

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

Symmetry Energy Solutions, LLC,	)	
Constellation NewEnergy-Gas Division,	)	
LLC, and Clearwater Enterprises, LLC	)	
	)	
Complainants,	)	
	)	
v.	)	Case Nos. GC-2021-0316, GC-2021-0315,
	)	and GC-2021-0353
	)	
Spire Missouri, Inc. and its operating unit	)	
Spire Missouri West,	)	
	)	
Respondents.	)	

**SYMMETRY ENERGY SOLUTIONS, LLC’S, CONSTELLATION NEWENERGY-GAS  
DIVISION, LLC’S, CLEARWATER ENTERPRISES, LLC’S, AND SPIRE MISSOURI,  
INC. AND ITS OPERATING UNIT SPIRE MISSOURI WEST’S JOINT MOTION FOR  
PROTECTIVE ORDER AND MOTION FOR EXPEDITED TREATMENT**

Symmetry Energy Solutions, LLC (“Symmetry”), Constellation NewEnergy-Gas Division, LLC (“CNEG”), Clearwater Enterprises, LLC (“Clearwater”) (together, “Complainants”), and Spire Missouri, Inc. and its operating unit Spire Missouri West (together, “Respondents,” and together with Complainants, the “Parties”), by and through undersigned counsel, and in support of their Joint Motion for Protective Order, pursuant to 20 CSR 4240-2.135(3), state as follows:

1. On March 26, 2021, Symmetry filed a complaint with the Missouri Public Service Commission (the “Commission”) against Respondent, assigned File No. GC-2021-0316.
2. On March 26, 2021, CNEG filed a complaint with the Commission against Respondent, assigned File No. GC-2021-0315.

3. On April 15, 2021, Clearwater filed a complaint with the Commission against Respondent, assigned File No. GC-2021-0353 (together with File Nos. GC-2021-0315 and GC-2021-0316, the “Complaint Cases”).

4. On September 1, 2021, the Commission issued, in each Complaint Case, an “Order Setting a Joint Procedural Schedule, Including a Joint Hearing,” establishing a joint procedural schedule and joint hearing for the three Complaint Cases.

5. Portions of non-public information exchanged in discovery or otherwise provided in the Complaint Cases will be designated as “Confidential” in accordance with Commission Rule 20 CSR 4240-2.135(2)(A).

6. There is also a need for portions of such materials to be designated as “Highly Confidential” in accordance with Commission Rule 20 CSR 4240-2.135(4).

7. Missouri Supreme Court Rule 56.01(c) provides that protective orders may be issued “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including... that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.”

8. Due to the joint hearing on the Complaint Cases, the inclusion of three distinct Complainants, and the nature of certain material that has already or will be disclosed, the “Confidential” designation under Commission Rule 20 CSR 4240-2.135 may not provide adequate protection. Greater protection is required for the disclosure of certain material by the Complainants.

9. Complainants are competitors of each other, and are also all competitors of Respondent’s affiliate, Spire Marketing. Complainants would be harmed if information regarding their gas supply planning and gas procurement strategies were made available to in-

house counsel or other employees of other Complainants, or to individuals who are employees of, or have responsibilities with, Spire Marketing. The Parties agree that such information should be afforded greater protection than is provided by 20 CSR 4240-2.135. Therefore the Parties agree that Complainants may designate information regarding their gas supply planning and gas procurement strategies as “Highly Confidential,” and such information will be afforded additional protections as set forth herein.

10. The Parties therefore request a protective order as follows:

a. The Regulations set forth in 20 CSR 4240-2.135 regarding Confidential Information are incorporated by reference herein in their entirety.

b. Materials and information regarding any Complainant’s gas supply planning and gas procurement strategies shall be considered to be “Highly Confidential” if so designated at the time of disclosure.

c. Respondent shall not share any “Confidential” or “Highly Confidential” information from this case with Spire Marketing personnel.

d. With regard to entities and individuals other than the Staff of the Commission and the Office of the Public Counsel:

i. Disclosure of materials or information designated by any Party as "Confidential" shall be made only in accordance with 20 CSR 4240-2.135.

ii. Disclosure of materials or information designated by any Party as “Highly Confidential” may be made only to the other Parties’ (a) outside retained attorneys of record; (b) outside consultants who have executed a Commission-approved Nondisclosure Agreement; (c) up to, but no more than, 4 of a Party’s in-house attorneys, and paralegal, clerical and secretarial staff employed by such in-house counsel, who have executed a Commission-approved Nondisclosure Agreement; and (d) up to, but no more than, 6 of a Party’s employees who are acting as witnesses or subject-matter experts for such attorneys, who have executed a Commission-approved Nondisclosure Agreement.

iii. In all cases in which a person is required to execute a Commission-approved Nondisclosure Agreement before receiving “Confidential” or “Highly Confidential” information, the Party intending to disclose such information to such person must provide to the other Parties a copy of the Commission-approved Nondisclosure Agreement executed by the person

to whom disclosure is being made before disclosing the information to that person.

iv. Persons afforded access to materials or information designated “Confidential” or “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 cases referenced above, and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the protective order.

v. Consistent with 20 CSR 4240-2.135(13), this provision (d) shall not prevent the Commission’s Staff or the Office of the Public Counsel from using “Confidential” or “Highly Confidential” information obtained in this case as the basis for additional investigations or complaints against any public utility.

e. All material and information any other party has designated “Confidential” or “Highly Confidential”, as well as any notes pertaining to such information, must be returned to the party that produced it or destroyed upon the conclusion of the referenced case. Consistent with 20 CSR 4240-2.135(16), this provision (e) shall not apply to officers or employees of the Commission or the Public Counsel or employees of the Office of the Public Counsel, who are subject to the nondisclosure provisions of Section 386.480, RSMo.

f. In addition to the obligations set forth in 20 CSR 4240-2.135(15) and Paragraph 10(e) herein, each party entitled to access “Confidential” or “Highly Confidential” information shall certify in writing that they have complied with 20 CSR 4240-2.135(15) and Paragraph 10(e) herein. Consistent with 20 CSR 4240-2.135(16), this provision (f) shall not apply to officers or employees of the Commission or the Public Counsel or employees of the Office of the Public Counsel, who are subject to the nondisclosure provisions of Section 386.480, RSMo.

g. In addition to obligations set forth in 20 CSR 4240-2.135(13), each person entitled to have access to “Confidential” or “Highly Confidential” information under this rule shall take appropriate measures to safeguard the confidentiality of the “Confidential” or “Highly Confidential” information to prevent the willful or inadvertent disclosure thereof and to assure that the provisions of the protective order are accomplished. Any and all “Confidential” or “Highly Confidential” information shall be kept so that they are not amenable to being read or seen by anyone other than persons who have permission to view or obtain such documents and materials.

h. The burden of establishing that a document (or portion thereof) or prefiled testimony (or portion thereof) contains “Confidential” or “Highly Confidential” information that is entitled to the protection of this protective order shall remain on the designating party.

i. If a party disagrees with the “Confidential” or “Highly Confidential” designation of any 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. Further, a party is not obliged to challenge the propriety of a “Confidential” or “Highly Confidential” designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. If a party determines in good faith that information which was not previously designated as “Confidential” or “Highly Confidential” should have been so designated as “Confidential” or “Highly Confidential”, that party may make such designation at that time. A designation under this paragraph shall take effect at the time it is made.

j. Each individual who receives any “Confidential” or “Highly Confidential” information agrees to subject himself, herself, or itself to the jurisdiction of this Commission for the purpose of any proceedings relating to the performance under, compliance with, or violation of this protective order.

k. In the event that any party is dismissed as a party to this action, it shall continue to be bound by and have rights under this protective order, and a party that is in possession of “Confidential” or “Highly Confidential” information at the time it is dismissed from this action shall comply with Paragraph 10(e) promptly after the dismissal becomes final (i.e., when all appeals have concluded or when the time to appeal has expired without a notice of appeal being filed).

l. Except as specifically provided herein, the terms, conditions, and limitations of this protective order shall survive the termination of this action.

11. The Complainants are defendants in cases pending in the Western District of Missouri brought by respondent Spire, case numbers 21-cv-00180, 21-cv-00181, and 21-cv-00182 (the “Federal Cases”). Notwithstanding any other provisions herein, the persons afforded access to materials or information designated “Confidential” pursuant to Commission Rule 20 CSR 4240-2.135(2)(A), or “Highly Confidential” pursuant to this protective order, shall be entitled to use the disclosed information and materials in the Federal Cases, only after protective orders are entered in each case that are in accordance with the purposes and intent of this protective order, and then pursuant to such protective orders. The materials and information shall retain the confidentiality designations provided herein.

12. Issuance of a protective order as requested herein will still afford appropriate access to information by other parties to allow them to participate in the proceedings and will

not be prejudicial to the public interest.

13. Attached to this motion are nondisclosure forms that are similar to ones that the Commission has approved in other cases—one for confidential information (Exhibit A) and one for highly confidential information (Exhibit B)<sup>1</sup>. These modified nondisclosure forms are similar to that called for by Commission Rule 20 CSR 240-2.135 and accord with the provisions of the protective order requested herein.

### **MOTION FOR EXPEDITED TREATMENT**

Complainants have filed Notices of Deposition for November 30, 2021, at 9:00 a.m. Pursuant to 20 CSR 4240-2.080(14), the Parties request that the Commission expeditiously grant this Motion for Protective Order concurrently with the Motion to Coordinate Discovery by November 29, 2021. By doing so, the Commission will avoid the harm that would be caused by the inefficiencies associated with counsel for all Parties not being able to attend and witness all portions of the depositions. There will be no negative effects from the granting of this Motion. This Motion was filed as soon as it could have been under the circumstances.

**WHEREFORE**, the Parties respectfully request an order of the Commission, pursuant to Commission Rule 20 CSR 4240-2.135(4), granting a protective order and directing the exclusive use in these proceedings of the Nondisclosure Agreement forms attached hereto, and such other and further relief as is just and proper under the circumstances.

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<sup>1</sup> See, e.g., File Nos. EA-2019-0181, EA-2018-0202 and EA-2019-0021.

Respectfully Submitted,

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**ATTORNEYS FOR SPIRE MISSOURI INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of November 2021, a copy of the foregoing **Joint Motion for Protective Order** has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

*/s/ Stephanie S. Bell*

Stephanie S. Bell

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

**NONDISCLOSURE AGREEMENT  
For Case Nos.: GC-2021-0316,  
GC-2021-0315, and GC-2021-0353  
(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 confidential information produced in Case No. \_\_\_\_\_ on  
behalf of \_\_\_\_\_.

I hereby certify that I understand and agree that:

(a) I have reviewed the Commission's Protective Order in this docket, and the Commission's  
Rule at 20 CSR 4240-2.135.

(b) I am an attorney/consultant/employee of \_\_\_\_\_ acting  
as \_\_\_\_\_ [state role from list of eligible persons]  
for \_\_\_\_\_ ;  
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.

**NONDISCLOSURE AGREEMENT**

**For Case Nos.: GC-2021-0316,**

**GC-2021-0315, and GC-2021-0353**

(To Access Confidential Information)

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

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

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail Address

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

**NONDISCLOSURE AGREEMENT  
For Case Nos.: GC-2021-0316,  
GC-2021-0315, and GC-2021-0353  
(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 highly confidential information produced in Case No. \_\_\_\_\_  
on behalf of \_\_\_\_\_.

I hereby certify that I understand and agree that:

(a) I have reviewed the Commission's Protective Order in this case. Only the individuals  
listed in paragraph 10(d) of the Protective Order may receive information and documents  
designated by a Complainant as **highly confidential** in this case.

(b) I am an attorney/consultant/employee of \_\_\_\_\_ acting  
as \_\_\_\_\_ [state role from list of eligible persons  
from Protective Order] for \_\_\_\_\_ ;  
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.

**NONDISCLOSURE AGREEMENT**

**For Case Nos.: GC-2021-0316,**

**GC-2021-0315, and GC-2021-0353**

(To Access Highly Confidential Information)

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

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

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail Address