

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

Clearwater Enterprises, L.L.C.,)	
)	
Complainant,)	
)	
v.)	File No. GC-2021-0353
)	
Spire Missouri Inc., and its operating unit)	
Spire Missouri West)	
)	
Respondent.)	

**SPIRE’S MOTION TO DISMISS
AND, IN THE ALTERNATIVE, ANSWER**

COMES NOW Spire Missouri Inc. (“Spire Missouri” or “Company”), as its *Motion to Dismiss and, in the Alternative, Answer*, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

BACKGROUND

1. On April 15, 2021, Clearwater Enterprises, LLC (“Clearwater” or “Complainant”) filed a complaint against Spire Missouri, and its operating entity Spire Missouri West, concerning certain penalties related to the February 2021 cold weather event and Spire Missouri’s tariffs.
2. The Commission issued its *Notice of Complaint* on April 16, 2021, directing Spire Missouri to file its answer to the complaint by May 17, 2021.
3. Spire Missouri herein moves for the dismissal of this Complaint and provides its answer to the Complaint.

MOTION TO DISMISS

4. A complaint must allege a violation of a “tariff, statute, rule, order, or decision within the Commission’s jurisdiction. . . .” 20 CSR 4240-2.070(1); *See also* Section 386.390, RSMo. The Complaint does not meet this standard.

5. The Complaint suggests that it is based on an allegation that the charges demanded by Spire Missouri are not just and reasonable (Para. 7 - “Every unjust and unreasonable charge is prohibited.”). However, an allegation as to unjust and unreasonable rates may only support a complaint in very specific circumstances.

6. Section 386.390.1, RSMo, states as follows:

. . . provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

(emphasis added). *See also* 20 CSR 4240-2.070(5).

7. The Complaint does not satisfy the elements of statute and rule that are required to challenge the just and reasonable nature of Spire Missouri’s rates (or in this case, penalties). Further, even if it did, a challenge to the just and reasonable nature of rates may only be prospective in nature. Section 386.270, RSMo, provides that:

All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.

8. The Missouri Court of Appeals has recently described the impact of rates found in

effective tariffs as follows:

It is a settled rule that the legal rate is the filed rate, and it is the duty of the carrier, here MAWC, to charge and collect the rate as it is in the tariffs on file with the regulatory agency, here the PSC. The tariffs submitted by MAWC and approved by and on file with the PSC are prima facie lawful until found otherwise by the ruling of a court at the conclusion of the administrative appeal process by the OPC under Section 386.270. Here, the rates complained of by Appellants were presumptively reasonable, were never found to be otherwise, and the time to overcome the presumption has passed.

Agnew v. Mo.-Am. Water Co., 567 S.W.3d 652, 662-63 (Mo. Ct. App. 2018) (citations omitted).

9. The assessment of penalties after a cold weather event as described by the Complaint is supported by Spire Missouri's tariffs. Sheets Nos. 16-16.14 outline the relationship between Spire Missouri and its transportation customers. Those sheets include in the "Priority of Service" section (Sheets Nos. 16.7-16.14), discussion of OFO impacts, as well as the "Penalties for Unauthorized Usage" (Sheets Nos. 16.13-16.14).

10. 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.

11. The rates of which Clearwater complains have been approved by the Commission and are prima facie lawful and reasonable. In fact, Spire is required to charge and collect that rate in accordance with its tariffs. The fact that Spire is doing such does not form the basis for a valid complaint.

12. This conclusion can also be seen from the substantive remedy requested by Clearwater. The Complaint asks that the Commission:

. . . issue an Order voiding the OFO penalties, or in the alternative granting Spire a waiver or variance from the requirements of Tariff Sheets 16.13-16.14 and/or prohibiting Spire from billing or otherwise attempting to collect from Clearwater or any Missouri customer any portion of the approximately \$8.3 million in penalties demanded by Spire.

(Complaint, p. 6).

13. This is not a remedy that may be granted by the Commission. Penalties provided for by the Spire Missouri tariff may not be “voided” and a complaint case is not a proper forum to request a “waiver or variance.” In fact, a suggestion that a waiver or variance is needed shows that the violation of a tariff is not at issue in this case as these orders would only be necessary where a result contrary to the tariff is sought.

14. Moreover, the payment or non-payment of OFO penalties have consequences for Spire Missouri’s customers that are subject to the Purchased Gas Adjustment (PGA) and Actual Cost Adjustment (ACA). Spire Missouri’s tariff states that “All 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). Thus, all else being equal, every dollar of OFO penalties collected by Spire Missouri is a dollar less that its customers will pay in PGA/ACA charges, and each dollar of OFO penalty that is waived is a dollar more that will be paid by those customers subject to the PGA/ACA.

15. Neither the Complainant’s allegations that the penalties are not just and reasonable nor the suggestion that the Commission grant a waiver or variance from Spire Missouri’s tariffs is a basis for a complaint under 20 CSR 4240-2.070 or Section 386.390, RSMo.

16. Lastly, Complainant further requests that the Commission:

stay Spire from taking any retaliatory measures against Clearwater or its Missouri customers as a result of seeking the relief requested herein or in refusing to pay approximately \$8.3 million penalties and charges claimed by Spire, which would include but is not limited to terminating or altering the services provided to Clearwater or its Missouri customers until the resolution of this Complaint.

(Complaint, p. 6-7).

17. This request is not based on any allegation of tariff violation. It seeks to stay future, lawful conduct. Missouri law is clear that the power to issue a declaratory judgment is a judicial remedy that is not available to administrative agencies. *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W. 2d 69 (Mo. banc 1982). More specifically, this Commission has "no power to declare or enforce any principle of law or equity." *Lightfoot et al. v. City of Springfield*, 361 Mo. 659, 669, 236 S.W. 2d 348, 352 (Mo 1951). A request to stay future conduct, especially what may be lawful conduct, does not support a complaint.

18. Spire's billing of penalties to Complainant is consistent with its tariff. Section A.3.(a) of Spire Missouri's Transportation Provisions (Sheet No. 16) states in part that agents, such as Complainant, must acknowledge "agent's responsibilities under Section A-9 Cash Out and Section B-5 penalties for Unauthorized Usage." These responsibilities include the Section B.5.(d) requirement that "Unauthorized Over- or Under-Delivery penalties for pools shall be billed to and collected from the agent representing the aggregated customers" (Sheet No. 16.14). The allegations of the Complaint found in paragraphs 2 and 4 indicate that Clearwater has acknowledged its responsibility for a pool of aggregated customers and therefore its responsibility for the described penalties.

19. "The commission . . . may after notice dismiss a complaint for failure to state a claim on which relief may be granted . . ." 20 CSR 4240-2.070(7). Additionally, where the Commission

lacks jurisdiction over requested remedies, a complaint must be dismissed. *Shurin, v. Xspedius (formerly espire)*, Case No. TC-2005-0266, 2005 Mo. PSC LEXIS 786, *6 (Mo. P.S.C. June 2, 2005) (“Because the Commission lacks jurisdiction over the requested remedy, the Commission lacks subject matter jurisdiction over the complaint.”).

20. As described above, the Complaint in this case fails to allege any violation of a tariff, statute, rule, order, or decision within the Commission’s jurisdiction, or to request a remedy that may be granted by the Commission. Therefore, the Complaint fails to state a claim upon which relief may be granted and must be dismissed.

ANSWER

For its Answer, Spire Missouri states as follows:

1. Spire Missouri admits that Clearwater is a natural gas marketer. Spire Missouri is without sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 1, and therefore, denies the same.

2. Spire Missouri admits the allegations contained in paragraph 2.

3. Spire Missouri admits the allegations contained in paragraph 3.

4. Spire Missouri is without sufficient information or belief to admit or deny the allegations in the first sentence of paragraph 4, and therefore, denies the same. Spire Missouri admits the remaining allegations contained in paragraph 4.

5. Spire Missouri admits the allegations contained in paragraph 5.

6. Paragraph 6 does not contain a factual allegation to which a response is required. Spire Missouri further states that the referenced statutes and rule speak for themselves.

7. Paragraph 7 does not contain a factual allegation to which a response is required.

Spire Missouri further states that the referenced statutes speak for themselves.

8. Spire Missouri admits the allegations contained in the first five (5) sentences of Paragraph 8. Spire Missouri is without sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 8, and therefore, denies the same.

9. Spire Missouri admits that it did not involuntarily curtail any customers during the OFO period.

10. Spire Missouri admits the allegations contained in paragraph 10. Further answering, Spire Missouri states that its purchases of additional natural gas to cover marketers' supply failures is the reason why it did not experience an integrity issue and remained able to continue to make gas deliveries.

11. Spire Missouri admits the allegations contained in paragraph 11.

12. Spire Missouri admits that **Exhibit A** is a true and correct copy of a letter it sent on February 24, 2021, and denies the remaining allegations contained in paragraph 12 concerning **Exhibit A**, as **Exhibit A** speaks for itself. Spire Missouri admits that **Exhibit B** is a true and correct copy of an invoice it sent on March 16, 2021, and denies the remaining allegations contained in paragraph 12 concerning **Exhibit B**, as **Exhibit B** speaks for itself.

13. Spire Missouri admits the allegations contained in paragraph 13.

14. Paragraph 14 does not contain a factual allegation to which a response is required. Spire Missouri further states that the referenced Tariff speaks for itself.

15. Spire Missouri admits that there is an Aggregation Agreement between Clearwater and Spire Missouri and denies the remaining allegations contained in paragraph 15 concerning the Aggregation Agreement as that document speaks for itself. Spire Missouri is without sufficient

information or belief to admit or deny the remaining allegations contained in Paragraph 15, and therefore, denies the same.

16. The first two (2) sentences of paragraph 16 do not contain a factual allegation to which a response is required. Spire Missouri further states that the referenced Tariff provisions speak for themselves. Spire Missouri denies the remainder of the allegations contained in paragraph 16.

17. The first two (2) sentences of paragraph 17 do not contain a factual allegation to which a response is required. Spire Missouri further states that the referenced Tariff provision speaks for itself. Spire Missouri denies the remainder of the allegations contained in paragraph 17.

18. The first sentence of paragraph 18 does not contain a factual allegation to which a response is required. Spire Missouri further states that the referenced Tariff provision speaks for itself. Spire Missouri denies the remainder of the allegations contained in paragraph 18.

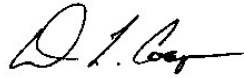
19. Spire Missouri admits that it has not sought a waiver or variance of the tariff provisions referenced in the Complaint. Spire Missouri denies three remainder of the allegations contained in paragraph 19.

20. The references in paragraph 20 to Spire Missouri's presentation in Commission File No. AO-2021-0264 and Spire Missouri's Demand letter do not contain a factual allegation to which a response is required. Spire Missouri further states that the referenced presentation and Demand Letter speak for themselves. Spire Missouri denies the remainder of the allegations contained in paragraph 20.

21. Paragraph 21 does not contain a factual allegation to which a response is required. Further answering, Spire Missouri denies that a waiver of OFO penalties is appropriate in this case.

WHEREFORE, Spire Missouri respectfully requests that this Complaint be dismissed, or, in the alternative, considered by the Commission to have been fully answered and requests such other and further relief as is just and proper under the circumstances.

Respectfully submitted,



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ATTORNEYS FOR SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 17th day of May, 2021, to:

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