

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

Constellation NewEnergy- Gas Division, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. GC-2021-0315
	)	
Spire Missouri Inc.,	)	
	)	
Respondent.	)	

**SPIRE MISSOURI’S PROPOSED PROCEDURAL SCHEDULE**

**COMES NOW** Spire Missouri Inc. (“Spire Missouri” or “Company”), and, as its *Proposed Procedural Schedule*, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

**SUMMARY**

Spire Missouri proposes herein a procedural schedule that will provide the opportunity for the Commission to issue a decision in this matter in time for that decision to be a part of the Purchased Gas Adjustment/Actual Cost Adjustment filing which will become effective in November 2021. This timeline is important for Missouri customers. For perspective, between the three complaint cases concerning these issues that are currently pending before the Commission, there are approximately \$190 M in penalties at issue and approximately \$80 M in actual increases in gas costs<sup>1</sup> at issue, of which the complainants have paid nothing, in spite of a contractual obligation to do so. This amount compares to Spire Missouri West’s usual annual gas cost of approximately \$239 M. The result of this case and the other similar cases and the treatment of the \$190 M and the \$80 M in actual costs will have a real and significant impact on the ACA to be filed in November and the rates to be paid by Spire Missouri’s customers.

Thus, the question of a procedural schedule is not just a question concerning the merits of the Complaint but is fundamentally about the impact a delay in resolution could have on the Spire Missouri customers. The Commission complaint case procedure should not be used as a delay tactic that ultimately affects Spire Missouri firm customers who will have to pay their bills without delay or face disconnect, unlike the Complainant who has not paid anything to date.

### **BACKGROUND**

1. On March 26, 2021, Symmetry Energy Solutions, LLC (“Symmetry” or “Complainant”) filed a complaint against Spire Missouri concerning certain penalties related to the February 2021 cold weather event and Spire Missouri’s tariffs. As the Complainant in this matter, Symmetry carries the burden of proof and it is Symmetry’s obligation to come forward first with its case. *See Mo. Pub. Serv. Comm'n v. Office of Pub. Counsel (In re Emerald Point Util. Co.)*, 438 S.W.3d 482, 490-491 (Mo. App. W.D. 2014).

2. The Commission issued its *Order Directing the Parties to File a Proposed Procedural Schedule* on May 27, 2021, directing the parties to file a proposed procedural schedule by June 10, 2021.

### **REASON FOR PROPOSED SCHEDULE**

3. The parties to this case have communicated in regard to a proposed procedural schedule. However, they have been unable to arrive at an agreement. This is primarily because of a significant difference of opinion as to the appropriate time frame for such a procedural schedule. Spire Missouri understands Complainant will request a schedule that would provide the opportunity for a Commission decision a full year after the filing of this Complaint.

3. This greatly extended time frame would create a detriment for Spire Missouri’s customers and the public interest in general, as a critical issue for these customers will arise in

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<sup>1</sup> The identified OFO penalties are inclusive of the referenced increases in gas costs.

November of this year when Spire Missouri makes its next Actual Cost Adjustment (ACA) filing.

4. As has been described in prior pleadings, the charges disputed by Complainant find their origin in Spire Missouri's tariff (Sheets Nos. 16-16.14). Section B.5.(d) of the tariff requires 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). In this case, Complainant is the referenced "agent."

5. Spire Missouri's Penalties for Unauthorized Usage provision 5.(c)(i), establishes the penalties that have been assessed by Spire Missouri (Sheet No. 16.14). These penalties have a direct impact on Spire Missouri's ACA - "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, every dollar of OFO penalties collected, or not collected, has a direct impact on the ACA. This is particularly significant in this case where Spire Missouri has been forced to purchase extremely high-priced gas in order to replace the gas Complainant has failed to deliver.

6. Spire Missouri is required to make its next PGA/ACA filing in sufficient time for it to become effective in November 2021. This filing will address the ACA for the winter period October 1, 2020 – September 30, 2021, which will include the period at issue in this case. Without Complainants' payment of the penalties assessed (or, at a minimum, reimbursement of the gas costs Spire Missouri incurred to replace the gas Complainant failed to deliver), Spire Missouri's ACA will reflect rates that require its firm customers to instead pay greater amounts as a result of Complainant's failure to deliver needed gas. The approximately \$35 million (Comp., p. 1) at issue in this case will have a material impact on the ACA. This amount reflects approximately 14% of Spire Missouri West's normal annual gas costs of approximately \$239 M.

7. Complainant previously argued that “Expedited action by the Commission is needed to bring clarity and resolution to an issue that affects hundreds of Missouri gas transportation customers who would otherwise face demand for immediate payment of substantial penalties even while the amount and propriety of those penalties is disputed” (Comp., p. 8). This case did not need to be “expedited” to protect those transportation customers as was explained by Spire Missouri. However, the case does need to move forward at a reasonable pace in order to bring clarity and resolution to an issue that will impacts hundreds of thousands of Spire Missouri’s firm customers beginning in November of this year.

8. Further, Section A.3.(a) of Spire Missouri’s Transportation Provisions (Sheet No. 16) requires an agent, such as Complainant, to enter into a signed agreement with the Company to acknowledge the agent’s responsibilities under the tariff. The signed agreement between Spire Missouri and Complainant includes the following provision:

Company shall bill Agent monthly for all charges relating to imbalances assessed to its Pools. All payments shall be made by the date indicated on the Agent’s bill. Company will assess a monthly delayed payment charge in accordance with its general terms and conditions if payment is not received by the stated due date. If Agent in good faith disputes any part of the invoice, it shall pay the invoice in full and the parties shall work in good faith to promptly and amicably resolve the dispute. Nothing hereunder shall obligate Company to submit its customers’ invoices for the basic transportation services rendered to the Agent.

(emphasis added).

9. Complainant has neither paid the invoice as required by its contract, nor paid for the gas Spire Missouri was required to purchase to cover Complainant’s failure to deliver gas to the Spire Missouri system, nor offered security associated with either of these amounts. It is not surprising that Complainant wants to stretch this matter out as long as possible, even though the Complainant has already billed its customers.

10. A reasonable schedule will provide the possibility for a Commission decision by

November of this year. Such a schedule would appropriately recognize both the import of this case as to Spire Missouri’s November ACA filing, and the fact that Complainant has made no effort to address its obligation to pay the invoice prior to a resolution of its dispute.

**PROPOSED SCHEDULE**

11. Accordingly, Spire Missouri requests that the Commission establish the following procedural schedule, which would still provide Complainant with a period of approximately 100 days between the filing of its Complaint and the due date of its direct testimony:

<b>Event</b>	<b>Date</b>
Complaint Filed/Discovery Begins	March 26, 2021
Response time for all DR’s changes to 10 calendars days and to 5 business days to object or notify that more than 10 calendar days will be needed to provide the requested information.	Date of Order Setting Procedural Schedule
Direct Testimony of Complainant	July 7, 2021
Response time for all DR’s changes to 7 calendars days and to 3 business days to object or notify that more than 5 calendar days will be needed to provide the requested information.	July 7, 2021
Rebuttal Testimony (Respondents, Staff and Intervenors)	July 28, 2021
Response time for all DR’s changes to 5 calendars days and to 2 business days to object or notify that more than 5 calendar days will be needed to provide the requested information.	July 28, 2021
Surrebuttal Testimony of All Parties	August 9, 2021
Joint list of issues, order of witnesses, order of parties for cross-examination, order of opening statements	August 12, 2021
Position statements	August 17, 2021
Evidentiary Hearing	August 30-31, 2021
Initial Briefs	September 15, 2021
Reply Briefs	September 27, 2021
Requested Date of Order	October 27, 2021

**WHEREFORE**, Spire Missouri respectfully requests that the Commission issue its order

setting the procedural schedule proposed herein.

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 10<sup>th</sup> day of June, 2021, to:

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