

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

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

**SYMMETRY’S OBJECTION AND RESPONSE IN OPPOSITION TO SPIRE’S  
PROPOSED PROCEDURAL SCHEDULE**

Pursuant to 20 CSR 4240-2.080(13), Complainant Symmetry Energy Solutions, LLC (“Symmetry”) hereby files this Objection and Response in Opposition to Respondent Spire Missouri, Inc.’s and its operating unit Spire Missouri West’s (collectively “Spire’s”) Proposed Procedural Schedule (the “Spire Proposed Sched.”). Given the vastly different schedules proposed by Spire and by Symmetry, Symmetry submits this Objection to respond to Spire’s purported justifications for the accelerated schedule it seeks.

**I. A PGA/ACA Filing Does Not Dictate the Procedural Schedule for This Case**

Spire argues that this case must be decided no later than November 2021 in time for its Purchased Gas Adjustment/Actual Cost Adjustment (“PGA/ACA”) filing. This is a false premise because Spire’s own Tariff allows it to make at least *four* PGA filings in each calendar year, and any adjustment issues raised by a decision in this case can be addressed in a future PGA filing once this matter has concluded. The Tariff reads as follows at Sheet 11.1.I.B (emphasis added):

B. Revision of the PGA rate

The Company **shall be allowed** to make up to **four (4)** PGA filings during each calendar year. One such filing will be effective in November of each year, but no more than one PGA filing shall become effective in any two consecutive calendar months **unless specifically ordered by the Commission**. Such PGA filings shall be made at least ten (10) business days prior to their effective dates.

All PGA filings shall be accompanied by detailed work-papers supporting the filing in an electronic format. Sufficient detail shall be provided so the level of hedging that is used to develop the gas supply commodity charge for the PGA factor can be determined. (emphasis added).

In short, the Commission retains authority and jurisdiction to decide the issues presented here, as it has already determined.<sup>1</sup> Given the importance and unprecedented nature of the issues presented, the Commission should allow all interested parties—including Missouri consumers—the time to develop the record.<sup>2</sup> And it should be done on a “reasonable pace.”<sup>3</sup> Spire’s Proposed Schedule, which would require Symmetry to submit the entirety of its direct testimony **by July 7**, is simply not reasonable for a complex matter with over \$150 million at stake, especially because Spire has refused to provide *any* meaningful discovery to date.

## **II. Spire Has Repeatedly Refused To Provide Its Actual Cost of Purchased Gas**

Spire claims that Symmetry has not paid Spire for its costs to buy natural gas during Winter Storm Uri. (Spire Proposed Sched. at 1.) Yet Spire has refused to provide Symmetry with that very information, namely what it actually spent to procure natural gas during the Operational Flow Order (“OFO”) period, despite informal and formal data requests. If anything, the evidence tilts against Spire:

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<sup>1</sup> Commission’s May 26, 2021 Order Denying Spire’s Motion to Dismiss Symmetry’s Complaint at 2-3.

<sup>2</sup> Spire claims it wants a “reasonable schedule” (Spire Proposed Sched. ¶ 10). Symmetry agrees that a reasonable schedule is needed, yet for the reasons explained here and in Symmetry’s own proposed schedule, Spire’s is not remotely reasonable. See *In the Matter of Laclede Gas Company’s Tariff to Revise Natural Gas Rate Schedules*, Case No. GR-2002-356, 2002 Mo. PSC LEXIS 1367 at \*22 (Mo. P.S.C. Oct. 3, 2002).

<sup>3</sup> Regardless of who prevails here, there will likely be an appeal. Any suggestions that this case will be resolved by November, 2021 is not realistic. *Accord* Ex. 1, Motion for Adoption of Procedural Schedule filed by Constellation NewEnergy-Gas Division, LLC, Case No. GC-2021-0315 ¶ 8 (June 10, 2021).

1. It has already conceded at FERC that it did not face imminent system integrity issues occurred as a result of the storm.<sup>4</sup> This would be a critical requirement for Spire to impose OFO penalties under the Tariff. *See* Complaint ¶¶ 14, 28-32.
2. Within one day of receiving Spire’s demand letter for over \$150 million in OFO penalties, Symmetry asked Spire to provide the actual cost of any gas it supplied to Symmetry and Spire’s mutual customers during the Winter Storm. Spire refused to answer.

Once it became apparent that Spire would continue to refuse to provide any support for its actual cost for gas, Symmetry had no choice but to protect Symmetry’s gas supply customers (who are Spire’s transportation customers) from Spire’s apparent attempt to gain enormous profit from the extraordinary hardships of Winter Storm Uri. *See* Complaint ¶¶ 29-31. And contrary to any suggestion by Spire to the contrary (Spire Proposed Sched. ¶ 9), Symmetry has *not* billed its customers for any of the OFO penalties Spire seeks to impose.

On the very day Symmetry filed its Complaint (approximately two and a half months ago) it also sent the following Data Request to Spire:

93. Produce proof of all gas purchases and associated costs on a per-unit total for all purchases on which Spire is relying for its assessment of penalties and charges to Spire transportation customers served by Symmetry.

Spire refused to respond, and has not since. If Spire truly believed that it was entitled to “at a minimum, reimbursement of the gas costs Spire Missouri incurred to replace the gas Complainant failed to deliver” (Spire Proposed Sched. ¶ 6), one would expect at least an

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<sup>4</sup> In a filing before the Federal Energy Regulatory Commission (FERC), Spire Missouri Inc. acknowledged it did not face any imminent threats to its system reliability. *See* Protest and Request for Maximum Suspension and Hearing of Spire Missouri Inc., *Southern Star Central Pipeline, Inc.*, No. RP21-778-000, at 9 (FERC) (“Spire Missouri relied heavily on storage to meet its customer’s [sic] requirements during the recent Polar Vortex, and it had sufficient storage in inventory to do so.”).

accounting. That has not happened.<sup>5</sup>

Spire's argument that it "has been forced to purchase extremely high-priced gas" (Spire Proposed Sched. ¶ 5) is thus without any evidentiary support, and is one of the reasons that adequate discovery is necessary to ensure a full and fair examination of the issues. Indeed, discovery is needed into whether the OFO was proper in the first place. Neither the Commission nor the Parties can or should rely on Spire's say-so.

### **III. This Dispute is Fundamentally About Whether Spire Complied with Its Tariff, Which is Squarely Within this Commission's Jurisdiction**

Spire attempts to vastly oversimplify this matter, arguing in its Proposed Schedule that the Agent Aggregation Agreement (the "Agreement") between the parties requires Symmetry to pay *any* invoice submitted by Spire to Symmetry, even one for over \$150 million with no evidence of its validity. But Spire failed to inform the Commission of Paragraph 18 of that Agreement, which explicitly provides that the Agreement, and the parties' relationship, is subject to the Commission's jurisdiction and authority:

18. This Agreement, and the rates and service hereunder, shall be subject to regulation by the regulatory authority having jurisdiction; to all applicable present and future state and federal laws; and to all rules, regulations, and orders of any other regulatory authority having jurisdiction of the subject matter or either of the parties hereto.<sup>6</sup>

In overruling Spire's Motion to Dismiss, the Commission has already (rightly) recognized its jurisdiction to decide whether Spire's OFO complied with its Tariff, and if the Commission decides it did not, then Symmetry owes no penalties to Spire under the Agreement. In short, a hearing before this Commission, with a fully developed record, is necessary for a

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<sup>5</sup> Accordingly, Symmetry anticipates filing a motion to compel in short order, unless Spire agrees to engage in discovery.

<sup>6</sup> Pursuant to this Agreement, Symmetry properly filed this Complaint case before this Commission for adjudication of the allegations of Spire's Tariff violations which bear directly on the amount of money, if any, either of these parties owes the other.

lawful determination of whether Spire had any basis under its Tariff to issue an OFO order, as well as the other Tariff violations alleged in the Complaint, and whether Spire's and Symmetry's mutual customers must pay any charges, and in what amounts.

#### **IV. Spire's and Symmetry's Mutual Customers Have the Due Process Right to a Reasonable Procedural Schedule**

Perhaps believing that this Commission will feel compelled to extend Due Process to end-use customers but not to a gas marketer such as Symmetry, Spire now attempts to persuade this Commission that Spire seeks to impose the \$150 million penalty only on Symmetry. But, as Symmetry explained in its own Motion, under the operative Tariff, Symmetry's customers are ultimately responsible for the penalties Spire is seeking to impose, and it was Spire's explicit threat to attempt collecting the penalties from Symmetry's and Spire's mutual customers that necessitated the filing of the Complaint and Symmetry's request for expedited treatment.

#### **Conclusion**

Spire's Proposed Procedural Schedule mischaracterizes the import of its November PGA/ACA filing in an effort to escape public scrutiny of the actual costs it incurred during the winter storm and the propriety of its OFO penalty. It over-reaches and misrepresents a complex and fact-intensive case as one that can be resolved in a matter of weeks. Spire's records must be produced and reviewed, as they hold evidence critical to a fair examination of the issues at bar. No prejudice will inure to Missouri consumers; to the contrary, their interests will be best served by a thoughtful understanding of the relevant facts.

Symmetry thus respectfully reiterates its request for its proposed schedule and for oral argument and/or a scheduling conference.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of June 2021, a copy of the foregoing Symmetry's Objection and **Response in Opposition to Spire's Proposed Procedural Schedule** 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/ Douglas L. Healy  
Douglas L. Healy