

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 8<sup>th</sup> day of December, 2021.

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

**File No. GR-2021-0128**

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

Issue Date: December 8, 2021

Effective Date: December 8, 2021

This file was opened to address changes in Spire Missouri, Inc. d/b/a Spire's Purchased Gas Adjustment (PGA) and Actual Cost Adjustment (ACA) for Spire's Missouri West operating unit. 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). 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, 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 Pipeline<sup>1</sup> 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 argues that its engagement in litigation with Spire in other forums does not justify placing limits on EDF in this protective order.

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

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<sup>1</sup> *Environmental Defense Fund v. Federal Energy Regulatory Commission*, Case No. 20-1016, 2021 U.S. App. LEXIS 18503, 2021 WL 2546672 (June 22, 2021)

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 Spire East's ACA (File No. GR-2021-0127) is the prudence of transportation costs related to Spire's transactions with Spire STL Pipeline. EDF was allowed to intervene in this case over Spire's objections because it met the requirements for intervention. However, Spire asserts that the prudence of the Spire STL Pipeline transaction is not an issue in this case.<sup>2</sup>

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 to contain a provision that singles out EDF merely because the requesting party is

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<sup>2</sup> Response of Spire Missouri Inc. to Applications to Intervene and Reply of Environmental Defense Fund, Office of the Public Counsel, Midwest Energy Consumers Group, and Consumers Council of Missouri, filed December 14, 2020. "Because STL Pipeline only serves the Company's Spire East service area, all of the cost impacts from this arrangement are necessarily limited to Spire East and its customers."

engaged in active litigation with Spire in another forum. Especially since Spire asserts the STL Pipeline is not an issue in this case and Spire has not cited any instances where EDF has violated Commission's confidentiality rules. 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

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Party

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Address

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Telephone

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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

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Employer

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Party

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Address

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Telephone

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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 8<sup>th</sup> day of December, 2021.**



  
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**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**December 8, 2021**

**File/Case No. GR-2021-0128**

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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**

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