

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
December, 2021.

In the Matter of Spire Missouri, Inc. d/b/a Spire)
(East) Purchased Gas Adjustment (PGA) Tariff)
Filing)

File No. GR-2021-0127

**ORDER GRANTING SPIRE'S MOTION FOR A
PROTECTIVE ORDER WITH MODIFICATIONS**

Issue Date: December 1, 2021

Effective Date: December 1, 2021

File No. GR-2021-0127 was opened to address changes in Spire Missouri, Inc. d/b/a Spire's Purchased Gas Adjustment (PGA) and Actual Cost Adjustment (ACA). The Commission approved Spire's PGA tariff to become effective on November 16, 2020, and ordered its Staff (Staff) to file a report concerning Spire's ACA no later than December 15, 2021. However, the Commission has since granted Staff's request to extend that due date until April 29, 2022.

On August 17, 2021, Spire filed a motion for a protective order. Spire's motion requests the Commission grant a protective order, to protect certain sensitive information from unnecessary disclosure, as permitted by Commission Rule 20 CSR 4240-2.135(3).¹ Spire asserts that certain materials produced in the course of discovery or otherwise disclosed in this matter need to be designated as highly confidential.

Most of Spire's motion for a protective order mirrors similar requests for a protective orders in other cases where large amounts of discovery will be exchanged,

¹ Spire's motion also requests a protective order in File No. GR-2021-0128, Spire West's ACA, which will be addressed in a separate order.

such as general rate cases and cases involving other sensitive market information. Spire deviates from standard protective order requests by asking that materials it designates as highly confidential be prohibited from being shared with anyone at the Environmental Defense Fund (EDF) who is also working on active D.C. Circuit and Federal Energy Regulatory Commission (FERC) filings pertaining to STL Pipeline. EDF is an intervenor in this case.

Spire contends that because EDF is involved in active federal litigation concerning the Spire STL Pipeline² there is inadequate protection for material regarding critical infrastructure, commodity prices, competitive strategies, and planned purchases. Spire is concerned that these materials could be used to provide a competitive or litigation advantage to EDF and other parties.

On August 27, 2021, EDF filed a response to Spire's motion. EDF objects to a protective order with provisions that specifically limit its ability to litigate this issue before the Commission or in other forums. EDF states that in-house staff and an external technical expert submitted Nondisclosure Agreements acknowledging that they have reviewed the Commission's Rule at 20 CSR 4240-2.135 and agree to abide by such, in compliance with 4 CSR 240-2.135(7). EDF points out that Spire has not cited any instance where EDF has violated the Commission's rules concerning the handling of confidential information. EDF does not believe that merely because the parties are engaged in litigation in other forums there is a need for an EDF specific provision in a protective order.

² *Environmental Defense Fund v. Federal Energy Regulatory Commission*, Case No. 20-1016, 2021 U.S. App. LEXIS 18503, 2021 WL 2546672 (June 22, 2021)

EDF also asserts that the motion for a protective order is deficient for failing to state with particularity the harm that may occur and that, because EDF is not a competitor, there is no concern over EDF gaining a competitive market advantage. EDF further asserts that a litigation advantage is not a reason to grant a protective order recognized in either the Commission's rules or the Missouri Supreme Court Rules concerning confidential information.

EDF is actively involved in federal litigation involving the Spire STL Pipeline and EDF's interest in this case is the prudence of transportation costs related to Spire STL Pipeline, an affiliate of Spire Missouri. EDF has already stated that it seeks a full hearing consistent with a contested proceeding.³

Commission Rule 20 CSR 4240-2.135(4) permits the Commission to order greater protection than that provided by a confidential designation. Commission Rule 20 CSR 4240-2.135(A)(1) provides that the requesting party must state with particularity why the requesting party seeks additional protection and what harm may occur if the information is made public.

The Commission is mindful that the information concerning critical infrastructure, commodity prices, competitive strategies, and planned purchases is commercially sensitive information, and that even if EDF is not a competitor there may be a need to keep that information safeguarded from unnecessary disclosure and prevent commercial harm to Spire. EDF states that it does not object to a protective order generally. Therefore, the Commission finds that there is a need to protect sensitive information and the request for a protective order is reasonable. However, there is no need for that protective order

³ *Application to Intervene of Environmental Defense Fund*, filed December 2, 2020.

to contain a provision that singles out a party with no history of violations merely because the requesting party is engaged in active litigation with that party in another forum. Therefore, the Commission concludes that a protective order should be granted with some modification.

THE COMMISSION ORDERS THAT:

1. Spire is granted a protective order as follows:
 - a. Certain materials and information divulged by Spire shall be considered to be “Highly Confidential” if so designated at the time of disclosure. Any such designation shall be made in good faith.
 - b. With regard to entities and individuals other than the Staff of the Commission and the Office of the Public Counsel:
 - i. Disclosure of materials or information so designated shall be made only to attorneys and/or to such outside experts/consultants who have executed a Commission Nondisclosure Agreement. No Highly Confidential information shall be provided directly or indirectly to any non-attorney other than to a designated outside expert/consultant who have executed a Commission Nondisclosure Agreement and filed it herein.
 - ii. Persons afforded access to materials or information designated “Highly Confidential” shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than in regard to the case referenced above and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the protective order.
 - iii. All material and information designated as “Highly Confidential” in the possession of any entity or person, as well as any notes pertaining to such information, shall be returned to Spire or destroyed upon the conclusion of the referenced case.
 - c. If a party disagrees with the “Highly Confidential” designation of any information, the party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If the party exhausts these dispute resolution procedures, the party may file a motion challenging the designation.

2. Except for attorneys of record for all parties, and employees of state agencies covered by statutory confidentiality requirements, all persons authorized to access “confidential” information in this case shall complete the nondisclosure agreement attached to this order as Exhibit A.

3. Except for attorneys of record for all parties, and employees of state agencies covered by statutory confidentiality requirements, all persons authorized to access “highly confidential” information in this case shall complete the nondisclosure agreement attached to this order as Exhibit B.

4. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Clark, Senior Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

NONDISCLOSURE AGREEMENT

For Case No.: _____
(To Access Confidential Information)

I, _____, have reviewed the Commission's Rule at 20 CSR 4240-2.135
on the _____ day of _____, 20_____.

I have requested review of the confidential information produced in Case No. _____
on behalf of _____.

I hereby certify that:

- (a) Only employees of a party that are acting as an expert for that party or that have been retained for this case as an outside expert for that party may receive confidential information;
- (b) An employee is a person in the service of his or her employer whose services are controllable by the employer;
- (c) I am an employee of _____ [state name of intervenor] acting as its expert and/or its employee who intends to file testimony in this docket, or I am an outside expert for _____ [state name of intervenor] retained to provide expert consultation or testimony in this docket;
and
- (d) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135.

Dated on this _____ day of _____, 20_____.

Signature & Title

NONDISCLOSURE AGREEMENT

(To Access Confidential Information)

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Employer

Party

Address

Telephone

E-Mail Address

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

NONDISCLOSURE AGREEMENT

For Case No.: _____
(To Access Highly Confidential Information)

I, _____, have reviewed the Commission's Rule at 20 CSR 4240-2.135
on the _____ day of _____, 20_____.

I have requested review of the highly confidential information produced in Case No.
_____ on behalf of _____.

I hereby certify that:

- (a) Only an outside expert retained by a party in this case may receive highly confidential information;
- (b) I am an employee of _____ acting as an outside expert for _____ [state name of intervenor] retained to provide expert consultation or testimony in this docket;
and
- (c) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135 and all terms of the Protective Order issued by the Commission in this docket.

Dated on this _____ day of _____, 20_____.

Signature & Title

NONDISCLOSURE AGREEMENT

(To Access Highly Confidential Information)

Page 2

Employer

Party

Address

Telephone

E-Mail Address

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 1st day of December, 2021.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 1, 2021

File/Case No. GR-2021-0127

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.