

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

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant	)	
v.	)	Case No. GC-2021-0316
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent	)	

**Symmetry Energy Solutions, LLC’s Motion to Compel Production of Responsive Documents by Spire Missouri, Inc. and Motion for Expedited Treatment**

Pursuant to 20 CSR 4240-2.080 and 2.090 and for good cause shown, Symmetry Energy Solutions, LLC (“Symmetry”) respectfully moves the Missouri Public Service Commission (“Commission”) for an order compelling Spire Missouri, Inc. (“Spire”) to produce all documents responsive to various of Symmetry’s data requests, the first set of which was served on March 26, 2021, as set forth more fully herein and in the attached Proposed Order. Spire made implausibly small and facially incomplete productions in response to these requests, and then made multiple representations—including in a letter signed by Spire’s counsel, and in the sworn testimony of Spire’s corporate representative—that its production was complete. Now, ten days before a settlement conference, Spire reports that it has further documents to produce. Because obtaining the information sought in many of the data requests at issue is crucial to Symmetry’s ability to prepare for and participate meaningfully in a settlement conference scheduled for February 17, 2021, and more generally to engage in the merits of the action itself, Symmetry further moves for expedited consideration per 20 CSR 4240-2080(14) of this motion to compel. In support of its motions, Symmetry states as follows:

## I. INTRODUCTION

Spire seeks to impose a \$150 million penalty on Symmetry based on Symmetry's purported violation of an Operational Flow Order ("OFO"). Symmetry initiated the present litigation against Spire because Symmetry contends that Spire's OFO and associated penalties are improper under Spire's tariff. Since instituting this litigation in March 2021, Symmetry has consistently attempted to obtain discovery from Spire that would support, or undercut, the propriety of Spire's OFO. But Spire has refused to produce such discovery.

Until late last week, Spire had produced fewer than 60 documents in response to Symmetry's 134 data requests, and Spire has to date refused to produce documents and information that would support Symmetry's challenge to Spire's draconian penalty.<sup>1</sup> Spire's document production is, to say the least, implausibly small. For example:

- Spire produced just a single document in response to Symmetry's request for all documents regarding Spire's evaluation of the need for the OFO.
- Spire produced just a single document in response to Symmetry's request for all documents related to Spire's decisions around how long the OFO should last.
- Spire produced a spreadsheet purporting to show gas it bought on the spot market during the OFO and a set of invoices showing certain gas purchases, but no documentation reflecting when those purchases were actually made.

Symmetry spent much of 2021 prodding Spire to make an adequate document production. In the end, Spire repeatedly assured Symmetry—in representations from counsel and its corporate representative's sworn testimony—that Spire had produced all responsive material. That is not true. For example, Symmetry understandably requested all documents and correspondence relating to Spire's gas purchases and sales during the OFO period. *See Ex. 1*

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<sup>1</sup> On February 2, 2022, Spire produced 308 agreements between Spire and customers of Symmetry in response to a request in Symmetry's second set of data requests.

(Data Request No. 74). Spire has produced two documents relating to its transactions during this period in response to Symmetry’s data requests: a spreadsheet and a set of invoices. Notably, (1) the spreadsheet is an incomplete record of Spire’s transactions during the period, as it includes only purchases (not sales), and in fact does not even include a complete list of all gas purchases that Spire made in February 2021; and (2) the invoices are also facially incomplete, as no invoices for gas sales were produced—and, because Spire continues to refuse to provide a complete list of all purchases made during the period (sought in Symmetry’s Data Request No. 73), Symmetry cannot determine whether the invoices reflect all of Spire’s purchases. Spire’s production was entirely missing all other documents concerning Spire’s transactions during this period: it did not include a single base contract, transaction confirmation, or email relating to a gas transaction. It further did not include a single complete ICE chat (a messaging system used by Spire’s gas traders),<sup>2</sup> gas demand or supply forecast, or any documentation of the factors driving the transactions. We are quickly approaching the merits hearing, only a week from the settlement conference, and about to embark on a series of depositions, and Spire continues to hide the relevant evidence, or its destruction of said evidence. And the absence of responsive documents is not in dispute. Indeed, Spire’s corporate representative testified to the existence of many categories of documents that are clearly responsive to Symmetry’s data requests, but which Spire has withheld, including the following:

- internal email and chat communications;
- correspondence with upstream pipelines;

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<sup>2</sup> Incredibly, this morning, in the conference before the Administrative Law Judge regarding the instant motion to compel, and after repeated representations by Spire’s corporate representative and counsel to the contrary, Spire admitted that there may be responsive ICE chats, and stated that they would attempt to collect and produce them.

- gas demand forecasts;
- base contracts and transaction confirmations; and
- daily summaries of Spire’s gas supply portfolio.

Spire’s corporate representative was unable to explain why Spire had failed to produce this discovery, and Spire has stated that it has not withheld any responsive documents on the basis of privilege. Ex. 2 (Response to Data Request 2.24). Spire, moreover, has refused to respond to Symmetry’s multiple inquiries into the conflict between its representations regarding the completeness of its production and the compelling evidence that Spire has withheld (and likely destroyed) responsive documents. Worse still, Spire has now moved for an order blocking the deposition of its head of records management, seeking to cover up its failure to produce, and failure to preserve, relevant documents.

As the Commission is aware, Spire’s obstruction of document discovery is a long-running practice. In two Actual Cost Adjustment cases, Spire repeatedly objected to Staff discovery requests on grounds that it had previously waived, and refused to cooperate even after the Commission ordered Spire to comply with the requests. *See State ex rel. Laclede Gas Co. v. Pub. Serv. Commn. of State*, 392 S.W.3d 24, 29 (Mo. App. W.D. 2012). As a result, the Commission granted a summary determination against Spire and the Missouri Court of Appeals affirmed. *Id.* at 39. Similarly, in late 2019, the Missouri Court of Appeals reversed a portion of an order from the Commission allowing Spire to collect costs it incurred to replace certain mains and service lines. *See Matter of Spire Missouri Inc.*, 593 S.W.3d 546, 554 (Mo. App. W.D. 2019). Because Spire had improperly objected to producing relevant documents, the Court of Appeals reversed the related parts of the Commission’s order as “not supported by competent and substantial evidence.” *Id.* at 555.

Spire's discovery abuses here are a continuation of that pattern. If left unchecked, this proceeding will not be supported by competent and substantial evidence. Nor will it allow due process.

The rules governing this proceeding support broad discovery. Rule 56 of the Missouri Rules of Civil Procedure provides that “[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” Mo. R. Civ. Pro. 56.01(b)(1). Spire refuses to play by those rules.

Symmetry has been and continues to be prejudiced by Spire's refusal to produce responsive documents. Symmetry respectfully requests that the Commission direct Spire to cooperate in discovery, provide the documents and information requested by Symmetry, and—to the extent that responsive documents are not being produced because they have been destroyed—identify such materials.

## **II. BACKGROUND**

### **A. Spire's Failure to Produce Responsive Documents**

This case is about Spire's attempt to impose more than \$150 million in penalties on Symmetry, based on Symmetry's alleged violation of an OFO Spire issued in connection with Winter Storm Uri. Symmetry contends that Spire's OFO was not proper or justifiable under Spire's tariff. As Symmetry's petition discusses in more detail, Spire's OFO and associated penalties violate Spire's Tariff in at least four ways: (1) Spire did not have a proper basis to issue the OFO; (2) Spire kept the OFO in place longer than was allowable under its tariff; (3) Spire failed to provide sufficient notice and instruction to its transportation customers as required

under its tariff; and (4) Spire failed to properly calculate OFO penalties. *See generally* Symmetry’s Complaint and Motion for Expedited Treatment (March 26, 2021), Dkt. 1.

To obtain evidence related to these claims, Symmetry served its First Set of Data Requests to Spire on March 26, 2021. Symmetry’s requests seek, among other materials, correspondence and documents related to:

- “Spire’s evaluation, actions, and decisions regarding the need for [any] OFO[.]” Symmetry’s Data Request No. 3;
- “Spire’s evaluation, actions, and decisions regarding the protection of the integrity of the Spire MO West System.” Data Request No. 7;
- “Spire’s evaluation, actions, and decisions regarding the timing of issuance of the OFO.” Data Request No. 31;
- “Spire’s evaluation, actions, and decisions regarding the duration of [any] OFO, including . . . the basis of Spire’s decision regarding when to terminate the OFO.” Data Request No. 33;
- “Spire’s efforts to insure compliance with requirements of upstream pipeline companies (including [Southern Star]) regarding the Spire MO West System.” Data Request No. 47;
- “all correspondence and other documents related to Spire’s issuance of OFOs affecting the Spire MO West System” “[t]o the extent not produced in response to other Data Requests” Data Request No. 58;
- “Spire’s evaluation, actions, and decisions regarding whether to initiate any POC affecting the Spire MO West System.” Data Request No. 64;
- “correspondence between Spire and Spire Marketing.” Data Request. No. 72; and
- “all gas purchase, sale, exchange, and other transactions made by Spire related to the SS System or the Spire MO West System[.]” Data Request No. 74.

Spire submitted boilerplate objections in response to almost all of Symmetry’s requests. *See* Ex. 3. In response to the requests above, all of which go to the core of Symmetry’s case, Spire produced just **seven** documents, and referred in its written responses to another **six** unique documents produced in response to other data requests. *See id.*

Between April and September 2021, Symmetry made several attempts to obtain further evidence.<sup>3</sup> To date, Spire has produced just 45 documents *total* in response to this first set of data requests<sup>4</sup> and short, written responses to other requests, many of which only incorporate other responses or documents by reference. *See* Ex. 6; *see also* the attached Appendix A (providing an overview of Spire’s productions in response to Symmetry’s data requests to date).

Spire’s 45-document production in response to Symmetry’s first set of data requests is not just small in absolute terms; it is implausibly small relative to the significance of the topics Symmetry’s data requests address. Spire’s responses to three data requests illustrate why this is the case.

First, in response to Data Request 3, which seeks documents regarding “Spire’s evaluation, actions, and decisions regarding the need for the OFO,” Spire produced just **one** document: a one-page printout of a six-day temperature forecast in the Kansas City area from February 12, 2021. But, if there exists a weather forecast from February 12 that is responsive, there clearly exist weather forecasts for other days that are responsive. Moreover, one would expect that there would be email correspondence, memoranda, and supply and demand forecasts, among other documents. Spire would have Symmetry and this Commission believe that not a single person at Spire wrote a single internal email or engaged in a single internal online chat about an emergency-driven OFO issuance that would affect dozens of marketers and hundreds of

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<sup>3</sup> The parties had conference calls about Spire’s production on August 4 and August 13, 2021. Symmetry also sent Spire a letter about Spire’s sparse production of information on September 15, 2021. Ex. 4. In response, Spire’s counsel sent a letter on September 17 representing that “Spire has no additional documents to produce at this time.” Ex. 5.

<sup>4</sup> On January 24, 2022, Spire produced six documents in response to a request contained in Symmetry’s third set of data requests; and on February 2, 2022, Spire produced a set of contracts between Spire and Symmetry’s customers in response to a request contained in Symmetry’s second set of data requests.

customers, and that could potentially result in hundreds of millions of dollars in penalties. Either these documents have been destroyed or they are being deliberately withheld.

Second, in response to Data Request 33, which seeks correspondence relating to the duration of Spire's OFO, Spire produced also just **one** document: an email from natural gas pipeline Southern Star terminating Southern Star's OFO. As discussed above, the absence of a single email, chat or other document about this important event beggars belief. Again, these documents have been destroyed or are being withheld.

Third, in response to Data Request 74, which asks for documents related to all gas purchases, sales, exchanges, and other transactions that Spire made on the relevant pipeline systems, Spire produced, as noted above, a facially incomplete set of invoices relating to gas purchases. Spire produced **no** documents whatsoever relating to its gas sales, exchanges, or other transactions. It is impossible that Spire does not possess documents such as base contracts, transaction confirmations, ICE chats, (additional) invoices, and other responsive documents concerning its purchases, sales and other transactions (again, unless they have been destroyed). Under Spire's Records Retention Schedule Report, contracts and agreements for transportation, sale, purchase and storage of gas are maintained for "Current + 6 Years," records of billing and gas supply charges – including a Daily Position Report – are retained for seven years, and daily/period records of sales including Spot Purchase and Off-System Sales Confirmations are retained for "Current + 6 years." Ex. 7 at 31, 33. Those documents must be produced, or their destruction explained.

Despite the clear deficiencies in its productions, Spire represented in mid-September that "Spire has no additional responsive documents to produce at this time." Ex. 5. Unless Spire's destruction is even broader than Symmetry suspects, that statement is almost certainly false—as



Spire acknowledged on the February 8, 2022 call with the Administrative Law Judge that preceded this motion.

**B. Spire’s Corporate Deposition Underscores Its Discovery Deficiencies**

Symmetry took the deposition of Spire’s corporate representative on December 13, 2021. Given Spire’s sparse responses to Symmetry’s data requests, Symmetry’s deposition notice included topics related to Spire’s document production and data request responses. Ex. 9 (Topics 1 and 9). Spire’s corporate representative, George Godat, testified under oath that “Spire’s produced all the documents that Symmetry has requested.” Ex. 8 at 25:3-4. That testimony was not true. Indeed, despite Mr. Godat’s statement, he separately testified about several categories of documents clearly responsive to Symmetry’s data requests that Spire had never produced. Moreover, as further discussed below, the binders with which Mr. Godat was prepared for the deposition—which Spire produced at the deposition—contained additional, previously unproduced documents, which themselves indicate the existence of more unproduced documents. Nevertheless, neither Mr. Godat himself, nor Spire, has withdrawn Mr. Godat’s false testimony.

**1. Mr. Godat’s Testimony Reveals the Existence of Other Unproduced Categories of Responsive Documents**

Mr. Godat’s testimony confirmed that Spire had not yet produced specific documents, even though they are responsive to Symmetry’s data requests. For example, as mentioned above, Data Request 74 seeks documents related to all gas purchases, sales, exchanges, and other transactions that Spire made on the relevant pipeline systems. Ex. 1. Spire’s production of invoices (and, separately, a spreadsheet of “actual costs”) refer only to gas purchases, but Mr. Godat testified that Spire sold gas to the energy company Tenaska on February 13 or 14, 2021. Ex. 8 at 118:3-8; 299:16-300:8. Spire failed to produce to Symmetry any documents relating to

that sale.<sup>5</sup> Mr. Godat also testified that Spire maintained a “gas supply folder” in its electronic records, *id.* at 153:9-23, as well as “a daily trade sheet that documents the counterparty and the price” of any gas purchases Spire made, *id.* at 157:19-20. Spire has not produced any documents from a “gas supply folder” or any “daily trade sheet.”

Several data requests (such as 3, 7, 11, 58, and 74) require Spire to produce documents and communications concerning Spire’s OFO and evaluation of, and efforts to protect, the integrity of its systems. Mr. Godat testified that Spire personnel from Spire’s Gas Supply or Control teams would have been involved in exactly those types of evaluations by, for example, monitoring market forecasts or “put[ting] out the forecast[s] . . . for what our system demand is going to be,” and that those personnel used email to communicate. *Id.* at 39:14-16, 40:6-12, 41:18-42:18. But Spire has not produced any emails among Spire Gas Supply or Control personnel, let alone correspondence with upstream suppliers (in which, per Mr. Godat, the Gas Supply team was engaged, *id.* at 39:12-16), or correspondence about gas supply or demand forecasts—outside of a one-page weather forecast for February 12, 2012 that was developed by a third party. *See id.* at 131:4-8.

Similarly, Mr. Godat testified that Spire employee Greg Hayes generates daily summaries of Spire’s gas portfolio that are “used to manage [Spire’s] overall supply,” documents that would

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<sup>5</sup> On February 2, 2022, Spire for the first time shared with Symmetry, Constellation and Clearwater its productions to each Complainant. In the documents produced to Constellation was a single document titled “Spire Missouri West – OFF SYSTEM SALES BY COUNTERPARTY” that provided some transaction details relating to the sale of gas to Tenaska. Inexplicably, this document was never produced to Symmetry, and, in any event, this one document fails to reflect many details of this transaction that must be contained in other documents that have yet to be produced to any Complainant (including transaction confirmations). For example, the document does not explain when Spire agreed to the sale, or its rationale for doing so. Moreover, consistent with the rest of Spire’s deficient production, it has not produced even one communication—not an email, nor an ICE chat, nor otherwise—regarding this sale.

be responsive to Symmetry’s Data Request 7, and others. *Id.* at 154:15-155:20. Spire has not produced any of those portfolio summaries.

Finally, the data requests generally call for chat communications, in addition to emails and other documents.<sup>6</sup> Mr. Godat testified that Spire uses the “ICE” platform in connection with the purchase and sale of natural gas. *Id.* at 155:21-24. But Spire has only produced one excerpted, incomplete ICE chat between one of its employees and a Symmetry employee. Mr. Godat also stated that he and others at Spire use Microsoft Teams chats. But Spire has not produced any Microsoft Teams chat logs. Spire must produce responsive ICE chats and Teams chats or explain why they do not exist.<sup>7</sup>

**2. Spire Produced Further Responsive Documents at the Deposition That Themselves Reveal the Existence of Other Unproduced Documents**

Despite Spire’s representation on **September 17, 2021** that Spire had produced all documents responsive to Symmetry’s data requests, Spire produced, at its own corporate representative’s **December 13, 2021** deposition, responsive documents that Spire had never disclosed, and which point to the existence of more categories of unproduced documents. For example, Mr. Godat brought to his deposition a record of various Spire transactions with Spire Marketing. Spire had not previously produced that document to Symmetry, even though Symmetry’s Data Request 73 had sought a detailed list of all gas purchase, sale, exchange, and

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<sup>6</sup> *See* Ex. 1 (First Set of Data Requests) at 3 (defining “correspondence” as “any document that reflects or constitutes the transmittal of information in any form, including through letters, faxes, e-mails, text messages, online chats, messaging apps, and recorded conversations or audio or video conferences or broadcasts”).

<sup>7</sup> As discussed in further detail below, the evidence to date indicates that Spire failed to issue a timely litigation hold, and appears to have—at the very least—failed to take steps to retain, and avoid the deletion of, responsive communications such as chats. Once the record on these issues is complete, Symmetry will seek appropriate sanctions.

other transactions made by Spire related to the Southern Star System or the Spire MO West System.<sup>8</sup>

That newly produced record revealed additional ways that Spire’s production was incomplete. For example, although Spire had only previously produced two documents in response to Symmetry’s Data Request 72, which sought “all correspondence between [Spire and] Spire Marketing,” the transaction record that Mr. Godat produced at his deposition referenced a number of previously undisclosed transactions between Spire Marketing and Spire about which Spire had not produced any communications.<sup>9</sup> Spire had previously produced a document purporting to reflect all of Spire’s “cover costs”—i.e., purchases of gas made during the storm that Spire alleged were necessary to maintain system integrity (for which Spire has not produced a single transaction confirmation). The newly produced document of Spire Marketing transactions revealed purchases not included on the “cover costs” spreadsheet, including purchases of gas at much lower prices than the purchases reflected in the documents Spire did produce. In other words, the document that Spire had previously claimed reflected all of Spire’s “cover costs” was itself incomplete and underscores Spire’s failure to produce documents

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<sup>8</sup> Spire likewise produced at the deposition a previously unproduced transaction confirmation relating to a February 15, 2021 transaction with Atmos Energy Corporation. That transaction confirmation, and related correspondence and documents, are responsive to Symmetry’s Data Request No. 74. But, not only had Spire withheld the transaction confirmation from Symmetry until its corporate representative deposition, it still has not produced to Symmetry any correspondence or other documents related to the deal (although Symmetry received from Constellation one email that Spire had produced to Constellation relating to the aforementioned transaction confirmation—yet another example of a document responsive to Symmetry’s data requests that was not produced).

<sup>9</sup> Constellation also filed on December 20, 2021 as Schedule 11 to the testimony of James N. Cantwell a letter dated March 15, 2021 from Sean P. Jamieson, General Counsel of Spire Marketing, to Spire’s counsel regarding Spire Marketing’s response to Spire’s OFO penalty assessment. This letter is also clearly responsive to Symmetry’s data request and was not produced to Symmetry.

responsive to Symmetry’s request for all documents relating to all gas purchases, sales, exchanges and other transactions.

**C. Symmetry Attempts to Obtain the Responsive, Unproduced Material Uncovered at the Corporate Representative Deposition**

Following Mr. Godat’s deposition, Symmetry sent Spire another letter asking Spire to confirm that: it had taken steps to preserve responsive documents; fewer than 50 responsive documents existed; no responsive documents had been destroyed or lost; and no further responsive documents existed—all topics about which Mr. Godat was unprepared to testify. *See* Ex. 10. Symmetry requested a response within one week—i.e., by January 26, 2022. *Id.* To date, Spire has failed to respond.

Symmetry has also requested to take the deposition of the head of Spire’s record management so that Symmetry can investigate the steps Spire took to preserve, collect, and produce responsive documents. Spire has refused to produce that witness, and instead has filed a motion seeking a protective order. *See* Spire Missouri Inc.’s Motion for Protective Order and Memorandum in Support (February 2, 2022), Dkt. 88.

**D. Symmetry Discovers That Spire Inexplicably Delayed in Issuing a Legal Hold Notice**

On January 24, 2022, Spire stated in a written response to a Symmetry data request that Spire did not issue a litigation hold until April 22, 2021. Ex. 11 (Response to Data Request 3.3). That means that Spire waited to issue a litigation hold until: (i) more than two months after it sent Symmetry a demand letter on February 24, 2021 seeking \$150 million in OFO penalties; (ii) almost two months after Symmetry responded on February 26 objecting to Spire’s demand and refusing to pay the purported penalties; (iii) more than a month after Spire filed a lawsuit against Symmetry in federal court on March 22; and (iv) nearly a month after Symmetry filed this action against Spire on March 26 and served its first set of data requests. Compounding this clear

violation of Spire's discovery obligations, the litigation hold that was issued was sent to only seven individuals, excluding multiple members of Spire's Gas Supply and Gas Control teams.<sup>10</sup>

**E. Symmetry Again Requests Information in Advance of Settlement Conference**

On February 1, 2022, the parties agreed to seek a modification to the procedural schedule to permit a formal settlement conference to occur in mid-February, and the Commission granted the parties' motion. On the same day, Symmetry again reached out to Spire to discuss the further production of documents that Symmetry requires prior to the settlement conference in order to make the conference meaningful, and identified the following categories (which are responsive to Symmetry's Data Requests Nos. 3, 7, 31, 33, 47, 58, 73 and 74):

- documentation regarding Spire's available gas supply for each day in February 2021, including baseload gas, callable gas, storage gas, and spot purchases;
- trade confirmations and invoices for all of Spire's gas purchases and sales in February 2021;
- a daily record of all sources of supply to the Spire Missouri West system in February 2021, including:
  - whether the gas was baseload, callable, storage, or spot purchases;
  - the price basis for the gas (whether FOM, GDD, or otherwise);
  - the actual price Spire paid for the gas;
  - the volume of gas, both as contracted and as actually delivered;
  - the date the gas was contracted to be purchased;
  - the date, or date range, for delivery;
  - whether the supply was firm or interruptible—and if interruptible, any exceptions to that; and
  - any applicable reservation or demand charges assessed to Spire's sales customers for the use of certain volumes of gas including, but not limited to, callable options and storage;
- all forecasts regarding supply, customer demand, storage, and weather in February 2021 (including any regression analyses referred to by Mr. Godat in his deposition);

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<sup>10</sup> On November 23, 2021, Spire added an additional five individuals to the hold. *See* Ex. 11 (Response to Data Request 3.3).

- daily supply cuts faced by Spire (regardless of whether notice was verbal or written) during February 2021 and all force majeure notices provided to Spire by its suppliers during February 2021; and
- daily throughput on the Missouri West system, broken down between sales customers and transportation customers.

On February 2, counsel for Symmetry provided this list in writing to Spire’s counsel and, in order to facilitate productive settlement discussions, requested all responsive documents by close-of-business on Monday, February 7.<sup>11</sup> Additionally, on February 2, counsel for Symmetry discussed that list on a telephonic meet-and-confer with Spire’s counsel. Also during that call, counsel for Symmetry requested that, at a minimum, Spire’s counsel provide the company’s position with respect to each category of documents (i.e. whether Spire does not have any more responsive documents, or whether Spire has responsive documents but refuses to produce them) as soon as possible. On February 3, counsel for Symmetry memorialized that request in writing. On February 4, Spire’s counsel indicated that they would provide a response over the weekend or early on February 7, but no response had been provided at the time of this filing.

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<sup>11</sup> In that same correspondence, counsel for Symmetry indicated its intent to move to compel the production of the aforementioned categories to the extent not produced by close of business on February 7, and the following categories of documents (which are responsive to Symmetry’s Data Requests Nos. 3, 7, 31, 33, 47, 58, 64, 73 and 74):

- a. Email and chat communications, from February 2021 through the present, relating to the following:
  - The need for, issuance, duration and termination of the OFO, including discussions of supply and demand, correspondence with upstream pipelines and suppliers, and correspondence regarding system integrity.
  - Spire’s gas transactions in February 2021, including Spire’s decisions to (or to not) purchase gas, utilize storage inventory, and sell gas and capacity.
  - The decision not to curtail any customers during February 2021.
- b. Agreements and correspondence during or relating to February 2021 with Southern Star.
- c. A complete set of all gas supply/demand and weather forecasts and projections for the days February 5-22, 2021 and any correspondence relating thereto.
- d. Documentation, including trade confirmations and invoices, for any gas purchases, sales, or other transactions in February 2021 not covered by the categories listed above, including Spire’s daily portfolio summary or position report.

The parties participated in a conference before the Administrative Law Judge on the morning of February 8, 2022. At that conference, Spire belatedly reported—in direct contradiction to the representations previously made both by its corporate representative and its own counsel—that it had additional documents to produce (including ICE chats), and that it would move forward with that production. But, no additional production has been made as of the time of this filing.

### **III. DISCUSSION**

As discussed below, Spire has failed to meet its obligations under Missouri’s Rule of Civil Procedure 56.01(b)(1), which governs discovery. The documents that Symmetry seeks are not only relevant, but are key to the core issues on this case. The Commission should compel Spire to produce all documents responsive to Symmetry’s data requests, to produce on an expedited basis documents required to make the settlement conference meaningful and for Symmetry to prepare for depositions, and to identify responsive materials that have been destroyed.

#### **A. Spire Has Failed to Produce Responsive, Non-Privileged Documents**

Discovery conducted in a case pending before the Missouri Public Service Commission “may be obtained by the same means and under the same conditions as in civil actions in the circuit court.” 20 CSR 4240-2.090(1); *accord Missouri Landowners All., E. Missouri Landowners All. d/b/a Show Me Concerned Landowners, & John G. Hobbs, Complainants*, No. EC-2021-0059, 2021 WL 824749, at \*1 (Feb. 24, 2021) (examining the Missouri rules of civil procedure pursuant to this rule). Pursuant to Mo. R. Civ. Pro. 56.01(b)(1), parties can obtain relevant, non-privileged information and documents reasonably calculated to lead to the discovery of admissible evidence.



Relevance, for purposes of discovery, is “broadly defined to include material “reasonably calculated to lead to the discovery of admissible evidence.” *In the Matter of the Application of Kansas City Power & Light Co. for Approval to Make Certain Changes in Its Charges for Elec. Serv. to Continue the Implementation of Its Regul. Plan*, No. ER-2009-0089, 2009 WL 5069707, at \*6 (Dec. 9, 2009). “The modern philosophy of pre-trial discovery is salutary and performs important and legitimate functions. The benefits of pre-trial discovery are numerous: liberal discovery aids in the ascertainment of truth, surprise is eliminated, issues are narrowed, trial preparation is facilitated, and ‘relevant’ information is obtained.” *State ex rel. Kawasaki Motors Corp., U.S.A. v. Ryan*, 777 S.W.2d 247, 251 (Mo. Ct. App. 1989). Missouri courts have recognized that the rules relating to discovery were designed to eliminate, as far as possible, concealment and surprise in the trial of lawsuits, and to provide a party with access to anything “relevant” to the proceedings and subject matter of the case which are not protected by privilege. *Id.*

Further, Rule 56.01(g) provides: “All parties shall make reasonable efforts to cooperate for the purpose of minimizing the burden or expense of discovery.” Rule 61.01 gives trial courts significant discretion to impose sanctions that are “just” when a party fails to answer interrogatories, produce documents, or attend depositions. Rule 61.01(b), (d), (f). For the purpose of this Rule 61, an evasive or incomplete answer is to be treated as a failure to answer. *Id.*; see *Anderson v. Arrow Trucking Co.*, 181 S.W.3d 185, 189 (Mo. Ct. App. 2005) (district court’s imposition of discovery sanctions was appropriate where defendant’s initial response to plaintiffs’ interrogatories was to object that the requests were “unduly burdensome and . . . not reasonably calculated to lead to admissible evidence,” said nothing about not having the

documents or information or not being able to obtain it and then waited until months later at a hearing on sanctions to announce that it might not even have the documents).

Here, Symmetry has alleged that Spire's OFO and associated penalties violate Spire's tariff because, among other things, Spire did not have a proper basis to issue the OFO or to maintain it for the period of its duration. Symmetry has therefore sought, among other things, documents relating to Spire's evaluation of and decisions to initiate, maintain and terminate the OFO, *see, e.g.*, Data Request Nos. 3, 31, 33, 58; Spire's evaluation of and decisions regarding the protection of Spire's system integrity and ensuring compliance with upstream pipeline companies, *see, e.g.*, Data Request Nos. 7, 47; and Spire's evaluation of and decisions regarding whether to curtail customers, *see, e.g.* Data Request No. 64. The requested documents go directly to the heart of Symmetry's allegations and, in response to these requests, Spire produced only five documents and referred in its written responses to six documents produced in response to a separate data request. Spire's decision to unilaterally withhold correspondence and other documents relating to these issues is in direct violation of its discovery obligations. *See* Mo. R. Civ. Pro. 56.01(b)(1).

Similarly, since Symmetry has also alleged that Spire failed to properly calculate OFO penalties (and since Spire is arguing that it was forced to purchase expensive spot gas to compensate for marketers' purported shortfalls in delivery), Symmetry has also sought information and documentation relating to Spire's use of and transactions in gas during the relevant period. *See, e.g.*, Data Requests 73 (seeking a detailed list of all gas purchase, sale, exchange and other transactions made by Spire during the relevant time period), 74 (seeking correspondence and documents relating to the same). In response to these data requests, Spire produced only a (incomplete) set of invoices. Again, Symmetry cannot develop its claim against

Spire without these foundational documents and, since Spire has stated that it has not withheld any responsive documents on the basis of privilege, Spire has no justification for its failure to produce.<sup>12</sup> *See id.*

Ultimately, Spire’s misconduct has sabotaged Symmetry’s ability to present its case, and allowing these contraventions of Missouri law and procedure to go unchecked would violate Symmetry’s due process rights. *See Weinbaum v. Chick*, 223 S.W.3d 911, 913-14 (Mo. Ct. App. 2007) (reversing agency determination on due process grounds because litigant was not allowed to present certain evidence at hearing); *Jones v. State Dep’t of Pub. Health & Welfare*, 354 S.W.2d 37, 39-40 (Mo. App. 1962) (“An administrative proceeding will not be considered a ‘fair hearing’ if it lacks the rudimentary elements of ‘fair play’ embraced within the requirements of due process.”). Spire must produce these documents.

Finally, on February 2, 2022, the procedural schedule in this case was modified following a joint motion of the parties to allow for the parties to engage in a settlement conference. *See* Order Further Modifying Joint Procedural Schedule (February 2, 2022), Dkt. 89. For the settlement conference to truly be meaningful, Symmetry must have sufficient information to understand the factual basis for Spire’s actions and stated positions. Because the settlement conference in this case is scheduled for February 17, 2022, the interval between the filing date of this motion and that conference is extremely short. Moreover, because the discovery conference, which the Commission’s rules require as a prerequisite to a motion to compel, was completed

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<sup>12</sup> Notably, Spire has included in the topics noticed for Symmetry’s corporate representative deposition “[t]he factual basis for why Symmetry is refusing to pay Spire’s cover damages which Spire incurred buying natural gas on behalf of Symmetry for its customers during the OFO period,” *see* Ex. 12 (Topic 16), yet Spire continues to withhold the very documents that would permit Symmetry to fully examine and evaluate those costs, documents that—under the terms of its own retention policies—must be in Spire’s possession.

just a few hours before this motion was filed, the need to expedite the consideration of Symmetry's motion was not caused by neglect or failure to timely press its claim for the discovery to which it is entitled. Accordingly, Symmetry requests that the Commission (i) require that Spire respond to this motion no later than Friday, February 11, 2022; and (ii) render a decision on the motions no later than Wednesday, February 16, 2022. If the Commission grants Symmetry's motion, the order should require that Spire (i) provide the outstanding documents requested for the settlement conference no later than 5:00 PM, Central time, on Wednesday, February 16, 2022 (the day before the settlement conference, in order to permit Symmetry to analyze the materials ahead of the conference), and (ii) provide all other outstanding responsive documents no later than 5:00 PM, Central time, on Thursday, February 17, 2022 (in advance of Justin Powers' deposition, which is currently scheduled to begin on Monday, February 21, 2022). Symmetry further requests that the Commission caution Spire that failure to provide the required response could result in sanctions up to, and including, Spire being denied the right to provide evidence at, or otherwise participate in, the April 18 evidentiary hearing.

#### **IV. CONCLUSION**

For the reasons discussed above, Symmetry respectfully requests that the Commission grant this motion and issue the attached Proposed Order.

Dated: February 8, 2022

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## CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February 2022, a copy of the foregoing **Symmetry Energy Solutions, LLC's Motion to Compel Production of Responsive Documents by Spire Missouri, Inc. and Motion for Expedited Treatment** 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

**Appendix A: Documents Produced by Spire in Response to Symmetry’s Data Requests**

**V. FIRST SET OF DATA REQUESTS**

<b>Request</b>	<b>Production</b>
Data Request 1: Produce all OFOs issued by Spire to any parties, including affiliates of Spire, affecting the Spire MO West System, including OFOs for gas and transportation imbalances at a meter, shipper, agent, or aggregator level; OFOs related to storage levels and storage withdrawal rates; and OFOs related to operational balance agreements.	Three emails reflecting Spire’s initiation and termination of Spire’s OFO, dated February 10 and 19, 2021.
Data Request 3: For each OFO issued by Spire affecting the Spire MO West System, produce all correspondence and other documents related to Spire’s evaluation, actions, and decisions regarding the need for the OFO, including all conditions and circumstances giving rise to the need for the OFO.	One weather forecast for February 12, 2021.
Data Request 8: Describe in detail any risk of Spire resources on the Spire MO West System being used at or near their maximum Tariff or contractual limits.	Five documents <sup>13</sup> : <ul style="list-style-type: none"> <li>• Four emails showing snapshots of system pressure at specific points in time, dated February 14-16, 2021.</li> <li>• One document showing a graph of pressure changes at one point on the Southern Star system.</li> </ul>
Data Request 17: Produce all correspondence and other documents regarding any risk of loss of sufficient line pressure to meet the Spire MO West System delivery obligations.	One email, dated February 15, 2021, subject: “FW: Spire IST Notification – Extreme Cold Weather Preparedness.”
Data Request 33: For each OFO issued by Spire affecting the Spire MO West System, produce all correspondence and other documents related to Spire’s evaluation,	One email from Southern Star terminating the Southern Star OFO, dated February 19, 2021.

<sup>13</sup> Spire indicated that these documents are also responsive to Symmetry Data Requests 9-11, 18-21, 23, 25, 38-39, 47.

<p>actions, and decisions regarding the duration of the OFO, including all conditions and circumstances that formed the basis of Spire’s decision regarding when to terminate the OFO.</p>	
<p>Data Request 44: Produce all correspondence and other documents related to all OFOs (including OFOs for gas transport, gas deliveries, gas imbalances, storage withdraws, and operational balance agreements), functional equivalent of OFOs, critical notices, notices of any other requirement, or force majeure notices from any upstream pipeline (including SS) to Spire regarding the Spire MO West System.</p>	<p>Spire’s written response to Constellation Data Request 17, and five notices from pipelines<sup>14</sup>:</p> <ul style="list-style-type: none"> <li>• Enable Gas Transmission Standard OFO notice.</li> <li>• MoGas Pipeline Extreme Weather Alert, dated February 9, 2021.</li> <li>• Critical Operational Flow Order, reflecting an Update to Southern Star OFO – System Wide, dated February 15, 2021.</li> <li>• Enable Gas Transmission – Human Needs Requirements Advisory.</li> <li>• MRT Notice 3789, regarding an OFO.</li> </ul>
<p>Data Request 49: Produce all correspondence and other documents related to Spire’s issuance of any OFO to Spire transportation customers served by Symmetry.</p>	<p>Spire’s written response to Constellation Data Request 19, and fourteen documents reflecting communications to Spire customers<sup>15</sup>:</p> <ul style="list-style-type: none"> <li>• February 14, 2021 Spire press release: “Spire asks customers to conserve energy.”</li> <li>• February 15, 2021 press release: “Southwest Missouri customers immediately asked to reduce natural</li> </ul>

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<sup>14</sup> The following documents were originally produced by Spire in response to Constellation Data Request 17 (DR 0306 in AO-2021-0264). Spire also indicated that these documents are responsive to Symmetry Data Request 48, 51.

<sup>15</sup> The following documents were originally produced by Spire in response to Constellation Data Request 19 (DR 183 in AO-2021-0264).



	<p>gas usage” reflecting a Spire Missouri Curtailment Communication.</p> <ul style="list-style-type: none"> <li>• February 17, 2021 press release: “Southwest Missouri customers to continue conserving energy.”</li> <li>• February 18, 2021 press release: “Emergency curtailment ends for Southwest Missouri business customers.”</li> <li>• Spire Instagram posting: “Conserve energy to help your community.”</li> <li>• Spire email to residential customers: “Hello, the most recent wave of extreme, cold temperatures...”</li> <li>• Spire website message to customers: “Due to extreme weather conditions across the Midwest, Spire is urging customers across Missouri to conserve energy over the next few days.”</li> <li>• Spire website message to customers: “Updates for customers in Southwest MO.”</li> <li>• February 17, 2021 document: “FINAL Marketer Symmetry Customer Notice.”</li> <li>• Email to transportation customers: “The extreme weather conditions we’re experiencing throughout the nation. . .”, dated February 14, 2021.</li> <li>• “MOW Transportation Customers – CONSERVE outbound call scripts”, dated February 14, 2021.</li> <li>• “Missouri West Transportation Customers CONSERVE text,” dated February 14, 2021.</li> </ul>
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	<ul style="list-style-type: none"> <li>• “TRANSPORT – FINAL” document, dated February 16, 2021.</li> <li>• Text message: “Targeted text to Southwest Missouri business customers.”</li> </ul>
Data Request 53: If you contend that any Spire transportation customers served by Symmetry engaged in conduct that failed to comply with any OFO or Spire directives, produce all correspondence and other documents related to your contention.	One spreadsheet <sup>16</sup> , titled “Confidential Actual Cover Costs Spire.”
Data Request 56: For each OFO issued by Spire affecting the Spire MO West System, describe in detail any attempts by Spire to remedy the conditions or circumstances giving rise to the need for the OFO, including through requests for voluntary actions.	One document <sup>17</sup> titled “GC-2021-0316 DR Response CONFIDENTIAL MOW Invoice.”
Data Request 58: To the extent not produced in response to other Data Requests, produce all correspondence and other documents related to Spire’s issuance of OFOs affecting the Spire MO West System.	One document, titled “Symmetry ICE Conversation.”
Data Request 72: Produce all correspondence between Spire and Spire Marketing.	Two emails, reflecting Spire’s issuance and termination of its OFO on February 10 and 19, 2021.
Data Request 75: Produce documents sufficient to show the daily gas volumes owned or managed by Spire in storage on the Spire MO West System, the SS System, or any other upstream pipeline system with access to the Spire MO West System.	Two documents <sup>18</sup> showing Spire’s Panhandle Eastern Pipeline Company and Southern Star storage balance details.

<sup>16</sup> Spire also indicated that this spreadsheet is responsive to Symmetry Data Requests 56-57, 64, 67-68, 86-87, 101.

<sup>17</sup> Spire also indicated that this document is responsive to Symmetry Data Requests 57, 64, 73-74.

<sup>18</sup> Spire also indicated that this document is responsive to Symmetry Data Requests 66, 69, 76, 78.

Data Request 102: Produce all correspondence with S&P Global Platts, including but not limited to any affiliate and representative, regarding its published pricing during the OFO Period.	Five emails exchanged between Spire and S&P Global Platts.
	One spreadsheet titled “Confidential Updated OFO Report”

## VI. SECOND SET OF DATA REQUESTS

Request	Production
Data Request 2.12: Produce all agreements between Spire and customers of Symmetry that received gas from the Spire MO West System during the period from February 1, 2021 to February 28, 2021.	308 agreements.

## VII. THIRD SET OF DATA REQUESTS

Request	Production
Data Request 3.1: Describe in detail the actions Spire took to ensure that correspondence, documents, and other materials relating to the Winter Storm Event or this Action were preserved, and when each such action was taken.	One legal hold notice. <sup>19</sup>
Data Request 3.7: Describe in detail Spire’s document retention policy/policies in effect at all times relevant to this Action and produce all said policies.	Five Spire policies.

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<sup>19</sup> Spire also indicated that this document is responsive to Symmetry Data Request 3.2.