

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 6th day of January, 2021.

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

File No. GR-2021-0127

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

File No. GR-2021-0128

**ORDER DENYING MOTION TO ESTABLISH
A PROCEDURAL SCHEDULE**

Issue Date: January 6, 2021

Effective Date: January 6, 2021

Spire Missouri Inc. d/b/a Spire filed tariff sheets on October 30, 2020, to reflect changes in its Purchased Gas Adjustment (PGA) clause and Actual Cost Adjustment (ACA) for its Spire Missouri East Operating Unit, and Spire Missouri West Operating Unit. The Environmental Defense Fund, Midwest Energy Consumers Group, Consumers Council of Missouri (collectively “Intervenors”) and the Office of the Public Counsel (OPC) subsequently filed comments about Spire’s filing and a motion to establish a procedural schedule. The Intervenors and OPC’s comments expressed concern with the prudence of Spire East’s affiliate transactions with Spire STL Pipeline. Their motion requested that the Commission only allow the tariffs go into effect subject to refund and that the Commission establish a procedural schedule consistent with a contested proceeding. On November 12, 2020, the Commission approved Spire’s PGA tariffs to become effective on November 16, 2020, subject to refund, and ordered the Commission’s Staff (Staff) to

file its report and recommendation about Spire's ACA on December 15, 2021.¹ The Commission also ordered Staff and Spire to respond to the Intervenors and OPC's filings, and recommend how best to address the prudence of the Spire STL Pipeline transaction within this ACA file.

As ordered, Staff and Spire filed responses to the Intervenors and OPC's motion requesting a procedural schedule and the Commission's question about how to address the Spire STL Pipeline transaction. The Intervenors and OPC filed replies to those responses. The relevant positions of Staff, Spire, the Intervenors and OPC are summarized below.

Staff explained that it has not begun conducting necessary discovery for its report and recommendation regarding Spire's gas purchasing decisions made during 2019-2020, and will be issuing its standard package of 110 data requests each to Spire East and West in January 2021. Staff states that the volume and complexity of the supply decisions made by Spire during the ACA period require it to have sufficient time to conduct thorough discovery, process its reports, and develop its recommendations. Staff says that its Procurement Analysis Department performs a year-long examination for all gas distribution companies regulated by the Commission, and this encompasses the Procurement Analysis Department's main workload and assignment. Since Staff's ACA report and recommendation are not typically due for a year, and because the review it does is extensive, Staff believes it is premature for the Commission to order a procedural schedule. Staff states there will be sufficient time to raise issues after Staff completes its report and recommendation.

¹ The Commission typically orders Staff to file an ACA recommendation approximately one year after the order approving the PGA tariff.

Spire's response states that it understands the Intervenor's want to obtain additional information concerning the PGA costs associated with Spire STL Pipeline, but it agrees with Staff and believes that establishing a procedural schedule now is premature and inconsistent with Commission practice in these cases. Spire believes that waiting until Staff's report is complete will provide the Commission and parties with a better idea of any areas of concern requiring additional inquiry and a procedural schedule.

The Intervenor's and OPC assert that areas of concern are known and contested issues have already been raised. They state that allowing them discovery rights at this time might enhance Staff's review with additional resources and perspectives conducting analyses. They assert that denying them access to discovery for a year and conducting analysis "behind closed doors" discriminates against them and favors Spire. They also state that if the final order results in a decrease, lengthening the process will deprive ratepayers of a refund at a challenging time for many customers. The Intervenor's and OPC again request that the Commission establish procedures consistent with a contested proceeding.

The Commission determined in Spire's most recent rate case that a future ACA proceeding was the appropriate proceeding to address the Spire STL Pipeline transaction.² Staff's ACA memorandum in File No. GR-2019-0119 notes that the affiliated pipeline and transactions between Spire East and Spire STL Pipeline would be examined as part of the 2019-2020 ACA period review. Therefore, this ACA review is the appropriate proceeding to address Spire East's affiliate transaction with Spire STL Pipeline. However,

² File No. GR-2017-0215, *Amended Report and Order*, issued March 7, 2018 at page 57 states "If Spire STL Pipeline's pipeline is approved by the FERC, and if Spire Missouri enters into a transportation agreement with that affiliated pipeline, the Commission would review the prudence of that decision in a future ACA review case."

the prudence of the Spire STL Pipeline transaction is not the only issue before the Commission. This is an ACA proceeding. As Staff stated in its response, “many factors go into that calculation, including over/under recovery, hedging, gas costs, pipeline costs, storage costs, and demand charges.” All of those factors make up the ACA filing, and ultimately all of those result in a single amount for Commission approval. The amounts approved in Spire’s PGA by the Commission are subject to refund, any rush to arrive at potential refunds is outweighed by the need to determine the correct ACA amount, so that rates are just and reasonable.

The Commission agrees with Staff and Spire that it is too early in this proceeding to establish a procedural schedule. Staff’s discovery process has yet to commence, and the Commission typically allows a year for Staff to complete its report and recommendation. This is not an arbitrary timetable, but one based upon Staff’s experience with how long it takes to conduct this sort of extensive investigation and analysis. Staff’s report aids the Commission in making a determination as to the correct ACA amount, but it also aids the parties who use Staff’s report and recommendation to support or contrast their positions.

The Commission’s discovery rule, 20 CSR 4240-2.090, sets out how data requests are used to obtain information. Staff will be issuing 110 data requests each to Spire East and West. Given the numerous data requests being issued, and the extensive and time-consuming analysis conducted by Staff, the Commission finds that the approximate one-year time period to process all of Spire’s gas supply decisions made during the 2019-2020 ACA period prior to setting a procedural schedule in this case is necessary.

Additionally, Section 536.062(3) RSMo, provides: “Reasonable opportunity shall be given for the preparation and presentation of evidence bearing on any issue raised or

decided or relief sought or granted.” The one-year time frame in which Staff conducts its investigation is a reasonable amount of preparation, and would be even if this case was uncontested.

Therefore, the Commission will wait to establish a procedural schedule until after the parties have had an opportunity to examine Staff’s report and recommendation.

Spire suggests that Staff be allowed to lead the discovery process. Spire says it requires substantial time and effort on its behalf to respond to Staff’s data requests and additional numerous duplicative data requests will only distract it from providing timely and responsive information to the more relevant data requests submitted by Staff. Spire states that the Commission could avoid this by instructing other parties to defer submitting data requests until after Staff completes its audit. Spire states that it would be willing to discuss a negotiated discovery process with the Intervenors that would provide Staff the opportunity to lead the discovery process initially, with additional data requests from Intervenors stayed until such time as Staff’s initial discovery is complete. Spire cites no authority for its proposition, and has not requested a protective order to limit discovery. All parties have discovery rights in a case that are only restricted by relevance and privilege.³ If Spire wishes to negotiate with the parties as to an agreed upon discovery process to avoid duplicative data requests, it is free to do so, but since the Commission is not establishing a procedural schedule at this time, it will also not restrict the discovery process.

THE COMMISSION ORDERS THAT:

1. The motion to establish a procedural schedule filed by the Intervenors and OPC is denied.

³ Missouri Rules of Civil Procedure, Rule 56.01.

2. This order shall become effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge