

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 16th day of June, 2021.

Clearwater Enterprises, L.L.C.,)	
)	
Complainant,)	
)	
v.)	<u>File No. GC-2021-0353</u>
)	
Spire Missouri, Inc. d/b/a Spire and its)	
Operating Unit Spire Missouri West)	
)	
Respondent.)	

ORDER DENYING MOTION TO DISMISS

Issue Date: June 16, 2021

Effective Date: June 16, 2021

Clearwater Enterprises, L.L.C. (Clearwater) filed a complaint against Spire Missouri, Inc. and its operating unit Spire Missouri West (Spire) on April 15, 2021. The complaint alleges that Spire has failed to comply with the requirements of its tariff in assessing approximately \$8.3 million in operational flow order penalties following the February 2021 cold weather event. Spire filed a motion to dismiss the complaint along with its answer to the complaint on May 17, 2021. Clearwater responded in opposition to the motion to dismiss on June 8, 2021.

Spire's motion to dismiss argues that Clearwater has failed to allege facts in its complaint that would support a conclusion that Spire has violated its tariff by assessing Operational Flow Order penalties against Clearwater. To the contrary, Spire argues that Clearwater's complaint alleges that the penalties imposed by Spire are not just and reasonable, and would have the Commission impose a waiver or variance from Spire's tariff

provisions that authorize the imposition of such penalties. Spire contends those allegations and requests for relief do not support a complaint against Spire under controlling statutes and the Commission's rules.

Spire's motion is a motion to dismiss the complaint for failure to state a cause of action. In ruling on that motion, the Commission merely considers the adequacy of the complaint.¹ It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.² Further, "[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition 'fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.'"³ Section 386.390(1), RSMo (Supp. 2020), gives the Commission jurisdiction to hear complaints about:

any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission;

...

After examining Clearwater's complaint in light of the guiding legal standard, the Commission finds that the complaint is sufficient to state a cause of action that can be addressed by the Commission. Specifically, the complaint alleges that Spire violated its tariff regarding the justification for issuance of operational flow orders, the notice provided

¹ *State ex rel. Laclede Gas Company v., Public Service Com'n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App. W.D. 2012).

² *Foremost Ins. Co. v. Public Service Com'n of Missouri*, 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).

³ *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission*, 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission*, 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).

to shippers about those operational flow orders, and the duration of the operational flow orders. The Commission cannot make any findings or reach any conclusions about the truth of those allegations at this time, but the allegations are sufficient to properly place this complaint within the Commission's jurisdiction.

Spire's motion to dismiss and Clearwater's response also discuss whether the Commission has authority to order Spire to "waive" its claim to collect operational flow order penalties from Clearwater and other shippers, and whether such a "waiver" would be appropriate. Those questions are about the remedy the Commission may impose if it finds that Spire has violated its tariff or other law or order. They may be addressed in the complaint, but they are not relevant to the question of whether Clearwater's complaint states a cause of action against Spire.

The Commission finds that Clearwater's complaint states a cause of action against Spire, and Spire's motion to dismiss will be denied.

THE COMMISSION ORDERS THAT:

1. Spire's Motion to Dismiss is denied.
2. 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., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Woodruff, Chief Regulatory Law Judge