

## LATHAM & WATKINS LLP

January 19, 2022

### **BY EMAIL**

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Re: *Symmetry v. Spire*, Missouri PSC Case No. GC-2021-0316

Dear Sirs:

Both Mr. Aplington and Spire's corporate representative have represented that Spire has produced all documents Symmetry requested in this case (with the exception of seven requests where Spire stood on its objections), and that Spire has no additional responsive documents to produce. As you know, we believe it is odd that there are fewer than 50 documents within all Spire that are responsive to requests such as:

- Symmetry's Data Request Number 3: "For each OFO issued by Spire affecting the Spire MO West System, produce all correspondence and other documents related to Spire's evaluation, actions, and decisions regarding the need for the OFO, including all conditions and circumstances giving rise to the need for the OFO."<sup>1</sup>

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<sup>1</sup> "Document" is broadly defined in Symmetry's data requests, and includes, among other things, "communications, including intracompany communications, correspondence, e-mails, online chats, instant messages, text messages, messaging app communications, telegrams, telephone bills and records, electronic facsimiles, electronically stored information, cables, memoranda ... and any other document or writing of whatever description, including, without limitation, any information contained in any computer, although not yet printed out." "Correspondence" is

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- Symmetry’s Data Request Number 7: “Produce all correspondence and other documents regarding Spire’s evaluation, actions, and decisions regarding the protection of the integrity of the Spire MO West System.”
- Symmetry’s Data Request Number 33: “For each OFO issued by Spire affecting the Spire MO West System, produce all correspondence and other documents related to Spire’s evaluation, actions, and decisions regarding the duration of the OFO, including all conditions and circumstances that formed the basis of Spire’s decision regarding when to terminate the OFO.”
- Symmetry’s Data Request Number 47: “Produce all correspondence and other documents regarding Spire’s efforts to insure compliance with requirements of upstream pipeline companies (including SS) regarding the Spire MO West System.”
- Symmetry’s Data Request Number 72: “Produce all correspondence between Spire and Spire Marketing.”
- Symmetry’s Data Request Number 74: “Produce all correspondence and documents related to all gas purchase, sale, exchange, and other transactions made by Spire related to the SS System or the Spire MO West System, including intra-storage transactions and any transactions within any pools on the SS System or Spire MO West System.”

Spire’s corporate representative did not have the information requested about whose documents were collected, whose were preserved or who decided which were responsive and which were not. He just referred us to “Scott Weitzel and then [Spire’s] inside and outside counsel.”

Our request, then, is that you either present a knowledgeable witness for a continued corporate representative deposition or confirm the following through a representation by counsel or a sworn declaration by a nonlawyer:

1. That a document-hold communication was sent to at least these witnesses before Spire demanded OFO penalties from Symmetry and filed a lawsuit:
  - a. Rob Atkinson
  - b. Scott Carter
  - c. Ashley Dixon
  - d. Scott Dudley
  - e. Owen Farron
  - f. Christopher Gagliano
  - g. Todd Gibson

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similarly broadly defined as “any document that reflects or constitutes the transmittal of information in any form, including through letters, faxes, e-mails, text messages, online chats, messaging apps, and recorded conversations or audio or video conferences or broadcasts.”

- h. George Godat
  - i. Alex Grewach
  - j. Greg Hayes
  - k. Mark Lowe
  - l. Bob McKee
  - m. Al Moore
  - n. Theresa Payne
  - o. Justin Powers
  - p. Michael Schormann
  - q. Scott Weitzel
2. That the fewer than 50 documents Spire produced to Symmetry in response to Symmetry's data requests are all of the responsive documents that are or were in the possession of the witnesses named above.
3. That no responsive documents have been destroyed, lost, erased, or overwritten.
4. That there are no additional responsive documents in any of these categories:
- a. Forecasts produced by the gas control team, responsive to Data Requests 3 and 6, among others. (*See Spire's Corporate Representative Deposition at 41:6-10.*)
  - b. Correspondence among the gas supply team and upstream pipelines and suppliers regarding restrictions on gas supply in the lead up to the issuance of the OFO, responsive to Data Request 3. (*See, e.g., Deposition at 39:14-16.*)
  - c. Email and other correspondence among members of the gas supply and gas control teams responsive to Data Requests 3, 7, 11, 58 and 74, among others. (*See Deposition at 42:14.*)
  - d. Daily portfolio circulated by Greg Hayes and used to manage Spire's overall supply, responsive to Data Request 7 and others. (*See Deposition at 154:15-155:20.*)
  - e. Correspondence related to the matters referred to in the email marked as Exhibit 6 during the deposition, including any correspondence with Southern Star pursuant to which any telephone calls or other meetings with Southern Star were scheduled, and any other correspondence related to declines in pressure on the Southern Star system, responsive to Data Requests 7, 9, 11, and 17, among others. (*See Deposition at 217:17-219:9.*)
  - f. ICE Chats or other correspondence documenting gas purchase and sale transactions, responsive to Data Request 74 and others. (*See Deposition at*

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155:21-156:4.) In fact, I note that Spire produced an (excerpted and incomplete) ICE Chat in discovery in response to Data Request 58.

- g. The daily trade sheet, responsive to Data Request 74. (*See* Deposition at 157:19-20.)
- h. Correspondence and documents relating to Spire's sales of gas, including documents relating to the February 15 Atmos transaction – for which no documents were previously produced, although Spire provided the transaction confirmation in its witness binder at the deposition – and other sales during the relevant period, responsive to Data Request 74. (*See* Deposition at 118:3-8, 299:16-300:8.)
- i. A complete collection of invoices, transaction confirmations, and other documents reflecting Spire's gas purchases during February, including all documents supporting the Actual Cover Costs spreadsheet, responsive to Data Request 74.

Thank you for your attention to this matter. We would appreciate your response within a week, by January 26.

Very truly yours,



Steven M. Bauer  
of LATHAM & WATKINS LLP

cc: Doug Healy, Esq.  
Peggy Whipple, Esq.  
Terry Jarrett, Esq.