

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 17<sup>th</sup> day of February, 2022.

Constellation NewEnergy - Gas Division, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. GC-2021-0315</u></b>
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	
	)	
Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. GC-2021-0316</u></b>
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	
	)	
Clearwater Enterprises, L.L.C.,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. GC-2021-0353</u></b>
	)	
Spire Missouri, Inc. d/b/a Spire and its Operating	)	
Unit Spire Missouri West	)	
	)	
Respondent.	)	

**ORDER REGARDING CONSTELLATION'S MOTION TO COMPEL  
DISCOVERY FROM SPIRE**

Issue Date: February 17, 2022

Effective Date: February 17, 2022

On February 8, 2022, Constellation NewEnergy-Gas Division (CNEG) filed a motion to compel Spire to respond to certain data requests. Spire responded to CNEG's Motion to Compel on February 11, 2022. CNEG replied to Spire on February 15, 2022.

CNEG's complaint is one of three complaints arising from the extreme cold weather event that struck the central United States in February, 2021. That event is sometimes referred to as Winter Storm Uri. As the effects of the storm developed, Spire issued an Operational Flow Order (OFO) on its Spire West operating system. That OFO required shippers of gas through Spire's system to balance their shipments of gas daily, meaning they had to deliver sufficient supplies of gas into Spire's system each day to meet the gas demand of their customers on the system. Under normal conditions, such shipments are balanced monthly. During the storm, the market for natural gas supplies became extremely unstable and spot prices for natural gas reached stratospheric heights.

The three complainants - CNEG, Symmetry Energy Solutions, LLC, (Symmetry), and Clearwater Enterprises, L.L.C. (Clearwater) - are natural gas marketing companies that during Winter Storm Uri failed to deliver enough gas into Spire's system to fully meet the needs of their customers. Spire billed the gas marketers for natural gas used by the marketers' customers during the storm. The bills included the cost of gas Spire said it procured to replace the gas that was not delivered to the system by the marketers, as well as substantial OFO penalties established under Spire's tariffs for the failure to balance natural gas supplies and deliveries during the OFO. Spire's February 2021 bill to the Complainants was approximately \$35 million to CNEG, \$150 million to Symmetry, and \$7 million to Clearwater.

CNEG, Symmetry, and Clearwater filed separate complaints against Spire, alleging that the OFO issued by Spire in February 2021 did not comply with the requirements of Spire's tariff in that the OFO was put in place without sufficient justification, and kept in place beyond the time Spire knew, or should have known, it was no longer necessary. The complainants further allege that Spire has overstated the cost of obtaining natural gas to make-up for the shortage of gas supplied by the marketers.

The three complaints were filed separately and have not been consolidated. However, they have been consolidated for purposes of a joint hearing, which is currently scheduled to take place on April 18-22, 2022. In addition, counsel for all complainants have cooperated in their attempts to obtain discovery from Spire.

Discovery at the Commission is governed by Commission Rule 20 CSR 4240-2.090(1), which states that discovery "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." The applicable Missouri civil procedure rule regarding discovery is Missouri Rules of Civil Procedure Rule 56.01. That rule provides in general that parties may obtain discovery regarding any relevant matter that is not privileged. In deciding whether discovery is to be had, the tribunal is to consider whether the discovery is:

proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

The party seeking discovery has the burden of establishing relevance.<sup>1</sup> That rule also requires that discovery must be limited if the tribunal determines that:

- (A) The discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (B) The party seeking discovery as had ample opportunity to obtain the information by discovery in the action; or
- (C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).

The Commission's rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court.<sup>2</sup> In addition, parties may use data requests as a means of discovery.<sup>3</sup> Data requests are enforceable by means of a motion to compel pursuant to Missouri Rules of Civil Procedure Section 61.01(g).

CNEG expresses concern that Spire has failed to produce documents that are responsive to its data request and that CNEG believes exist, based on conflicting explanations offered by Spire. Specifically, CNEG seeks to compel production of responsive documents along four categories: (1) chats using the Intercontinental Exchange, Inc. trading platform ("ICE Chats") during February 2021; (2) Microsoft Team chats during February 2021; (3) emails or other communications with Southern Staff personnel during February 2021; and internal Spire emails during February 2021 related to Spire's Operational Flow Order, Southern Star's operating conditions, Spire's natural gas trading and marketing affiliate (Spire Marketing), and Spire's sales of natural gas from storage before and during Winter Storm Uri. Spire's response asserts that it has already

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<sup>1</sup> Missouri Rules of Civil Procedure 56.01(b)(1).

<sup>2</sup> Commission Rule 20 CSR 4240-2.090(1).

<sup>3</sup> Commission Rule 20 CSR 4240-2.090(2).

responded to CNEG's document request through prior discovery and that there is no need to issue an order directing Spire to further respond.

The Commission will grant CNEG's motion to compel.

**THE COMMISSION ORDERS THAT:**

1. CNEG's Motion to Compel Discovery from Spire is granted.
2. No later than March 3, 2022, Spire shall produce all documents and data responsive to the requests outlined in CNEG's Motion to Compel Discovery. For any such documents and data that once existed, but has not been produced or allegedly cannot now be produced, Spire shall explain the circumstances of such data loss that resulted in Spire's inability to produce such documents.
3. This order shall be effective when issued.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Coleman, Holsman, and  
Kolkmeier CC., concur.  
Rupp, C., absent.

Woodruff, Chief Regulatory Law Judge


**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 17<sup>th</sup> day of February, 2022.**



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

**MISSOURI PUBLIC SERVICE COMMISSION**

**February 17, 2022**

**File/Case No. GC-2021-0315, GC-2021-0316 and GC-2021-0353**

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***Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).***

***Sincerely,***

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

**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.