

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office on  
Jefferson City on the 16<sup>th</sup> day of  
March, 2022.

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>File No. GC-2022-0062</u></b>
	)	
The Empire District Gas Company d/b/a Liberty,	)	
	)	
Respondent.	)	

**ORDER GRANTING MOTION FOR PROTECTIVE ORDER**

Issue Date: March 16, 2022

Effective Date: March 16, 2022

Symmetry Energy Solutions, LLC has filed a complaint against The Empire District Gas Company d/b/a Liberty. Liberty filed a motion on February 11, 2022, asking the Commission to issue a protective order to establish procedures for controlling the flow of highly confidential information among the parties.

The motion explains that certain material regarding commodity prices and actual or planned purchases, as well as competitively sensitive and confidential information regarding natural gas retail and transportation customers and suppliers, including natural gas usage and meter date by customer, will not be adequately protected by the “confidential” designation under Commission Rule 20 CSR 4240-2.135. As permitted by the rule, Liberty requests a protective order to increase the level of protection for that particularly sensitive information.

The Commission initially granted that motion in an order issued on February 22, but then withdrew that order on February 23, to allow Symmetry time to respond.

Symmetry's response expresses concern that Liberty's proposed protective order would prevent its employees from viewing information designated as highly confidential even if those employees are acting as witnesses or subject-matter experts in preparation of Symmetry's case. Symmetry proposes alternative language for a protective order that would allow such employees to view highly confidential information if they have executed a Commission-approved Nondisclosure Agreement.

Liberty replied to Symmetry's response on March 4. Liberty contends that Symmetry's proposed modification of the protective order would essentially eliminate the distinction between confidential and highly confidential information that Liberty's proposed protective order attempts to create. Liberty explains that it does compete with Symmetry for service to transportation customers and service from suppliers. Therefore, Symmetry employees could gain a competitive advantage if allowed to review Liberty's pricing and purchase information.

The Commission agrees with Liberty, Symmetry's modified protective order would allow competitively sensitive information to be viewed by employees of a competitor who might be in a position to use that information to the detriment of the disclosing party. The signing of a confidentiality agreement will not permit even the most conscientious employee to "unsee" highly confidential information when later doing their job in competition with the disclosing party. Therefore, the protective order proposed by Symmetry would not provide sufficient protection for highly confidential information.

The Commission will enter the protective order requested by Liberty, but Symmetry will have a remedy if it believes Liberty has inappropriately designated information as highly confidential, or if it believes that specific employees should be allowed to view the

highly confidential information. The order will allow Symmetry, or any other party, to bring those concerns to the Commission for resolution.

**THE COMMISSION ORDERS THAT:**

1. The following Protective Order is established:
  - a. Materials and information divulged by Liberty, or other parties, shall be considered to be “Highly Confidential” if so designated at the time of disclosure.
  - b. With regard to entities and individuals other than the Staff of the Commission and the Office of the Public Counsel:
    - i. Disclosure of materials and information so designated shall be made only to attorneys and/or such outside consultants who have executed a Commission Non-Disclosure Agreement. No Highly Confidential information shall be provided directly or indirectly to any non-attorney party employee or other individual, except as specifically authorized by the Commission.
    - ii. Persons afforded access to materials or information designated “Highly Confidential” shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than in regard to the case referenced above and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of this protective order.
    - iii. All material and information designated as “Highly Confidential”

in the possession of any entity or person, as well as any notes pertaining to such information, shall be returned to the designating party or destroyed upon conclusion of the referenced case.

c. If a party disagrees with the “Highly Confidential” designation of any information, or if a party believes that one or more of its employees should be allowed to view the highly confidential information, the party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If the party exhausts these dispute resolution procedures, the party may file a motion challenging the designation of the information or the preclusion of one or more of its employees from being able to view the designated information.

2. Nondisclosure forms for use in accessing confidential information in these cases are attached to this order as Exhibit A (for access to “Confidential” information) and Exhibit B (for access to “Highly Confidential” information).

3. This order shall be effective when issued.



**BY THE COMMISSION**

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

Morris Woodruff  
Secretary

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

Woodruff, Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

**NONDISCLOSURE AGREEMENT**

For Case No.: \_\_\_\_\_  
(To Access Confidential Information)

I, \_\_\_\_\_, have reviewed the Commission's Rule at 20 CSR 4240-2.135  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

I have requested review of the confidential information produced in Case No. \_\_\_\_\_  
on behalf of \_\_\_\_\_.

I hereby certify that:

- (a) Only employees of a party that are acting as an expert for that party or that have been retained for this case as an outside expert for that party may receive confidential information;
- (b) An employee is a person in the service of his or her employer whose services are controllable by the employer;
- (c) I am an employee of \_\_\_\_\_ [state name of intervenor] acting as its expert and/or its employee who intends to file testimony in this docket, or I am an outside expert for \_\_\_\_\_ [state name of intervenor] retained to provide expert consultation or testimony in this docket;  
and
- (d) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135.

Dated on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature & Title

NONDISCLOSURE AGREEMENT

(To Access Confidential Information)

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Employer

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Party

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Address

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Telephone

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E-Mail Address

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

**NONDISCLOSURE AGREEMENT**

For Case No.: \_\_\_\_\_  
(To Access Highly Confidential Information)

I, \_\_\_\_\_, have reviewed the Commission's Rule at 20 CSR 4240-2.135  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

I have requested review of the highly confidential information produced in Case No.  
\_\_\_\_\_ on behalf of \_\_\_\_\_.

I hereby certify that:

- (a) Only an outside expert retained by a party in this case may receive highly confidential information;
- (b) I am an employee of \_\_\_\_\_ acting as an outside expert for \_\_\_\_\_ [state name of intervenor] retained to provide expert consultation or testimony in this docket;  
and
- (c) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135 and all terms of the Protective Order issued by the Commission in this docket.

Dated on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signature & Title

NONDISCLOSURE AGREEMENT

(To Access Highly Confidential Information)

Page 2

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Employer

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Party

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Address

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Telephone

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E-Mail Address




**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 16<sup>th</sup> day of March, 2022.**



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

**MISSOURI PUBLIC SERVICE COMMISSION**

**March 16, 2022**

**File/Case No. GC-2022-0062**

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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.