

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

Symmetry Energy Solutions, LLC,)	
)	
Complainant,)	
)	
v.)	File No. GC-2021-0316
)	
Spire Missouri Inc., d/b/a Spire,)	
)	
Respondent.)	

**SPIRE MISSOURI INC.’S RESPONSE
TO SYMMETRY ENERGY SOLUTIONS, LLC’S MOTION TO COMPEL
PRODUCTION**

COMES NOW Spire Missouri Inc. (“Spire Missouri”), and, as its *Response to Symmetry Energy Solutions, LLC’s (“Symmetry”) Motion to Compel Production*, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

GENERAL REPSONSE

On February 8, 2022, Symmetry filed its *Motion to Compel Production of Responsive Documents by Spire Missouri, Inc. and Motion for Expedited Treatment* (“Motion to Compel” or “Motion”). The Commission issued an Order on February 9, 2022, directing that any responses to the Motion to Compel be filed by February 11, 2022.

Perspective

The Commission should notice that for all of the various allegations made in Symmetry’s Motion to Compel (some relating to the Motion and some not so much), none of those allegations suggest that Symmetry provided natural gas to the Spire Missouri Mo West system equal to the amount of natural gas burned by its customers during Winter Storm Uri. The basic function of a marketer is to supply the natural gas used by its customers. Those customers are “transportation”

customers of Spire Missouri. Spire Missouri's primary responsibility is to transport the gas delivered by the marketer to the marketer's customer. Symmetry did not deliver natural gas equal to that used by its customers during Winter Storm Uri between February 12 and 19, 2021. In fact, on February 17, 2021, Symmetry only delivered 75 Dth while Symmetry's customer usage was 55,780 Dth.

The Commission should keep this perspective in mind in judging the over-the-top protestations of Symmetry. It is ridiculous to suggest that this case somehow hinges on there being written correspondence related to the issuance of Spire Missouri's Winter Storm Uri operational flow order ("OFO"). This was the time of a truly extraordinary weather event and a period of time when Southern Star Central ("Southern Star") pipeline had issued an OFO to Spire Missouri. It is hard to imagine a reason that an OFO would not have been appropriate during this time frame.

No "Refusal"

The most fundamental misrepresentation contained in the Motion is its infatuation with the word "refuse," in its various tenses. Certainly, that is what the Motion would like the Commission to remember. However, there has been no "refusal" to supply documents on the part of Spire Missouri.

This is most obvious because the Motion's supposed examples of "refusal" concern Spire Missouri's voluntary production of documents without the need of a motion to compel. This makes sense as Spire Missouri has received and answered hundreds of data requests from the three complainants and Staff in the related cases (GC-2021-0315, GC-2021-0316, and GC-2021-0353), and has stood on its objections in only a relatively limited number of situations. These data requests ("DRs") include the following:

Symmetry – First Set (103 DRs), Second Set (24 DRs), Third Set (7 DRs),
Fourth Set (3 DRs), plus the February 2, 2022 inquiry;

Clearwater – First Set (4 DRs), Second Set (106 DRs), Third Set (10 DRs),
Fourth Set (9 DRs), Fifth Set (22 DRs); and,

Constellation - First Set (30 DRs), Second Set (7 DRs), Third Set (10 DRs),
Fourth Set (11 DRs), Fifth Set (13 DRs); Sixth Set (2 DRs); Seventh Set (1 DR).

Staff – (27 DRs)

All three complainants, as well as the other parties, have access to all the responses provided by Spire Missouri.

Additionally, Spire Missouri has also produced its corporate representative for an 11 hour deposition by all three complainants and, as mentioned in the Motion to Compel, produced many documents in association with that deposition. Depositions of five Spire Missouri employees are scheduled for the next two weeks (all well ahead of the April 18-22 hearing dates for these cases).

Lastly, as was indicated to the regulatory law judge on Tuesday, prior to the filing of this Motion, Spire Missouri was in the process of completing its response to the inquiry Symmetry provided on February 2, 2022. That response was provided to Symmetry and the other complainants and parties on Wednesday, February 9, 2022.

There is no “refusal” to provide information or to participate in the discovery process from Spire Missouri.

Summary

Ultimately, there is no mystery as to Spire Missouri’s actions. The primary pipeline that provides gas supply to the MoWest System, Southern Star, issued an OFO to which Spire Missouri

was subject and Spire Missouri was concerned about problems with gas supply (which turned out to be more than warranted). Spire Missouri issued an OFO, which was an extraordinary measure (Spire Missouri had not issued an OFO since 2014) to address an extraordinary situation (Winter Storm Uri).

There is nothing to be remedied in regard to the discovery process at this time and the Commission should deny Symmetry's Motion to Compel Production.

SPECIFIC ISSUES

In the following paragraphs, Spire Missouri will respond to certain specific issues raised by Symmetry. Spire Missouri's lack of response to any other allegation should not be considered agreement with such allegation.

Tariff – Origin of Penalty – No Discretion

Symmetry alleges that Spire Missouri “seeks to impose a \$150 million” “draconian penalty.” (Motion, p. 2, 5). Spire Missouri has no discretion in the matter at this time as it is seeking to follow its Commission approved tariff and the penalty called for by that tariff.

Specifically, as to OFOs, if there is non-compliance with the directives set forth in the OFO, “shall cause the incurrence of penalties” pursuant to the Tariff. (Penalties for Unauthorized Usage provision 5., PSC MO No. 8, Sheet No. 16.13.). Moreover, “[a]ll revenues received from unauthorized use charges will be considered as gas cost recovery and will be used in the development of the gas cost recovery amount during the ACA audit as set forth in the Purchased Gas Adjustment schedule (PGA)” (Sheet No. 16.13).

Any validly adopted tariff “has the same force and effect as a statute, and it becomes state law.” *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 337 (Mo. App., W.D.

2006), *Public Service Com'n of State v. Missouri Gas Energy*, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012). Spire Missouri's actions are directed by such a tariff. This is not a discretionary matter for Spire Missouri.

Timing of Spire Missouri Responses

Symmetry alleges that it “spent much of 2021 prodding Spire to make an adequate document production.” (Motion, p. 2). This is a gross misstatement.

Symmetry served 103 DRs with its Complaint on March 26, 2021. Spire Missouri timely responded on April 5, 2021, with a corresponding set of objections to the proportionality and reasonableness of the discovery as a whole. Spire Missouri further provided an initial set of responses on April 28, 2021.

Approximately 110 days passed without any comment from Symmetry as to Spire Missouri's objections.¹ Spire Missouri and Symmetry had the opportunity to discuss and clarify the data requests and objections. During this time, Spire Missouri provided additional information to Symmetry and concluded with responses provided on September 9, 2021.

Spire Missouri received no further discovery requests from Symmetry until January 7, 2022, when Spire Missouri received Symmetry's Second Set of Data Requests.

Information Provided

Symmetry alleges that information provided by Spire Missouri is incomplete as to Spire Missouri's gas purchases, sales and invoices. (Motion, p. 8, 9, 12-13). Spire Missouri disagrees with that allegation. However, this is another instance where the issue at hand is being confused. In the Commission's *Order Denying Motion to Dismiss* (May 26, 2021), the Commission has stated that

¹ Objections served April 5, 2021, Symmetry contacted Spire Missouri by e-mail on July 27, 2021, seeking to set a meeting to discuss objections.

the following are the issues in this case:

Whether Spire violated its tariff regarding –

1. the justification for issuance of operational flow orders,
2. the notice provided to shippers about those operational flow orders,
3. the duration of the operational flow orders, and
4. calculation of the penalties it seeks to impose.

As to item 4, Spire Missouri's Penalties for Unauthorized Usage provision 5.(c)(i), found on Sheet No. 16.14, states:

Standard OFO Penalties: For each day of the Standard OFO, the greater of \$5 or 2 ½ times the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas pipeline (Oklahoma) times the MMBtu of Unauthorized Over- or Under-deliveries that exceed the tolerance level applicable under Section B-5-a Tolerance Levels.

(emphasis added)

The penalty called for by the tariff is calculated based on “the greater of \$5 or 2 ½ times the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas pipeline (Oklahoma)”

There is no separate element or billing for Spire Missouri's cost of gas. The cost of gas is considered to be included in the “penalty.” Thus, the penalty provision has nothing to do with the details of Spire Missouri's purchases or sales.

The penalty does concern whether Symmetry was supplying the gas being used by its customers (“the MMBtu of Unauthorized Over- or Under-deliveries that exceed the tolerance level applicable under Section B-5-a Tolerance Levels”). Symmetry does not allege that it did so, and it did not.

Having said this, Spire Missouri has endeavored to provide information related to its gas purchases, sales and invoices and will continue to do so.²

² This includes Spire Missouri's sale of storage gas to Atmos. As was described in Mr. Godat's deposition (Appendix A, Tr. 75-81, 245-246, 275-278), Spire Missouri was unable to use certain storage gas because of Southern Star restrictions.

Past Cases

Symmetry cites to two Court of Appeals cases as examples of supposed past “document obstruction.” (Motion, p. 4). As a party involved in those cases, the Commission should be well aware that they stand for nothing of the sort. Neither of these appellate cases relate to, or impact, the decision to be made by the Commission in this case.

Spire Mo. Inc. v. Office of Pub. Counsel, 593 S.W.3d 546, 555 (Mo. Ct. App. 2019) concerned a question as to what replaced lines could be deemed to be “deteriorated” for purposes of the Infrastructure System Replacement Surcharge (ISRS). The Court’s decision ultimately pointed to the fact that “[t]he PSC also found . . . that Spire's work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated. The evidence at the hearing was that Spire considered a structure to be worn out and deteriorated any time there was a leak.” *Id.*

The Court further concluded, based on citations to a prior case, that:

While Spire's "replacement strategy may laudably produce a safer system, the question squarely before us is not whether its chosen approach is prudent but rather whether the replacement of ... components that were not in a worn out or deteriorated condition are ISRS-eligible." *Id.* at 840. "In analyzing that proposition, we cannot ignore the plain language of the statute for convenience, expediency[,] or necessity to conclude that the costs are eligible for recovery through the ISRS process." *Id.* (internal quotation marks omitted).

Id. This case turned on concepts of “deterioration,” not Spire Missouri’s production or non-production of existing information.

State ex rel. Laclede Gas Co. v. PSC, 392 S.W.3d 24, 27 (Mo. Ct. App. 2012) was an appeal involving a dispute as to the release of documents from an affiliate of Laclede pursuant to a

Spire Missouri sold the storage gas at a market rate to Atmos, who was in desperate need of gas for its customers. Proceeds from the sale, in accordance with the off-system sales provisions of the tariff, are used to reduce the ACA for sales customers. In other words, sales customers would pay more, but for this sale. And, again, none of that relates to the OFO tariff penalties.

Stipulation and Agreement approved by the Commission in 2001 (the 2001 Agreement). The underlying case was a case brought for the purpose of addressing this issue. The issue was concluded with the referenced appellate case. The issue in this case was legal in nature – the interpretation of a prior stipulation in relation to the document production on an unregulated entity.

Neither of these cases bear a relationship to the allegations contained in the Motion to Compel.

Discovery Provided

Interestingly, Symmetry spends many pages using discovery provided by Spire Missouri to allege that Spire Missouri has not provided discovery. (Motion, pp. 9-13). Much is made of the deposition of George Godat (as corporate representative) and the documents provided by Spire Missouri in association with that deposition. What this shows is Spire Missouri's good faith in this matter. Spire Missouri has provided, and continues to provide, information to the parties.

A good example of this is found in Symmetry's footnote 9. Symmetry cites to the existence of a letter from Spire Marketing to Spire Missouri as if it were supportive of its position. What Symmetry does not reveal in this footnote is that the subject letter was produced in response to a NewEnergy-Gas Division, LLC ("Constellation") data request on July 9, 2021, in File No. GC-2021-0315.

More importantly, Spire Missouri's September 9, 2021 response to Symmetry's DR 72 referenced this letter:

Response: Spire Missouri communicated with Spire Marketing in the same manner it did with all marketers. Please refer to the confidential correspondence with Spire Marketing regarding its OFO penalties, which have been paid, that was provided in response to CNEG DR 26. This information is confidential and protected by 20 CSR 4240-2.135(2)(A) 1.

The referenced response to Constellation had been previously provided to Symmetry.

Symmetry has been provided access to all discovery to which Spire Missouri has responded. Nothing has been withheld by Spire Missouri. The responses provided by Spire Missouri show that it has continued to search and provide documents. Spire Missouri will continue to do so.

Legal Hold Notice

Symmetry takes time in the Motion to Compel to criticize the timing of Spire Missouri's "legal hold notice," without citation to any authority (Motion, pp. 13-14). Presumably, that is because a legal hold notice is a feature of federal procedure. Under Federal Rule of Civil Procedure ("FRCP") 37(e), organizations have an affirmative obligation to preserve electronically stored information ("ESI") relevant to a federal case. Notably, the Missouri Rules of Civil Procedure ("MRCP") do not contain a provision relating to preservation of ESI that is similar to FRCP 37(e).

Thus, while Spire Missouri would argue that it has appropriately preserved information relevant to this case, the discussion of the legal hold notice is a mere academic pursuit given that the MRCP do not follow the federal rules in this respect.

Moot

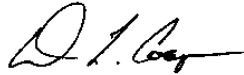
The specific remedy sought by Symmetry is as follows:

If the Commission grants Symmetry's motion, the order should require that Spire (i) provide the outstanding documents requested for the settlement conference no later than 5:00 PM, Central time, on Wednesday, February 16, 2022 (the day before the settlement conference, in order to permit Symmetry to analyze the materials ahead of the conference), and (ii) provide all other outstanding responsive documents no later than 5:00 PM, Central time, on Thursday, February 17, 2022 (in advance of Justin Powers' deposition, which is currently scheduled to begin on Monday, February 21, 2022).

As indicated herein, Spire Missouri has responded to the documents requested for the settlement conference. Given that, the motion to compel should be found to be moot.

WHEREFORE, Spire Missouri respectfully requests that the Commission deny Symmetry's Motion to Compel Production for the reasons stated herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent to the parties by electronic mail this 11th day of February, 2022.



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<p>1 Q. (By Mr. Bauer) All right. So --</p> <p>2 A. Is that --</p> <p>3 Q. So to prepare to testify as the</p> <p>4 representative of Spire on topic number six, you</p> <p>5 looked at the documents that were behind tab 12 of</p> <p>6 the binders that have been prepared by Spire's</p> <p>7 attorneys; is that accurate?</p> <p>8 A. That's correct.</p> <p>9 Q. And did you do anything else?</p> <p>10 A. Yeah, there really wasn't any other</p> <p>11 information to -- that I needed to understand that</p> <p>12 topic.</p> <p>13 Q. So now I think we might have taken a</p> <p>14 slight detour when I was asking about the questions</p> <p>15 about the release of the capacity by Spire to the</p> <p>16 market during the winter storm. I think you told me</p> <p>17 you didn't know -- you didn't know the details of</p> <p>18 when it happened and I think you said you don't know</p> <p>19 to whom the capacity was released. Is that true?</p> <p>20 A. Yeah, I don't recall those off the top</p> <p>21 of my head.</p> <p>22 Q. Okay. Do you know why it was released?</p> <p>23 A. It's a common practice. Utilities</p> <p>24 typically hold the majority of the firm in the</p> <p>25 market, and marketers take release capacity from --</p>	<p>1 pipeline?</p> <p>2 A. It is.</p> <p>3 Q. Okay.</p> <p>4 A. Not supply.</p> <p>5 Q. Okay. So that's -- so that is not</p> <p>6 related to the availability and use of storage gas.</p> <p>7 That's a totally different topic?</p> <p>8 A. That's correct.</p> <p>9 Q. So for releasing capacity, on that</p> <p>10 topic, who made the decisions to release capacity to</p> <p>11 third parties during the February storm?</p> <p>12 MR. GORE: I'm going to object, beyond</p> <p>13 the scope of the notice and beyond the scope of</p> <p>14 topic six, which is where I understand we are.</p> <p>15 Q. (By Mr. Bauer) Do you know?</p> <p>16 A. Justin Powers and his team.</p> <p>17 Q. All right. So now let's look at --</p> <p>18 let's look at topic six and talk about drawing from</p> <p>19 storage or selling gas to third parties. Did -- did</p> <p>20 Spire draw from storage and sell gas to any third</p> <p>21 parties during February 2021?</p> <p>22 MR. GORE: I object, compound, vague.</p> <p>23 A. We -- we had a storage transaction</p> <p>24 where we sold some inventory to another party.</p> <p>25 Q. (By Mr. Bauer) And when did that</p>
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<p>1 from the utility to serve other markets. It's</p> <p>2 always on a recallable basis, so we always have the</p> <p>3 ability to recall that capacity if we need it.</p> <p>4 Q. But for this particular event you don't</p> <p>5 know why?</p> <p>6 MR. GORE: I'm going to object, vague.</p> <p>7 Are we -- are we on topic six?</p> <p>8 MR. BAUER: Yes.</p> <p>9 MR. GORE: Okay. I'm going to object,</p> <p>10 beyond the scope of topic six, and I'm going to</p> <p>11 object, vague as to the term release capacity. I'm</p> <p>12 not sure you and the witness are in agreement on</p> <p>13 that term.</p> <p>14 MR. BAUER: Okay. I was just trying to</p> <p>15 use his word.</p> <p>16 Q. (By Mr. Bauer) What do you mean by</p> <p>17 release capacity?</p> <p>18 A. Transportation capacity that we hold on</p> <p>19 the pipelines can be -- if -- during times if we're</p> <p>20 not going to necessarily need all of it, we can put</p> <p>21 that in the market and other parties can use that</p> <p>22 capacity on a temporary basis. Like I say, it's</p> <p>23 always recallable, so in the event the utility needs</p> <p>24 it, they can recall that capacity.</p> <p>25 Q. So that's just capacity on the</p>	<p>1 happen?</p> <p>2 A. On February 15th if I recall.</p> <p>3 Q. And who was involved in that decision?</p> <p>4 A. Justin Powers and I.</p> <p>5 Q. Anyone else?</p> <p>6 A. I had a conversation with my boss Scott</p> <p>7 Carter to make sure he was aware of it.</p> <p>8 Q. And how much natural gas was involved</p> <p>9 in this?</p> <p>10 A. 500,000 dekatherms.</p> <p>11 MR. GORE: And Mr. Godat, I would just</p> <p>12 instruct you if you recall these terms specifically,</p> <p>13 that's fine, but if you feel the need reference to</p> <p>14 refresh your recollection, do so.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. GORE: I'm impressed that you</p> <p>17 remember them.</p> <p>18 Q. (By Mr. Bauer) And so that was 500</p> <p>19 dekatherms?</p> <p>20 A. 500,000 dekatherms.</p> <p>21 Q. 500,000 dekatherms, sorry, on</p> <p>22 February 15th. To whom was that sold?</p> <p>23 A. Atmos.</p> <p>24 Q. Do you know the price?</p> <p>25 A. \$200 per dekatherm.</p>

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<p>1 Q. How was that price arrived at?</p> <p>2 A. Justin did the transaction, so it would</p> <p>3 have been a negotiated price between Justin and</p> <p>4 Atmos.</p> <p>5 Q. Okay. As the representative of Spire</p> <p>6 today, do you know anything about the back and forth</p> <p>7 of that negotiation?</p> <p>8 A. Like I say, Justin was handling it. I</p> <p>9 don't recall what the big offer price that went --</p> <p>10 it would have went back and forth.</p> <p>11 Q. And was -- the 500,000 dekatherms, was</p> <p>12 that the amount that Spire offered for sale</p> <p>13 originally?</p> <p>14 A. It was the amount that Atmos requested.</p> <p>15 Q. Did Spire propose any different</p> <p>16 quantity of natural gas?</p> <p>17 A. You know, I don't -- I don't recall a</p> <p>18 different volume being discussed. Justin may have</p> <p>19 had other conversations. I don't -- I don't recall</p> <p>20 another volume.</p> <p>21 Q. And was it determined that Spire did</p> <p>22 not need this gas in order to protect its system</p> <p>23 integrity?</p> <p>24 A. It was.</p> <p>25 Q. And how was that determined?</p>	<p>1 A. I'm not sure. I'd have to ask Justin.</p> <p>2 Q. You say this transaction was approved</p> <p>3 by your supervisor?</p> <p>4 A. I just let him know I was doing it. I</p> <p>5 don't have to have his approval to do it.</p> <p>6 Q. Did you need approval from anyone else</p> <p>7 at the company to sell this amount of gas during the</p> <p>8 winter storm?</p> <p>9 A. I do not.</p> <p>10 Q. Did you consult with anyone other than</p> <p>11 Mr. Powers before deciding to sell this gas?</p> <p>12 A. I don't recall consulting with anyone,</p> <p>13 like I say, other than I know I ran it past my boss.</p> <p>14 Q. And how does it work when you sell that</p> <p>15 amount of gas, where -- where is the gas? Where</p> <p>16 does it come from?</p> <p>17 A. It's just in our storage inventory.</p> <p>18 It's just sitting in our inventory balance.</p> <p>19 Q. And in any particular location --</p> <p>20 A. No.</p> <p>21 Q. -- in the inventory?</p> <p>22 A. It's just a paper transfer from our</p> <p>23 storage contract to Atmos's storage contract.</p> <p>24 Q. Is there any daily limit to the amount</p> <p>25 that could be taken out of this storage as you were</p>
<p style="text-align: right;">Page 78</p> <p>1 A. It gets back to the overall inventory</p> <p>2 question that we had talked about where our</p> <p>3 limitation during that time was our daily withdrawal</p> <p>4 restriction out of storage, not -- we always had</p> <p>5 ample inventory to meet our daily requirement. So</p> <p>6 really, yeah -- it was really just trying to help</p> <p>7 Atmos out because the party that was managing theirs</p> <p>8 had mismanaged it and they were out of storage.</p> <p>9 Q. And this transaction happened on</p> <p>10 February 15th. Was the reason for that date -- it's</p> <p>11 not going to be a very well asked question. Was the</p> <p>12 reason for that -- the transaction happened on that</p> <p>13 date, was that when Atmos asked for the gas or was</p> <p>14 that when Spire said it had it available or some</p> <p>15 other reason?</p> <p>16 A. That was when the -- that was when the</p> <p>17 two parties agreed on the transaction.</p> <p>18 Q. So when was the first time that Spire</p> <p>19 had 500,000 dekatherms available for sale?</p> <p>20 A. Yeah, that's not something we talked</p> <p>21 about ahead of this opportunity. So I don't have</p> <p>22 the answer to that question.</p> <p>23 Q. When Atmos -- when Atmos and Spire</p> <p>24 began discussing this transaction, which party</p> <p>25 suggested that \$500,000 -- 500,000 dekatherm amount?</p>	<p style="text-align: right;">Page 80</p> <p>1 talking about with the Southern Star?</p> <p>2 MR. GORE: I'm going to object, vague</p> <p>3 as to whether you're asking him about the gas that</p> <p>4 was sold or the gas that exists in Spire's storage.</p> <p>5 MR. BAUER: I think I'm asking about</p> <p>6 the gas that was sold that existed in Spire's</p> <p>7 storage, right?</p> <p>8 A. Yeah, I think you're misunderstanding</p> <p>9 the transaction. There wasn't -- there wasn't a</p> <p>10 physical withdrawal of gas. It was a paper transfer</p> <p>11 from our inventory to Atmos's inventory. So there</p> <p>12 was no -- there's nothing physically took place</p> <p>13 other than going from our account to Atmos's</p> <p>14 account.</p> <p>15 Q. (By Mr. Bauer) And despite having an</p> <p>16 OFO up, Spire concluded that it had this much gas on</p> <p>17 paper that it could transfer to someone else?</p> <p>18 A. Yes.</p> <p>19 Q. Explain that to me, please.</p> <p>20 A. Yeah, we felt like based on -- based on</p> <p>21 the inventory that we had going into the winter</p> <p>22 period and where our storage inventory was on the</p> <p>23 15th that we were not going to be able to use that</p> <p>24 supply during the month of February. Atmos had a</p> <p>25 need for it. We didn't think it was going to impact</p>

20 (Pages 77 to 80)

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<p>1 our operation at all. So it was a win/win for us. 2 Got -- you know, Atmos is a sister utility, got them 3 out of bad shape, and we didn't feel like it was 4 going to impact our operation at all. 5 Q. All right. Let's go on to another 6 topic in Exhibit 1. I think we are up to -- we're 7 up to 2D, but I think may skip that. Let's look at 8 2E if you would, please. 9 A. This ties back to the letter? 10 Q. Ties back to the letter, and actually 11 if you look at it, it ties back to the topic we just 12 skipped, which is -- we skipped 2D, which referred 13 to item six in Mr. Aplington's letter. And then 14 item seven says (quote as read): 15 Symmetry apparently didn't communicate 16 these facts to its customers behind 17 Spire's city gates. 18 So you have to look at number six to 19 know what these facts are on item seven. Does that 20 make sense to you? 21 A. Yes. 22 Q. Great. 23 A. What's the question? 24 Q. There's not one out yet. 25 A. Oh.</p>	<p>1 Q. (By Mr. Bauer) Yeah, so is there a 2 factual basis for that statement? 3 A. Yeah, as I reviewed the information and 4 I look at the daily imbalance calculation for 5 Symmetry, it appears as though their usage stayed 6 consistent and did not -- did not decrease whenever 7 Symmetry's noms went to zero. 8 Q. Okay. And you called it a daily 9 imbalance -- what's the phrase? 10 A. Your daily imbalance calculation. It's 11 the support for the OFO calculation. 12 Q. And so tell me about the daily 13 imbalance calculation. Is that something that gas 14 control does? 15 A. Gas supply. 16 Q. Gas supply. And who is in charge of 17 doing that? 18 A. Justin Powers and his team. 19 Q. And tell me how that calculation is 20 arrived at. 21 MR. GORE: And are we -- are we 22 talking -- I'm going to object, vague. I'm not sure 23 whether you're talking generally or during this 24 particular OFO period. 25 Q. (By Mr. Bauer) I guess I would be</p>
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<p>1 Q. I was just making sure we were on the 2 same page. So the question is what is Spire's basis 3 for saying that Symmetry apparently didn't 4 communicate facts to its customers behind Spire's 5 city gate? 6 A. Yeah, I mean, Mr. Aplington was the one 7 that wrote the document, but given the fact that 8 Spire -- that Symmetry's customers continued to burn 9 gas as though we weren't in an OFO and Symmetry's 10 volumes were zero, I think it was just pretty 11 obvious that there was some disconnect between 12 Symmetry and its customers. 13 Q. And is there anything other than that 14 observation that supports Spire's position in that? 15 A. Yeah, like I say, I can't speak for 16 Mr. Aplington. 17 Q. Now, in the topic 2F, which is also 18 sort of related, it says (quote as read): 19 Symmetry customers largely did not 20 conserve natural gas during this 21 period. 22 Is that a true statement? 23 MR. GORE: I'm going to object to that 24 as improper corporate rep testimony. I believe the 25 topic relates to the factual basis.</p>	<p>1 interested in knowing if you did it the same way 2 during this OFO period that you normally do it. 3 A. Yeah, there -- there's a sheet -- you 4 know where the OFO calculation sheet is? 5 MR. GORE: We can't testify, but -- 6 the -- 7 MR. BAUER: You can show him. I mean, 8 you prepared the documents for him. Show him the 9 documents. It's no secret here. 10 MR. GORE: All right. The documents 11 relating to damages calculations are tab one -- 12 THE WITNESS: Okay. 13 MR. GORE: -- which is this binder, 14 which is binder -- 15 THE WITNESS: Oh, I'm sorry. Sorry, I 16 got too much info running in my head here. I'm a 17 little slow. 18 A. Yeah, so if you go to your -- it's a 19 very simple calculation. It's the nominated 20 quantity that Symmetry had on a daily basis. It's 21 the usage in total of all the customers that 22 Symmetry serves, and the imbalance -- there's a five 23 percent tolerance that's given, so that five percent 24 is backed out and then the difference of those two 25 is the imbalance calculation.</p>

21 (Pages 81 to 84)

<p style="text-align: center;">Page 245</p> <p>1 our gate that we serve. Given the fact that we --</p> <p>2 we don't have any control over the purchases that</p> <p>3 are made by the marketers, so there -- yeah.</p> <p>4 Q. (By Mr. Howell) You have pointed to a</p> <p>5 weather forecast, correct, and that's one of the</p> <p>6 items in this binder, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Beyond the weather forecast that you</p> <p>9 received did you personally look at -- did you</p> <p>10 personally review the weather forecast?</p> <p>11 A. I don't know if I personally reviewed</p> <p>12 that weather forecast prior to looking what was</p> <p>13 turned over. You know, definitely had conversations</p> <p>14 with -- with Justin Powers about what he was seeing</p> <p>15 kind of from a historical perspective of demand on</p> <p>16 the system.</p> <p>17 Q. And by that what do you mean, that when</p> <p>18 it gets colder people use more gas?</p> <p>19 A. Yeah, just the high -- the high level</p> <p>20 of demand that we were going to see on our system,</p> <p>21 you know, which -- which is troubling anytime. It's</p> <p>22 especially troubling in late February when not -- a</p> <p>23 lot of storage holders weren't -- you know, weren't</p> <p>24 near as conservative as what we are. And I think we</p> <p>25 found out that a lot of other storage holders went</p>	<p style="text-align: center;">Page 247</p> <p>1 a quantitative analysis to determine whether or not</p> <p>2 to issue an OFO, and if so, for which segments?</p> <p>3 MR. GORE: All right. I'm going to</p> <p>4 object to the question as an incomplete statement of</p> <p>5 the witness's testimony as already given. You</p> <p>6 listed two things, but the witness has listed much</p> <p>7 more than that. I'm going to object to the question</p> <p>8 as vague in terms of the use of the term</p> <p>9 quantitative. And I'm going to object, compound and</p> <p>10 foundation. You can answer.</p> <p>11 A. Yeah, I mean, like I mentioned, we had</p> <p>12 concern that production wasn't going to be</p> <p>13 available. We had concern that, you know, the</p> <p>14 temperature -- the temperature that was forecasted</p> <p>15 was going to have us close to peak demand, and the</p> <p>16 upstream pipelines were in OFOs. So there's not a</p> <p>17 lot more to it than that.</p> <p>18 Q. (By Mr. Howell) Okay. Respectfully,</p> <p>19 that's not an answer to the question that I asked.</p> <p>20 The question I asked concerned whether you looked at</p> <p>21 any Spire spreadsheet, analysis, data, anything that</p> <p>22 addressed this issue of demand -- projected demand</p> <p>23 increase.</p> <p>24 A. I --</p> <p>25 MR. GORE: Let me object. I'm going to</p>
<p style="text-align: center;">Page 246</p> <p>1 into the month with their storage almost depleted.</p> <p>2 We knew storage levels across the</p> <p>3 country were low. So if you have a peak situation</p> <p>4 in mid-February it's a completely different</p> <p>5 situation than if you have a peak -- peak demand</p> <p>6 situation in December when storage inventories are</p> <p>7 full.</p> <p>8 You know, and I think that come to</p> <p>9 fruition halfway through -- halfway through the</p> <p>10 polar vortex. You know, folks like Atmos and others</p> <p>11 had completely depleted their storage inventories.</p> <p>12 I don't know if they did, but the marketers that</p> <p>13 were managing it had depleted it.</p> <p>14 So like I say, there was a whole host</p> <p>15 of concerns that -- that went into it that weren't</p> <p>16 -- that weren't analysis driven. It was driven by</p> <p>17 information that Justin and his team had about the</p> <p>18 market at that time.</p> <p>19 Q. Okay. You've told me about -- as far</p> <p>20 as quantitative issues, you told me about weather</p> <p>21 forecasts, and there's one that you provided in the</p> <p>22 binder. You also mentioned historical data about</p> <p>23 demand increases. Did you personally look at any</p> <p>24 document, spreadsheet, analysis, anything either on</p> <p>25 Spire's system or elsewhere that you used as part of</p>	<p style="text-align: center;">Page 248</p> <p>1 object because you just asked a completely different</p> <p>2 question and framed it as a question that you</p> <p>3 previously asked. So I object to that misstatement.</p> <p>4 The current question I'm going to object to as</p> <p>5 compound and lacking foundation. You can answer.</p> <p>6 A. Yeah, I mean, that being, what, six,</p> <p>7 eight months ago, I can't recall exactly everything</p> <p>8 I looked at. I know Justin and I had a lot of</p> <p>9 conversations about what he was seeing in the</p> <p>10 forecast from a demand perspective.</p> <p>11 So I know we definitely spent ample</p> <p>12 time talking about what we saw, you know, as</p> <p>13 potential usage on the system. Now, whether I</p> <p>14 looked at the specific spreadsheet or he was giving</p> <p>15 me numbers, I don't recall that from, you know,</p> <p>16 months ago.</p> <p>17 Q. (By Mr. Howell) You also mentioned</p> <p>18 production drops. I want to ask you about that.</p> <p>19 What production data did you have -- did Spire have</p> <p>20 that identified or indicated or projected production</p> <p>21 drops?</p> <p>22 MR. GORE: I'm going to -- I'm going to</p> <p>23 object, asked and answered. You can answer again.</p> <p>24 A. Yeah, I mean, I notice -- I notice this</p> <p>25 one in Gas Daily. Like I say, a lot of it was</p>

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<p>1 A. That's correct.</p> <p>2 Q. Did Spire ever during February 2021</p> <p>3 reach or attempt to reach the MDQ?</p> <p>4 MR. GORE: I'm going to object, vague,</p> <p>5 foundation. You can answer.</p> <p>6 A. What time period did you ask about?</p> <p>7 Q. (By Mr. Howell) Yeah. So I'm trying</p> <p>8 to figure out, you have all this gas in storage.</p> <p>9 You say that it's really conservative that you have</p> <p>10 all this gas that's just sitting there to protect</p> <p>11 your system. What I'm trying to find out is if you</p> <p>12 have the gas sitting there and obviously you sold</p> <p>13 some of it to Atmos, but did you try to draw out the</p> <p>14 gas, did you try to remove the gas, the physical</p> <p>15 molecules from storage so that it could come onto</p> <p>16 your system and protect your system integrity? So</p> <p>17 with that kind of background, what I'm trying to</p> <p>18 find out is did Spire at any time during</p> <p>19 February 2021 attempt to use its full MDQ for any</p> <p>20 day from storage?</p> <p>21 MR. GORE: I'm going to object, move to</p> <p>22 strike the commentary that preceded the question and</p> <p>23 object to the question as compound.</p> <p>24 A. Justin was the one actually determining</p> <p>25 the actual daily volumes. You know, what I gathered</p>	<p>1 that you couldn't tell me, but sitting here today</p> <p>2 are you aware of any day on which Spire either --</p> <p>3 A. Let me -- I mean, to answer that we --</p> <p>4 MR. GORE: I don't know if there's a</p> <p>5 question pending.</p> <p>6 THE WITNESS: All right.</p> <p>7 Q. (By Mr. Howell) Yeah, yeah, yeah.</p> <p>8 Okay. I think I have one or two other questions</p> <p>9 about storage. With respect to the 500,000</p> <p>10 dekatherms that were sold to Atmos, you mentioned</p> <p>11 that in response to questioning from Mr. Bauer,</p> <p>12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And you sold 500,000 dekatherms at a</p> <p>15 price of \$200 per dekatherm, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. That's \$100 million?</p> <p>18 A. That's correct.</p> <p>19 Q. Did Spire credit its rate base from the</p> <p>20 profit made from the Atmos sale?</p> <p>21 MR. GORE: I'm going to object --</p> <p>22 object, lack of foundation. You can answer.</p> <p>23 A. We -- we handled it through our</p> <p>24 off-system sales mechanism that's in the tariff.</p> <p>25 Q. (By Mr. Howell) Could you explain that</p>
<p>Page 274</p> <p>1 from him in conversations was that from a planning</p> <p>2 perspective, storage -- storage is the one buffer</p> <p>3 that keeps us from being short on Southern Star. So</p> <p>4 from a planning perspective he -- he felt like he</p> <p>5 maximized his storage withdrawals to the fullest</p> <p>6 extent possible through that whole period of time.</p> <p>7 That's where I got back talking to</p> <p>8 Mr. Bauer that if you -- if you look with perfect</p> <p>9 hindsight, you know, would it say that you maximized</p> <p>10 every dekatherm, you know, the question is -- the</p> <p>11 answer is probably no, but I think the team was</p> <p>12 confident that they were maximizing that to the</p> <p>13 fullest extent possible to -- to minimize the amount</p> <p>14 of gas that our firm customers were having to buy.</p> <p>15 Q. (By Mr. Howell) Okay. So your team</p> <p>16 felt that they were maximizing that asset. I'm</p> <p>17 asking kind of a different question about</p> <p>18 quantitatively did you actually maximize use of</p> <p>19 those physical molecules. Was there ever even one</p> <p>20 single day that you used the MDQ that you were</p> <p>21 allowed under the Spire agreement?</p> <p>22 MR. GORE: I'm going to object, vague.</p> <p>23 A. Yeah, I couldn't tell you if we</p> <p>24 actually reached the MDQ on any given day.</p> <p>25 Q. (By Mr. Howell) I know you're saying</p>	<p>Page 276</p> <p>1 answer?</p> <p>2 A. Yeah, there's -- there's a sharing</p> <p>3 mechanism for that activity. Yeah, I don't -- I</p> <p>4 don't recall the exact sharing under that agreement.</p> <p>5 So the dollars were shared -- the majority of the</p> <p>6 dollars go to the ratepayers and then Spire gets a</p> <p>7 portion of that.</p> <p>8 Q. And what day of the winter storm did</p> <p>9 that occur on?</p> <p>10 A. The transfer took place on</p> <p>11 February 15th if I recall.</p> <p>12 Q. And so that was three days after the --</p> <p>13 the OFO was issued and, what, another four days</p> <p>14 before you could even consider terminating the OFO,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And so at that point in time during the</p> <p>18 winter storm Spire determined that rather than using</p> <p>19 that 500,000 dekatherms of gas for its own system</p> <p>20 and its own customers, that it was a better decision</p> <p>21 to sell that gas to a third party so that third</p> <p>22 party could use it?</p> <p>23 MR. GORE: I'm going to object,</p> <p>24 foundation, misstates prior testimony, assumes facts</p> <p>25 not in evidence, compound if I didn't say that. You</p>

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<p>1 can answer the question.</p> <p>2 A. Yeah. Like I mentioned, given our</p> <p>3 overall inventory level and the fact that that had</p> <p>4 no bearing on what our daily limitations were,</p> <p>5 Justin is -- Justin and his team determined that he</p> <p>6 was not going to be able to use the 500,000</p> <p>7 dekatherms of inventory during the cold period.</p> <p>8 Atmos was in a dire situation because</p> <p>9 from what we understood their marketer had</p> <p>10 mismanaged their -- their storage capacity and, you</p> <p>11 know, had not only ran out of storage, but actually</p> <p>12 overran it.</p> <p>13 So them being a sister utility, we kind</p> <p>14 of raised to the call and thought we did a win-win</p> <p>15 deal for them when it was an asset that we weren't</p> <p>16 going to be able to use anyway. So we went ahead</p> <p>17 and executed the transaction.</p> <p>18 Q. (By Mr. Howell) All right. Do you</p> <p>19 know what Atmos did with the gas?</p> <p>20 MR. GORE: I'm going to -- I'm going to</p> <p>21 object as beyond the scope of the 30(b)(6) -- of the</p> <p>22 corporate representative notice. Also, it's a</p> <p>23 question about a subject matter that this witness</p> <p>24 isn't qualified to answer. That being said, you</p> <p>25 can -- you can answer if you know.</p>	<p>1 would be great.</p> <p>2 THE WITNESS: Seven? Tab seven?</p> <p>3 MR. HOWELL: Mr. Godat, this was an</p> <p>4 exhibit that Mr. Bauer offered during his</p> <p>5 examination.</p> <p>6 MR. APLINGTON: I think it's 8.</p> <p>7 MR. HOWELL: There was an e-mail that</p> <p>8 Spire sent to all the customers.</p> <p>9 MR. GORE: Can you say what's at the --</p> <p>10 at the top of the document? Is it MOW</p> <p>11 Transportation Comms 2-17-21, is that the document</p> <p>12 you're referring to? What's at the top of the</p> <p>13 document?</p> <p>14 MR. HOWELL: Yes, sir. I --</p> <p>15 MR. GORE: Okay.</p> <p>16 MR. HOWELL: -- apologize. I'm trying</p> <p>17 to pull it up and confirm that with you.</p> <p>18 THE WITNESS: I see the document.</p> <p>19 Q. (By Mr. Howell) During the questioning</p> <p>20 you were asked if this e-mail was sent to -- to</p> <p>21 Symmetry customers. Did a -- did this letter or</p> <p>22 e-mail also go to Constellation customers as well?</p> <p>23 MR. GORE: What? I'm not sure it's</p> <p>24 clear in the record what we're looking at. We've</p> <p>25 got -- we've got Exhibit 8, but I'm not at all sure</p>
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<p>1 A. I don't know anything beyond the -- the</p> <p>2 transaction where the inventory was transferred on</p> <p>3 paper from our account to Atmos's account.</p> <p>4 Q. (By Mr. Howell) You mentioned a minute</p> <p>5 ago that there was a -- a tariff mechanism for</p> <p>6 splitting the hundred million dollar revenue event</p> <p>7 between ratepayers and Spire Missouri. What share</p> <p>8 of that hundred million dollars did Spire get?</p> <p>9 A. I'm pretty sure it's 25 percent.</p> <p>10 Q. 25 percent plus -- 25 plus on the</p> <p>11 profit plus the return of its cost basis?</p> <p>12 A. It's 25 percent of the net margin on</p> <p>13 the deal. So it would be sale less cost. Excuse</p> <p>14 me.</p> <p>15 MR. HOWELL: If I can just go on mute</p> <p>16 for one second, I'm going to check my notes really</p> <p>17 fast and I think I can be done.</p> <p>18 (WHEREIN, a discussion was held off the</p> <p>19 record.)</p> <p>20 MR. HOWELL: All right. Are you ready?</p> <p>21 There's one other document I need to ask about.</p> <p>22 Ryan, there was an e-mail that Mr. Bauer used that</p> <p>23 Spire sent to the customers. I do not have the</p> <p>24 exact number. I think it might have been 6 or 7.</p> <p>25 If you can locate that quickly and bring it up, that</p>	<p>1 that you're referencing Exhibit 8.</p> <p>2 THE WITNESS: Do you know if this is in</p> <p>3 our binder?</p> <p>4 MR. HOWELL: I'd like to pass the</p> <p>5 witness.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. GORE: Are you referencing the</p> <p>8 document that's at tab 17, whatever binder? 18 --</p> <p>9 so we think you're referencing a document that's at</p> <p>10 18M of our binder. That's a different e-mail than</p> <p>11 this one.</p> <p>12 THE WITNESS: This may have just went</p> <p>13 to Symmetry customers.</p> <p>14 MR. GORE: Actually, scratch that. The</p> <p>15 Exhibit 8 used today in Bauer's -- Mr. Bauer's</p> <p>16 questioning is not the same as 18M, so we were wrong</p> <p>17 about that. So I'm not sure whether we're using</p> <p>18 Exhibit 8 from Mr. Bauer's questioning or something</p> <p>19 else.</p> <p>20 MR. HOWELL: Well, with respect to</p> <p>21 Exhibit 8 from Mr. Bauer's questioning, if Ryan can</p> <p>22 put that up on the screen, I think that can resolve</p> <p>23 this immediately. Yes, this was the document that I</p> <p>24 was referring to.</p> <p>25 Q. (By Mr. Howell) I believe you</p>

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