

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

Constellation NewEnergy- Gas Division, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. GC-2021-0315
	)	
Spire Missouri Inc.,	)	
	)	
Respondent.	)	

**SPIRE’S MOTION TO DISMISS  
AND, IN THE ALTERNATIVE, ANSWER**

**COMES NOW** Spire Missouri Inc. (“Spire Missouri” or “Company”), as its *Motion to Dismiss and, in the Alternative, Answer*, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

**BACKGROUND**

1. On March 26, 2021, Constellation NewEnergy- Gas Division, LLC (“Constellation” or “Complainant”) filed a complaint against Spire Missouri concerning certain penalties related to the February 2021 cold weather event and Spire Missouri’s tariffs.
2. The Commission issued its *Notice of Complaint* on March 29, 2021, directing Spire Missouri to file its answer to the complaint by April 28, 2021.
3. Spire Missouri herein moves for the dismissal of this Complaint, provides its answer to the Complaint, and responds to the Complainant’s Motion for Expedited Treatment.

**MOTION TO DISMISS**

4. A complaint must allege a violation of “any tariff, statute, rule, order, or decision within the Commission’s jurisdiction. . . .” 20 CSR 4240-2.070(1); see also Section 386.390, RSMo.

The Complaint that is the subject of this case makes no reference to any violation of “statute, rule, order, or decision.” Thus, the remaining question for the Commission is whether the Complaint alleges that Spire Missouri violated its tariff. As described in the following paragraphs, the Complaint does not.

5. The only hint at a tariff violation allegation is found in paragraph 1 when the Complainant states an unsupported conclusion that Spire Missouri has failed “to comply with the requirements of its Tariff in assessing approximately \$35 million in Operational Flow Order (“OFO”) penalties following a cold weather event.” (Para. 1). However, there are no factual allegations in the remainder of the Complaint that support such a conclusion.

6. To the contrary, it is apparent that what Complainant does not like is the fact that Spire Missouri is acting in compliance with its tariff provisions. Certainly, the assessment of penalties after a cold weather event is supported by Spire Missouri’s tariffs. Sheets Nos. 16-16.14 outline the relationship between Spire Missouri and its transportation customers. Those sheets include in the “Priority of Service” section (Sheets Nos. 16.7-16.14) discussion of OFO impacts, as well as the “Penalties for Unauthorized Usage” (Sheets Nos. 16.13-16.14).

7. Complainant’s further allegations suggest compliance with those tariffs. For example, Complainant recites that “OFO penalties under the Tariff are calculated at 2.5x the average Gas Daily Index for Southern Star, which peaked during the OFO period at stratospheric amounts of over \$622 per MMBtu, resulting in OFO Penalties for one day at the unprecedented amount of over \$1,555 per MMBtu” (para. 23). This approach is consistent with Spire Missouri’s Penalties for Unauthorized Usage provision 5.(c)(i), found on Sheet No. 16.14, which states:

Standard OFO Penalties: For each day of the Standard OFO, the greater of \$5 or 2 ½ times the daily midpoint stated on Gas Daily’s Index for Southern Star Central Gas

pipeline (Oklahoma) times the MMBtu of Unauthorized Over- or Under-deliveries that exceed the tolerance level applicable under Section B-5-a Tolerance Levels.

8. Instead of seeking a Commission finding of a violation of the Company's tariff, statute, rule, order, or decision within the Commission's jurisdiction as required by the Commission's Rules, Complainant asks the Commission for a "waiver" of Spire Missouri's tariffs (or that Spire Missouri seek such a waiver) – "CNEG has requested, on behalf of the Spire transportation customers, that Spire waive the exorbitant OFO penalties, just as other pipelines have done" (para. 20). Complainant further states - "As of the date of the filing of this Complaint, Spire has not sought a waiver or variance from this Commission for the Tariff provisions cited by Spire in its Demand Letter" (para. 25).

9. This is not a subject that is properly before the Commission in a Complaint case. A suggestion that a waiver should be granted or sought again shows that the violation of a tariff is not at issue in this case. A waiver would only be necessary where a result contrary to the tariff is sought.

10. In support of its suggestion that Spire Missouri seek a waiver from its tariffs, Complainant points out that certain interstate pipelines – specifically cited are Southern Star and Panhandle Eastern Pipeline Company – have sought waivers of OFO penalties from FERC (para. 26).

11. Spire Missouri is not, of course, an interstate pipeline company like Southern Star or Panhandle Eastern. It is a local distribution company ("LDC") and no relevant example of a LDC seeking such a waiver is provided.

12. This may be because, for LDC's such as Spire Missouri, OFO penalties have competing interests as to transportation customers and Spire Missouri's customers that are subject to the Purchased Gas Adjustment (PGA) and Actual Cost Adjustment (ACA). Spire Missouri's tariff

states that “All revenues received from unauthorized use charges will be considered as gas cost recovery and will be used in the development of the gas cost recovery amount during the ACA audit as set forth in the Purchased Gas Adjustment schedule (PGA)” (Sheet No. 16.13). Thus, all else being equal, every dollar of OFO penalties collected by Spire Missouri is a dollar less that its customers will pay in PGA/ACA charges, and each dollar of OFO penalty that is waived is a dollar more that will be paid by those customers subject to the PGA/ACA.

13. Complainant’s request that Spire Missouri take the discretionary action of seeking a waiver from its tariffs is not a basis for a complaint under either 20 CSR 4240-2.070 or Section 386.390, RSMo.

14. Lastly, Complainant states that “. . . hundreds of Missouri ratepayers could soon be receiving exorbitant bills based on penalties . . .” (para. 1) and “Spire’s imminent threat to issue bill to hundreds of Missouri gas transportation customers . . .” (para. 35).

15. There is no allegation of tariff violation in these allegations of future conduct. However, even if there were, Missouri law is clear that the power to issue a declaratory judgment is a judicial remedy that is not available to administrative agencies. *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W. 2d 69 (Mo. banc 1982). More specifically, this Commission has "no power to declare or enforce any principle of law or equity." *Lightfoot et al. v. City of Springfield*, 361 Mo. 659, 669, 236 S.W. 2d 348, 352 (Mo 1951). Alleged future conduct does not support a complaint.

16. Moreover, Spire Missouri may never need to send such bills to the gas transportation customers referenced by Complainant. Section A.3.(a) of Spire Missouri’s Transportation Provisions (Sheet No. 16) states in part that agents, such as Complainant, must acknowledge

“agent’s responsibilities under Section A-9 Cash Out and Section B-5 penalties for Unauthorized Usage.” These responsibilities include the Section B.5.(d) requirement that “Unauthorized Over- or Under-Delivery penalties for pools shall be billed to and collected from the agent representing the aggregated customers” (Sheet No. 16.14). Thus, Spire’s billing of penalties to Complainant is consistent with its tariff.

17. “The commission . . . may after notice dismiss a complaint for failure to state a claim on which relief may be granted . . .” 20 CSR 4240-2.070(7). As described above, the Complaint in this case fails to allege any violation of a “tariff, statute, rule, order, or decision within the Commission’s jurisdiction. . . .” The Complaint therefore fails to state a claim upon which relief may be granted and must be dismissed.

### **ANSWER**

For its Answer, Spire Missouri states as follows:

1. Spire Missouri denies the allegations contained in paragraph 1.
2. Spire Missouri admits the allegations contained in Paragraph 2.
3. Spire Missouri admits the allegations contained in Paragraph 3.
4. Spire Missouri admits that Constellation is a natural gas marketer. Spire Missouri is without sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 4, and therefore, denies the same.
5. Spire Missouri denies the allegations contained in paragraph 5.
6. Paragraph 6 does not contain a factual allegation to which a response is required. The referenced statutes and regulation speak for themselves.
7. Paragraph 7 does not contain a factual allegation to which a response is required. The

referenced statutes speak for themselves.

8. Spire Missouri admits the allegations contained in Paragraph 8.

9. Spire Missouri admits the allegations contained in Paragraph 9.

10. Spire Missouri admits that it has a transportation contract with certain Missouri customers. Constellation is a natural gas marketer serving as the agent for certain transportation customers. Spire Missouri is without sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 10, and therefore, denies the same.

11. Spire Missouri denies the allegations contained in paragraph 11.

12. Spire Missouri admits the allegations contained in Paragraph 12.

13. Spire Missouri denies the allegations contained in paragraph 13.

14. Spire Missouri denies the allegations contained in paragraph 14.

15. Spire Missouri denies the allegations contained in paragraph 15.

16. Spire Missouri denies the allegations contained in paragraph 16. Further answering, Constellation has not paid Spire Missouri for any of the cover gas Spire Missouri purchased and supplied to Symmetry's customers to maintain their gas service through the event.

17. Spire Missouri admits the allegations contained in Paragraph 17.

18. Spire Missouri admits that **Exhibit A** is a true and correct copy of a letter it sent on February 24, 2021, and denies the remaining allegations contained in paragraph 18, as **Exhibit A** speaks for itself.

19. Spire Missouri admits that **Exhibit A** is a true and correct copy of a letter it sent on February 24, 2021, and denies the remaining allegations contained in paragraph 19 as **Exhibit A** speaks for itself.

20. Spire Missouri admits Constellation requested that Spire Missouri waive OFO penalties. Spire Missouri admits it has requested financial performance assurances concerning the OFO penalties. Spire Missouri denies the remaining allegations contained in Paragraph 20.

21. Spire Missouri admits that **Exhibit A** is a true and correct copy of a letter it sent on February 24, 2021, and denies the remaining allegations contained in paragraph 19 as **Exhibit A** speaks for itself.

22. Spire Missouri admits the allegations contained in Paragraph 22.

23. Spire Missouri admits the allegations contained in Paragraph 23.

24. Spire Missouri admits the allegations contained in Paragraph 24.

25. Spire Missouri admits the allegations contained in Paragraph 25.

26. Spire Missouri admits the allegations contained in Paragraph 26.

27. Spire Missouri admits the allegations contained in Paragraph 27.

28. Spire Missouri denies the allegations contained in paragraph 28.

29. Paragraph 29 does not contain a factual allegation to which a response is required.

Spire Missouri further states that its tariff sheets speak for themselves.

30. Paragraph 30 does not contain a factual allegation to which a response is required.

Spire Missouri further states that its tariff sheets speak for themselves.

31. Spire Missouri denies the allegations contained in paragraph 31.

32. Spire Missouri denies the allegations contained in paragraph 32.

33. Spire Missouri denies the allegations contained in paragraph 33.

34. Spire Missouri admits that some interstate pipelines have applied for waiver of OFO penalties on their systems. Spire Missouri is without sufficient information or belief to admit or

deny the remaining allegations contained in Paragraph 10, and therefore, denies the same.

35. Spire Missouri denies the allegations contained in paragraph 35.

**RESPONSE TO MOTION FOR EXPEDITED TREATMENT**

1. Complainant further moved for expedited treatment of this Complaint alleging that “hundreds of Missouri ratepayers could soon be received bills seeking to impose penalties” and that those customers could receive bills as soon as April 1, 2021.


2. In fact, those customers referenced by Complainants have not received bills by April 1, 2021, and, Spire Missouri has been clear that bills to Spire’ Missouri’s transportation customers containing the penalties were not (and are not) eminent.

3. Additionally, Complainant’s request for expedited treatment does not meet the requirements of Commission Rule 20 CSR 4240-2.080 (14).

4. There is no need, and no basis, for the Commission to expedite its treatment of this Complaint.

**WHEREFORE**, Spire Missouri respectfully requests that this Complaint be dismissed, or, in the alternative, considered by the Commission to have been fully answered and requests such other and further relief as is just and proper under the circumstances.

Respectfully submitted,



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**ATTORNEYS FOR SPIRE MISSOURI INC.**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 28<sup>th</sup> day of April, 2021, to:

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