

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

Symmetry Energy Solutions, LLC,)	
Complainant,)	
)	
v.)	File No. GC-2021-0316
)	
Spire Missouri, Inc. and its operating unit)	
Spire Missouri West,)	
Respondent.)	

**RESPONDENT SPIRE MISSOURI INC’S RESPONSE TO SYMMETRY’S
MOTION TO COMPEL FURTHER DEPOSITION TESTIMONY**

Spire Missouri, Inc. (“Spire”), by and through its attorneys, hereby submits its Response to Symmetry’s Motion to Compel Further Deposition Testimony from Spire’s Corporate Representative.

INTRODUCTION

Symmetry’s motion to compel further corporate representative testimony is replete with inflammatory language and baseless allegations, but is premised on the fiction that Spire’s corporate representative testified for eleven-hours without providing responsive testimony on virtually any of the noticed deposition topics. A review of the 345-page deposition transcript makes clear that Symmetry’s request to re-depose Spire’s corporate representative is nothing more than an effort to engage in duplicative, abusive, and costly discovery in an attempt to gain a tactical advantage in this administrative proceeding. Symmetry’s efforts to engage in abusive practices are atypical for proceedings before the Missouri Public Service Commission (the “Commission”), but should be rejected here just as they would be in a Missouri circuit court.

The Commission should deny Symmetry’s motion to compel further deposition testimony from Spire’s corporate representative. Spire prepared its corporate representative, Vice President

of Gas Supply, George Godat (“Godat”), to testify, and he did testify in response to Symmetry’s deposition topics, as well as the topics of two other Complainants during his eleven-hour deposition. The 345-page deposition transcript is clear as to the depth of Mr. Godat’s preparation and willingness to answer Complainants’ questions. Ex. A (Mr. Godat’s Entire Transcript with Highlights). Symmetry’s sparse and largely irrelevant or out of context citations to the record do not support reopening any of the corporate representative topics for further examination.

Symmetry’s motion is consistent with its broader efforts to make this administrative proceeding about anything other than Symmetry’s complete failure to perform during Winter Storm Uri, while seeking to profit from the natural gas that Spire delivered. See, e.g., Vicinity Energy Kansas City, Inc. v. Symmetry Energy Solutions, LLC, Case No. 2116-CV07877 (Mo. Cir.) (“In reliance on Symmetry’s assertion that it delivered the natural gas that Vicinity utilized during Winter Storm Uri, and in accordance with its contract with Symmetry, Vicinity paid Symmetry what Vicinity believed to be the reasonable and fair value for its natural usage during February 2021. But, Vicinity has now learned that Symmetry never delivered any gas to Vicinity during Winter Storm Uri. All of the gas Vicinity utilized was delivered by other providers, not Symmetry.”) (attached as Ex. B).

BACKGROUND

In early February 2021, extreme cold weather was forecast to occur in the central United States, threatening to disrupt natural gas supply. In response to these forecasts, Spire issued an Operational Flow Order (“OFO”) to protect the integrity of its natural gas distribution system and to ensure compliance with upstream pipelines who had similarly issued OFOs. Complainant Symmetry Energy Solutions is a natural gas marketer who, during the February OFO, performed abysmally, failing on several days to nominate any gas to cover its customers’ needs. In accordance

with the parties' service agreements and Spire's Tariff, Spire charged Symmetry over **\$50 million dollars** for the cost of gas that Spire purchased to cover Symmetry's under-deliveries, as well as for the OFO penalties that attached to those under-deliveries.

Symmetry, along with two other underperforming natural gas marketers, Clearwater Enterprises, LLC and Constellation New-Energy-Gas Division, LLC (collectively, "the Complainants"), have since refused to pay their February 2021 invoices or, even, reimburse Spire for the significant costs it incurred buying cover gas on behalf of Complainants. Instead, each have filed cases with the Commission arguing they should be absolved of paying these damages. Discovery is underway, and all three Complainants noticed Spire for a corporate representative deposition on several substantively identical topics. See Ex. C (Symmetry's Deposition Notice); Ex. D (Clearwater's Deposition Notice); and Ex. E (Constellation's Deposition Notice). Spire timely responded to these notices with objections and had one meet and confer with Constellation regarding Spire's objection to its Topic 18. See Ex. F (Spire's Objections to Symmetry); Ex. G (Spire's Objections to Clearwater); and Ex. H (Spire's Objections to Constellation). Neither Symmetry nor Clearwater commented on Spire's objections.

Spire designated Mr. Godat, who was the final decisionmaker regarding the issuance, continuance, and cessation of the OFO, as its corporate representative. Spire produced Mr. Godat for eleven hours of deposition to accommodate Complainants, and Mr. Godat provided informed, responsive testimony regarding the corporate representative topics that Symmetry and the other Complainants had noticed. The transcript of Mr. Godat's deposition makes clear that Mr. Godat was prepared, knowledgeable, and willing to testify at length regarding the topics that Complainants had noticed.

STANDARD

Under Rule 57.03(b)(4), a party may name a corporation as the deponent. Once the corporation is served, it is required to designate a corporate representative to testify on its behalf who is prepared to address the topics, subject to the corporation's timely served objections. Mo. Sup. Ct. R. 57.03(b); Mo. Sup. Ct. R. 61.01(a) (a party may be excused from complying with discovery requests if the party "has served timely objections to the discovery request or has applied for a protective order") (emphasis added). In order for a corporate representative deposition to be efficient, it is the burden of the requesting party to "designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute." Prokosch v. Catalina Lighting, Inc., 193 F.R.D. 633, 638 (D. Minn. 2000) (discussing corporate representative topics in the context of the corollary federal rule, Fed. R. Civ. Pr. 30(b)(6)).

ARGUMENT

Symmetry alleges that Mr. Godat was unprepared to testify about the following twelve Topics: 1, 2(b); 2(f); 2(k); 2(l); 2(m); 3; 4; 6; 7; 8; and 9. As described in detail below, Mr. Godat was prepared and provided responsive testimony regarding these Topics over the course of his eleven-hour deposition. As a result, the Commission should reject Symmetry's misguided effort to re-depose Mr. Godat just because the answers that he gave during the marathon corporate representative deposition do not comport with the false narrative set forth in Symmetry's Complaint and motion to compel.

I. Mr. Godat Provided Fully Responsive Testimony Regarding Topic No. 2.

Symmetry's motion to compel makes the baseless accusation that Spire is engaging in "gamesmanship," but here is a clear example of Symmetry engaging in gamesmanship through the

attempted use of a letter between counsel as a discovery device. A majority of the topics in Symmetry’s notice of corporate deposition were based on a letter that Spire’s counsel, Matt Aplington, drafted and sent to Symmetry’s counsel on September 17, 2021. See Ex. I (the “September 17 letter”). Mr. Aplington wrote the September 17 letter in response to a letter from Symmetry regarding the status of discovery, and in it explained Spire’s position on the unreasonableness of Symmetry’s 103 data requests and highlighted Symmetry’s failure to respond to Spire’s timely objections to said data requests. As part of that communication between counsel, Mr. Aplington also provided a brief summary of the facts underlying the OFO penalty cases. It is from that summary section that Symmetry derived most of its topics for Spire’s corporate representative. Specifically, Symmetry requested corporate representative testimony regarding the “factual bases” for the statements made by Spire’s counsel. See Ex. C.

Unsurprisingly, Symmetry’s eagerness to inject Spire’s General Counsel into this matter led to inartfully drafted corporate representative topics that impermissibly sought to have Spire produce a corporate representative to testify as to Mr. Aplington’s mental impressions and work product. Spire, of course, objected to Symmetry’s Topic 2 on the basis that the topic sought information protected by the attorney client privilege, work product doctrine, and other applicable privileges. Ex. F. Despite the improper nature of Symmetry’s corporate representative Topic 2, Mr. Godat testified to the factual bases of the statements in Mr. Aplington’s letter.

a. Topic No. 2(b)

Symmetry’s Topic No. 2(b) requested that Spire produce a corporate representative to testify regarding the factual bases for the following statement in Mr. Aplington’s discovery letter:

Spire reacted by initiating an OFO to all marketers for the projected start of the storm and short market.

Ex. C. A review of the corporate representative transcript demonstrates that Symmetry’s assertion that Mr. Godat was not prepared to testify regarding this Topic is false. As Spire’s Vice President of Gas Supply, Mr. Godat was the ultimate decisionmaker regarding the initiation of the OFO. Ex. A, 44:23 – 45:8. Mr. Godat testified regarding the issuance of the OFO at length, answering questions not only from Symmetry’s counsel about the Topic but also from counsel for Constellation and Clearwater. Examples of Mr. Godat discussing the initiation of the OFO include:

- Answering questions about what initiating an OFO entails (42:19 – 43:7);
- The purposes of initiating an OFO (43:8-18; 54:15 – 55:21);
- The procedures Spire has in place for declaring an OFO (44:3-16);
- Who was involved in initiating the OFO in February of 2021 and whether Mr. Godat was the ultimate decision maker (44:23 – 45:8; 138:19 – 139:24);
- Whether there was debate within Spire about initiating the OFO (45:9 – 45:23);
- Steps that Spire took to prepare for Winter Storm Uri, in addition to issuing the OFO, which included regression analyses, looking into increased staffing, attempts to figure out who the more vulnerable suppliers were and making contract changes to try and prevent supply from being disrupted (47:23 – 51:7);
- How long Spire thought the OFO would last when it was initiated (56:15-23);
- Whether the OFO was issued for the entire system and why Spire did not consider issuing a narrower OFO (59:2 – 60:2);
- Whether or not there were grounds to issue an Emergency OFO and whether anyone advocated for an Emergency OFO within Spire (60:3-5);
- Reasons Spire entered the February 2021 OFO and whether it was Spire’s position that those reasons justified issuing the OFO under Spire’s Tariff (244:10 – 246:18; 247:11-17, 252:21 – 253:13; 263:7 – 264:20; 265:3 – 266:11; 286:8-23; 287:9-25; 289:4 – 290:10; 291:5-23; 294:14 – 295:11; 295:25 – 296:5);
- Details regarding the language in the OFO notice and whether it was Spire’s position that the language of the notice met the requirements of Spire’s Tariff (291:24 – 294:8).

Ex. A.

In response to the hours of testimony spent on this issue, Symmetry argues that Mr. Godat was unprepared to testify on this Topic for two reasons. First, because Mr. Godat testified that he was not exactly sure how Mr. Justin Powers communicates with upstream pipelines (whether it be verbally, email, or text). Ex. A, 51:8-13. And, second, because he testified that he was not in “a position to represent everything” that all Spire employees did in preparation for Winter Storm Uri given that there are “3,500 employees” that work at Spire and that there was a lot of activity that occurred in preparation for the storm. Ex. A, 51:14 – 52:22. Mr. Godat instead referenced counsel back to the steps that he had already described that Spire took in preparation for the storm. See Ex. A, 47:23 – 51:7.

Neither of these small snippets of testimony indicate that Mr. Godat was unprepared to testify about the initiation of the OFO, particularly given that these lines of questioning are only tangentially related to the Topic and sought highly-specific, minute details that are of questionable relevance to this matter. Brown v. W. Corp., 2014 WL 1794870, at *1 (D. Neb. May 6, 2014) (“While [corporate representative] deponents have an obligation to adequately prepare, depositions [of a corporate representative] are not meant to be traps in which the lack of an encyclopedic memory commits an organization to a disadvantageous position.”). If Symmetry wished to know specifically how Mr. Powers communicated with upstream pipelines or everything that every Spire employee did to prepare for Winter Storm Uri, it should have noticed those topics rather than asking for the factual bases for the initiation of the OFO (which, as the copious pages of testimony show, Mr. Godat undoubtedly testified to). Alternatively, Symmetry could simply ask these questions of Mr. Powers, who they are scheduled to depose in this matter on February 22, 2022. Mr. Godat testified regarding the Topic that was noticed and was not required to be prepared to repeat verbatim the actions every Spire employee took during Winter Storm Uri.

b. Topic 2 No. (f)

Symmetry's Topic No. 2(f) requested that Spire produce a corporate representative to testify regarding the factual bases for the following statement in Mr. Aplington's discovery letter:

As a result, Symmetry customers largely did not conserve natural gas during this period.

Ex. C. Symmetry's single argument that Mr. Godat was unprepared on this Topic is quickly refuted. Symmetry argues that Mr. Godat was unprepared on this Topic for one reason: because he could not testify as to "whether Spire tracked burn rates for individual customers." Symmetry's Motion to Compel, at 7 (citing 88:8-15). However, if Symmetry had only continued reading, it would have seen that Mr. Godat later testified to this issue after having an opportunity to reference documents regarding this Topic:

QUESTION: And then on the same daily basis you're able to see how much the customers of the -- of the marketers, how much natural gas they used?

ANSWER: That's correct.

....

QUESTION: Okay. Let me -- let me just ask you -- now that you've seen some of these documents, the broader question that I was -- we were trying to discuss earlier, and that is does Spire know on a daily basis who is -- which -- which marketers have -- marketers' customers have used more gas than their daily nominations?

ANSWER: We do.

See Ex. A, 98:9-12, 98:25 – 99:8. In addition to the excerpt above, the transcript clearly shows that Mr. Godat testified extensively on this Topic. See also Ex. A, 82:17-22; 83:1-20; 83:25 – 86:9; 86:18-25; 87:13 – 88:7; 89:18 – 90:2; 90:13-24; 99:9 – 99:23. Symmetry's baseless complaints regarding the adequacy of Mr. Godat's testimony on this topic demonstrates that Symmetry's request for further deposition testimony is more tactical than true fact seeking.

c. Topic No. 2(k)

Symmetry's Topic No. 2(k) requested that Spire produce a corporate representative to testify regarding the factual bases for the following statement in Mr. Aplington's letter:

Spire was faced with the choice of either shutting off natural gas to all of Symmetry's customers or buying additional gas to maintain their gas service.

Ex. C. Mr. Godat testified as to the factual basis for this statement. Ex. A, 101:11 –102:6; 103:9-15. In follow-up, Symmetry's counsel then asked Mr. Godat, "For what days during February does Spire believe that this sentence in Topic 2K was factually accurate?" Ex. A, 104:5-7. Mr. Godat responded that the question was asking him to do a "hindsight review" and that he did not know if there was "even a way to mathematically" answer Symmetry's question. Ex. A, 104:11-16. Symmetry asked no follow-up questions to determine what difficulties prevented Mr. Godat from answering its question or whether another question could get at the information Symmetry sought. Instead, Symmetry immediately moved onto its next Topic. Ex. A, 104:13-18. Throughout his deposition, Mr. Godat further discussed the issues of curtailment as well as Spire's cover purchases in response to questioning from all three Complainants. See, e.g., Ex. A, 211:9 – 212:8; 320:15 – 321:10; 331:16 – 333:2; 333:24 – 335:23.

In short, Mr. Godat was prepared to testify about the factual bases for the statements made in Mr. Aplington's discovery letter and did so in response to questioning from Symmetry and the other Complainants. To the extent Symmetry was unsatisfied with Mr. Godat's answer to a single question on this Topic, it had an opportunity to ask follow-up questions to determine whether it was possible for Mr. Godat to provide the information it sought. Symmetry failed to do so and should not be permitted to cause Spire to incur the additional cost and inconvenience of producing Mr. Godat for further deposition.

d. Topic No. 2(l)

Symmetry's Topic No. 2(l) requested that Spire produce a corporate representative to testify regarding the factual bases for the following statement in Mr. Aplington's discovery letter:

Spire elected to do the right thing for the community by purchasing and delivering enough natural gas to cover for Symmetry's failure.

Ex. C. Mr. Godat testified to the factual basis of this statement. Ex. A, 105:2-5 ("I think that's a pretty simple statement that there was enough supply to meet all the customers' load irrespective of the fact that the marketers weren't bringing in their volumes."). Mr. Godat answered Symmetry's follow up questions regarding how much gas it needed to purchase to cover Symmetry's shortfall and specified that Spire had to purchase Symmetry's entire shortfall. Ex J, 106:5 – 108:9. Symmetry complains that Mr. Godat's testimony about Spire needing to buy the entire shortfall only cited to Mr. Powers's "opinion" about the need to make such cover purchases. However, Symmetry asked no follow-up questions about what evidence Mr. Power's position was based on and withdrew a question to Mr. Godat about whether Mr. Godat had any reason to question Mr. Power's position. Ex. A, 108:10-17. Mr. Godat referencing the position of Mr. Power's on this Topic does not mean he was not prepared to testify. He did testify, and (to the dismay of Symmetry) Spire's testimony was that it had to purchase Symmetry's entire shortfall of natural gas. Just because Symmetry does not like an answer does not mean it is entitled to another round of questioning on a Topic.

e. Topic No. 2(m)

Symmetry's Topic No. 2(m) requested that Spire produce a corporate representative to testify regarding the factual bases for the following statement in Mr. Aplington's discovery letter:

Symmetry is charging its customers for gas Spire bought for them during the OFO period.

Ex. C. This Topic clearly improperly seeks work product regarding investigation that Mr. Aplington conducted in his role as General Counsel, which is why Spire objected to all of Topic No. 2 as improper. In response to questioning on this entirely objectionable Topic, Mr. Godat testified that Spire was aware of a “customer invoice where a customer was being charged the Gas Daily pricing,” but stated he could not recall “off the top of [his] head” whether the invoice was a Symmetry invoice. Ex. A, 109:7-18. In response to Symmetry asking if that was the “full factual basis” for the statement, Mr. Godat stated that he could not speak as to whether it was the full basis Mr. Aplington was referring to when he drafted the September 17 letter. Ex. A, 109:7-24. Symmetry asked no follow-up questions presumably recognizing that the questioning was improperly seeking Mr. Aplington’s work product and mental impressions.

II. Mr. Godat Provided Fully Responsive Testimony Regarding Topic No. 3.

Symmetry’s Topic No. 3 requested that Spire produce a corporate representative to testify regarding the following:

Any analysis Spire engaged in concerning the issuance of the Operational Flow Order (“OFO”) Spire issued on February 10, 2021, including why it was necessary, when it should be issued, and any internal discussions or communications with third parties about this topic.

Ex. C. As discussed previously in §I.a, Mr. Godat testified at length regarding the issuance of Spire’s February OFO. Ex. A, 42:19 – 43:7; 43:8-18; 44:3-16; 44:23 – 45:8; 45:9 – 45:23; 47:23 – 51:7; 54: 15 – 55:21; 56:15-23; 59:2 – 60:2; 60:3-5; 138:19 – 139:24; 244:10 – 246:18; 247:11-17, 252:21 – 253:13; 263:7 – 264:20; 265:3 – 266:11; 286:8-23; 287:9-25; 289:4 – 290:10; 291:5-23; 291:24 – 294:8; 294:14 – 295:11; 295:25 – 296:5. Symmetry has provided three cherry-picked examples of why it believes Mr. Godat was not prepared. None of the examples contradict the clear evidence in the transcript that Mr. Godat provided fully responsive testimony regarding this Topic. See, e.g., 62:1-8 (stating only that Mr. Godat was unsure whether gas supply or gas control

ran a model about what the expected burn would be for marketers); 136:9-19 (irrelevant, as this citation to Mr. Godat's testimony had to do with the appropriate time to lift an OFO rather than issue it); 247:18-248:16 (stating only that he could not remember whether he knew about potential natural gas usage on the system because he looked at a specific spreadsheet or if he knew because Mr. Powers gave him the information).

III. Mr. Godat Provided Fully Responsive Testimony Regarding Topic No. 4.

Symmetry's Topic No. 4 requested that Spire produce a corporate representative to testify regarding the following:

Any analysis Spire engaged in concerning the lifting the OFO, including why it was lifted on February 20, 2021, why it was not lifted earlier, and any internal discussions or communications with third parties about this topic.

Ex. C. A review of the deposition transcript refutes Symmetry's assertion that Mr. Godat was not prepared to testify regarding this Topic. Mr. Godat was the ultimate decisionmaker regarding when Spire lifted its OFO. Ex. A, 270:34 – 271:3. Mr. Godat testified about the decision to lift the OFO at length, answering questions not only from Symmetry's counsel about the Topic but also from counsel for Constellation and Clearwater. Examples of Mr. Godat testifying at length as to this Topic include:

- Answering questions as to when the OFO was lifted and who was involved in the decision to lift it (57:11-23; 268:13 – 269:6; 270:10 – 271:3);
- Whether there was discussion or debate about how long the OFO should stay in place (57:24 – 59:1);
- The analysis Spire undertook to determine how long to keep the OFO (66:8-23; 269:7 – 270:4); and
- Why Spire ultimately lifted the OFO (135:11 – 136:19; 271:4 – 272:9).

Ex. A.

Again, Symmetry has provided three unpersuasive examples of why it believes Mr. Godat was not prepared to testify. None of the examples contradict the clear evidence in the deposition transcript that Mr. Godat was prepared to testify to this Topic, nor support continuing Mr. Godat's deposition. See, e.g., 62:1-8 (irrelevant, as this citation to Mr. Godat's testimony had to do with issuing the OFO rather than lifting it); 136:9-19 (stating only that Mr. Godat does not recall having any conversation about lifting the OFO prior to Southern Star lifting theirs because "even as late as the 18th" there were still supply issues and marketers were "shorting the system by a huge amount"); 247:18-248:16 (stating only that he could not remember whether he knew about potential natural gas usage on the system because he looked at a specific spreadsheet or if he knew because Mr. Powers gave him the information).

IV. Mr. Godat Provided Fully Responsive Testimony Regarding Topic No. 6.

Symmetry's Topic No. 6 requested that Spire produce a corporate representative to testify regarding the following:

The availability and use of storage gas by Spire in February 2021, including any decisions to draw from storage or to sell gas to third parties.

Ex. C. Symmetry's assertion that Mr. Godat was not prepared to discuss this Topic is refuted by the transcript. Mr. Godat testified about the availability and use of storage gas at length, answering questions not only from Symmetry's counsel about the Topic but also from counsel for Constellation and Clearwater. Examples of Mr. Godat testifying as to this Topic include:

- Discussing Southern Star's flowing gas requirement that is tied to its storage agreement (47:23 – 48:16; 71:25 – 72:13; 118:14 – 120:3; 272:19 – 273:1; 296:23 – 297:8; 298:19-25);
- Spire's storage position coming into February 2021 and whether Spire felt its position was sufficient (66:24 – 68:14; 69:2-22; 272:10-18);
- Who made the decision to pull storage gas (68:15 – 69:1);

- A storage transaction that Spire made to Atmos, the decisionmakers regarding that transaction, the amount of gas involved in the transaction, how much it was sold for, and why Atmos needed the gas (75:17 – 76:10; 76:18 – 81:4; 122:12-20; 123:10 – 125:3; 160:11 – 161:5; 275:7 – 278:14; 297:13-16; 298:7-12; 300:23 – 301:1; 309:11 – 310:18; 311:19 – 312:5; 316:9-11; 317:1-14);
- Whether Spire reached its maximum daily quantity of gas that it could draw from storage during the February OFO (273:2 – 274:24); and
- Whether Spire has access to Storage outside the Southern Star System (299:1-8).

Ex. A.

Again, Symmetry has provided three unpersuasive examples of why it believes Mr. Godat was not prepared to testify. Symmetry's examples are citations to two instances of testimony in which Mr. Godat stated that he needed to look back at documents to answer a highly-specific question and one instance that is irrelevant to this Topic. See, e.g., 117:18 – 118:13 (Mr. Godat testified to not remembering if there were small sales of gas made on the weekend and stated that he would need to look at the GSC schedule to remember); 120:17 – 121:11: (irrelevant, as this citation has to do with testimony elicited for Topic No. 2(l)); 68:15-22 (Mr. Godat testified that he could not recall whether Spire pulled the maximum gas out of storage each day during the February OFO, stating he would need to look back at documents to see if that was the case). None of these examples support continuing Mr. Godat's deposition on this Topic.

V. Mr. Godat Provided Fully Responsive Testimony Regarding Topic No. 7.

Symmetry's Topic No. 7 asked Spire to produce a corporate representative to testify regarding the following:

Spire's sales of gas to Atmos Energy Corporation in February 2021, including any discussions, communication, or analysis concerning this topic.

Ex. C. As discussed previously in § IV, Mr. Godat testified at length regarding the sale of gas to Atmos Energy Corporation in February 2021. See, e.g., Ex. A, 75:17 – 76:10; 76:18 – 81:4;

122:12-20; 123:10 – 125:3; 160:11 – 161:5; 275:7 – 278:14; 297:13-16; 298:7-12; 300:23 – 301:1; 309:11 – 310:18; 311:19 – 312:5; 316:9-11; 317:1-14.

Symmetry, however, takes issue with the fact that Mr. Godat could not recall the name of Spire’s contact at Atmos and that Mr. Godat directed them to Mr. Powers (who Symmetry is set to depose on February 22, 2022), regarding the exact details of verbal negotiations between Spire and Atmos. Both of these hyper-technical fact questions could have been specified in this Topic, but they were not. Just because Mr. Godat was not prepared to testify regarding every minute factual detail that Symmetry seeks is not a basis to reopen a deposition that already lasted for eleven hours. Mr. Godat was prepared on this topic, gave full answers, and directed Symmetry to Mr. Powers for more in-depth factual questions regarding spoken negotiations. Mr. Powers is the more appropriate witness for these highly fact-specific questions. Bell v. Pension Comm. of ATH Holding Co., LLC, 2018 WL 7350951, at *6 (S.D. Ind. Aug. 16, 2018) (“Given Plaintiffs highly fact-specific questions as to the actual negotiations/communications between Anthem and Vanguard, Plaintiffs would likely have been better to have appropriately selected a fact witness, [rather than a corporate representative.]”). Symmetry is deposing Mr. Powers on February 22 and can explore these issues with him then.

VI. As Acknowledged by Symmetry, Mr. Godat Provided Fully Responsive Testimony Regarding Topic No. 8.

Symmetry’s Topic No. 8 asked Spire to produce a corporate representative to testify regarding the following:

The process by which Spire engages in month-end balancing with Symmetry regarding monthly invoicing, including but not limited to the process as applied since November 2020.

Ex. C. Although Symmetry listed Topic No. 8 as a Topic warranting a continued deposition in the introduction and conclusion of its motion, Symmetry did not substantively discuss Topic No.

8 in its motion. Symmetry at no point argued that Mr. Godat was unprepared or failed to testify regarding this Topic and provided no alleged examples of Mr. Godat being unresponsive to this Topic in the body of its motion or in its attached appendix. Given that Symmetry has failed to argue this point, the Commission should not allow Symmetry to reopen a corporate representative deposition as to this Topic. However, even to the extent Symmetry had made an argument regarding this Topic, it still would have failed given that Mr. Godat provided knowledgeable testimony on this Topic. See, e.g., Ex. A, 125:6 – 126-25; 157:21 – 158:16.

VII. Mr. Godat Provided Fully Responsive Testimony Regarding Topic Nos. 1 and 9.

Symmetry’s Topic No. 1 asked Spire to produce a corporate representative to testify regarding the following:

Spire’s collection and production of documents in this matter, including the basis for stating that “Spire has no additional responsive documents to produce at this time” in Spire’s September 17, 2021 letter.

Ex. C. Spire timely objected to Topic No. 1 on the grounds that it was vague; overbroad; and unduly burdensome. Because the Topic appeared to be an attempt to put discovery matters typically handled by counsel in front of a corporate representative, Spire further objected to the Topic to the extent that it was seeking legal conclusions or information protected by the attorney client privilege or work product doctrine. Spire specified in its objections that it would only produce a corporate representative who could testify regarding the collection and production of documents. See Ex. F. Spire reasserted its objections during Mr. Godat’s deposition and stated that Mr. Godat would only testify as to the collection and production of documents. Ex. A, 23:9-23. Spire further reiterated its position that Topic No. 1 was improper for a corporate representative deposition, given that discovery issues including “narrowing what the documents are to be

discovered and what additional collections need to take place” should be sorted out between counsel and through motion practice. Ex. A, 339:20 – 340:8.

Subject to those objections, Mr. Godat testified regarding the collection and production of documents to Symmetry in this matter. Ex. A, 31:7-21; 32:14 – 33:2. Symmetry’s frustration with the testimony it received is the direct result of it trying to engage in a discovery discussion with a lay witness to whom, at one point, Symmetry attempted to explain the difference between a responsive and requested document. Ex. A, 25:16 – 26:15. To the extent Symmetry has questions regarding document production, those questions will be addressed in continued discussions with Spire’s counsel and through its pending motion to compel (as such questions should have been from the beginning).

Relatedly, Symmetry’s Topic No. 9 asked Spire to produce a corporate representative to testify regarding “Spire’s document retention policies.” Ex. C. Spire did not object to this Topic, and Mr. Godat was prepared and testified as to the retention policies, which were produced to the parties by request of Complainants at the deposition. Mr. Godat reviewed the retention policies in preparation for his testimony and confirmed with the Manager of Records Retention, Bob McKee, that the policies were followed during Winter Storm Uri and since. Ex. A, 127:5-25; 206:2-9. Again, this is another Topic to which Symmetry is not entitled to further questioning.

CONCLUSION

For the foregoing reasons, the Commission should deny Symmetry’s motion to compel further deposition testimony from Spire’s corporate representative.

Dated: February 11, 2022

Respectfully submitted,

By: /s/ Gabriel Gore

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 11 day of February 2022 to the parties.

By: /s/ Gabriel Gore _____