

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

In the Matter of Spire Missouri, Inc.            )       File No. GR-2021-0127  
d/b/a Spire (East) Purchased Gas            )  
Adjustment (PGA) Tariff Filing                )

In the Matter of Spire Missouri, Inc.            )       File No. GR-2021-0128  
d/b/a Spire (West) Purchased Gas            )  
Adjustment (PGA) Tariff Filing                )

**RESPONSE TO SPIRE MISSOURI INC.’S  
MOTION FOR PROTECTIVE ORDER**

NOW COMES Environmental Defense Fund (“EDF”) and responds to the Motion for Protective Order (“Motion”) of Spire Missouri Inc (“Spire” or “the Company”). EDF has already submitted Nondisclosure Agreements in this case and does not object to a Protective Order generally. For the reasons described below, EDF urges the Missouri Public Service Commission (“Commission”) to deny the extraordinary request in the Motion to limit EDF’s ability to litigate in this and other forums by way of the Protective Order. EDF respectfully states as follows:

1. EDF is a nonprofit membership organization whose mission is to preserve the natural systems on which all life depends. Guided by science and economics, EDF finds practical and lasting solutions to the most serious environmental problems.

2. The Commission approved Spire’s tariff sheets, filed October 30, 2020, on an interim basis, subject to refund, pending final Commission decision in File Nos. GR-2021-0127, GR-2021-0128, GR-2020-0121 and GR-2020-0122. Order of November 16, 2020. The Commission ordered Staff to file the results of its 2019-2020 ACA review in this case no later than December 15, 2021. *Id.* While acknowledging that Staff will conduct a year-long investigation, including issuing discovery, prior to submitting that Report, the Commission noted that all parties have discovery rights that are only restricted by relevance and privilege and did not further restrict

the discovery process as a result. Order of January 6, 2021, *citing* Missouri Rules of Procedure, Rule 56.01.

3. The Commission granted EDF's Application to Intervene on December 30, 2020 and additionally granted leave for EDF in-house counsel Christie Hicks to appear *pro hac vice* on April 23, 2021. Additional 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). Nondisclosure Agreements were filed via the Commission's EFIS system on July 19, 2021. EDF continues to abide by the Commission's Orders and Rules regarding confidentiality.

4. Throughout this initial year-long discovery phase, Spire has designated many documents produced in response to requests of the Staff of the Commission ("Staff") and EDF as Confidential or Highly Confidential. Designations have been made via header, file name, or other marking. Such designation has been typically (if not exclusively) applicable to the entire document produced rather than through specific redactions.

5. The Commission's rules require that certain information shall be designated as "Confidential" or "Highly Confidential," and allow for a protective order that states with particularity why the moving party seeks protection and what harm may occur if the information is made public. 20 CSR 4240-2.135 (3)(A)(2).

6. Spire's Motion argues that designation under Commission Rule 2.135 may not provide adequate protection and asserts that it seeks a protective order but does not state with particularity what harm may occur, especially in light of the novel limitations Spire proposes. Spire does not point to any instance in this case or any other in which it believes EDF has violated the Commission's rules on confidential information. The mere fact that Spire and EDF are parties in

litigation in other forums does not give rise to a need for the extraordinary, prejudicial, and punitive provisions that Spire seeks to include in its protective order. In many other Commission matters, parties are also involved in related litigation in other venues, and the Commission's rules on the treatment of confidential information are sufficiently protective. The rules allowing for additional protections in a protective order are primarily designed for instances in which competitors are involved in the same case and there is a need to protect competitively sensitive information. Such is not the case here.

7. EDF is a nonprofit organization. Spire does not assert, nor can it, that EDF could gain a competitive market advantage of any sort as a result of receipt of confidential information in this docket. Instead, Spire asserts a "standard" of "competitive *or litigation* advantage." (Motion at 2, emphasis added). Spire cites no authority in support of protecting a "litigation advantage."

8. As part of its requested protective order, Spire requests that EDF be prohibited from sharing information internally with anyone in the organization who is also working in active D.C. Circuit and the Federal Energy Regulatory Commission ("FERC") filings pertaining to the STL Pipeline – regardless of whether that person has signed a nondisclosure agreement. Motion at 2-3.

9. Spire's request should be denied for three reasons. First, Spire's request to single out EDF as a party and limit the participation of EDF staff in this proceeding is inconsistent with the Commission rules governing protective orders; Spire cites no authority in support of its extraordinary request. Second, EDF would be unduly prejudiced by such an unworkable limitation. Finally, Spire's proposed Protective Order is overly broad and seeks confidential treatment for information outside the scope of what is permitted by the Commission's rules.

10. Neither the Commission's rules nor the Missouri Supreme Court Rules provide for designation of information as confidential due to a "litigation advantage." Similarly, neither

authority offers any support for Spire’s notion that in-house employees within the same nonprofit organization (a single entity) should be limited from litigating in multiple forums with a utility and its affiliate(s) or parent company. Rule 2.135 provides for protective orders for the purpose of “designating specific information as confidential,” not for regulating the internal practices of parties in the manner Spire proposes. 20 CSR 4240-2.135(3)(A). Spire has failed to satisfy the requirements of Rule 2.135 to “state with particularity why the moving party seeks protection and what harm may occur if the information is made public.” Spire does not assert any harm with respect to making the information public, but rather seeks to leverage the Protective Order for other purposes. Spire’s Motion also does not satisfy 2.135(3)(A)(3) which requires that a pleading seeking a protective order should state whether any of the information for which a claim of confidentiality is made can be found in any public document; Spire cannot satisfy that requirement since it does not identify what additional information it seeks to designate as confidential beyond what is provided for under the Commission’s rules.

11. Confidential designations and protective orders typically protect commercially sensitive information or system information that could pose a security threat to the utility and/or its customers. Spire cites one such example of a case where the court protected information that included trade secrets and pricing information. *In the Matter of the Application of Grain Belt Express Clean Line LLC*, Commission File No. EA-2014-0207, 2014 Mo.PSC Lexis 858, Opinion issued September 24, 2014. Here, Spire does not seek to limit the nature of information EDF may view under a protective order. Instead, the Company seeks to limit the individuals within EDF who may access the information based upon their participation in ongoing litigation in other forums – specifically, at the Federal Energy Regulatory Commission and in a related appeal before the D.C. Circuit.

12. Spire's request would effectively and stringently limit EDF's ability to effectively participate in this and other cases. EDF is nonprofit organization with limited resources and counsel and further restraints on its ability to participate in various forums would be prejudicial and unworkable. Spire's limitation is also impermissibly vague, and it is unclear how the prohibition would even apply in practice. Spire does not define those "working on active D.C. Circuit and FERC filings pertaining to STL Pipeline." Does reviewing a data response in the FERC docket constitute "working on" the FERC Filings? Does participating in a conversation that refers to the D.C. Circuit litigation constitute "working on" the D.C. Circuit litigation? If Spire's proposed limitation is imposed, it will lead to unnecessary disputes, detracting from the substance of the case.

13. If the Commission considers granting Spire's request, the protective order should not include an arbitrary limitation of EDF counsel's ability to participate in this and other dockets so long as EDF continues to abide by nondisclosure agreements.

14. Further, any protective order should be explicit that information with confidential designations should clearly identify that information which is confidential, consistent with Commission rules, rather than marking entire documents such. *See* 20 CSR 4240-2.135(3)(A) (stating that parties may seek protective orders "designating *specific* information as confidential" (emphasis added)); 20 CSR 4240-2.135(2)(B) ("Only the specific information that qualifies as confidential shall be designated as such."). Spire should be required to make specific redactions and provide public and confidential versions of documents containing confidential information.

15. Finally, the protective order should be limited in scope to only that material which is legally protected under the Commission's rules. Spire acknowledges the purpose of confidential designations in seeking to prevent disclosure "for purposes of business or competition," but goes

on to add “or any other purpose other than in regard to the case referenced above.” Motion at 3. That overly broad request would frustrate the Commission’s rules. *See* 20 CSR 4240-2.135(2)(A) (detailing specific types of information that may be designated confidential); *id.* 4240-2.135(3)(A) (requiring that parties seeking a protective order explain why they seek protection and what harm may occur without such protection); *id.* 4240-2.135(4) (requiring that parties seeking “greater protection than that provided by a confidential designation” explain what information must be protected in a “detailed summary of the information at issue,” what harm might result from disclosure, and an explanation of how the information may be disclosed while protecting party interests).

WHEREFORE, EDF requests that, if the Commission establishes a protective order in this case, it should not adopt the extraordinary limitations requested by Spire.

Dated: August 27, 2021

Respectfully Submitted,

/s/ Christie Hicks

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been emailed to the certified service list this 27th day of August, 2021.