

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

In the Matter of Spire Missouri, Inc.            )       File No. GR-2021-0127  
d/b/a Spire (East) Purchased Gas            )  
Adjustment (PGA) Tariff Filing                )

In the Matter of Spire Missouri, Inc.            )       File No. GR-2021-0128  
d/b/a Spire (West) Purchased Gas            )  
Adjustment (PGA) Tariff Filing                )

**REPLY OF ENVIRONMENTAL DEFENSE FUND,  
OFFICE OF THE PUBLIC COUNSEL, MIDWEST ENERGY CONSUMERS GROUP,  
AND CONSUMERS COUNCIL OF MISSOURI**

Environmental Defense Fund (“EDF”), Office of the Public Counsel (“OPC”), Midwest Energy Consumers Group (“MECG”), and Consumers Council of Missouri (“Consumers Council”) hereby Reply to the Responses filed respectively on November 10, 12 and 30 by Spire Missouri Inc. (“Spire”) and Staff of the Missouri Public Service Commission (“Staff”). Spire and Staff responded to the Comments and Motion to Establish Procedural Schedule of the Environmental Defense Fund, Office of the Public Counsel, Midwest Energy Consumers Group, and Consumers Council of Missouri of November 9, 2020 (“Comments and Motion”). The Comments and Motion requested that the Commission establish a procedural schedule consistent with a contested proceeding, beginning with evidence from the Company to demonstrate the prudence of the costs associated with the affiliate transaction and compliance with the Commission’s affiliate standards.<sup>1</sup>

**I. Introduction**

In its Order of November 12, the Missouri Public Service Commission (“Commission”) required Spire and Staff to recommend how best to address the prudence of the Spire STL Pipeline transaction within this ACA file. Spire’s tariffs were approved on an interim basis,

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<sup>1</sup> Comments and Motion at 15.

subject to refund, as is customary pending conclusion of the Actual Cost Adjustment (“ACA”) review.<sup>2</sup> The Commission also directed Spire and Staff to recommend how best to address the prudence of the Spire STL Pipeline within this ACA file. Though Spire and Staff had already filed brief responses to the EDF/OPC/MECG/Consumers Counsel Comments and Motion, neither Response had sufficiently addressed that important question. Unfortunately, their Responses of November 30 also lacked adequate support for their recommendation to defer the issues. Furthermore, neither Spire nor Staff address in any of their four responses the threshold issue of Spire’s failure to meet its initial burden of proof.

EDF/OPC/MECG/Consumers Counsel file this brief Reply in order to provide the Commission with additional context on which to base their decision, in light of the responding parties’ failure to sufficiently address the issues of: 1) the harm likely to be suffered by other parties if work is delayed by a year or more; 2) Spire’s lack of evidentiary support for its filing, much less meet its burden of proof; and 3) the Commission’s direct request that the parties recommend how best to address the prudence of the Spire STL Pipeline within this ACA file.

Spire and Staff both argue that Staff should undertake a year-long analysis, file a report in December 2021, and only then might parties have an opportunity to conduct further investigation into Spire’s costs and purchasing decisions. While Staff’s work in this case is critical, necessary and appreciated, its proposal to deny parties the opportunity to participate in this case for at least a year is problematic, as well as ignores Missouri law regarding the burden of proof in the case of affiliate transactions. There is no compelling reason why Staff’s work cannot unfold alongside a parallel effort by other parties. Moreover, Spire and Staff’s proposal would unnecessarily lengthen the review process and this proceeding generally. If the result of the final

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<sup>2</sup> Order at 2-3.

Order is a rate decrease, this would deprive ratepayers of refunds at a particularly challenging time for many customers. Prohibiting parties aside from Staff from participating in the discovery process would also inhibit more robust analysis. Potential issues have already been identified and raised before this Commission in Spire's prior rate case. There is no reason to delay investigation. Earlier review by a greater number of parties is likely to result in a more thorough analysis and earlier refunds to ratepayers.

Therefore, EDF, OPC, MECG and Consumers Counsel respectfully request that the Commission grant their Motion to set a procedural schedule, including requiring Spire to set forth evidence to meet its threshold burden of proof regarding the prudence of costs and whether/how it satisfied Missouri's Affiliate Transaction Rules.

## **II. Spire's Request Unreasonably and Unfairly Disadvantages Parties**

In its Responses, Spire argues against setting a procedural schedule in this proceeding – for at least a year.<sup>3</sup> Spire argues that Staff alone should initiate comprehensive discovery and analyze the Company's gas purchasing decisions, and a process will take over a year to complete.<sup>4</sup> Rather than giving stakeholders an opportunity to review materials relevant to its gas purchasing decisions for the 2019-2020 ACA period, Spire seeks to keep the bulk of that analysis behind closed doors and delay interested parties' review of its affiliate contracting decisions and costs as long as possible. Spire asserts that parties will get “a better idea of any areas of concern that may require additional inquiry and necessitate the need for a procedural schedule.”<sup>5</sup> In

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<sup>3</sup> Spire Missouri's Response to Motion of Public Counsel, Environmental Defense Fund, MECG and CCM's Motion for Procedural Schedule, and Reply in Support of Staff's Response thereto, and Response to Staff's Recommendation of November 12, 2020 (“Spire November 12 Response”) at 4; Spire Missouri Inc's Response to the Commission's Order (“Spire November 30 Response”) at 3.

<sup>4</sup> Spire November 12 Response at 2.

<sup>5</sup> Spire November 30 Response at 2.

doing so, Spire implies that “areas of concern” are not yet known, and therefore parties should wait for Staff’s report in December of 2021 to determine whether any exist.

This argument is based on a false premise. Areas of concern are known and have already been noted in some detail in EDF/OPC/MECG/Consumers Counsel’s Motion. There is no benefit to the Commission, ratepayers, or any other party in delaying review of potentially imprudent costs for a year. The only benefit accrues to Spire. Holding up the work of other parties will only limit their analysis and/or lengthen the inquiry.

Spire’s Responses also do not address the question posed in the Commission’s Order. That Order required Spire and Staff to each recommend how best to address the prudence of the Spire STL Pipeline transaction within this ACA file. Spire’s apparent response is that such a review is unnecessary because it “already provided a comprehensive report on the decision” to Staff and OPC in December of 2019.<sup>6</sup> It is not legally sustainable to base rates on reports between parties in another proceeding. Potentially contested issues have already been raised in this proceeding. A robust record must be developed in order for the rates to pass muster.

Staff, in their November 9 Response, similarly asserts that, as of now, there are no particular issues or disputes because there has been no discovery conducted. We respectfully disagree. A number of procedural and substantive issues were raised in the Comments and Motion. Procedurally, the Comments and Motion raised Spire’s failure to meet their burden of proof in light of the lack of a presumption of prudence. The Comments and Motion also noted Spire’s history of non-compliance with the Affiliate Transaction Rules and its failure to provide evidence of compliance in its initial filing. Additionally, the Comments and Motion noted record evidence in the Federal Energy Regulatory Commission (“FERC”) docket approving the Spire

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<sup>6</sup> Spire November 12 Response at 3.

STL Pipeline which, at the very least, suggest Spire's affiliate transaction could have resulted in rates higher than they would have been but for the affiliate contract.

EDF, OPC, MECG and Consumers Counsel appreciate Staff's commitment to analyzing Spire's gas purchasing decisions and the level of work required of Staff in annual ACA/PGA dockets. The parties understand that work on prior years is not yet complete. However, neither Staff nor Spire make a colorable argument for preventing other parties from conducting concurrent analysis and discovery in this proceeding. Allowing other parties discovery rights at this time would not inhibit Staff's review, and could enhance it given the additional resources and perspectives conducting analyses. Parties have identified important interests and issues in this docket. It disadvantages those parties and the process itself to wait a year to even begin investigating those issues. EDF, OPC, MECG and Consumers Counsel respectfully request that the Commission grant the ability for parties' review in this proceeding be allowed in parallel with Staff's review.

### **III. Burden of Proof in Affiliate Transaction Cases**

Neither Spire nor Staff even addressed EDF, OPC, MECG and Consumers Counsel's request to require Spire to provide more information at this juncture in order to support its burden of proof. As discussed in the Motion, there is no presumption of prudence in this case involving an affiliate transaction.<sup>7</sup> Though Spire and Staff each argue for a year-long Staff analysis, such an investigation would be lacking at best without additional detail to support Spire's initial burden of proof. Any analysis prior to that showing will unnecessarily delay and lengthen the process of review. Accordingly, Spire should establish that it has met its burden of proof prior to the start of Staff or any other party's discovery.

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<sup>7</sup> See Comments and Motion at 7-9.

Spire's arguments regarding the many inputs in planning gas supply, aside from just price,<sup>8</sup> only underscore the importance of enabling robust review at this time. It is certainly true that there are a number of factors underlying any business decision at a utility. That is precisely the type of material that the Company should be required to file prior to the start of the discovery process. The material should not need to be cajoled out of the Company through lengthy data requests, and it should be made public to the extent possible – not confidentially reviewed by a single party. While that process may be acceptable in some other proceedings, the nature of the issues already raised in this proceeding clearly demonstrate that such is not appropriate here.

#### **IV. This is the Proceeding for Review of the Affiliate Transaction**

Despite Spire's previous agreement that this proceeding is the appropriate venue for consideration of the prudence of the affiliate transaction between the regulated utility and its pipeline affiliate,<sup>9</sup> Spire attempts to walk back that position by arguing that such consideration amounts to "re-litigating" the issues.<sup>10</sup> That argument does not withstand scrutiny. Over EDF's objections, FERC deferred these issues to the Missouri Commission. Again, over EDF's objections, the Commission deferred these issues from the 2017 rate case to this proceeding. This proceeding will be the first time a regulatory body has substantively reviewed the affiliate transaction. So while Spire is correct that the Comments and Motion include arguments made in previous dockets, that is for good reason – because FERC and the Commission declined to rule on the issues previously and deferred them to *this* proceeding.

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<sup>8</sup> Spire Response of November 12 at 2.

<sup>9</sup> Specifically, the Company stated, "the new transportation agreement between Spire East and Spire STL Pipeline should be addressed in the Company's next ACA proceeding." GR-2019-0119 Spire Response to Staff Recommendation and Memorandum Regarding Spire East's 2017-2018 Actual Cost Adjustment Filing at 2 (January 31, 2020).

<sup>10</sup> Spire Response of November 12 at 3; Spire Response of November 30 at 2.

#### IV. Conclusion

EDF, OPC, MECG and Consumers Counsel therefore respectfully request that the Commission grant the Motion and establish procedures consistent with a contested proceeding, including requiring additional information from Spire followed by a robust opportunity for discovery.

Dated: December 8, 2020

Respectfully submitted,

/s/ Lewis Mills

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been served by electronic means on all parties of record as reflected in the records maintained by the Secretary of the Commission through the EFIS system on this 8th day of December, 2020.

/s/ Lewis Mills