Missouri, Inc.  
 23 COURT REPORTER: Hold on, Ryan.  
 24 Anybody else on the Zoom that has not introduced  
 25 themselves?

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1 MR. STOKES: On behalf of the Public  
 2 Service Commission staff, this is Curt Stokes  
 3 appearing telephonically.  
 4 MS. NIEMEIER: On behalf of Spire this  
 5 is Rachel Niemeier, appearing telephonically.  
 6 MS. MILLER: On behalf of Clearwater,  
 7 outside counsel from Hall Estill, this is Sarah  
 8 Miller.  
 9 VIDEOGRAPHER: Would the court reporter  
 10 please swear in the witness?  
 11 COURT REPORTER: Do you swear or affirm  
 12 that the testimony you are about to give in this  
 13 proceeding will be the truth, the whole truth, and  
 14 nothing but the truth?  
 15 THE WITNESS: Yes, sir.  
 16 MR. BAUER: Okay. So Mr. Gore, you  
 17 want to start us off?  
 18 MR. GORE: Yeah. So good morning  
 19 everyone. At the outset of the deposition today I  
 20 just wanted to point out that Mr. Godat has in front  
 21 of him two binders that reflects the documents that  
 22 he used to prepare to provide testimony on each of  
 23 the topics. We thought the most comprehensive list  
 24 of topics was Constellation, so that is how the  
 25 binders are organized. They're organized by tab

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1 following Constellation's topics.  
 2 To the extent there were topics from  
 3 others' notices that we felt weren't covered within  
 4 those 20 Constellation topics, we added a couple at  
 5 the end, but we think it covers everyone's topics  
 6 and that's -- these are the documents that he  
 7 reviewed in his preparation for today's testimony.  
 8 We provided these documents  
 9 electronically, so I hope everyone who is on video  
 10 got the documents. If you did not get them, you can  
 11 shoot Becky McLaughlin an e-mail. She'll shoot a  
 12 zip file out to you. And I think that is all we  
 13 have.  
 14 MR. BAUER: Okay. Great. So can I ask  
 15 you a question or two which you're not being  
 16 deposed, so I -- you don't have to answer the  
 17 questions, but one question I have is are all of  
 18 these documents in these two binders things that  
 19 have been previously disclosed in this litigation?  
 20 MR. GORE: I believe so. Can we  
 21 confirm that? There may be a couple -- I'm thinking  
 22 of one publicly available document that you guys may  
 23 not have, but I think by and large, 99 percent of  
 24 it -- it will be -- I think we have a notice from  
 25 the Southern Star that's publicly available that we

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1 put in there. Maybe some weather reports. I don't  
 2 know -- those were probably produced weren't they or  
 3 maybe they weren't. So there's things like that  
 4 that we pulled, but it be will obvious to you.  
 5 But all the documents I think have been  
 6 produced. If not, let us know if you think they  
 7 haven't been produced but to the extent they haven't  
 8 been produced, we're producing them today. I don't  
 9 think anybody is going to see anything in there  
 10 that's unfamiliar to them.  
 11 MR. BAUER: Is there any way -- are  
 12 these Bates marked or marked in any way that we can  
 13 track them?  
 14 MR. GORE: They're marked just like  
 15 they were when they were produced and as I  
 16 understand it we didn't produce anything but Bates  
 17 labels.  
 18 MR. BAUER: Okay. All right.  
 19 MS. BELL: Can I state for the record  
 20 that Jennifer Thompson from Clearwater is also on  
 21 the Zoom.  
 22 MR. BAUER: All right. Well, let's get  
 23 started.  
 24 MR. GORE: You guys know -- before we  
 25 get started here, let me do one more thing. I meant

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1 to do this earlier. I think this goes better with  
 2 this down. Less distractions.  
 3 EXAMINATION  
 4 QUESTIONS BY MR. BAUER:  
 5 **Q. Okay. Good morning, sir.**  
 6 A. Good morning.  
 7 **Q. Could you pronounce your last name**  
 8 **again for me because I think I've been getting it**  
 9 **wrong all this time.**  
 10 A. Yeah, George Godat.  
 11 **Q. Godat?**  
 12 A. Yes.  
 13 **Q. Okay. Thank you. Nice to meet you.**  
 14 A. Uh-huh. Nice to meet you.  
 15 **Q. What is your current position at Spire?**  
 16 A. Vice president of gas supply and  
 17 general manager for Missouri East. So I have  
 18 responsibility for gas supply for all of our  
 19 utilities, gas control for all of our utilities, and  
 20 then I also have field operations for St. Louis. So  
 21 about a thousand field employees.  
 22 (Court reporter interruption.)  
 23 **Q. (By Mr. Bauer) And you say is that**  
 24 **just for Spire East or is it for the entire Spire**  
 25 **group of companies?**

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1 A. My gas supply and gas control  
 2 responsibilities are for all of Spire utilities. My  
 3 field operations is just for Missouri East.  
 4 **Q. How long have you been in that**  
 5 **position?**  
 6 A. I've had gas supply and gas control  
 7 since 2018. I took over field operations last  
 8 October.  
 9 **Q. Who did you take field operations over**  
 10 **from?**  
 11 A. Tim Goodson.  
 12 **Q. Can you just run us quickly through**  
 13 **your education and your past employment positions?**  
 14 A. Sure. I have a mechanical engineering  
 15 degree from University of Missouri Rolla, which is  
 16 now Missouri S&T. Came to work for Spire right out  
 17 of college. So been here 30 years in January. I  
 18 was -- held various positions on the operations side  
 19 for my first four years. In 1996 I moved into gas  
 20 supply for Laclede Gas Company. And I held -- I was  
 21 then -- held various roles in gas supply for Laclede  
 22 Gas for about 14 years.  
 23 And then 2008 I moved to Spire  
 24 marketing, which was Laclede Energy Resources at the  
 25 time. I spent ten years there. And when they moved

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1 that entity to Houston, I came back to the utility  
 2 in 2018 and I took over gas supply and gas control  
 3 and then this past October when Tim Goodson retired,  
 4 they added the responsibility of field operations to  
 5 me.  
 6 **Q. And currently who do you report to?**  
 7 **Who is above you in the chain of command?**  
 8 A. I report directly to Scott Carter, the  
 9 president of Spire Missouri.  
 10 **Q. And who are your direct reports?**  
 11 A. On the gas supply side, Justin Powers  
 12 runs gas supply for all the utilities. Alex Grewach  
 13 runs gas control. I have three directors on the  
 14 field operations side. I don't know if you want me  
 15 to name those.  
 16 **Q. Sure.**  
 17 A. Rob Atkinson, Todd Gibson, and David  
 18 Williams. And then I have -- I have a manager of  
 19 op support that's Ray Wilson that reports directly  
 20 to me. I have an admin Theresa Payne that reports  
 21 to me, and then an accountant, Michelle Beaver, that  
 22 reports directly to me.  
 23 **Q. Thank you. Is there any reason that**  
 24 **you cannot testify today truthfully and accurately?**  
 25 A. There is not.

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1 **Q. Have you had your deposition taken**  
 2 **before?**  
 3 A. I did in a Missouri PSC case when I was  
 4 in gas supply for the utility, so probably 20 years  
 5 ago.  
 6 **Q. And that's the only one?**  
 7 A. It is.  
 8 MR. BAUER: Okay. Can we mark the  
 9 deposition notice as the first exhibit, please?  
 10 (WHEREIN, Exhibit 1, Notice of  
 11 deposition, was marked for identification by the  
 12 Court Reporter.)  
 13 **Q. (By Mr. Bauer) So we put Exhibit 1**  
 14 **before you, and that's the deposition notice in this**  
 15 **case for your deposition as an attachment. You've**  
 16 **seen it before I take it?**  
 17 A. I have.  
 18 **Q. Okay. And so you're the person who's**  
 19 **testifying as the corporate representative for**  
 20 **Spire?**  
 21 A. Yes, sir.  
 22 **Q. And that means that you've been**  
 23 **designated by the company as its representative for**  
 24 **each of these topics, true?**  
 25 A. Correct.

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1 **Q. Okay. And do you feel qualified to**  
 2 **testify on behalf of Spire -- Spire Missouri, Inc.**  
 3 **and Spire Missouri West on each of these topics?**  
 4 MR. GORE: I'm just going to object to  
 5 the use of the term qualified as vague. You can  
 6 answer.  
 7 A. Yeah. I'm going to -- yeah, I'm  
 8 testifying on the fact that I've reviewed these  
 9 documents and I'm familiar with the information  
 10 that's been presented. I'm not necessarily the  
 11 person that produced them, so to the extent I can  
 12 talk about them, I don't necessarily have all the  
 13 information that went into putting those together.  
 14 **Q. (By Mr. Bauer) Is there any particular**  
 15 **area that you -- that you would prefer not to**  
 16 **testify about today?**  
 17 A. No, I'm fine talking about each one.  
 18 **Q. So since you're testifying as the**  
 19 **representative, I'm going to try to use the word**  
 20 **Spire rather than you --**  
 21 A. Okay.  
 22 **Q. -- because you're testifying on behalf**  
 23 **of Spire. When we take your deposition personally,**  
 24 **we may ask you what did you do, what do you know,**  
 25 **but now I'm going to be asking on behalf of Spire.**

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1 A. Okay.  
 2 **Q. You understand that?**  
 3 A. Yes.  
 4 **Q. We'll all just do the best we can with**  
 5 **that.**  
 6 A. Okay.  
 7 **Q. It's a little awkward. So can you tell**  
 8 **us generally what you did to prepare to be the Spire**  
 9 **representative today?**  
 10 A. Okay. I reviewed these documents. I  
 11 read through the notice of deposition. I spoke  
 12 with -- with some of the parties that had provided  
 13 the documents to make sure that they were still --  
 14 still confident that the information that they had  
 15 provided was accurate.  
 16 **Q. Okay. So let's get a little more**  
 17 **detail on that. Who did you meet with?**  
 18 MR. GORE: And I'm going to object,  
 19 vague. You can answer.  
 20 A. Yeah, I spoke with inside, outside  
 21 counsel. The ones that I specifically talked to  
 22 were Scott Weitzel. Justin Powers works for me, so  
 23 I have ongoing conversations with Justin. I talked  
 24 to Scott Dudley, who prepares our documents for  
 25 press releases and for our -- there was another

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1 document here. Like our earnings releases, Scott  
 2 Dudley is the one that prepares those. So I talked  
 3 to Scott Dudley. And I also spoke with Patty  
 4 Reardon.  
 5 **Q. (By Mr. Bauer) Who is Patty Reardon?**  
 6 A. She's the business rep for Kansas City  
 7 for Spire.  
 8 **Q. Right. And you met with you say inside**  
 9 **and outside counsel?**  
 10 A. That's correct.  
 11 **Q. For approximately how much time did you**  
 12 **spend with them?**  
 13 MR. GORE: I'm going to -- I'm going to  
 14 object, vague because I don't think you're making it  
 15 clear as to whether or not what he was doing in  
 16 preparation to give testimony today, specifically on  
 17 the topics, as opposed to privileged meetings with  
 18 counsel.  
 19 MR. BAUER: Okay. Well, I think his  
 20 meeting with you to get ready for the topics, to get  
 21 ready for this deposition would be privileged too.  
 22 I'm not trying to --  
 23 MR. GORE: Right.  
 24 MR. BAUER: I'm not trying to bust your  
 25 privilege.

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1 MR. GORE: There's preparations --  
 2 there's people he met with and prepared that he's  
 3 prepared to talk about those conversations because  
 4 they were in preparation to give testimony on the  
 5 topics, whereas when he met with us we were, you  
 6 know --  
 7 MR. BAUER: Preparing for the  
 8 deposition.  
 9 MR. GORE: Exactly.  
 10 **Q. (By Mr. Bauer) So all I'd like to know**  
 11 **is the names of the people that you met with when**  
 12 **you prepared for the deposition and approximately**  
 13 **how long you met with them. I don't want to know**  
 14 **about the content or anything.**  
 15 A. Yeah, I met, what, approximately six  
 16 hours total I would guess. It was the four  
 17 attorneys in this room. Yeah, it was these four and  
 18 then Goldie -- how do you pronounce her last name?  
 19 MR. APLINGTON: Bockstruck.  
 20 A. Bockstruck. She was also in the  
 21 meeting with us. She works for Matt.  
 22 **Q. (By Mr. Bauer) So if I get it right,**  
 23 **you spent about six hours with lawyers preparing for**  
 24 **the deposition, but you spent additional time**  
 25 **talking to these four different persons that you**

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1 listed before?  
 2 A. That's correct.  
 3 **Q. Anything else have you done -- have you**  
 4 **done anything else to prepare for the deposition**  
 5 **other than what we just described here?**  
 6 A. The majority of my time was just spent  
 7 getting myself familiar with these documents.  
 8 **Q. Do you know how those documents came to**  
 9 **be a set that were given to you?**  
 10 A. It was -- it was information that  
 11 counsel pulled that thought -- they thought was  
 12 representative of the questions that had been asked  
 13 in the deposition.  
 14 **Q. Did you review any documents other than**  
 15 **the ones that are in these binders in preparation**  
 16 **for this deposition?**  
 17 A. Yeah, none that I can think of.  
 18 MR. GORE: For the record, Steve, I'd  
 19 just point out he did forget one name of a person he  
 20 spoke with in preparation. If you want me to remind  
 21 him I can or just --  
 22 MR. BAUER: Sure. Let's just get it  
 23 out.  
 24 MR. GORE: Bob McKee.  
 25 A. Oh, Bob McKee. Yeah, I'm sorry. He's

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1 our records retention coordinator or manager.  
 2 **Q. (By Mr. Bauer) At Spire?**  
 3 A. At Spire.  
 4 **Q. Bob McKee?**  
 5 A. Bob McKee, correct.  
 6 **Q. Okay. Thank you. Okay. Take a look,**  
 7 **if you would, at Exhibit 1. It's on page four,**  
 8 **examination topic number one. Just for keeping**  
 9 **yourself organized there, as a general rule I'm just**  
 10 **going to plow through these topics one after the**  
 11 **next. I may skip around a little bit, but not too**  
 12 **much. So you probably want to just keep Exhibit 1**  
 13 **in front of you.**  
 14 **So topic one is (quote as read):**  
 15 **Spire's collection and production of**  
 16 **documents in this matter, including the**  
 17 **basis for stating that, quote, Spire**  
 18 **has no additional responsive documents**  
 19 **to produce at this time, end quote, in**  
 20 **Spire's September 17th, 2021 letter.**  
 21 **Which is attached as attachment A. Go**  
 22 **ahead and turn to attachment A, if you would. It's**  
 23 **the letter from Mr. Aplington to me. The fourth**  
 24 **paragraph says (quote as read):**  
 25 **Your letter seems to imply that,**

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1 because the damages Spire seeks are  
 2 large, there must be a concomitant  
 3 volume of documents to substantiate the  
 4 claim. There are not, and Spire has no  
 5 additional responsive documents to  
 6 produce at this time.  
 7 **Do you see that?**  
 8 A. Yes, sir.  
 9 **Q. Do you -- do you know -- or let me ask**  
 10 **you this: What does it mean when it says there that**  
 11 **Spire has no additional responsive documents to**  
 12 **produce at this time? Can you explain that to me?**  
 13 MR. GORE: At this point I'm just going  
 14 to point out that I submitted written objections to  
 15 topic one, and after the objections what I stated  
 16 the witness would be prepared to testify about is  
 17 that we would produce the corporate representative  
 18 who would be capable of testifying regarding the  
 19 collection and production of documents in response  
 20 to Symmetry's data requests. And I think the  
 21 question you just asked goes beyond that in terms of  
 22 asking what was Matt Aplington's thought process  
 23 when he wrote a sentence in a letter.  
 24 MR. BAUER: Okay. But I'm asking what  
 25 Spire -- does Spire have any understanding of what

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1 that means and what does that mean to us in this  
 2 litigation. So I take your objection. There's some  
 3 discussion on our side of the aisle here about  
 4 whether those objections were late, and that's  
 5 something we can talk about later. We don't need to  
 6 burn time on this now.  
 7 MR. GORE: I'm pretty sure under  
 8 Missouri law they were not late.  
 9 MR. BAUER: I didn't -- it wouldn't  
 10 surprise me that we might disagree on that. But so  
 11 I take -- I take your objection, but can he just  
 12 answer the question or are you going to instruct him  
 13 not to answer?  
 14 MR. GORE: No, you can answer if you're  
 15 able.  
 16 **Q. (By Mr. Bauer) Okay.**  
 17 A. Yeah, I mean, you know, as you  
 18 mentioned, I wasn't directly responsible for  
 19 producing the documents that were turned over. I  
 20 went through and reviewed all the documents. You  
 21 know, based -- based on my information on the  
 22 matter, you know, I think all of the documents that  
 23 are needed to -- to calculate damages in this case  
 24 are in this -- in these binders.  
 25 **Q. Does that mean that Spire has produced**

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1 **all of the documents that Symmetry has requested?**  
 2 A. Yeah, I mean, it's my understanding  
 3 based on this letter that Spire's produced all the  
 4 documents that Symmetry has requested. Like I say,  
 5 I haven't -- I haven't personally been responsible  
 6 for collecting all the documents, so I would say  
 7 it's Spire's position that the documents that  
 8 Symmetry has requested have been collected and  
 9 turned over.  
 10 MR. GORE: And I'm -- and I'm going to  
 11 object to the questioning as vague and calls for  
 12 legal conclusion. You switched terms. You switched  
 13 from responsive to requested, which are two  
 14 different things legally, which this witness is not  
 15 a lawyer.  
 16 **Q. (By Mr. Bauer) Do you have an**  
 17 **understanding of the difference between responsive**  
 18 **and requested? I'm not sure your counsel and I are**  
 19 **thinking about the same words.**  
 20 A. Yeah. Could you explain what you're  
 21 talking about in context of?  
 22 **Q. Yeah, sure. I mean, my question is --**  
 23 **I'll take a step back. Symmetry requested a bunch**  
 24 **of documents from Spire in this case. My question**  
 25 **to -- to you is after seeing this letter, it says**

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1 **(quote as read):**  
 2 **Spire has no additional responsive**  
 3 **documents to produce at this time.**  
 4 **And my question is have you guys**  
 5 **produced all the documents that we requested or do**  
 6 **you know? And that's all I'm trying to find out**  
 7 **here.**  
 8 MR. GORE: I'm going to object, vague,  
 9 calls for legal conclusion. If you want me to say  
 10 more, I will. Go ahead. You can answer.  
 11 A. Yeah, to the best of my knowledge based  
 12 on everything I reviewed here, Spire's position is  
 13 that they've turned over all the documents that --  
 14 that Symmetry has requested and have been responsive  
 15 to the questions that Symmetry has asked.  
 16 **Q. (By Mr. Bauer) And your basis for that**  
 17 **testimony is -- is Mr. Aplington's letter. Anything**  
 18 **else?**  
 19 MR. GORE: I'm going to object, calls  
 20 for legal conclusion. You can answer.  
 21 A. Yeah, I would say -- I mean, based on  
 22 the letter and then just based on the data request  
 23 process is something that's -- that's something that  
 24 our -- Spire as a utility has to do a lot. So I  
 25 think the company in general is familiar with that

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1 process and goes above and beyond to try to be  
 2 responsive to data requests as they come in.  
 3 **Q. (By Mr. Bauer) Who is the person who's**  
 4 **in charge of the data response -- the data responses**  
 5 **at Spire?**  
 6 MR. GORE: I'm going to object, vague.  
 7 Are you talking about this case?  
 8 MR. BAUER: Yes.  
 9 A. It just depends on the topic. You  
 10 know, the folks that I mentioned that I had spoken  
 11 to I think provided information to the various  
 12 topics that were included in the questioning from --  
 13 from Symmetry.  
 14 **Q. (By Mr. Bauer) Are you aware of any**  
 15 **documents that were requested by Symmetry but have**  
 16 **been withheld by Spire?**  
 17 A. I am not.  
 18 **Q. Have you made any inquiry to -- to --**  
 19 **within Spire to know whether there were documents**  
 20 **that were requested by Symmetry that Spire is**  
 21 **withholding?**  
 22 A. I have not specifically asked that  
 23 question.  
 24 **Q. What did you do specifically to prepare**  
 25 **yourself to testify about this topic number one?**

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1 A. I reviewed the information that's in  
 2 the binder. I could run through -- it's all of the  
 3 information that was used to calculate the OFO  
 4 penalties. It was -- it was the invoices that  
 5 showed what our cost to gas was. It was the  
 6 imbalance calculations on the spreadsheets that  
 7 showed the nominated volumes versus actual volumes.  
 8 (Court reporter interruption.)  
 9 A. I reviewed all the Gas Daily pricing,  
 10 which is the -- the number that gets calculated in  
 11 the OFO penalty calculation. So I mean, I could --  
 12 I could go through every document here, but  
 13 basically reviewed the information that had been  
 14 turned over that was used to calculate the damage  
 15 calculations.  
 16 **Q. (By Mr. Bauer) Was there a time**  
 17 **related to the winter storm event that Spire sent a**  
 18 **request to its employees that they preserve any**  
 19 **documents related to the winter storm?**  
 20 A. Yes, I believe we had a retention  
 21 request from -- from inside counsel.  
 22 **Q. And when was that sent out?**  
 23 MR. GORE: I'm going to object, beyond  
 24 the scope of the notice. You can answer if you  
 25 know.

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1 A. Yeah, I don't know it off the top of my  
 2 head.  
 3 **Q. (By Mr. Bauer) Do you know, was it**  
 4 **sent before or after Spire brought a lawsuit against**  
 5 **Symmetry?**  
 6 MR. GORE: I'm going to object,  
 7 foundation. I will instruct the witness not to  
 8 speculate if you don't know.  
 9 A. Yeah, I don't have that date off the  
 10 top of my head.  
 11 **Q. (By Mr. Bauer) Who sent it?**  
 12 A. Yeah, I don't recall that off the top  
 13 of my head either.  
 14 **Q. Do you know who it was sent to?**  
 15 A. I do not. I would have to find out who  
 16 sent it and see who the list was on that  
 17 distribution.  
 18 **Q. So there's one of those occasions where**  
 19 **I'm going to ask you personally because it relates**  
 20 **to that exact issue, but did you receive a -- a**  
 21 **document preservation order in this -- related to**  
 22 **the winter storm?**  
 23 A. I do recall receiving that.  
 24 **Q. And what form was that in?**  
 25 A. I believe it was an e-mail.

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1 **Q. What do you recall of the scope or --**  
 2 **of -- or what the document retention request asked**  
 3 **you to preserve?**  
 4 MR. GORE: I'm going to object that  
 5 this is beyond the scope, but you can answer.  
 6 A. Yeah. From what I recall when I read  
 7 it, I knew it was clearly anything that I had, any  
 8 information that I had that was related to the  
 9 Winter Storm Uri that I needed to keep it.  
 10 **Q. (By Mr. Bauer) Did you ever -- did you**  
 11 **ever receive any amendment or follow-up to that**  
 12 **preservation request?**  
 13 MR. GORE: I'll object again beyond the  
 14 scope of the notice, but you can answer.  
 15 A. Yeah, I don't recall receiving an  
 16 update.  
 17 (Court reporter interruption.)  
 18 **Q. (By Mr. Bauer) What did Spire do to**  
 19 **collect documents related to this case?**  
 20 A. I would have to -- I wasn't the one  
 21 specifically collecting them, so that would -- that  
 22 would have to be asked by our regulatory team that  
 23 runs that process.  
 24 **Q. So if I wanted to ask questions about**  
 25 **Spire's collection of documents in this matter, who**

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1 **would I ask?**  
 2 A. I would say Scott Weitzel and then our  
 3 inside and outside counsel.  
 4 MR. GORE: And Steve, I'll just say the  
 5 witness is prepared to talk about the document  
 6 collection process in general.  
 7 **Q. (By Mr. Bauer) Well, I want to get**  
 8 **whatever information you have. So I guess your**  
 9 **counsel would like me to ask you tell me about the**  
 10 **document collection process at Spire in general.**  
 11 A. Yeah, in general whenever we get a data  
 12 request --  
 13 MR. GORE: Well, can I -- can you tell  
 14 him your general understanding of the process in  
 15 this case?  
 16 A. Yeah, my general understanding of the  
 17 process is those requests flow through legal and  
 18 regulatory and as they look at that they -- they  
 19 understand who at Spire would be the party that  
 20 would have the information responsive to that topic,  
 21 and that's who they collect the information from.  
 22 **Q. (By Mr. Bauer) So the -- the folks**  
 23 **that you mentioned earlier in legal and regulatory**  
 24 **made the decisions of -- from whom to collect**  
 25 **documents in this case?**

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1 A. That's my understanding of the process.  
 2 **Q. Do you have -- do you know specifically**  
 3 **who made the decisions in this case?**  
 4 A. I do not know specifically.  
 5 **Q. Now, after the documents are collected**  
 6 **they are reviewed and then either produced or not**  
 7 **produced to the party that requested them in this**  
 8 **case. Did you have any involvement with deciding**  
 9 **what was going to be disclosed to Symmetry from the**  
 10 **documents that were collected within Spire?**  
 11 A. I do not recall having any  
 12 conversations deciding what information was going to  
 13 go.  
 14 **Q. So let me ask you as Spire's**  
 15 **representative, can you tell me any details about**  
 16 **how that procedure worked in this case? Who did**  
 17 **what?**  
 18 A. Well, based on reviewing the documents,  
 19 pretty much anything from -- from the gas supply  
 20 damage calculation process was collected through gas  
 21 supply. The presentations that were provided to the  
 22 Missouri Public Service Commission were provided by  
 23 Scott Weitzel. The individual customer contacts  
 24 that took place were by Patty Reardon. Records  
 25 retention questions go to Bob McKee. So I would say

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1 in general that's where it's my understanding that  
 2 questions got directed to.  
 3 **Q. So do you have as Spire's**  
 4 **representative today any information about any of**  
 5 **the specific data requests and Spire's responses?**  
 6 A. I don't understand your question.  
 7 **Q. What I'm trying to understand -- tell**  
 8 **you exactly what I'm doing. Is wondering whether**  
 9 **it's just going to be a waste of everybody's time if**  
 10 **I ask you about a certain data request and say Spire**  
 11 **only produced one document or didn't produce any**  
 12 **documents. Can you tell us about that? I don't**  
 13 **want to go through that whole exercise if you don't**  
 14 **know.**  
 15 A. Yeah, like I say --  
 16 **Q. So --**  
 17 A. I was not the one that specifically  
 18 pulled all the documents. So I'm prepared to talk  
 19 about the information that was turned over, but I'm  
 20 not in a situation to know if there was any -- yeah,  
 21 if -- yeah. Like I say, I'm here to talk about the  
 22 documents that are here. I couldn't tell you if --  
 23 if there's another document out there that -- since  
 24 I wasn't specifically in the position of preparing  
 25 the documents.

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1 **Q. So let's say I ask you what are the**  
 2 **documents that are within -- that were within Spire**  
 3 **that are correspondence communications relating to**  
 4 **whether or not to issue an OFO, and I showed you**  
 5 **whatever documents that were produced in this case**  
 6 **related to that. Would you be in a position to tell**  
 7 **me whether there are others that were withheld or**  
 8 **whether that's all there were or whether there are**  
 9 **no documents?**  
 10 MR. GORE: I'm going to object to the  
 11 hypothetical, compound, beyond the scope.  
 12 A. Yeah. Like I say, it is my assumption  
 13 when they asked the questions, that the documents in  
 14 our possession have been produced.  
 15 MR. GORE: And just to state for the  
 16 record, the witness is prepared to testify on each  
 17 topic in the manner that we agreed in our responses  
 18 and objections to produce the witness. And on this  
 19 topic the witness is prepared to testify as we set  
 20 out in our objections.  
 21 MR. BAUER: Okay. Well, and the first  
 22 topic of the deposition is Spire's collection and  
 23 production of documents and Spire's representation  
 24 that they have no additional responsive documents to  
 25 produce at this time. So those are just kind of

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1 pretty basic questions. And if he's not the person  
 2 to answer those questions, we'll have to find the  
 3 person that is.  
 4 **Q. (By Mr. Bauer) If you look at**  
 5 **attachment A to Exhibit 1, there's a footnote to the**  
 6 **paragraph that we have been discussing. Take a look**  
 7 **at that. It says (quote as read):**  
 8 Spire remains mindful of its  
 9 obligations to supplement discovery  
 10 responses as appropriate, and will do  
 11 so.  
 12 **Do you see that, sir?**  
 13 A. Yes, sir.  
 14 **Q. Does Spire have any supplemental**  
 15 **document productions in process?**  
 16 A. I'm not aware of any at this time.  
 17 **Q. And does Spire -- is Spire -- does**  
 18 **Spire have any supplemental document productions**  
 19 **planned?**  
 20 A. Not that I'm aware of.  
 21 **Q. Okay. Let's continue looking at**  
 22 **Exhibit 1, examination topic number 2A, which states**  
 23 **(quote as read):**  
 24 **The full factual bases, including**  
 25 **details and the supporting**

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1 **documentation, for the following**  
 2 **statement. 3, as a result, gas markets**  
 3 **were very -- were forecast to become**  
 4 **very short.**  
 5 **What -- which gas markets is this**  
 6 **statement referring to?**  
 7 A. The -- it was -- it was basically the  
 8 production side of supply that serves the Kansas  
 9 City market.  
 10 **Q. And any other gas market or just that**  
 11 **one?**  
 12 A. There were -- there were other gas  
 13 markets that were short that impact the  
 14 midcontinent. So it was -- it was -- basically the  
 15 supply in general that was going to be available to  
 16 serve Kansas City was very constrained. A lot of  
 17 production was disappeared from the market. And  
 18 that was very much a concern for Spire going into  
 19 the cold period.  
 20 (Court reporter interruption.)  
 21 **Q. (By Mr. Bauer) Any other gas market**  
 22 **other than what you just described?**  
 23 A. I think it's a pretty vague question.  
 24 I mean, when you look at the -- when you look at how  
 25 integrated supply is across the country, it's hard

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1 to just pinpoint one -- one specific production  
 2 region because I think the Gas Daily documents that  
 3 are included in here, you know, give a good  
 4 explanation of how shortages in one market can  
 5 impact supply in another from that supply/demand  
 6 tug. So in general there was productions concerns  
 7 across the whole Midwest.  
 8 MR. GORE: And Steve, at this point  
 9 just for the purpose of -- so taking the deposition,  
 10 I'm going to give him another copy of the letter  
 11 because when he's looking at the topic, he can't see  
 12 the letter. So when you ask about these phrases, I  
 13 just think he needs to read it in context so he has  
 14 context for the phrase you're asking about.  
 15 MR. BAUER: Great idea.  
 16 MR. GORE: So you understand what's in  
 17 this topic is being taken out of that letter.  
 18 THE WITNESS: Oh, I got you.  
 19 MR. GORE: Okay.  
 20 THE WITNESS: Thank you.  
 21 **Q. (By Mr. Bauer) Okay. So still on --**  
 22 **still on topic A --**  
 23 MR. GORE: Can I just ask, can you take  
 24 a moment and find that language in the letter? I  
 25 just want to make sure you have the context as

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1 you're answering these questions. If you could  
 2 direct him, that might speed it up a bit, where that  
 3 phrase came from in the letter.  
 4 MR. BAUER: Okay. I thought you were  
 5 directing him just fine.  
 6 A. Yeah, I see it here.  
 7 **Q. (By Mr. Bauer) It's number three.**  
 8 A. Yes. I see it here now. Yeah, I think  
 9 it was -- it was the fear of what actually happened  
 10 was going to happen.  
 11 **Q. Let me ask you, when you were preparing**  
 12 **for this deposition, did you -- did you understand**  
 13 **that these topics that you were going to testify**  
 14 **came directly out of that letter from Mr. Aplington**  
 15 **or did you just, you know, determine that now?**  
 16 MR. GORE: I'm going to -- I'm going to  
 17 object, beyond the scope of the notice and --  
 18 A. I'm familiar with this document. I  
 19 didn't go through and try to specifically see if  
 20 information and different pieces of correspondence  
 21 tied exactly to what the questions were in this  
 22 document.  
 23 **Q. (By Mr. Bauer) Okay. Okay. So going**  
 24 **back to topic 2A (quote as read):**  
 25 **As a result gas markets were forecast**

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1 to become very short.  
 2 **Which forecasts is that referring to?**  
 3 **Like who's making the forecast?**  
 4 A. I mean, there's a lot of different  
 5 information out there. I think Gas Daily is one of  
 6 the best -- best sources. I think would you like  
 7 for me to direct you to where that says it in the  
 8 Gas Daily for the 12th?  
 9 **Q. No, no. I'm just asking who said it**  
 10 **and when. I mean, you don't have to point out the**  
 11 **exact document.**  
 12 A. Yeah. It's a combination of  
 13 information that's in documents like Gas Daily along  
 14 with correspondence that -- that the gas supply team  
 15 was having with the upstream pipelines and  
 16 suppliers.  
 17 **Q. And when did those forecasts come out**  
 18 **that made Spire believe that gas markets were going**  
 19 **to be very short?**  
 20 A. We were seeing the cold forecast coming  
 21 out of the weekend, but it was really the beginning  
 22 of that -- the week prior to going into the polar  
 23 vortex that it was really coming to light.  
 24 **Q. So is that the -- do you remember**  
 25 **dates?**

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1 A. 9th, 10th, 11th.  
 2 **Q. And --**  
 3 MR. GORE: Can you go ahead and say the  
 4 month just to be clear for the record.  
 5 A. Yeah, February 9th, 10th, 11th.  
 6 **Q. (By Mr. Bauer) Who at Spire is**  
 7 **involved with monitoring the gas market forecasts?**  
 8 A. Justin Powers that runs gas supply,  
 9 he -- he monitors the forecasts and keeps track of  
 10 the upstream supply situation. Our gas control is  
 11 the one that actually puts the forecast out for what  
 12 our system demand is going to be.  
 13 **Q. And the gas control reports to**  
 14 **Mr. Powers?**  
 15 A. It reports to me.  
 16 **Q. It reports to you?**  
 17 A. It does.  
 18 **Q. So who's in charge of gas control**  
 19 **again? I'm sorry if you told me and I have**  
 20 **forgotten the name.**  
 21 A. No, I don't. Alex Grewach is the name.  
 22 **Q. And who are the people that were**  
 23 **monitoring the gas market forecasts for Spire in**  
 24 **February 2021? Is it those two gentlemen?**  
 25 A. That would be our whole gas supply team



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1 and gas control. So Alex and his staff.  
 2 **Q. How do -- how do those groups**  
 3 **communicate with each other within Spire?**  
 4 MR. GORE: I'm going to object, vague.  
 5 You can answer.  
 6 A. Gas control actually sends the forecast  
 7 over showing what our -- excuse me -- based on the  
 8 temperature forecast what our system demand is going  
 9 to be, but in general they spend a lot of time on  
 10 phone conversations and situations like this.  
 11 **Q. (By Mr. Bauer) Were their documents**  
 12 **collected for this case?**  
 13 MR. GORE: I'm going to object, vague.  
 14 A. Yeah, I think that's a given.  
 15 **Q. (By Mr. Bauer) Meaning that -- I'll**  
 16 **respond. It was a vague question. I'll make it a**  
 17 **little tighter.**  
 18 **Were documents related to the winter**  
 19 **storm collected from the persons who were involved**  
 20 **in monitoring the gas market forecasts for Spire?**  
 21 A. They were.  
 22 MR. GORE: I'm going to object. I'll  
 23 object, vague. You can answer.  
 24 A. Okay. Yeah, they were.  
 25 **Q. (By Mr. Bauer) And were all the**

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1 **responsive documents from those groups produced to**  
 2 **us in this case?**  
 3 A. Like I mentioned before, it's my  
 4 understanding that if someone was asked to produce  
 5 documents, they produced the documents.  
 6 **Q. Now, do these folks in gas control, do**  
 7 **they have any means for communicating with each**  
 8 **other other than by telephone?**  
 9 A. They do. The forecasts that they send  
 10 out to gas supply, the forecast was actually one of  
 11 the documents that's included in this binder.  
 12 **Q. And do they communicate by -- by e-mail**  
 13 **or by some other way?**  
 14 A. Typically by e-mail.  
 15 **Q. In February 2021, were those folks**  
 16 **working remotely or were they on-site here at Spire?**  
 17 A. The controllers themselves were  
 18 on-site.  
 19 **Q. All right. Let's go to topic 2B,**  
 20 **please. Here it says (quote as read):**  
 21 **Spire reacted by initiating an OFO to**  
 22 **all marketers for the projected start**  
 23 **of the storm and short market.**  
 24 **It says initiating an OFO. What does**  
 25 **that entail?**

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1 MR. GORE: And George, I just instruct  
 2 you look at the letter and read it --  
 3 THE WITNESS: Yeah.  
 4 MR. GORE: -- in context of the letter  
 5 before you answer. Thank you.  
 6 A. Yeah. It's giving notice to the  
 7 marketers that we're in an OFO situation.  
 8 **Q. (By Mr. Bauer) And what is the purpose**  
 9 **of an OFO?**  
 10 A. It is to protect the integrity of our  
 11 system and it is to make sure that we stay in  
 12 compliance with our upstream pipelines.  
 13 **Q. Any other purposes?**  
 14 A. Yeah, it's basically since the utility  
 15 has no control over the supply that's -- that's  
 16 brought in to serve the marketers, it's to make sure  
 17 that the marketers are doing their part to bring  
 18 that supply in.  
 19 MS. BAIRD: I'm sorry, Steve, to  
 20 interrupt. This is Amy. I'm having a little  
 21 trouble hearing the witness. He keeps dropping his  
 22 voice a little. Can you guys make an effort,  
 23 please, to either get him closer or have him speak  
 24 up?  
 25 THE WITNESS: I'll try to speak up. I

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1 apologize.  
 2 MS. BAIRD: Thank you.  
 3 **Q. (By Mr. Bauer) Okay. So are there**  
 4 **procedures in place for Spire on when to declare an**  
 5 **OFO and when not to?**  
 6 A. Procedure-wise, I mean, there's a lot  
 7 of things that the utilities have to do to stay in  
 8 compliance with their tariff, and not everything is  
 9 written down in a formal procedure. So the tariff  
 10 itself is the guidepost for gas supply making the  
 11 decision to go into an OFO.  
 12 **Q. So Spire does not have any other**  
 13 **internal procedures related to whether or not to go**  
 14 **into an OFO; is that true?**  
 15 A. Yeah, we don't have a formal procedure  
 16 for that, correct.  
 17 **Q. Okay. So who was involved in the**  
 18 **decision whether to declare an OFO?**  
 19 MR. GORE: I'm going to object. Are  
 20 you -- vague. And I would just ask you to specify  
 21 whether you're talking about the present matter.  
 22 MR. BAUER: Absolutely right.  
 23 **Q. (By Mr. Bauer) Who was involved at --**  
 24 **at Spire in February of 2021 in deciding when and**  
 25 **whether to have an OFO?**

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1 A. It was primarily Justin Powers who  
 2 oversees gas supply and myself. I did -- I did  
 3 consult with Scott Carter, my boss, but ultimately I  
 4 was the one that made the decision.  
 5 **Q. That was my next question. Did you**  
 6 **need approval from anyone above you for that**  
 7 **decision or does the buck stop with you?**  
 8 A. It stops with me.  
 9 **Q. Was there any debate within Spire about**  
 10 **when to initiate an OFO?**  
 11 MR. GORE: I'm going to object to the  
 12 term debate as vague. Go ahead and answer.  
 13 A. Yeah, it was actually -- the timing  
 14 fell in to where it didn't even require a lot of  
 15 debate. You know, on that Monday and Tuesday we  
 16 were seeing -- we were seeing the supply situation  
 17 deteriorate.  
 18 We were starting to see -- we were  
 19 starting to have concern that supply was going to  
 20 disappear and then Southern Star issued their OFO on  
 21 the 9th. So after reviewing that we -- we moved in  
 22 lockstep and issued ours on the 10th, effective for  
 23 the same gas date, nine a.m. on the 12th.  
 24 **Q. (By Mr. Bauer) How did Southern Star's**  
 25 **OFO factor into Spire's decision whether or not to**

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1 **declare an OFO?**  
 2 A. It just reinforced to us that it was  
 3 absolutely necessary to do.  
 4 **Q. Are there any documents at Spire**  
 5 **indicating that anyone believed that the OFO was**  
 6 **unnecessary?**  
 7 A. I'm not aware of any of those  
 8 documents.  
 9 **Q. Are there any documents within Spire**  
 10 **indicating that Spire's system integrity was not at**  
 11 **risk at the time that the OFO was declared?**  
 12 A. I'm not aware of those documents.  
 13 **Q. Are there any documents in Spire**  
 14 **indicating that anyone believed that the system**  
 15 **integrity was not at risk during any time during**  
 16 **which the OFO was in place?**  
 17 MR. GORE: I'm going to object, vague  
 18 and compound.  
 19 A. Yeah, I mean, to the contrary, there  
 20 was -- there was actually a lot of concern during  
 21 Winter Storm Uri about the integrity of the system  
 22 in Kansas City.  
 23 **Q. (By Mr. Bauer) And since I'm asking**  
 24 **you about documents on this line of questions, who**  
 25 **were -- do any of those people communicate by**

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1 **e-mail?**  
 2 MR. GORE: I'm going to -- I'm going to  
 3 object, calls for speculation. You can answer.  
 4 A. Yeah, I mean, there's documents in here  
 5 that talk about specifically the issues that we were  
 6 having in Southwest Missouri where we were losing  
 7 supply on the Southern Star system. We initiated  
 8 our incident support team because we were preparing  
 9 for outages in Southwest Missouri. There was a  
 10 media campaign.  
 11 We provided the pressure profile on the  
 12 Southern Star system in Southwest Missouri where you  
 13 could see we were -- we were dramatically losing  
 14 pressure over a short amount of time. So that  
 15 information has been provided.  
 16 MR. GORE: And Mr. Godat, I would just  
 17 ask just for the record, when you reference the  
 18 binder, could you be specific? Rather than say  
 19 here, say in the binders that I -- that have been  
 20 produced at the deposition today just to make clear  
 21 on the record what you're referring to.  
 22 THE WITNESS: Yes, sir. Thanks.  
 23 **Q. (By Mr. Bauer) What actions, if any,**  
 24 **did Spire take to prepare for the winter storm other**  
 25 **than issuing the OFO?**

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1 A. You know, that's one thing I think --  
 2 you know, the utility -- Spire as a whole, you know,  
 3 especially our gas supply team prides their self on  
 4 as far as preparedness. We run a lot of regression  
 5 analysis to -- where we have, you know, a very firm  
 6 grasp on what our firm requirements are going to be.  
 7 You know, we clearly understand the  
 8 limitations of our transportation agreements that we  
 9 have, you know, specifically the Southern Star  
 10 system has -- has a flowing gas requirement that's  
 11 tied to its storage agreements, you know, so yeah,  
 12 there's a lot of preparation. The firm gas supply  
 13 contracts that the utility enters into ahead of the  
 14 winter. So yeah, there's -- as a utility that's  
 15 probably the main focus for the company is just  
 16 winter preparedness.  
 17 **Q. So you mentioned regression analyses.**  
 18 **What are those?**  
 19 A. That's where we would look at  
 20 historical usage information as compared to -- and  
 21 see how that relationship ties to forecasted  
 22 temperatures. And then we can estimate what our  
 23 demand is going to be based on that -- the forecasts  
 24 that we get.  
 25 **Q. And so those are computer models that**

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1 are run?  
 2 A. They are.  
 3 **Q. Who runs those?**  
 4 A. Our gas supply group and our gas  
 5 control group.  
 6 **Q. Who are the main people in this gas**  
 7 **supply and the gas control groups who know how to**  
 8 **run those regression analyses?**  
 9 A. Justin Powers and Sean Simpson.  
 10 **Q. And were those the gentlemen who ran**  
 11 **those regressions in February 2021?**  
 12 A. The models that are generated are used  
 13 by the gas control team to -- to generate the  
 14 forecast.  
 15 **Q. And those are the two that were**  
 16 **involved in that period of time?**  
 17 A. I'm saying -- I'm saying the winter  
 18 preparedness get -- because the models that are put  
 19 together are done well ahead of winter so that we  
 20 understand what our firm requirements are going to  
 21 be. So after you go through that process then those  
 22 models get embedded into gas control's forecast.  
 23 **Q. When gas markets were being forecast to**  
 24 **become very short in February 2021, did Spire do**  
 25 **anything else in reaction to those forecasts other**

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1 **than initiating an OFO?**  
 2 A. We did.  
 3 **Q. And what did you do? What did Spire**  
 4 **do?**  
 5 A. I mean, there was a lot of actions that  
 6 were taken. I know field operations was looking at  
 7 their staffing to see if they needed to add extra  
 8 technicians, you know, for increased calls. On the  
 9 gas supply side I know Justin and his team were --  
 10 were trying to figure out where the more vulnerable  
 11 suppliers were going to be and actually made some  
 12 contract changes to -- to be able to source some  
 13 supply that had a less likelihood of being  
 14 interrupted. I think just a lot of communication  
 15 with the upstream pipelines on, you know, what they  
 16 were seeing from a supply perspective and our  
 17 producers. So it was a pretty hectic time.  
 18 **Q. What are the contract changes that you**  
 19 **just referred to?**  
 20 A. We had some supply that was coming in  
 21 off of Enable Gas Transmission that had some  
 22 concerns whether it was going to be delivered or  
 23 not. Excuse me, I'm losing my voice a little bit.  
 24 Actually made a -- requested a contract change to  
 25 source gas off of Rockies Express Pipeline.

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1 **Q. Any other contract changes other than**  
 2 **that one?**  
 3 A. That's the only one that I can recall.  
 4 **Q. And then you also mentioned a lot of**  
 5 **communications with upstream suppliers. Who had --**  
 6 **who is in charge of having those communications?**  
 7 A. Mainly Justin Powers.  
 8 **Q. And does he -- do you know -- I don't**  
 9 **want to ask you a you know. But does Spire know how**  
 10 **Mr. Powers communicates with those folks? Is it**  
 11 **verbally or by e-mail or by text or --**  
 12 A. You know, I don't know exactly. Yeah.  
 13 I would have to ask Mr. Powers.  
 14 **Q. All right. So I want to make sure that**  
 15 **I have given you the opportunity to give a full**  
 16 **answer to what actions Spire took to prepare for the**  
 17 **winter storm other than issuing the OFO. You've**  
 18 **been testifying about that for a few minutes, but I**  
 19 **just want to make sure, is there anything else that**  
 20 **you haven't mentioned to me?**  
 21 MR. GORE: I'm going to -- I'm going to  
 22 object, vague as to time period. How far back do  
 23 you want him to go?  
 24 MR. BAUER: The question is not limited  
 25 by time period.

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1 MR. GORE: Okay.  
 2 A. Yeah, I mean, I'm one of, what, 3500  
 3 employees. So it would be hard for me to -- for me  
 4 to be able to do a good job of saying that --  
 5 everything that Spire did preparing for the storm.  
 6 **Q. (By Mr. Bauer) Okay. So --**  
 7 A. If that -- I'm just saying there's a  
 8 lot of activity and there's a lot of employees, so I  
 9 mentioned some of the highlights of the things that  
 10 I knew were going on, but I can't imagine that there  
 11 probably wasn't a lot of other things taking place  
 12 that I don't necessarily know about them.  
 13 **Q. So now let me limit the question by**  
 14 **time and say from the time that gas markets were**  
 15 **forecast to become very short in February until the**  
 16 **time of issuing the OFO, what did Spire do to**  
 17 **prepare for the disruption in the gas markets?**  
 18 A. Like I mentioned, the things that I can  
 19 recall that I knew took place were what I just  
 20 mentioned, but like I say, I don't think I'm in a  
 21 position to represent everything that Spire was  
 22 doing during that three- or four-day period.  
 23 MR. BAUER: Can we just take a  
 24 five-minute break?  
 25 MR. GORE: Sure.

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1 VIDEOGRAPHER: Off the record,  
 2 9:08 a.m.  
 3 (WHEREIN, a recess was taken.)  
 4 VIDEOGRAPHER: On the record, 9:23 a.m.  
 5 **Q. (By Mr. Bauer) Mr. Godat, let me go**  
 6 **back and just ask a couple more questions about**  
 7 **these regression analyses that -- that Spire does.**  
 8 **Can you tell me exactly who runs those?**  
 9 A. You mean who physically is actually  
 10 putting that model together?  
 11 **Q. Yeah.**  
 12 A. Yeah, like I mentioned, Sean -- Sean  
 13 Simpson, he is currently in gas supply, but he  
 14 worked in -- he worked in our system planning team  
 15 and then was a gas controller and now he's in gas  
 16 supply. So he worked, put a lot of those  
 17 regressions together. It's something that Spire's  
 18 done for years and just gets updated on an annual  
 19 basis, so you know, he -- he does it. I know he  
 20 works with Justin Powers and then I'm sure Alex  
 21 Grewach weighs in too as they're looking at the  
 22 results of those models when they come out.  
 23 **Q. And are they generated on any**  
 24 **particular intervals?**  
 25 A. We actually have a reliability report

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1 that gets sent to the Public Service Commission and  
 2 the results of those regressions are included in  
 3 those, so --  
 4 **Q. So --**  
 5 A. Yeah.  
 6 **Q. I'm sorry.**  
 7 A. Yeah, I mean, I haven't done them  
 8 myself, so I'm -- yeah, I'd be speculating as exact  
 9 interval of when they actually get ran.  
 10 **Q. Okay. All right. Okay. We'll move**  
 11 **on.**  
 12 A. It's a common approach. I think pretty  
 13 much all utilities do that. I would assume  
 14 marketers do too, estimate their usage, so --  
 15 **Q. Okay. Thank you. Let's go, still on**  
 16 **Exhibit 1, examination topic 2C, which also refers**  
 17 **back to item five in Mr. Aplington's letter. (Quote**  
 18 **as read):**  
 19 **The purpose of the OFO was to ensure**  
 20 **adequate natural gas supply to Western**  
 21 **Missouri for the duration of the event.**  
 22 **Do you see that?**  
 23 A. Yes, sir.  
 24 **Q. Did the OFO ensure adequate supply to**  
 25 **Western Missouri?**

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1 A. Fortunately, we -- we were able to get  
 2 through the OFO period without losing any customers.  
 3 **Q. And how did the OFO affect that?**  
 4 A. I realize that marketers didn't meet  
 5 the firm obligation that they had, but I think the  
 6 situation could have been even worse if we weren't  
 7 in an OFO. We could have seen -- we could have seen  
 8 the marketer volumes -- all the marketers go to  
 9 zero, not just Symmetry.  
 10 **Q. And what do you mean by -- I'm sorry.**  
 11 **Let me see exactly what he said. What do you mean**  
 12 **by it could have even been worse if we weren't in an**  
 13 **OFO, anything other than that all of the marketers**  
 14 **might have gone to zero?**  
 15 A. Yeah, I mean, if you look, there was --  
 16 there was supply that the marketers brought in  
 17 during that period that ultimately contributed to us  
 18 not having to curtail our firm customers. I think  
 19 if we weren't in an OFO those volumes could have --  
 20 all the marketers could have just taken up to zero,  
 21 similar to where Symmetry did.  
 22 **Q. Did the OFO -- did Spire's OFO require**  
 23 **daily balancing by marketers?**  
 24 A. It does.  
 25 **Q. And was there any discussion inside of**

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1 **Spire about whether daily balances should be**  
 2 **required, should not be required, should be**  
 3 **adjusted, any discussion at all about daily balances**  
 4 **related to the OFO?**  
 5 MR. GORE: I'm going to object, beyond  
 6 the scope of the notice. You can answer if you  
 7 know.  
 8 A. The -- I mean, the discussion took  
 9 place when we were deciding to issue the OFO, and  
 10 then once the OSO -- OFO was in place, there was --  
 11 there was no need for discussion because it was  
 12 given that marketers were going to have to be  
 13 balanced on a daily basis in compliance with our  
 14 tariff.  
 15 **Q. (By Mr. Bauer) So at the time that the**  
 16 **OFO was issued, how long did Spire believe the**  
 17 **winter event would last?**  
 18 A. You know, we don't have a crystal ball.  
 19 We could -- we could definitely see forecasted  
 20 temperatures cold through the weekend, so at a  
 21 minimum we knew it was going to be a weekend event,  
 22 but there's no way for us to predict the weather to  
 23 say how long it was ultimately going to last.  
 24 **Q. When --**  
 25 MR. GORE: Can you -- and just can you

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1 use specific dates just for the record just to be  
 2 clear of the time period you're talking about?  
 3 A. Yeah. So -- so we issued it effective  
 4 the 12th, which was a Friday, and then the -- it was  
 5 a holiday weekend so the gas market was trading the  
 6 13th through the 16th, and we knew based on the  
 7 forecast that it was going to at least continue  
 8 through the weekend, and -- you know, as we  
 9 ultimately saw it did, and then continued into that  
 10 next week.  
 11 **Q. (By Mr. Bauer) And when did Spire lift**  
 12 **the OFO?**  
 13 A. Effective nine a.m. on the 20th.  
 14 **Q. And who was involved in that decision?**  
 15 A. Justin Powers and I, similar to --  
 16 **Q. Anyone else -- I'm sorry.**  
 17 A. Yeah, similar to when we initiated it.  
 18 **Q. Okay. Anyone else involved other than**  
 19 **you two?**  
 20 A. I'm sure I probably made my boss aware  
 21 of it because I, you know, had conversations with  
 22 him during that time, but it was Justin and my  
 23 decision.  
 24 **Q. Was there any discussion or debate**  
 25 **among people within Spire about how long the OFO**

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1 **should stay in place other than with you and Justin**  
 2 **Powers?**  
 3 A. No, because even -- I mean, we -- we  
 4 were dealing with -- we were dealing with a tight  
 5 supply situation all the way up through the 18th. I  
 6 know on the 18th the situation was -- was probably  
 7 as bad or worse than it had been any time through  
 8 the OFO period. There were still -- you know,  
 9 25 percent of the U.S. production was still off  
 10 line. I know marketers in aggregate were still  
 11 35,000 dekatherms a day short.  
 12 So it wasn't until -- so as we looked  
 13 into the weekend, you know, it was our goal to give  
 14 a reprieve as soon as we could too. Southern Star  
 15 lifted their OFO effective nine a.m. on the 20th, so  
 16 we made the decision kind of based on what we were  
 17 seeing for the weekend forecast along with Southern  
 18 Star coming out of their OFO, that was kind of the  
 19 trigger for us lifting ours.  
 20 I think if you look at the OFO notice,  
 21 there was still definitely concern and we were  
 22 prepared to -- to go back into that if we didn't  
 23 feel like the marketers were doing their part to  
 24 uphold their firm deliveries. We mentioned that in  
 25 the OFO response when it was sent out, so we were

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1 trying to get out of it as soon as we could.  
 2 **Q. And the OFO that was issued, was that**  
 3 **for the entire Spire system?**  
 4 A. It was for the entire Spire West  
 5 distribution system.  
 6 **Q. Was an OFO required for the entire**  
 7 **Spire West distribution system?**  
 8 A. It was because it was a supply issue.  
 9 The concern was overall supply and balancing on the  
 10 Southern Star system and that system is balanced as  
 11 one system in Kansas City on Southern Star.  
 12 **Q. Did Spire consider issuing a narrower**  
 13 **OFO than it did?**  
 14 MR. GORE: I'm going to object to the  
 15 phrase narrow as vague, but you can answer.  
 16 A. We did not. We were concerned about  
 17 overall supply and we wanted all the marketers to be  
 18 in balance. So we never contemplated a -- a  
 19 narrower OFO. You know, we could have went into an  
 20 emergency OFO, which is an even bigger penalty than  
 21 a standard OFO. We elected to go into the standard  
 22 OFO.  
 23 **Q. (By Mr. Bauer) Why did you do that?**  
 24 A. It was -- it was kind of in lockstep  
 25 with Southern Star's and we felt that it would be

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1 adequate to -- to give the incentive for marketers  
 2 to bring supply in.  
 3 **Q. Was there anybody within Spire that was**  
 4 **advocating for an emergency OFO?**  
 5 A. There was not.  
 6 **Q. Who were -- was it just you and**  
 7 **Mr. Powers who considered an emergency OFO and**  
 8 **elected not to do one or were other people involved?**  
 9 MR. GORE: I'm going to object,  
 10 misstates prior testimony.  
 11 **Q. (By Mr. Bauer) Correct me. I didn't**  
 12 **mean to get it wrong.**  
 13 A. Yeah, I mean, our conversations were  
 14 around the standard OFO. I don't have any details  
 15 around the emergency one.  
 16 **Q. Before issuing the OFO, did Spire do**  
 17 **any analysis comparing the integrity of different**  
 18 **parts of its system?**  
 19 MR. GORE: I'm going to object, vague.  
 20 You can answer.  
 21 A. Like I said, it was -- it was an  
 22 overall supply issue. I think we responded in here  
 23 it wasn't -- it wasn't individual line segments. It  
 24 was the overall supply availability into Southern  
 25 Star that was the issue. So we did not look at that

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1 on individual parts of the system.

2 **Q. (By Mr. Bauer) Okay. Let's go back to**

3 **Exhibit 1, and now I'm going to jump ahead a little**

4 **bit and look at topic number three, which is at the**

5 **bottom of page five.**

6 MR. GORE: And the documents in the

7 binder will be tab nine.

8 THE WITNESS: Tab nine?

9 MR. GORE: Yes, documents you reviewed

10 in preparation for this topic.

11 THE WITNESS: Oh, over here. Somehow I

12 ended up with the squeaky chair.

13 **Q. (By Mr. Bauer) Okay. So topic three**

14 **says (quote as read):**

15 **Any analysis Spire engaged in**

16 **concerning the issuance of the**

17 **operational flow order Spire issued on**

18 **February 10, 2021, including why it was**

19 **necessary, when it should be issued,**

20 **and any internal discussions or**

21 **communications with third parties about**

22 **this topic.**

23 **I think in our discussions we've --**

24 **we've gone pretty far into this topic already, but I**

25 **see you turning to a binder. I'm interested in --**

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1 **in what you're going to refer to. And -- and let me**

2 **just start with the question is was there any**

3 **analysis done about how much supply Spire needed for**

4 **marketers to maintain its system integrity?**

5 A. Yeah, I wasn't specifically running the

6 model. Yeah, I couldn't speak for Justin or for gas

7 control as to whether or not they -- they knew what

8 the expected burn was going to be for the marketers.

9 **Q. So you made -- you said the buck**

10 **stopped with you on whether to issue an OFO. You**

11 **made that decision without knowing about any**

12 **analysis of how much supply Spire needed for**

13 **marketers to maintain system integrity; is that**

14 **true?**

15 MR. GORE: I'm going to object to the

16 extent it misstates prior testimony. You can

17 answer.

18 A. Yeah, I didn't need to know what the

19 individual level was. I know about ten percent of

20 the volume overall on our system is supplied by

21 marketers, you know, which is a huge chunk of gas.

22 I mean, it's pretty simple math to know that when

23 you get in a curtailment situation that you need

24 that physical supply coming into the system if it's

25 something that our gas supply is not -- not

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1 necessarily responsible for bringing in.

2 **Q. (By Mr. Bauer) So if you don't know**

3 **you don't know. I'm going to ask a follow-up**

4 **question, and I don't want to sound like I'm**

5 **confronting you, right, but was there any analysis**

6 **done that would say if marketers could supply, say,**

7 **half of that ten percent, then that would not be**

8 **a -- then that would have any effect on Spire's**

9 **system integrity?**

10 MR. GORE: I'm going to -- I'm going to

11 object, foundation, compound, improper hypothetical.

12 You can answer.

13 **Q. (By Mr. Bauer) Kind of a little**

14 **unclear too, but if you --**

15 A. Yeah, I mean, with Southern Star being

16 in an OFO our -- our receipts and deliveries at our

17 gates had to match. So if we were -- we were using

18 all of our firm requirements and marketers --

19 customers were burning their supply and not bringing

20 the supply in to match it, then those OFO penalties

21 come back on us.

22 So like I say, I know -- I can say I

23 know generally about how much of the supply is

24 provided by a third party. I don't have the

25 regression numbers, you know, based on the

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1 temperatures on every day leading up to that period

2 exactly how much was expected from marketer, but we

3 knew that any shortfall they had was going to come

4 back on us. So we needed them to match.

5 **Q. So if I'm understanding your testimony,**

6 **you're saying that the analysis for the OFO depended**

7 **on the Southern Star OFO as opposed to an analysis**

8 **that Spire conducted of risks to its system**

9 **integrity; is that accurate?**

10 MR. GORE: I'm going to object,

11 compound, foundation, misstates prior testimony.

12 You can answer.

13 A. Yeah, I would say that's not an

14 accurate statement that you made. I said it was a

15 combination of Spire worried about the integrity of

16 its system, knowing that supply was disappearing,

17 and us having the ability to meet our firm

18 requirements without having to cover the marketers.

19 So it was a combination of that that was reinforced

20 by Southern Star going into the OFO.

21 **Q. (By Mr. Bauer) You were turning to tab**

22 **nine. Is that -- is that what we should look at in**

23 **your binder?**

24 A. Yeah, we were just -- we had provided

25 weather forecasts. This is --

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1 MR. GORE: Can I just state for the  
 2 record and for the people attending, he is -- tab  
 3 nine of the binder we provided reflects the  
 4 documents that he reviewed in preparation to provide  
 5 testimony on Constellation topic nine, which we  
 6 correlate to Symmetry topic three.  
 7 THE WITNESS: Thank you.  
 8 **Q. (By Mr. Bauer) Okay. And -- and these**  
 9 **are the documents that you looked at to prepare to**  
 10 **testify about the operational flow order that we've**  
 11 **been talking about, right?**  
 12 A. Yeah, these are documents that we  
 13 thought -- or that Spire provided that they thought  
 14 were -- was responsive to the question of why we  
 15 went into an OFO.  
 16 **Q. And are these all of the documents**  
 17 **within Spire that relate to the question of whether**  
 18 **or not you should go into an OFO in February 2021?**  
 19 MR. GORE: I'm going to object, vague.  
 20 You can answer.  
 21 A. Yeah, it's my understanding based on  
 22 the process that these are the documents that Spire  
 23 had available that were responsive to that question.  
 24 **Q. (By Mr. Bauer) You don't know whether**  
 25 **there are other documents within Spire that are**

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1 **responsive to that question that just aren't here at**  
 2 **tab nine, true?**  
 3 MR. GORE: I'm going to object, asked  
 4 and answered. You can answer again.  
 5 A. Yeah, no, it would be -- yeah, it's my  
 6 understanding that these are the documents that they  
 7 thought were responsive.  
 8 **Q. (By Mr. Bauer) Can you describe to me**  
 9 **what analysis, if any, occurred within Spire**  
 10 **concerning the -- how long to keep the OFO?**  
 11 A. Yeah, I mean, like I mentioned -- and I  
 12 think there's -- there's probably a narrative in  
 13 here. Like I mentioned, though, even as late as the  
 14 18th, you know, which was the day before we lifted  
 15 the -- sent the notice lifting the OFO, about  
 16 25 percent of the production was still off line.  
 17 And marketers were still shorting our  
 18 system by about 35,000 dekatherms a day, which is,  
 19 you know, probably 30 to 40 percent of what their  
 20 nomination should have been. So there was a lot of  
 21 analysis required at that point to know that we  
 22 should still be in the OFO. Situation hadn't  
 23 changed.  
 24 **Q. Going into the cold period of**  
 25 **February 2021, did Spire believe it had sufficient**

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1 **storage capacity to handle the demands of the**  
 2 **period?**  
 3 MR. GORE: I'm going to object, vague  
 4 as to time period.  
 5 A. Yeah, there's actually an explanation  
 6 in here that was responsive to that.  
 7 **Q. (By Mr. Bauer) Where is that?**  
 8 A. We did Spire -- and I can find that --  
 9 do you remember which question that is?  
 10 MR. GORE: No, you've got it.  
 11 Reference it as you need to, but --  
 12 A. Let me find it real quick. It's  
 13 actually -- it's tab nine, 9C.  
 14 **Q. (By Mr. Bauer) 9C.**  
 15 A. You can see there we went into service  
 16 with over 50 percent of our storage position full.  
 17 I think that was unique to the -- to most other  
 18 shippers on the system. That was available on  
 19 February 1st. This explains what I was talking  
 20 about how we saw the extreme weather come in  
 21 Oklahoma and Texas. There's the 35,000 a day where  
 22 we sourced from Enable Gas Transmission over to  
 23 Rockies Express.  
 24 Yeah, so I mean, the answer to your  
 25 question is we thought we were adequate. The big

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1 limitation for us during that period was never our  
 2 overall inventory. It was the amount that we could  
 3 take on a daily basis.  
 4 **Q. Can you explain --**  
 5 A. Out of storage.  
 6 **Q. Can you explain that further to me,**  
 7 **please?**  
 8 A. Yeah, Southern Star's storage doesn't  
 9 ratchet down based on inventory. So having nine BCF  
 10 going into the month, there was no time during the  
 11 polar vortex that -- that we were limited by the  
 12 inventory that we had. The limitation was always  
 13 the daily restriction on how much we could  
 14 physically pull out of storage.  
 15 **Q. And so during the winter period did**  
 16 **Spire always pull out the maximum that it could out**  
 17 **of this conservative storage position that you all**  
 18 **took?**  
 19 A. Not necessarily on every day.  
 20 **Q. But did you do it on any days?**  
 21 A. You know, I would have to see. There  
 22 was probably days that we came close.  
 23 **Q. And who made the decision on each day**  
 24 **on whether to take gas out of storage at Spire?**  
 25 A. It was Justin Powers and his team was

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1 doing the planning.  
 2 **Q. Who made the decision to enter February**  
 3 **with a conservative storage position of over**  
 4 **50 percent full?**  
 5 A. Justin Powers and his team.  
 6 **Q. Anyone else involved in that decision**  
 7 **at Spire?**  
 8 A. No.  
 9 **Q. At any time during the winter storm did**  
 10 **Spire conclude that it did not have enough gas in**  
 11 **storage to meet demand?**  
 12 MR. GORE: I'm going to object,  
 13 foundation and vague. You can answer.  
 14 A. Like I mentioned, there wasn't a time  
 15 when our overall inventory limited our daily storage  
 16 capability.  
 17 MS. BAIRD: I'm sorry, could the  
 18 witness repeat that, please? I couldn't hear you.  
 19 A. I said there was no time during the  
 20 storm that our overall inventory had any limitation  
 21 on the amount that we could pull out on a daily  
 22 basis.  
 23 MS. BAIRD: Thank you.  
 24 THE WITNESS: You're welcome.  
 25 **Q. (By Mr. Bauer) During the winter storm**

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1 **period, did Spire ever release natural gas to other**  
 2 **companies?**  
 3 A. We had some capacity that was released  
 4 into the market.  
 5 **Q. And when was that?**  
 6 A. I don't know the exact nature of the  
 7 transactions.  
 8 **Q. You say you don't know when it**  
 9 **happened? That was my question.**  
 10 A. I don't know exactly when it happened.  
 11 That's correct.  
 12 MR. GORE: I'm going to object. Are we  
 13 still on topic three? Because I think this is  
 14 beyond the scope of that topic.  
 15 MR. BAUER: It probably drifts into a  
 16 different topic, but since we're talking about it I  
 17 just thought of a little bit.  
 18 **Q. (By Mr. Bauer) So you refer to it as**  
 19 **release capacity to the market. To whom did Spire**  
 20 **release that capacity?**  
 21 A. You know, I don't have -- I don't think  
 22 I have seen a copy of exactly who it was all being  
 23 released to. That's something that Justin Powers  
 24 and his team does as well.  
 25 **Q. Okay. Let's look at Exhibit 1 and turn**

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1 **to topic six. This is (quote as read):**  
 2 **The availability and use of storage gas**  
 3 **by Spire in February 2021, including**  
 4 **any decisions to draw from storage or**  
 5 **to sell gas to third parties.**  
 6 **Just respecting your lawyer's comment**  
 7 **that we had sort of drifted off from one topic into**  
 8 **another one.**  
 9 A. Okay.  
 10 **Q. This is the topic we're talking about**  
 11 **now. So tell me what did you do to prepare to be**  
 12 **Spire's corporate representative for topic number**  
 13 **six?**  
 14 MR. GORE: If I could just state for  
 15 the record, the documents reflecting the documents  
 16 that he reviewed in preparation for Symmetry topic  
 17 six, which is Constellation topic 12 is at tab 12 of  
 18 the binder. At least that's how we correlated it.  
 19 **Q. (By Mr. Bauer) Okay. So then my**  
 20 **question is what did you do to prepare to be Spire's**  
 21 **testifying witness on topic six?**  
 22 A. Yeah, so -- so my understanding after  
 23 reviewing the documents was that --  
 24 **Q. Sorry.**  
 25 A. That's fine. We definitely didn't have

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1 an overall inventory limitation, so our gas supplies  
 2 goal was to stay in balance on Southern Star. And  
 3 I'm sure everybody can have an appreciation for --  
 4 for the uncertainty around the amount of supply that  
 5 was going to be available on any given day.  
 6 So there -- there were a couple big  
 7 issues. One was whether -- whether the marketers  
 8 were going to deliver and then the other issue is --  
 9 is whether the supply that we were buying was going  
 10 to show up. So there were -- there were a lot of  
 11 moving parts. So what I understand from Justin was  
 12 that he did his best to optimize just the overall  
 13 portfolio the best he could during that vortex time.  
 14 **Q. Okay. What did you do to prepare to**  
 15 **testify as Spire's representative on topic six?**  
 16 A. Really the big issue was whether or not  
 17 we had enough inventory to make it through the  
 18 vortex.  
 19 MR. GORE: And George, I would just --  
 20 if you could, listen to the question because I think  
 21 he's asking you a different question.  
 22 A. Okay. Yeah, so I mean, I looked at the  
 23 documents here where we explain the process that we  
 24 went through deciding how much storage was going to  
 25 be used.



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1 **Q. (By Mr. Bauer) All right. So --**  
 2 A. Is that --  
 3 **Q. So to prepare to testify as the**  
 4 **representative of Spire on topic number six, you**  
 5 **looked at the documents that were behind tab 12 of**  
 6 **the binders that have been prepared by Spire's**  
 7 **attorneys; is that accurate?**  
 8 A. That's correct.  
 9 **Q. And did you do anything else?**  
 10 A. Yeah, there really wasn't any other  
 11 information to -- that I needed to understand that  
 12 topic.  
 13 **Q. So now I think we might have taken a**  
 14 **slight detour when I was asking about the questions**  
 15 **about the release of the capacity by Spire to the**  
 16 **market during the winter storm. I think you told me**  
 17 **you didn't know -- you didn't know the details of**  
 18 **when it happened and I think you said you don't know**  
 19 **to whom the capacity was released. Is that true?**  
 20 A. Yeah, I don't recall those off the top  
 21 of my head.  
 22 **Q. Okay. Do you know why it was released?**  
 23 A. It's a common practice. Utilities  
 24 typically hold the majority of the firm in the  
 25 market, and marketers take release capacity from --

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1 from the utility to serve other markets. It's  
 2 always on a recallable basis, so we always have the  
 3 ability to recall that capacity if we need it.  
 4 **Q. But for this particular event you don't**  
 5 **know why?**  
 6 MR. GORE: I'm going to object, vague.  
 7 Are we -- are we on topic six?  
 8 MR. BAUER: Yes.  
 9 MR. GORE: Okay. I'm going to object,  
 10 beyond the scope of topic six, and I'm going to  
 11 object, vague as to the term release capacity. I'm  
 12 not sure you and the witness are in agreement on  
 13 that term.  
 14 MR. BAUER: Okay. I was just trying to  
 15 use his word.  
 16 **Q. (By Mr. Bauer) What do you mean by**  
 17 **release capacity?**  
 18 A. Transportation capacity that we hold on  
 19 the pipelines can be -- if -- during times if we're  
 20 not going to necessarily need all of it, we can put  
 21 that in the market and other parties can use that  
 22 capacity on a temporary basis. Like I say, it's  
 23 always recallable, so in the event the utility needs  
 24 it, they can recall that capacity.  
 25 **Q. So that's just capacity on the**

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1 **pipeline?**  
 2 A. It is.  
 3 **Q. Okay.**  
 4 A. Not supply.  
 5 **Q. Okay. So that's -- so that is not**  
 6 **related to the availability and use of storage gas.**  
 7 **That's a totally different topic?**  
 8 A. That's correct.  
 9 **Q. So for releasing capacity, on that**  
 10 **topic, who made the decisions to release capacity to**  
 11 **third parties during the February storm?**  
 12 MR. GORE: I'm going to object, beyond  
 13 the scope of the notice and beyond the scope of  
 14 topic six, which is where I understand we are.  
 15 **Q. (By Mr. Bauer) Do you know?**  
 16 A. Justin Powers and his team.  
 17 **Q. All right. So now let's look at --**  
 18 **let's look at topic six and talk about drawing from**  
 19 **storage or selling gas to third parties. Did -- did**  
 20 **Spire draw from storage and sell gas to any third**  
 21 **parties during February 2021?**  
 22 MR. GORE: I object, compound, vague.  
 23 A. We -- we had a storage transaction  
 24 where we sold some inventory to another party.  
 25 **Q. (By Mr. Bauer) And when did that**

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1 **happen?**  
 2 A. On February 15th if I recall.  
 3 **Q. And who was involved in that decision?**  
 4 A. Justin Powers and I.  
 5 **Q. Anyone else?**  
 6 A. I had a conversation with my boss Scott  
 7 Carter to make sure he was aware of it.  
 8 **Q. And how much natural gas was involved**  
 9 **in this?**  
 10 A. 500,000 dekatherms.  
 11 MR. GORE: And Mr. Godat, I would just  
 12 instruct you if you recall these terms specifically,  
 13 that's fine, but if you feel the need reference to  
 14 refresh your recollection, do so.  
 15 THE WITNESS: Okay.  
 16 MR. GORE: I'm impressed that you  
 17 remember them.  
 18 **Q. (By Mr. Bauer) And so that was 500**  
 19 **dekatherms?**  
 20 A. 500,000 dekatherms.  
 21 **Q. 500,000 dekatherms, sorry, on**  
 22 **February 15th. To whom was that sold?**  
 23 A. Atmos.  
 24 **Q. Do you know the price?**  
 25 A. \$200 per dekatherm.

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1 **Q. How was that price arrived at?**  
 2 A. Justin did the transaction, so it would  
 3 have been a negotiated price between Justin and  
 4 Atmos.  
 5 **Q. Okay. As the representative of Spire**  
 6 **today, do you know anything about the back and forth**  
 7 **of that negotiation?**  
 8 A. Like I say, Justin was handling it. I  
 9 don't recall what the big offer price that went --  
 10 it would have went back and forth.  
 11 **Q. And was -- the 500,000 dekatherms, was**  
 12 **that the amount that Spire offered for sale**  
 13 **originally?**  
 14 A. It was the amount that Atmos requested.  
 15 **Q. Did Spire propose any different**  
 16 **quantity of natural gas?**  
 17 A. You know, I don't -- I don't recall a  
 18 different volume being discussed. Justin may have  
 19 had other conversations. I don't -- I don't recall  
 20 another volume.  
 21 **Q. And was it determined that Spire did**  
 22 **not need this gas in order to protect its system**  
 23 **integrity?**  
 24 A. It was.  
 25 **Q. And how was that determined?**

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1 A. It gets back to the overall inventory  
 2 question that we had talked about where our  
 3 limitation during that time was our daily withdrawal  
 4 restriction out of storage, not -- we always had  
 5 ample inventory to meet our daily requirement. So  
 6 really, yeah -- it was really just trying to help  
 7 Atmos out because the party that was managing theirs  
 8 had mismanaged it and they were out of storage.  
 9 **Q. And this transaction happened on**  
 10 **February 15th. Was the reason for that date -- it's**  
 11 **not going to be a very well asked question. Was the**  
 12 **reason for that -- the transaction happened on that**  
 13 **date, was that when Atmos asked for the gas or was**  
 14 **that when Spire said it had it available or some**  
 15 **other reason?**  
 16 A. That was when the -- that was when the  
 17 two parties agreed on the transaction.  
 18 **Q. So when was the first time that Spire**  
 19 **had 500,000 dekatherms available for sale?**  
 20 A. Yeah, that's not something we talked  
 21 about ahead of this opportunity. So I don't have  
 22 the answer to that question.  
 23 **Q. When Atmos -- when Atmos and Spire**  
 24 **began discussing this transaction, which party**  
 25 **suggested that \$500,000 -- 500,000 dekatherm amount?**

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1 A. I'm not sure. I'd have to ask Justin.  
 2 **Q. You say this transaction was approved**  
 3 **by your supervisor?**  
 4 A. I just let him know I was doing it. I  
 5 don't have to have his approval to do it.  
 6 **Q. Did you need approval from anyone else**  
 7 **at the company to sell this amount of gas during the**  
 8 **winter storm?**  
 9 A. I do not.  
 10 **Q. Did you consult with anyone other than**  
 11 **Mr. Powers before deciding to sell this gas?**  
 12 A. I don't recall consulting with anyone,  
 13 like I say, other than I know I ran it past my boss.  
 14 **Q. And how does it work when you sell that**  
 15 **amount of gas, where -- where is the gas? Where**  
 16 **does it come from?**  
 17 A. It's just in our storage inventory.  
 18 It's just sitting in our inventory balance.  
 19 **Q. And in any particular location --**  
 20 A. No.  
 21 **Q. -- in the inventory?**  
 22 A. It's just a paper transfer from our  
 23 storage contract to Atmos's storage contract.  
 24 **Q. Is there any daily limit to the amount**  
 25 **that could be taken out of this storage as you were**

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1 **talking about with the Southern Star?**  
 2 MR. GORE: I'm going to object, vague  
 3 as to whether you're asking him about the gas that  
 4 was sold or the gas that exists in Spire's storage.  
 5 MR. BAUER: I think I'm asking about  
 6 the gas that was sold that existed in Spire's  
 7 storage, right?  
 8 A. Yeah, I think you're misunderstanding  
 9 the transaction. There wasn't -- there wasn't a  
 10 physical withdrawal of gas. It was a paper transfer  
 11 from our inventory to Atmos's inventory. So there  
 12 was no -- there's nothing physically took place  
 13 other than going from our account to Atmos's  
 14 account.  
 15 **Q. (By Mr. Bauer) And despite having an**  
 16 **OFO up, Spire concluded that it had this much gas on**  
 17 **paper that it could transfer to someone else?**  
 18 A. Yes.  
 19 **Q. Explain that to me, please.**  
 20 A. Yeah, we felt like based on -- based on  
 21 the inventory that we had going into the winter  
 22 period and where our storage inventory was on the  
 23 15th that we were not going to be able to use that  
 24 supply during the month of February. Atmos had a  
 25 need for it. We didn't think it was going to impact

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1 our operation at all. So it was a win/win for us.  
 2 Got -- you know, Atmos is a sister utility, got them  
 3 out of bad shape, and we didn't feel like it was  
 4 going to impact our operation at all.  
 5 **Q. All right. Let's go on to another**  
 6 **topic in Exhibit 1. I think we are up to -- we're**  
 7 **up to 2D, but I think may skip that. Let's look at**  
 8 **2E if you would, please.**  
 9 A. This ties back to the letter?  
 10 **Q. Ties back to the letter, and actually**  
 11 **if you look at it, it ties back to the topic we just**  
 12 **skipped, which is -- we skipped 2D, which referred**  
 13 **to item six in Mr. Aplington's letter. And then**  
 14 **item seven says (quote as read):**  
 15 **Symmetry apparently didn't communicate**  
 16 **these facts to its customers behind**  
 17 **Spire's city gates.**  
 18 **So you have to look at number six to**  
 19 **know what these facts are on item seven. Does that**  
 20 **make sense to you?**  
 21 A. Yes.  
 22 **Q. Great.**  
 23 A. What's the question?  
 24 **Q. There's not one out yet.**  
 25 A. Oh.

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1 **Q. I was just making sure we were on the**  
 2 **same page. So the question is what is Spire's basis**  
 3 **for saying that Symmetry apparently didn't**  
 4 **communicate facts to its customers behind Spire's**  
 5 **city gate?**  
 6 A. Yeah, I mean, Mr. Aplington was the one  
 7 that wrote the document, but given the fact that  
 8 Spire -- that Symmetry's customers continued to burn  
 9 gas as though we weren't in an OFO and Symmetry's  
 10 volumes were zero, I think it was just pretty  
 11 obvious that there was some disconnect between  
 12 Symmetry and its customers.  
 13 **Q. And is there anything other than that**  
 14 **observation that supports Spire's position in that?**  
 15 A. Yeah, like I say, I can't speak for  
 16 Mr. Aplington.  
 17 **Q. Now, in the topic 2F, which is also**  
 18 **sort of related, it says (quote as read):**  
 19 **Symmetry customers largely did not**  
 20 **conserve natural gas during this**  
 21 **period.**  
 22 **Is that a true statement?**  
 23 MR. GORE: I'm going to object to that  
 24 as improper corporate rep testimony. I believe the  
 25 topic relates to the factual basis.

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1 **Q. (By Mr. Bauer) Yeah, so is there a**  
 2 **factual basis for that statement?**  
 3 A. Yeah, as I reviewed the information and  
 4 I look at the daily imbalance calculation for  
 5 Symmetry, it appears as though their usage stayed  
 6 consistent and did not -- did not decrease whenever  
 7 Symmetry's noms went to zero.  
 8 **Q. Okay. And you called it a daily**  
 9 **imbalance -- what's the phrase?**  
 10 A. Your daily imbalance calculation. It's  
 11 the support for the OFO calculation.  
 12 **Q. And so tell me about the daily**  
 13 **imbalance calculation. Is that something that gas**  
 14 **control does?**  
 15 A. Gas supply.  
 16 **Q. Gas supply. And who is in charge of**  
 17 **doing that?**  
 18 A. Justin Powers and his team.  
 19 **Q. And tell me how that calculation is**  
 20 **arrived at.**  
 21 MR. GORE: And are we -- are we  
 22 talking -- I'm going to object, vague. I'm not sure  
 23 whether you're talking generally or during this  
 24 particular OFO period.  
 25 **Q. (By Mr. Bauer) I guess I would be**

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1 **interested in knowing if you did it the same way**  
 2 **during this OFO period that you normally do it.**  
 3 A. Yeah, there -- there's a sheet -- you  
 4 know where the OFO calculation sheet is?  
 5 MR. GORE: We can't testify, but --  
 6 the --  
 7 MR. BAUER: You can show him. I mean,  
 8 you prepared the documents for him. Show him the  
 9 documents. It's no secret here.  
 10 MR. GORE: All right. The documents  
 11 relating to damages calculations are tab one --  
 12 THE WITNESS: Okay.  
 13 MR. GORE: -- which is this binder,  
 14 which is binder --  
 15 THE WITNESS: Oh, I'm sorry. Sorry, I  
 16 got too much info running in my head here. I'm a  
 17 little slow.  
 18 A. Yeah, so if you go to your -- it's a  
 19 very simple calculation. It's the nominated  
 20 quantity that Symmetry had on a daily basis. It's  
 21 the usage in total of all the customers that  
 22 Symmetry serves, and the imbalance -- there's a five  
 23 percent tolerance that's given, so that five percent  
 24 is backed out and then the difference of those two  
 25 is the imbalance calculation.

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1           **Q. (By Mr. Bauer) And so is this based on**  
 2 **a report that Spire receives every day?**  
 3           A. The -- the usage -- the nomination and  
 4 usage is something that Spire has every day.  
 5           **Q. That's something that Spire generates**  
 6 **every day I should have said, right?**  
 7           A. You know, I don't actually -- I'm not  
 8 responsible for those reports. I would have to see  
 9 if that's something that's generated every day.  
 10           **Q. And when it's generated, is it**  
 11 **circulated to any group of people?**  
 12           A. I don't have an answer to that  
 13 question. I don't physically generate that report  
 14 so I couldn't answer.  
 15           **Q. If somebody doesn't really know how**  
 16 **your system works, how -- what's the mechanism for**  
 17 **Spire knowing what the usage is of various customers**  
 18 **on a given day?**  
 19           A. There's -- from what I understand,  
 20 there's meter read data that's collected by a  
 21 third-party system, and we get a download of that  
 22 data.  
 23           **Q. So --**  
 24           A. And then they -- and then that's  
 25 compared -- gas supply knows what the nominations

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1 are, so they can compare the usage to the  
 2 nomination.  
 3           **Q. So the nomination is something that --**  
 4 **that a marketer like Symmetry gives to Spire on a**  
 5 **daily basis; is that right?**  
 6           A. Symmetry actually nominates on the  
 7 Southern Star system, and then we get -- Spire gets  
 8 a report from Southern Star that shows what those  
 9 nominations are by each marketer.  
 10           (Court reporter interruption.)  
 11           **Q. (By Mr. Bauer) And is that -- by what**  
 12 **period of time?**  
 13           A. That would be --  
 14           MR. GORE: I'm going to object, vague.  
 15           **Q. (By Mr. Bauer) Are they daily**  
 16 **nominations, weekly, monthly?**  
 17           A. That would be a daily nomination.  
 18           **Q. Okay. And how long after -- let me ask**  
 19 **you, does a nomination come in -- poorly phrased.**  
 20 **When are the daily nominations made by**  
 21 **the marketers?**  
 22           A. There are actually four -- if I recall,  
 23 four nomination cycles for every day. So the  
 24 marketer has opportunity to change them at any point  
 25 in those four cycles every day.

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1           **Q. Okay.**  
 2           A. I don't -- I don't have the exact time  
 3 of what those nomination cycles are.  
 4           **Q. And what are the cycles for -- for**  
 5 **Spire being able to tell what the marketers'**  
 6 **customers used? Is that four times a day as well?**  
 7           A. We get that information on a daily  
 8 basis from what I understand.  
 9           **Q. And do you get it at the end of the**  
 10 **day, beginning of the day?**  
 11           A. I couldn't tell you the timing of when  
 12 that comes in.  
 13           **Q. And that involves an accumulation of**  
 14 **meter readings of just all specific meter readings**  
 15 **for marketers' customers?**  
 16           A. From reviewing the data, that's my  
 17 understanding, that there's a meter read for each  
 18 customer for each marketer.  
 19           **Q. And is there a system by which Spire**  
 20 **gives that information back to the marketers on a**  
 21 **daily basis?**  
 22           A. Well, the marketers -- from what I  
 23 understand, the marketers have access to the same  
 24 information that Spire does.  
 25           **Q. And how do you know that?**

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1           A. When I -- yeah, when I first come in to  
 2 gas supply, just understanding what the system was  
 3 for nominations, understood that it went through --  
 4 went through the third party -- I think it's  
 5 Honeywell that collects that information, and then  
 6 provides that information to the -- to the  
 7 marketers.  
 8           **Q. So on -- on a daily basis there is**  
 9 **information within the Spire system that allows it**  
 10 **to identify which customers are conserving natural**  
 11 **gas and which ones aren't?**  
 12           A. Yeah, I couldn't -- I couldn't answer  
 13 whether we -- whether Spire has the information  
 14 to -- to make that determination or not on an  
 15 individual customer basis.  
 16           **Q. But you believe that Spire has the**  
 17 **information to do it on a marketer-by-marketer**  
 18 **basis; is that accurate?**  
 19           MR. GORE: I'm going to object,  
 20 foundation, vague. You can answer.  
 21           A. Yeah, I -- yeah. My understanding is  
 22 that at high level there -- they -- they would know  
 23 whether usage is going down or staying consistent  
 24 for each marketer.  
 25           **Q. (By Mr. Bauer) But you're not -- you**

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1 don't know whether they would be able to have any  
 2 more detail than that amount on a daily basis?  
 3 A. Yeah, I would have to find that out.  
 4 **Q. So looking at this sentence that we've**  
 5 **been talking about from topic 2F (quote as read):**  
 6 **As a result, Symmetry's customers**  
 7 **largely did not conserve natural gas**  
 8 **during this period.**  
 9 **Just so the record's clear, I'm going**  
 10 **to ask you some narrower questions, right? What**  
 11 **does Spire mean by conserve in that statement?**  
 12 MR. GORE: I'm going to object,  
 13 improper corporate rep testimony. He's testifying  
 14 as to the factual basis. You can answer.  
 15 A. Yeah, like I mentioned, I'm not the one  
 16 that put -- that did the document, but in general  
 17 conserve means use less than you otherwise would.  
 18 **Q. (By Mr. Bauer) And was there an**  
 19 **expectation during the winter storm by Spire that**  
 20 **customers were supposed to conserve some particular**  
 21 **percentage of their normal usage?**  
 22 A. In the context of this sentence, it was  
 23 the fact that Symmetry's customers still had a very  
 24 high usage and the nomination was zero. I think the  
 25 expectation would be is if Symmetry's nomination

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1 went to zero, then the customers' usage would go to  
 2 zero, and they didn't seem to be correlated at all.  
 3 **Q. Including human needs customers, you'd**  
 4 **expect a hospital to go to zero?**  
 5 A. Not necessarily a hospital.  
 6 **Q. Certainly not a hospital, right?**  
 7 A. (Witness indicates head motion.)  
 8 **Q. So what customers should go to zero if**  
 9 **a marketer is unable to nominate gas for a day?**  
 10 MR. GORE: I'm going to object,  
 11 foundation, improper hypothetical, beyond the scope  
 12 of the topic. You can answer.  
 13 A. Yeah, like I say, largely -- largely  
 14 appears as though the usage -- usage stayed fairly  
 15 flat. What, Symmetry's got 400 customers, and I'm  
 16 sure they're not all human needs. So I think given  
 17 the fact that nominations went to zero, there would  
 18 be some expectation that usage would go down as  
 19 well.  
 20 **Q. (By Mr. Bauer) So by -- so by saying**  
 21 **conserve, we're considering that some decrease in**  
 22 **usage for this testimony I take it?**  
 23 A. Yeah. Like I say, I can't speak for  
 24 Matt and what the context of that comment was.  
 25 **Q. Did Spire's customers conserve during**

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1 **the winter storm by that definition?**  
 2 MR. GORE: I'm going to object, vague  
 3 as to the term customers. You can answer.  
 4 A. Yeah, I have not requested or seen an  
 5 analysis at this point as to whether or not our  
 6 customers conserved.  
 7 (Court reporter interruption.)  
 8 **Q. (By Mr. Bauer) Did any -- do you have**  
 9 **any information about any customers on the system**  
 10 **conserving during that time?**  
 11 A. The only one that we spoke about was  
 12 Ford Motor Company. They -- Ford was concerned  
 13 about being able to meet the expectations of the OFO  
 14 and I think they were concerned about the overall  
 15 system from what I heard, and they actually  
 16 shuttered their plant and left that volume on the  
 17 system for others to use.  
 18 **Q. Are you aware of any other customers**  
 19 **shuttering their plants to leave more capacities on**  
 20 **the system?**  
 21 A. I am not, but those -- those aren't  
 22 conversations that I would have had.  
 23 MR. BAUER: So we have covered a lot  
 24 of -- by jumping ahead we've covered a lot of these  
 25 other topics. Let's take another short break and I

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1 will try to eliminate some of the questions that I  
 2 prepared so we don't go any longer than we need to.  
 3 THE WITNESS: I appreciate that.  
 4 VIDEOGRAPHER: Off the record,  
 5 10:22 a.m.  
 6 (WHEREIN, a recess was taken.)  
 7 VIDEOGRAPHER: On the record, 10:40  
 8 a.m.  
 9 MR. GORE: This is Gabe Gore for Spire.  
 10 I would just -- I've talked with counsel and we  
 11 would like at this time to mark the two volume  
 12 binders that the witness brought with him today as  
 13 Exhibit 2.  
 14 MR. BAUER: And that's fine.  
 15 (Court reporter interruption.)  
 16 MR. HOWELL: And Gabe, this is Richard  
 17 Howell for Constellation. My understanding is that  
 18 you already have all of these materials available  
 19 electronically and so we can just electronically  
 20 also mark that zip file and its contents as  
 21 Exhibit 2.  
 22 MR. GORE: Yeah, they're the same  
 23 things. They're just copies. I think of those as  
 24 exhibit copies.  
 25 MR. HOWELL: Understood. Thank you.

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1 MR. GORE: Like they were handed out at  
 2 the deposition.  
 3 (WHEREIN, Exhibit 2A, Binder 1 of  
 4 materials, was marked for identification by the  
 5 Court Reporter.)  
 6 (WHEREIN, Exhibit 2B, Binder 2 of  
 7 materials, was marked for identification by the  
 8 Court Reporter.)  
 9 MR. GORE: All right. Thank you.  
 10 **Q. (By Mr. Bauer) Back to Exhibit 1,**  
 11 **please. Topic 2I on page five. It is 11 -- yeah,**  
 12 **item 11 from the Aplington letter. (Quote as read):**  
 13 **Symmetry apparently held insufficient**  
 14 **firm capacity, supply or storage**  
 15 **positions to adequately serve its**  
 16 **customers, and didn't bother purchasing**  
 17 **any in the daily spot market.**  
 18 **Do you see that, sir?**  
 19 A. Yes.  
 20 **Q. Excellent. I'm looking at that last**  
 21 **phrase, didn't bother purchasing any in the daily**  
 22 **spot market. What's the basis for -- for that**  
 23 **statement by Spire?**  
 24 A. Like I say, this -- these are Matt's  
 25 comments, but I guess it's evident when the

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1 nominations are zero that there wasn't any purchases  
 2 for -- there wasn't any supply making it to a city  
 3 gate for Symmetry's customers.  
 4 **Q. So on a day where the nominations was**  
 5 **zero, that's when this -- that's what this statement**  
 6 **refers to?**  
 7 MR. GORE: I'm going to object,  
 8 improper -- calls for improper corporate rep  
 9 testimony. He's testifying as to the factual basis  
 10 for the statement as he understands it.  
 11 MR. BAUER: That's all I'm asking.  
 12 A. I would say that's the most obvious  
 13 time when the nomination is zero.  
 14 **Q. (By Mr. Bauer) All right. Are there**  
 15 **any other days in -- in which Spire believes**  
 16 **Symmetry didn't bother purchasing any in the daily**  
 17 **spot market?**  
 18 A. Yeah, I guess we don't have --  
 19 necessarily have -- we can't -- we don't know  
 20 exactly what Symmetry was trying to buy. Know --  
 21 knowing the nature of the business, there's --  
 22 there's some business that's typically for a whole  
 23 month. So as -- as those volumes were going down,  
 24 you would expect to see replacement volumes and it  
 25 didn't appear as though that was the case. It

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1 appeared as though as the volumes were going down  
 2 Symmetry just let those volumes go to zero and there  
 3 wasn't an attempt, but --  
 4 **Q. So that's an inference that Spire is**  
 5 **making, you don't know whether -- whether Symmetry**  
 6 **bothered to purchase anything in the daily markets?**  
 7 MR. GORE: I'm going to object,  
 8 improper -- calls for improper corporate rep  
 9 testimony. That is not an inference that Spire  
 10 made. You have a letter that you're questioning  
 11 from that was written by counsel, and this witness  
 12 is testifying about the factual basis for those  
 13 statements in those letters as he understands them.  
 14 MR. BAUER: I agree with everything you  
 15 just said.  
 16 MR. GORE: Okay.  
 17 **Q. (By Mr. Bauer) But -- but my question**  
 18 **stands.**  
 19 A. Yeah, Symmetry's -- Symmetry's actions  
 20 were so bad, I would say any -- any person that  
 21 looks at it would assume that there wasn't a whole  
 22 lot of effort going on for Symmetry to serve their  
 23 customers.  
 24 **Q. Okay. And what's your basis for saying**  
 25 **that?**

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1 A. I can refer you to the binder on  
 2 tab 1 -- 1D, second page. Actually the third page.  
 3 It shows Symmetry's nominations on a daily basis and  
 4 the usage.  
 5 **Q. Okay. So what -- what is document 1D?**  
 6 A. This is a summary calculation of  
 7 Symmetry's OFO penalties.  
 8 **Q. And who prepared it?**  
 9 A. Justin Powers and his team.  
 10 **Q. Okay. And what is it based upon? It's**  
 11 **a summary of something. What's the underlying data?**  
 12 A. The underlying data, the nominations  
 13 are all of the nominations that are provided in this  
 14 tab, shows every nomination for southern -- or for  
 15 Symmetry's customers to Southern Star. That's  
 16 simply pulling in the nominations that Symmetry made  
 17 on Southern Star on behalf of its customers. That's  
 18 the nominations.  
 19 MR. GORE: And if you could, when you  
 20 say this tab, can you be more specific and just  
 21 state exactly which tab you're talking about?  
 22 A. Where the nominations are? Give me one  
 23 second here. I'll find one.  
 24 **Q. (By Mr. Bauer) I thought we were**  
 25 **talking about 1D. We're on a different one?**

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1 A. I'm going to show you the nominations  
 2 that we provided.  
 3 **Q. Okay.**  
 4 A. Shows Symmetry's nominations.  
 5 **Q. Okay.**  
 6 A. If you turn to tab 1J, that shows the  
 7 Southern Star flat files.  
 8 (Court reporter interruption.)  
 9 A. For every nomination, marketer  
 10 nomination to our city gate. So that's information  
 11 we provided.  
 12 **Q. (By Mr. Bauer) Okay. And this -- tell**  
 13 **me exactly what this printout is. This is something**  
 14 **out of Spire's computer systems?**  
 15 A. This is a download out of Southern  
 16 Star's system that shows every nomination that  
 17 Symmetry made on behalf of its customers behind  
 18 Spire.  
 19 **Q. Okay. So this -- this would reflect**  
 20 **those four a day that you talked about earlier,**  
 21 **right?**  
 22 A. That's correct.  
 23 **Q. All right. So this is something --**  
 24 **this is a document that -- do you all refer to this**  
 25 **in real time while things are happening during the**

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1 **winter storm or is this something that you pulled**  
 2 **together for your testimony today?**  
 3 A. We -- we see a nomination total from  
 4 Southern Star on a daily basis, actually on each of  
 5 those cycles.  
 6 **Q. And by -- by marketer?**  
 7 A. You know, I don't recall what that  
 8 actual report looks like.  
 9 **Q. And then on the same daily basis you're**  
 10 **able to see how much the customers of the -- of the**  
 11 **marketers, how much natural gas they used?**  
 12 A. That's correct.  
 13 **Q. So you --**  
 14 A. So that's -- yeah, that's the next tab  
 15 in this spreadsheet is the usage.  
 16 **Q. That's 1K?**  
 17 A. It is not. I think we provided that  
 18 electronically because the file was so big. Let me  
 19 find the tab. Sorry for the delay here. I'll try  
 20 and find it for you. Yeah, I apologize. I'm not  
 21 seeing the --  
 22 **Q. Okay.**  
 23 A. I'm not seeing the usage report, the  
 24 reference to the usage report.  
 25 **Q. Okay. Let me -- let me just ask you --**

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1 **now that you've seen some of these documents, the**  
 2 **broader question that I was -- we were trying to**  
 3 **discuss earlier, and that is does Spire know on a**  
 4 **daily basis who is -- which -- which marketers**  
 5 **have -- marketers' customers have used more gas than**  
 6 **their daily nominations?**  
 7 A. We do. That's what went into this  
 8 calculation.  
 9 **Q. And is there any mechanism by which**  
 10 **that information is then given to the marketers so**  
 11 **they know what is happening on the Spire system?**  
 12 A. Yeah, the marketers have access to  
 13 the -- the meter read information out of that  
 14 Honeywell system that I mentioned.  
 15 **Q. So -- so --**  
 16 A. Just like Spire.  
 17 **Q. I'm sorry. Didn't mean to interrupt**  
 18 **you.**  
 19 A. Yeah. Just like Spire.  
 20 **Q. So the marketers have access to the**  
 21 **exact same information about the nominations and the**  
 22 **burns that Spire does. Is that true?**  
 23 A. That's correct.  
 24 MR. BAUER: One thing we can do that  
 25 would save time with regard to these binders that

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1 are Exhibit 2 is if -- and maybe we can talk about  
 2 it at lunch, but if I could just authenticate them  
 3 en masse, that would save us having to go through  
 4 each one and say this is a business record, it come  
 5 out of here, blah, blah, blah, it would save time.  
 6 I don't really want to do that with 12 people  
 7 watching.  
 8 MR. GORE: There's no reason to do  
 9 that. They're not all business records, though.  
 10 MR. BAUER: No.  
 11 MR. GORE: I mean, obviously some are  
 12 DR requests, responses.  
 13 MR. BAUER: Yeah.  
 14 MR. GORE: There are some other  
 15 documents in there, but the ones that -- well, we're  
 16 happy to go through and tell you the ones that are  
 17 business records. There's documents that were  
 18 pulled off of other people's systems and used by us,  
 19 which are obviously not our business records. So I  
 20 think those are probably the two most predominant  
 21 categories of documents in the binder.  
 22 MR. BAUER: Maybe at lunch we can talk  
 23 about -- I understand some of those aren't your  
 24 business records, but they're probably at least all  
 25 authentic maybe. And so --

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1 MR. GORE: Yeah. If we relied on them  
 2 doing our damage calculations we obviously believed  
 3 they were authentic.  
 4 MR. BAUER: All right. So I'm not  
 5 going to ask you all the foundational questions  
 6 about every document that -- that you referenced  
 7 here with the thought that we will work something  
 8 out over the lunch period.  
 9 **Q. (By Mr. Bauer) Look at topic 2K,**  
 10 **please. It says (quote as read):**  
 11 **Spire was faced with the choice of**  
 12 **either shutting off natural gas to all**  
 13 **of Symmetry's customers or buying**  
 14 **additional gas to maintain their gas**  
 15 **service.**  
 16 **Do you see that?**  
 17 A. Yes, sir.  
 18 **Q. What's the factual basis for that**  
 19 **statement?**  
 20 A. I mean, I still keep referring back to  
 21 the fact that this is Matt's document, but I think  
 22 we've been -- we've been clear that -- that we  
 23 didn't physically turn off service to any customers.  
 24 You know, there's -- there's processes to try to --  
 25 try to get marketers to perform, that is the OFO

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1 process, we went through that process.  
 2 To the extent that Spire could find  
 3 supply to make up for the marketer shortfall, we did  
 4 that. So I think we never got to the point where we  
 5 had to shut customers off because we were able to  
 6 physically make up for the shortfall.  
 7 **Q. And did Spire always make up for the**  
 8 **shortfall by buying additional gas to maintain their**  
 9 **gas service?**  
 10 MR. GORE: I'm going to object,  
 11 compound, vague. You can answer.  
 12 A. Yeah, Spire's position that we did --  
 13 if anything, we probably had to buy more than we  
 14 otherwise would have because we didn't know if the  
 15 volume that was being nominated would show up in the  
 16 nomination process.  
 17 **Q. (By Mr. Bauer) And do you have -- does**  
 18 **Spire have any estimate of how much additional gas**  
 19 **it bought that -- that was more than what you**  
 20 **needed?**  
 21 MR. GORE: I'm going to object, vague.  
 22 Vague as to time period.  
 23 **Q. (By Mr. Bauer) During February 2021.**  
 24 A. Yeah, the only numbers that I've seen  
 25 quantified are the shortfalls with the marketers.

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1 **Q. Were there any other options related to**  
 2 **topic 2K other than shutting off all of Symmetry's**  
 3 **customers or buying additional gas for Spire?**  
 4 MR. GORE: I'm going to object,  
 5 foundation, vague.  
 6 A. Like I say, we were never in a position  
 7 where we weren't able to cover the shortfall. So we  
 8 were never faced with having to turn anybody off.  
 9 **Q. (By Mr. Bauer) There also were days in**  
 10 **which Spire didn't have to buy additional gas to**  
 11 **maintain gas service to Symmetry's customers. Is**  
 12 **that true or false?**  
 13 MR. GORE: I'm going to object,  
 14 foundation.  
 15 A. I'd say that's false.  
 16 **Q. (By Mr. Bauer) So Spire had to buy**  
 17 **additional gas -- well, let me ask you, to what days**  
 18 **does this refer to? Is it just certain days during**  
 19 **the winter storm or during the OFO or during the**  
 20 **whole period?**  
 21 MR. GORE: I'm going to object, calls  
 22 for improper corporate representative testimony.  
 23 He's testifying as to the factual basis for the  
 24 statement as he understands it.  
 25 A. Yeah, and it's -- you know, it's a

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1 hindsight review. So with looking at it with  
 2 perfect knowledge. So yeah. I don't have the  
 3 perfect knowledge to know what that number was  
 4 looking in hindsight.  
 5 **Q. (By Mr. Bauer) For what days during**  
 6 **February does Spire believe that this sentence in**  
 7 **topic 2K was factually accurate?**  
 8 A. Yeah, based on the document review, I  
 9 think that's something that Justin Powers would have  
 10 to consult on.  
 11 **Q. Okay. Sitting here today, you don't**  
 12 **know?**  
 13 A. Like I say, that's a hindsight review.  
 14 I don't know if there's even a way to mathematically  
 15 determine that. That's not an answer that I have  
 16 today.  
 17 **Q. Okay. Let's go to the next topic then,**  
 18 **2L, on Exhibit 1. (Quote as read):**  
 19 **Spire elected to do the right thing for**  
 20 **the community by purchasing and**  
 21 **delivering enough natural gas to cover**  
 22 **for Symmetry's failure.**  
 23 **First question to you is what is --**  
 24 **what is meant by enough gas? Define enough.**  
 25 A. Like I say, this is Mr. Aplington's



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1 document. We -- we never had to physically turn  
 2 anyone off, so I think that's a pretty simple  
 3 statement that there was enough supply to meet all  
 4 the customers' load irrespective of the fact that  
 5 the marketers weren't bringing in their volumes.  
 6 **Q. Are you able to quantify that in any**  
 7 **way other than by -- by that statement?**  
 8 MR. GORE: I'm going to object. That's  
 9 beyond the scope of the topic.  
 10 A. I mean, to me that question is vague  
 11 enough that I wouldn't even know remotely how to go  
 12 about answering it.  
 13 **Q. (By Mr. Bauer) So I'll tell you is I'm**  
 14 **trying to understand what delivering enough gas to**  
 15 **cover for Symmetry's failure means. Let me ask you**  
 16 **admittedly a hypothetical question. And that is**  
 17 **let's say there was a day in which Symmetry was**  
 18 **unable to deliver any gas to the system. How much**  
 19 **gas does -- did Spire have to buy in order to cover**  
 20 **for Symmetry's failure?**  
 21 MR. GORE: I'm going to object to  
 22 foundation, improper hypothetical. Mr. Godat is not  
 23 being produced as an expert witness, and are we  
 24 still on topic 2L?  
 25 MR. BAUER: We're still on that

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1 sentence.  
 2 MR. GORE: Okay. And I'll also object  
 3 asked and answered.  
 4 A. Could you repeat the question?  
 5 **Q. (By Mr. Bauer) I'm trying to**  
 6 **understand what enough is, and my question is let's**  
 7 **say there was a day that Symmetry delivered no gas,**  
 8 **they were unable to produce any -- give any gas to**  
 9 **the Spire system. Is it Spire's position that Spire**  
 10 **had to purchase all of the gas that had been**  
 11 **nominated by Symmetry in order to deliver enough gas**  
 12 **to cover for the failure?**  
 13 MR. GORE: Objection, foundation.  
 14 Objection to form, improper hypothetical, beyond the  
 15 scope of the topic. You can answer.  
 16 A. Yeah, the simple answer is that  
 17 Symmetry didn't even nominate any gas. So it's not  
 18 like we were covering nominations that got cut.  
 19 Symmetry didn't even make any nominations.  
 20 **Q. (By Mr. Bauer) Okay. So then -- so**  
 21 **then what is -- I'm still trying to understand what**  
 22 **is enough then? How much does Spire have to buy if**  
 23 **Symmetry didn't make a nomination?**  
 24 MR. GORE: I'm going to object,  
 25 improper hypothetical, asked and answered, beyond

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1 the scope of the topic.  
 2 A. Yeah, I mean, I can point to you here  
 3 on tab 1D, page three. I mean, yeah, easy -- I  
 4 mean, there's days there where we were having to buy  
 5 55,000 dekatherms a day to cover for the shortfall.  
 6 Like I say, it's -- you're asking me to make -- to  
 7 do a mathematical computation on a hindsight review  
 8 of information that was not available to the gas  
 9 supply team at the time.  
 10 **Q. (By Mr. Bauer) So on a day in which**  
 11 **Symmetry didn't deliver as much gas as it had**  
 12 **nominated, did Spire have to buy that entire**  
 13 **shortfall or are there any other sources for Spire**  
 14 **to, as it says here, cover for Symmetry's failure?**  
 15 MR. GORE: I'm going to object,  
 16 improper hypothetical, foundation, beyond the scope  
 17 of the notice. You can answer.  
 18 A. We were -- we were buying to cover the  
 19 shortfall.  
 20 **Q. (By Mr. Bauer) And do you have to**  
 21 **buy --**  
 22 A. According to Mr. Powers, he was buying  
 23 to cover the shortfall.  
 24 **Q. Did he have to buy the entire shortfall**  
 25 **or were there other sources?**

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1 MR. GORE: I'm going to object,  
 2 foundation, vague.  
 3 A. His position was that he had to buy to  
 4 cover the entire shortfall during his conversation.  
 5 **Q. (By Mr. Bauer) And you say his**  
 6 **position, what -- what --**  
 7 A. Talking with Justin, he felt like the  
 8 incremental purchases he made were to cover the  
 9 marketers' shortfall.  
 10 **Q. And you have no reason to question**  
 11 **that?**  
 12 MR. GORE: Object, improper corporate  
 13 representative testimony. It's beyond the scope of  
 14 the topic.  
 15 MR. BAUER: You know, that's true. I  
 16 shouldn't ask him what he said. I withdraw the  
 17 question.  
 18 **Q. (By Mr. Bauer) Did -- during**  
 19 **February 2021 did any other gas marketers fail to**  
 20 **deliver enough natural gas?**  
 21 A. There were other marketers that also  
 22 had OFO penalties.  
 23 **Q. And did Symmetry have to purchase**  
 24 **natural gas to cover for those marketers' failures**  
 25 **to deliver natural gas?**

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1 MR. HOWELL: Objection, vague.  
 2 MR. GORE: Yeah, and I'm going to  
 3 object. Maybe you misstated it. You said Symmetry.  
 4 MR. BAUER: I probably did, huh? Okay.  
 5 You know what, it's not worth it. I'm not going  
 6 to -- I'm going to move on.  
 7 **Q. (By Mr. Bauer) Let's look at topic 2M.**  
 8 **It says (quote as read):**  
 9 **Symmetry is charging its customers for**  
 10 **gas Spire bought for them during the**  
 11 **OFO period.**  
 12 **What's Spire's basis for saying that?**  
 13 A. I know we had a customer invoice where  
 14 a customer was being charged the Gas Daily pricing.  
 15 I don't recall off the top of my head if that was --  
 16 if that was a Symmetry invoice. Mr. Aplington must  
 17 have been aware of that document. I just don't  
 18 recall it off the top of my head here.  
 19 **Q. And is that the -- is that the full**  
 20 **factual basis for that statement?**  
 21 A. Like I say, it was Mr. Aplington's  
 22 statement, so I don't know if there was more to his  
 23 statement because he may have been aware of  
 24 something that I wasn't.  
 25 **Q. Okay. Take out Exhibit 1 again. Let's**

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1 **go to topic number five, (quote as read):**  
 2 **Communications between employees of**  
 3 **Spire Missouri, Inc. and Spire**  
 4 **Marketing, Inc. concerning Winter Storm**  
 5 **Uri or Symmetry during February or**  
 6 **March 2021.**  
 7 **My first question is did Spire produce**  
 8 **any communications in this case that are between**  
 9 **Spire Missouri and Spire Marketing that you're aware**  
 10 **of at least.**  
 11 A. I think there were -- I'm trying to  
 12 remember. Do you remember which tab this is  
 13 referring to?  
 14 MR. GORE: I don't believe there's a  
 15 tab. There's not a tab of documents you reviewed in  
 16 preparation for this topic.  
 17 A. Yeah, I don't recall -- I don't recall  
 18 seeing any, and I don't recall -- yeah, Spire --  
 19 Spire Marketing is such a small player in the Kansas  
 20 City market that there's no reason I would have had  
 21 reason to have communication with them, and if no  
 22 documents have been produced then I'm confident that  
 23 there wasn't communication going on there.  
 24 There were -- when I went through the  
 25 schedule -- that's the only place I saw it. There's

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1 a summary of the purchases with Spire Marketing. I  
 2 can't remember where that tab is. There was a  
 3 handful of transactions where we were buying --  
 4 where Spire Missouri bought supply from Spire  
 5 Marketing, but I think that's one where it must have  
 6 been a verbal conversation so we produced the -- a  
 7 copy of the transaction, but there wasn't any  
 8 documentation back and forth of where they bought  
 9 that supply.  
 10 MR. GORE: Steve, I'll just tell you if  
 11 the questioner thinks it's helpful when Mr. Godat is  
 12 saying I know there is a document in here, but I  
 13 can't find it, if you want me to expedite things, we  
 14 typically know which document he's talking about.  
 15 So if you want me to give it to him, I will. If  
 16 not, if you want him to look, that's fine.  
 17 MR. BAUER: No, I'd prefer that you  
 18 give it to him.  
 19 MR. GORE: Okay. So the document we  
 20 believe he's referring to right now is at tab 20.  
 21 A. Yeah, so there would have been some  
 22 communication to effectuate these transactions, but  
 23 like I say, it's not something that there is a  
 24 record of, I think. When I looked at this document,  
 25 the document that was turned over showed the

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1 transaction and it actually showed the Southern Star  
 2 index price I think just to give -- just so that  
 3 everybody could kind of see what the transaction  
 4 price was versus what market price was that day.  
 5 That was my understanding.  
 6 **Q. (By Mr. Bauer) And do you know who was**  
 7 **involved in that transaction?**  
 8 A. It would have been Justin Powers' team.  
 9 **Q. And anybody on the Spire Marketing**  
 10 **side?**  
 11 A. There would have been -- there would  
 12 have been a trader I assume on the Spire Marketing  
 13 side. I'm not sure who that party was.  
 14 **Q. Do you know -- I won't ask you if you**  
 15 **know. Strike that.**  
 16 **Why was that transaction made?**  
 17 A. I mean, if you look through, there were  
 18 a lot of incremental transactions through the polar  
 19 vortex period buying supply, and this is just a  
 20 handful of those transactions that took place.  
 21 MR. BAUER: Let's mark this as  
 22 Exhibit 3. I'm not done with 1 yet, but we'll  
 23 switch it up a little bit here.  
 24 (WHEREIN, Exhibit 3, 2-17-21 Spire  
 25 correspondence, was marked for identification by the

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1 Court Reporter.)  
 2 **Q. (By Mr. Bauer) All right. Placed**  
 3 **Exhibit 3 before you. Take a moment if you could**  
 4 **and look at it and tell us if you recognize what**  
 5 **this document is.**  
 6 MR. GORE: I'm going to object to the  
 7 use of this document because as far as I can tell  
 8 this is not a Spire Missouri document and therefore  
 9 is beyond the scope of this corporate representative  
 10 deposition and notice.  
 11 A. Looks like a force majeure notice from  
 12 Spire Marketing.  
 13 **Q. (By Mr. Bauer) Let me know when I can**  
 14 **start asking questions. I don't want to interrupt**  
 15 **your reading.**  
 16 A. Okay.  
 17 **Q. So what -- what does this document look**  
 18 **like to you?**  
 19 A. A force majeure --  
 20 MR. GORE: I'm going to object. This  
 21 is not a document that it appears that Spire  
 22 Missouri, Inc. was the subject, which is the subject  
 23 of this corporate representative deposition, was  
 24 either a drafter or recipient of. Unless you can  
 25 establish that foundation I'm going to object that

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1 this is beyond the notice and beyond anything this  
 2 witness is qualified to testify about.  
 3 **Q. (By Mr. Bauer) Okay. So it's a**  
 4 **document with Spire Marketing, Inc. at the top**  
 5 **right. It's dated February 17th, 2021. It was sent**  
 6 **via e-mail initial notice of force majeure under a**  
 7 **NAESB contract to whom it may concern by Patrick J.**  
 8 **Strange; is that correct?**  
 9 A. It is.  
 10 **Q. Okay. Did Spire receive this notice**  
 11 **from Spire Marketing?**  
 12 MR. GORE: Are you referring to Spire  
 13 Missouri, Inc.?  
 14 MR. BAUER: As far as I know.  
 15 A. The only force majeure issue I knew  
 16 that we had was Spire Marketing was actually on our  
 17 Alabama utility, and we actually protested the force  
 18 majeure and I know it's a different utility, but  
 19 Spire Marketing paid all the damage claims.  
 20 **Q. (By Mr. Bauer) So -- so do you know if**  
 21 **Spire Missouri received this notice that's**  
 22 **Exhibit 3?**  
 23 A. I'm not aware that Spire Missouri  
 24 received this.  
 25 **Q. Was it ever discussed among Spire**

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1 **Missouri and Spire Marketing?**  
 2 A. I don't recall any conversations -- I  
 3 can't recall any conversations, nor have I seen any  
 4 produced where this was an issue for Spire Missouri.  
 5 Like I say, I know we had a lot of conversations  
 6 about Spire Alabama, and we ultimately held them --  
 7 basically didn't accept the force majeure and got  
 8 our costs covered.  
 9 **Q. Okay. So this topic relates to**  
 10 **communications between these two entities, Spire**  
 11 **Missouri and Spire Marketing. It occurs to me I**  
 12 **think there's some people that work for both**  
 13 **companies, so I'm not sure how that -- how they**  
 14 **communicate with each other if they work for both**  
 15 **companies.**  
 16 A. Can you --  
 17 **Q. So my question is --**  
 18 A. I disagree with that statement.  
 19 **Q. I was going to ask that.**  
 20 MR. GORE: I'm going to object to  
 21 foundation and the assumption that there's people  
 22 who work for both companies.  
 23 A. Yeah, we have affiliate transaction  
 24 rules that make those relationships even more  
 25 separate than a normal producer or marketer

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1 relationship would be.  
 2 **Q. (By Mr. Bauer) Yes, and that was just**  
 3 **a preamble for me to ask the foundation question,**  
 4 **which is are there any persons who are affiliated**  
 5 **with both Spire and Spire Marketing?**  
 6 A. Not that I'm aware of.  
 7 MR. BAUER: I'm happy to keep going or  
 8 if people want to eat lunch. I'm not trying to keep  
 9 people from eating.  
 10 MR. APLINGTON: How much longer do you  
 11 think you have overall?  
 12 MR. BAUER: Maybe an hour, something  
 13 like that. Not enough to push all the way through  
 14 lunch, but plenty of time for other people to ask  
 15 questions.  
 16 MR. GORE: I think the earliest I would  
 17 like to do lunch is 12, so by -- assuming the  
 18 witness is okay.  
 19 MR. BAUER: I'm sorry, I thought -- I'm  
 20 getting all screwed up with time.  
 21 MR. GORE: Yeah, I've got 11:15.  
 22 MR. BAUER: I'm totally messed up. I  
 23 was thinking it's 12:15.  
 24 MR. GORE: The food's not going to be  
 25 here until 12, of course, so I'm happy to do 12,

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1 12:30. We probably don't want to go much past  
 2 12:30.  
 3 MR. BAUER: I'm sorry, I thought it was  
 4 12:17, which is why I asked. Forget that. Okay.  
 5 Let's --  
 6 MR. GORE: Anywhere between 12 and  
 7 12:30 for lunch work for us. Does that work for  
 8 you, George?  
 9 THE WITNESS: Yes, sir.  
 10 MR. GORE: All right.  
 11 **Q. (By Mr. Bauer) Okay. Let's go back to**  
 12 **Exhibit 1 and topic number six. Okay. (Quote as**  
 13 **read):**  
 14 **The availability and use of storage gas**  
 15 **by Spire in February 2021 including any**  
 16 **decisions to draw from storage or to**  
 17 **sell gas to third parties.**  
 18 **I just want to make sure that in our**  
 19 **last discussions that I asked you the broad question**  
 20 **is, you know, did Spire sell any gas to third**  
 21 **parties in February 2021?**  
 22 A. We talked through the Atmos transaction  
 23 where we sold gas to -- storage gas to Atmos.  
 24 **Q. Anything else? Any other sales?**  
 25 A. I don't recall any other sale

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1 transactions. I'm trying to remember if -- on the  
 2 GSC -- yeah, I have to remember. There may have  
 3 been -- I'm trying to recall. There may have been a  
 4 day or two on the weekend where we had a day where  
 5 we would have a little extra gas. I'd have to look  
 6 back, whether it was a party that -- to try to  
 7 minimize the daily purchase where we may have sold a  
 8 little bit back.  
 9 **Q. And how is that analysis?**  
 10 A. It was minimal. Huh?  
 11 **Q. How was that analysis made at Spire?**  
 12 A. That's something Justin Powers and his  
 13 team would have been doing.  
 14 **Q. Okay. And anything else or is that it?**  
 15 A. I think the other thing -- you know, I  
 16 was thinking about it after we got out of here,  
 17 talking about this topic number six, talking about  
 18 the availability and use of storage gas. You know,  
 19 really I was thinking I probably should have  
 20 explained the -- the limitation -- the limitation  
 21 that we have on the Southern Star storage is the  
 22 tariff provision that ties your storage withdrawal  
 23 capability to the amount of flowing molecules that  
 24 you have, it's -- you know, it's a very unique  
 25 storage service.

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1 Most storage services allow you just to  
 2 pull from zero up to your MDQ on any given day.  
 3 Southern Star actually has a tariff provision where  
 4 only -- only two-thirds of your total gas being  
 5 delivered to your gate can be sourced from storage.  
 6 The other one-third has to be flowing supply. So as  
 7 we look at -- as gas supply looks at their risk  
 8 going into a period, you know, not only -- not only  
 9 are you worrying about that the flowing supply is  
 10 not going to show up, you also have to worry that  
 11 for every molecule that doesn't show up on the  
 12 flowing side you're losing two-thirds of your  
 13 capability on the storage side.  
 14 So I think, you know, that's something  
 15 that I didn't mention before. That even ties back  
 16 to the overall storage inventory where our -- our  
 17 concern during that period wasn't the overall  
 18 inventory. It was -- it was the flowing molecules  
 19 that we're going to have available to match up with  
 20 that one-third, two-third requirement to a city  
 21 gate.  
 22 **Q. Okay. So when during the winter storm**  
 23 **period did that become a factor in Spire's**  
 24 **decisions?**  
 25 A. I mean, it's just -- it's something

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1 that the gas supply team is well aware of and knows  
 2 of through the planning process. It's something  
 3 they would have known through the whole winter.  
 4 **Q. And did that factor into decisions by**  
 5 **Spire to purchase gas during that period of time?**  
 6 MR. GORE: I'm going to object, beyond  
 7 the scope of the notice unless you can point out to  
 8 me, but I don't think -- we're definitely not on the  
 9 topic we were on. So objection.  
 10 MR. BAUER: Yeah, I guess we're kind of  
 11 back to 2L, which is Spire purchasing and delivering  
 12 enough natural gas to cover.  
 13 MR. GORE: Objection, beyond the scope  
 14 of the notice.  
 15 MR. BAUER: Can you read the question  
 16 back? I've now forgotten it.  
 17 COURT REPORTER: Question: And did  
 18 that factor into decisions by Spire to purchase gas  
 19 during that period of time?  
 20 MR. GORE: Objection, beyond the scope  
 21 of the notice, vague.  
 22 A. Yeah, I mean, all the moving parts from  
 23 a gas supply perspective, I mean, Justin would have  
 24 to be the one that actually talked about the daily  
 25 decisions that he made, and that's where I keep

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1 getting back to the hindsight review of, you know,  
 2 if you look back with perfect knowledge of  
 3 everything happened, you could probably draw some  
 4 conclusions one way or another, but you know, as  
 5 monitoring the portfolio those are all factors that  
 6 go into play.  
 7 **Q. (By Mr. Bauer) So if I want to ask**  
 8 **questions about the thinking that went into gas**  
 9 **purchases on each day, Justin is the person I should**  
 10 **ask?**  
 11 A. That's correct.  
 12 **Q. Were you -- well, was -- I don't want**  
 13 **to ask were you. Was anyone else at Spire involved**  
 14 **in making those daily gas purchase decisions that**  
 15 **Justin Powers was doing?**  
 16 A. It would have been Justin in  
 17 conjunction with his team.  
 18 **Q. And does he need to -- to fill out any**  
 19 **approval paperwork or anything at Spire before he**  
 20 **makes purchases?**  
 21 A. He does not. That's -- that's a fluid  
 22 enough process that there's no -- I mean, that's not  
 23 even a feasible -- that's not even a workable  
 24 process.  
 25 **Q. There's no like limit to how much he**

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1 **can buy on a day?**  
 2 A. There's not.  
 3 **Q. So you all put a lot of faith in him?**  
 4 A. Yeah.  
 5 MR. GORE: Objection, beyond the scope  
 6 of the 30(b)(6) -- or corporate representative  
 7 notice.  
 8 **Q. (By Mr. Bauer) He gets -- he makes**  
 9 **those decisions?**  
 10 A. Yeah, that's part of his job  
 11 responsibilities.  
 12 **Q. Okay. Topic seven on Exhibit 1,**  
 13 **please. (Quote as read):**  
 14 **Spire's sales of gas to Atmos Energy**  
 15 **Corporation in February 2021, including**  
 16 **any discussions, communication, or**  
 17 **analysis concerning this topic.**  
 18 **I think we've kind of wandered into**  
 19 **this topic earlier today, but -- so let me just ask**  
 20 **a couple narrower questions.**  
 21 MR. GORE: Before you do that, I'll  
 22 just state for the record that the documents that  
 23 Mr. Godat reviewed in preparation for this topic are  
 24 at tab 13 of the binder.  
 25 MR. BAUER: Let's pull it out just to

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1 see.  
 2 **Q. (By Mr. Bauer) There's one document;**  
 3 **is that right?**  
 4 A. The confirmation.  
 5 **Q. Okay. Are there any other documents**  
 6 **related to this transaction within the Spire system?**  
 7 A. You know, there's not. Like I say, it  
 8 was something that Justin was handling working with  
 9 the Atmos trader. Yeah.  
 10 **Q. Who was Spire's contact at Atmos, do**  
 11 **you know?**  
 12 A. I do not know that off the top of my  
 13 head.  
 14 **Q. I see this is approved by you, by**  
 15 **signature. Did you know about this as it was**  
 16 **happening?**  
 17 A. I did.  
 18 **Q. And was this one of the decisions that**  
 19 **Justin was able to make or did he need your -- I**  
 20 **should say Justin Powers, I'm sorry -- that**  
 21 **Mr. Powers made on his own or did he require your**  
 22 **approval?**  
 23 A. He consulted with me on this  
 24 transaction.  
 25 **Q. Could he have done it on his own or are**

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1 **you necessary?**  
 2 A. There's nothing that restricts him from  
 3 doing it on his own.  
 4 **Q. I think --**  
 5 A. I ultimately made the decision, but  
 6 there's nothing that restricts him from that.  
 7 **Q. My memory is not perfect, but I feel**  
 8 **like I asked you all the questions, the who, what,**  
 9 **whys, wheres about all of this and you knew some**  
 10 **things and referred me to Mr. Powers on some others,**  
 11 **including -- forgive me if I've asked this already,**  
 12 **but how was the price arrived at?**  
 13 A. That's where I said it was just a  
 14 negotiation between Justin and Atmos.  
 15 **Q. And did Spire have any goals or**  
 16 **guidelines or, you know, objectives in the**  
 17 **negotiation?**  
 18 A. Just to come up with something that was  
 19 reasonable for both parties. Like I say, Atmos is a  
 20 sister utility and we were -- everybody was in that  
 21 together and we were trying to -- we were trying to  
 22 help them and at the same time they were trying to  
 23 be fair to us.  
 24 **Q. And how was the amount of gas arrived**  
 25 **at?**

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1 A. From what I remember, I would have  
 2 to -- yeah, I'd have to confirm with Justin. Yeah,  
 3 I would have to confirm that with Justin.  
 4 **Q. Okay. Let's go to topic eight, please,**  
 5 **on Exhibit 1 (quote as read):**  
 6 **The process by which Spire engages in**  
 7 **month-end balancing with Symmetry**  
 8 **regarding monthly invoicing, including**  
 9 **but not limited to the process as**  
 10 **applied since November 2020.**  
 11 **You're prepared to testify about this**  
 12 **topic?**  
 13 A. I am.  
 14 **Q. Can you explain to me how the month-end**  
 15 **balancing with Symmetry works?**  
 16 MR. GORE: If I could just state for  
 17 the record the documents that Mr. Godat reviewed in  
 18 preparation for testimony on this topic are at tabs  
 19 one and 14 of the binder.  
 20 **Q. (By Mr. Bauer) Feel free to refer to**  
 21 **those, sir.**  
 22 A. We -- yeah, we talked earlier about the  
 23 process that Spire goes through calculating the  
 24 daily amounts where it's looking at nominated  
 25 quantities and usage. The process is exactly the

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1 same for the month-end. It's just looking --  
 2 looking at the nominations for the full month period  
 3 and the usage for the full month period and  
 4 calculates the difference between those two.  
 5 **Q. And is your --**  
 6 A. There's a cash-out mechanism under that  
 7 process. So to the extent the farther the person is  
 8 out of balance, then the calculation gets punitive  
 9 the farther you're out of balance. And if the  
 10 marketer has brought in more gas than they burn,  
 11 then Spire owes the marketer money. If the marketer  
 12 has brought in less volume than they burn, then the  
 13 marketer owes Spire.  
 14 **Q. And is this something that's done at**  
 15 **the end of every month?**  
 16 A. It is. It's sometime after the month  
 17 has closed.  
 18 **Q. But does it square up among -- between**  
 19 **the marketer and Spire each month?**  
 20 A. It does.  
 21 **Q. Who is in charge of this process?**  
 22 A. The gas -- Justin Powers and his team.  
 23 **Q. Anyone in particular in Powers' team?**  
 24 A. Theresa Payne I believe was doing the  
 25 calculations at that time.

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1 **Q. Does she do them now too?**  
 2 A. You know, I would have to confirm. I  
 3 don't -- I'm not close enough to daily -- to the  
 4 daily task to know if she's still doing it.  
 5 **Q. Okay. Let's look at topic number nine,**  
 6 **Spire's document retention policies. Does Spire**  
 7 **have one?**  
 8 A. We do, and they're referenced in the  
 9 binder, and I --  
 10 MR. GORE: For the record, on topic  
 11 nine, the documents that Mr. Godat reviewed in  
 12 preparation to give testimony on topic nine are  
 13 located at tab --  
 14 MS. MCLAUGHLIN: 15.  
 15 MR. BAUER: 15?  
 16 A. 15. Yeah, there's multiple documents.  
 17 I did review those documents, and I spoke with Bob  
 18 McKee to confirm that the documents that are  
 19 provided were the documents -- were the policies  
 20 that were in place during Winter Storm Uri.  
 21 **Q. (By Mr. Bauer) And were those policies**  
 22 **followed during Winter Storm Uri and since?**  
 23 A. My understanding is that they were.  
 24 Actually, Bob said he didn't have any reason to  
 25 believe that they weren't followed as well.

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1 **Q. Okay. Let's look at -- at topic ten.**  
 2 **I'll read it. (Quote as read):**  
 3 **The identities of the persons who**  
 4 **provided the factual information**  
 5 **supporting the responses to Symmetry's**  
 6 **data requests served on March 26, 2021.**  
 7 **And I just say that -- note that we**  
 8 **want to ask about who the people are. Are you**  
 9 **prepared to testify on this topic today, sir?**  
 10 A. Like I mentioned before, inside and  
 11 outside counsel works with a number of Spire  
 12 employees. The ones that I was aware of are the  
 13 ones that I mentioned, Justin Powers, Scott Weitzel,  
 14 Patty Reardon. Like I say, Bob McKee on -- Bob  
 15 McKee would have been asked on the records policy.  
 16 **Q. Okay. How about Theresa Payne?**  
 17 A. Theresa Payne as well.  
 18 **Q. Is there somebody named Greg Hayes?**  
 19 A. Greg Hayes is scheduler for Justin  
 20 Powers.  
 21 **Q. Okay. And anyone else that was**  
 22 **consulted for the responses to the data requests?**  
 23 A. Ashley Dixon is also on Justin's team,  
 24 so --  
 25 MR. BAUER: Mark this as Exhibit 4.

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1 (WHEREIN, Exhibit 4, PowerPoint  
 2 presentation, was marked for identification by the  
 3 Court Reporter.)  
 4 **Q. (By Mr. Bauer) Okay. We placed for**  
 5 **the witness Exhibit 4, which is – appears to be a**  
 6 **PowerPoint entitled Spire Missouri AO 2021-0264 cold**  
 7 **weather event workshop, March 23rd, 2021. Have you**  
 8 **seen this before, sir?**  
 9 A. Yes, sir.  
 10 **Q. Can you tell us what it is?**  
 11 A. It was a presentation that Spire  
 12 Missouri gave to the Commission and the Commission  
 13 staff in response to their inquiry around the cold  
 14 weather event.  
 15 MR. GORE: Let me just state for the  
 16 record this document and the transcript relating to  
 17 this presentation is located at tab four of the  
 18 binder and was reviewed by Mr. Godat in preparation  
 19 for his testimony today.  
 20 THE WITNESS: Yeah, that's correct.  
 21 **Q. (By Mr. Bauer) Who prepared this – or**  
 22 **who were the people that prepared this presentation?**  
 23 A. Mr. Weitzel presented it. I called  
 24 Mr. Weitzel to confirm that the information was  
 25 still correct to his knowledge, but I don't -- I

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1 don't know who prepared that presentation for Scott.  
 2 **Q. Remind me, I'm sure you told me what**  
 3 **Mr. Weitzel's title is?**  
 4 A. He was managing director of  
 5 regulatory -- you know what, I don't have his exact  
 6 title. I would have to get that for you.  
 7 **Q. Close enough.**  
 8 A. He's over regulatory for Spire  
 9 Missouri.  
 10 MR. GORE: I bet it's probably  
 11 referenced in the transcript if they wanted to look.  
 12 A. Yeah.  
 13 **Q. (By Mr. Bauer) You know what,**  
 14 **Mr. Godat, we don't have to burn time. I can look**  
 15 **that up myself too.**  
 16 A. Okay.  
 17 MR. BAUER: Let's mark this as  
 18 Exhibit 5, please.  
 19 (WHEREIN, Exhibit 5, Murray & Trettel  
 20 document, was marked for identification by the Court  
 21 Reporter.)  
 22 **Q. (By Mr. Bauer) Okay. We placed**  
 23 **Exhibit 5 in front of the witness. Sir, do you**  
 24 **recognize this?**  
 25 A. I do.

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1 **Q. What is it?**  
 2 A. That is the temperature forecast that  
 3 our gas control uses for estimating consumption.  
 4 **Q. And it's -- this is something that**  
 5 **Spire hires Murray & Trettel, Inc. to do. Are you**  
 6 **familiar with them?**  
 7 A. Yeah, it's our outside weather service  
 8 that we use.  
 9 **Q. Do you have more than one outside**  
 10 **weather service or is this the one that Spire uses?**  
 11 A. We use -- Spire uses other sources, but  
 12 Alex Grewach manages that relationship along with  
 13 Justin Powers, so I don't have the exact details.  
 14 **Q. Do you -- strike that.**  
 15 **How frequently does Murray and Trettel**  
 16 **provide meteorological forecasts to Spire?**  
 17 A. I don't know the exact timing. From my  
 18 recollection, there's at least a couple times a day,  
 19 but I would have to confirm that with Justin and  
 20 Alex.  
 21 MR. BAUER: Okay. Can we mark this as  
 22 the next exhibit?  
 23 THE WITNESS: This is also provided in  
 24 the binder. I can't think of the tab it's on.  
 25 (WHEREIN, Exhibit 6, 9-9-21 e-mail

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1 chain, was marked for identification by the Court  
 2 Reporter.)  
 3 **Q. (By Mr. Bauer) Okay. We placed**  
 4 **Exhibit 6 before the witness. At the top it says**  
 5 **September 9th, 2021 e-mail from Justin Powers to**  
 6 **Matt Aplington and Dean Cooper. That looks like**  
 7 **just a forward and below the meat of the e-mail is a**  
 8 **February 15th, 2021 e-mail from you. Have you seen**  
 9 **this before?**  
 10 A. Yes, sir.  
 11 **Q. Tell us what it is, please.**  
 12 A. We were -- yeah, we made quite a few  
 13 references to it here. I think Mr. Ap -- or  
 14 Mr. Weitzel representing his document. On the 15th  
 15 Southern Star was starting to experience pressure  
 16 loss down in the southwest part of our system in the  
 17 Joplin area, and we were getting very concerned that  
 18 we weren't going to have adequate supply to meet our  
 19 demand in that area. So we were putting everybody  
 20 on notice that we may end up in a position where  
 21 we're physically losing customers in that area. So  
 22 just getting everyone prepared, thinking about the  
 23 actions they may take.  
 24 **Q. And who within Spire discussed whether**  
 25 **this was a good idea to send this e-mail out?**

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1 **Strike that. That sounded like I was being**  
 2 **facetious. I didn't mean to sound facetious at all.**  
 3 **Who in Spire discussed sending this**  
 4 **e-mail out?**  
 5 A. Justin Powers and I recognized the --  
 6 the vulnerability we were going to have in that  
 7 area. So I made the decision to send it out to get  
 8 everybody on notice.  
 9 **Q. And -- and everybody seems like a lot**  
 10 **of folks. Can you tell us by group at least who all**  
 11 **these people are?**  
 12 A. We have an incident support team that  
 13 that's there to handle any type of extreme  
 14 condition. So I just went to that list.  
 15 **Q. Okay. Yeah, so tell me like who are**  
 16 **the people on the incident support team and what are**  
 17 **their roles?**  
 18 A. There's -- the goal is to have somebody  
 19 from all parts of the organization involved,  
 20 regulatory, legal, our customer experience, field  
 21 operations, engineering.  
 22 **Q. And are they tasked with dealing with**  
 23 **any particular kinds of incidents?**  
 24 A. I don't understand your question.  
 25 **Q. What's -- I'll ask it differently. Why**

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1 **is there an incident support team?**  
 2 A. It's to handle any type of emergency  
 3 incident that's out of the ordinary that's going to  
 4 require communication amongst the teams.  
 5 **Q. And the extreme cold weather**  
 6 **preparedness of February was a time that you wanted**  
 7 **to communicate to the incident support team,**  
 8 **correct?**  
 9 A. Right. It's because we had that  
 10 particular issue going on in Southwest Missouri.  
 11 **Q. Did any of the folks on this -- on this**  
 12 **e-mail respond back to you? Are there further**  
 13 **communications related to this in the Spire system?**  
 14 A. I don't recall specifically to me other  
 15 than Mike Schormann is the one that heads up that  
 16 incident response team, and he was the one that  
 17 actually set up the -- from that point forward we  
 18 handled it by call. He basically set up a line  
 19 that -- there were -- there were people that stayed  
 20 kind of in communication throughout the day and  
 21 through the night as we were watching the conditions  
 22 continue to deteriorate down in Southwest Missouri.  
 23 **Q. What -- what area of expertise does**  
 24 **Mr. Schormann have?**  
 25 A. Let me see what his title is.

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1 **Q. What is his title other than head of**  
 2 **the incident response team?**  
 3 A. Crisis management lead. He's the one  
 4 that's basically tasked with calling the troops  
 5 together.  
 6 MR. BAUER: Okay. We'll mark this as  
 7 the next exhibit.  
 8 (WHEREIN, Exhibit 7, 2-29-21 e-mail  
 9 chain, was marked for identification by the Court  
 10 Reporter.)  
 11 **Q. (By Mr. Bauer) We put Exhibit 7 in**  
 12 **front of you, sir. Do you recognize this?**  
 13 A. Yes, sir.  
 14 **Q. Tell us what it is.**  
 15 A. It was the notice that Justin and his  
 16 team sent out terminating the OFO.  
 17 **Q. What were the discussions within Spire**  
 18 **regarding sending this notice out? I'll ask it a**  
 19 **different way. Why was this notice sent at this**  
 20 **time with this subject?**  
 21 A. Yeah, it was kind of twofold. One  
 22 would have been we were seeing -- seeing forecasts  
 23 for the temperature to warm up and Justin was having  
 24 conversations with our producers, getting the  
 25 indication that the supply was starting to come back

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1 on. And this was going into a weekend, and you  
 2 know, gas trades for multiple days over the weekend.  
 3 So you know, I know he was -- he was  
 4 trying to get it lifted as soon as possible. And  
 5 then kind of the last piece of that was Southern  
 6 Star lifted their OFO also on the 20th. So we  
 7 thought the prudent thing to do was to lift it in  
 8 conjunction with Southern Star.  
 9 **Q. Did -- did Spire considering lifting**  
 10 **the OFO before Southern Star lifted theirs?**  
 11 A. I can't speak for Justin, but I don't  
 12 recall having any conversations because even as late  
 13 as the 18th, you know, roughly 25 percent of the  
 14 supply was still force majeure'd and the marketers  
 15 were still shorting the system by a huge amount at  
 16 that point. So like I say, if Justin had  
 17 conversations, I'm not aware of those, but I don't  
 18 recall any conversations prior to the day that we  
 19 actually lifted it.  
 20 MR. BAUER: Let's mark this one.  
 21 (WHEREIN, Exhibit 8, MOW Transportation  
 22 Comms 2-17-21, was marked for identification by the  
 23 Court Reporter.)  
 24 **Q. (By Mr. Bauer) Okay. We put Exhibit 8**  
 25 **in front of the witness, and you recognize this,**



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1 sir?  
 2 A. This looks like one of the customer  
 3 communications that took place.  
 4 Q. Is this something you've seen before?  
 5 A. I have seen this. I'm trying to --  
 6 yeah.  
 7 Q. Can you tell us in any more detail what  
 8 it is?  
 9 A. It is one of the documents that I  
 10 reviewed.  
 11 MR. GORE: This document is at tab 18  
 12 of the binder that Mr. Godat reviewed in preparation  
 13 for his testimony today.  
 14 A. Yeah, I'm trying to remember from when  
 15 I had looked through it before, the context of what  
 16 I was understanding was sent out because this goes  
 17 out from a different group, but it was -- yeah, as I  
 18 recall, this was when we were having our issues in  
 19 Southwest Missouri and I know there was a lot of  
 20 customer communication that was going on around that  
 21 trying to make sure the public was aware of the  
 22 situation that we were in. So yeah, that's what I  
 23 remember, that this was in conjunction with that  
 24 communication.  
 25 Q. (By Mr. Bauer) And who was involved in

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1 that effort?  
 2 MR. APLINGTON: Sorry, just real quick.  
 3 I just want to make sure -- I didn't see you flip it  
 4 over. You're aware that it's a two-sided document?  
 5 A. Oh, okay. Yeah, I was going to say, I  
 6 assume that this was Patty Reardon. I had  
 7 referenced Patty Reardon as the one that actually  
 8 has the customer communications for Southwest MO.  
 9 Q. (By Mr. Bauer) Anyone else to Spire's  
 10 knowledge involved in preparing this document?  
 11 A. Yeah, I would have to -- yeah, I'd have  
 12 to ask Patty who all was involved in putting that  
 13 communication together.  
 14 MR. BAUER: Okay. Let's mark this as  
 15 Exhibit 9, please.  
 16 (WHEREIN, Exhibit 9, 2-10-21 Payne  
 17 e-mail, was marked for identification by the Court  
 18 Reporter.)  
 19 Q. (By Mr. Bauer) Okay. Can you tell us  
 20 what Exhibit 9 is?  
 21 A. This was the OFO notice that went out  
 22 to the marketers letting them know that we were  
 23 going to an OFO effective February 12th at nine a.m.  
 24 Q. And did -- you of course were involved  
 25 in that decision, right?

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1 A. I was.  
 2 Q. Yeah. Who is Greg Hayes?  
 3 A. I mentioned that before. He's a  
 4 scheduler in Justin Powers' team.  
 5 Q. And Theresa Payne, she's on  
 6 communications?  
 7 A. No, she's on the gas supply side.  
 8 Q. Okay. My main question here is why is  
 9 this communication among those three people, if you  
 10 know?  
 11 A. This is -- from what I understand, this  
 12 is actually the notification that went out to the  
 13 marketers. They're just bcc'd. So it not only went  
 14 out to them, it went out to the marketer group as  
 15 well.  
 16 Q. Okay.  
 17 A. Greg is responsible for scheduling for  
 18 MO west on the upstream side, and Theresa handled --  
 19 was handling the end user nominations at the time.  
 20 Q. Were Ms. Payne and Mr. Hayes involved  
 21 in the decision to issue an OFO?  
 22 A. They were not.  
 23 Q. Were they consulted?  
 24 A. They were not.  
 25 (WHEREIN, Exhibit 10, 2-17-21 e-mail

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1 chain, was marked for identification by the Court  
 2 Reporter.)  
 3 Q. (By Mr. Bauer) Okay. So Exhibit 10 is  
 4 an e-mail dated February 17th, 2021 that includes  
 5 several people, including you; is that right?  
 6 A. That's correct.  
 7 Q. Can you tell us who the other people  
 8 are who are -- received this e-mail? The name at  
 9 the top is an associate that works for us. I guess  
 10 that's because it was printed out, Nate Saper.  
 11 A. So Greg, Justin, and Ashley are all in  
 12 the gas supply team. Castor is in-house counsel  
 13 that handled this -- pursued this legal matter for  
 14 us.  
 15 Q. Okay. All right. I'm only asking you  
 16 about this because it was a document produced -- I  
 17 don't think this is within the scope of my 30(b)(6),  
 18 but it may be in the scope of other people so  
 19 I'll -- I'll leave it here. Someone else can ask  
 20 questions about it, okay?  
 21 A. Okay.  
 22 MR. BAUER: Mark this as Number 11  
 23 please.  
 24 (WHEREIN, Exhibit 11, 2-24-21 Spire  
 25 letter to Symmetry, was marked for identification by

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1 the Court Reporter.)  
 2 **Q. (By Mr. Bauer) All right. We placed**  
 3 **before the witness Exhibit 11, which is a**  
 4 **February 24th, 2021 letter from Spire to Symmetry.**  
 5 **Have you seen this before?**  
 6 A. I have.  
 7 **Q. Were you involved in discussions – or**  
 8 **strike that.**  
 9 **What discussions were had within**  
 10 **Symmetry – I'm sorry, strike that again.**  
 11 **What discussions occurred within Spire**  
 12 **regarding sending out this letter at this time? Not**  
 13 **asking for privileged communications.**  
 14 MR. GORE: Does this relate to a  
 15 particular topic?  
 16 MR. BAUER: Well, it does to the extent  
 17 that the OFO penalties are at all fact based.  
 18 MR. GORE: Okay. So -- all right. So  
 19 probably topic one, I guess.  
 20 A. Yeah, it's -- it's my understanding  
 21 that once there was a general feel for what the  
 22 penalty calculation number was that the decision was  
 23 made internally to get the invoices out as soon as  
 24 possible to the marketers, just given overall  
 25 liquidity concerns just for the company in general.

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1 **Q. (By Mr. Bauer) Liquidity concerns for**  
 2 **Spire or for the marketers?**  
 3 A. For Spire overall. To get the cost  
 4 covered for the supply that Spire had to make on  
 5 behalf of the marketers.  
 6 **Q. And were there communications or**  
 7 **meetings regarding that decision within Spire?**  
 8 A. You know what, I'm not privy to those  
 9 conversations if they took place.  
 10 **Q. If you look at the second page, can you**  
 11 **tell me who these folks are who are the cc's? Wait,**  
 12 **I'm sorry. Strike that. Those cc's are all my**  
 13 **people.**  
 14 A. Yeah, they're all Symmetry.  
 15 MR. BAUER: Yeah, okay. Okay. So  
 16 subject to going back over my notes and having a  
 17 discussion with you about authenticity of documents,  
 18 you know, I'm just about done, all right? So if you  
 19 want to break while I meet with my team and talk  
 20 with you about authenticity and get something on the  
 21 record, then I'd be ready to pass the witness.  
 22 MR. GORE: Okay. Why don't we do that  
 23 before lunch then?  
 24 COURT REPORTER: Go ahead, Ryan.  
 25 VIDEOGRAPHER: Off the record,

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1 12:04 p.m.  
 2 (WHEREIN, a recess was taken.)  
 3 VIDEOGRAPHER: On the record, 12:14  
 4 p.m.  
 5 MR. BAUER: Okay. First of all, I  
 6 think we have an agreement among counsel that  
 7 Exhibit 2, the two binders of documents that you  
 8 brought to this deposition and referred to during  
 9 your testimony will be considered authentic, the  
 10 documents within the binders will be considered  
 11 authentic for purposes of this public services  
 12 commission proceeding. Did I get that right? Are  
 13 we in agreement on that?  
 14 MR. GORE: That's correct. For the  
 15 limited purpose of this proceeding only. There is a  
 16 civil litigation also occurring and we're not  
 17 stipulating for the purposes of that civil  
 18 litigation.  
 19 MR. BAUER: Right. We're not talking  
 20 about the evidence code other than authenticity.  
 21 MR. GORE: Correct.  
 22 MR. BAUER: Okay.  
 23 MR. HOWELL: Sorry, this is Richard  
 24 Howell for Constellation. My understanding was that  
 25 Spire was saying that it was not going to object on

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1 the basis of authenticity for any of the documents  
 2 in the binder.  
 3 MR. GORE: For the purposes of the PSC  
 4 matter?  
 5 MR. HOWELL: Yes, correct.  
 6 MR. GORE: Yes, that's what I thought  
 7 we just stipulated to.  
 8 MR. HOWELL: Okay. Thank you.  
 9 **Q. (By Mr. Bauer) Okay. And let's go**  
 10 **back to Exhibit 6, please. This is that e-mail to**  
 11 **the -- to the incident response team. Just a couple**  
 12 **questions. The list of people to whom this was**  
 13 **sent, are any of them related to Spire Marketing?**  
 14 A. They are not.  
 15 **Q. Are any of them employed by Spire**  
 16 **Marketing?**  
 17 A. They are not.  
 18 **Q. Was this communication sent to Spire**  
 19 **Marketing in February of 2021 forwarded by anyone?**  
 20 A. Not that I am aware of.  
 21 **Q. Were there any communications related**  
 22 **to the OFO that were then forwarded to Spire**  
 23 **Marketing personnel?**  
 24 A. Spire Marketing was handled like every  
 25 other marketer in Kansas City from a communication

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1 perspective as far as I'm aware.  
 2 **Q. Were there any communications from**  
 3 **Spire Missouri to Spire Marketing related to Spire's**  
 4 **gas purchases other than the purchase from Spire**  
 5 **Marketing?**  
 6 A. Not that I am aware of.  
 7 **Q. Did Spire Marketing know what gas**  
 8 **purchases Spire was making during the winter storm?**  
 9 MR. GORE: I'm going to object, beyond  
 10 the scope to the extent of seeking the knowledge of  
 11 Spire Marketing. To the extent that it's seeking  
 12 the knowledge of Spire Missouri, Inc., you can  
 13 answer.  
 14 A. Yeah, I can tell you that based on our  
 15 standard of communication we -- we would not be  
 16 giving Spire Marketing any information outside of  
 17 information that pertains to business -- outside of  
 18 business that pertains directly to Spire Marketing.  
 19 MR. BAUER: Okay. Well, thank you.  
 20 I'll pass the witness.  
 21 MR. GORE: Okay. We're going to take a  
 22 lunch break before we start back up is the thought  
 23 process. How long do you guys want to take? Why  
 24 don't we --  
 25 MR. BAUER: Doesn't matter to me.

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1 MR. GORE: Let me consult with the  
 2 witness briefly.  
 3 (WHEREIN, a discussion was held off the  
 4 record.)  
 5 MR. GORE: Okay. Why don't we shoot  
 6 for trying to get lunch done in 30 minutes or so?  
 7 We have food here and we'll come as close to that as  
 8 we can, all right?  
 9 MR. BAUER: Sounds good.  
 10 MR. HOWELL: Like 12:55 or --  
 11 MR. GORE: Let's call it one o'clock.  
 12 MR. HOWELL: Great. Thank you.  
 13 MR. GORE: All right.  
 14 VIDEOGRAPHER: Off the record,  
 15 12:20 p.m.  
 16 (WHEREIN, a lunch recess was taken from  
 17 12:20 p.m. to 1:11 p.m.)  
 18 VIDEOGRAPHER: On the record, 1:11 p.m.  
 19 EXAMINATION  
 20 QUESTIONS BY MR. HOWELL:  
 21 **Q. Hi, Mr. Godat. My name is Richard**  
 22 **Howell. I'm an attorney in Houston with the law**  
 23 **firm of Jackson Walker. We're attorneys for**  
 24 **Constellation. Do you understand that?**  
 25 A. Yes.

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1 **Q. Great. The court reporting service has**  
 2 **provided you and all the other attorneys associated**  
 3 **with these three regulatory proceedings with a Zoom**  
 4 **link and I believe we have something like 20 people**  
 5 **who are participating via Zoom as well as all the**  
 6 **people who are in the room with you. Now, if you**  
 7 **have any trouble hearing what I'm saying during the**  
 8 **course of this deposition, please let me know, all**  
 9 **right?**  
 10 A. Yes. I'm hearing you good so far.  
 11 **Q. Perfect. All right. We have discussed**  
 12 **a little bit on the break before we resumed how --**  
 13 **how exhibits would be used. Ryan, who is serving as**  
 14 **the videographer and also helping with the exhibits,**  
 15 **may be able to load exhibits. You should be able to**  
 16 **see those both on the screen and for most of them in**  
 17 **the binder. You have a binder that you brought with**  
 18 **you to this deposition which has been previously**  
 19 **marked as Exhibit 2, our deposition notice, and a**  
 20 **number other files that have been produced and some**  
 21 **that we had not seen were included in that binder.**  
 22 **To the extent possible I will both mark**  
 23 **an exhibit and put it up on screen as well as**  
 24 **reference where it is in the binder if I can -- if I**  
 25 **know where that is before asking you about it. Do**

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1 **you understand?**  
 2 A. Yes.  
 3 **Q. Great. If you -- if you ever don't**  
 4 **understand something I'm saying or there's some sort**  
 5 **of transition error, please stop me and let me know.**  
 6 A. Okay. Will do. Thanks.  
 7 **Q. So just to let you know kind of where**  
 8 **I'm headed, there are a few things that I want to**  
 9 **follow up on from what you were asked about before**  
 10 **that relates to the -- to our notice as well as**  
 11 **Mr. Bauer's notice for -- on behalf of Symmetry.**  
 12 **And I want to then ask you a little bit more about**  
 13 **some of your background at Spire and then I'll go**  
 14 **through each of the topics in the -- in**  
 15 **Constellation's notice. But let me start with this:**  
 16 **At the beginning of the deposition you were asked --**  
 17 **or you provided testimony rather about a hold**  
 18 **notice, correct?**  
 19 A. That's correct.  
 20 **Q. All right. Do you recall what month**  
 21 **that was provided to you?**  
 22 A. I do not off the top of my head.  
 23 **Q. Okay. Do you know whether it was in**  
 24 **the fall, in the spring, in the summer, do you know**  
 25 **what season it was provided to you?**

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1 A. I would -- I would have to actually  
 2 look back at the actual notice.  
 3 **Q. Okay. And do you have that with you?**  
 4 A. Not that I recall.  
 5 **Q. Okay. Did you look at the notice in**  
 6 **preparation for testifying for any of the**  
 7 **depositions today?**  
 8 A. I don't recall looking at that.  
 9 **Q. Okay. All right. Does Spire use -- I**  
 10 **want to ask you a little bit about document**  
 11 **collection process and let me just start with this:**  
 12 **What -- what types of -- are you issued a device by**  
 13 **Spire, like a computer?**  
 14 A. I am.  
 15 **Q. Okay. And what kind -- is it an Apple**  
 16 **computer or is it a Windows-based computer?**  
 17 A. It's a Windows-Based computer.  
 18 **Q. Okay. And do you guys use -- does**  
 19 **Spire use Microsoft Office 365?**  
 20 A. I believe that's -- that's the --  
 21 that's the system that we use.  
 22 **Q. Okay. And do you use Microsoft Teams**  
 23 **for internal meetings and chat?**  
 24 A. Yeah, we have several systems that we  
 25 use, and Teams is one of those.

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1 **Q. Okay. Do you use Microsoft Teams for**  
 2 **internal videoconferences or telephonic conferences?**  
 3 A. Yes, like I said, I use Teams in  
 4 addition to others.  
 5 **Q. Okay. Do you use Microsoft Teams for**  
 6 **chats?**  
 7 A. I will use team -- the chat feature at  
 8 times when I'm in the Teams meeting.  
 9 **Q. Okay. You mentioned a few times now**  
 10 **that you use other software as well. What other**  
 11 **software do you use?**  
 12 A. I know Skype is one that gets used from  
 13 time to time. I think Zoom for some external  
 14 meetings. Typically they're Skype or -- or Teams  
 15 for internal meetings.  
 16 **Q. Okay. Do you know whether Spire**  
 17 **records any of the Teams or Skype meetings that are**  
 18 **internal in the company?**  
 19 MR. GORE: I'm going to -- I'm going to  
 20 object, overbroad, beyond the scope of this  
 21 deposition notice. If you want to limit it to any  
 22 of the calls at issue.  
 23 **Q. (By Mr. Howell) You can answer.**  
 24 A. Yeah, I'm not aware if Spire records  
 25 those conversations.

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1 **Q. Okay. Have you ever attempted to**  
 2 **record any phone or video conversations either**  
 3 **related to the winter storm or related to this**  
 4 **proceeding?**  
 5 A. I have not.  
 6 **Q. Are you aware of whether any other**  
 7 **individual at Spire has attempted to record any**  
 8 **phone or video meeting related to the winter storm**  
 9 **or related to this regulatory proceeding?**  
 10 A. I'm not aware of any phone or video  
 11 conversations that have been recorded.  
 12 **Q. I'm sorry, you trailed off a little bit**  
 13 **at the end. You said you're not aware of any phone**  
 14 **or video recordings that were recorded?**  
 15 A. That's correct.  
 16 **Q. Understand. Other than Teams and Skype**  
 17 **for internal meetings, are there other internal chat**  
 18 **or instant communication services that you use?**  
 19 A. I'm not aware of any others that I use.  
 20 **Q. Okay. Are you aware of any that -- any**  
 21 **other chat or instant messaging systems that Spire**  
 22 **makes available to its -- its employees and**  
 23 **officers?**  
 24 A. I am not.  
 25 **Q. Okay. Do you -- does Spire use any**

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1 **sort of shared server for storing information**  
 2 **related to the winter storm or for this regulatory**  
 3 **proceeding?**  
 4 A. I'm not familiar with the structure for  
 5 how information that's been gathered is stored.  
 6 **Q. Well, fair enough. Who -- who would be**  
 7 **the best person to speak to or who would be the**  
 8 **person most knowledgeable with regard to how that**  
 9 **information is -- is stored or preserved?**  
 10 A. We work with both inside and outside  
 11 counsel, so since I don't specifically know who's --  
 12 who's in charge of that, I would have to follow up  
 13 to find out.  
 14 **Q. All right. Setting aside what may or**  
 15 **may not have been collected for litigation, I just**  
 16 **want to have a better understanding of how things**  
 17 **are -- operate on a day-to-day basis. You know,**  
 18 **with respect to, you know, documents that might be**  
 19 **generated in the ordinary course of business related**  
 20 **to gas purchases, are those, you know, types of**  
 21 **transactions, are they saved or recorded on any**  
 22 **particular part of a -- of the Spire system, are**  
 23 **they just saved on someone's individual hard drive,**  
 24 **are they put onto a shared file site or how else are**  
 25 **they maintained within Spire?**

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1 A. So could you repeat the information  
 2 that you're -- that you're addressing when you're  
 3 asking how it's stored?  
 4 **Q. Yes, sir. So what I'm trying to**  
 5 **understand is I'm trying to get a better picture of**  
 6 **Spire's systems with regard to data, okay? Just**  
 7 **that's the umbrella of what I'm looking at.**  
 8 A. Okay.  
 9 **Q. And what I am trying to figure out is**  
 10 **you told me about videoconferencing and chat stuff,**  
 11 **and what I -- what I am trying to find out now is**  
 12 **with regard to, you know, documents that might be**  
 13 **created in the ordinary course of business, like gas**  
 14 **purchase and sale documents or transaction**  
 15 **confirmations or nominations. Is all of that data,**  
 16 **is it stored on a server somewhere? Is it stored on**  
 17 **a shared file site? Where does that normally get**  
 18 **saved to?**  
 19 A. You know what, I have not personally  
 20 looked at that structure since -- since taking my  
 21 current role. There is a gas supply folder that I'm  
 22 aware of on our -- on our system that I would assume  
 23 houses most of those documents.  
 24 **Q. And is there also like an e-mail server**  
 25 **or multiple servers perhaps that maintain the Spire**

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1 **e-mail system?**  
 2 A. We do -- as far as I know, we're all  
 3 part of the same system.  
 4 **Q. Okay. Are there databases that you**  
 5 **either use or oversee with respect to the gas**  
 6 **purchasing and gas control arms of Spire?**  
 7 A. Yes. We have -- we have a database  
 8 that all of our purchase and sales are housed in,  
 9 and that -- my -- my group maintains those.  
 10 **Q. Anything else --**  
 11 A. It's basically --  
 12 (Court reporter interruption.)  
 13 A. Yeah, I say it's basically a deal  
 14 capture system that's used for reconciliations and  
 15 for transaction confirmations. We do -- we do also  
 16 have a portfolio that's maintained on a daily basis  
 17 that's used to just manage our overall supply.  
 18 **Q. (By Mr. Howell) Could you explain?**  
 19 A. It's just a computation of what our  
 20 expected send-outs are and what the supplies are  
 21 coming into the gate and what the storage activity  
 22 would be.  
 23 **Q. And what's that called?**  
 24 A. You know, I don't know the exact name  
 25 for it off the top of my head.

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1 **Q. Do you -- do you call it anything or is**  
 2 **that a report that you receive on a daily basis or**  
 3 **is it something just available to you?**  
 4 A. Yeah, it gets sent out, gas portfolio  
 5 maybe. Like I say, I don't recall the name off the  
 6 top of my head.  
 7 **Q. And you said it gets sent out?**  
 8 **(Court reporter interruption.)**  
 9 MR. GORE: I just instructed the  
 10 witness that when you can't recall, please don't  
 11 speculate.  
 12 THE WITNESS: Okay.  
 13 **Q. (By Mr. Howell) To whom is it sent**  
 14 **from and to who is it sent to?**  
 15 A. The scheduler for Spire Missouri sends  
 16 it -- I'd have to look at the distribution list.  
 17 It's for the Spire Missouri employees.  
 18 **Q. And who is the scheduler?**  
 19 A. Greg Hayes is the scheduler for Spire  
 20 Missouri West.  
 21 **Q. Do -- does Spire use the ICE platform**  
 22 **to purchase and sell gas, natural gas?**  
 23 A. Spire does have an account with ICE,  
 24 correct.  
 25 **Q. Okay. And during February 2021 did**

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1 **Spire purchase gas using the ICE platform?**  
 2 A. Yeah, it was a combination of ICE and  
 3 then physical transactions, you know, phone-to-phone  
 4 transactions.  
 5 MR. GORE: And if I can just interject  
 6 for the record, I think this is clear, but when  
 7 we're using the term Spire, we're referring to Spire  
 8 Missouri, Inc. I assume, and that if you're going to  
 9 refer to a different Spire entity you would specify  
 10 that.  
 11 MR. HOWELL: Okay. I think that's a  
 12 great point, Mr. Gore.  
 13 **Q. (By Mr. Howell) Whenever I use the**  
 14 **term Spire, Mr. Godat, I am intending to refer to**  
 15 **Spire Missouri. You are -- you are an officer of**  
 16 **Spire Missouri, correct?**  
 17 A. I am.  
 18 **Q. All right. Just assume that for the**  
 19 **rest of my deposition of you that when I refer to**  
 20 **Spire I'm referring to Spire Missouri, and -- unless**  
 21 **I add an additional name, such as Spire Marketing or**  
 22 **Spire, Inc. Is that fair?**  
 23 A. Yes, sir.  
 24 **Q. All right. During the month of**  
 25 **February 2021, I believe you were saying that Spire,**

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1 that is Spire Missouri, used ICE as well as  
 2 phone-to-phone – phone-based physical purchases of  
 3 natural gas, correct?  
 4 A. That's correct.  
 5 Q. Okay. Do – do Spire's traders use ICE  
 6 Chat to facilitate the purchases of natural gas for  
 7 its system?  
 8 A. I know they have the ICE Chat feature.  
 9 I'm not sure how often they use the ICE Chat versus  
 10 using phone to phone.  
 11 Q. Prior to taking on your current role,  
 12 were you a natural gas trader?  
 13 A. I was prior to 2018 when I came to the  
 14 gas supply group.  
 15 Q. How were the purchases documented?  
 16 Whether they're – whether they're purchased, you  
 17 know, through the ICE system or by phone, how were  
 18 they documented?  
 19 A. They're just kept on a daily trade  
 20 sheet that documents the counterparty and the price.  
 21 Q. Okay. And then are those trade –  
 22 trade sheets reconciled at the end of the month to  
 23 invoice whichever party is obligated to pay?  
 24 A. Yeah, there is – there is an internal  
 25 I guess documentation process that verifies that the

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1 information that's being invoiced from our third  
 2 parties and that we're invoicing is correct.  
 3 Q. And what is that system or process?  
 4 A. I don't understand your question. I'm  
 5 sorry.  
 6 Q. Yes, sir. Mr. Godat, you indicated  
 7 that there's an internal system or an internal  
 8 process that is used to verify that information.  
 9 Does that have a name or is that – does that have  
 10 a – could you describe that in greater detail?  
 11 A. It's just the reconciliation process,  
 12 making sure the documents tie out. I don't know  
 13 that there's an official name for that process.  
 14 Q. And who is in charge of the  
 15 reconciliation process?  
 16 A. Justin Powers and his team.  
 17 MR. GORE: If I can just interject for  
 18 one second, is there a way we can get the frame  
 19 tighter where we're not picking up the people?  
 20 We're getting people out in the hallway. And I'm  
 21 sure that if you played it you could probably frame  
 22 that out, but I would rather not have it in there.  
 23 Thank you.  
 24 MR. HOWELL: Okay to proceed, Mr. Gore?  
 25 MR. GORE: Yeah.

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1 Q. (By Mr. Howell) Are the purchases and  
 2 sales between Spire and Spire Marketing conducted  
 3 via ICE, via phone, or some other method for  
 4 February 2021?  
 5 A. I don't know which method those were  
 6 performed under.  
 7 Q. Who would know?  
 8 A. Justin Powers and his team.  
 9 Q. Are the transactions between Spire and  
 10 Spire Marketing documented in the same way as for  
 11 other counterparties?  
 12 MR. GORE: Objection, foundation,  
 13 vague. You can answer if you understand.  
 14 A. Yeah, it's my understanding that  
 15 they're captured in the same trade sheet and tied  
 16 out in the same gas management system.  
 17 Q. (By Mr. Howell) You mentioned Justin a  
 18 number of times. Does he have a limit on – on his  
 19 transaction authority or is there a certain  
 20 threshold above which his transactions require your  
 21 supervision or approval?  
 22 A. He does not.  
 23 Q. So presumably he could go out and  
 24 buy – if it necessitated it a billion dollars worth  
 25 of gas and he would have authority to do that

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1 without approval from anyone else within Spire?  
 2 MR. GORE: Objection, beyond the scope  
 3 of the notice, improper foundation, improper  
 4 hypothetical. Mr. Godat is not testifying as an  
 5 expert witness. You can – you can answer.  
 6 A. There's -- we do not have a formal  
 7 limit on his ability to manage supply on a daily  
 8 basis, but having said that, if they reached that  
 9 level that's not to say there wouldn't be some  
 10 conversation about it.  
 11 Q. (By Mr. Howell) You indicated earlier  
 12 in questioning by Mr. Bauer that you were aware of  
 13 and participated in conversations with Justin Powers  
 14 related to a sale of natural gas that Spire owned  
 15 that was in storage to Atmos, correct?  
 16 A. That's correct.  
 17 Q. Were there any other natural gas  
 18 purchases and sales during the February 10th through  
 19 20th period in which you were personally involved?  
 20 A. Not that I recall.  
 21 Q. Were there any other natural gas  
 22 purchases and sales that you participated in  
 23 approving?  
 24 A. Not that I recall.  
 25 Q. Does Mr. Power – Powers have the

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1 authority to make decisions to buy or sell and from  
 2 whom and at what price?  
 3 A. Yeah, as I mentioned before, he's in  
 4 charge of the group and he does not have a set limit  
 5 on the transactions that he can perform.  
 6 Q. All right. I want to take a little bit  
 7 of a step back also to address or follow up on  
 8 something that you were asked about by Mr. Bauer at  
 9 the beginning of your deposition. You indicated  
 10 that you took over this new role in October of 2020;  
 11 is that correct?  
 12 A. I took over gas supply in October of  
 13 2018, gas supply and gas control, and they added the  
 14 responsibility of field operations for our St. Louis  
 15 utility in October of 2020.  
 16 Q. And prior to October of 2018 what was  
 17 your role?  
 18 A. I held various roles for Spire  
 19 Marketing for -- that was the -- that was the  
 20 position immediately prior to two thousand -- my  
 21 2018 change. I had worked for Laclede Gas Company  
 22 up through 2008 prior to moving to the marketing  
 23 side.  
 24 Q. 2018 or 2008?  
 25 A. 2008.

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1 Q. Sorry. All right. So in 2018 you  
 2 became vice president of gas supply for Spire  
 3 Missouri; is that fair? Is that correct?  
 4 A. Vice president of gas supply for  
 5 Spire -- for Spire, Inc. I'm responsible for all of  
 6 the utilities.  
 7 Q. So your role as vice president of gas  
 8 supply for Spire, Inc., you have oversight or  
 9 leadership not only with regard to the Missouri  
 10 utility, but the two other states, correct?  
 11 A. That's correct.  
 12 Q. And is Justin Powers the person who  
 13 is -- who directs gas supply with respect to Spire  
 14 Missouri?  
 15 A. It is.  
 16 Q. And is there a different individual who  
 17 is in charge for directing gas supply for the other  
 18 two states?  
 19 A. No. He directs for -- for all of Spire  
 20 Missouri utilities -- or for all Spire utilities.  
 21 Q. And you indicated that prior to taking  
 22 over the role of VP of gas supply for Spire, Inc. in  
 23 2018, you worked for Spire Marketing, correct?  
 24 A. That's correct.  
 25 Q. What was your last role with Spire

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1 Marketing?  
 2 A. Vice president and general manager.  
 3 Q. And could you describe what your role  
 4 was as vice president, general manager of Spire  
 5 Marketing?  
 6 A. Yes. I was basically responsible for  
 7 all the P&L for the group.  
 8 Q. And did you work with Pat Strange?  
 9 A. I did not. Actually, the company made  
 10 the decision to move that entity to Houston, and  
 11 they -- they replaced my position, basically  
 12 eliminated my role and brought on Pat Strange to run  
 13 that group when it moved to Houston.  
 14 Q. Is Pat essentially serving the same  
 15 role -- is it your understanding that Pat is serving  
 16 in the same role that you used to serve in prior to  
 17 your transition from Spire Marketing to Spire, Inc.?  
 18 MR. GORE: I'm going to object,  
 19 foundation, vague. You can answer.  
 20 A. Yeah, you know what, I'm not -- I don't  
 21 understand the -- necessarily the reporting  
 22 structure on that side. So the --  
 23 Q. (By Mr. Howell) Are there other  
 24 individuals that you worked with at Spire Marketing  
 25 who -- who made the move from -- made the move to

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1 Houston?  
 2 MR. GORE: I'm going to -- I'm going to  
 3 object, beyond the scope of the notice. He's  
 4 produced here as a witness for Spire Missouri and  
 5 not being produced for any knowledge he has of the  
 6 workings of Spire Marketing.  
 7 Q. (By Mr. Howell) Subject to the  
 8 objection, you can answer.  
 9 A. There were only a couple of individuals  
 10 that went. There was one trader -- one trader and  
 11 two schedulers that I recall that made the move.  
 12 Q. Who was that?  
 13 A. Kayla Hull, Chris Whilwhite. I don't  
 14 recall -- I don't recall the other scheduler's name.  
 15 Q. Spire Missouri is a regulated utility  
 16 that provides sales service and transportation  
 17 service to residential business and industrial  
 18 customers in Missouri, correct?  
 19 A. Generally that sounds correct.  
 20 Q. And natural gas purchased by Spire  
 21 Missouri for delivery to its service area can reach  
 22 the Spire Missouri system through the Southern Star  
 23 central gas pipeline, correct?  
 24 A. Yeah, that's one of the pipelines that  
 25 supplies our Kansas City utility.

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1           **Q. And natural gas purchased for delivery**  
2 **to Spire Missouri can also reach the Spire system**  
3 **through the Enable Mississippi River transmission**  
4 **river entity, correct?**  
5           A. It cannot reach the Spire Missouri West  
6 system that's in question in this case.  
7           **Q. It can reach Spire Missouri East?**  
8           A. It can reach the east, correct, but not  
9 the west.  
10           **Q. And are the east and west systems not**  
11 **interconnected?**  
12           A. They are not.  
13           **Q. The natural gas can also reach the**  
14 **Spire Missouri system through the Tallgrass**  
15 **Interstate Gas Transmission Pipeline?**  
16           A. That's correct.  
17           **Q. And is that the east system or the west**  
18 **system or both?**  
19           A. That's the west.  
20           **Q. And natural gas can also reach the**  
21 **Spire Missouri system through the Panhandle Eastern**  
22 **Pipeline, correct?**  
23           A. That is correct on a very limited  
24 basis.  
25           **Q. Can you explain your answer?**

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1           A. Very -- we have some small isolated  
2 areas that are served off the Panhandle system.  
3           MS. BAIRD: May I ask that the witness  
4 try to speak up a little? I'm having trouble  
5 hearing him. I'm so sorry.  
6           THE WITNESS: Okay. I'll try to talk  
7 louder.  
8           MS. BAIRD: Thank you so much.  
9           **Q. (By Mr. Howell) And can natural gas**  
10 **purchased by Spire Missouri -- or sorry, let me**  
11 **start over. Can natural gas also reach the Spire**  
12 **Missouri system through the Rockies Express**  
13 **Pipeline?**  
14           A. Yeah. There again, it's on a very  
15 limited basis.  
16           **Q. Can you explain your answer?**  
17           A. The majority of the -- we do have one  
18 small take point where we can receive it. The  
19 majority of any gas that comes off of Rockies  
20 Express actually goes through Southern Star to get  
21 to our system.  
22           **Q. And can natural gas also reach the**  
23 **Spire Missouri system through the Spire STL**  
24 **pipeline?**  
25           A. It cannot reach the Spire Missouri West

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1 through STL.  
2           **Q. All right. So just so I understand,**  
3 **the Southern Star, Tallgrass, Panhandle Eastern, and**  
4 **Rockies Express Pipelines all have a delivery point**  
5 **that interconnects with Spire Missouri West's**  
6 **system, correct?**  
7           MR. GORE: I'm going to object, asked  
8 and answered, and -- I'll object, asked and  
9 answered.  
10           A. Yeah, I think consistent with my  
11 response I had just given.  
12           **Q. (By Mr. Howell) The Spire Missouri**  
13 **West system is not dependent upon any one pipeline,**  
14 **correct?**  
15           MR. GORE: I'm going to object, vague,  
16 foundation. You can answer.  
17           A. Yeah, it's not -- it's not solely  
18 provided by Southern Star. Southern Star probably  
19 provides 80 percent of the supply, somewhere in that  
20 neighborhood.  
21           **Q. (By Mr. Howell) What's the basis for**  
22 **that statement?**  
23           MR. GORE: I don't think the witness  
24 was finished answering the question. Did you have  
25 more to say, Mr. Godat?

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1           **Q. (By Mr. Howell) Please. I didn't mean**  
2 **to cut you off.**  
3           A. Just overall volume-wise. You know,  
4 it's pretty well dependent on the Southern Star  
5 system.  
6           **Q. And again, I did not mean to cut you**  
7 **off. What was the basis for that statement?**  
8           A. Just based on the contracts that we  
9 hold on the pipelines.  
10           **Q. You say based on the contracts that you**  
11 **hold with the pipelines. Are we talking about firm**  
12 **gas transportation agreements that you have -- that**  
13 **Spire Missouri has entered into with these four**  
14 **other interconnecting pipelines?**  
15           MR. GORE: I'm going to object,  
16 foundation, compound, vague. You can answer.  
17           **Q. (By Mr. Howell) You can answer,**  
18 **Mr. Godat.**  
19           A. Yeah, if you just look at the capacity  
20 that's available in that Kansas City market, the  
21 majority of it is served by Southern Star.  
22           **Q. I think I'm asking you a little bit**  
23 **different question than what you may be answering.**  
24 **Does -- let me break it down a little bit further.**  
25 **Does Spire Missouri -- you already established that**



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1 **Spire Missouri West's system interconnects with the**  
 2 **four pipelines that we've already talked about,**  
 3 **Southern Star, Tallgrass, Panhandle Eastern, and**  
 4 **Rockies Express. Does Spire Missouri have firm gas**  
 5 **transportation agreements with Southern Star?**  
 6 MR. GORE: I'm -- I'm going to object  
 7 to the question as compound and I'm going to move to  
 8 strike the statement made regarding what the  
 9 witness's prior testimony was as improper commentary  
 10 by the questioner. You can answer the question.  
 11 A. Could you repeat the question again? I  
 12 apologize.  
 13 **Q. (By Mr. Howell) All right. We're in**  
 14 **this moment where I'm trying to get very precise**  
 15 **information from you about what agreements are or**  
 16 **are not in place. We've already talked about the**  
 17 **interconnecting pipelines. What I'd like to know is**  
 18 **does Spire Missouri have a firm gas transportation**  
 19 **agreement with Southern Star?**  
 20 A. Spire Missouri does have a firm  
 21 transportation agreement.  
 22 **Q. Does Spire have a firm gas**  
 23 **transportation agreement with Tallgrass?**  
 24 A. We do.  
 25 **Q. Does Spire Missouri have a firm gas**

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1 **transportation agreement with Panhandle Eastern?**  
 2 A. We do have an agreement. Like I say,  
 3 very small in comparison to the Southern Star  
 4 agreement.  
 5 **Q. And does Spire have a firm gas**  
 6 **transportation agreement with Rockies Express?**  
 7 A. We do not.  
 8 **Q. Why not?**  
 9 A. Not -- not for Spire Missouri West.  
 10 **Q. Okay. Why not?**  
 11 A. It's not part of the portfolio.  
 12 **Q. In your role as VP of gas supply, you**  
 13 **could make the decision to either have it be part of**  
 14 **the portfolio or not, correct, that's within the**  
 15 **scope of your authority?**  
 16 MR. GORE: I'm going to -- I'm going to  
 17 object to this questioning as beyond the scope of  
 18 the notice unless you can direct me to a topic  
 19 you're questioning under, Mr. Howell.  
 20 MR. HOWELL: Yeah, so with respect to,  
 21 among other things, topic 19 relates to sources of  
 22 gas supply and with respect to topic 18 with regard  
 23 to contract demand and transportation arrangements  
 24 that Spire had entered into.  
 25 A. Yeah, and like I say, we have not

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1 entered into any firm contracts for Spire Missouri  
 2 West on REX.  
 3 MR. GORE: I didn't hear the last part  
 4 of what you said.  
 5 A. I said we have not entered into any  
 6 firm contracts on Rockies Express for Spire Missouri  
 7 West.  
 8 **Q. (By Mr. Howell) During the**  
 9 **February 2021 winter storm, did Spire buy any gas**  
 10 **that was delivered off of the Tallgrass, Panhandle**  
 11 **Eastern, or Rockies Express Pipelines?**  
 12 A. We did, and that information has been  
 13 provided in the binders and are responses to the  
 14 data requests. The details of those purchases.  
 15 **Q. In one of the documents that you**  
 16 **referenced during a discussion with Mr. Bauer, this**  
 17 **is -- let's see. There is a document that is a --**  
 18 **is a timeline that was provided in response to staff**  
 19 **request 0311. Trying to find the binder tab number.**  
 20 MR. GORE: That document is at -- well,  
 21 why don't you tell me which one.  
 22 **Q. (By Mr. Howell) So this is tab nine of**  
 23 **your binder, sub tab C. In the zip file I was sent**  
 24 **it was labeled DR response explaining a timeline of**  
 25 **Spire's actions. Let me know when you get to 9-C.**

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1 A. I'm there.  
 2 **Q. And on the second -- I guess the third**  
 3 **bolded item it says gas supply actions on page one.**  
 4 **Do you see that?**  
 5 A. I do.  
 6 **Q. And line three and four says the**  
 7 **company, which I believe refers to Spire,**  
 8 **immediately acquired an additional 35,000 a day of**  
 9 **Rockies-sourced gas for the Missouri West for the**  
 10 **next week. Do you see that statement?**  
 11 A. Yes, sir.  
 12 **Q. Is Rockies-sourced gas a reference to**  
 13 **the Rockies Express Pipeline?**  
 14 A. Yes. That was supply that we bought  
 15 into Southern Star off of Rockies Express.  
 16 **Q. And so is it the case that even if you**  
 17 **don't have a large volume contract you repeatedly**  
 18 **characterize Rockies and Panhandle as either small**  
 19 **or minor in your testimony --**  
 20 A. You were -- to correct you there, you  
 21 were --  
 22 MR. GORE: Let him finish and then  
 23 we'll have.  
 24 THE WITNESS: I'm sorry.  
 25 MR. GORE: We'll have our opportunity.

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1 A. I'm sorry. Go ahead.  
 2 **Q. (By Mr. Howell) Don't apologize. What**  
 3 **were you going to say?**  
 4 A. I said I was just going to correct that  
 5 you were talking about city gate deliveries off of  
 6 those pipelines. Direct interconnects with those  
 7 pipelines into our distribution system. This --  
 8 this supply is not coming into our distribution  
 9 system. It's just an upstream supply into our  
 10 Southern Star contract. So there's a difference  
 11 there.  
 12 **Q. Yes, sir. So with regard to the**  
 13 **Rockies Express Pipeline, there is both a direct**  
 14 **interconnection with the Spire Missouri West system**  
 15 **as well as another interconnection between the**  
 16 **Rockies Express Pipeline and Southern Star; is that**  
 17 **correct?**  
 18 A. That's correct.  
 19 **Q. And with respect to the 35,000 a day**  
 20 **that's referenced in that binder tab, that**  
 21 **particular transaction was a transaction that Spire**  
 22 **arranged with -- or through the Rockies Express**  
 23 **Pipeline that would have the gas flow initially on**  
 24 **to the Southern Star pipeline system and then into**  
 25 **the Spire Missouri West system at the -- at the**

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1 **Southern Star interconnection, correct?**  
 2 A. That's correct. So there was no --  
 3 there was no coordination with Rockies. It was just  
 4 a purchase from a third party off of Rockies Express  
 5 into Southern Star.  
 6 **Q. And what third party?**  
 7 A. I would have to look back through the  
 8 documents to see. You want me to find it?  
 9 **Q. If you can, yes, please.**  
 10 MR. GORE: All of the calculation  
 11 documents are in tab one.  
 12 A. You know, I apologize. On the tab that  
 13 summarizes the cost, the deliveries that were made  
 14 directly into our distribution system show up as  
 15 REX, but all of the purchases into Southern Star are  
 16 just lumped into Southern Star tab. So I would have  
 17 to comb through the individual transaction  
 18 confirmations, which --  
 19 **Q. (By Mr. Howell) Okay.**  
 20 A. -- I don't know that I would be able to  
 21 do that timely.  
 22 MR. GORE: Can you reference what  
 23 document you were just testifying about?  
 24 A. Yeah, so I was pulled up in tab C, 1C,  
 25 where it shows all of our transactions.

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1 **Q. (By Mr. Howell) Okay. Thank you.**  
 2 A. The transactions would show up in -- in  
 3 the Southern Star section.  
 4 **Q. Is it true that Tallgrass can**  
 5 **physically deliver more natural gas to the Spire**  
 6 **Missouri system than the -- than the current**  
 7 **transportation contract would provide for?**  
 8 MR. GORE: I'm going to object,  
 9 foundation, improper hypothetical, beyond the scope  
 10 of the notice. You can answer.  
 11 A. Yeah, I don't have the -- I don't -- I  
 12 don't -- can't recall that -- or I don't -- I don't  
 13 have the knowledge of that physical limitation of  
 14 their -- their transport into our system or who else  
 15 may hold the capacity that would be utilized in that  
 16 capacity on our system.  
 17 **Q. (By Mr. Howell) During the**  
 18 **February 2021 winter storm, did Spire Missouri**  
 19 **attempt to acquire additional transportation**  
 20 **capacity or capacity release for transporting**  
 21 **natural gas on the Tallgrass pipeline?**  
 22 A. I do not recall that taking place, but  
 23 Justin would have been the one managing that, Justin  
 24 and his team.  
 25 **Q. During the February 2021 winter storm,**

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1 **did Spire Missouri purchase additional**  
 2 **transportation capacity or capacity release volumes**  
 3 **for the Panhandle Eastern Pipeline?**  
 4 A. Like I say, that's something that would  
 5 have to talk to Justin about.  
 6 **Q. Would I also need to talk to Justin**  
 7 **about whether the same -- the same question with**  
 8 **respect to the REX pipeline?**  
 9 A. That's correct.  
 10 **Q. Okay. Do you know the answer -- same**  
 11 **question with respect to the Southern Star pipeline,**  
 12 **did -- did Spire Missouri purchase or attempt to**  
 13 **purchase any additional transportation capacity or**  
 14 **capacity release during the February 2021 winter**  
 15 **storm from Southern Star?**  
 16 A. I would have to talk to Justin, but I'm  
 17 not aware of any that was done.  
 18 **Q. Earlier in the deposition in response**  
 19 **to discussion with Mr. Bauer, I believe you**  
 20 **indicated that about ten percent of the natural gas**  
 21 **throughput volumes on the Spire Missouri West system**  
 22 **are for transportation customers. Is that -- is**  
 23 **that correct? I don't want to mischaracterize your**  
 24 **testimony.**  
 25 MR. GORE: Yeah, I'm going to object.

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1 I think that does misstate testimony, but you can  
 2 answer.  
 3 A. Yeah. Roughly -- roughly ten percent  
 4 of the throughput on -- at least on a cold winter  
 5 day is associated with the end user volumes  
 6 that's -- that's the responsibility of the  
 7 marketers.  
 8 **Q. (By Mr. Howell) Okay. So the other**  
 9 **90 percent of volumes would be Spire customers that**  
 10 **are residential, business, or industrial sales**  
 11 **customers?**  
 12 A. It's all customers other than the ones  
 13 that are served by the marketers.  
 14 **Q. Is it true that transportation**  
 15 **customers represent about three percent of Spire's**  
 16 **operating revenues?**  
 17 MR. GORE: I'm going to object,  
 18 foundation, vague. You can answer. Vague as to the  
 19 term transportation customers. You can answer.  
 20 A. I don't have that knowledge.  
 21 **Q. (By Mr. Howell) Do you know what I**  
 22 **mean when I say transportation customers?**  
 23 A. I do.  
 24 **Q. Okay. What's your understanding?**  
 25 A. They're customers that have the right

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1 to contract for supply from a third party rather  
 2 than buying it from the utility.  
 3 **Q. And do you know what I mean when I say**  
 4 **sales customers?**  
 5 A. My assumption is that it's anybody that  
 6 provide -- getting service from Spire other than the  
 7 customers that rely on a third party.  
 8 **Q. You talked about the Spire Missouri**  
 9 **entity, and I looked at a couple of e-mails so far**  
 10 **and I notice that your e-mail address and the other**  
 11 **e-mail address -- the other e-mail addresses that**  
 12 **are there use an @spireenergy.com e-mail domain.**  
 13 **Are you familiar with that?**  
 14 A. I am.  
 15 **Q. Does Spire Alabama and Spire Marketing**  
 16 **and the other entities that are under the Spire,**  
 17 **Inc. umbrella also use the @spireenergy.com domain?**  
 18 A. The utility companies do. I don't  
 19 recall off the top of my head what the -- what the  
 20 other legal entities use.  
 21 **Q. Are you aware of a different domain or**  
 22 **e-mail address group being used?**  
 23 MR. GORE: I'm going to object, beyond  
 24 the scope of this corporate witness's designation,  
 25 but you can answer if you know.

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1 A. Yeah, I'm trying to remember when I was  
 2 on the marketing side. I think I had a Spire  
 3 marketing e-mail, but we've -- we've went through  
 4 quite a few changes, you know, with our name change  
 5 over the last few years. So I would need to confirm  
 6 that.  
 7 **Q. (By Mr. Howell) It's true, is it not,**  
 8 **that Spire Missouri and Spire Marketing engaged in**  
 9 **natural gas purchase and sale transactions during**  
 10 **the month of February 2021, correct?**  
 11 MR. GORE: I'm going to object, vague,  
 12 foundation. You can answer.  
 13 A. There were some limited transactions  
 14 between the two entities. Spire Marketing, as you  
 15 know, is a -- they're a marketing company that  
 16 engages in that activity, so they are one of our  
 17 counterparties.  
 18 **Q. (By Mr. Howell) And you characterize**  
 19 **that as limited transactions. Isn't it true that**  
 20 **during the period between February 12th, 2021 and**  
 21 **February 19th, 2021, Spire Missouri purchased more**  
 22 **than 240,000 dekatherms from Spire Marketing?**  
 23 A. I have not went through and added up  
 24 what that total is. In the overall -- I would say  
 25 that's -- that's a pretty small counterparty for us

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1 when you look at the number of purchases that we  
 2 made.  
 3 **Q. And if it's true that those sales**  
 4 **occurred based on spreadsheets that were provided to**  
 5 **us and the total value of those transactions**  
 6 **exceeded \$51 million just for that seven-day period,**  
 7 **would you also characterize that as a -- as a small**  
 8 **transaction?**  
 9 MR. GORE: I'm going to object,  
 10 foundation, compound, improper hypothetical.  
 11 **Q. (By Mr. Howell) Well, it's not a**  
 12 **hypothetical. It's a fact. But you can answer if**  
 13 **you know the answer.**  
 14 A. Yeah, I don't know what --  
 15 MR. GORE: And I'm going to move that  
 16 the statement by counsel be struck, it's not -- not  
 17 a hypothetical. It's a fact. You can answer.  
 18 A. Yeah, given the magnitude of all costs  
 19 during that period were higher than normal, so I  
 20 still stand by the fact that the volume that we  
 21 bought from them during -- during that period was --  
 22 made them a pretty small part of our overall  
 23 portfolio during that period.  
 24 **Q. (By Mr. Howell) What was the total**  
 25 **volume of natural gas that was purchased during the**

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1 **February 2021 winter storm?**  
 2 MR. GORE: At this point --  
 3 A. I don't have that number off the top of  
 4 my head.  
 5 MR. GORE: At this point I do just want  
 6 to instruct the witness, you're being asked some  
 7 detailed questions about numbers during a specific  
 8 time period, and I would just instruct you to the  
 9 extent you need to reference something to refresh  
 10 your recollection, do so, and don't speculate.  
 11 A. Okay. What was your question again?  
 12 **Q. (By Mr. Howell) Yes, sir. I was**  
 13 **asking you do you know the total natural gas --**  
 14 **total volume of natural gas purchased during the**  
 15 **February 2021 winter storm?**  
 16 A. I do not have that number on the top of  
 17 my head. The details of all of our transactions  
 18 were provided in -- during that period were provided  
 19 in tab C of Exhibit 1 -- or Exhibit 2.  
 20 MR. GORE: And that would be Exhibit 2,  
 21 tab 1C. Can you confirm?  
 22 **Q. (By Mr. Howell) Yes, sir.**  
 23 A. That's correct.  
 24 MR. GORE: I just want it clear on the  
 25 record.

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1 **Q. (By Mr. Howell) Wonderful point. So**  
 2 **let's look at that. If you would turn to Exhibit 2,**  
 3 **tab 1C, this is a -- a document that was provided by**  
 4 **Spire to Constellation in response to a data**  
 5 **request. Let me know when you're there.**  
 6 A. I'm there.  
 7 **Q. All right. I just want to get some**  
 8 **clarity on pages one and two of this tab. So what**  
 9 **is listed here on these first two pages is not cover**  
 10 **costs, it's Spire's calculation -- Spire Missouri's**  
 11 **calculation of shortfalls by marketer; is that**  
 12 **correct?**  
 13 A. My understanding looking at the  
 14 documents that you're -- the documents you're  
 15 referencing is that -- is a combination of the  
 16 shortfall and an estimate of the cover cost that  
 17 Spire Missouri incurred to make up that shortfall.  
 18 **Q. And for February 12th, 2021 there are a**  
 19 **number of different marketers that are listed,**  
 20 **Constellation, Clearwater, Spire, KCPL, ProEnergy,**  
 21 **Atmos, and Department of Corr, which I'm going to**  
 22 **assume is Corrections. Do you see that?**  
 23 A. I do.  
 24 **Q. The Spire that's listed here as a**  
 25 **marketer, is that Spire Marketing?**

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1 A. That is Spire Marketing, correct.  
 2 **Q. So during the February 2021 winter**  
 3 **storm it's undisputed, is it not, that Spire**  
 4 **Marketing had a shortfall under the OFO; is that**  
 5 **correct?**  
 6 A. For day 12, that is correct.  
 7 **Q. It also had shortfalls for other --**  
 8 **really just one other day, correct?**  
 9 A. Looks like they had a small one on  
 10 day 18 as well.  
 11 **Q. Okay. And listed in the third column**  
 12 **from the right is a -- a bold item that says volume.**  
 13 **Do you see that? On page one of this tab.**  
 14 A. I do see that.  
 15 **Q. All right. And so following that**  
 16 **column down, at the -- at the bottom of each day**  
 17 **there is a total volume listed which was the volume**  
 18 **shortfall for that day; is that correct?**  
 19 A. The total volume shortfall for the day,  
 20 I'm not showing -- there's not a summation in the  
 21 volume column. The only one that's got a volume  
 22 summary is the shortfall column.  
 23 **Q. Fine. Perfectly fine. We'll use that**  
 24 **number instead. So for day 12, gas day 12 during**  
 25 **the winter storm, it identifies a total shortfall of**

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1 **15,687 dekatherms; is that correct?**  
 2 A. That's correct.  
 3 **Q. And there's a different total listed**  
 4 **for each day between the 12th and the 18th. Do you**  
 5 **see that?**  
 6 A. I do.  
 7 **Q. And then on page two there's a grand**  
 8 **total shortfall volume. Do you see that?**  
 9 A. I do.  
 10 **Q. Okay. And so this is Spire Missouri's**  
 11 **statement or assertion that the total shortfall by**  
 12 **all marketers combined during the winter storm**  
 13 **period was 224,933 dekatherms, correct?**  
 14 MR. GORE: I'm going to -- I'm going to  
 15 object, foundation, and vague as to the terms  
 16 assertions and statements. You can answer.  
 17 A. That's correct. 224,933.  
 18 **Q. (By Mr. Howell) And then if we turn to**  
 19 **page three of this document, pages three through ten**  
 20 **of this tab, we see purchases that Spire Missouri**  
 21 **made during the February 12th through 19th period,**  
 22 **correct?**  
 23 MR. GORE: If you -- can I ask for just  
 24 some direction on the document as to where you're --  
 25 what you're referencing?

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1 MR. HOWELL: Is that to me, Mr. Gore?  
 2 MR. GORE: Yes. I'm looking at page  
 3 three and four. You and the witness may be  
 4 following each other, but I'm not.  
 5 MR. HOWELL: All right. I show that --  
 6 this document that I was provided with, so it's  
 7 Exhibit 2, tab one, document C or I guess 1C. It's  
 8 a ten-page document that I have in front of me. The  
 9 first two pages of that document are a summary or  
 10 document created by Spire with regard to shortfalls  
 11 from marketers.  
 12 And then what I show in front of me as  
 13 pages three through ten are alleged purchases by  
 14 Spire Missouri from different suppliers, and I'm  
 15 trying to get confirmation of that fact from the  
 16 witness.  
 17 MR. GORE: Thank you.  
 18 THE WITNESS: That is correct.  
 19 **Q. (By Mr. Howell) And so for each of the**  
 20 **documents on pages three through ten, we see who the**  
 21 **counterparty was, the unit price that was used for**  
 22 **the purchase transaction, and any transportation**  
 23 **cost, the volume which is listed under the**  
 24 **nomination column, and there's no total, but we see**  
 25 **the other information that was used to indicate**

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1 **purchases that were made during this week, correct?**  
 2 A. That is correct.  
 3 **Q. And on each of these pages, page three**  
 4 **through ten, one of the counterparties from whom**  
 5 **Spire Missouri made natural gas purchases that it is**  
 6 **seeking to use as a basis for OFO penalties is Spire**  
 7 **Marketing, correct?**  
 8 MR. GORE: And Mr. Godat, I would just  
 9 ask that you direct us to -- if you get that  
 10 information from this document, that you direct us  
 11 to where you're getting it from.  
 12 MR. HOWELL: Yes, sir. So --  
 13 MR. GORE: I was --  
 14 MR. HOWELL: -- I will start with --  
 15 MR. GORE: I was just asking the  
 16 witness to the extent that he --  
 17 MR. HOWELL: Okay.  
 18 MR. GORE: -- in answering your  
 19 question identifies it in a document, I just want  
 20 some guidance from him as to where he was looking.  
 21 A. Yeah, I do not see where we -- where we  
 22 tagged any Spire Marketing purchases to calculate  
 23 the cover cost.  
 24 **Q. (By Mr. Howell) Yes, sir. Okay. So I**  
 25 **will have to break it down a little bit further**

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1 **then. Let's start on page three, which is listed as**  
 2 **Friday, February 12th, 2021. Are you with me?**  
 3 A. You're on the GSC schedule?  
 4 **Q. Yes, sir.**  
 5 A. Okay.  
 6 **Q. GSC schedule, and then left hand --**  
 7 **left-hand sides of the page, it says Friday,**  
 8 **February 12, 2021. Do you see that?**  
 9 A. I do.  
 10 **Q. All right. I'd like for you to go**  
 11 **about two-thirds of the way down the page. There is**  
 12 **an item number 1008835, and it says in all caps**  
 13 **Spire Marketing. Do you see that?**  
 14 A. I do.  
 15 **Q. And then if you go to the line below**  
 16 **the bottom, 1008881, there's Spire Marketing listed**  
 17 **again. Do you see that?**  
 18 A. I do.  
 19 **Q. Okay. And so for gas day 12, does this**  
 20 **document reflect that there were purchases made by**  
 21 **Spire Missouri from Spire Marketing?**  
 22 A. Yeah, it does. Like I say --  
 23 **Q. Okay.**  
 24 A. Yeah. Consistent with our prior  
 25 conversation where I had indicated that they're a

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1 supplier for Spire Missouri.  
 2 **Q. All right. And do you also agree that**  
 3 **for gas days 13 through 19 Spire Marketing is listed**  
 4 **on each of the pages of this document, pages three**  
 5 **through ten?**  
 6 A. I agree there are transactions on each  
 7 page with Spire Marketing.  
 8 **Q. Why did Spire Missouri make purchases**  
 9 **from Spire Marketing rather than from a true third**  
 10 **party?**  
 11 MR. GORE: I'm going to object,  
 12 foundation. I'm going to object to the  
 13 mischaracterization of Spire Marketing as not being  
 14 a true third party. And I'm going to object,  
 15 compound. You can answer.  
 16 A. Yeah, I mean, as I said, Spire  
 17 Marketing is a completely stand-alone entity from  
 18 Spire Missouri. They're one of the suppliers in our  
 19 portfolio. And I think as we know -- we know as  
 20 well as, you know, anybody else that was in the  
 21 market, you know, people were trying to find any  
 22 molecules that they could find. So we were -- we  
 23 were buying gas from Spire Marketing like we would  
 24 any other entity.  
 25 **Q. (By Mr. Howell) I have a couple**

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1 follow-ups based on what you just said. First,  
 2 isn't it true that Spire Missouri's finances are  
 3 reported through Spire, Inc.?  
 4 MR. GORE: I'm going to object, vague.  
 5 A. Yeah, I mean, I couldn't tell the exact  
 6 details of how they're reported, but we're part of  
 7 Spire, Inc.  
 8 **Q. (By Mr. Howell) Isn't it also true**  
 9 **that Spire Marketing is part of Spire, Inc.?**  
 10 MR. GORE: I'm going to object, beyond  
 11 the scope of the notice, beyond this witness's  
 12 qualified area of testimony since you were seeking  
 13 information about Spire Marketing, Inc., improper --  
 14 MR. HOWELL: You can answer.  
 15 MR. GORE: -- improper corporate  
 16 representative testimony. You can -- you can  
 17 answer.  
 18 A. They're a part of Spire, Inc.  
 19 **Q. (By Mr. Howell) What diligence did**  
 20 **Spire Missouri do to know that Spire Missouri could**  
 21 **not buy the same natural gas -- the same volume of**  
 22 **natural gas for a lower price from a third party**  
 23 **that is not Spire Marketing?**  
 24 MR. GORE: I'm going to -- I'm going to  
 25 object, foundation, and again object to counsel's

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1 characterization of Spire Marketing. You can  
 2 answer.  
 3 A. I mean, if you look at -- if you look  
 4 at the detail that we provided -- you remember the  
 5 tab that shows the Spire Marketing correspondence?  
 6 MR. GORE: Is it -- is it -- Richard,  
 7 do you want me to help out the witness when he's  
 8 looking for documents or not? Your call.  
 9 MR. HOWELL: I mean, if -- you can help  
 10 point him to a particular document.  
 11 MR. GORE: Yeah, you're looking for  
 12 documents that we believe are under tab 20.  
 13 A. Yeah, if you look at tab 20, it  
 14 actually shows the Spire Marketing pricing versus  
 15 the Southern Star index. We feel like some of  
 16 the -- some of the cheapest prices that we got  
 17 during that period were from Spire Marketing. I  
 18 think we were --  
 19 **Q. (By Mr. Howell) Would you --**  
 20 **A. Yeah. We feel like they were well**  
 21 **below market. We tried to indicate that here on the**  
 22 **sheet. If they were -- if they were -- if they were**  
 23 **trying to gouge or if we were trying to make a**  
 24 **windfall, then they wouldn't have sold us gas that**  
 25 **was way under market.**

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1 **Q. All right. Would you go back to tab --**  
 2 **Exhibit 2, tab 1C, which was the GSC schedule we**  
 3 **were just looking at?**  
 4 A. Okay.  
 5 **Q. And if you would turn to gas day 12.**  
 6 A. Okay.  
 7 **Q. And here looking at transaction**  
 8 **1008835, is it correct that this references a**  
 9 **purchase from Spire Marketing at a price of \$45.19?**  
 10 A. That's correct.  
 11 **Q. And it's also true that except for one**  
 12 **purchase from Tenaska for a purchase price of \$124,**  
 13 **actually that has a volume of zero. Do you see**  
 14 **that?**  
 15 A. I do.  
 16 **Q. So a volume of zero would indicate that**  
 17 **a purchase actually did not occur or that volumes**  
 18 **were not delivered to us, correct?**  
 19 A. I would say that's correct.  
 20 **Q. All right. So we can ignore that \$124**  
 21 **transaction because there were no volumes associated**  
 22 **with it. Is it true that all of the transactions**  
 23 **for gas day 12 were -- were between a purchase price**  
 24 **of seven dollars and 70.5 cents and \$46.78?**  
 25 A. That appears to be correct.

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1 **Q. And so with that information do you**  
 2 **want to change your answer with respect to Spire**  
 3 **Marketing's purchase being a below market purchase?**  
 4 MR. GORE: I'm going to object, vague.  
 5 I don't know what testimony you're referencing when  
 6 you say does he want to change it.  
 7 MR. HOWELL: Mr. Gore, first, with  
 8 regard to that objection, I think the witness can  
 9 answer the question, and second, he made a statement  
 10 when he was referencing tab 20 that his analysis or  
 11 Spire's analysis suggested that the purchases from  
 12 Spire Marketing were, you know, at or below market.  
 13 And the testimony is what it is, but I have a  
 14 specific question with respect to gas day 12, and  
 15 I'd like the witness's answer.  
 16 A. Yeah, I would say -- go ahead.  
 17 MR. GORE: I object, vague, but I think  
 18 that additional explanation may give you enough to  
 19 answer it.  
 20 A. I still stand by my comment that it was  
 21 at or below market. You can see on here pretty much  
 22 all the daily transactions were -- were within a few  
 23 cents of one another. Spire Marketing actually  
 24 being one of the lowest of those. The range wasn't  
 25 as big that day, but it was definitely still at or

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1 below market. They weren't coming to Spire Missouri  
 2 just to make some big windfall.  
 3 **Q. (By Mr. Howell) Do you know the source**  
 4 **of supply for Spire Marketing?**  
 5 A. I do not have that information.  
 6 **Q. Was Spire Missouri a source of supply**  
 7 **for Spire Marketing?**  
 8 MR. GORE: I'm going to object, vague  
 9 as the time period. You can answer.  
 10 A. I'm not aware of any supply that Spire  
 11 Missouri provided to Spire Marketing.  
 12 **Q. (By Mr. Howell) To address the time**  
 13 **period issue, during the month of February 2021 did**  
 14 **Spire Missouri sell any natural gas to Spire**  
 15 **Marketing?**  
 16 A. I would have to confirm that with  
 17 Justin Powers. I'm not aware of any that was sold  
 18 to Spire Marketing.  
 19 **Q. During the month of February 2021, did**  
 20 **Spire Missouri transfer any natural gas in storage**  
 21 **to Spire Marketing?**  
 22 A. We did not.  
 23 **Q. During the month of February 2021, did**  
 24 **Spire Missouri provide any natural gas**  
 25 **transportation or capacity release to Spire**

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1 **Marketing?**  
 2 A. It is possible that they were one of  
 3 the shippers that we released capacity to going into  
 4 the month.  
 5 **Q. Did Spire Missouri release capacity in**  
 6 **any private transactions or did it only release**  
 7 **capacity through the FERC capacity release system?**  
 8 MR. GORE: I'm going to object, vague  
 9 and compound. You can answer.  
 10 A. Yeah, we -- we abide by all of the FERC  
 11 rules -- standing rules of conduct. So we would not  
 12 have done any capacity outside of the posting  
 13 process on the pipelines.  
 14 **Q. (By Mr. Howell) And you would -- you**  
 15 **would be able to find out or look at Spire records**  
 16 **and determine whether any of the capacity release**  
 17 **that Spire Missouri engaged in was acquired by -- by**  
 18 **Spire Marketing, correct?**  
 19 A. That -- that is public information, so  
 20 anybody can go find that data.  
 21 **Q. During the month of February 2021, did**  
 22 **Spire loan any natural gas to Spire Marketing?**  
 23 A. We did not.  
 24 **Q. During the month of February 2021, did**  
 25 **Spire Missouri allow Spire Marketing to sell or**

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1 **purchase any gas on its behalf?**  
 2 A. On behalf of what entity?  
 3 **Q. On behalf of Spire Missouri.**  
 4 MR. GORE: I'm going to -- I'm going to  
 5 object, vague.  
 6 A. I'm sorry. Could you repeat the  
 7 question?  
 8 **Q. (By Mr. Howell) Yes, sir. During the**  
 9 **month of February 2021, are you aware of whether**  
 10 **Spire Marketing -- sorry, let me start over.**  
 11 **During the month of February 2021, are**  
 12 **you aware of whether Spire Missouri allowed Spire**  
 13 **Marketing to purchase or sell any natural gas on its**  
 14 **benefit?**  
 15 MR. GORE: I'm going to object, vague.  
 16 A. Yeah, I'm sorry. I'm still -- I  
 17 can't -- I can't even follow what transaction you're  
 18 trying to ask me whether we did or didn't do.  
 19 **Q. (By Mr. Howell) I think I really don't**  
 20 **want to belabor the point. I think I covered what I**  
 21 **need to, but if I can better formulate a question**  
 22 **I'll come back to it.**  
 23 A. Okay. Thank you.  
 24 **Q. I want to ask you another question**  
 25 **about this document we've been looking at,**

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1 **Exhibit 2, tab 1C, the GSC schedule for gas day 12.**  
 2 A. Okay.  
 3 **Q. The first transaction that's listed**  
 4 **here, 1008929 Spire Missouri, do you see that?**  
 5 A. I do.  
 6 **Q. Well, could you explain to me why Spire**  
 7 **Missouri, it would be listed as a supplier for the**  
 8 **Spire Missouri West system?**  
 9 A. Spire Missouri East had supply on  
 10 Panhandle that they made available to Spire Missouri  
 11 West. So they sold them that supply and they  
 12 replaced it with gas over on -- over on the Spire  
 13 East system just to help them out.  
 14 So it was -- we look at the gas supply  
 15 costs for Spire Missouri West and Spire Missouri  
 16 East separately, so we just put that in as an  
 17 individual transaction between the two entities.  
 18 **Q. And could you explain that a little bit**  
 19 **further? Is it the case that Spire Missouri West**  
 20 **was selling gas to Spire Missouri East?**  
 21 A. Spire Missouri East was selling gas to  
 22 Spire Missouri West.  
 23 **Q. Understood. Thank you.**  
 24 A. Uh-huh.  
 25 **Q. If there are other -- would this**

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1 document reflect any volumes that Spire Missouri  
 2 physically took out of its natural gas storage to  
 3 provide natural gas supply to the Spire Missouri  
 4 West system?  
 5 A. This does not include storage.  
 6 **Q. How is the price set -- so for this**  
 7 **February 12th transaction between Spire Missouri**  
 8 **East and Spire Missouri West, how was the price of**  
 9 **the natural gas set for that transaction?**  
 10 A. You know, I would have to confirm with  
 11 Justin. My -- my recollection is that we just give  
 12 it to them at the cost that Spire Missouri incurred  
 13 to replace it.  
 14 **Q. And wasn't the price at which Spire**  
 15 **East bought it?**  
 16 A. That's my recollection.  
 17 **Q. And how was the price set for the Spire**  
 18 **Marketing transactions?**  
 19 A. That would have just been in  
 20 negotiation with Justin Powers' team with the Spire  
 21 Marketing employees.  
 22 **Q. And are those -- do you know whether**  
 23 **the volumes that are reflected on this document**  
 24 **we've been looking at, Exhibit 2, tab 1C, reflect**  
 25 **base load volumes that were contracted prior to the**

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1 month?  
 2 A. These appear to just be our incremental  
 3 purchases during the month.  
 4 **Q. Do you know whether Spire Marketing**  
 5 **bought any gas from Spire East, Spire Missouri East**  
 6 **system in order to supply the Spire Missouri West**  
 7 **system?**  
 8 A. I'm not aware of that happening.  
 9 **Q. You mentioned that you thought that the**  
 10 **transactions with Spire Marketing reflected**  
 11 **something less than the market prices at that time.**  
 12 **Is that -- is that a fair understanding of your**  
 13 **testimony?**  
 14 MR. GORE: I'm going to -- I'm going to  
 15 object, misstates prior testimony. You can answer.  
 16 And the testimony will speak for itself in the  
 17 transcript.  
 18 A. Yeah, when I referred you to tab 20  
 19 that listed the Spire Marketing transactions  
 20 compared to the Southern Star index, I think it  
 21 shows that it was at or below market during that  
 22 time.  
 23 **Q. (By Mr. Howell) Based on your**  
 24 **experience and your knowledge and your position with**  
 25 **Spire, Inc. and serving as VP for gas supply, are**

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1 you aware of why during a winter storm the Spire  
 2 Marketing subsidiary of Spire, Inc. would sell  
 3 natural gas to the Spire Missouri utility at a price  
 4 below the market price?  
 5 MR. GORE: I'm going to object,  
 6 compound, improper corporate representative  
 7 testimony to the extent that you're asking Mr. Godat  
 8 to answer in his personal capacity given his  
 9 personal experiences. You can answer the question  
 10 if you can in your capacity as Spire Missouri's  
 11 corporate representative.  
 12 A. Yeah, I -- yeah, like I cannot speak  
 13 for -- for why they made the decisions that we did.  
 14 I know at Spire Missouri when it was -- when it was  
 15 at a time when everybody was pretty much taking any  
 16 molecules that they could find given the limited  
 17 supply that was out there, we were happy to take the  
 18 Spire Marketing volumes especially when the prices  
 19 were so attractive.  
 20 **Q. (By Mr. Howell) Did you participate in**  
 21 **any discussions with anyone from Spire Marketing**  
 22 **during the February 2021 winter storm regarding**  
 23 **making purchases from them at or below market price?**  
 24 A. I did not.  
 25 **Q. Did you participate in any meetings,**

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1 communications, or deliberations with anyone at  
 2 Spire, Inc. or Spire Missouri regarding purchases  
 3 from Spire Marketing during the winter storm?  
 4 A. I did not.  
 5 MR. HOWELL: All right. We have been  
 6 going for about an hour and 20 minutes or so. I'd  
 7 suggest that we take a -- maybe a ten-minute break,  
 8 and then I'll come back and ask you some questions  
 9 about some of the people that you identified earlier  
 10 and their roles, and then the OFO that was issued.  
 11 VIDEOGRAPHER: Off the record,  
 12 2:37 p.m.  
 13 (WHEREIN, a recess was taken.)  
 14 VIDEOGRAPHER: On the record, 2:51 p.m.  
 15 MR. HOWELL: Mr. Godat, thank you for  
 16 coming back. And before I get too much further, I  
 17 wanted to offer Constellation's deposition notice as  
 18 I believe it's Exhibit 12 is the next one that we --  
 19 I guess in sequence. You may have a copy of that in  
 20 your binder. No need to turn to it, but I just  
 21 wanted to make sure that I offered that for the  
 22 record.  
 23 THE WITNESS: Okay.  
 24 MR. HOWELL: I believe that Ryan the  
 25 videographer will take care of marking it so it's



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1 admitted and acknowledged.  
 2 **Q. (By Mr. Howell) I believe Mr. Gore**  
 3 **said at the beginning of the deposition that**  
 4 **Mr. Bauer took that you had used this --**  
 5 **Constellation's deposition notice Exhibit 12 to help**  
 6 **kind of prepare yourself for the deposition; is that**  
 7 **correct?**  
 8 A. Yeah. We actually ordered the  
 9 documents in the binder tied to the Constellation  
 10 document.  
 11 **Q. Great. All right. I want to ask you**  
 12 **one -- I want to ask you a question about some of**  
 13 **the people you have mentioned, just make sure that I**  
 14 **understand who had what role and that kind of thing.**  
 15 A. Okay.  
 16 **Q. Then I want to talk with you about the**  
 17 **OFO that was issued. Scott Carter is the president**  
 18 **of Spire Missouri; is that correct?**  
 19 A. That's correct.  
 20 **Q. Okay. What role -- you know, from**  
 21 **your -- from your perspective as a corporate**  
 22 **representative and as a VP of natural gas supply**  
 23 **for -- for the Spire Missouri entity as well as**  
 24 **Spire, Inc., what role did Mr. Carter have with**  
 25 **regard to the February 2021 winter storm?**

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1 MR. GORE: I'm going to object, vague.  
 2 A. Yeah, are you talking about gas supply  
 3 decisions or just his role overall through the whole  
 4 process?  
 5 **Q. (By Mr. Howell) So my notes indicate**  
 6 **that you said that you had talked with Mr. Carter in**  
 7 **preparation for issuing the OFO, and I just want to**  
 8 **get some more information about what Mr. Carter's**  
 9 **role was either in connection with the OFO or**  
 10 **anything else during the winter storm period.**  
 11 MR. GORE: I'm going to -- I'm going to  
 12 object to foundation. It misstates prior testimony  
 13 regarding the consultation with Mr. Carter regarding  
 14 the implementation of the OFO. You can answer.  
 15 **Q. (By Mr. Howell) So I'm just trying to**  
 16 **avoid this dance of me saying what I think you told**  
 17 **me and it being potentially, you know, getting --**  
 18 **drawing an objection about misstating your prior**  
 19 **testimony and asking you an open-ended question and**  
 20 **getting an objection that it's vague.**  
 21 **So at the end of the day, I'm just**  
 22 **trying to figure out from you, Mr. Godat, as Spire's**  
 23 **corporate representative could you describe the**  
 24 **role, if any, that Scott Carter had during the**  
 25 **winter storm?**

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1 A. I kept him -- on the OFO perspective,  
 2 since that's who I report to, I kept him informed of  
 3 what was going on and that we were -- we were in a  
 4 position where we thought we had to issue an OFO.  
 5 I -- I was the one that ultimately made  
 6 the decision working with Justin Powers. So it  
 7 wasn't that I went to Scott for permission. It  
 8 was -- it was more of an information to keep him  
 9 up-to-date.  
 10 Scott Carter through -- throughout the  
 11 process, he did a lot of radio interviews, just more  
 12 from the media side kind of keeping customers and  
 13 stuff up-to-date on things that were going on.  
 14 So I mean, I had enough going on that I  
 15 wouldn't be able to speak for -- you know, for all  
 16 the activities that Scott undertook during that  
 17 time, but you know, as far as the OFO I just kept  
 18 him informed. I was the one that made the decision  
 19 along with Justin.  
 20 **Q. Yes, sir. And I certainly understand**  
 21 **that. You are just one -- one human being, and I'm**  
 22 **not asking you to kind of know what everyone else**  
 23 **has done or may have done. We may have an**  
 24 **opportunity to speak with Mr. Carter later on. I**  
 25 **just am trying to have an understanding of what**

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1 **you're aware of based on your personal knowledge and**  
 2 **based on anything you may have learned in preparing**  
 3 **to give testimony as to corporate representative.**  
 4 **Does that make sense?**  
 5 A. Yeah. So I mean, I think the  
 6 information I provided was accurate to that.  
 7 **Q. Were there other members of either the**  
 8 **Spire Missouri or Spire, Inc. management or**  
 9 **executive team who you also met with or kept**  
 10 **informed about the OFO decisions?**  
 11 A. We definitely let the other parties  
 12 know. The business development reps and regulatory,  
 13 more just from an information perspective that we  
 14 were -- we were seeing the issues, potential issues  
 15 with gas supply and that we were going into the OFO.  
 16 **Q. And you said that you kept the other**  
 17 **parties informed. Could you describe for me who the**  
 18 **other parties are that you're thinking of when you**  
 19 **give that answer?**  
 20 A. The only two that I recall would be  
 21 Patty Reardon and Mr. Weitzel that's over  
 22 regulatory.  
 23 **Q. Okay. And so Mr. Weitzel has what**  
 24 **role?**  
 25 A. He's over our regulatory group for

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1 Spire Missouri.

2 **Q. And Ms. Reardon, what is her role?**

3 A. Manager -- her -- her exact title, I

4 can find it. Manager of small commercial,

5 industrial for Spire Missouri West.

6 **Q. You also mentioned that you met with or**

7 **spoke with Scott Dudley in preparing for your**

8 **deposition. Who is Mr. Dudley?**

9 A. Mr. Dudley is the one that is

10 responsible for preparing the earnings statements

11 and then the presentations that our senior

12 management makes with -- with our outside

13 shareholder entities. And the two documents that he

14 prepared were provided in the binder.

15 **Q. Yes, sir. Does he also -- so does**

16 **Mr. Dudley's public relations focus relate to kind**

17 **of investor relations or communications with the**

18 **public or is it -- did he also make any -- prepare**

19 **any statements as far as you're aware to any**

20 **regulatory authority?**

21 MR. GORE: I'm going to object, beyond

22 the scope of the notice. Mr. Dudley is not a Spire

23 Missouri employee.

24 A. Yeah, the only two documents that I

25 spoke to him about were the two that are referenced

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1 in the binder.

2 **Q. (By Mr. Howell) You also reference**

3 **that you spoke with Bob McKee in records retention.**

4 **Do you know what -- what his role is?**

5 A. He is the manager of records retention,

6 and I confirmed with him that the policies that we

7 provided in the binder were basically accurate and

8 in effect during Winter Storm Uri and he confirmed

9 that.

10 **Q. You also mentioned someone named Alex**

11 **Grewach. Can you spell that last name and then also**

12 **tell me what his role was?**

13 A. Yeah, it's actually Alex Grewach,

14 G-R-E-W-A-C-H. He's our manager of gas control. So

15 he was the one that -- there's a pressure chart

16 that's included in here. He was the one provided

17 the pressure information for -- for the -- the

18 pressure drop that we were experiencing down in

19 Southwest Missouri.

20 **Q. And you also mentioned schedulers**

21 **during the February 2021 winter storm. I believe**

22 **you identified someone named Ashley Dixon. Is she a**

23 **scheduler, and are there other schedulers that**

24 **you're aware of who were involved in natural gas**

25 **scheduling for the winter storm?**

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1 A. Yeah, Ashley is actually manager of gas

2 supply. Greg Hayes is the one that does the

3 scheduling.

4 **Q. What traders were involved for Spire**

5 **Missouri with regard to purchases of natural gas**

6 **during the February 2021 winter storm?**

7 A. It would have been Justin and his team.

8 So it would have been Justin, Ashley, and to the

9 extent Greg had to help out, he may have been

10 involved as well, Greg Hayes. It would have been

11 those three.

12 **Q. Does Justin -- I'm sorry. Go ahead,**

13 **please. I didn't mean to cut you off.**

14 A. It would have been those three.

15 **Q. Does natural gas supply, gas control,**

16 **and system planning, do all three of those roles**

17 **fall under the supervision of Justin Powers?**

18 A. They do not. Justin just has gas

19 supply. Alex Grewach has gas control and reports

20 directly to me. System planning actually reports up

21 through our engineering department.

22 **Q. And who leads the natural gas planning**

23 **team?**

24 A. Mark Lowe is the vice president over

25 that group. I believe Owen Farron was probably

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1 working on Missouri at the time, but he actually --

2 he left the company since then.

3 **Q. You were asked a few questions about**

4 **the incident support team, and you identified**

5 **Michael Schormann as the person who leads the**

6 **incident support team; is that correct?**

7 A. That's correct.

8 **Q. Who is -- who does Mr. Schormann report**

9 **to or who is he managed or supervised by?**

10 A. You know, I do not recall. I believe

11 it's through our risk team, but I'm not positive.

12 **Q. And who runs the risk team?**

13 A. You know, actually it might be through

14 our security group now that I'm thinking about it.

15 I think it's through our corporate security team.

16 **Q. And who leads that?**

17 A. Al Moore runs that group.

18 **Q. I'm sorry. I missed that name. Can**

19 **you say it one more time?**

20 A. Al Moore.

21 **Q. Are you a member of the incident**

22 **support team?**

23 A. I am.

24 **Q. Is Justin Powers a member of the**

25 **incident support team?**

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1 A. He was included on the calls. I'm not  
 2 sure he's an active member all the time.  
 3 **Q. Do you know who the members are? Can  
 4 you identify them?**  
 5 A. You know, I do not have the information  
 6 off the top of my head.  
 7 **Q. I'm just trying to get a better  
 8 understanding of this -- of this team. Is it -- you  
 9 know, is it three or four people? Is it ten? Is it  
 10 20? Do you have an idea of the scale of the  
 11 incident support team that was created for the 2021  
 12 winter storm?**  
 13 A. Yeah, I mean, as I recall on the call  
 14 it was really -- there were representatives from gas  
 15 supply, our corporate communications team,  
 16 regulatory, and then we pulled field operations in  
 17 when we got to the point where we thought we were  
 18 going to have outages in Southwest Missouri because  
 19 the -- the Spire operations employees in MO East  
 20 were soliciting volunteers to actually send to  
 21 Kansas City in the event that we had gas outages.  
 22 And then Alex Grewach would have been on from gas  
 23 control.  
 24 **Q. You mentioned that there was a phone  
 25 call with the incident support team and**

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1 **representatives of different groups within Spire who  
 2 attended. When was the phone call that you were  
 3 just discussing?**  
 4 A. That period is such a blur. We -- I  
 5 would have to look -- I would have to look at the  
 6 pressure chart here when it showed our pressure -- I  
 7 believe it was the night of the 16th. Let me see if  
 8 I can find the pressure chart. I apologize.  
 9 **Q. Yeah. Well --**  
 10 A. Yeah, it was basically the night that  
 11 we thought we were losing -- losing our system down  
 12 in Southwest Missouri. So we had all the parties on  
 13 that were going to be ready to respond in the event  
 14 that we did have a lot of outages.  
 15 **Q. All right. I really want to focus on  
 16 this incident support team issue, but I do -- I will  
 17 come back to that in just -- just a moment. Let me  
 18 address this pressure issue that you've raised.  
 19 Would you turn to Exhibit 2, which is the binder,  
 20 tab 17A? And 17A is a spreadsheet that is labeled  
 21 at the top border stations and pressures. Do you  
 22 see that?**  
 23 A. I do.  
 24 **Q. And for -- there's the gas day listed,  
 25 correct, in the second column? Do you see that?**

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1 A. I do.  
 2 **Q. And the leftmost column is the -- the  
 3 temperature, the average temperature on that day,  
 4 correct?**  
 5 A. That is.  
 6 **Q. And then in each of the rows it  
 7 identifies the pressure at that station, correct?**  
 8 A. Yes, I would say that is correct.  
 9 **Q. And is it true that Spire did not  
 10 experience a drop in operating pressure at any  
 11 Constellation customer delivery point that affected  
 12 Spire's ability to make deliveries to that  
 13 Constellation customer?**  
 14 MR. GORE: I'm going to object,  
 15 compound and foundation.  
 16 A. Yeah, I mean, I think we've -- you  
 17 know, I think we've talked about it in several  
 18 instances where we never got -- I mean, given the  
 19 fact that Spire went out and replaced the supply  
 20 that the marketers weren't bringing in, we didn't  
 21 get to the point where we were -- where our system  
 22 pressures were jeopardized other than in the  
 23 Southwest Missouri incident that we provided the  
 24 date on Southern Star's pressures.  
 25 But that -- that is because we went out

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1 and covered the supply. Had we not covered the  
 2 supply, then I know that would have been a  
 3 completely different story.  
 4 I mean, I think -- I think we said that  
 5 multiple times that it wasn't -- it wasn't that we  
 6 actually lost pressure on the Southern Star system,  
 7 and that was because we went out and made up for the  
 8 shortfall.  
 9 **Q. Understood, Mr. Godat. So just to be  
 10 clear, when you talk about the system losing  
 11 pressure, you're referring to the risk of the  
 12 Southern Star system losing pressure or the Southern  
 13 Star system actually losing pressure; is that  
 14 correct?**  
 15 A. Yeah, the pressure issue that I'm  
 16 speaking about on the night of the 16th was Southern  
 17 Star getting critically low to where they wouldn't  
 18 be able to provide the pressure that we needed for  
 19 our system.  
 20 **Q. And this document that we're looking  
 21 at, Exhibit 2, tab 17A, this spreadsheet about  
 22 border stations and pressures, this is the  
 23 spreadsheet that would show the pressure data for  
 24 each of the gas days in February 2021 for Spire's  
 25 system, correct? Not for Southern Star, but for**

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1 **Spire.**  
 2 A. Yeah, I would have to confirm -- I  
 3 would have to check with Justin to see if it was on  
 4 the Southern Star side of the meter or the Spire  
 5 side of the meter.  
 6 **Q. Can you explain your answer?**  
 7 A. Well, if it's on the -- if it's on the  
 8 Southern Star side of the regulator or the -- or the  
 9 Spire Missouri side.  
 10 **Q. And you're aware, are you not, that**  
 11 **Southern Star waived all penalties associated with**  
 12 **the February 2021 winter storm?**  
 13 A. I am.  
 14 MR. GORE: Richard, can we just get  
 15 confirmation that we're looking at the same  
 16 document?  
 17 MR. HOWELL: Yes, sir.  
 18 MR. GORE: I think we are. The  
 19 document you're looking at at the top says border  
 20 stations and pressures, DR 4.1A, correct?  
 21 MR. HOWELL: Yes, sir.  
 22 MR. GORE: Okay.  
 23 THE WITNESS: Yeah, that's the one I'm  
 24 looking at.  
 25 MR. GORE: Okay. Just wanted to

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1 confirm.  
 2 **Q. (By Mr. Howell) Are you aware of any**  
 3 **pressure reading on this document, Exhibit 2, tab**  
 4 **17A, this spreadsheet, the border stations and**  
 5 **pressures, that identifies a border station on the**  
 6 **Spire system for a gas day for which Spire Missouri**  
 7 **experienced a drop in pressure that jeopardized**  
 8 **system integrity?**  
 9 MR. GORE: I'm going to object,  
 10 foundation and compound. You can answer.  
 11 A. Yeah, I mean, that goes back to my  
 12 prior response. If the information that we provided  
 13 was the only time we had -- we were in jeopardy of  
 14 not being able to serve was in Southwest Missouri.  
 15 That's when we provided the pressure profile for --  
 16 for that area.  
 17 Other than that, given that Spire  
 18 Missouri went out and found the supply to replace  
 19 what the marketers weren't bringing in, we were not  
 20 in a position to where our system was jeopardized  
 21 during a winter storm period.  
 22 **Q. (By Mr. Howell) And the issue that you**  
 23 **said arose was an issue that occurred on the -- on**  
 24 **the Southern Star system, correct? The pressure**  
 25 **issue that you just described in your last answer is**

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1 **one that arose or existed on the Southern Star**  
 2 **system rather than the Spire Missouri system --**  
 3 MR. GORE: I'm going to --  
 4 **Q. (By Mr. Howell) -- correct?**  
 5 MR. GORE: I'm going to object --  
 6 object, vague, because it's just unclear to me --  
 7 the referencing back to other questions and  
 8 statements is just -- I don't know where we are. So  
 9 I object, vague.  
 10 A. Yeah, the pressure profile that we  
 11 provided was on Southern Star where you could see  
 12 their pressures were dropping 30 or 40 pounds an  
 13 hour.  
 14 MR. GORE: Can I interject just for  
 15 clarification?  
 16 THE WITNESS: Yes.  
 17 MR. GORE: When you say pressure  
 18 profile, are you referring to a document?  
 19 THE WITNESS: I am. I should have  
 20 pointed to it.  
 21 MR. GORE: Okay. I was confused. I  
 22 didn't know -- okay.  
 23 THE WITNESS: Let me see if I can find  
 24 that document.  
 25 MR. GORE: It would be at document 17D.

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1 A. Yeah, it's on -- like Gabe just said,  
 2 it's tab 17D.  
 3 **Q. (By Mr. Howell) Is it 17D as in dog?**  
 4 A. D as in dog.  
 5 **Q. And when --**  
 6 A. So --  
 7 **Q. -- this -- this document refers to the**  
 8 **pressure available to Spire from the Southern Star**  
 9 **system; is that correct?**  
 10 A. That's correct. Yeah, you can see  
 11 where we were accustomed to having 500-plus pounds  
 12 and the supply/demand on that part of the system was  
 13 out of balance, so we were seeing -- seeing a very  
 14 sharp drop in pressure.  
 15 You know, had that -- had that  
 16 continued on through the night, you know, we were  
 17 concerned that we were going to -- we were going to  
 18 not have enough pressure into our system to maintain  
 19 deliveries to the customers in that area.  
 20 **Q. And so this -- this chart which is**  
 21 **shown here in Exhibit 2, tab 17D as in dog, this is**  
 22 **showing data from the Southern Star system, correct,**  
 23 **showing pressure at that station --**  
 24 A. That's correct.  
 25 **Q. -- correct?**

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1 A. That's correct.

2 **Q. And -- and the data that is graphed**

3 **here, you're saying that it reflects a drop in**

4 **pressure between 4:48 p.m. on the 15th and 4:48 a.m.**

5 **on the 16th? Is that what you're referencing?**

6 A. Looks like 2:24 -- well, I guess --

7 yeah, it starts at 4:48. I'm sorry. On the 15th.

8 You are correct. And runs through basically the

9 morning of the 16th.

10 **Q. And by the morning of the 16th the**

11 **pressure drop had stabilized and was going back up,**

12 **correct?**

13 A. At that point in time it was

14 stabilizing.

15 **Q. And increasing?**

16 A. Yeah, that's correct.

17 **Q. Did Southern Star explain to you or did**

18 **you participate in any discussions with Southern**

19 **Star or someone else regarding the problems that**

20 **Southern Star was having on its system?**

21 A. We did have some conversations with

22 Southern Star throughout the course of the evening

23 and night.

24 **Q. And who did you speak with?**

25 A. There were a number of folks on the

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1 Southern Star side, mainly their gas control.

2 **Q. Okay. Did you provide -- could you**

3 **identify the people who you spoke with?**

4 A. I would have to go back. I typically

5 don't deal with those individuals on a daily basis

6 anymore in my current role, so I would have to go

7 back and look and see who was in that -- on those

8 phone calls or I would have to inquire with Justin

9 who all -- if he can remember who was on the calls.

10 He's the one that has the relationships with the

11 individuals.

12 **Q. The calls you're referencing, were they**

13 **on the afternoon or evening of the 15th?**

14 A. They are. I mean, we were -- we were

15 on the phone with them all through the night.

16 **Q. All through the night of the 15th?**

17 A. That's correct.

18 **Q. And sitting here today, you can't**

19 **remember who it was you spoke with from Southern**

20 **Star?**

21 A. Matt -- Matt is -- yeah, one of the

22 gentleman's first name. Like I say, I don't deal

23 with them on a daily basis anymore, so I don't have

24 the names right off the top of my head.

25 **Q. Okay. And so you were speaking with**

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1 **the Southern Star representatives regarding the**

2 **pressure drop that they were experiencing on their**

3 **system at this Crenshaw station, correct?**

4 A. That's correct. We were trying --

5 trying to understand if -- if they thought they were

6 going to be able to do anything to keep the pressure

7 from continuing to drop as we were evaluating the

8 steps that we were going to have to take in the

9 event that we had outages.

10 **Q. And ultimately Spire on its side of the**

11 **meter and its system did not experience the drop in**

12 **pressure? This was -- this was limited to what**

13 **Southern Star was experiencing, correct?**

14 A. We never -- we never were limited in

15 pressure on our side enough to where we physically

16 lost -- physically couldn't serve any of our

17 customers.

18 **Q. If -- okay. And the remedial actions**

19 **or the potential actions that you were**

20 **contemplating, if the Southern Star problems had**

21 **actually carried over to Spire, those remedial**

22 **actions weren't necessary because between the --**

23 **between four p.m. and let's say four a.m. that**

24 **pressure drop stopped and was stabilized, correct?**

25 MR. GORE: I'm going to object,

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1 compound. You can answer.

2 A. Yeah, we didn't -- didn't have to --

3 like I say, we didn't have to physically turn

4 anybody off and we did not lose any customers

5 because of where the pressures ultimately ended up

6 being at on Southern Star that night.

7 **Q. (By Mr. Howell) And this was the only**

8 **station at which there was a pressure drop that --**

9 **that was a -- that you -- that you saw as a -- as**

10 **a -- as a concern during the winter storm period; is**

11 **that correct?**

12 A. Ultimately this is the only -- the only

13 pressure incident that we had where -- that I'm

14 aware of where the company was concerned that we

15 weren't going to be able to serve the load on our

16 system based on the supply that was coming to our --

17 to our system.

18 **Q. And again, just to be very clear, you**

19 **just referenced it as a pressure incident we had,**

20 **but when you say it's a pressure incident we had,**

21 **it's actually a pressure incident that Southern Star**

22 **had --**

23 A. Yeah.

24 **Q. -- correct?**

25 A. It's the pressure incident that we were

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1 dealing with. I'll phrase it that way. It was on  
 2 the Southern Star system, but it was something that  
 3 we were having -- having to react to.  
 4 **Q. And limiting your -- or focusing your**  
 5 **answer or your thought here to the Spire Missouri**  
 6 **West system, during the February 2021 winter storm**  
 7 **there was not a -- a system pressure issue that**  
 8 **occurred on that system?**  
 9 A. You're saying on that system, you're  
 10 referring to Southern Star?  
 11 **Q. Wonderful -- wonderful clarification**  
 12 **question. This is an important question, and I want**  
 13 **to make sure I -- make sure we're talking about the**  
 14 **same thing.**  
 15 **During the February 2021 winter storm,**  
 16 **isn't it true that there was not a pressure drop on**  
 17 **the Spire Missouri West system, correct?**  
 18 A. That's --  
 19 MR. GORE: Objection.  
 20 A. Yeah, that's -- yeah, not an accurate  
 21 statement. You say not a pressure drop on the  
 22 system. We've reiterated time and time again that  
 23 we never got to the point where we couldn't serve  
 24 the customers behind our gate, but I mean, there's  
 25 pressure drop that takes place at every juncture on

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1 a distribution system, so --  
 2 **Q. (By Mr. Howell) Yes, sir.**  
 3 A. -- we never ended up -- yeah, we never  
 4 ended up at a point where -- where we weren't able  
 5 to serve the load behind our gate.  
 6 **Q. Yes, sir. And what I'm trying to**  
 7 **identify here is whether there was any -- if you**  
 8 **would look back with me to tab 17A, that border**  
 9 **stations document. For each of the border stations**  
 10 **that are listed here, there is a range of pressures**  
 11 **that are shown, correct? So for example, for**  
 12 **Riverside West, it says low as -- as low as 129 and**  
 13 **as high as let's say 147. Do you see that?**  
 14 A. I do. But keep in mind this -- this is  
 15 one snapshot in time over a 24-hour period. So I  
 16 mean, these aren't reflective of the true pressure  
 17 ranges over that February time period from high to  
 18 low. That's just a snapshot for each day.  
 19 **Q. Well, I will tell you that this is the**  
 20 **data that we've been provided by -- by Spire, and so**  
 21 **this is what I have to go on. And just to focus**  
 22 **again on the question that I'm trying to ask for**  
 23 **that one particular station, Riverside West, there**  
 24 **is a pressure swing between the high 120s and 147.**  
 25 **Do you see that?**

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1 A. I do.  
 2 **Q. And for each of the other stations**  
 3 **there is a variety of pressures within -- within a**  
 4 **range, correct?**  
 5 A. That's correct.  
 6 **Q. And so what I'm trying to get to is a**  
 7 **question that is on the Spire Missouri West system.**  
 8 **During the month of February 2021 did the Spire**  
 9 **system have an out of the ordinary pressure drop?**  
 10 MR. GORE: I'm going to -- I'm going to  
 11 object, foundation. At this point it's unclear to  
 12 me -- vague to the extent that it's unclear to me  
 13 whether you're questioning about the document or  
 14 whether you're referencing a document and then  
 15 asking a more general question. I'm also going to  
 16 object, asked and answered if you're asking the  
 17 question that I think you might be asking.  
 18 A. Yeah, I mean, I think we've -- you  
 19 know, at least I've continued to say over and over  
 20 that at no point was the pressure low enough that we  
 21 lost service to customers on the system, you know.  
 22 Were they -- were they at ideal design pressure, you  
 23 know, I can't answer that.  
 24 My guess would be probably no, but I  
 25 mean, when you're looking at, you know, thousands of

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1 miles of pipeline and, you know, 25 to 30 border  
 2 stations, I can't just agree to a general statement  
 3 that says we never saw any pressure below anything  
 4 that was historical or however you worded that. But  
 5 I will reiterate that we did not lose any customers  
 6 behind the gate.  
 7 **Q. (By Mr. Howell) And at any time during**  
 8 **the February 2021 winter storm, did the Spire**  
 9 **Missouri West system experience a pressure loss that**  
 10 **threatened the integrity of any segment of that**  
 11 **system?**  
 12 MR. GORE: Object, foundation.  
 13 A. Yeah, I mean, like I mentioned, were  
 14 the pressures ideal, probably not. But were they --  
 15 were they to the point where we couldn't serve, no,  
 16 we were able to serve. It wouldn't be fair of me to  
 17 say that we didn't have a single segment out of  
 18 thousands of miles of main that -- that caused  
 19 anybody in gas control concern during that -- during  
 20 that winter storm period.  
 21 **Q. (By Mr. Howell) Okay. Well, sitting**  
 22 **here today as the representative of Spire, are**  
 23 **you -- can you -- can you identify for us any**  
 24 **segment of the Spire Missouri West system where --**  
 25 **that experienced a pressure drop that threatened the**

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1 integrity of that segment?  
 2 A. Yeah, that's not information that I  
 3 would have, but that would be in gas control.  
 4 Q. All right. And it's also true that  
 5 Spire did not curtail any Constellation customer in  
 6 February of 2021?  
 7 A. We started down the curtailment process  
 8 in Southwest Missouri as far as just giving  
 9 notification that we were experiencing issues, but  
 10 we never physically curtailed any customers that I'm  
 11 aware of in Spire Missouri West that were  
 12 Constellation customers.  
 13 Q. All right. I'd like for you to look at  
 14 Exhibit 12, please, which is our deposition notice.  
 15 And I'd like for you to turn to topic 17.  
 16 MR. GORE: Are you looking at -- you're  
 17 looking at tab 12. Exhibit 12 is -- did you get a  
 18 copy of the notice?  
 19 THE WITNESS: I didn't. I don't have  
 20 it in my book.  
 21 MR. GORE: Yeah, I don't think we got a  
 22 hard copy of the notice. Was there one in the book?  
 23 THE WITNESS: I didn't see any. I saw  
 24 Clearwater. Just because their number sequence is  
 25 different.

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1 MR. GORE: Hold on a second. We're  
 2 tracking it down.  
 3 THE WITNESS: Sorry about that.  
 4 MR. HOWELL: No, no problem. It's also  
 5 on the screen.  
 6 THE WITNESS: Sorry.  
 7 (WHEREIN, Exhibit 12, Constellation  
 8 notice of deposition, was marked for identification  
 9 by the Court Reporter.)  
 10 THE WITNESS: Which one were you  
 11 referring to?  
 12 Q. (By Mr. Howell) Take a look at it and  
 13 let me know when you're ready.  
 14 A. Which number?  
 15 Q. Number 17, sir.  
 16 A. Okay.  
 17 Q. Okay. And so this topic addresses some  
 18 of the issues that I've just been trying to ask you  
 19 about with respect to the Spire Missouri West  
 20 system's integrity and operating parameters --  
 21 A. Okay.  
 22 Q. -- for the February 2021 period. Do  
 23 you see that?  
 24 A. I do. I see that.  
 25 Q. All right. Just a moment ago I asked

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1 whether you were aware of sitting here today there  
 2 was any loss of pressure on any Spire Missouri West  
 3 segment that affected the -- that system's  
 4 integrity, and you said you didn't know. And so --  
 5 A. Well, I said that --  
 6 Q. Or you couldn't answer it. Go ahead.  
 7 I'm sorry.  
 8 A. I said that I couldn't speak to every  
 9 segment of a thousands of mile system, but I did say  
 10 that we never -- we never had a pressure drop low  
 11 enough to where we couldn't meet the firm customer  
 12 demands on our system. I think there's definitely a  
 13 difference between those two comments.  
 14 Q. It's true, is it not, that the Spire  
 15 Missouri West gas distribution system never  
 16 experienced any sort of -- any system failure,  
 17 correct?  
 18 A. There was never a failure that wasn't  
 19 able to be worked around to where we could still  
 20 provide firm service. To say that we'd never had a  
 21 regulator fail that didn't have to be -- have to be  
 22 backstopped by additional gas through another  
 23 regulator station, I don't have the specific details  
 24 of that, but we never ended up to the point where we  
 25 couldn't serve our customer demand.

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1 Q. Did you meet with anyone from gas  
 2 supply to educate yourself in order to prepare to  
 3 testify about this topic?  
 4 A. Yeah, I mean, we talked -- we talked  
 5 through the issue really focused just around what  
 6 happened down in Southwest Missouri.  
 7 Q. Again, when you're talking about what  
 8 happened down in Southwest Missouri, you -- that  
 9 again is a reference to the -- something that  
 10 happened on the Southern Star system, not on the  
 11 Spire Missouri West system, correct?  
 12 A. That is correct. That's where, you  
 13 know, it was my understanding that given the fact  
 14 that we were never at a point where we had to  
 15 curtail firm, that that -- that covered at the  
 16 detailed level that I needed to understand.  
 17 I wasn't -- I guess I wasn't under the  
 18 impression that I needed to understand the exact  
 19 workings of every piece of the distribution system  
 20 and whether or not there was a single issue across  
 21 the thousands of miles and regulator stations that  
 22 were on the system during that couple-week period.  
 23 Q. During the month of February 2021 the  
 24 Spire Missouri West system was able to stay in  
 25 operation, correct?

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1 A. Yes, I think I've confirmed that  
 2 multiple times that we were able to serve all of  
 3 our -- all of our demand during February, the  
 4 February storm, and during the month of February.  
 5 **Q. And sitting here today, you are not  
 6 offering any testimony that any Spire -- or sorry,  
 7 any -- any Constellation customer delivery point was  
 8 ever even in danger of losing pressure, correct?**  
 9 MR. GORE: I'm going to -- I'm going to  
 10 object, asked and answered. This same question has  
 11 been asked I think 15 different ways at this point  
 12 and the witness has answered it the same every time.  
 13 So I'm going to object, asked and answered. You can  
 14 answer.  
 15 **Q. (By Mr. Howell) Mr. Godat, are you  
 16 saying that there were system failures that you had  
 17 to work around or are you saying that the gas that  
 18 Spire bought prevented there from being any  
 19 failures?**  
 20 MR. GORE: Objection, compound,  
 21 foundation.  
 22 A. Yeah, I think -- I think it's in the  
 23 semantics of your question you're asking because you  
 24 keep referring to failures across our system. And  
 25 I'm -- I'm saying with thousands of miles of main

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1 into the system.  
 2 So I mean, it -- it definitely was not  
 3 without issues during that time, but I keep coming  
 4 back to the fact that, you know, there was no point  
 5 where we weren't able to provide firm service behind  
 6 our gate.  
 7 I mean, I think anybody -- anybody that  
 8 was allowed in the market during that time from the  
 9 12th to the 20th knows that it was -- it was a  
 10 minute-by-minute account of what was going on on the  
 11 Southern Star system. One minute supply was flowing  
 12 and the next minute it wasn't.  
 13 So I mean, to say -- to say that, you  
 14 know, that there weren't any issues, I mean, our  
 15 team didn't even sleep for like five days is how bad  
 16 it was, you know. So I don't want to characterize  
 17 it as there was never a failure or a supply problem  
 18 given the extraordinary situations that took place,  
 19 but I can say that at no point did we lose firm  
 20 service behind our gate.  
 21 **Q. If during this extraordinary winter  
 22 storm Spire was able to maintain service for all of  
 23 the customers that it serves, doesn't that mean that  
 24 Spire was successful in navigating these issues?  
 25 Wouldn't a failure be if service had been lost?**

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1 and hundreds of regulator stations, I can't -- based  
 2 on the information I reviewed, I can't say that we  
 3 did not have a single failure across our  
 4 distribution system.  
 5 But I can say that at no point the  
 6 pressures on our system get low enough to where we  
 7 couldn't provide certain firm service -- or couldn't  
 8 provide service in general to the customers behind  
 9 our city gate.  
 10 MR. GORE: And I'm just going to at  
 11 this point just reassert my objection, asked and  
 12 answered, because I think we've been through that  
 13 series of questions and answers probably ten times  
 14 at this point.  
 15 **Q. (By Mr. Howell) Other than the  
 16 Southern Star issue in Southwest Missouri, is there  
 17 any other incident or event on Southern Star that  
 18 created a -- a concern with regard to the Spire  
 19 Missouri West system?**  
 20 A. Yeah, I mean, during -- during that  
 21 two-week period or ten days, whatever it was, I  
 22 mean, I know the gas supply team, you know, was  
 23 on -- on calls with Southern Star, trying to  
 24 understand where -- where supply was making it into  
 25 the system and was -- you know, wasn't making it

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1 MR. GORE: All right. I'm going to  
 2 object, foundation, compound, vague, improper  
 3 hypothetical since Mr. Godat is not testifying as an  
 4 expert witness. You can answer a question -- well,  
 5 you can answer the questions if you can. I just  
 6 request you specify which question you're answering.  
 7 A. And I apologize, Richard. Could you  
 8 repeat the question?  
 9 **Q. (By Mr. Howell) Yes, sir. My question  
 10 was this: If -- if Spire was able to navigate all  
 11 of the, you know, extremely low temperatures that  
 12 occurred during the winter storm and Spire was able  
 13 to make all of the gas purchases that were needed to  
 14 maintain system pressure in every segment and to  
 15 provide -- to ensure that the Spire Missouri West  
 16 system didn't lose pressure and that all of the  
 17 Spire customers were able to receive the gas, isn't  
 18 that a success?**  
 19 MR. GORE: I'm going to object,  
 20 foundation, compound, misstates prior testimony,  
 21 improper hypothetical.  
 22 A. Yeah, I mean, depends on how you define  
 23 success. We were glad we didn't lose any customers,  
 24 but ultimately incurred costs that sent us down this  
 25 path where we're trying to recover.



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1           **Q. (By Mr. Howell) Is it not also the**  
2 **case that during the winter storm, because of the**  
3 **gas that Spire had, that it was able to purchase as**  
4 **well as gas it was able to sell from storage, that**  
5 **it was a financial success as well?**  
6           MR. GORE: I'm going to object, vague  
7 as to foundation.  
8           THE WITNESS: Do I -- do I --  
9           MR. GORE: I'm still --  
10          THE WITNESS: I'm sorry, Gabe.  
11          MR. GORE: I was trying to think of how  
12 to phrase this. Financial success for whom is  
13 unclear to me.  
14          **Q. (By Mr. Howell) You can answer,**  
15 **Mr. Godat.**  
16          A. Financial success, I would say it  
17 was -- you know, it was not -- not a positive  
18 outcome for -- for our firm customers given the cost  
19 increase they're seeing.  
20                When I see -- when I say our team's  
21 actions relative to other distribution companies and  
22 to other marketers' performance, I think we stand  
23 out of the crowd from a success perspective.  
24                You know, I think Southern Star  
25 acknowledged Spire and its activities during Winter

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1 Storm Uri as really saving the system for not only  
2 Spire's customers, but for the munis and all the  
3 other customers whose marketers failed them as well.  
4                So to say I'm not proud of my team  
5 would be an understatement. To say it was -- to say  
6 it was a financial win whenever our -- whenever our  
7 customers are going to be bearing the costs that  
8 they're going to be bearing, then I have to  
9 disagree.  
10          **Q. All right. I want to turn back to the**  
11 **issue of the OFO issuance.**  
12          A. Okay.  
13          **Q. You made mention with regard to the**  
14 **incident support team that there was a call that you**  
15 **were -- you participated on with Michael Schormann**  
16 **and some other people. Was that just -- was it just**  
17 **one call that you had with Mr. Schormann and his**  
18 **team or were there multiple calls?**  
19          A. You know, we kept a line open for quite  
20 a while. I don't remember the exact timing of when  
21 that call took place. It was -- it was not  
22 surrounding the issuing or how long we were staying  
23 in the OFO. It was -- it was centered around the  
24 potential loss of gas customers down in Southwest  
25 Missouri specifically --

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1           **Q. Okay.**  
2           A. -- and how we were going to react to  
3 that.  
4           **Q. Okay. So the support issue related to**  
5 **the Southern Star problem we've --**  
6 **(Court reporter interruption.)**  
7           MR. GORE: I thought you had more to  
8 say and were cut off.  
9           A. Yeah, it was specifically around how  
10 we're going to react to that and, you know, a lot of  
11 it was centered around -- like I mentioned, around  
12 the operations side on how -- if we had some mass  
13 outages out there, how we were going to handle  
14 bringing the gas service back on.  
15                And that's when my -- my Missouri East  
16 field operations team, you know, was involved  
17 soliciting -- soliciting volunteers to go over and  
18 help with that process. So that -- that process  
19 was -- was limited to those activities that were  
20 happening down in Southwest Missouri. It wasn't the  
21 OFO in general.  
22          **Q. (By Mr. Howell) I want to ask you**  
23 **about -- if you look at your binder, Exhibit 2,**  
24 **tab 18, item L. This is a text message that you**  
25 **were asked about during Mr. Bauer's questioning.**

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1           A. Okay. What's the question?  
2          **Q. Sitting here today, are you aware of**  
3 **whether this text message was ever sent?**  
4          A. It's my understanding that this text  
5 message went out to the customers down in Southwest  
6 Missouri.  
7          **Q. And when you say the customers, would**  
8 **that include Symmetry's customers?**  
9          A. That is my understanding.  
10          **Q. Would that include Constellation's**  
11 **customers?**  
12          A. It's my understanding that it was all  
13 of the transportation customers in Southwest MO. I  
14 would have to confirm whether or not it was limited  
15 to just the transports or if it went to the small  
16 commercial/industrial as well. That's not part of  
17 transportation service.  
18          **Q. Did it go to sales customers of Spire**  
19 **in Southwest Missouri?**  
20          A. That's what I just said. I would have  
21 to confirm whether or not it went to the smaller  
22 commercial sales customers or if it only went to the  
23 transport customers.  
24          **Q. Isn't it true that business customers**  
25 **in Southwest Missouri did not experience a temporary**

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1 **curtailment of their natural gas service?**  
 2 A. That is correct. We never physically  
 3 turned off any customers.  
 4 **Q. Do you know what day this text message**  
 5 **may or may not have been sent?**  
 6 A. You know, I did not know the exact date  
 7 that it went out. It would have been -- it would  
 8 have been during that time frame when we had the  
 9 pressure issue down in Southwest MO, so the 15th,  
 10 16th, 17th time frame.  
 11 **Q. So again, this was tied to the -- to**  
 12 **the Southern Star issue?**  
 13 A. It was.  
 14 **Q. All right. You said that you were**  
 15 **ultimately the decision-maker for the decision to**  
 16 **issue the OFO?**  
 17 A. That's correct.  
 18 **Q. You said that Southern Star issued**  
 19 **theirs on February 9th?**  
 20 A. Yes, sir.  
 21 **Q. Did you have discussions with Southern**  
 22 **Star before they issued their OFO?**  
 23 A. My -- Justin Powers and his team may  
 24 have had conversations with them. I did not  
 25 physically have conversation with him.

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1 **Q. Please identify for us every fact or**  
 2 **factor that you considered as a threat to the Spire**  
 3 **Missouri West system in deciding to issue an OFO**  
 4 **beginning on February 10th, 2021.**  
 5 MR. GORE: So just for clarification,  
 6 you're not interested -- interested in anything  
 7 considered prior to that date?  
 8 MR. HOWELL: I'm asking him to identify  
 9 every fact or factor that caused him -- that caused  
 10 Spire Missouri to issue an OFO for the Spire  
 11 Missouri West system beginning on February 10th,  
 12 2021. If there are facts that existed before that,  
 13 if there are facts that existed on the 8th or 9th or  
 14 10th, so be it, but I want to have the entire  
 15 universe of what -- what was the basis for that  
 16 decision.  
 17 MR. GORE: Okay. Thank you for that  
 18 clarification.  
 19 A. Yeah, you know, it's pretty simple. I  
 20 know there's been -- there's been some frustration  
 21 by the parties on not having more information  
 22 available, but it was -- it really came down to the  
 23 temperature forecast, what we were seeing, you know,  
 24 from loss of production combined with the fact that  
 25 Southern Star also went into an OFO.

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1 So we had every reason to believe that  
 2 the prudent thing to do was for the utility to go  
 3 into an OFO as well. So unfortunately there's not  
 4 reams and reams of analysis to give you on that  
 5 topic.  
 6 **Q. (By Mr. Howell) Okay.**  
 7 A. I can --  
 8 **Q. I just want to make sure I understand.**  
 9 **You identified the temperature forecast data you**  
 10 **were seeing, loss of production, and the Southern**  
 11 **Star OFO. Were those the three factors or were**  
 12 **there anything else that were factors that you**  
 13 **considered for evaluating when you were deciding**  
 14 **whether or not to issue an OFO for the Spire**  
 15 **Missouri West system?**  
 16 MR. GORE: And I'm going to -- I'm  
 17 going to object because I think you misstated the  
 18 factors as he stated them, although I know you were  
 19 probably doing your best to state them exactly,  
 20 but -- so I'll just object on that basis.  
 21 A. Yeah, I mean, that was the three  
 22 primary factors. I can point you to -- if I can  
 23 point you to the Gas Daily postings in tab 1E in  
 24 Exhibit 2, I mean, if you look on the 12th, you  
 25 know, this is information that's in the market.

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1 If I refer you to -- if I refer you to  
 2 page three of the Gas Daily for Friday,  
 3 February 12th. So this was already at nine a.m. on  
 4 Friday the 12th. This is production in the  
 5 midcontinent region.  
 6 I mean, I think this -- this is an easy  
 7 example of -- of what we were experiencing from a  
 8 loss of supply, you know, and all the conversations  
 9 that Justin and his team were having with -- with  
 10 the upstream suppliers and the pipelines.  
 11 I mean, you can see here the  
 12 midcontinent -- the whole midcontinent market only  
 13 had six and a half BCF, and by Friday morning we  
 14 were already down -- we were already down a BCF and  
 15 the cold weather hadn't even hit yet. So I mean --  
 16 MR. HOWELL: Sir, I really appreciate  
 17 you --  
 18 MR. GORE: You got to let him finish --  
 19 you got to let him finish answering the question.  
 20 MR. HOWELL: I'm sorry. Go ahead.  
 21 MR. GORE: He was in the middle --  
 22 MR. HOWELL: I thought he was done.  
 23 MR. GORE: He was in the middle of his  
 24 explanation and you cut him off.  
 25 A. That's what I say, I think -- I know

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1 people just in general think that there's a ton of  
 2 analysis out there, but it's -- you know, it's just  
 3 the fact that there was -- there was a lot of  
 4 concern over production. You know, NGPL went to a  
 5 an OFO on the 10th. Enable Gas Transmission went to  
 6 an OFO on the 10th. I'm pretty sure Panhandle  
 7 Eastern issued theirs on the 10th.

8 So yeah, I mean, there wasn't even a  
 9 lot of discussion for us because we knew -- we knew  
 10 the huge risk that there was on the loss of supply  
 11 on the Southern Star system, and we had to do  
 12 everything we could to maintain integrity.

13 And then like I say, that was confirmed  
 14 when Southern Star came out with theirs because we  
 15 were the point operator, so all the penalties for  
 16 the marketers' shortfalls fall back on Spire  
 17 Missouri. The marketers are completely insulated  
 18 from that unless we -- we do an OFO to match up with  
 19 the Southern Star.

20 **Q. (By Mr. Howell) The document you were**  
 21 **just referencing is an S&P Platts publication from**  
 22 **February 12th, correct?**

23 A. That's correct. Gas Daily price guide.

24 MR. GORE: Could you state again for  
 25 the record which tab you were at?

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1 THE WITNESS: I was on tab 1E, page  
 2 three of the Gas Daily for February 12th. I was  
 3 referring to that production chart there in the  
 4 middle of the screen.

5 **Q. (By Mr. Howell) Mr. Godat, let me take**  
 6 **you back in time and let us look not at this**  
 7 **document, but Exhibit 2, your binder, tab 18,**  
 8 **document O, which is an e-mail from February 10th,**  
 9 **2021.**

10 A. Which tab did you say?  
 11 **Q. Tab O, as in Oscar.**  
 12 MR. GORE: 18O.  
 13 **Q. (By Mr. Howell) 18O.**  
 14 A. Oh, okay. Okay.  
 15 **Q. It's true, is it not, that this**  
 16 **document, this e-mail, is the document that Spire**  
 17 **claims is its operational flow order notice?**

18 MR. GORE: I'm going to object to the  
 19 characterization of the document.

20 **Q. (By Mr. Howell) Mr. Godat, what is**  
 21 **this document, tab 18O?**

22 A. It's my understanding that this is the  
 23 OFO notice that went to the marketers on the 10th  
 24 for an OFO effective on the 12th at nine a.m.  
 25 **Q. And at the time that this e-mail was**

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1 **sent, the February 12th, 2021 Platts document that**  
 2 **you were just talking about did not exist, correct?**

3 A. Yeah, that document did not exist. I  
 4 was just saying that that was -- that shows the drop  
 5 that we were seeing prior to the 12th. That would  
 6 have been around the 8th and the 9th and the 10th  
 7 that we had in our possession.

8 I just happened to notice it in the Gas  
 9 Daily document when I was reviewing it that showed  
 10 just a physical demonstration of the huge cuts that  
 11 were taken on the production side.

12 **Q. All right. What I want to do is try to**  
 13 **determine -- or try to understand whether you,**  
 14 **Mr. Godat, or whether Spire Missouri engaged in any**  
 15 **sort of objective quantitative analysis on -- on or**  
 16 **before February 10th, 2021 at 9:20 a.m. when this**  
 17 **e-mail was sent out to determine that there was a**  
 18 **threat to system integrity.**

19 MR. GORE: All right. And I'm going to  
 20 object. Was that a question?

21 **Q. (By Mr. Howell) Yes, sir. I'm asking**  
 22 **Mr. Godat what objective quantitative analysis was**  
 23 **used to determine that there was a threat to system**  
 24 **integrity on or before February 10th at 9:20 a.m.**  
 25 MR. GORE: All right. And I'm going to

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1 object to -- can I hear back the question that's put  
 2 to the witness right now?

3 COURT REPORTER: Question: I'm asking  
 4 Mr. Godat what objective quantitative analysis was  
 5 used to determine that there was a threat to system  
 6 integrity on or before February 10th at 9:20 a.m.

7 MR. GORE: All right. I'm going to  
 8 object, asked and answered. You can answer that  
 9 question again.

10 A. Okay. I mean, that's where I keep  
 11 going back to saying there's not a ton of detailed  
 12 analysis that -- that Justin and I went through to  
 13 determine the risk. I mean, it was the factors that  
 14 we've talked about, the drops we were seeing in  
 15 production.

16 I think we produced the weather  
 17 forecasts that we had from our weather service  
 18 showing, you know, close to peak demand from a  
 19 temperature perspective, you know. So we knew  
 20 production was going to be strained.

21 And then when it was reaffirmed by all  
 22 the pipelines entering into OFOs, including Southern  
 23 Star, that was really all the determination that we  
 24 needed to make sure that we were going to be able to  
 25 maintain our firm service to the customers behind

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1 our gate that we serve. Given the fact that we --  
 2 we don't have any control over the purchases that  
 3 are made by the marketers, so there -- yeah.  
 4 **Q. (By Mr. Howell) You have pointed to a**  
 5 **weather forecast, correct, and that's one of the**  
 6 **items in this binder, right?**  
 7 A. That's correct.  
 8 **Q. Beyond the weather forecast that you**  
 9 **received did you personally look at -- did you**  
 10 **personally review the weather forecast?**  
 11 A. I don't know if I personally reviewed  
 12 that weather forecast prior to looking what was  
 13 turned over. You know, definitely had conversations  
 14 with -- with Justin Powers about what he was seeing  
 15 kind of from a historical perspective of demand on  
 16 the system.  
 17 **Q. And by that what do you mean, that when**  
 18 **it gets colder people use more gas?**  
 19 A. Yeah, just the high -- the high level  
 20 of demand that we were going to see on our system,  
 21 you know, which -- which is troubling anytime. It's  
 22 especially troubling in late February when not -- a  
 23 lot of storage holders weren't -- you know, weren't  
 24 near as conservative as what we are. And I think we  
 25 found out that a lot of other storage holders went

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1 into the month with their storage almost depleted.  
 2 We knew storage levels across the  
 3 country were low. So if you have a peak situation  
 4 in mid-February it's a completely different  
 5 situation than if you have a peak -- peak demand  
 6 situation in December when storage inventories are  
 7 full.  
 8 You know, and I think that come to  
 9 fruition halfway through -- halfway through the  
 10 polar vortex. You know, folks like Atmos and others  
 11 had completely depleted their storage inventories.  
 12 I don't know if they did, but the marketers that  
 13 were managing it had depleted it.  
 14 So like I say, there was a whole host  
 15 of concerns that -- that went into it that weren't  
 16 -- that weren't analysis driven. It was driven by  
 17 information that Justin and his team had about the  
 18 market at that time.  
 19 **Q. Okay. You've told me about -- as far**  
 20 **as quantitative issues, you told me about weather**  
 21 **forecasts, and there's one that you provided in the**  
 22 **binder. You also mentioned historical data about**  
 23 **demand increases. Did you personally look at any**  
 24 **document, spreadsheet, analysis, anything either on**  
 25 **Spire's system or elsewhere that you used as part of**

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1 **a quantitative analysis to determine whether or not**  
 2 **to issue an OFO, and if so, for which segments?**  
 3 MR. GORE: All right. I'm going to  
 4 object to the question as an incomplete statement of  
 5 the witness's testimony as already given. You  
 6 listed two things, but the witness has listed much  
 7 more than that. I'm going to object to the question  
 8 as vague in terms of the use of the term  
 9 quantitative. And I'm going to object, compound and  
 10 foundation. You can answer.  
 11 A. Yeah, I mean, like I mentioned, we had  
 12 concern that production wasn't going to be  
 13 available. We had concern that, you know, the  
 14 temperature -- the temperature that was forecasted  
 15 was going to have us close to peak demand, and the  
 16 upstream pipelines were in OFOs. So there's not a  
 17 lot more to it than that.  
 18 **Q. (By Mr. Howell) Okay. Respectfully,**  
 19 **that's not an answer to the question that I asked.**  
 20 **The question I asked concerned whether you looked at**  
 21 **any Spire spreadsheet, analysis, data, anything that**  
 22 **addressed this issue of demand -- projected demand**  
 23 **increase.**  
 24 A. I --  
 25 MR. GORE: Let me object. I'm going to

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1 object because you just asked a completely different  
 2 question and framed it as a question that you  
 3 previously asked. So I object to that misstatement.  
 4 The current question I'm going to object to as  
 5 compound and lacking foundation. You can answer.  
 6 A. Yeah, I mean, that being, what, six,  
 7 eight months ago, I can't recall exactly everything  
 8 I looked at. I know Justin and I had a lot of  
 9 conversations about what he was seeing in the  
 10 forecast from a demand perspective.  
 11 So I know we definitely spent ample  
 12 time talking about what we saw, you know, as  
 13 potential usage on the system. Now, whether I  
 14 looked at the specific spreadsheet or he was giving  
 15 me numbers, I don't recall that from, you know,  
 16 months ago.  
 17 **Q. (By Mr. Howell) You also mentioned**  
 18 **production drops. I want to ask you about that.**  
 19 **What production data did you have -- did Spire have**  
 20 **that identified or indicated or projected production**  
 21 **drops?**  
 22 MR. GORE: I'm going to -- I'm going to  
 23 object, asked and answered. You can answer again.  
 24 A. Yeah, I mean, I notice -- I notice this  
 25 one in Gas Daily. Like I say, a lot of it was

<p style="text-align: center;">Page 249</p> <p>1 driven around the conversation that Justin was 2 having -- 3 MR. GORE: Could you -- could you 4 reference the page of Gas Daily? I want you to 5 really describe in the record exactly what you're 6 looking at. 7 THE WITNESS: Yeah, tab E, 1E, page 8 three, the Gas Daily from February 12th. 9 MR. GORE: Okay. Could you do me a 10 favor? Could you highlight exactly what you're 11 looking at, the whole thing? And describe it as 12 you -- well, if you could just highlight it because 13 I just want to be clear in the record. 14 A. Yeah. Like I say, here this is 15 physical evidence of all the conversations that 16 Justin was having with the upstream producers and 17 with the pipelines. I think this -- this is 18 actually showing it quantified on a piece of paper. 19 You know, he -- 20 <b>Q. (By Mr. Howell) Mr. Godat --</b> 21 A. -- he wasn't -- 22 <b>Q. -- did you have --</b> 23 A. I'm sorry. 24 <b>Q. You do not have a time machine and you</b> 25 <b>could not have possibly looked at this February 12th</b></p>	<p style="text-align: center;">Page 251</p> <p>1 of the conversations that Justin was having leading 2 up to that time. 3 He didn't have producers that was -- 4 that were physically giving him production data and 5 he didn't have -- you know, the pipeline wasn't 6 giving him production data, but he was having a lot 7 of conversations about what was physically going on 8 in the market, which is -- for anybody that's been 9 in the market, you realize that's where you find out 10 your information about what's going on is through 11 those conversations. 12 So that's what I say, people are 13 disappointed -- or counterparties are disappointed 14 that there's not a bunch of detailed analysis, but 15 that wasn't required given the facts that were going 16 on at that time. 17 <b>Q. (By Mr. Howell) Have you completed</b> 18 <b>your answer?</b> 19 A. Yes. 20 <b>Q. This tab 1E document did not exist at</b> 21 <b>9:10 -- or 9:20 a.m. on February 10th, correct?</b> 22 A. That's correct. 23 <b>Q. This is all -- any -- any document that</b> 24 <b>you reference that was created after February 10th</b> 25 <b>at 9:20 a.m. when the notice was issued would be an</b></p>
<p style="text-align: center;">Page 250</p> <p>1 <b>document when you issued an OFO on February 10th.</b> 2 <b>What production data did you have on or before</b> 3 <b>February 10th that addressed a production drop?</b> 4 MR. GORE: Okay. He's not going to 5 answer that question because I think the record's 6 pretty clear that he wasn't finished asking -- 7 answering the question that you asked him. Do you 8 remember where you were cut off? 9 A. Yeah, that's where I'm telling you that 10 there's not a bunch of analysis and data that we 11 had. It was conversations that Justin was having 12 with our upstream supplies and pipeline. I pointed 13 to this -- 14 MR. GORE: And could you just be clear 15 about what you're pointing to when you say this? 16 A. I pointed -- I pointed to -- I pointed 17 to the document in the Gas Daily daily on tab 1E, 18 page three. 19 MR. GORE: What is it on page three 20 you're referencing? I just need to be clear in the 21 record. 22 A. It's the production data that shows the 23 huge decline in production volumes in the 24 midcontinent region, which is what serves Southern 25 Star. I pointed to that to just show physical proof</p>	<p style="text-align: center;">Page 252</p> <p>1 <b>after-the-fact document that would either confirm or</b> 2 <b>refute a decision that you chose to make before that</b> 3 <b>time, correct?</b> 4 MR. GORE: I'm going to object, 5 compound, lack of foundation. You can answer. 6 A. I think I've been clear that I'm not -- 7 I'm not saying it's information I had at the time. 8 I'm saying the information that we were collecting 9 was through conversations that Justin's team was 10 having with his counterparties. All I was saying is 11 that the information that you're trying to extract 12 from us that doesn't exist is just confirmed in this 13 graph on Exhibit 1E, page 12. 14 <b>Q. (By Mr. Howell) So --</b> 15 MR. GORE: Could I -- could I just get 16 a clarification for the record? You said page 12? 17 THE WITNESS: Or I'm sorry, 1E, page 18 three. 19 MR. GORE: Thank you. 20 THE WITNESS: Sorry. 21 <b>Q. (By Mr. Howell) You mentioned</b> 22 <b>conversations that Justin told you that he had with</b> 23 <b>other people about production and potential</b> 24 <b>production drops. Are you saying that you -- when</b> 25 <b>you decided to issue the OFO, the factor you were</b></p>

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1 **considering with regard to production was your**  
 2 **reliance on Justin's conversations about production**  
 3 **drops that could occur in the future?**  
 4 MR. GORE: I'm going to object,  
 5 compound. You can answer.  
 6 A. Yeah, I think -- I think I've been  
 7 clear that it was the conversations that he was  
 8 having about production drops that were taking place  
 9 at the time and the fear of them getting worse, and  
 10 then combined with the fact that NGPL, Enable,  
 11 Panhandle, Southern Star all issued OFOs. It was --  
 12 yeah, it -- anybody in the market knew the situation  
 13 was getting bad.  
 14 **Q. (By Mr. Howell) Are you aware of any**  
 15 **production drops that actually occurred as of**  
 16 **February 9th?**  
 17 A. Justin Powers would have to answer  
 18 those questions.  
 19 **Q. Are you aware of any production drops**  
 20 **that occurred as of February 10th?**  
 21 MR. GORE: So let me -- can I just get  
 22 a clarification of your question? When you're  
 23 saying as of, are you saying as he sits here today  
 24 does he know of production drops that occurred as of  
 25 that date or are you saying -- you're not being

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1 clear as to whether you're asking him to go back in  
 2 time or whether you're asking him presently.  
 3 MR. HOWELL: Well, I'm trying to  
 4 determine not based on things that he knows about  
 5 days or weeks or months later, but what the  
 6 information was in front of him when he made the  
 7 decision, and I'm trying to determine with this  
 8 question whether he had seen any information --  
 9 otherwise received any information that production  
 10 drops had actually occurred, that there were  
 11 production drops as of the February 9th or 10th.  
 12 MR. GORE: So can we -- can we get a  
 13 question that just specifies whether you want him to  
 14 rely on present knowledge or knowledge he had at the  
 15 time? That's the only clarification I want in the  
 16 record.  
 17 **Q. (By Mr. Howell) Sure. Mr. Godat,**  
 18 **based on information that you had as of February --**  
 19 **the morning of February 10th, 2021, had you seen or**  
 20 **heard from Justin or anyone else information**  
 21 **confirming that production drops had already begun?**  
 22 A. Yeah, I'm confident -- I'm confident at  
 23 the time that he was giving me real world examples  
 24 of issues that he was hearing about. To say that I  
 25 know exactly what each of those are, no, but I can

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1 tell you it was a real world conversation about the  
 2 issues he was -- that he was seeing.  
 3 You know, ultimately -- I mean, he --  
 4 Justin is -- is responsible for gas supply. I think  
 5 we've said that multiple times. I've got 1100  
 6 employees under me, so I'm not in the details of  
 7 those individual conversations, but he kept me fully  
 8 apprised of -- of the situation that he was seeing.  
 9 And then -- and then those were all --  
 10 like I say, those were all -- they were all  
 11 confirmed with all of the OFOs that were being  
 12 issued by all the pipelines.  
 13 **Q. The next thing you mentioned was**  
 14 **storage levels. You said -- you said something to**  
 15 **the effect that you thought Spire had a conservative**  
 16 **storage level, but you thought other people did not.**  
 17 **Was there any data or report or documents, e-mails,**  
 18 **anything tangible that you reviewed regarding the**  
 19 **status of storage levels?**  
 20 A. Like I say, I was relying on  
 21 information that I was getting from Justin.  
 22 **Q. And what information did Justin provide**  
 23 **to you regarding the status of storage levels up to**  
 24 **and including February 9th and 10th when you made**  
 25 **this OFO decision?**

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1 A. Yeah, I don't know that I recall  
 2 specific information on the day that we made the  
 3 decision.  
 4 **Q. Other than Justin and I believe you**  
 5 **also mentioned Scott Carter, that you had a**  
 6 **conversation with both of them about the decision to**  
 7 **issue the OFO before it was issued, was there anyone**  
 8 **else that you spoke with that informed your decision**  
 9 **of whether or not to issue an OFO --**  
 10 MR. GORE: I'm going to object --  
 11 **Q. (By Mr. Howell) -- for the Spire**  
 12 **Missouri system?**  
 13 MR. GORE: I'm going to object,  
 14 compound, misstates prior testimony, misstates what  
 15 this witness has testified about about Scott  
 16 Carter's role in this whole thing. You can -- you  
 17 can answer the question if you understand it.  
 18 A. Yeah, like I said, Justin and I were  
 19 the ones that had the conversation, and then I -- I  
 20 informed my boss, Mr. Carter, before we actually  
 21 issued the OFO.  
 22 **Q. (By Mr. Howell) Was there anyone else**  
 23 **that you consulted with prior to making the**  
 24 **decision, the determination that you would -- that**  
 25 **Spire would issue an OFO for the Spire Missouri West**

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1 system?  
 2 A. Not that I recall.  
 3 **Q. Did you discuss with mister – is it**  
 4 **Weinstral?**  
 5 A. Weitzel.  
 6 **Q. – regarding whether implementing the**  
 7 **OFO was in compliance with the tariff provisions?**  
 8 MR. GORE: I'm going to object. It's  
 9 unclear of who you're talking about in the record.  
 10 I think you may have mispronounced his name, but I'm  
 11 not sure.  
 12 **Q. (By Mr. Howell) You mentioned an**  
 13 **individual mister I believe it's Weinstral or --**  
 14 A. Weitzel.  
 15 **Q. Weitzel. So -- yeah, my notes were off**  
 16 **there. Thank you, Mr. Gore and Mr. Godat. Did you**  
 17 **discuss with Mr. Weitzel whether implementing the**  
 18 **OFO was in compliance with the tariff provisions?**  
 19 A. I do not recall having that  
 20 conversation with Mr. Weitzel.  
 21 **Q. Did you have a discussion with**  
 22 **Mr. Weitzel at any time during the winter storm**  
 23 **regarding whether implementing or maintaining the**  
 24 **OFO was in compliance with the tariff provisions?**  
 25 A. I did not recall having any

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1 conversations whether they were in compliance with  
 2 the tariff.  
 3 MR. GORE: Mr. Howell, we're coming up  
 4 on an hour and a half in the afternoon here. I've  
 5 been trying to let you get through this part of your  
 6 questioning, but we're going to need to take a break  
 7 here in the next five minutes or so.  
 8 MR. HOWELL: All right. I probably  
 9 have --  
 10 A. To follow up -- to follow up on your  
 11 question because I know it was a two-part, if I  
 12 recall. It was one --  
 13 MR. GORE: Right now the record is too  
 14 unclear unless we're going to have a question read  
 15 back. I just don't know what you're testifying  
 16 about at this point.  
 17 THE WITNESS: Okay. Go ahead. I'm  
 18 sorry.  
 19 **Q. (By Mr. Howell) Just so that I'm**  
 20 **clear, did you -- during the winter storm, did you**  
 21 **ever speak with Mr. Weitzel about the OFO?**  
 22 A. I'm sure we had conversations once we  
 23 notified everyone that we were in the OFO, but your  
 24 specific question around whether we had any  
 25 conversations about whether we should maintain the

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1 OFO, I do not recall having that conversation.  
 2 **Q. Other than Mr. Weitzel, did you consult**  
 3 **with the regulatory group at Spire before making the**  
 4 **decision to issue it?**  
 5 MR. GORE: Now, I'm going to -- I'm  
 6 going to object to the extent the way the question  
 7 was just asked would suggest that Mr. Weitzel was  
 8 consulted, which I think the testimony is clear he  
 9 was not. I don't know if you meant to do that, but  
 10 to me that question was misleading the record.  
 11 **Q. (By Mr. Howell) That was not my**  
 12 **intent. I'm just trying to figure out whether he**  
 13 **was or he wasn't. The testimony is what it is, and**  
 14 **I'm trying to figure out whether there was anyone**  
 15 **else that you spoke with other -- was there someone**  
 16 **you spoke with other than Mr. Weitzel, which you**  
 17 **said you did not, regarding the decision to issue**  
 18 **the OFO?**  
 19 A. Any conversation I would have had with  
 20 regulatory would have been with Mr. Weitzel.  
 21 **Q. And force majeure was not a concern**  
 22 **that led -- that played any decision to issue or**  
 23 **maintain the OFO, correct?**  
 24 MR. GORE: I'm going to -- I'm going to  
 25 object, lack of foundation.

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1 **Q. (By Mr. Howell) You can answer.**  
 2 A. I don't understand your -- you didn't  
 3 say what you were referencing as being force  
 4 majeure'd.  
 5 **Q. Okay. Wonderful point. You had**  
 6 **mentioned in questioning of Mr. Bauer -- or**  
 7 **questioning by Mr. Bauer of you that there was a**  
 8 **force majeure issue that affected the Alabama**  
 9 **pipeline. Do you recall that?**  
 10 A. I do.  
 11 **Q. Okay. With respect to the Missouri**  
 12 **West system, was there any force majeure issue that**  
 13 **played any role in the decision to issue or maintain**  
 14 **the OFO?**  
 15 MR. GORE: I'm going to -- I'm going to  
 16 object, lack of foundation, calls for legal  
 17 conclusion, vague.  
 18 A. I don't recall having -- any force  
 19 majeure conversations on the MO West side during  
 20 Winter Storm Uri.  
 21 MR. HOWELL: All right. Let's take a  
 22 break now, and then I probably have 30 minutes of  
 23 questions left.  
 24 VIDEOGRAPHER: Off the record,  
 25 4:23 p.m.

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1 (WHEREIN, a recess was taken.)  
 2 VIDEOGRAPHER: On the record, 4:38 p.m.  
 3 MR. HOWELL: Mr. Godat, I'm going to  
 4 mark another document as Exhibit 13. This is --  
 5 exhibit is the entire Spire tariff for the Spire  
 6 Missouri West system. I believe Ryan the  
 7 videographer is marking that and will put a portion  
 8 of it on the screen.  
 9 (WHEREIN, Exhibit 13, Spire Missouri  
 10 Schedule of Rates and Charges, was marked for  
 11 identification by the Court Reporter.)  
 12 **Q. (By Mr. Howell) What is -- what is**  
 13 **shown on the screen now is page 69 of Exhibit 13,**  
 14 **and this section addresses operational flow orders**  
 15 **in 16.8. What I want to look at is the last**  
 16 **sentence. If we put that up, that would be great.**  
 17 MR. GORE: I have a hard copy of it  
 18 here. Can he take a look at that? Easier on his  
 19 eyes.  
 20 MR. HOWELL: Wonderful. That's fine.  
 21 THE WITNESS: What page?  
 22 **Q. (By Mr. Howell) It's page 69 of the**  
 23 **document. It's section 16.8 of the tariff, and it's**  
 24 **in the section titled operational flow orders.**  
 25 MR. GORE: This is Exhibit 13. I've

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1 got a question about what was -- what was marked.  
 2 And if you don't mind, we will mark a hard copy of  
 3 it as 13 and have the court reporter take it here  
 4 physically.  
 5 MR. HOWELL: Perfectly fine with me.  
 6 **Q. (By Mr. Howell) Mr. Godat, have you**  
 7 **been able to read the sentence that's brought up on**  
 8 **the screen before issuing an OFO?**  
 9 A. Was the question -- you're asking if I  
 10 read this particular sentence just now?  
 11 **Q. Yes, sir. Whenever -- whether you read**  
 12 **it just now or whether you've read it, you know,**  
 13 **studied it intensely --**  
 14 A. Yeah.  
 15 **Q. -- before now, I'm going to ask you**  
 16 **some questions about it. I just want to make sure**  
 17 **you've read it before I ask you about it.**  
 18 A. Okay. I've read it.  
 19 **Q. Great. This sentence that I'm focusing**  
 20 **on says the following (quote as read):**  
 21 **Before issuing an OFO, Spire West will**  
 22 **attempt to identify specific customers**  
 23 **causing the conditions that give rise**  
 24 **to the need for the OFO, and attempt to**  
 25 **remedy those problems through requests**

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1 **for voluntary action; provided,**  
 2 **however, exigent circumstances may**  
 3 **exists -- may exist which require**  
 4 **immediate issuance of an OFO.**  
 5 **Did I read that correctly?**  
 6 A. Yes, sir.  
 7 **Q. All right. Did you deem there to be an**  
 8 **exigent circumstance existing at the time before**  
 9 **Spire issued the OFO that required the issuance of**  
 10 **the OFO?**  
 11 A. Yeah, like I mentioned, the -- the  
 12 production that was being cut in combination with  
 13 the Southern Star OFO was ex -- yeah, exigent  
 14 circumstance that -- that required us to go into it  
 15 immediately.  
 16 **Q. And what is your understanding of the**  
 17 **phrase exigent circumstances in this tariff?**  
 18 A. Yeah, my -- my understanding of reading  
 19 it is that it's not something that -- that trying to  
 20 do it on an individual customer basis was going to  
 21 be effective. Like I said multiple times, it was a  
 22 supply issue in combination with Southern Star being  
 23 an OFO. So we needed -- we needed -- we needed all  
 24 of the marketers to stay in balance.  
 25 **Q. I understand -- that's a confusing**

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1 **answer to me, and I need to follow up on that. Are**  
 2 **you saying that you -- that Spire issued the OFO as**  
 3 **a preventative measure to keep the marketers in**  
 4 **balance?**  
 5 MR. GORE: I'm going to object to the  
 6 commentary on his prior answer and move that that be  
 7 struck, and I'm going to object to the current  
 8 question as vague as to the term preventative and to  
 9 the extent it misstates the witness's prior  
 10 testimony. You can answer.  
 11 A. Yeah, I mean, I -- yeah, it was -- I  
 12 mean, consistent with what I've been saying, it  
 13 was -- it was the overall fear of availability of  
 14 supply in conjunction with the fact that Southern  
 15 Star was in an OFO, those two things combined  
 16 were -- were the main drivers in why we went into  
 17 the OFO. So that -- that wouldn't have been -- that  
 18 wouldn't have been on a specific marketer basis.  
 19 All the marketers were in the same situation at that  
 20 point.  
 21 **Q. (By Mr. Howell) As of February 9 --**  
 22 MR. GORE: Were you -- I don't know if  
 23 the witness was finished testifying. Were you  
 24 finished?  
 25 THE WITNESS: Yeah, I'm fine. Go



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1 ahead.

2 MR. GORE: Okay.

3 **Q. (By Mr. Howell) As of February 9th and**

4 **the morning of February 10th, what reason did you**

5 **have to believe that the marketing companies were**

6 **not going to deliver the nominated volumes?**

7 MR. GORE: I'm going to object to the

8 extent the question either misstates prior testimony

9 or assumes testimony that has not occurred. You can

10 answer.

11 A. When -- when supply gets limited --

12 I've been in the market for a long time and Justin's

13 been in the market for a long time. It's -- the

14 company that has -- that doesn't have restrictions

15 typically ends up being the swing for everybody.

16 So the fact that Enable was in an OFO,

17 NGPL was in an OFO, Southern Star was in an OFO,

18 Panhandle was in an OFO. If -- if Spire Missouri

19 was not in an OFO why would there be any incentive

20 for -- for marketers to continue to bring gas to us

21 when they could take it to those other markets? So

22 it's -- like I say, it's a combination of Southern

23 Star being in an OFO.

24 But I guess the other thing I haven't

25 talked about yet was just -- Justin had voiced

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1 concern to me even early winter about the fact that

2 he felt that marketers weren't necessarily planning

3 appropriately and weren't taking out -- weren't

4 taking out capacity to serve their markets and

5 didn't necessarily have -- have a handle on what the

6 demands were going to be.

7 So I mean, that was an underlying

8 factor as well. So it's not -- I mean, at that

9 point when we issued it, it wasn't something that

10 targeting an individual marketer was going to -- was

11 going to solve our issue.

12 **Q. (By Mr. Howell) Did you communicate**

13 **with any of the marketers? Did you communicate with**

14 **Constellation regarding those concerns that you just**

15 **expressed?**

16 A. I'm not exactly sure which companies

17 that Justin had the conversations with. He would

18 have to answer that question.

19 **Q. Okay. Did you, Mr. Godat, have any**

20 **communications with -- with any of the marketers --**

21 A. I did not --

22 **Q. -- to address those concerns that you**

23 **just mentioned?**

24 A. I did not personally. I relied on

25 Justin.

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1 **Q. Did you have any reason to believe that**

2 **there would be a problem with any specific marketer**

3 **or all of the marketers in general that would --**

4 **that you believe would justify issuing an OFO for**

5 **the system?**

6 A. At the time we issued it, like I

7 mentioned, it was -- we just needed all of the

8 marketers to be in balance given the situation that

9 we were in.

10 **Q. So did you issue the OFO as a**

11 **preventative measure to keep the marketers in**

12 **balance?**

13 A. I think I've said time and time again

14 it wasn't about -- just about being in balance. It

15 was -- we needed -- we needed to make sure that we

16 were able to serve the customers that we're

17 responsible for serving. So we needed to make sure

18 supply was going to come to the system for -- for

19 the customers that we weren't bringing -- weren't

20 typically bringing gas in for.

21 **Q. And so did you issue the OFO to make**

22 **sure that the marketers delivered the gas that they**

23 **were responsible for delivering?**

24 MR. GORE: I'm going to object, asked

25 and answered. You can answer it again.

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1 A. The -- I mean, a basic premise of an

2 OFO is that you bring in enough supply to serve your

3 customer needs. If you don't, you get a penalty.

4 So I mean, I think -- I think that's the basic

5 premise of an OFO is you need -- you need the

6 marketers to bring in the gas that their customers

7 are going to burn. I think that -- that was -- our

8 fear was that that was what was not going to happen

9 and that came to fruition pretty quick once we got

10 into the vortex.

11 **Q. (By Mr. Howell) You mentioned I**

12 **believe -- I'll move on.**

13 **Mr. Godat, were you the person**

14 **responsible for making the determination to leave**

15 **the OFO in place on gas day 11? Or sorry. Sorry.**

16 **Let me -- the OFO was implemented to begin on gas**

17 **day 12, correct?**

18 A. That's correct.

19 **Q. Were you the person responsible for the**

20 **decision to keep the OFO in place on gas day 13?**

21 A. Yeah, when you -- when you say I was

22 responsible, that -- given the situation that we

23 were under, that's not a conversation that took

24 place.

25 **Q. I'm sorry. Could you explain what you**

Page 269

1 mean by that answer?

2 A. I mean, the situation that we were

3 going through was bad enough every day, and the

4 underperformance by -- by the marketers were so bad

5 that there wasn't even reason to have a conversation

6 about that until closer to the time we lifted it.

7 **Q. Did you have any conversation or**

8 **conduct any analysis about lifting the OFO on gas**

9 **day 13?**

10 A. We did not have any formal analysis

11 on -- and conversation around lifting it at that

12 point.

13 **Q. Okay. Did you conduct any analysis or**

14 **have any conversations about lifting the OFO on gas**

15 **day 14?**

16 A. I'm not aware of any analysis. I mean,

17 if Justin and his team had it and didn't raise it to

18 my level -- I can't speak for them, but like I say,

19 the situation was bad enough all the way through the

20 18th that it didn't even warrant a conversation.

21 **Q. Are you aware of any analysis or did**

22 **you have any conversations about lifting the OFO on**

23 **gas day 15?**

24 MR. GORE: I'm going to object, asked

25 and answered.

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1 A. Yeah, I mean, I'll give my same answer.

2 I never had a conversation with Justin, but not to

3 say that he didn't have that conversation with his

4 team.

5 **Q. (By Mr. Howell) Justin has -- does not**

6 **have the authority to issue or to terminate an OFO,**

7 **correct?**

8 A. He would have -- he would have brought

9 that to my attention before he changed --

10 **Q. Does Justin Powers have the authority**

11 **to issue or terminate an OFO for the Spire Missouri**

12 **West system?**

13 MR. GORE: I'm going to object to the

14 extent it calls for a legal conclusion. And

15 Mr. Howell, I will just remind you, I know we're

16 doing this remotely, but George doesn't speak super

17 fast and I think you're cutting him off a few times

18 here, which I just would ask you to be careful of.

19 A. There's not a particular restriction

20 that I'm aware of in the company that would prevent

21 Justin from making that decision. Having said that,

22 he and I consulted each other and I was the one

23 ultimately made that decision in this case.

24 **Q. (By Mr. Howell) And you were also**

25 **ultimately the person who made the decision not only**

Page 271

1 to issue it, but also the decision to terminate it,

2 correct?

3 A. That's correct.

4 **Q. When was the first gas day that you**

5 **considered terminating the OFO?**

6 A. Me personally, I don't recall having a

7 conversation about it until I guess the 19th when we

8 had terminated it effective the 20th. We found out

9 Southern Star was lifting theirs as well.

10 **Q. And was Southern Star's decision to**

11 **lift their OFO the impetus for Spire Missouri to**

12 **consider lifting and then ultimately decide to lift**

13 **its OFO?**

14 A. It was a factor that went into our

15 decision.

16 **Q. What other factors went into your**

17 **decision?**

18 A. Looking at the -- kind of the projected

19 forecast and, you know, based on conversation that

20 Justin was having with the suppliers on -- on the

21 return of the production that was frozen off.

22 MR. GORE: If I could just ask for

23 clarification. When you say projected forecast,

24 could you just say what you mean by that?

25 A. The temperature forecast warming up in

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1 combination with -- like I say, conversations that

2 he was having about the production situation getting

3 better. I think -- you know, he wanted to -- he

4 wanted to caveat it with the fact that if that

5 didn't happen he wanted to put people -- the

6 marketers on notice that he would turn around and

7 issue that again over the weekend. So he put that

8 notice in his -- in his e-mail when he lifted the

9 OFO.

10 **Q. (By Mr. Howell) All right. I have**

11 **two -- two more kind of short things I want to go**

12 **over with you. First I want to ask you about**

13 **storage. You indicated earlier with mister -- in**

14 **response to Mr. Bauer's questioning that there was**

15 **approximately 8.9 BCF of gas that Spire had in**

16 **storage, correct?**

17 A. That's correct, going into the month of

18 February.

19 **Q. And that storage gas was subject to two**

20 **restrictions. It was subject to an MDQ, which is**

21 **the maximum daily quantity of gas that you could**

22 **draw out of storage each day, and second, it was**

23 **subject to a restriction that no more than**

24 **two-thirds of your gas on the Southern Star system**

25 **could be from storage; is that correct?**

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1 A. That's correct.

2 **Q. Did Spire ever during February 2021**

3 **reach or attempt to reach the MDQ?**

4 MR. GORE: I'm going to object, vague,

5 foundation. You can answer.

6 A. What time period did you ask about?

7 **Q. (By Mr. Howell) Yeah. So I'm trying**

8 **to figure out, you have all this gas in storage.**

9 **You say that it's really conservative that you have**

10 **all this gas that's just sitting there to protect**

11 **your system. What I'm trying to find out is if you**

12 **have the gas sitting there and obviously you sold**

13 **some of it to Atmos, but did you try to draw out the**

14 **gas, did you try to remove the gas, the physical**

15 **molecules from storage so that it could come onto**

16 **your system and protect your system integrity? So**

17 **with that kind of background, what I'm trying to**

18 **find out is did Spire at any time during**

19 **February 2021 attempt to use its full MDQ for any**

20 **day from storage?**

21 MR. GORE: I'm going to object, move to

22 strike the commentary that preceded the question and

23 object to the question as compound.

24 A. Justin was the one actually determining

25 the actual daily volumes. You know, what I gathered

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1 from him in conversations was that from a planning

2 perspective, storage -- storage is the one buffer

3 that keeps us from being short on Southern Star. So

4 from a planning perspective he -- he felt like he

5 maximized his storage withdrawals to the fullest

6 extent possible through that whole period of time.

7 That's where I got back talking to

8 Mr. Bauer that if you -- if you look with perfect

9 hindsight, you know, would it say that you maximized

10 every dekatherm, you know, the question is -- the

11 answer is probably no, but I think the team was

12 confident that they were maximizing that to the

13 fullest extent possible to -- to minimize the amount

14 of gas that our firm customers were having to buy.

15 **Q. (By Mr. Howell) Okay. So your team**

16 **felt that they were maximizing that asset. I'm**

17 **asking kind of a different question about**

18 **quantitatively did you actually maximize use of**

19 **those physical molecules. Was there ever even one**

20 **single day that you used the MDQ that you were**

21 **allowed under the Spire agreement?**

22 MR. GORE: I'm going to object, vague.

23 A. Yeah, I couldn't tell you if we

24 actually reached the MDQ on any given day.

25 **Q. (By Mr. Howell) I know you're saying**

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1 **that you couldn't tell me, but sitting here today**

2 **are you aware of any day on which Spire either --**

3 A. Let me -- I mean, to answer that we --

4 MR. GORE: I don't know if there's a

5 question pending.

6 THE WITNESS: All right.

7 **Q. (By Mr. Howell) Yeah, yeah, yeah.**

8 **Okay. I think I have one or two other questions**

9 **about storage. With respect to the 500,000**

10 **dekatherms that were sold to Atmos, you mentioned**

11 **that in response to questioning from Mr. Bauer,**

12 **correct?**

13 A. That's correct.

14 **Q. And you sold 500,000 dekatherms at a**

15 **price of \$200 per dekatherm, correct?**

16 A. That's correct.

17 **Q. That's \$100 million?**

18 A. That's correct.

19 **Q. Did Spire credit its rate base from the**

20 **profit made from the Atmos sale?**

21 MR. GORE: I'm going to object --

22 object, lack of foundation. You can answer.

23 A. We -- we handled it through our

24 off-system sales mechanism that's in the tariff.

25 **Q. (By Mr. Howell) Could you explain that**

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1 **answer?**

2 A. Yeah, there's -- there's a sharing

3 mechanism for that activity. Yeah, I don't -- I

4 don't recall the exact sharing under that agreement.

5 So the dollars were shared -- the majority of the

6 dollars go to the ratepayers and then Spire gets a

7 portion of that.

8 **Q. And what day of the winter storm did**

9 **that occur on?**

10 A. The transfer took place on

11 February 15th if I recall.

12 **Q. And so that was three days after the --**

13 **the OFO was issued and, what, another four days**

14 **before you could even consider terminating the OFO,**

15 **correct?**

16 A. That's correct.

17 **Q. And so at that point in time during the**

18 **winter storm Spire determined that rather than using**

19 **that 500,000 dekatherms of gas for its own system**

20 **and its own customers, that it was a better decision**

21 **to sell that gas to a third party so that third**

22 **party could use it?**

23 MR. GORE: I'm going to object,

24 foundation, misstates prior testimony, assumes facts

25 not in evidence, compound if I didn't say that. You

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1 can answer the question.  
 2 A. Yeah. Like I mentioned, given our  
 3 overall inventory level and the fact that that had  
 4 no bearing on what our daily limitations were,  
 5 Justin is -- Justin and his team determined that he  
 6 was not going to be able to use the 500,000  
 7 dekatherms of inventory during the cold period.  
 8 Atmos was in a dire situation because  
 9 from what we understood their marketer had  
 10 mismanaged their -- their storage capacity and, you  
 11 know, had not only ran out of storage, but actually  
 12 overran it.  
 13 So them being a sister utility, we kind  
 14 of raised to the call and thought we did a win-win  
 15 deal for them when it was an asset that we weren't  
 16 going to be able to use anyway. So we went ahead  
 17 and executed the transaction.  
 18 **Q. (By Mr. Howell) All right. Do you**  
 19 **know what Atmos did with the gas?**  
 20 MR. GORE: I'm going to -- I'm going to  
 21 object as beyond the scope of the 30(b)(6) -- of the  
 22 corporate representative notice. Also, it's a  
 23 question about a subject matter that this witness  
 24 isn't qualified to answer. That being said, you  
 25 can -- you can answer if you know.

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1 A. I don't know anything beyond the -- the  
 2 transaction where the inventory was transferred on  
 3 paper from our account to Atmos's account.  
 4 **Q. (By Mr. Howell) You mentioned a minute**  
 5 **ago that there was a -- a tariff mechanism for**  
 6 **splitting the hundred million dollar revenue event**  
 7 **between ratepayers and Spire Missouri. What share**  
 8 **of that hundred million dollars did Spire get?**  
 9 A. I'm pretty sure it's 25 percent.  
 10 **Q. 25 percent plus -- 25 plus on the**  
 11 **profit plus the return of its cost basis?**  
 12 A. It's 25 percent of the net margin on  
 13 the deal. So it would be sale less cost. Excuse  
 14 me.  
 15 MR. HOWELL: If I can just go on mute  
 16 for one second, I'm going to check my notes really  
 17 fast and I think I can be done.  
 18 (WHEREIN, a discussion was held off the  
 19 record.)  
 20 MR. HOWELL: All right. Are you ready?  
 21 There's one other document I need to ask about.  
 22 Ryan, there was an e-mail that Mr. Bauer used that  
 23 Spire sent to the customers. I do not have the  
 24 exact number. I think it might have been 6 or 7.  
 25 If you can locate that quickly and bring it up, that

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1 would be great.  
 2 THE WITNESS: Seven? Tab seven?  
 3 MR. HOWELL: Mr. Godat, this was an  
 4 exhibit that Mr. Bauer offered during his  
 5 examination.  
 6 MR. APLINGTON: I think it's 8.  
 7 MR. HOWELL: There was an e-mail that  
 8 Spire sent to all the customers.  
 9 MR. GORE: Can you say what's at the --  
 10 at the top of the document? Is it MOW  
 11 Transportation Comms 2-17-21, is that the document  
 12 you're referring to? What's at the top of the  
 13 document?  
 14 MR. HOWELL: Yes, sir. I --  
 15 MR. GORE: Okay.  
 16 MR. HOWELL: -- apologize. I'm trying  
 17 to pull it up and confirm that with you.  
 18 THE WITNESS: I see the document.  
 19 **Q. (By Mr. Howell) During the questioning**  
 20 **you were asked if this e-mail was sent to -- to**  
 21 **Symmetry customers. Did a -- did this letter or**  
 22 **e-mail also go to Constellation customers as well?**  
 23 MR. GORE: What? I'm not sure it's  
 24 clear in the record what we're looking at. We've  
 25 got -- we've got Exhibit 8, but I'm not at all sure

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1 that you're referencing Exhibit 8.  
 2 THE WITNESS: Do you know if this is in  
 3 our binder?  
 4 MR. HOWELL: I'd like to pass the  
 5 witness.  
 6 THE WITNESS: Okay.  
 7 MR. GORE: Are you referencing the  
 8 document that's at tab 17, whatever binder? 18 --  
 9 so we think you're referencing a document that's at  
 10 18M of our binder. That's a different e-mail than  
 11 this one.  
 12 THE WITNESS: This may have just went  
 13 to Symmetry customers.  
 14 MR. GORE: Actually, scratch that. The  
 15 Exhibit 8 used today in Bauer's -- Mr. Bauer's  
 16 questioning is not the same as 18M, so we were wrong  
 17 about that. So I'm not sure whether we're using  
 18 Exhibit 8 from Mr. Bauer's questioning or something  
 19 else.  
 20 MR. HOWELL: Well, with respect to  
 21 Exhibit 8 from Mr. Bauer's questioning, if Ryan can  
 22 put that up on the screen, I think that can resolve  
 23 this immediately. Yes, this was the document that I  
 24 was referring to.  
 25 **Q. (By Mr. Howell) I believe you**

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1 indicated during Mr. Bauer's questioning that this  
 2 was an e-mail -- an e-mail that starts in the middle  
 3 of page one of Exhibit 8 and runs to the middle of  
 4 page two, that this was an e-mail that was sent to  
 5 Symmetry customers. Is that -- do you know if  
 6 that's correct?  
 7 A. I think all that I'd indicated was that  
 8 this was sent by the business development team at  
 9 Spire, but this is not a document that I recall  
 10 reviewing for my deposition, so they would have to  
 11 consult with the business development group on who  
 12 it actually went to.  
 13 Q. Sitting here today, do you know whether  
 14 or not this e-mail was sent to Constellation  
 15 customers?  
 16 A. I do not.  
 17 Q. And do you know whether Spire told any  
 18 Constellation customers what is stated here on page  
 19 two of Exhibit 8, that Spire strongly recommends  
 20 that those customers reduce their natural gas usage  
 21 to avoid exposure to historically high prices?  
 22 MR. GORE: I'm sorry. I missed the  
 23 first part of the question. Can I hear the question  
 24 again?  
 25 Q. (By Mr. Howell) Yes, sir. I was

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1 asking whether you -- whether you knew whether or  
 2 not Spire had informed Constellation customers that  
 3 it strongly recommended that they reduce their  
 4 natural gas usage to avoid exposure to historically  
 5 high prices.  
 6 A. I cannot confirm that. Like I say, I  
 7 didn't review this document.  
 8 MR. GORE: Well, okay. I'm going to --  
 9 just to get clarification in the record, Mr. Godat  
 10 testified that he did not have knowledge of this  
 11 document. Your question then asked him about the  
 12 document that he said he didn't have knowledge of,  
 13 so it's unclear to me whether you were asking your  
 14 question as it related to the document or just  
 15 generally. If you're asking it as it relates to the  
 16 document, I'm going to say object, lack of  
 17 foundation.  
 18 MR. HOWELL: It sounds like he is not  
 19 aware of this document specifically and also that he  
 20 is not aware of whether Constellation customers were  
 21 told that they may be responsible either for gas  
 22 costs or for other penalties, and so I'm just going  
 23 to leave it there because it just sounds like maybe  
 24 this is a question for someone else.  
 25 MR. GORE: Okay.

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1 MR. HOWELL: Again, apologize for the  
 2 confusion about this Exhibit 8, and I think with  
 3 that I can pass the witness.  
 4 MR. GORE: Okay. I'm just going to  
 5 make my objection that how you just characterized  
 6 his testimony is not how I understood it because it  
 7 was confusing to me whether the questioning was  
 8 limited to the document that no foundation was laid  
 9 for or whether it was a question stated more  
 10 generally.  
 11 MR. HOWELL: Understand. Thank you,  
 12 Mr. Godat, for your time. I really appreciate it.  
 13 THE WITNESS: Yeah. Thank you.  
 14 MS. BELL: To confirm, what are we on,  
 15 14? 13.  
 16 MR. GORE: And I'll just state at this  
 17 point it's getting pretty late in the evening.  
 18 MS. BELL: Uh-huh.  
 19 MR. GORE: So we are going to need to  
 20 take a break on the hour. By my count we started at  
 21 4:35 in this session, so I'm going to want to take a  
 22 break by 5:35. I mean -- yeah, 5:35.  
 23 MS. BELL: Okay. I'm handing you that.  
 24 (WHEREIN, Exhibit 14, Clearwater notice  
 25 of deposition, was marked for identification by the

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1 Court Reporter.)  
 2 EXAMINATION  
 3 QUESTIONS BY MS. BELL:  
 4 Q. My name is Stephanie Bell and I'm  
 5 appearing today on behalf of Clearwater. I'm  
 6 handing you what's been marked as Exhibit 14. Are  
 7 you familiar with this deposition notice from  
 8 Clearwater?  
 9 A. I am.  
 10 Q. And you understand you're appearing  
 11 pursuant to that deposition notice today?  
 12 A. I am.  
 13 Q. Okay. I believe you were just asked  
 14 about communications to the end users. Is it your  
 15 understanding that one of the -- that the documents  
 16 produced included a question regarding  
 17 communications to end users?  
 18 A. I was aware of that, and the one -- the  
 19 ones that I had referenced -- the ones that I knew  
 20 that had been turned over were included in these  
 21 documents.  
 22 Q. Okay.  
 23 MR. GORE: Can you reference -- just  
 24 for the record, when you say these documents, you're  
 25 pointing to a binder. I just need you to give me a

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1 tab, specific tab you're referencing.  
 2 THE WITNESS: Yeah, I'll have -- I'll  
 3 have to find them. I know they were --  
 4 MS. BELL: Can you direct the witness  
 5 to the tab that -- of the communications?  
 6 MS. MCLAUGHLIN: It would be tab 18.  
 7 MS. BELL: Tab 18.  
 8 THE WITNESS: Yeah.  
 9 **Q. (By Ms. Bell) Okay. You had talked**  
 10 **earlier about talking with what you said I think**  
 11 **upstream people, and you had said you spent a lot of**  
 12 **time on the phone -- on phone conversations, not**  
 13 **just -- I think you were being asked about**  
 14 **documents. Do you recall saying you spent a lot of**  
 15 **time on the phone?**  
 16 MR. GORE: I'm going to -- I'm going to  
 17 object. I think that misstates prior testimony,  
 18 vague.  
 19 **Q. (By Ms. Bell) Okay. Did you spend --**  
 20 **that's fine. Did you spend any time on the phone**  
 21 **with Clearwater prior to February 10th regarding the**  
 22 **issues we've been talking about today?**  
 23 A. I did not personally spend time on the  
 24 phone with Clearwater. I don't know if -- I'm not  
 25 sure if Justin and his team did.

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1 **Q. Okay. Mr. Bauer had previously asked**  
 2 **you about any documents indicating that Spire**  
 3 **thought the OFO was unnecessary. Do you recall that**  
 4 **question?**  
 5 A. You know, I don't recall. I've been  
 6 asked so many questions I don't recall that I recall  
 7 a specific question.  
 8 **Q. I believe his question was limited to**  
 9 **documents. My question is about conversations. Do**  
 10 **you recall any conversations or any individual**  
 11 **statements regarding thoughts about whether the OFO**  
 12 **was unnecessary?**  
 13 MR. GORE: I'm going to object, vague.  
 14 A. Yeah, I don't -- not to say that --  
 15 that we didn't have the conversation over the course  
 16 of that week. I think there was -- by the time we  
 17 got to the 9th or 10th it was very obvious that  
 18 there was no doubt that we were going into the OFO  
 19 given -- given where the production was sitting and  
 20 the fact that, you know, Southern Star along with  
 21 all the other pipelines were in OFO, there -- there  
 22 was never -- at that point there was no doubt that  
 23 we were going to the OFO.  
 24 **Q. (By Ms. Bell) So did you have a**  
 25 **conversation on the 8th and the determination was**

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1 **not yet?**  
 2 MR. GORE: I'm going to object to the  
 3 extent that assumes testimony that doesn't exist.  
 4 You can answer.  
 5 A. Yeah, I mean, that was long enough ago  
 6 and there's been so much that's happened since then  
 7 I would be speculating as to what day we actually  
 8 initially had the conversation.  
 9 **Q. (By Ms. Bell) So was there any**  
 10 **suggestion prior to February 10th that you should**  
 11 **wait and see what Southern Star does before you make**  
 12 **a decision on the OFO?**  
 13 MR. GORE: I'm going to object, lack of  
 14 foundation, vague.  
 15 A. I do not recall having that  
 16 conversation.  
 17 **Q. (By Ms. Bell) When you were**  
 18 **determining whether to issue the OFO, the**  
 19 **determination under the tariff is in regard to a**  
 20 **threat to the system; is that your understanding?**  
 21 MR. GORE: I'm going to object, vague,  
 22 calls for legal conclusion.  
 23 A. Yeah, it's not just limited to --  
 24 there's a couple triggers. One is -- I can pull --  
 25 I prefer just to refer to the tariff.

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1 MS. BELL: He wants to refer to the  
 2 tariff, which is a separately marked exhibit.  
 3 MR. GORE: The page he's referring to  
 4 is a tab in the binder. I believe it's probably tab  
 5 ten.  
 6 MR. APLINGTON: The page we looked at  
 7 before was Exhibit 13.  
 8 MR. GORE: Is that what it is?  
 9 MS. MCLAUGHLIN: I think we need to --  
 10 it's 16A in this.  
 11 THE WITNESS: 16?  
 12 MR. GORE: All right. Why don't we --  
 13 why don't we go back to Exhibit 13. You can confirm  
 14 that this is what you're referencing. Let's go to  
 15 Exhibit 13, page --  
 16 MS. BELL: It's in your stack over  
 17 here.  
 18 MR. GORE: 16A, okay. Take a look at  
 19 Exhibit 13, page 16A. You can tell us whether  
 20 that's what you were looking for.  
 21 THE WITNESS: Yeah, it's actually on  
 22 this exhibit, page 16.7, sheet number 16.7.  
 23 **Q. (By Ms. Bell) So when you're making**  
 24 **that analysis, are you doing that by --**  
 25 MR. GORE: I'm not -- I didn't think he

<p style="text-align: center;">Page 289</p> <p>1 was finished testifying about that page, were you?                  2 A. Yeah, I was just going to read --                  3 <b>Q. (By Ms. Bell) Go ahead.</b>                  4 A. -- the requirement (quote as read):                  5 Notice of operational floors and                  6 periods of curtailment shall be                  7 provided as far in advance as practical                  8 and prospectively may be changed by                  9 company upon reasonable advanced notice                  10 as conditions warrant. Where                  11 practical --                  12 (Court reporter interruption.)                  13 A. (Quote as read):                  14 May be changed by company upon                  15 reasonable advanced notice as                  16 conditions warrant. Where practical,                  17 OFOs will be issued by 12 noon Central                  18 time and will be effective the second                  19 day after insurance, thereby providing                  20 time for customers to adjust                  21 nominations. Company may make OFOs                  22 effective with a shorter notice if                  23 necessary to protect the integrity of                  24 the system and/or where such actions                  25 are necessary to ensure compliance with</p>	<p style="text-align: center;">Page 291</p> <p>1 the document? Can I take a look at yours?                  2 THE WITNESS: Yeah.                  3 MR. GORE: Okay. I've got it. Thank                  4 you. If you could ask the question again.                  5 <b>Q. (By Ms. Bell) Sure. You had suggested</b>                  6 <b>that it went beyond protecting the integrity of our</b>                  7 <b>system and had something to do with -- something to</b>                  8 <b>do with complying with upstream, like Southern Star</b>                  9 <b>requirements. Does this A9 e-mail, the OFO notice</b>                  10 <b>say anything about upstream requirements?</b>                  11 MR. GORE: I'm going to object to the                  12 commentary that preceded the question and I'm going                  13 to object to the question as vague.                  14 A. It does not mention the upstream OFOs,                  15 but the question that you asked me was does it --                  16 does it require -- does Spire have to be in a                  17 position where it's afraid about the integrity of                  18 its system to issue an OFO.                  19 And I was clarifying that it could be                  20 that or it could be that the upstream pipeline                  21 issues an OFO, and I confirmed that we had both.                  22 This -- even though this only mentions one, either                  23 one fulfills that requirement.                  24 <b>Q. (By Ms. Bell) Okay. With respect to</b>                  25 <b>the notice provisions of the OFO notice, the tariff</b></p>
<p style="text-align: center;">Page 290</p> <p>1 the requirements of upstream pipeline                  2 companies and shall permit customers --                  3 transportation customers to adjust                  4 nominations as necessary to reasonably                  5 comply with the OFO.                  6 So I think that it's not just bound by                  7 the integrity of the system. It's -- it's the                  8 integrity of the system or abide the -- to abide by                  9 the requirements of the upstream pipelines. And I                  10 think both of those requirements were met.                  11 MR. GORE: We were looking for this in                  12 the binder. In Exhibit 2 it's tab 9A.                  13 <b>Q. (By Ms. Bell) Okay. Turn to A9, which</b>                  14 <b>is in your stack of exhibits -- I'm sorry. I said</b>                  15 <b>A9, but 9 from Mr. Bauer's questioning.</b>                  16 A. Okay.                  17 <b>Q. And if we start with that second</b>                  18 <b>sentence, it says (quote as read):</b>                  19 <b>In order to maintain and protect the</b>                  20 <b>integrity of our distribution system.</b>                  21 <b>Do you see that?</b>                  22 A. I do.                  23 <b>Q. Does it say anything about keeping</b>                  24 <b>compliance with upstream producers?</b>                  25 MR. GORE: Can I have one moment to get</p>	<p style="text-align: center;">Page 292</p> <p>1 <b>requires that you identify the nature of the</b>                  2 <b>problem. What was identified as the nature of the</b>                  3 <b>problem in the OFO notice?</b>                  4 MR. GORE: I'm going to object as vague                  5 as to exactly which tariff provision you're                  6 referring to.                  7 <b>Q. (By Ms. Bell) Okay. If you turn to --</b>                  8 <b>I think it's exhibit -- the tariff, Exhibit 13 I</b>                  9 <b>believe, and you go to sheet 16.8. Do you see that</b>                  10 <b>first paragraph? And I'll read it for you (quote as</b>                  11 <b>read):</b>                  12 <b>Notice of an OFO shall specify the</b>                  13 <b>nature of the problems sought to be</b>                  14 <b>addressed.</b>                  15 <b>What was the nature of the problem</b>                  16 <b>sought to be addressed in the notice?</b>                  17 A. I think it was pretty simple that we                  18 were going to try to maintain the integrity of our                  19 distribution system.                  20 <b>Q. Okay. Moving on to the next sentence</b>                  21 <b>in the tariff, it says (quote as read):</b>                  22 <b>Notice of an OFO shall specify the</b>                  23 <b>anticipated duration.</b>                  24 <b>In the notice what is the anticipated</b>                  25 <b>duration of the OFO?</b></p>

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1 A. Until further notice.

2 **Q. The next part of the tariff says (quote**

3 **as read):**

4 **The notice must also specify the**

5 **parameters of such compliance.**

6 **What parameters are identified in the**

7 **notice?**

8 MR. GORE: I'm going to object, vague.

9 Make sure you're reading the provision that she's

10 reading from, the full context.

11 A. Yeah, I mean, to me the e-mail says it.

12 It says end users control their usage to avoid any

13 underdeliveries.

14 **Q. (By Ms. Bell) So how was --**

15 A. That's pretty specific that -- that we

16 didn't want you underdelivering for your customers

17 during the OFO period.

18 **Q. So how were customers to know how much**

19 **to curtail or to -- to curtail and for how long?**

20 MR. GORE: I'm going to object,

21 misstates the document. The document will speak for

22 itself.

23 A. The OFO --

24 MR. GORE: Object, lack of foundation.

25 THE WITNESS: I'm sorry.

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1 MR. GORE: You can answer.

2 A. The OFO doesn't force customers to

3 curtail. It -- it's a requirement for the marketers

4 to bring in as much volume as the customers are

5 burning. So to the extent the marketer brings in

6 all the volume that a customer would burn on any

7 given day, there's no reason for that customer to

8 curtail.

9 **Q. (By Ms. Bell) Okay. Let's go back to**

10 **the decision to issue the OFO. You had named**

11 **previously a number of other -- I think you said**

12 **NG --**

13 A. NGPL.

14 **Q. NGPL, a number of other people who had**

15 **issued an OFO. At the time that you were making the**

16 **decision to issue the OFO, were you talking to other**

17 **utilities about what they were doing?**

18 MR. GORE: I'm going to -- I'm going to

19 object, vague and to the extent there's an attempt

20 to state what prior testimony was it misstates it.

21 I don't think there's been any testimony that any

22 utility issued an OFO that was part of the Spire

23 decision. You can answer.

24 A. I'm not sure all the conversation

25 Justin and his team were having with the other

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1 utilities. There was -- there was at no point in

2 our conversations around an OFO where we -- we

3 contemplated or even questioned what actions the

4 other utilities were taking.

5 **Q. (By Ms. Bell) Were you aware that**

6 **there were other utilities that didn't issue an OFO?**

7 MR. GORE: I'm going to object, vague

8 as to time period and as to geographic scope of the

9 question.

10 A. Like I said, at that time we did not

11 even have a conversation about it.

12 **Q. (By Ms. Bell) You had previously --**

13 **let's see. You previously stated you had concerns**

14 **prior to issuing the OFO. Do you know whether those**

15 **concerns were ever communicated to Clearwater before**

16 **the OFO notice?**

17 MR. GORE: I'm going to object, vague

18 as to what prior testimony is being referenced,

19 therefore vague as to the time concerns.

20 A. Yeah, I think it's the same question

21 you asked me before. I said I didn't -- I don't

22 recall any specific conversations with Clearwater,

23 but I can't speak for conversations the gas supply

24 team may have had.

25 **Q. (By Ms. Bell) When making the**

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1 **determination whether to issue the OFO, did you**

2 **research the history of the last time Spire issued**

3 **an OFO?**

4 A. I did not recall researching that

5 information.

6 **Q. Did you have any conversations about --**

7 **with anyone at Spire about the last time Spire**

8 **issued an OFO?**

9 A. No. To say there wasn't conversations

10 at some point afterwards just as we were reminiscing

11 about what happened maybe. I don't recall any

12 conversation about that prior to initiating the OFO.

13 **Q. Okay. Do you know the last time that**

14 **Spire issued an OFO?**

15 A. I could not tell you off the top of my

16 head.

17 **Q. Do you know if Spire's ever issued OFO**

18 **penalties before? Before 2021?**

19 MR. GORE: I'm going to object as

20 beyond the scope of the notice. You can answer.

21 A. I am not aware if we have issued

22 penalties before, OFO penalties.

23 **Q. (By Ms. Bell) You had previously**

24 **talked about storage and had said there was a**

25 **limitation on the daily withdrawal of storage, and**



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1 **that limitation was specific to Southern Star; is**  
 2 **that correct?**  
 3 MR. GORE: I'm going to object to that  
 4 restatement of his testimony. The record will speak  
 5 for itself.  
 6 A. The contract that was in question  
 7 around the Atmos transaction was the Southern Star  
 8 storage contract.  
 9 **Q. (By Ms. Bell) Uh-huh.**  
 10 A. So my reference to the limitation was  
 11 tied to the Southern Star contract that was involved  
 12 in the Atmos transaction.  
 13 **Q. Okay. So you offered storage gas to**  
 14 **Atmos as part of that transaction, correct?**  
 15 A. We did an inventory transfer with  
 16 Atmos.  
 17 **Q. Did you offer that storage gas to any**  
 18 **of the gas marketers when you understood they were**  
 19 **unable to meet supply?**  
 20 A. I couldn't tell you if Justin had  
 21 conversations with marketers about that. I don't --  
 22 I'm not sure -- yeah, I'm not sure if marketers even  
 23 hold storage contracts.  
 24 **Q. Did you --**  
 25 A. The conversation -- yeah, like I say,

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1 it was -- it was the utility that had come to us  
 2 because their marketer had mismanaged their storage  
 3 and they were in dire straits and inquired about the  
 4 transaction for -- with us, so it wasn't -- it  
 5 wasn't something that we were out soliciting at the  
 6 time.  
 7 **Q. So you were aware that Atmos was low on**  
 8 **supply, correct?**  
 9 A. They had reached out to Justin  
 10 concerned that they were -- their storage inventory  
 11 was depleted and they were going to be susceptible  
 12 to OFO penalties.  
 13 **Q. And were you also aware that the gas**  
 14 **marketers were potentially short on supply?**  
 15 A. At that time we did not know -- we did  
 16 not know the inventory levels of anybody else that  
 17 held storage on the Southern Star system on an  
 18 individual basis.  
 19 **Q. Okay. And the two-thirds, one-third**  
 20 **rule, does that apply to storage on Southern Star**  
 21 **only?**  
 22 MR. GORE: I'm going to object, vague.  
 23 A. It definitely applies to Southern Star.  
 24 Southern Star is the only one -- is the only tariff  
 25 that I'm aware of that has that requirement.

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1 **Q. (By Ms. Bell) Did you have access to**  
 2 **any other storage?**  
 3 A. We do have a small piece of storage on  
 4 Panhandle Eastern that's used to balance those -- I  
 5 think I had talked through earlier that we had a  
 6 small delivery point off of Panhandle and that  
 7 volume is used to balance deliveries that are  
 8 directly connected to the Panhandle system.  
 9 **Q. Mr. Bauer had asked you about any other**  
 10 **sales of gas, and I believe you had said there may**  
 11 **have been a day on the weekend where you sold some.**  
 12 **Can you say more about that?**  
 13 MR. GORE: I'm going to object, vague  
 14 as to the reference to the prior testimony. You can  
 15 answer to the extent you follow the question.  
 16 A. Yeah, I don't -- I don't recall  
 17 reviewing any transactions in here. I just vaguely  
 18 remember Justin saying that -- that there were a  
 19 couple days where in order to -- I'm pretty sure it  
 20 was over the long weekend where he was having to  
 21 transact for four days where when the demand was  
 22 down he was just trying to recoup some of the costs  
 23 of the supply that he had bought -- he had bought on  
 24 a day when he may not need it.  
 25 And I think at that time there was -- I

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1 don't know if it was one of the counterparties that  
 2 he was working with that had helped him out on the  
 3 supply side where he sold them gas a couple  
 4 different ways.  
 5 **Q. (By Ms. Bell) So who would those --**  
 6 **who would he have been selling to?**  
 7 A. I would have to get the detail as I  
 8 recall, though I'm pretty sure it was Tenaska.  
 9 **Q. And do you have any idea what the**  
 10 **volume of those sales would be?**  
 11 A. I do not recall off the top of my head.  
 12 **Q. You had indicated that -- sorry.**  
 13 MR. GORE: Ms. Bell, we really are  
 14 going to need to take a break. We've been going  
 15 about an hour and it's, you know, 5:30. As you get  
 16 later in the evening I think an hour is the  
 17 reasonable amount of time to go without a break.  
 18 MS. BELL: Sure. I think I have two  
 19 more questions on storage. Could I finish those and  
 20 then --  
 21 MR. GORE: Sure.  
 22 MS. BELL: Thank you.  
 23 **Q. (By Ms. Bell) You had said that Atmos**  
 24 **had come to you because the marketer had mismanaged**  
 25 **their storage. Who is this marketer for Atmos?**

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1 A. It's our understanding it was Symmetry.  
 2 MS. BELL: Okay. We can go ahead and  
 3 take a break.  
 4 VIDEOGRAPHER: Off the record,  
 5 5:40 p.m.  
 6 (WHEREIN, a recess was taken.)  
 7 VIDEOGRAPHER: On the record, 5:56 p.m.  
 8 **Q. (By Ms. Bell) All right. I'd like to**  
 9 **go back to the binders, which is Exhibit 2, and**  
 10 **let's go to Exhibit 10D.**  
 11 A. Okay.  
 12 **Q. Do you see that e-mail? And if we flip**  
 13 **to page two, it talks about -- it looks like a**  
 14 **meeting with a conference bridge.**  
 15 A. Uh-huh.  
 16 **Q. Do you know if that call was recorded?**  
 17 A. I'm not aware of any of those type of  
 18 conversations that are recorded internally.  
 19 **Q. Okay. Do you know if there was a**  
 20 **presentation given during that call?**  
 21 A. There was not.  
 22 **Q. Do you have any notes from that call?**  
 23 A. Not that I recall that I would have  
 24 kept. It was -- really we just kept that line open  
 25 when we were having -- having the supply issues. So

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1 it was -- it was more just to make sure people were  
 2 in the loop of the potential situation that may --  
 3 may transpire down in Southwest MO.  
 4 **Q. Okay. Can you flip to I think 10G?**  
 5 MR. GORE: Exhibit 2, tab 10G?  
 6 MS. BELL: Correct.  
 7 MR. GORE: Thank you.  
 8 **Q. (By Ms. Bell) Okay. What is this?**  
 9 **Can you identify it?**  
 10 A. This was an actual IM conversation that  
 11 Justin captured between him and the Symmetry trader.  
 12 **Q. Okay. So Shon Purcell is the Symmetry**  
 13 **trader?**  
 14 A. That's correct.  
 15 **Q. Okay. There's no dates on here. Do**  
 16 **you know when this conversation was occurring?**  
 17 A. Yeah, I know when I was looking at it  
 18 here it was over the course of a couple days. I'm  
 19 sure I could back into it when it's talking about  
 20 the ID 2 nom for gas day 17 --  
 21 (Court reporter interruption.)  
 22 A. The ID 2 nom for gas day 17. At three  
 23 o'clock basically Justin was showing that -- that  
 24 there was no nomination from Symmetry on -- late in  
 25 the day on the 17th. So I would have to back up and

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1 try to look at the chron -- the time frame on when  
 2 those conversations were happening.  
 3 **Q. (By Ms. Bell) But given that some of**  
 4 **them are in the morning and in the afternoon and in**  
 5 **the morning again and then the afternoon, this**  
 6 **conversation occurred over several days?**  
 7 A. Over a couple days, yeah.  
 8 **Q. And this was during the OFO period?**  
 9 A. I assume that that's the case, yes.  
 10 **Q. Do you know if there were any similar**  
 11 **conversations with Clearwater?**  
 12 MR. GORE: I'm going to object, vague  
 13 as to the term similar.  
 14 A. I'm not aware if he had a similar  
 15 conversation or not.  
 16 **Q. (By Ms. Bell) You would agree that if**  
 17 **there was --**  
 18 MR. GORE: I don't think the witness  
 19 was finished answering.  
 20 MS. BELL: Okay.  
 21 A. Yeah, I think it was -- yeah. I think  
 22 it was the magnitude of the conversation that was  
 23 being -- that was taking place and the attitude of  
 24 the -- the trader that kind of prompted him to do a  
 25 snapshot of that conversation.

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1 **Q. (By Ms. Bell) So if there were**  
 2 **real-time conversations with Clearwater, they would**  
 3 **have been produced?**  
 4 A. They only would have been produced if  
 5 Justin had taken a screen shot like he did on this  
 6 one.  
 7 **Q. Okay. Are you aware if there were**  
 8 **real-time conversations with Clearwater?**  
 9 A. I could not answer that question. I'd  
 10 have to check with Justin.  
 11 **Q. Is it the regular practice of Spire to**  
 12 **communicate in real time to the marketers like**  
 13 **Justin was doing here?**  
 14 MR. GORE: I object, vague, lack of  
 15 foundation.  
 16 A. When you're saying normal, normal  
 17 procedure as far as -- I don't know if I follow your  
 18 question.  
 19 **Q. (By Ms. Bell) Is it part of Justin's**  
 20 **regular practice to be in touch with the schedulers**  
 21 **for the marketers?**  
 22 A. You know, I'm not sure what  
 23 conversation he has with them on a regular basis.  
 24 **Q. Okay. Let's flip to Exhibit 2,**  
 25 **tab 18B.**

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1 (Court reporter interruption.)  
 2 **Q. (By Ms. Bell) Are you there?**  
 3 A. I am.  
 4 **Q. Okay. And you see this appears to be a**  
 5 **staff data request. Is your understanding that this**  
 6 **encompasses communications to both end users and the**  
 7 **gas marketers?**  
 8 MR. GORE: And I would just instruct  
 9 you to take a moment and familiarize yourself with  
 10 the document.  
 11 A. This appears to me to be in response to  
 12 communications specifically with public customers  
 13 and not necessarily the marketers.  
 14 **Q. (By Ms. Bell) Okay. If we flip to the**  
 15 **second page, this --**  
 16 MR. HOWELL: Hey, Stephanie, would you  
 17 mind just to speak up a little bit?  
 18 **Q. (By Ms. Bell) Sure. If we flip to the**  
 19 **second page, this appears to be a summary of what**  
 20 **communications did take place with the**  
 21 **transportation customers which I've been referring**  
 22 **to as the marketers. Is that your understanding of**  
 23 **that paragraph?**  
 24 MR. GORE: And you're referencing the  
 25 paragraph that starts with customer communications?

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1 MS. BELL: No. I am referencing the  
 2 paragraph that says initial notification under  
 3 transportation customers.  
 4 A. Yeah, it's my understanding that this  
 5 was the communication that was taking place around  
 6 the potential outage issue in Southwest Missouri.  
 7 **Q. This says Western Missouri.**  
 8 A. I see that. I see that that's how this  
 9 is documented here, but from -- from the documents  
 10 that I've reviewed, the -- the information that  
 11 Scott has summarized is referencing the curtailment  
 12 instructions that were sent out in regards to the  
 13 pressure issue that was occurring in Southwest  
 14 Missouri.  
 15 **Q. Okay. If you flip back to the first**  
 16 **page and you see the question, does it have any**  
 17 **limitation as to the region of the customers?**  
 18 A. You're asking me if the question has?  
 19 **Q. Yes.**  
 20 A. I don't see where there's a designation  
 21 for the region.  
 22 **Q. Okay. If we go back to page two, it**  
 23 **talks about initial notification.**  
 24 A. Page -- where are we going back to?  
 25 **Q. The back page of this same document.**

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1 A. Okay.  
 2 **Q. It talks about initial notification.**  
 3 **Do you know what form that took? Was it e-mail or**  
 4 **phone?**  
 5 A. I would have to go back and review the  
 6 letters that we provided. I know there were several  
 7 letters that we had -- that I had reviewed around --  
 8 around the issue in Southwest Missouri.  
 9 **Q. Okay. And if you take a look back at**  
 10 **A8 -- correct?**  
 11 A. A8? Yeah, that was a document I said I  
 12 wasn't familiar with.  
 13 **Q. Right. It appears to be -- in my mind**  
 14 **it looks like a Word document with draft language.**  
 15 **If you would have actually sent this e-mail, would**  
 16 **it not have been responsive to DR 0183?**  
 17 MR. GORE: Can we -- can we for the  
 18 record -- I believe what you're referring to as A8  
 19 is --  
 20 MS. BELL: Sorry, 8.  
 21 MR. GORE: -- is -- is actually  
 22 Exhibit 8?  
 23 MS. BELL: Exhibit 8, correct.  
 24 MR. GORE: Okay. And -- okay. And  
 25 this is a document the witness has previously

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1 testified about, correct?  
 2 MS. BELL: Correct.  
 3 MR. GORE: Okay. If you could re-ask  
 4 the question.  
 5 **Q. (By Ms. Bell) Sure. Exhibit 8 appears**  
 6 **to be draft language of an e-mail sent to**  
 7 **transportation customers. You have previously**  
 8 **testified you were unsure of whether that e-mail was**  
 9 **actually sent. If the e-mail was sent, would it not**  
 10 **be responsive to data request 0183 under tab 18?**  
 11 MR. GORE: I'm going to -- I'm going to  
 12 object, lacks foundation, misstates prior testimony.  
 13 The witness's testimony actually was that he had no  
 14 knowledge of this document. Compound question,  
 15 improper hypothetical, calls for legal conclusion.  
 16 MR. BAUER: Bingo.  
 17 MR. GORE: Can you answer the question?  
 18 A. Oh, I -- I thought she was waiting to  
 19 ask me another question. What was the question?  
 20 **Q. (By Ms. Bell) Well, let's look at**  
 21 **Exhibit 181, how about that. And this is Exhibit 2,**  
 22 **tab 18, tab I. And you see the header. The green**  
 23 **sheet in front of that says conserve residential**  
 24 **e-mail, and the following page looks like an e-mail**  
 25 **that was sent to residential customers.**

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1 A. Yeah, Christopher Gagliano is over our  
 2 customer experience team. So I'm sure this document  
 3 went to -- went to all -- I would say to all  
 4 customers. I'm not sure if it went to all customers  
 5 or just the residential customers.  
 6 **Q. Okay. Let's go in the other volume**  
 7 **to -- let's --**  
 8 A. In the first book?  
 9 **Q. Yeah. Let's look at -- let's see. 1C.**  
 10 A. Okay.  
 11 **Q. Okay. And I'm looking at the first**  
 12 **page at the bottom under February 15th. That's the**  
 13 **date that you made the Atmos transaction, correct?**  
 14 A. That -- yeah, that's the date that was  
 15 on the confirmation.  
 16 **Q. Okay. Did that transaction, was it**  
 17 **agreed to at a different time than the 15th?**  
 18 A. It would have been -- it would have  
 19 been right around that time. I just recall that the  
 20 confirmation itself and the storage transfer  
 21 happened on the 15th, and just given the urgency of  
 22 the transaction it would have been right around that  
 23 time.  
 24 **Q. Sure. My understanding was that gas**  
 25 **was being traded on day 12 for day 13 to 16, but**

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1 A. I'm sorry, which page?  
 2 **Q. The second page under tab C. Yep. So**  
 3 **the next page, and it's that first transaction,**  
 4 **1008929.**  
 5 A. Spire Missouri transaction --  
 6 **Q. Correct.**  
 7 A. -- on the GSC schedule? Yes.  
 8 **Q. How did you describe that 14.925?**  
 9 A. That was -- that was a sale that Spire  
 10 Missouri -- the Spire Missouri utility on the east  
 11 side of the state sold gas to Spire Missouri utility  
 12 on the west side of the state.  
 13 **Q. And you suggested that number was**  
 14 **potentially the cost that you had initially paid for**  
 15 **that?**  
 16 A. Not that we initially paid. It was --  
 17 it was the cost that it took for us to replace that  
 18 on the east side of the state.  
 19 **Q. Okay. Is the \$200 with Atmos, is that**  
 20 **a cost-based rate?**  
 21 A. It is not.  
 22 **Q. Can you tell me what went into that**  
 23 **rate?**  
 24 A. It was just a negotiated price at the  
 25 time based on -- we had factors like the \$300 that

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1 **that sometimes you could actually do the transaction**  
 2 **on the 16th and it would be retroactive. So do you**  
 3 **know if this occurred after the 15th or before the**  
 4 **15th?**  
 5 A. The actual storage transfer?  
 6 **Q. When the transaction was agreed to.**  
 7 A. Like I say, I recall reviewing the  
 8 confirmation where it took place on the 15th. Yeah,  
 9 whether there was verbal agreement on the 14th I  
 10 would have to check with Justin.  
 11 **Q. If you look at -- so I think you said**  
 12 **that the price was \$200?**  
 13 A. That's correct.  
 14 **Q. And the price on February 15th you**  
 15 **would agree is in the 330 ranges on Exhibit 2,**  
 16 **tab 1C?**  
 17 A. That was -- that was the prices that  
 18 were posted for that weekend, that's correct.  
 19 **Q. Okay. And if we flip to the next page,**  
 20 **I will not testify about what you said. I will**  
 21 **testify about what I thought you said. And that --**  
 22 **or what I will ask you about -- let's see if I can**  
 23 **do this right. Okay.**  
 24 I believe you previously said that the  
 25 **14.925 in the first line, the unit price --**

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1 were in play, you know, not knowing -- there wasn't  
 2 a crystal ball as to where -- where that was going  
 3 to trade later in the month. So it was agreed-upon  
 4 price that both parties felt was fair to each other  
 5 given the circumstances.  
 6 **Q. Okay. If we flip to 1M, Exhibit 2,**  
 7 **tab 1M. Are you familiar with this spreadsheet?**  
 8 A. I am.  
 9 **Q. Okay. How did Spire calculate the cost**  
 10 **of gas sourced by Spire to make up for the**  
 11 **underdeliveries?**  
 12 A. We shared --  
 13 MR. GORE: I'm going to object, vague.  
 14 You can answer.  
 15 A. Yeah. I guess just a caveat, these  
 16 were -- these were costs that we put together I  
 17 think just -- just so people understood what our  
 18 cover costs were.  
 19 **Q. (By Ms. Bell) Okay.**  
 20 A. The details of the supply that was  
 21 picked is depicted on the GSC schedules that you're  
 22 referring to under 1C.  
 23 **Q. Okay.**  
 24 A. So -- yeah, we basically assign the  
 25 highest price gas on each day that we had bought to

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1 the -- to the cover cost.

2 **Q. So if I'm looking at cover cost, you**

3 **assigned the highest price gas in that column?**

4 A. Yeah, we picked the highest price gas

5 on each day and assigned that to the transaction.

6 **Q. Okay. And why did you do that?**

7 A. It was generally in the Southern Star

8 index price, which was the majority of the gas we

9 bought was around the Southern Star index. You

10 know, from what we understand from the marketers the

11 supply that was trying to be purchased that wasn't

12 physically flowing was also bought at the Southern

13 Star price. So we thought from a settlement

14 perspective that this was a fair cover number to

15 pass on to the marketers.

16 **Q. If -- in the cold weather workshop you**

17 **had -- Spire had represented that it plans its**

18 **sources of supply for firm customers and with**

19 **respect to that 20 to 27 percent of that floated**

20 **with the daily market. Do you recall that?**

21 A. Uh-huh.

22 **Q. Was that Spire's plan for February of**

23 **2021 as of the first of February?**

24 A. We typically always had some -- some

25 spot purchases, that's correct.

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1 **Q. Okay. So if you intended to purchase**

2 **20 to 27 percent of your February gas, February 2021**

3 **gas at current spot prices, then did you -- didn't**

4 **you always expect that price -- or the cost to --**

5 **sorry.**

6 **Didn't you always expect the costs of**

7 **the gas to reflect the daily spot prices?**

8 MR. GORE: I'm going to object,

9 foundation, improper hypothetical. You can answer.

10 A. Yeah, so our -- I mean, kind of high

11 level we -- we kept our costs tied to Southern Star

12 since that's where marketer deliveries were being

13 made. The fact that we had alternative transport

14 options that we contract for to provide gas for our

15 firm customers, we didn't feel like it was fair to

16 the firm customers to take other alternatives that

17 the company contracts for and assign those costs to

18 the marketer shortfall since the shortfall was --

19 those shortfalls were taking place with

20 nondeliveries on the Southern Star system. So

21 that's why we restricted those purchases to Southern

22 Star at roughly the daily price.

23 **Q. (By Ms. Bell) Did your firm customers**

24 **use more gas in February 2021 than you had planned**

25 **for and sourced at the first of February?**

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1 A. You know, I have not went back to look

2 to see what our overall supply level was versus

3 normal.

4 **Q. Was all of the gas you had contracted**

5 **for delivery in February as of the first of the**

6 **month delivered as expected?**

7 A. Yeah, we had very little issues around

8 our first of the month supply flowing.

9 **Q. What about throughout the month?**

10 A. Yeah, I mean, I think our -- our

11 suppliers performed very well throughout the course

12 of February.

13 **Q. Was any -- any supply not delivered?**

14 A. I'm sure there's instances where small

15 volumes were -- were cut. I'd have to go through on

16 a transaction-by-transaction basis. I mean, given

17 the fact that the first of the month gas never comes

18 into play here, that's not something that I focused

19 on for this deposition.

20 **Q. Okay. And you mentioned storage. When**

21 **we're looking at Exhibit 2M -- 2, 1M, this cover**

22 **cost spreadsheet --**

23 A. Okay.

24 **Q. -- was the fact that you had so much**

25 **storage on hand factored into your cover cost?**

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1 A. It was not. That's not a service that

2 the transport customers pay for. So we -- we gave

3 the benefit of the storage gas -- assigned the

4 benefit of the storage gas to the firm customers

5 that pay for that service.

6 **Q. And who are those customers?**

7 A. It's everybody but the transport

8 customers. They rely on third parties.

9 **Q. Does Atmos pay you for storage costs?**

10 A. They paid us for storage inventory in

11 that transaction.

12 **Q. But previous to that --**

13 MS. BAIRD: I apologize for

14 interrupting. I can't hear the witness at all.

15 Would you mind speaking up? I know everybody is

16 getting tired, but --

17 THE WITNESS: Sorry about that.

18 MS. BAIRD: Thank you so much.

19 THE WITNESS: Uh-huh.

20 **Q. (By Ms. Bell) I'll clarify. So what**

21 **you're saying is residential customers as part of**

22 **their tariff, a storage cost is built into their**

23 **rates; is that correct?**

24 A. We -- yeah, we recoup the cost of our

25 storage contracts from our firm customers.

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1 **Q. Okay. Did -- does Atmos pay anything**  
 2 **for storage?**  
 3 MR. GORE: I'm going to object, beyond  
 4 the scope of the 30(b)(6) notice. He's a corporate  
 5 representative on behalf of Spire Missouri.  
 6 A. You're asking if they pay -- if they  
 7 pay Spire Missouri anything for storage?  
 8 **Q. (By Ms. Bell) Correct.**  
 9 A. They have a storage contract on  
 10 Southern Star. The only transaction between Spire  
 11 Missouri and Atmos was the storage transfer that we  
 12 did.  
 13 (Court reporter interruption.)  
 14 A. The storage transfer that we did in  
 15 February.  
 16 **Q. (By Ms. Bell) Okay. Was gas purchased**  
 17 **by Spire after February 1st for use during the month**  
 18 **of February intended for and delivered to Spire's**  
 19 **firm customers?**  
 20 MR. GORE: I'm going to object, vague.  
 21 Vague as to time period.  
 22 A. Yeah, what time frame are you referring  
 23 to?  
 24 **Q. In February 2021.**  
 25 A. The whole month of February or you're

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1 **costs, why did you not use a weighted average cost**  
 2 **for all incremental gas sources?**  
 3 MR. GORE: I'm going to object to form  
 4 and just state for the record that this witness --  
 5 when you say you, you're referring to Spire,  
 6 correct?  
 7 MS. BELL: Correct.  
 8 MR. GORE: I assume.  
 9 MS. BELL: Thank you.  
 10 A. Yeah, we were -- I mean, we were --  
 11 Justin and his team were making incremental  
 12 purchases to cover -- to cover the marketers'  
 13 shortfalls, and like I had said, we -- if we had  
 14 ways -- if we had tools in our portfolio to manage  
 15 the cost of those spot purchases during the winter  
 16 by holding capacities on Tallgrass that the firm  
 17 customers pay for, we did not feel like the  
 18 marketers should get the benefit of those other  
 19 assets that the customers were paying for.  
 20 **Q. (By Ms. Bell) Okay. I'm going to go**  
 21 **back to something that we were talking about before.**  
 22 **As of February 1 you intended firm customers to pay**  
 23 **spot prices; is that right?**  
 24 MR. GORE: I'm going to object, vague.  
 25 You can answer. Lack of foundation.

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1 referring to a specific day?  
 2 **Q. The whole month of February.**  
 3 A. I don't know that I follow your  
 4 question. I apologize.  
 5 **Q. I think you said that you applied the**  
 6 **highest price incremental cost to the gas marketer's**  
 7 **cover cost. Were you purchasing gas that was then**  
 8 **not going to the gas marketers, but instead going to**  
 9 **Spire's own firm customers or do you know?**  
 10 MR. GORE: I'm going to object,  
 11 foundation, compound.  
 12 A. I think I've indicated all of the --  
 13 all of the transaction on these sheet appear to be  
 14 spot purchases that were made during -- during the  
 15 OFO period.  
 16 **Q. (By Ms. Bell) Okay. What percentage**  
 17 **of Spire's incremental sources of gas in**  
 18 **February 2021 were from purchases versus from**  
 19 **storage?**  
 20 A. I don't have that number off the top of  
 21 my head.  
 22 **Q. Who would have that number?**  
 23 A. Justin Powers and his team could  
 24 calculate that number I'm sure.  
 25 **Q. Why did you -- when calculating cover**

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1 A. There is typically a portion of the  
 2 portfolio that's based on daily prices, correct.  
 3 **Q. (By Ms. Bell) Okay. And then after**  
 4 **February 1st, 2021, did you transact to purchase gas**  
 5 **during February that was delivered to firm**  
 6 **customers?**  
 7 A. I think in response to the -- your  
 8 prior question, I said these were all spot purchases  
 9 that were made by Spire during -- during the OFO  
 10 period.  
 11 MR. GORE: Could you specify when  
 12 you're saying these what you're referring to?  
 13 A. The ones that are shown on the GSC  
 14 schedule on tab 1C, starting on page three.  
 15 **Q. (By Ms. Bell) Okay. And with respect**  
 16 **to the same purchases, you can't be sure whether**  
 17 **those -- that gas was delivered to Clearwater's**  
 18 **customers or to your own firm customers, correct?**  
 19 A. We do not assign physical molecules.  
 20 **Q. Okay.**  
 21 A. It's -- it's our position that -- that  
 22 incremental purchases that we had to make to cover  
 23 the marketers are what's depicted in these schedules  
 24 that we provided.  
 25 **Q. I'm trying to reconcile those two**

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1 statements. So you said you don't assign molecules,  
 2 but that you have assigned these purchases to the  
 3 gas marketers. Can you help me with that?  
 4 A. Yeah, the first question was you asked  
 5 me if I could tell whether these molecules  
 6 physically flow to the marketers' customers that  
 7 used our supply. I said I can't track the physical  
 8 molecules, but the actual purchases, we feel these  
 9 are reflective of the costs that we incurred to  
 10 cover the marketers' shortfall.  
 11 **Q. The -- the -- let's see. Spire**  
 12 **indicated in its letter to Clearwater that it would**  
 13 **need to bill the OFO penalties directly to each of**  
 14 **the transportation customers and stated they**  
 15 **ultimately retain financial responsibility under the**  
 16 **tariff. Did that actually happen?**  
 17 A. Let me make sure I understand the --  
 18 you know, which --  
 19 MR. APLINGTON: Exhibit 11.  
 20 THE WITNESS: Exhibit -- oh. Sorry, my  
 21 exhibits are all out of order.  
 22 MS. BELL: And you can mark -- I think  
 23 it's on here. Yeah, you can mark this one. I think  
 24 we're on 15. And it's in the letter attached to our  
 25 complaint.

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1 THE WITNESS: Okay.  
 2 MS. BELL: For those following along,  
 3 that's my Exhibit 3C.  
 4 MR. GORE: Do you have any paper  
 5 copies?  
 6 MS. BELL: Yeah, I do. This one has  
 7 some writing on it. Sorry.  
 8 MR. GORE: Thanks.  
 9 (WHEREIN, Exhibit 15, Clearwater  
 10 complaint, was marked for identification by the  
 11 Court Reporter.)  
 12 **Q. (By Ms. Bell) So if you flip to the**  
 13 **exhibit that's attached to the complaint and you**  
 14 **look in that last paragraph, it says (quote as**  
 15 **read):**  
 16 **Spire will need to bill these OFO**  
 17 **penalties directly to each of your**  
 18 **transportation customers.**  
 19 **Do you see that?**  
 20 A. I do.  
 21 **Q. Okay. And you were later notified by**  
 22 **Clearwater that they disputed the penalties,**  
 23 **correct?**  
 24 A. Yes, my understanding that Clearwater  
 25 disputed the penalties.

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1 **Q. And then at some time after that you**  
 2 **had to decide -- Spire decided whether to bill the**  
 3 **OFO penalties directly to the customers as it stated**  
 4 **in the letter or to Clearwater. Can you tell me**  
 5 **about those conversations, how that decision was**  
 6 **made?**  
 7 A. That -- that was not a decision that I  
 8 made. I think -- I don't have a copy at my  
 9 fingertips of our response to -- to Clearwater on  
 10 the deposition, but I think from reviewing the  
 11 document, we addressed that.  
 12 I think legal has taken the position at  
 13 this time that even though that comment was made in  
 14 this letter to Clearwater that we're currently  
 15 continuing to seek these cover costs or OFO penalty  
 16 costs from the marketers and we're not billing  
 17 transportation customers at this time.  
 18 **Q. Okay. Is it -- is it your position**  
 19 **that end users could have conserved to mitigate the**  
 20 **issues in this case?**  
 21 MR. GORE: Objection to form, vague.  
 22 A. Purely -- purely a mathematical  
 23 computation -- computation where if your nominations  
 24 had stayed what they were and your usage was less,  
 25 mathematically that would have resulted in a lower

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1 OFO penalty.  
 2 **Q. (By Ms. Bell) So what are you**  
 3 **suggesting that Clearwater could have done**  
 4 **differently?**  
 5 MR. GORE: Objection, beyond the scope  
 6 of this 30(b)(6) -- or I'm sorry, corporate  
 7 representative notice. This witness isn't here to  
 8 testify on behalf of Clearwater. Can only testify  
 9 as to the things that are within his knowledge as  
 10 the corporate representative for Spire Missouri and  
 11 that's all he's qualified to testify to.  
 12 A. Like I say, back to the simple math  
 13 where if Clearwater had delivered enough volume to  
 14 cover the customers' usage, which is what the  
 15 obligation that the marketers have, the OFO penalty  
 16 wouldn't be an issue.  
 17 **Q. (By Ms. Bell) You would agree that**  
 18 **Clearwater was nominating and attempting to purchase**  
 19 **gas during the OFO?**  
 20 MR. GORE: Object, vague.  
 21 A. Clearwater's -- Clearwater's volumes  
 22 never went to zero, so some volume was being  
 23 nominated. It just wasn't at the level to cover the  
 24 usage of the customers that they sold the firm  
 25 service to.

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1 **Q. (By Ms. Bell) Okay.**  
 2 A. Like I say, the simple math of the  
 3 nominations versus usage is what calculates the OFO  
 4 penalty.  
 5 **Q. Early in the OFO --**  
 6 A. Excuse me.  
 7 **Q. -- there was a transaction between**  
 8 **Spire East and West, correct? Is that right, yeah.**  
 9 **East. You had said that Spire East had provided gas**  
 10 **to Spire West.**  
 11 MR. GORE: I'm going to object to the  
 12 characterization of this early in the OFO.  
 13 A. You refer to transaction -- on  
 14 schedule 1C, page three referred to transaction  
 15 1008929.  
 16 **Q. (By Ms. Bell) Yes.**  
 17 A. That's correct. That was a sale from  
 18 Spire Missouri East to Spire Missouri West.  
 19 **Q. Was that from Spire Missouri East's**  
 20 **storage?**  
 21 A. It was not.  
 22 **Q. Okay. Were there any other Spire**  
 23 **Missouri East transactions during the OFO to Spire**  
 24 **Missouri West?**  
 25 A. If they are, they would be depicted on

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1 this schedule.  
 2 **Q. Do you know -- do you know if there**  
 3 **were conversations about additional purchases from**  
 4 **Spire Missouri East during the OFO?**  
 5 A. I'm not aware of any other transactions  
 6 other than ones, excuse me, that are -- that show up  
 7 on this GSC schedule.  
 8 **Q. Are you aware if Spire Missouri East**  
 9 **had available supply to complete additional**  
 10 **transactions with Spire Missouri West during the**  
 11 **OFO?**  
 12 A. Yeah, I mean, that's -- that's a -- too  
 13 vague a question given the complexity of the two  
 14 portfolios that I wouldn't have an answer for that  
 15 right now.  
 16 **Q. How did transaction 1008929 come about?**  
 17 A. Justin -- Justin oversees the east and  
 18 the west. In recognition of all of the supply  
 19 challenges that West was having he had some split  
 20 connected supply that -- that West -- that helped  
 21 West's supply situation, and from conversations  
 22 through him he opted to -- to sell that supply to --  
 23 from MO East to West because he was able to replace  
 24 that with another purchase on the east side of our  
 25 system.

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1 **Q. So he would -- Justin would know**  
 2 **whether there's additional supply in the East market**  
 3 **that could have been purchased by West?**  
 4 A. He -- he would -- if anybody had the  
 5 ability to do that, it would be Justin and his team.  
 6 **Q. Let's look at Exhibit 2, tab 4B.**  
 7 A. You said 4B?  
 8 **Q. Yeah, should be the transcript.**  
 9 A. Okay.  
 10 **Q. Okay. If we turn to page 11.**  
 11 A. Okay.  
 12 **Q. Okay. Spire said -- and I think who**  
 13 **was speaking here, Mr. Weitzel, on behalf of Spire?**  
 14 **Who presented at the cold weather docket?**  
 15 A. Yeah, there were -- I'm just verifying.  
 16 There was multiple utilities that were ...  
 17 MR. HEALY: Mr. Weitzel.  
 18 **Q. (By Ms. Bell) So on page 11 it says**  
 19 **(quote as read):**  
 20 **So I think these aren't once in a**  
 21 **lifetime events. These are once in**  
 22 **every five to seven year events.**  
 23 **Would you agree with that?**  
 24 MR. GORE: Take a look at the -- enough  
 25 to get the context of what she's referencing there.

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1 A. Are you saying do I agree that it's a  
 2 once in every five to seven year event? Is that the  
 3 question?  
 4 **Q. (By Ms. Bell) Yes.**  
 5 A. Not to the magnitude that we  
 6 experienced in Winter Storm Uri.  
 7 **Q. And why do you say that?**  
 8 A. It was a perfect storm of cold -- cold  
 9 weather, late into February, some of the coldest  
 10 late temperatures we've ever seen, combined with the  
 11 widespread cold that -- the other big thing in that  
 12 -- he probably mentioned in this document was  
 13 that the issues that the electric -- electric --  
 14 electric utilities were having with their renewable  
 15 generation.  
 16 The windmills were all down. So at  
 17 times there was three or four percent of the -- of  
 18 the wind generation available was all that was  
 19 flowing. So it was the perfect storm of late  
 20 season, cold temperatures, production freeze-offs,  
 21 and then the power generation was off as well.  
 22 So they were competing out in the  
 23 market, competing for molecules against the  
 24 utilities. So I don't see this -- what we  
 25 experienced in -- in Winter Storm Uri as a once in



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1 every five year -- five to seven. You may have a  
 2 polar vortex event, but just not to the extent that  
 3 we experienced this year.  
 4 **Q. Okay. So -- and I believe when he was**  
 5 **asked about this he was referencing the five to**  
 6 **seven years about a previous polar vortex. Do you**  
 7 **recall what year that was?**  
 8 MR. GORE: I'm going to object, vague,  
 9 and take a look at the testimony before you  
 10 speculate.  
 11 A. Yeah, I'm not sure specifically which  
 12 event he was referencing.  
 13 **Q. (By Ms. Bell) You said you -- how long**  
 14 **have you been in this industry?**  
 15 A. I've been with Spire for 30 years.  
 16 **Q. And so before Winter Storm Uri have you**  
 17 **ever experienced anything of the magnitude of this**  
 18 **event?**  
 19 A. A magnitude of this one, I would say  
 20 no.  
 21 **Q. If you flip to page 19, Mr. Weitzel**  
 22 **testified on lines 23 to 25, I think it's a**  
 23 **little -- I will recharacterize. I don't think he**  
 24 **was testifying, but presented. (Quote as read):**  
 25 **I think it's a little too early right**

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1 **now for us to know if we're going to**  
 2 **get billed penalties from the gas**  
 3 **pipelines.**  
 4 **You know that answer today, right?**  
 5 A. Yeah, are you -- I assume you're just  
 6 referencing Southern Star?  
 7 (Court reporter interruption.)  
 8 **Q. (By Ms. Bell) Yes. We'll start there.**  
 9 **Are you going to be billed penalties, and if so, how**  
 10 **much from Southern Star?**  
 11 A. Spire Missouri, we -- we ultimately did  
 12 not get billed. Spire Missouri was in compliance  
 13 during the OFO so did not get billed penalties.  
 14 **Q. Did you get billed penalties from**  
 15 **anyone else?**  
 16 A. Yeah, I would have to -- I would have  
 17 to check with Justin to see. The ones that we had  
 18 discussions around were the Southern Star.  
 19 **Q. Okay. I'd like to go back to exhibit I**  
 20 **believe 13, which is the tariff.**  
 21 A. Oh, Exhibit 13?  
 22 **Q. Uh-huh.**  
 23 A. Okay.  
 24 **Q. Was there -- if we look at -- let's**  
 25 **see. I'm on sheet 16.9, and I'm looking at the TRPR**

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1 **provisions specifically under VB.**  
 2 A. Under which number?  
 3 **Q. B2.**  
 4 MR. GORE: Can you give me a page?  
 5 Sheet number?  
 6 MS. BELL: Sheet number 16.9.  
 7 MS. MCLAUGHLIN: It's page 71.  
 8 **Q. (By Ms. Bell) Do you believe that**  
 9 **Spire should have curtailed transportation customer**  
 10 **receipts to retain the adjusted nomination volume?**  
 11 MR. GORE: I'm going to object,  
 12 foundation, improper hypothetical, beyond the scope  
 13 of notice.  
 14 A. I'm sorry. Could you rephrase the  
 15 question again?  
 16 **Q. (By Ms. Bell) Do you believe it should**  
 17 **have curtailed transportation customers under these**  
 18 **provisions to retain adjusted nomination volumes?**  
 19 MR. GORE: I'm going to object, lack of  
 20 foundation, beyond the scope of the notice. And are  
 21 you referencing a particular provision of the  
 22 tariff?  
 23 MS. BELL: I'm looking at B2, C, D, and  
 24 F.  
 25 MR. GORE: I'm also going to object,

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1 improper hypothetical.  
 2 A. B doesn't apply because we weren't in  
 3 an emergency. Our position has been that to the  
 4 extent we can find the molecules to cover the  
 5 shortfall then we didn't physically curtail.  
 6 Had we got to the point where we  
 7 couldn't maintain the integrity of our system, then  
 8 we would have had to physically curtail transport  
 9 customers, but we never reached that point.  
 10 **Q. (By Ms. Bell) If you had curtailed**  
 11 **would there have been additional supply for**  
 12 **Clearwater?**  
 13 MR. GORE: I'm going to object, lack of  
 14 foundation, improper hypothetical, compound.  
 15 A. Who are you asking who I curtail?  
 16 (Court reporter interruption.)  
 17 A. Who are you asking who I curtail?  
 18 **Q. (By Ms. Bell) Anybody but Clearwater.**  
 19 **If you would have curtailed anyone else, wouldn't**  
 20 **there not have been additional supply on the system**  
 21 **for Clearwater?**  
 22 MR. GORE: I'm going to object,  
 23 improper hypothetical, compound, vague.  
 24 A. Clearwater's nomination still would not  
 25 have equaled their usage unless Clearwater's

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1 customers were the ones that curtailed, so it  
 2 wouldn't have had any impact on Clearwater.  
 3 MS. BELL: If we can take --  
 4 MS. BAIRD: I'm so sorry, Stephanie.  
 5 I'm having a huge amount of trouble hearing the  
 6 witness again.  
 7 MS. BELL: Can you repeat your last  
 8 answer?  
 9 MR. GORE: Maybe we can just have it  
 10 read back.  
 11 COURT REPORTER: Answer: Clearwater's  
 12 nomination still would not have equaled their usage  
 13 unless Clearwater's customers were the ones that  
 14 curtailed, so it wouldn't have had any impact on  
 15 Clearwater.  
 16 MS. BELL: Can we just take a  
 17 five-minute break?  
 18 COURT REPORTER: Ryan, going off the  
 19 record.  
 20 VIDEOGRAPHER: Off the record,  
 21 6:50 p.m.  
 22 (WHEREIN, a recess was taken.)  
 23 VIDEOGRAPHER: On the record, 6:53 p.m.  
 24 **Q. (By Ms. Bell) Okay. Can you say more**  
 25 **about why Spire chose not to curtail any of the**

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1 relationship is with your customers.  
 2 **Q. Okay. Does Spire have the authority to**  
 3 **curtail end users?**  
 4 A. I think to the extent there's a system  
 5 integrity issue we could -- we could isolate  
 6 customers to prevent our firm customers going  
 7 without service, but otherwise I don't think there's  
 8 any -- anything that would give us the right to  
 9 physically curtail them.  
 10 **Q. So what would give you the right?**  
 11 A. If the -- if the integrity of our  
 12 system was in jeopardy, meaning that if we  
 13 weren't -- if we weren't able to physically cover  
 14 the marketer shortfall, then I think we'd have the  
 15 ability to curtail.  
 16 **Q. During the OFO period, did you have a**  
 17 **conversation about potentially curtailing the**  
 18 **marketers?**  
 19 A. We did in Southwest Missouri when we  
 20 were fearful of -- for the integrity of our system.  
 21 I think that's the -- all the communications that  
 22 you saw go out around -- around the issues that we  
 23 had in Southwest Missouri.  
 24 **Q. And I think on the tariff that you**  
 25 **were -- we were looking at, the same place under F,**

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1 **marketing customers?**  
 2 MR. GORE: I'm going to object, vague,  
 3 lack of foundation.  
 4 A. Yeah, to the extent we were able to  
 5 source the molecules to cover the shortfall we did  
 6 not curtail the customers, and we were able to do  
 7 that every day so we didn't curtail.  
 8 **Q. (By Ms. Bell) Okay. If you would have**  
 9 **curtailed to the nominations, would that not have**  
 10 **prevented the OFO penalties?**  
 11 MR. GORE: I'm going to object,  
 12 improper hypothetical, foundation. You can answer.  
 13 Also vague.  
 14 A. Like I say, I keep going back to the  
 15 simple math to where if -- if nominations -- if the  
 16 nominations matched usage, there wouldn't be an OFO  
 17 penalty, but given -- given that we were able to  
 18 cover the volumes, we did not -- we did not  
 19 physically curtail any customers because we were  
 20 able to -- like I say, we were able to cover the  
 21 purchases and still maintain the integrity of our  
 22 system.  
 23 **Q. (By Ms. Bell) Okay. Is Clearwater**  
 24 **able to physically curtail end users?**  
 25 A. I'm not sure what your contractual

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1 **you're allowed to curtail if the gas isn't**  
 2 **delivered, not just if the system integrity is at**  
 3 **issue?**  
 4 A. What are you referring to?  
 5 **Q. If you go back to 16.9.**  
 6 MR. GORE: Which exhibit are we looking  
 7 at?  
 8 MS. BELL: I want to -- I think we have  
 9 one other question down here, and I want to give him  
 10 time for that before we hit our seven o'clock, and  
 11 this is my last question.  
 12 MR. GORE: I was just saying what  
 13 exhibit are we on?  
 14 MS. BELL: We're on 13, back on  
 15 sheet 16.  
 16 MR. GORE: 16.9?  
 17 MS. BELL: Correct.  
 18 A. And which -- which -- which item on  
 19 16.9?  
 20 **Q. (By Ms. Bell) Well, F says that they**  
 21 **shall not be required to curtail as long it's**  
 22 **delivered and the system capacity is adequate to**  
 23 **make deliveries.**  
 24 A. So what's the question?  
 25 **Q. Is Spire authorized to curtail if the**

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1 **gas is not delivered?**  
 2 MR. GORE: I'm going to object, asked  
 3 and answered, also calls for a legal conclusion.  
 4 You can answer.  
 5 A. To me, when I read this, it's not  
 6 addressing the issue of if the marketer's not  
 7 delivering. It's basically saying to the extent the  
 8 marketer is delivering, we have the requirement to  
 9 deliver that gas to the end user. To me it's not  
 10 addressing an issue of when the marketer is not  
 11 providing supply.  
 12 MS. BELL: Okay. No further questions.  
 13 FURTHER EXAMINATION  
 14 QUESTIONS BY MR. BAUER:  
 15 **Q. Hello again.**  
 16 A. Hey there.  
 17 **Q. From whom did Spire collect documents**  
 18 **when Spire was responding to the Symmetry data**  
 19 **requests? I missed that question.**  
 20 A. That -- that was a process that inside  
 21 and outside counsel worked the -- the ones that --  
 22 the documents that I reviewed, and the individuals  
 23 that I spoke to about the collection of those  
 24 documents were the ones that I referred, which was  
 25 Patty Reardon, Bob McKee, Scott Weitzel. Was there

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1 anything else. I'm asking if there's anything else  
 2 before I make my decision about whether I have any  
 3 more questions.  
 4 MR. BAUER: Oh, okay. All right.  
 5 Yeah. Well, there is one thing then. While I  
 6 appreciate you've been sitting in the chair for ten  
 7 hours, there are a number of topics in which  
 8 Mr. Godat said I need to talk to somebody else, I  
 9 don't know the answer.  
 10 And so I just -- for example,  
 11 topics 2A, 2B, 2F, 2K, 3, 6, 7, 8, and all those  
 12 times he said that he'd have to talk to Mr. Powers  
 13 to get the answer, and we just had another one with  
 14 respect to topic one regarding the documents. So  
 15 I'm not agreeing to close the deposition. I'm --  
 16 MR. GORE: Okay.  
 17 MR. BAUER: I don't want to have a  
 18 fight with you, but I'm just not agreeing at this  
 19 point.  
 20 MR. GORE: No, that's fine. As to  
 21 those -- since we're on that deal, as to that topic,  
 22 I -- well, as to topic one, we stated what our  
 23 objections were in writing and explained what we  
 24 would produce a witness to cover.  
 25 I will just say that to me in general

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1 any others? Justin Powers.  
 2 **Q. Did Spire collect documents from anyone**  
 3 **else other than those persons?**  
 4 A. Those are the individuals that I had  
 5 the conversations with about the individual  
 6 documents that I collected. I couldn't say that  
 7 that is the full extent of anybody that was asked a  
 8 question about the collection of the documents.  
 9 **Q. And whom would I have to ask to get the**  
 10 **answer to my question?**  
 11 A. I would say our inside, outside  
 12 counsel.  
 13 MR. BAUER: Okay. And I'll save my  
 14 comment till everyone's done. Okay. Thank you.  
 15 THE WITNESS: Uh-huh.  
 16 MR. GORE: Are we -- you guys are done?  
 17 No more -- nothing else from complainants?  
 18 MS. BELL: I don't know about  
 19 Mr. Howell. Nothing else for me.  
 20 MR. GORE: He should be done. It's  
 21 seven o'clock.  
 22 MR. BAUER: No, not closing the  
 23 deposition. I thought you were going to ask  
 24 questions.  
 25 MR. GORE: No, I'm asking if you have

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1 topic one was wholly improper in that those are  
 2 things that are typically worked out between counsel  
 3 in terms of narrowing what the documents are to be  
 4 discovered and what additional collection needs to  
 5 take place and then it's sorted out in a motion to  
 6 compel. So I think it's improper to try to inject  
 7 that into a 30(b)(6) deposition. So that's on topic  
 8 one.  
 9 On topic two, I do believe that the  
 10 witness testified on each topic as to the factual  
 11 basis for the statements that were made. I think  
 12 the ones where he was saying you would have to ask  
 13 other people I think is when you were getting far  
 14 afield and getting into the inferences that were  
 15 being drawn by the author of the letter that you  
 16 were questioning the witness about.  
 17 But I would stand by the fact that in  
 18 terms of the factual basis for each of the  
 19 assertions that you questioned about, he gave  
 20 testimony on that that represented the corporation's  
 21 knowledge of the factual basis for those statements  
 22 as the corporate rep understood them.  
 23 He was not going to try to step inside  
 24 of Mr. Aplington and testify as to everything  
 25 Mr. Aplington meant when he drafted the letter, and

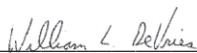
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1 I don't think that would be proper 30(b)(6)  
 2 corporate representative testimony. I don't think  
 3 we're required to do that.  
 4 MR. BAUER: Okay. Well, my comment  
 5 stands.  
 6 MR. GORE: And with that being said, we  
 7 don't have any questions. So I understand  
 8 Mr. Bauer's point about not saying that this  
 9 30(b)(6) -- or this corporate representative  
 10 deposition is closed, but we don't have any  
 11 questions to ask today. So I guess we're done for  
 12 now.  
 13 VIDEOGRAPHER: Off the record,  
 14 7:04 p.m.  
 15 (WHEREIN, the deposition was concluded  
 16 at 7:04 p.m.)  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 Alaris Litigation Services  
 2 711 North Eleventh Street  
 3 St. Louis, Missouri 63101  
 4 (314) 644-2191  
 5  
 6 December 14, 2021  
 7 Mr. Gabriel Gore  
 8 Dowd Bennett LLP  
 9 7733 Forsyth Blvd., 19th Floor  
 10 St. Louis, Missouri 63105  
 11 (314) 889-7300  
 12 ggore@dowdclaw.net  
 13  
 14 In Re: Constellation NewEnergy-Gas Division, LLC;  
 15 Symmetry Energy Solutions, LLC;  
 16 and Clearwater Enterprises, LLC, Complainants, vs.  
 17 Spire Missouri, Inc. and its operating unit Spire  
 18 Missouri West, Respondents  
 19  
 20 Dear Mr. Gore:  
 21  
 22 Please find enclosed your copy of the deposition of  
 23 GEORGE E. GODAT taken on December 13, 2021 in the  
 24 above-referenced case. Also enclosed is the  
 25 original signature page and errata sheets.  
 Please have the witness read your copy of the  
 transcript, indicate any changes and/or corrections  
 desired on the errata sheets, and sign the signature  
 page before a notary public.  
 Please return the errata sheets and notarized  
 signature page to Alaris Litigation Services, 711  
 North Eleventh Street, St. Louis, Missouri 63101 for  
 filing prior to trial date.  
 Thank you for your attention to this matter.  
 Sincerely,  
 William L. DeVries, CCR(MO)/RDR/CRR  
 Enclosures

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1 CERTIFICATE OF REPORTER  
 2  
 3 I, William L. DeVries, a Certified  
 4 Court Reporter (MO), Registered Diplomat Reporter,  
 5 and a Certified Realtime Reporter, do hereby certify  
 6 that the witness whose testimony appears in the  
 7 foregoing deposition was duly sworn by me pursuant  
 8 to Section 492.010 RSMo; that the testimony of said  
 9 witness was taken by me to the best of my ability  
 10 and thereafter reduced to typewriting under my  
 11 direction; that I am neither counsel for, related  
 12 to, nor employed by any of the parties to the action  
 13 in which this deposition was taken, and further that  
 14 I am not a relative or employee of any attorney or  
 15 counsel employed by the parties thereto, nor  
 16 financially or otherwise interested in the outcome  
 17 of the action.  
 18  
 19  
 20   
 21 Certified Court Reporter  
 22 within and for the State of Missouri  
 23  
 24  
 25

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1 WITNESS ERRATA SHEET  
 2 Witness Name: GEORGE E. GODAT  
 3 Case Name: Constellation NewEnergy-Gas Division,  
 4 LLC; Symmetry Energy Solutions, LLC;  
 5 and Clearwater Enterprises, LLC, Complainants, vs.  
 6 Spire Missouri, Inc. and its operating unit Spire  
 7 Missouri West, Respondents  
 8 Date Taken: December 13, 2021  
 9  
 10 Page # \_\_\_\_\_ Line # \_\_\_\_\_  
 11 Should Read: \_\_\_\_\_  
 12 Reason for Change: \_\_\_\_\_  
 13  
 14 Page # \_\_\_\_\_ Line # \_\_\_\_\_  
 15 Should Read: \_\_\_\_\_  
 16 Reason for Change: \_\_\_\_\_  
 17  
 18 Page # \_\_\_\_\_ Line # \_\_\_\_\_  
 19 Should Read: \_\_\_\_\_  
 20 Reason for Change: \_\_\_\_\_  
 21  
 22 Page # \_\_\_\_\_ Line # \_\_\_\_\_  
 23 Should Read: \_\_\_\_\_  
 24 Reason for Change: \_\_\_\_\_  
 25 Witness Signature: \_\_\_\_\_

# EXHIBIT B

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Constellation NewEnergy-Gas )  
Division, LLC, )  
 )  
Complainant, )  
 )  
v. )  
 )  
Spire Missouri, Inc. and its operating unit )  
Spire Missouri West, )  
 )  
Respondents. )

Case No. GC-2021-0315

**SPIRE MISSOURI INC'S RESPONSE TO**  
**FIRST SET OF DATA REQUESTS**  
**FROM CONSTELLATION NEWENERGY GAS DIVISION**

Spire Missouri, Inc. ("Spire" or "Company") provides the following responses to Constellation NewEnergy Gas Division's ("Constellation") First Set of Data Requests ("DR").

1. For the time period of February 10, 2021 to February 19, 2021, describe in detail Spire's evaluation, actions, and decisions regarding the need for an OFO on the Spire MO West System, including all conditions and circumstances giving rise to the need for the OFO.

**RESPONSE:**

**The timing of the weather event being a late season cold, the OFO that Southern Star issued, and the need to uphold the integrity of our MO West system all played a part in making our decision to issue a LDC OFO. Spire began seeing prices beginning to rise prior to February 12<sup>th</sup> and available supply dwindling. Our storage position at that time was adequate to meet the needs of the rate-based customers' demand. Even though Spire was confident about our storage position, we were still concerned with the one-third flowing supply requirements for SSC storage and finding enough flowing supply. In addition to this supply discrepancy, Spire was dependent on our marketers' performance during this period to meet our overall supply needs. We felt that the best way to protect and maintain the integrity of our distribution system was to enter into an OFO effective Friday, February 12, 2021 until February 20, 2021. Even with this OFO in place, Spire nearly lost pressure to areas of our distribution system in Southwest Missouri.**

2. For the time period of February 1, 2021 to the present, produce all email, correspondence and other documents related to Spire's evaluation, actions, and decisions regarding the need for an OFO on the Spire MO West System, including all conditions and circumstances giving rise to the need for the OFO.

**RESPONSE:**

**See objection previously filed. See also response to #1.**

3. Describe in detail any risk of any failure of the integrity of the Spire MO West System from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**See response to DR 1.**

4. Produce all email, correspondence and other documents related to the integrity of the Spire MO West System from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**Please see documents provided in DR AO-2021-0264 DR 0311 which are marked confidential and are protected under 20 CSR 4240-2.135(2)(A) 3 and 4.**

5. For each OFO issued by Spire affecting the Spire MO West System, describe in detail any attempts by Spire to remedy the conditions or circumstances giving rise to the need for the OFO, including through requests for voluntary actions.

**RESPONSE:**

**See response to DR 4.**

6. For each OFO issued by Spire related to the Spire MO West System from February 10, 2021 to February 19, 2021, produce all email, correspondence, and other documents related to any attempts by Spire to remedy the conditions or circumstances giving rise to the need for the OFO, including through requests for voluntary actions.

**RESPONSE:**

**See response to DR 4.**

7. State whether the Spire MO West System was completely physically balanced on a cumulative basis by the end and for the month of February 2021.

**REPSONSE:**

**During the time period of the polar vortex, Spire was concerned about maintaining the integrity of our system. At the end of February 2021, the Spire MO West System was physically balanced on a cumulative basis by the end of the month as normal.**

8. State whether gas receipts and deliveries for any Spire transportation customers served by Constellation were physically balanced on a cumulative basis by the end and for the month of February 2021.

**RESPONSE:**

**Constellation's transport customers were balanced with a cash out process at the end of the month and billed accordingly.**

9. Describe in detail your method of calculation for each penalty or charge assessed against Spire transportation customers served by Constellation.

**RESPONSE:**

**Spire compared confirmed nominations to our gate to the actual usage of Constellation customers on those days and applied the 5% threshold factor to come up with the imbalance (See Spire West's Tariff Sheet 16). Spire consulted Platt's Gas Daily for the SSC daily index price and multiplied that price by the daily volume of the imbalance.**

10. Describe in detail your factual basis for each penalty or charge assessed against Spire transportation customers served by Constellation.

**RESPONSE:**

**Constellation's customers burned more gas than what Constellation was able to deliver to our gates for those days.**

11. Produce all email, correspondence, and other documents related to any penalties and charges assessed related to any OFO or POC affecting the Spire MO West System from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**Please refer to the attached correspondence.**

12. Produce all email, correspondence, and other documents related to billing or invoicing related to any OFO or POC affecting the Spire MO West System from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**Please refer to the attached correspondence.**

13. For each penalty or charge assessed against Spire transportation customers served by Constellation, describe in detail all costs incurred by Spire in connection with providing the services giving rise to the penalty or charge.

**RESPONSE:**

**We followed our tariff curtailment plan and applied the OFO to all marketers equally. The penalties were assessed based on the tariff formula, which was applied equally to all defaulting marketers. Attached please find a summary of Spire's**



**incremental gas purchases during the OFO period (actual cover costs) which is confidential and protected under Commission Rule 20 CSR 4240-2.135(2)(A) 3 and 4.**

14. Produce all supporting documentation for the gas purchases Spire refers to its Motion to Intervene and Comments of Spire Missouri Inc. in the proceeding before the Federal Energy Regulatory Commission, Docket No. RP21-618-000, in which it states “Spire Missouri acquired significant quantities of flowing gas to ensure it could meet the requirements of its customers and incurred a considerable expense to do so during the period of peak demand.”

**RESPONSE:**

**Attached please find a summary of Spire’s incremental gas purchases during the OFO period (actual cover costs) which is confidential and protected under Commission Rule 20 CSR 4240-2.135(2)(A) 3 and 4.**

15. For the time period of February 1, 2021 to the present, produce all email, correspondence and other documents related to Spire’s acquisition of gas or attempts to acquire gas on the Spire MO West System from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**During this time period, correspondence between Spire and other parties relating to gas acquisition mostly occurred via telephone call and ICE. Spire does not have detailed records of those conversations.**

16. For the time period of February 1, 2021 to the present, produce all email, correspondence and other documents related to requests for voluntary actions from any upstream pipeline (including Southern Star) to Spire regarding the Spire MO West System.

**RESPONSE:**

**Please refer to OFO postings by upstream pipelines.**

17. For the time period of February 1, 2021 to the present, produce all email, correspondence and other documents related to any OFO (including OFOs for gas transport, gas deliveries, gas imbalances, storage withdraws, and operational balance agreements), functional equivalent of OFOs, critical notices, notices of any other requirement, or force majeure notices from any upstream pipeline (including Southern Star) to Spire regarding the Spire MO West System.

**RESPONSE:**

**Please see the attached documents that the Company provided in DR AO-2021-0264 DR 0306.**

18. For the time period of February 1, 2021 to the present, produce all email, correspondence and other documents related to any penalties and charges assessed by any upstream pipeline (including Southern Star) to Spire regarding the Spire MO West System.

**RESPONSE:**

**All OFO penalties otherwise due to Southern Star were waived by FERC. For additional information, see Docket No. RP21-618-000.**

19. For the time period of February 1, 2021 to the present, produce all email or other correspondence between Spire and any transportation customer served by Constellation for which Spire seeks recovery of OFO penalties.

**RESPONSE:**

**Spire's informal procedure is to provide notice to any customer or community that could be impacted by a curtailment. This includes the media, residential customers, commercial and industrial customers, state and local government officials. Also see Spire's presentation from the Commission's February cold weather event workshop on March 23, 2021. Please also see the attached documents that the Company provided in response to DR 183 in AO-2021-0264. There is no known correspondence with Constellation customers at this time, but the investigation is ongoing.**

20. For each OFO issued by Spire to Spire transportation customers served by Constellation, describe in detail each effort to provide notice of the OFO, including the manner of notice attempted, the date and time of attempt, the person attempting to provide notice, and the intended recipient (with contact information) of the notice.

**RESPONSE:**

**Spire notified Constellation and all other marketers of its OFO. See attached correspondence. There is no known correspondence with Constellation customers, but the investigation is ongoing. The Company engaged in general public communications about the impact of the polar vortex and the need to conserve natural gas during this time.**

21. For the time period of February 1, 2021 to the present, produce all email, correspondence and other documents related communications or attempts to communicate with Spire transportation customers served by Constellation regarding an OFO.

**RESPONSE:**

**See response to DR 19.**

22. If you contend that any Spire transportation customers served by Constellation failed to make all reasonable attempts to comply with any OFO or Spire directives, produce all correspondence and other documents related to your contention.

**RESPONSE:**

**See response to DR 10.**

23. Produce a detailed, daily list of all nomination changes and physical curtailments made by Spire for and on gas transport, receipt, and delivery volumes for any Spire transportation customers served by Constellation from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**Spire Missouri did not physically curtail any transportation customers.**

24. Produce a detailed list of all unauthorized deliveries under any OFO or during a POC affecting the Spire MO West System from February 10, 2021 to February 19, 2021, including for each such unauthorized delivery the customer, meter, and daily unauthorized volume.

**RESPONSE:**

**Please refer to the attached confidential spreadsheet showing all OFO penalties by marketer. This information is confidential and protected under 20 CSR 4240-2.135(2)(A) 3 and 4.**

25. Produce a detailed list of all penalties and charges assessed related to any OFO or POC affecting the Spire MO West System from February 10, 2021 to February 19, 2021, including for each such penalty or charge the customer, any customer agent, any customer marketer, the OFO or POC underlying the penalty or charge, the amount of the penalty or charge, and the basis for the calculation of the penalty or charge.

**RESPONSE:**

**See response to DR 24.**

26. For the time period of February 1, 2021 to the present, produce all email or other correspondence between Spire and Spire Marketing relating to each OFO issued by Spire related to the Spire MO West System from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**Spire Missouri communicated with Spire Marketing in the same manner it did with all marketers. Please refer to the attached confidential correspondence with Spire Marketing regarding its OFO penalties, which have been paid. This information is confidential and protected by 20 CSR 4240-2.135(2)(A) 1.**

27. For the time period of February 1, 2021 to the present, produce all email or other correspondence between Spire and Spire Marketing relating to the Winter Storm Event.

**RESPONSE:**

**See response to DR 26.**

28. For the time period of February 1, 2021 to the present, produce all email or other correspondence between Spire and Spire Marketing relating to OFOs on Spire MO West System from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**See response to DR 26.**

29. For the time period of February 1, 2021 to the present, produce all email, correspondence, or other documents regarding sales of gas between Spire and Spire Marketing from February 10, 2021 to February 19, 2021.

**RESPONSE:**

**Spire Missouri did not have any sales to Spire Marketing during this period.**

30. For the time period of February 1, 2021 to the present, produce all email and correspondence between Spire and Spire Marketing regarding (i) any transportation customer served by Constellation (ii) the Constellation pool of gas supply on Spire (ii) the issuance of or potential issuance of an operational flow order by Spire, (iv) the impact on Spire Marketing of any OFO notice issued or penalty assessed by Spire.

**RESPONSE:**

- i) There was no correspondence with Spire Marketing about transportation customers served by Constellation.**
- ii) None**
- iii) See response to DR 26**

Respectfully submitted,

*/s/ Matt Aplington*

---

Matthew Aplington MoBar #58565  
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(573) 635-7166  
[dcooper@brydonlaw.com](mailto:dcooper@brydonlaw.com)

**ATTORNEYS FOR SPIRE MISSOURI INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of July, 2021, a copy of the foregoing Spire Missouri Inc.'s Response to the First Set of Data Requests to Spire Missouri, Inc. and its operating unit Spire Missouri West has been mailed, emailed or hand-delivered to the following:

Joshua Harden  
1010 W. Foxwood Dr.  
Raymore, MO 64083  
[jharden@collinsjones.com](mailto:jharden@collinsjones.com)

*/s/ Matt Aplington*

---

# APPENDIX ITEM A

473 S.W.3d 107  
Supreme Court of Missouri,  
en banc.

G. Steven COX, Appellant,  
v.  
KANSAS CITY CHIEFS FOOTBALL  
CLUB, INC., Respondent.

No. SC 94462

Opinion issued September 22, 2015

Rehearing Denied November 24, 2015

### Synopsis

**Background:** Terminated employee brought single-act age discrimination claim against employer under the Missouri Human Rights Acts (MHRA). The Circuit Court, Jackson County, James F. Kanatzar, J., entered judgment on a jury verdict in favor of employer. Employee appealed.

**Holdings:** On transfer from the Court of Appeals, the Supreme Court, Laura Denvir Stith, J., held that:

trial court could not issue blanket ruling excluding testimony of other terminated employees on the ground that plaintiff employee did not assert a “pattern or practice” claim;

testimony of such other terminated employees was relevant and admissible;

evidence of statement by employer's general manager was admissible; and

employee was entitled to depose employer's chief executive officer (CEO).

Vacated and remanded.

Zel M. Fischer, J., filed dissenting opinion in which Wilson, J., concurred.

**Procedural Posture(s):** On Appeal.

**\*111 APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY, The Honorable Janies F. Kanatzar, Judge.**

### Attorneys and Law Firms

Cox was represented by Dennis E. Egan of The Popham Law Firm PC in Kansas City, (816) 221–2288; Chad C. Beaver of Beaver Law Firm LLC in Kansas City, (816) 226–7750; and Lewis M. Galloway of LG Law LLC in Kansas City, (816) 442–7002.

The Chiefs were represented by Anthony J. Romano, Eric E. Packel, Alison P. Lungstrum, William E. Quirk and Jon R. Dedon of Polsinelli PC in Kansas City, (816) 753–1000.

Several organizations filed briefs as friends of the Court. The Kansas City and St. Louis chapters of the National Employment Lawyers Association were represented by Paul A. Bullman, an attorney in Kansas City, (816) 286–2860; and Mark A. Buchanan of the Law Office of Mark Buchanan in Kansas City, (816) 221–2288. The Missouri Association of Trial Attorneys was represented by Martin M. Meyers of The Meyers Law Firm LC in Kansas City, (816) 444–8500; and Leland F. Dempsey of Dempsey & Kingsland PC in Kansas City, (816) 421–6868.

### Opinion

Laura Denvir Stith, Judge

Steven Cox, a former Kansas City Chiefs employee, appeals a judgment for the Chiefs following a jury trial. He contends that certain trial court rulings excluding evidence from nonparty former employees and limiting discovery in his single-act age discrimination case were in error. The trial court ruled that the testimony of other former employees as to their ages and the circumstances under which their employment with the Chiefs ended was inadmissible on grounds that the employees were directly fired or forced out by different managers and worked in different departments, among other distinctions, and, therefore, were not “similarly situated” to Mr. Cox. The trial court, likewise, ruled that testimony as to a discriminatory statement allegedly made by a Chiefs executive who did not supervise Mr. Cox was inadmissible.

This Court determines that the trial court misapplied the legal standard for the admission of evidence by so-called “me too” witnesses by issuing a blanket ruling requiring the strict

level of similarity that would support a disparate treatment claim when the standard for admitting such testimony as circumstantial evidence of the employer's discriminatory intent instead depends on many factors, including the plaintiffs circumstances and theory of the case. Here, the plaintiff alleges a company-wide policy of discrimination executed over a several months-long period both before and after his own termination. As such, the trial court abused its discretion in excluding "me too" evidence offered by several employees who, like Mr. Cox, were older than age 40, were terminated during the time period in question and replaced by younger workers, and many of whom were terminated directly or indirectly by the person who fired Mr. Cox. These commonalities make "me too" evidence relevant and admissible in this case even when the other former employees are not similarly situated in all respects.

For these reasons and for reasons discussed below, the trial court also erred in excluding the evidence concerning the discriminatory age-related statement and in quashing the deposition order issued to the Chiefs' chairman and chief executive officer. \*112 The judgment is vacated, and the case is remanded.

#### *I. FACTUAL AND PROCEDURAL BACKGROUND*

The Chiefs hired Mr. Cox as a maintenance manager in 1998. At that time, Carl Peterson served as the Chiefs' president and general manager, supervising both the business side and the football-operations side of the organization. Mr. Cox presented evidence to the jury that, in 2008, Mr. Peterson told longtime employee Ann Roach that there would be changes to the Chiefs front office staff under the leadership of the new chairman and chief executive officer, Clark Hunt, because Mr. Hunt "wanted to go in a more youthful direction."

When Mr. Peterson resigned in 2008, Mr. Hunt did commence an organizational restructuring. To that end, he hired Scott Pioli in January 2009 to run football operations as general manager and Mark Donovan in May 2009 to serve as chief operating officer who, along with interim president Denny Thum, oversaw all business operations including stadium operations. After Mr. Thum (then age 59) was fired in September 2010, Mr. Donovan (age 43 or 44) was named president in 2011.

After Director of Stadium Operations Steve Schneider (age 51) was fired in January 2010, Mr. Cox took on additional responsibilities and reported directly to Mr. Donovan for several months until, in April 2010, David Young (age 34)

and Brandon Hamilton (age 39) were hired to fill the newly created positions of vice president of stadium operations and director of facilities, respectively. Mr. Cox was not invited to interview for these new positions.

On October 14, 2010, Mr. Cox's employment with the Chiefs was terminated in a meeting attended by Mr. Young, Mr. Hamilton, and the new director of human resources, Kirsten Krug (age 42). Although Mr. Donovan did not attend the meeting and was no longer Mr. Cox's direct supervisor, he later testified at trial that he himself made the decision to fire Mr. Cox for reasons of poor performance and insubordination. At the time of his termination, Mr. Cox was 61 years old. His position was filled shortly thereafter by a 37-year-old.<sup>1</sup>

<sup>1</sup> The Chiefs claim that Mr. Cox was fired because he gave another person a raise that Mr. Cox claimed was required by a collective bargaining agreement. It is for the jury to determine which version of facts it believes.

Mr. Cox filed a charge of discrimination with the Missouri Commission on Human Rights and was issued a right to sue letter. He then filed his petition in the Jackson County circuit court alleging a single act of age discrimination on the day of his termination. His theory of the case was that the Chiefs, starting with Mr. Hunt and his desire to "go in a more youthful direction," had instituted a company-wide policy of terminating or forcing out older employees to make way for younger replacements. Mr. Cox sought to depose Mr. Hunt and certain other Chiefs officials and later to subpoena Mr. Hunt for trial. The Chiefs opposed the depositions on the basis that Mr. Cox had only pleaded an individual discrimination claim, not a pattern-or-practice claim of discrimination in the workplace. Mr. Cox argued that the sought-after discovery would be relevant to his individual claim as well as to any claim of pattern-or-practice discrimination. The trial court allowed other depositions but quashed the deposition notice of Mr. Hunt; later, the trial court also quashed a subpoena issued to Mr. Hunt to testify at trial.

\*113 As evidence of the company policy in action, however, Mr. Cox also presented testimony that another employee, then age 60, was told by the Chiefs' president that he would have been considered for the position of chief financial officer "if [he] weren't so old." Further testimony was presented to the jury that, at a directors meeting in January 2011 that Mr. Donovan attended, another high-level manager stated that



“[t]hese old people [employees] around here think they're entitled to everything.”

In pretrial proceedings, the Chiefs filed a number of motions in limine seeking the exclusion of additional evidence. As is relevant to this appeal, the Chiefs filed a motion to exclude evidence of 17 “non-similarly situated former employees” whom the Chiefs anticipated Mr. Cox would call to testify as to the circumstances surrounding their separations from the Chiefs organization.<sup>2</sup> The Chiefs again raised the “pattern-or-practice” argument, asserting that because Mr. Cox alleged only a single act of discrimination, and not a pattern or practice of discrimination, he could not offer the testimony of other former employees to show such a pattern or practice. The Chiefs also argued that these employees were not similarly situated to Mr. Cox, rendering their testimony irrelevant and prejudicial. The trial court granted the Chiefs' motion without explanation. On the first day of trial, the court clarified its ruling:

My order granting that motion in limine pertains to you calling those 17 witnesses to testify that they were terminated, they have a case of discrimination pending against the Chiefs, and I suppose they're over forty. If you want to call these witnesses for some other purpose, that is outside my ruling on this motion in limine.

....

But I hope I made myself clear as it pertains to my ruling on the Defendant's Motion *in Limine* as to those 17 witnesses: nothing about the fact that they've been terminated, they have a lawsuit, or that they're over forty.

<sup>2</sup> The 17 former employees named in the motion are: Anita Bailey, Gene Barr, Ken Blume, Evelyn Bray, Larry Clemmons, Doug Hopkins, Pam Johnson, Carol Modean, Bill Newman, Pete Penland, Carl Peterson, Ann Roach, Lisa Siebern, Brenda Sniezek, Nadine Steffan, Tom Stephens, and Lamonte Winston.

In other words, Mr. Cox was permitted to call these witnesses to present other evidence, but they could not testify as to whether they too had filed age discrimination suits against the Chiefs,<sup>3</sup> or to any of the circumstances surrounding their terminations from employment with the Chiefs, or even how old they were. The latter prohibitions also precluded plaintiff from offering any testimony as to the ages of employees hired to replace these former employees. Over the course of the

trial, the court expanded its exclusionary ruling to at least three additional witnesses not named in the Chiefs' motion in limine. Those witnesses, likewise, were not permitted to testify before the jury as to their ages or as to the fact of and the circumstances surrounding their terminations or resignations from employment with the Chiefs, nor could they discuss the ages of the employees who replaced them.

<sup>3</sup> At the time of trial, Larry Clemmons and Brenda Sniezek also had lawsuits pending against the Chiefs.

Despite the trial court's declaration that “I don't think it's necessary that you make an offer of proof for each and every one of these 17 witnesses,” Mr. Cox did make an offer of proof for at least 11 witnesses—eight of the 17 named in the motion in **\*114** limine and the three additional witnesses to whom the court extended its ruling. Additionally, Scott Pioli testified during an offer of proof as to two more of the 17 named witnesses. Most of these offers of proof took the form of direct questioning and, in some cases, cross-examination outside the presence of the jury. They generally established the employees' ages, job titles, the circumstances of their departures from the Chiefs organization, and the approximate ages of their replacements. Together, the offers of proof presented evidence that, over approximately 12 months, a large number of employees over age 40 were either fired or pressured to resign and their job duties were assumed by younger replacements, most of them under 40. The trial court denied Mr. Cox's requests to have this testimony presented to the jury.

The Chiefs also filed a motion in limine, which the court granted, excluding testimony by former Field Security Supervisor Herman Suhr as to certain alleged statements made by Mr. Pioli. In a videotaped deposition, Mr. Suhr testified that, in August or September 2009, he overheard Mr. Pioli say to an unknown person in a stadium hallway: “I need to make major changes in this organization as so many employees of CP [Carl Peterson] are over 40 years old.” At trial, Mr. Cox submitted offers of proof both from Mr. Suhr, in the form of his deposition testimony, and from Mr. Pioli who testified outside the presence of the jury that he made no such statement. The trial court overruled Mr. Cox's motion to set aside its exclusionary order and further refused to admit the statement as impeachment evidence against Mr. Pioli.

The jury ultimately returned a verdict in favor of the Chiefs. Following an opinion by the court of appeals, Mr. Cox sought

and was granted transfer to this Court pursuant to [article V, section 10 of the Missouri Constitution](#).

## II. STANDARD OF REVIEW

A trial court “enjoys considerable discretion in the admission or exclusion of evidence, and, absent clear abuse of discretion, its action will not be grounds for reversal.” *Moore v. Ford Motor Co.*, 332 S.W.3d 749, 756 (Mo. banc 2011) (internal citation and quotation marks omitted). A ruling constitutes an abuse of discretion when it is “clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.” *Lozano v. BNSF Ry. Co.*, 421 S.W.3d 448, 451 (Mo. banc 2014). “By both statute and rule, an appellate court is not to reverse a judgment unless it believes the error committed by the trial court against the appellant materially affected the merits of the action.” *Id.* A trial court’s discovery rulings are also reviewed for abuse of discretion. *State ex rel. BNSF Ry. Co. v. Neill*, 356 S.W.3d 169, 172 (Mo. banc 2011). “[A] trial court has no discretion to deny discovery of matters [that] are relevant to [a] lawsuit and are reasonably calculated to lead to the discovery of admissible evidence when the matters are neither work product nor privileged.” *Id.* (internal citation omitted).<sup>4</sup>

<sup>4</sup> Rule 83.08(b) states, in part: “The substitute brief ... shall not alter the basis of any claim that was raised in the court of appeals brief...” This Court rejects the Chiefs’ argument that Mr. Cox violated this rule by raising new arguments not raised in his court of appeals brief. To the contrary, Mr. Cox’s point relied on in his court of appeals brief clearly states that the trial court erred in excluding the evidence in question “because such evidence was *highly relevant* to appellant’s claims of age discrimination in that it would have demonstrated Respondent’s discrimination against other front office employees on the basis of their age, and would have demonstrated respondent’s discriminatory motives and/or intent.” (Emphasis added). This is substantially the same basis for his claim before this Court and, to the extent that his brief below does not specifically apply the legal relevance standard to the excluded evidence, Rule 83.08(b) does not prohibit a party filing a substitute brief with this Court from improving the brief with more detailed legal analysis than that articulated below. Were that the meaning of Rule 83.08(b),

there would be no point in encouraging or allowing substitute briefs at all.

The Chiefs also argue that Mr. Cox did not adequately explain in his court of appeals brief the logical relevance of each witness’s testimony that he argues should have been admitted, and should not be held to have preserved that issue in this court. The Chiefs further argue that Mr. Cox’s substitute brief also fails to adequately argue logical relevance. Mr. Cox’s discussion in Point I of his court of appeals brief sets out the commonalities between himself and the “me too” witnesses (including age over 40, replacement by younger employees, and termination by Mr. Donovan) that show the logical relevance of that evidence, and the details concerning each witness appear in the statement of facts. In Point I of his substitute brief, Mr. Cox provides the names, ages, and common decisionmakers presented in the offers of proof made at trial. He further argues in his substitute brief that such evidence is logically relevant because it “tends to prove” Mr. Cox’s theory of a company-wide policy of replacing older workers with younger ones. As this Court previously has observed, “logical relevance has a very low threshold.” *State v. Anderson*, 76 S.W.3d 275, 277 (Mo. banc 2002). Moreover, it is this “Court’s policy to decide a case on its merits whenever possible.” *Williams v. Hubbard*, 455 S.W.3d 426, 432 (Mo. banc 2015). Mr. Cox’s briefing presents no bar to review on the merits here.

Finally, the Court notes that the Chiefs failed to include any argument in their brief that matched their suggestion at oral argument that Mr. Cox’s offers of proof made at trial were inadequate and did not preserve any of the excluded evidence for appeal. While not suggesting that there was any inadequacy in the offers made, this Court declines to consider this argument further as it was not briefed and any deficiency is not clearly apparent in the record.

### \*115 III. THE TRIAL COURT ABUSED ITS DISCRETION IN EXCLUDING CIRCUMSTANTIAL EVIDENCE OF OTHER EMPLOYEES ALLEGEDLY FIRED BASED ON AGE

Section 213.055.1<sup>5</sup> of the Missouri Human Rights Acts (MHRA) states:

It shall be an unlawful employment practice:

(1) For an employer, because of the race, color, religion, national origin, sex, ancestry, age or disability of any individual:

(a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, ancestry, age or disability; ....

The statute defines “age” as “forty or more years but less than seventy years.” § 213.010(1). In reviewing a case brought under the MHRA, appellate courts look to Missouri law but also are guided by federal employment discrimination cases to the extent they are consistent with Missouri law. *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814, 818 (Mo. banc 2007). This Court has noted that the MHRA is “not identical to the federal standards and could offer greater protection” against discrimination than that offered under Title VII. *Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371, 383 (Mo. banc 2014); *Daugherty*, 231 S.W.3d at 818–19. In particular, under the MHRA a plaintiff must show that his age was a “contributing factor” in the discriminatory \*116 act, while the federal cases apply the more stringent “motivating factor” standard. See *Templemire*, 433 S.W.3d at 383.

5 Statutory references are to RSMo 2000.

Employment discrimination cases, as this Court has noted, “often depend on inferences rather than on direct evidence ... because employers are shrewd enough not to leave a trail of direct evidence.” *Daugherty*, 231 S.W.3d at 818, 818 n.4. Therefore, individual plaintiffs claiming discriminatory employment action on the basis of age, or any other protected classification, generally must rely on circumstantial evidence. *Id.*; *U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983) (“There will seldom be ‘eyewitness’ testimony as to the employer's mental processes”).

As with other forms of evidence, circumstantial evidence of employment discrimination must be both logically and legally relevant to be admissible. See *State v. Tisius*, 92 S.W.3d 751, 760 (Mo. banc 2002). “Evidence is logically relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less

probable than it would be without the evidence, or if it tends to corroborate evidence which itself is relevant and bears on the principal issue of the case.” *Id.* The legal relevance analysis requires the trial court to balance “the probative value of the proffered evidence against its prejudicial effect on the jury.” *Id.*

#### *A. Exclusion of Evidence of Age Discrimination Against Other Employees*

Mr. Cox sought to introduce evidence of the firings of other older employees, often with younger people replacing them, as circumstantial evidence of the Chiefs' discriminatory intent in terminating his own employment. In explaining its ruling excluding such evidence, the trial court said:

And just to reiterate so the record is clear, that ruling is based upon the fact that these peoples' terminations, *the people who terminated them were not decisionmakers in the termination of the plaintiff in this case* and also because *the plaintiff did not plead a pattern and practice, did not plead a pattern and practice, did not plead a hostile work environment*, and for these reasons and other reasons that I'm not going to go into that were cited and argued by defense counsel in their motions and in their oral arguments, these witnesses are going to be excluded from those three areas of any kind of testimony that would touch upon those three areas [age, termination by the Chiefs, and pending lawsuits against the Chiefs].

(Emphasis added). The court then reiterated to Mr. Cox's counsel: “[T]he primary thing was that you didn't plead pattern and practice and that these employees were not similarly situated to Mr. Cox.” The trial court applied this ruling so strictly that when questioning most witnesses, counsel were not even permitted to ask them how old they were.

Taking each of these primary grounds in turn, the trial court's ruling appears to rest first on its belief that because Mr. Cox

did not “plead pattern and practice” discrimination, evidence that the Chiefs fired other older employees was not relevant to his claim. “Pattern or practice” is a legal term of art in the federal employment discrimination context and refers to Title VII’s authorization of lawsuits when a company repeatedly and regularly engages in discriminatory conduct prohibited by the federal statute.<sup>6</sup> \*117 *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977) (stating that such claims require a showing that “discrimination was the company’s standard operating procedure”). Proof of a company’s pattern or practice of discrimination “creates a rebuttable presumption in favor of individual relief.” *Id.* at 359 n. 45, 97 S.Ct. 1843. The party bringing a pattern-or-practice suit may present statistical evidence of discriminatory employment practices as well as the testimony of individual employees concerning specific instances of discrimination experienced by them during their employment with the company in question. *Id.* at 338, 97 S.Ct. 1843.

<sup>6</sup> Pattern-or-practice suits were initially authorized by the following language in section 707(a) of the Civil Rights Act of 1964:

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a *pattern or practice* of resistance to the full enjoyment of any of the rights secured by this sub-chapter, and that the *pattern or practice* is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate District Court of the United States by filing with it a Complaint....

(Emphasis added).

That Mr. Cox did not plead a company-wide pattern-or-practice claim under Title VII does not affect his right to bring other discrimination claims; indeed, this Court has not even addressed whether Missouri law permits pattern-or-practice claims. The dissent suggests that while Missouri has never ruled whether the MHRA permits a pattern-or-practice claim to be brought (its language is different from that of the relevant federal statutes), that does not mean that the trial court erred in considering Mr. Cox’s failure to bring such a claim. The Chiefs say that Missouri’s hostile work environment and continuing violation theories are comparable to the federal “pattern-or-practice” claim. The dissent suggests that while instances of “me too”

discrimination against other employees would have been clearly relevant to such a claim, the trial court’s refusal of permission to Mr. Cox to amend to assert a pattern-or-practice claim (due to his failure to assert that claim at the administrative level, a ruling not before the Court on appeal)<sup>7</sup> somehow gave the trial court discretion beyond that it otherwise would have to exclude evidence of the “me too” firing of other employees.

<sup>7</sup> See *Wallingsford v. City of Maplewood*, 287 S.W.2d 682, 685 (Mo. banc 2009) ; *Plengemeier v. Thermadyne Industries, Inc.*, 409 S.W.3d 395, 402 (Mo.App.2013) (“Under the continuing violation theory, a victim of discrimination may pursue a claim for an act occurring prior to the statutory period, if she can demonstrate the act is part of an ongoing *practice or pattern* of discrimination by her employer.”).

Respectfully, nothing supports this suggestion. In effect, the dissent is suggesting that if Mr. Cox’s allegations are true, the Chiefs may *also* have created a hostile work environment, and that because the evidence of discrimination against other employees would have been admissible as direct evidence under that theory (although there is no suggestion that Mr. Cox would thereby get the benefit of a rebuttable presumption as in federal court so it is not clear why a plaintiff would want to take on this heavier burden), it was not an abuse of discretion to exclude this evidence as circumstantial evidence supporting Mr. Cox’s traditional discrimination claim.

This just is incorrect in the same way it is incorrect to say a plaintiff who brings a negligence action is barred from introducing evidence of the fact that the defendant had warranted a product to be free from defects because the plaintiff *could have* brought a breach of warranty claim but \*118 failed to do so. Although this type of evidence may be essential to a breach of warranty claim, that fact is irrelevant to whether it is admissible in a negligence action. The trial court should undertake the same analysis as to whether the evidence is material and probative in the negligence action irrespective of whether the plaintiff also did or did not bring a breach of warranty claim.

Similarly here, whether Mr. Cox pleaded a hostile work environment claim should not affect the trial court’s analysis as to whether evidence of “me too” firings of other persons over the age of 40 by the Chiefs is relevant as circumstantial evidence supporting Mr. Cox’s individual discrimination

claim. A plaintiff is the master of his or her lawsuit and can choose which causes of action to plead. If evidence is not relevant to the claims pleaded, then it should be excluded. But, if it is relevant, then it should be admitted, subject to an individualized balancing of probativeness with prejudice as to each such example of circumstantial evidence of discrimination, regardless of whether any particular piece of evidence would have been admissible on another unpleaded cause of action as well.<sup>8</sup>

<sup>8</sup> It was only after the Chiefs argued in opposition to certain depositions that evidence about the firing of others was not relevant to Mr. Cox's individual discrimination claim and would be relevant only to a pattern-or-practice claim that Mr. Cox sought but was denied leave to amend to also assert a pattern-or-practice discrimination claim, as he believed the evidence would be relevant to both types of claims.

Indeed, this is explicitly the case in federal court. In *Sprint/United Management Co. v. Mendelsohn*, 552 U.S. 379, 380–81, 387, 128 S.Ct. 1140, 170 L.Ed.2d 1 (2008), the United States Supreme Court held that testimony by nonparty employees about discrimination can be relevant in a single-act discrimination case and that any *per se* exclusion of such evidence would constitute an abuse of discretion. The admissibility of such evidence instead must be determined on a case-by-case basis. *Id.* This analysis, *Sprint* directs, is “fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case.” *Id.* at 388, 128 S.Ct. 1140.

The federal lower courts repeatedly also have recognized that so-called “me too” or “other acts” evidence of “behavior toward or comments directed at other employees in the protected group is one type of circumstantial evidence that can support an inference of discrimination” in the context of single-act employment discrimination claims such as that of Mr. Cox. *Hasan v. Foley & Lardner LLP*, 552 F.3d 520, 529 (7th Cir. 2008) (internal citation and quotation marks omitted); see also *Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261, 1287 (11th Cir. 2008) (“[T]he ‘me too’ evidence was admissible both because it was probative of the intent of the supervisors of Bagby Elevator to retaliate and discriminate against Goldsmith and was relevant to Goldsmith's hostile work environment claim”).

This is the law in Missouri too. The trial court is not entitled to second-guess the plaintiff's pleading decisions and

penalize the plaintiff on a pleaded cause of action because the trial court believes offered evidence would have been even more relevant to an unpleaded cause of action. The fact that the testimony of other older employees would be relevant to a federal pattern-or-practice claim or a hostile work environment claim had it been brought does not make such testimony less probative or more prejudicial for other purposes.

Here, the trial court issued a blanket ruling prior to trial excluding the “me \*119 too” testimony of 17 potential witnesses as to age, termination or other separation from employment by the Chiefs and, by extension, the age of the replacement employees. That exclusionary order was extended to at least three additional witnesses during trial. The Chiefs argue on appeal that there was no blanket ruling because several of these witnesses did testify, but the trial court specifically prohibited them from even saying how old they were, much less testifying about their firings or resignations or any relevance of their ages to those events. And, despite the Chiefs' claim that the trial court “painstakingly revisited its *in limine* ruling with respect to [each] individual witness,” the record reflects otherwise.

There was much discussion of the exclusion order over the course of the trial, but at no time did the court consider revising its ruling based on any individual witness's testimony or offer of proof. Instead, the trial court repeatedly admonished plaintiff's counsel to stay well away from the excluded topics during questioning (“Don't ask questions that are outside of my—that elicit responses that are outside of my order”) and, when reminded that his order was interlocutory, reaffirmed the exclusion of such testimony (“We've talked about this already.... It's not coming in”). The trial court did at one point recognize the inherently interlocutory nature of its order: “That ruling is going to stand unless I'm convinced to change my mind.... I've heard a great deal of your testimony in this case and I don't anticipate changing my mind, but the only thing you all need to worry about is unless I tell you I'm changing my order, the order stands.”

But the record does not reflect that the trial court engaged in a witness-by-witness reexamination of its order when presented with the new facts in each offer of proof.<sup>9</sup> Rather, it issued a single ruling that it would not admit the testimony of multiple witnesses for whom the plaintiff made offers of proof, and did so without reference to the specific facts elicited in each or any offer. For the reasons noted, this blanket exclusion was error.

9 The court did issue individual rulings on two offers of proof, denying each instance Mr. Cox's request that the offered testimony be presented to the jury and explaining only that the denial was “[b]ased on [its] previous rulings.”

The Chiefs argue that even had the trial court erred in making an erroneous blanket ruling, the second primary ground for exclusion still applies; the nonparty employees' testimony was properly excluded because none were “similarly situated” or “sufficiently similar”<sup>10</sup> to Mr. Cox such that their testimony would be relevant to his claim. In support, the Chiefs cite federal cases in which plaintiffs allege that they were treated differently from other employees who were “similarly situated” but were of a different age, sex, or race. In such “disparate treatment” claims, the relevance of evidence as to the treatment of coworkers depends on whether those coworkers were otherwise similarly situated to the plaintiff. In determining whether coworkers were “similarly situated,” courts analyze factors including whether the same supervisor imposed the discipline, whether the coworkers were subject to the same standards, whether they engaged in conduct of similar seriousness, and similar factors. See, e.g., *Coleman v. Donahoe*, 667 F.3d 835, 850 (7th Cir. 2012); *Alexander v. Local 496, Laborers' Int'l Union of N. Am.*, 177 F.3d 394, 402–03 (6th Cir. 1999) (a disparate treatment plaintiff must show “that he \*120 or she was treated differently from similarly situated members of the unprotected class”); *Graham v. Long Island R.R.*, 230 F.3d 34, 40 (2d Cir. 2000). This analysis is appropriate in the disparate treatment context because, there, the plaintiff must prove that the motivating distinguishing factor leading to the more severe discipline was his or her membership in the protected group.

10 The trial court used these terms interchangeably.

In the context of “me too” evidence such as that excluded here, the plaintiff's claim of relevance is just the opposite—that he and others were treated similarly by being disciplined or fired and that the dominant common factor between himself and the others who were disciplined or fired is their membership in the protected group. *Williams v. Trans States Airlines, Inc.*, 281 S.W.3d 854, 873 (Mo.App.2009), the case primarily relied on by the trial court below, recognized this distinction between the relevance of evidence concerning other employees' discipline to a disparate treatment claim versus the relevance of “me too” evidence in a case alleging a single act of discrimination. In *Williams*, the plaintiff, a female probationary flight attendant who was

fired by an airline after complaining of sexual harassment, sought to introduce evidence that another female flight attendant previously also had been fired after raising a sexual harassment claim. The airline objected to the admission of this evidence, arguing that the two women were not similarly situated because they had different statuses within the company and were accused of different misconduct at the time of firing. *Id.* at 864.

*Williams* rejected the airline's objection. In so doing, *Williams* first explained the basis on which evidence of similarly situated employees is introduced in a disparate treatment case and noted that the other flight attendant's firing would not be sufficiently relevant if the *Williams* plaintiff were bringing a disparate treatment claim:

In analyzing discrimination claims, federal courts “generally recognize that instances of disparate treatment can support a claim of pretext, but the plaintiff bears the burden of establishing that the employees are similarly situated in all relevant respects.” *Young v. Am. Airlines, Inc.*, 182 S.W.3d 647, 654 (Mo.App.E.D.2005) (internal quotations and emphasis omitted). Employees are deemed “similarly situated” when they are “involved in or accused of the same or similar conduct and are disciplined in different ways.” *Id.*; see *Wheeler v. Aventis Pharm.*, 360 F.3d 853, 857 (8th Cir. 2004). Under this federal analysis, Ray and Williams are not “similarly situated” because they were not involved in the same conduct yet disciplined in different ways.

*Id.* at 873.

But, *Williams* continued, the evidence of the other flight attendant's firing was relevant in the case before it because the plaintiff was offering it as circumstantial “me too” evidence of the discriminatory reason for her own firing:

In fact, *Williams* premises the introduction of the evidence relating to Ray's termination on the assertion that Ray and Williams were involved in the same conduct and disciplined in the exact same way. As such, we do not see the relevance of [the airline]'s argument that Ray and Williams were not “similarly situated” as it relates to

the admission of evidence regarding Ray's termination.

*Id.*

In other words, *Williams* noted that both employees were disciplined the same way because both engaged in the same conduct—reporting sexual harassment by pilots—even though otherwise they did not hold the same position. *Williams* did not \*121 hold this to mean that evidence as to any person who was fired after reporting sexual harassment would be admissible, but rather said admissibility would be determined on a case-by-case basis. In *Williams*, both fired employees were female flight attendants and both were terminated by the same manager within 60 days of making their complaints. *Id.* at 873–74. This was sufficient even though different reasons for their firings were given and they held different positions within the company.

While the trial court cited to *Williams* in support of its ruling and even recognized that *Williams* draws a distinction between “similarly situated” employees in a disparate treatment case and “me too” evidence, it both misapplied *Williams*’ teachings and misstated the facts of the case before it. A key basis for the trial court’s exclusion of Mr. Cox’s “me too” evidence, it said, was the lack of a common decisionmaker.<sup>11</sup> Even were a common decisionmaker required, Mr. Cox presented evidence that at least seven employees for whom offers of proof were made were fired or forced out by or at the behest of the same decisionmaker who ordered his own firing. Those employees are: Anita Bailey (then age 58), Evelyn Bray (age 55), Heather Coleman (about age 45), Carol Modean (age 48), Steve Schneider (over age 50), Brenda Sniezek (age 42 or 43), and Tom Stephens (age 52). All were fired by Mr. Donovan—who admitted he ordered Mr. Cox’s direct supervisors to fire him—or by other persons who, like Mr. Cox’s supervisor, directly reported to Mr. Donovan. The trial court’s failure to account for the common decisionmaker in excluding these offers of proof itself requires reversal.

<sup>11</sup> The trial court stated on several occasions:

And just to reiterate so the record is clear, that ruling is based upon the fact that these peoples’ terminations, the people who terminated them were not decisionmakers in the termination of the plaintiff in this case

....

I think that some of them may have been terminated by people that weren’t decisionmakers and that also came into my consideration ...

....

But some of them, I think, were not decisionmakers, were not fired by decisionmakers of Mr. Cox’s.

But, equally importantly, the trial court erred in its belief that evidence of the firing of other employees is not admissible if not directed by the same decisionmaker. It also erred in applying *Williams* in a manner that required employees to have at least as many similar characteristics as did the employees in *Williams* for their firings to be sufficiently similar to be admissible.<sup>12</sup> This was not a careful balancing of probative value versus prejudicial impact, as the dissent would suggest; it was an abuse of discretion in issuing a blanket rejection of other instances of employees being fired based on their age, even where they were fired by the same supervisor or by one reporting to the same supervisor.

<sup>12</sup> The trial court stated:

The court in *Williams* identified five separate examples of similarity between the plaintiff and the other terminated employee. In examining the record in the offers of proof, it was clear to me that such similarity didn’t exist between the proffered witnesses and Mr. Cox’s termination. In my determination, any probative value of the testimony proposed by the plaintiff from these witnesses would be outweighed by the prejudicial effect it would have on the jury. In addition, I believe the testimony of these other past employees would only serve to confuse and distract the jury.

The dissent also implies that the trial court’s finding that Cox was not similarly situated and its finding that the probative value of all of the testimony of all of these witnesses was outweighed by \*122 its prejudicial effect, are independent bases for excluding the testimony. But, as this Court noted in *State v. Bernard*, 849 S.W.2d 10, 22 (Mo. banc 1993), while the trial court must consider both probative value and prejudice, the concepts and their application are interrelated: “Evidence acquires *legal relevance* ... only when the probative value of its *logical relevance* outweighs the danger of unfair prejudice ...” (emphasis added). Therefore, when determining the legal relevance of evidence a court must

do so in light of the logical relevance, or probativeness, of the evidence.

In its logical relevancy analysis, the trial court erroneously interpreted and applied *Williams*, incorrectly believing that the same decisionmaker was not involved in the other firings, and that each piece of evidence must be similar in at least five ways because that happened to be the case in *Williams*. As a result, it incorrectly concluded that none of these witnesses were similarly situated.

These mistakes are what led the court to make a blanket, and erroneous, determination that the prejudice of introducing this evidence outweighed its probative value in all instances. In other words, the trial court's analysis of the legal relevance of the excluded evidence requires the court to weigh its logical, probative value against its prejudicial effect. The trial court's erroneous belief that the evidence had little or no logical relevance to Mr. Cox's individual discrimination claim led it to abuse its discretion in balancing this probativeness against any prejudicial effect of permitting the evidence to be introduced.

Finally, the United States Supreme Court in *Sprint* and most subsequent federal cases hold that it is error to reject “me too” evidence based solely on the fact that the other employees had a different supervisor or were fired by a different person. See, e.g., *Sprint*, 552 U.S. at 382, 128 S.Ct. 1140 (noting that none of the “me too” witnesses in that case worked in the same unit as plaintiff, “nor had any of them worked under the supervisors in her chain of command”).<sup>13</sup> Rather, as *Sprint* cautions, the inquiry is “fact based and depends on many factors.” 552 U.S. at 388, 128 S.Ct. 1140. There is no one set of agreed-upon factors, and no one factor is dispositive.

<sup>13</sup> Some federal district court cases recently have held that “me too” evidence is relevant and admissible only when there is a common decisionmaker. See, e.g., *Hamilton v. Coffee Health Grp.*, 949 F.Supp.2d 1119, 1158 (N.D.Ala.2013) ; *Bell v. Crowne Mgmt., LLC*, 844 F.Supp.2d 1222, 1236 (S.D.Ala.2012). These cases cite *Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261 (11th Cir. 2008), for this proposition but, in doing so, they misrepresent the holding in *Bagby*. There was a common decisionmaker in *Bagby*, but the court there noted that he was only one of at least five different supervisors involved in the terminations of the “me too” witnesses. *Id.* at 1286. *Bagby* does

not say that a common decisionmaker is required for “me too” evidence to be admissible, and for the other cases to say so runs counter to *Sprint*, which clearly holds that discrimination by other supervisors can be relevant: “The question whether evidence of discrimination by other supervisors is relevant in an individual ADEA case is fact based and depends on many factors, including how closely related the evidence is to the plaintiffs circumstances and theory of the case.” 552 U.S. at 388, 128 S.Ct. 1140.

*Griffin v. Finkbeiner*, 689 F.3d 584, 598–99 (6th Cir. 2012), provides an example. The Sixth Circuit reversed the district court's decision to exclude “me too” evidence solely on the basis that there had been no common decisionmaker, stating:

Whether the same actors are involved in each decision is a factor, but *Sprint* makes clear that it cannot be the only factor in the decision whether to admit “other acts” evidence. Notably, the testimony \*123 in *Sprint* involved supervisors “who played no role in the adverse employment decision challenged by the plaintiff.” 552 U.S. at 380, 128 S.Ct. 1140. Here, the district court did not consider other ways in which the excluded evidence could be “related ... to the plaintiff's circumstances and theory of the case,” *id.* at 388, 128 S.Ct. 1140, such as *temporal and geographical proximity, whether the various decisionmakers knew of the other decisions, whether the employees were similarly situated in relevant respects, or the nature of each employee's allegations of retaliation.*

*Id.* (emphasis added).

In other words, evidence of other firings or forced resignations at the hands of other decisionmakers may be admissible if this evidence would be relevant to the plaintiffs “circumstances and theory of the case” as determined through an individualized fact-based analysis applying factors of the kind listed. *Sprint*, 552 U.S. at 388, 128 S.Ct. 1140. This was another reason for the trial court's improper blanket determination that the prejudicial effect of the evidence of other firings outweighed its probative value; it failed to make individualized determinations and applied the wrong “similarly situated” factors.

In addition to the factors set out in *Griffin*, courts have considered “whether it's the same place, the same time, the same decision makers, or whether it's such that the people who are making the decisions reasonably should have known



about the hostile environment,” *Bennett v. Nucor Corp.*, 656 F.3d 802, 810 (8th Cir. 2011), or “whether such past discriminatory behavior by the employer is close in time to the events at issue in the case, whether the same decisionmakers were involved, whether the witness and the plaintiff were treated in a similar manner, and whether the witness and the plaintiff were otherwise similarly situated,” *Elion v. Jackson*, 544 F.Supp.2d 1, 8 (D.C.Cir.2008).

As the framing of these factors demonstrates, the admissibility of “me too” evidence does not require that the nonparty employees be “similarly situated” under the more stringent disparate treatment standard; rather, courts look to and weigh *aspects* of similarity as appropriate given the facts, context, and theory of the specific case at issue.<sup>14</sup> This was the approach taken in *Williams* also. *Williams* does not impose a test involving specific factors of similarity in order for “me too” evidence to be admissible and, in fact, cautions against misapplying the disparate treatment “similarly situated” standard in the context of evaluating the admissibility of “me too” evidence.

<sup>14</sup> Even in the disparate treatment context, similarly situated employees “need not be identical in every conceivable way.... So long as the distinctions between the plaintiff and the proposed comparators are not ‘so significant that they render the comparison effectively useless,’ the similarly-situated requirement is satisfied.” *Coleman*, 667 F.3d at 846 (internal citations omitted); see also *Chaney v. Plainfield Healthcare Ctr.*, 612 F.3d 908, 916 (7th Cir. 2010) (“[T]he similarly situated co-worker inquiry [in a disparate treatment case] is a search for a substantially similar employee, not for a clone”).

Mr. Cox’s theory of the case was that all of the persons he identified were fired or forced out because they were older than 40 and most were replaced by persons younger than 40 pursuant to a plan developed at the highest level by Mr. Hunt and executed by Mr. Donovan and Mr. Pioli to bring in new, younger people to “become more efficient.” Therefore, the key relevant factors would be whether Mr. Hunt, Mr. Donovan, or Mr. Pioli fired these other employees or whether they were fired by persons who reported to them, whether they were fired in temporal proximity to \*124 when Mr. Cox was fired, and whether other factors indicated that age may have played a role in their firings. Whether evidence about some of these individuals might be sufficiently similar for

evidence of their firings to be admissible under a disparate impact or pattern-or-practice theory would not be dispositive of this determination, as those are not the claims Mr. Cox is pursuing.

The trial court erred in rejecting Mr. Cox’s offers of proof as to many of the excluded witnesses because their testimony constituted circumstantial “me too” evidence in Mr. Cox’s single-act employment discrimination case. As discussed, at least seven employees did share Mr. Donovan as a common decisionmaker. Additionally, Mr. Cox made offers of proof showing that several additional employees—including Gene Barr (age 58), Larry Clemmons (age 60), Ann Roach (over age 60), and Denny Thum (age 59)—were pressured to resign or were fired either directly or at the direction of Mr. Hunt after, according to other admitted testimony, Mr. Hunt indicated that the organization would be going in a “more youthful direction.” Lamonte Winston<sup>15</sup> and Lisa Siebern similarly were terminated by Mr. Pioli, who also reported to Mr. Hunt and who, as discussed further below, was overheard stating that he had to make major changes because the former general manager had too many older employees. All were fired or resigned within months of Mr. Cox’s own firing, between January 2010 and January 2011. All were over 40 at the time of their separation from the Chiefs, and Mr. Cox made offers of proof showing that at least nine—Ms. Bailey, Mr. Barr, Ms. Bray, Mr. Clemmons, Ms. Modean, Mr. Schneider, Ms. Sniezek, Mr. Stephens, and Mr. Thum—were either directly or effectively replaced with younger workers. At least three also testified that they, like Mr. Cox, never received a negative performance review before they were fired or forced out, and most believed that the reasons given for their terminations were pretextual.

<sup>15</sup> Mr. Winston’s employment with the Chiefs ended when Mr. Pioli decided not to renew his contract.

The Chiefs argue that there were distinguishing factors as to each of these employees that the trial court could have relied on to conclude that their testimony was not admissible as “me too” evidence. These include, as discussed, having a different direct supervisor, working in a different department, or being fired before or after Mr. Cox’s termination. But when the plaintiff’s theory of the case involves a top-down effort to replace older employees throughout the organization with younger replacements and when those replacements occurred within only months of the plaintiff’s own firing, these distinctions are less relevant than the similarities alleged.

The trial court erred in excluding evidence from these witnesses as to their ages, the circumstances of their firing or resignations, and the ages of those who replaced them based on its incorrect belief that they had to be directly fired by the same person and that they had to be as sufficiently similar to Mr. Cox as was the “me too” witness in *Williams* or as would satisfy the admissibility standard in a disparate impact case. Moreover, as noted, many of these employees were in fact fired either directly by or at the direction of the same persons if Mr. Cox's evidence is believed.

This error requires reversal and remand of the case. The trial court applied the wrong test in determining the probative value of the evidence, and this led it to \*125 erroneously weigh the probative value of the evidence against its prejudicial effect. The trial court had determined that the evidence had little probative value because there was no pattern-or-practice claim and found the admission of the evidence of little logical relevance in light of this error. But the evidence is highly logically relevant because it makes the existence of a fact—the firing of Mr. Cox due to his age—much more probable than it would be without the evidence. Moreover, nothing about the nature of the evidence is likely to mislead or confuse the jury. The trial court's error in weighing the probative value led to its abuse of discretion in determining that the probative value was outweighed by the prejudicial effect of the evidence as to the offered witnesses.

As it cannot now be anticipated which witnesses will be offered at any new trial which may occur after remand or what specific or additional evidence may be offered as to them or others, there is no purpose to this Court directing the trial court as to the admissibility of the testimony of specific witnesses. On remand, the trial court should consider the admissibility of the evidence of each witness who may be offered in light of this Court's opinion.

*B. Exclusion of Herman Suhr's Testimony Regarding Age-Related Statements Made by Scott Pioli*

The trial court likewise erred in excluding the testimony of former Chiefs field security supervisor, Herman Suhr, that in August or September 2009 he overheard Scott Pioli say to an unknown person in a stadium hallway: “I need to make major changes in this organization as so many employees of CP [Carl Peterson] are over 40 years old.” The trial court based its ruling on similar grounds as its ruling to exclude the age-related testimony of the employees discussed above, observing that Mr. Pioli was not directly involved in Mr. Cox's firing:

[I]t's that Mr. Pioli was not a decisionmaker based upon all the evidence that I've heard in this case and the arguments and the pleadings that I've reviewed. Mr. Pioli was not a decisionmaker in the decision to terminate the plaintiff in this case and his responsibilities were apart and separate from the business side which the maintenance department fell under. Therefore, anything that he may have said, and particularly the remarks that were attributed to him by Mr. Suhr in his deposition, could only be couched to be as falling in the category of a stray remark and it would only serve to prejudice the defendant by somehow allowing, if the jury were to [sic] allowed to attribute those remarks to a decisionmaker in this case, and therefore the statement is not paramount under the impeachment line of cases that deal with proper impeachment because he was not a decisionmaker.

The trial court here was persuaded by the Chiefs' presentation of federal cases stating that “direct evidence” of discrimination excludes “stray remarks in the workplace,” “statements by nondecisionmakers” and “statements by decisionmakers unrelated to the decisional process itself.” *E.E.O.C. v. Liberal R-II Sch. Dist.*, 314 F.3d 920, 923 (8th Cir. 2002) (quoting *Price Waterhouse v. Hopkins*, 490 U.S. 228, 277, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989) (O'Connor, J, concurring)), abrogated on other grounds by *Torgerson v. City of Rochester*, 643 F.3d 1031, 1043 (8th Cir. 2011). The distinction between direct and circumstantial evidence was significant in these cases because it controlled whether the burden-shifting framework set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800–01, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), \*126 for circumstantial evidence cases should apply.

But these cases do not say that “stray comments” or other comments by “nondecisionmakers” are wholly inadmissible; rather, the cases merely say that such comments do not

constitute direct evidence. As noted, this Court and others have recognized that direct evidence is rare in the employment discrimination context, *see Daugherty*, 231 S.W.3d at 818, and so the mere fact that this evidence is circumstantial does not defeat its admission.

Similarly, the fact that a statement was made by a person other than the decisionmaker in Mr. Cox's case does not preclude its admission. To the contrary, this fact is supportive of Mr. Cox's theory of the case that his firing was part of a company-wide policy of age discrimination carried out by the highest level executives, including Mr. Pioli, who was Mr. Donovan's counterpart on the football side of the organization. The evidence that Mr. Pioli made this statement in close proximity to the time that Mr. Cox and others over 40 were fired and replaced with younger employees is, for the reasons already noted, relevant circumstantial evidence of what Mr. Cox alleges to be the motivation behind his firing.

The Chiefs' other objections to Mr. Suhr's testimony are equally unavailing. Mr. Cox sought to introduce the statement into evidence as an admission by a party opponent, and the Chiefs concede that under *Bynote v. National Super Markets, Inc.*, 891 S.W.2d 117, 124 (Mo. banc 1995), "an admission of an agent or employee ... may be received in evidence against his principal, if relevant to the issues involved, where the agent, in making the admission, was acting within the scope of his authority." (Internal citation and quotation marks omitted). The Chiefs argue that because Mr. Pioli's authority extended only so far as the football operations side of the organization, this comment, if in fact it was made, fell outside the scope of his authority.

Once again, the fact that Mr. Pioli did not directly supervise Mr. Cox or order his firing does not mean that his comments are irrelevant when the theory of the case involves a company-wide policy. *See Griffin*, 689 F.3d at 599 (recognizing that evidence could be related to a plaintiff's theory of the case where "various decisionmakers knew of the other decisions" made). Furthermore, *Bynote* also states that a company executive generally "has broad authority to bind the principal by his or her statements." 891 S.W.2d at 124.<sup>16</sup>

<sup>16</sup> The Chiefs do not make clear why the alleged statement would be outside of Mr. Pioli's authority. As the highest level executive in football operations, he certainly has hiring and firing authority. He himself testified that he made the decision to fire or to not renew the contract of

potential witnesses in this case. As such, the Court will assume that the Chiefs are actually arguing that the comment is not relevant to the issues in this case.

The Chiefs further argue that it was within the trial court's discretion to exclude Mr. Suhr's testimony because it is "preposterous on its face" and unreliable because, among other things, he claims to have heard the statement from some distance and through a wall. But it is the responsibility of the jury, not the court, "to determine the credibility of witnesses, resolve conflicts in testimony, and weigh evidence." *State v. Letica*, 356 S.W.3d 157, 167 (Mo. banc 2011). The jurors are free to disbelieve a witness's testimony. *See State v. Jackson*, 433 S.W.3d 390, 403 (Mo. banc 2014).

*\*127 C. Exclusion of Any Testimony by Chiefs Chairman and CEO Clark Hunt*

Mr. Cox sought to depose Chiefs Chairman and Chief Executive Officer Clark Hunt before trial and later sought to subpoena him to testify at trial. The trial court quashed both the deposition notice and the subpoena. The Chiefs argue that the trial court did not abuse its discretion in so doing because Mr. Cox failed to establish to what Mr. Hunt would have testified and how that testimony would have contributed to the case. This ignores the fact that a key part of Mr. Cox's theory of the case is that there was a company-wide discriminatory policy instituted by Mr. Hunt who "wanted to go in a more youthful direction." As such, Mr. Hunt's testimony is clearly relevant and discoverable. *See Rule 56.01(b)(1)* ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ...").

The Chiefs point to this Court's discussion in *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602 (Mo. banc 2002), of the need to protect top-level executives, such as Mr. Hunt, from unnecessary depositions. There the Court recognized:

Even if the top-level employee has discoverable information, the organization or its top-level employee may seek a protective order. *Rule 56.01(c)*. The party or person opposing discovery has the burden of showing "good cause" to limit discovery. *Id.*

A protective order should issue if annoyance, oppression, and undue burden and expense outweigh the need for discovery. *Rule 56.01(c)*; [*State ex rel.*] *Woytus [v. Ryan]*, 776 S.W.2d [389] at 391 [ (Mo.1989) ]; [*State ex rel.*] *Anheuser [v. Nolan]*, 692 S.W.2d [325] at 328

[ (Mo.App.1985) ]. For top-level employee depositions, the court should consider: whether other methods of discovery have been pursued; the proponent's need for discovery by top-level deposition; and the burden, expense, annoyance, and oppression to the organization and the proposed deponent. See *Anheuser*, 692 S.W.2d at 328.

*Id.* at 607. In *Messina*, a defective design case, the plaintiffs sought to first depose the CEO and other high-level executives. The Court held, based on the facts at issue in that case, that deposing the executives rather than the engineers Ford agreed to make available would have been unduly burdensome and that “plaintiffs should not begin a tangential inquiry by deposing Ford's top-level employees.” *Id.* at 608–09.

Mr. Cox's claim is entirely different from that of the *Messina* plaintiffs. He contends that the discriminatory policy that contributed to his firing originated with Mr. Hunt himself. Certainly, the trial court did not abuse its considerable discretion in prohibiting Mr. Cox from going on a fishing expedition by deposing Mr. Hunt about topics that could be answered by lower level employees. But when the Chiefs deny that Mr. Hunt said he wanted to go in a more youthful direction and deny that there was any company-wide effort or direction to replace older workers with younger workers, there are specific questions that only Mr. Hunt can answer.

In those limited areas, the trial court abused its discretion in not permitting Mr. Hunt to be deposed. *Messina* specifically recognizes that “[o]pposing litigants may depose top-level executives who have discoverable information.” *Id.* at 606. That Mr. Cox was precluded from doing so here materially affected his presentation of the \*128 merits of his case.<sup>17</sup>

<sup>17</sup> Whether the trial court also should permit Mr. Hunt to be subpoenaed at trial is a separate issue that would depend on whether a sufficient reason was identified why his deposition testimony would not suffice and, therefore, is not further addressed here.

#### IV. CONCLUSION

For the reasons stated above, the judgment is vacated and the case is remanded.<sup>18</sup>

<sup>18</sup> Because the other errors alleged by Mr. Cox presumably will not be repeated on remand, they need not be addressed here.

Breckenridge, C.J., Draper, Teitelman and Russell, JJ., concur; Fischer, J. dissents in separate opinion filed; Wilson, J., concurs in opinion of Fischer, J.

Zel M. Fischer, Judge, dissenting.

I respectfully dissent from the principal opinion's holding that the trial court abused its discretion in excluding the testimony of former Chiefs employees because the trial court's ruling was not against the logic of the circumstances then before it. In fact, its ruling that the probative value of the proposed testimony was outweighed by the potential prejudicial effect is consistent with its ruling not to allow the petition to be amended to add a claim alleging systematic discrimination.

“The general rule in Missouri is that evidence must be both logically and legally relevant in order to be admissible.” *State v. Tisius*, 92 S.W.3d 751, 760 (Mo. banc 2002). “Evidence is logically relevant if it tends to make the existence of a material fact more or less probable.” *State v. Anderson*, 76 S.W.3d 275, 276 (Mo. banc 2002). “Logically relevant evidence is admissible only if legally relevant.” *Id.* “Legal relevance weighs the probative value of the evidence against its costs—unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness.” *Id.* “Thus, logically relevant evidence is excluded if its costs outweigh its benefits.” *Id.*

The principal opinion points out the trial court excluded the former employees' testimony based on Cox's failure to plead “pattern and practice” and Cox not being “similarly situated” to the other employees. The principal opinion goes on to explain why Cox should be deemed “similarly situated” for purposes of his claim of age discrimination under the relevant law. This analysis, however, only addresses logical relevance. That is, whether Cox is similarly situated to the other employees is relevant because it would tend to make the existence of a fact—that Cox was terminated because the Chiefs had a systematic plan to replace older workers—more probable. Whether Cox is similarly situated does not, however, touch upon legal relevance.

While the trial court may have suggested some of the excluded testimony was not logically relevant (e.g., by stating Cox was not similarly situated), more importantly, the trial court expressly ruled the former employees' testimony was not *legally* relevant: “**In my determination, any probative value of the testimony proposed by the plaintiff from these**

witnesses would be outweighed by the prejudicial effect it would have upon the jury. In addition, I believe the testimony of these other past employees would only serve to confuse and distract the jury.” Tr. 2075:21–25 (emphasis added). The principal opinion does not persuasively address this independent basis of exclusion of the proposed testimony.

**\*129 The Trial Court’s Ruling Was Not an Abuse of Discretion Because It Was Not Against the Logic of the Circumstances Then Before It**

“A trial court has broad discretion to admit or exclude evidence at trial.” *State v. Madorie*, 156 S.W.3d 351, 355 (Mo. banc 2005). Reversal is appropriate only when the trial court has clearly abused its discretion. *Id.* A trial court abuses its discretion when its “ruling is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.” *In re Care and Treatment of Donaldson*, 214 S.W.3d 331, 334 (Mo. banc 2007) (emphasis added).

The circumstances then before the trial court consisted of a petition with no claims based on a theory of systematic discrimination by the Chiefs, but only a claim based on a single act of discrimination directed at Cox individually—his own termination. Particularly significant to the procedural posture of this case is that, prior to the trial court excluding the former employees' testimony, Cox had attempted to amend his petition to include claims based on a theory of systematic discrimination by the Chiefs. The trial court had denied him leave to amend and that ruling is not challenged on appeal. The reason the trial court refused to allow Cox to amend his petition to add a “pattern or practice” claim was that Cox failed to present this claim to the Missouri Commission on Human Rights under § 213.075, RSMo 2000. Because Cox presented the Commission only with a claim based on a single act of discrimination, that is the only claim to which the Commission's 90–day letter applies, and Cox was not entitled to litigate any other claim. When the parties argued and the trial court denied Cox's motion to amend, all understood the importance of the ruling, i.e., that it would severely restrict the breadth of “me too” evidence admissible at trial. Accordingly, when such evidence was offered, the trial court refused to admit it because doing so would, in effect, give Cox the benefit of presenting a claim that he was not legally permitted to plead. By itself, this was a sufficiently reasoned and rational basis for rejecting the proffered evidence to

withstand scrutiny under the applicable—and lenient—abuse of discretion standard.

The principal opinion's willingness to second-guess the trial court's evidentiary decision risks serious harm to the process established in Chapter 213, RSMo. The requirement that an employee who has suffered workplace discrimination present his or her claim to the Commission is largely misunderstood and surely mis-served by the principal opinion. The Commission was not created merely to vindicate individual employee's rights. It has the power to order remedies that have this effect, but that it not its purpose. Instead, the Commission's purpose is to vindicate the public's interests in eradicating workplace discrimination. To enable the Commission to fulfill this broader public purpose, § 213.075 requires all those who have suffered such discrimination to present their claims to the Commission so that the Commission may determine which claims it will pursue in the public's interest and which the employees will be able to pursue on their own.

Many times, the Commission's “right of first refusal” under § 213.075 (*et seq.*) runs contrary to the preferences of employees (and their counsel), who would prefer to retain control over their claims. Allowing Cox the evidentiary benefit of a “pattern or practice” claim, even though he did not allow the Commission to decide whether it wanted to pursue that claim on his behalf, \*130 suggests to future claimants they may do the same. Accordingly, even though the principal opinion is correct that “me too” evidence may be admitted as proof of a single-act claim (and that *the trial court* might properly have admitted some or all of the “me too” evidence proffered here), the decision by *this trial court* to exclude what amounted to days and days of such evidence because Cox failed to submit the “pattern and practice” claim to the Commission was not an abuse of discretion. This is particularly true because this trial court made an explicit finding that the breadth of the proffered evidence ran an unacceptable risk of confusing the jury regarding the specific act of discrimination for which the Chiefs were on trial.

Under these circumstances, it was not clearly against logic for the trial court to exclude evidence tending to show systematic discrimination because it was not legally relevant in this case that involved a single act of discrimination. That is, it was not unreasonable and arbitrary for the trial court to have determined the probative value of the former employees' testimony was outweighed by the prejudicial effect of confusing the issues (whether there was systematic

discrimination versus whether Cox himself was discriminated against) and misleading the jury with which it could interpret as, essentially, propensity evidence.

### Conclusion

I agree the testimony excluded was logically relevant, as the principal opinion contends, but that is not dispositive. See *Howard v. City of Kansas City*, 332 S.W.3d 772, 786 (Mo. banc 2011) (“A court may exclude evidence that may have a prejudicial effect, even though the evidence is logically relevant, when the risk of unfair prejudice outweighs the probative value.”). Reasonable minds may differ, but my view after reviewing the record and applying the appropriate standard of review is that the trial court carefully considered its ruling and did not abuse its discretion when it determined that **“any probative value of the testimony proposed by the plaintiff from these witnesses would be outweighed by the prejudicial effect it would have upon the jury. In addition, I believe the testimony of these other past employees would only serve to confuse and distract the jury.”** Tr. 2075:21–25 (emphasis added). “If reasonable persons can

differ as to the propriety of the trial court's action, then it cannot be said that the trial court abused its discretion.” *In re Care and Treatment of Donaldson*, 214 S.W.3d at 334.<sup>1</sup>

<sup>1</sup> The principle opinion repeatedly refers to the trial court's “error” in weighing the probative value of the excluded evidence against its prejudicial effect. Op. at 119, 122, 125. However, it is undeniable that the admission of this category of evidence in response to an objection based on relevance was a “discretionary” ruling by the trial court and that this Court's standard of review of that discretionary ruling is for abuse of discretion, which is defined as “clearly against the logic of the circumstances...” *In re Care and Treatment of Donaldson*, 214 S.W.3d at 334. If the majority has determined that the trial court's ruling was so wrong that it was firmly against logic—abuse of discretion would be the proper terminology.

### All Citations

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