

**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)

**REPLY OF ENVIRONMENTAL DEFENSE FUND,
OFFICE OF THE PUBLIC COUNSEL, MIDWEST ENERGY CONSUMERS GROUP,
AND CONSUMERS COUNCIL OF MISSOURI**

Environmental Defense Fund (“EDF”), Office of the Public Counsel (“OPC”), Midwest Energy Consumers Group (“MECG”), and Consumers Council of Missouri (“Consumers Council”) hereby reply to the responses filed respectively on December 10 and December 14 by Staff of the Missouri Public Service Commission (“Staff”) and Spire Missouri Inc. (“Spire”). Staff and Spire responded to the December 8, 2020 Reply of the Environmental Defense Fund, Office of the Public Counsel, Midwest Energy Consumers Group, and Consumers Council of Missouri.

EDF, OPC, MECG and Consumers Counsel submit this brief reply to: 1) clarify the record regarding the consequences posed by the unnecessary buildout of the natural gas system and the importance of the Commission’s careful review of affiliate pipeline transactions; 2) respond to the procedural proposals contained in the Responses; and 3) respond to Spire’s request—which runs contrary to Missouri law—to delay meeting its burden of proof.

1. Contracts Between Regulated Utilities and Affiliated Pipeline Developers Pose Serious Concerns for Consumers and the Environment

In the interest of judicial economy, the parties will not repeat at length here the numerous arguments set forth in previous pleadings. Spire’s attempt to downplay the seriousness of its

affiliate pipeline contract is simply a red herring and has no bearing on issues of prudence and reasonableness associated with the utility-pipeline affiliate contract.

Numerous issues are posed by an affiliate contract with a monopoly local distribution company used to support a new natural gas pipeline. These include, but are not limited to: shifting of risk from the developer to customers of the regulated utility; ratepayers subsidizing unregulated affiliates; increased gas costs and higher gas bills for Missouri households and businesses; adverse impacts on the environment and landowners in the pathway of the new pipeline; substantial costs that will depreciate over several decades; long-term emission impacts; and others.¹

2. It is Unreasonable and Unnecessary to Delay Intervenors' Participation

While Spire argues that parties' participation should be delayed until at least August or September of 2021,² Staff agrees that parties should be permitted to conduct discovery concurrently with Staff's own process.³ Given that potential issues have already been identified, it is reasonable and appropriate to allow parties to begin conducting discovery immediately and in parallel to Staff's process. Spire questions what is so unique about this process that it warrants a change in the typical ACA/PGA procedures,⁴ and asserts that only Staff possesses specialized experience in the relevant issues. These arguments do not hold water. First, the circumstances presented in this case are in fact quite unique. The Commission itself protested the approval of the pipeline whose costs are at issue in this proceeding; federal regulators deferred the decision of whether it was prudent to enter into the affiliate contract to this Commission, specifically

¹ See Comments and Motion of Environmental Defense Fund, Office of the Public Counsel, Midwest Energy Consumers Group and Consumers Counsel of Missouri, Attachments A-E.

² Spire Response of December 12 at 8.

³ Staff Response of December 10 at 1.

⁴ Spire Response of December 12 at 5.

highlighting the importance of the state’s review; and the pipeline was approved and constructed based solely on the precedent agreement between this monopoly utility and its affiliate. Second, while parties sincerely value Staff’s unique expertise on ACA/PGA issues, EDF has asked for a forum to address identified concerns for over three years. It would be unreasonable to further delay investigation into the issues presented here.

3. Spire Must Make a *Prima Facie* Showing of Reasonableness

Finally, Spire continues to object to the notion that it should submit any documents supporting the costs included in this filing prior to the start of discovery. Spire states that it “intends to meet its burden of proof as the case proceeds.”⁵ That is not the standard required by Missouri law.⁶ Spire’s position, that it does not need to present evidence meeting its burden of proof, in effect shifts the burden from the utility to customers and intervenors, contrary to the law. The requirement to meet its burden of proof is all the more important in this case given that there is no presumption of prudence for an affiliate transaction.⁷ Before Staff and other parties expend valuable time and resources on unnecessary high-level discovery, the Commission should direct Spire to meet its burden of proof as required by the law. Once Spire makes its *prima facie* case, parties can target particular areas of interest earlier in the discovery phase of the case, enabling a far more efficient review.

⁵ Spire Response of December 12 at 5.

⁶ *In the matter of tariffs filed by Western Resources, Inc., d/b/a Gas Service, a Western Resources Company, to reflect rate changes to be reviewed in the company's 1992-1993 Actual Cost Adjustment*, 3 Mo. P.S.C. 3d 480 (1995) (“It is well settled that the utility . . . has the burden of showing that the gas costs passed on to ratepayers through operation of the PGA tariff are just and reasonable.”).

⁷ *Office of the Pub. Counsel v. Pub. Serv. Comm’n*, 409 S.W.3d 371, 372 (Mo 2013) (“due to the inherent risk of self-dealing, the presumption of prudence utilized by the PSC when reviewing regulated utility transactions should not be employed if a transaction is between a utility and the utility's affiliate.”).

CONCLUSION

Wherefore, EDF, OPC, MECG and Consumers Counsel respectfully request that the Commission grant the Motion and establish procedures consistent with a contested proceeding, including an initial requirement that Spire present support for its proposed rates, and a schedule that enables efficient discovery and hearing.

Dated: December 29, 2020

Respectfully submitted,

/s/ Lewis Mills

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been served by electronic means on all parties of record as reflected in the records maintained by the Secretary of the Commission through the EFIS system on this 29th day of December, 2020.

/s/ Lewis Mills