BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Cause of the February 2021 Cold Weather Event and its Impact on Investor Owned Utilities	)))	File No. AO-2021-0264

COMMENTS OF CONSTELLATION NEWENERGY-GAS DIVISION, LLC

Constellation NewEnergy-Gas Division, LLC ("CNEG") files these Comments in response to material and statements presented by Spire Missouri, Inc. to the Public Service Commission of the State of Missouri (the "Commission") at its March 23, 2021 workshop.[1]

Introduction

CNEG is one of the marketers against whom Spire Missouri, Inc. and its operating unit Spire Missouri West (collectively "Spire") has assessed $35,526,510.86[2] of the $195,000,000 in total OFO penalties it seeks to recover from a number of different marketers related to the 2021 Cold Weather Event. One point warrants special emphasis due to the serious and unnecessary financial impact of OFO penalties on Missouri customers. While at the March 23, 2021 workshop Spire claimed that the "OFO penalties are assessed to marketers and not our firm customers" that is flatly contradicted by Spire's Feb. 24, 2021 Demand Letter to CNEG in which Spire unequivocally stated "If we are unable to reach payment terms by Friday, February 26, *Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts*." As discussed below, as a marketer, CNEG acts as an agent of the transportation customers it serves, each of which has a separate Transportation Agreement with Spire. While CNEG provides pooling and other services to these customers, these are the customers ultimately subject to the Tariff

[1] CNEG has filed a separate complaint with the MPSC regarding these OFO penalties. Spire has filed a federal lawsuit related to these penalties. CNEG will confine its comments in this setting to addressing certain issues raised by the Commission for which Spire's presentation was erroneous or misleading.

[2] Spire's initial February 24, 2021 Demand Letter requested immediate payment of $39,451,576.78. Spire subsequently revised that amount on March 17, 2021 to demand $35,526,510.86.

and responsible for OFO penalties under its terms. Spire should waive these penalties under the circumstances, as many other pipelines and utilities have already done or sought to do. The Commission should be aware that Spire's own marketing affiliate, Spire Marketing, has itself sought waiver of OFO penalties arising out of the 2021 Cold Weather Event on other systems on substantially similar grounds by which Spire as an LDC should waive the OFO penalties in this instance. It does not serve any legitimate purpose to impose penalties on Missouri customers at a multiple of 2.5 times the already stratospheric natural gas prices under the circumstances of the 2021 Cold Weather Event.

The 2021 Cold Weather Event was an extraordinary weather event that had dramatic impacts on the availability of natural gas.

CNEG and the utilities Spire, Ameren Missouri, Summit Natural Gas and Liberty Utilities, all agree that extraordinary weather conditions had a dramatic impact on both natural gas production and the demand for electricity, and at the same time widespread power outages in turn further limited production of natural gas and presented serious operational and logistical challenges at many levels in the natural gas market.

On Sunday, February 14, 2021, an arctic air mass originating at the Canadian border reached the Midwest region, bringing snow, ice, and extreme cold temperatures. This series of events has been popularly described as the 2021 Polar Vortex and Winter Storm Uri, but we will refer to it here as the 2021 Cold Weather Event in keeping with the nomenclature of this proceeding.

The 2021 Cold Weather Event caused record winter power demand and impacted all types of power generation, including natural gas generation. The Southwest Power Pool ("SPP") declared Energy Emergency Alert Level 3 due to operating reserves falling below the required minimum as high demands related to the ongoing severe winter weather event exceeded available generation capacity. At the same time, gas production in the U.S. South Central Region was down approximately 6.3 Bcf per day due to wellhead freeze-offs, natural gas processing plant outages, and power outages.[3]

While CNEG and Spire agree that the 2021 Cold Weather Event was an extraordinary weather event, particularly as it impacted natural gas prices, CNEG and Spire have very different understandings about the actual effect on Spire's system, whether and when an OFO became necessary on Spire's system, the timing of the termination of the OFO, and the resulting unnecessarily punitive nature of Spire's insistence that $195,000,000.00 in OFO penalties must be paid by Missouri transportation customers, or the marketers that act as agents for those customers. Notably, *Spire's own marketing affiliate, Spire Marketing*, is also challenging OFO penalties issued by other pipelines on the same basis, noting that "recent weather events resulted in significant and unanticipated disruptions, all of which impeded shippers' ability to match deliveries to nominated volumes, as required by the OFO."[4] Spire Marketing challenged the OFO penalties in that case that "[t]he imbalances were not the result of intentional bad behavior and were instead the result of the impact of Winter Storm Uri and the unprecedented chaos and confusion in the natural gas market."[5] CNEG agrees. There was in fact unprecedented chaos and confusion in the natural gas market as a result of the 2021 Cold Weather Event. This is a strong argument not only for Spire Marketing when it seeks waiver of OFO penalties issued by other pipelines, but also as to those OFO penalties issued by Spire as an LDC to non-affiliated marketers such as CNEG.

As a marketer of natural gas, CNEG arranges purchases and sales of natural gas to satisfy its

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[3] U.S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, *Extreme Cold & Winter Weather Update #1*, https://www.energy.gov/ceser/downloads/extreme-cold-winter-weather-hub-situation-update-1 (Feb. 16, 2021) ("*DOE Update #1*").

[4] Attached hereto as Appendix E is a true and correct copy of Spire Marketing Inc.'s March 19, 2021 Motion to Intervene, Comments, and Limited Protest to Panhandle Eastern Pipe Line Company, LP's Request for Limited Waiver Determination before the Federal Energy Regulatory Commission, Docket No. RP21-616-000. FERC later approved Panhandle's application on March 25, 2021, finding that the requested limited waiver of OFO penalties in that case "is not unduly discriminatory and is consistent with Panhandle's tariff."

[5] *Id.*

customers' natural gas needs. Unlike pipeline companies or local distribution companies, a marketer does not own physical assets commonly used in the supply of natural gas, such as pipelines or storage fields. CNEG competes with other marketers in the industry, such as Spire Marketing, which provides similar purchase and sales services, and is an affiliate of Spire Missouri Inc.

As a marketer, CNEG does not set or have any control over natural gas market prices. Instead, it is subject to the market's inherent laws of supply and demand, including loss of supply of natural gas from upstream suppliers such as natural gas producers. Unlike a regulated utility such as Spire, CNEG does not have the ability to recover costs from its customers from future gas prices or a guaranteed rate of return but is subject to market forces. During the 2021 Cold Weather Event, CNEG suffered substantial and sudden cuts to its gas supply and purchased natural gas in the market, at prices exponentially greater than is typical, in order to respond to the effects of the 2021 Cold Weather Event as best it could. CNEG anticipates that it will suffer substantial financial losses from these events to a degree that is not yet fully determinable, which will be further compounded by the approximately $35 million in OFO penalties sought by Spire.

Contrary to Spire's assertions in the workshop, its own Tariff mandates that its transportation customers will be the ones who pay the $35M in OFO Penalties, not a gas marketer like CNEG.

On Wednesday, February 24, 2021, only 3 business days after terminating the OFO, Spire issued a Demand Letter to CNEG stating that Spire was "assessing an OFO penalty" "in the amount of $39,451,576.78" and demanded payment within two days.[6]

Contrary to what Spire told this Commission in the workshop on March 23, 2021,[7] Spire's

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[6] Attached hereto as Appendix A is a true and correct copy of the February 24, 2021 Demand Letter issued by Spire to CNEG ("Spire's Demand Letter").

[7] Appendix C, March 23, 2021 Transcript of Proceedings, 17:14-17 ("So we want to be clear with that that these fees are going to the marketers because of the nonperformance and not our customers"); Appendix D, Spire's Workshop Presentation at 15 ("[t]he OFO penalties are assessed to marketers and not our firm customers" is inaccurate."). True and correct copies of the March 23, 2021 Transcript of Proceedings and Spire's Workshop Presentation attached hereto as Appendix C and Appendix D respectively. The Missouri

Feb. 24, 2021 Demand Letter to CNEG made it clear that it would bill the OFO penalties to its own transportation customers, which it notes "retain ultimate financial responsibility for these amounts":[8]

> Please contact us right away to arrange payment. If we are unable to reach payment terms by Friday, February 26, Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff.

Under the terms of Spire's Tariff, CNEG acts as an agent for certain of Spire's transportation customers, each of which has a separate Transportation Agreement with Spire. CNEG is not a customer under the Spire Tariff but instead has a separate Agent Aggregation Service Agreement with Spire in which CNEG agrees to act as an agent for Spire's transportation customers. While CNEG acts as an agent, Spire's own Tariff is clear that Spire's transportation customer remains responsible for OFO penalties:

> (d) Responsibility for Payment: Unauthorized Over- or Under- Delivery Penalties for individually balanced customers shall be billed to and collected from the applicable customer. Unauthorized Over- or Under- Delivery Penalties for pools shall be billed to and collected from the agent representing the aggregated customers. Customers will continue to have ultimate responsibility for all charges on the account.[9]

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transportation customers with transportation contract directly with Spire, on one hand, and have separate agreements with marketers such as CNEG, Spire Marketing, and others who act as agents for the purposes of pooling the accounts of Spire's Missouri transportation customers and provide other services. For example, Spire stated at the March 23, 2021 workshop that "our customers have a contract with these marketers, and we don't know exactly how these contracts are set up, but they probably have some sort of firm provision in there and they were not getting firm service..." Appendix C, March 23, 2021 Transcript of Proceedings, 17:18-22. To be clear, there is no need for any marketer to have firm transportation agreements because the customers themselves contract directly with Spire for transportation services.

[8] Spire's insistence on collecting full OFO Penalties despite numerous discrepancies in the invoices and demands for immediate payment which have no basis in either the Agent Aggregation Service Agreement or the Tariff are the subject of CNEG's pending Complaint against Spire.

[9] Spire Missouri Inc.'s Tariff for Spire Missouri West, P.S.C. MO., No. 8, GR-2017-0216; YG-2018-0118,

and CNEG's Agent Aggregation Service Agreement provides so as well:

> The Agent will act on its customers' behalf for the purposes of fulfilling the customers' contractual obligations under this Agent Aggregation Service Agreement. Except as provided herein, all charges contained in the Agent Aggregation Service Agreement shall remain in full force and effect and remain payable to Company by the Agent's customers in the event the Agent fails to pay the same hereunder.[10]

CNEG has challenged the propriety and accuracy of the OFO penalties charged by Spire to the Missouri transportation customers served by Spire by filing a Complaint with this Commission.[11] However, unless the Commission grants relief in that proceeding, under the Tariff Spire's transportation customers are the parties against whom Spire has assessed OFO penalties. These include hospitals and care centers, schools and additional corporate, industrial, small business and non-profit customers.

While at the workshop, Spire sought to characterize the OFO penalties it seeks as "cover damages," the Tariff defines OFO penalties as penalties to be calculated as a multiple of the index price of gas. In this case, by definition, the calculation results in a dollar figure many times higher than any costs Spire could actually have incurred. The first of the month Index gas price for Southern Star for February was $2.52 per MMBtu. On February 19, 2021, the first day following the OFO period, the Gas Daily Index gas price was $7.94 per MMBtu. The peak penalty rate of $1,556.96 per MMBtu during the OFO Period is therefore 617 times the first of the month Index price and 195 times the Gas Daily Index price on the first day following the OFO period, in and of itself an abnormally high price. Spire has refused to provide information about the actual costs Spire incurred

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Sheet No. 16.14, Section B(5)(d).

[10] Attached hereto as <u>Appendix B</u> is a true and correct copy of the Agent Aggregation Service Agreement between Spire and CNEG.

[11] CNEG's separate Complaint regarding Spire's issuance of nearly $40 million in OFO Penalties to Spire's Missouri transportation customers served by CNEG is currently pending at GC-2021-0315.

in connection with the takes of gas by its transportation customers, almost certainly because the cost is nowhere close to what Spire has sought to impose. This Commission should compel Spire to disclose this information and, if it does not order Spire to do as other area interstate pipelines have done and simply waive the penalties altogether, should examine the actual cost to Spire of providing gas to its transportation customers during the OFO period.

Unlike Spire, interstate pipelines such as Southern Star, Gulf South, and Panhandle Eastern sought to waive their own OFO penalties from the 2021 Cold Weather Event.

In contrast to Spire's position on OFO penalties from the 2021 Cold Weather Event, pipeline operators proximate in location to Spire's system who also experienced those same effects, including Southern Star,[12] Panhandle Eastern Pipeline Company,[13] and Gulf South[14] are currently seeking or have obtained waiver of OFO penalties otherwise provided for under their tariffs. Other pipelines such as Texas Eastern Transmission, LP simply posted waiver notifications on their electronic bulletin boards.

Southern Star's request for a waiver is illustrative of a pragmatic approach with respect to

[12] On March 11, 2021 Southern Star Central Gas Pipeline formally requested that the Federal Energy Regulatory Commission ("FERC") grant a "waiver of the collection and crediting of operational flow order ("OFO") penalties that may have been incurred by Shippers and/or Point Operators during the period from gas day February 11, 2021, through gas day February 19, 2021…" Southern Star Central Gas Pipeline, Inc., Request for OFO Penalties Waiver, Docket No. RP21-618-000. Spire has intervened but has neither opposed nor supported Southern Star's request. A true and correct copy of Southern Star's waiver application is attached hereto as Appendix F.

[13] Panhandle Eastern Pipe Line Company, LP has submitted a Request for Limited Waiver Determination for certain OFO penalties that shippers recently incurred on Panhandle's system. *See* Panhandle Eastern Pipe Line Company, LP has submitted a Request for Limited Waiver Determination before the Federal Energy Regulatory Commission, Docket No. RP21-616-000. The Federal Energy Regulatory Commission approved Panhandle Eastern Pipeline Company's application on March 25, 2021, finding that the request "is not unduly discriminatory and is consistent with Panhandle's tariff." A true and correct copy of Panhandle Eastern Pipeline Company's waiver application is attached hereto as Appendix G.

[14] On March 19, 2021, Gulf South Pipeline Company, LLC ("Gulf South") requests that the Federal Energy Regulatory Commission ("Commission") approve a waiver of "the assessment, invoicing, collection, and crediting of potential operational flow order ("OFO") penalties associated with the unprecedented extreme winter weather of mid-February that impacted its customers, supply sources, and delivery locations." Gulf South Pipeline Company, LLC, Request for OFO Penalties Waiver, Docket No. RP21-630-000. A true and correct copy of Gulf South Pipeline Company's waiver application is attached hereto as Appendix H.

both the operational needs of the pipeline in having the power to issue OFO penalties, but also the ruinous financial effects such OFO penalties can have for Missouri transportation customers and other market participants. Southern Star proposed to FERC that "[i]n lieu of customers spending time reviewing invoices associated with OFO penalties, and in recognition of the historic nature of the Polar Vortex event, Southern Star proposes to waive all OFO penalties for all Shippers and Point Operators who may have incurred penalties during the OFO Period." *Id.* at 2. Southern Star's request for waiver noted that "[t]he purpose of issuing OFOs under Southern Star's tariff is to deter certain behaviors by Shippers and Point Operators on its system to ensure the integrity and reliability of its pipeline and storage operations during an event." With regard to the events of the 2021 Cold Weather Event itself, Southern Star noted:

> During this OFO Period, Shippers and Point Operators as a whole behaved in a manner that allowed Southern Star to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service. Although many Shippers and Point Operators were unable to adhere completely to the OFOs, and without a waiver would be subject to OFO penalties, many of those same Shippers and Point Operators also took actions that assisted Southern Star during this Polar Vortex event and helped enable the pipeline to continue to provide firm service without curtailment; however, the current OFO tariff provisions provide no mechanism for recognizing such equitable collaborations in the calculation of penalties. Southern Star believes that a waiver of all such penalties is appropriate in these circumstances. The aggregate level of compliance with the OFOs was sufficient to address the strain on the system due to the Polar Vortex event. Because of the collaborative effort among Shippers and Point Operators, the amount of OFO non-compliance did not impair Southern Star's ability to operate its system. In addition, given that standard OFO penalties are calculated at 2.5x the average Gas Daily Index -- and that index peaked on one day at over $600 per Dth – the OFO penalties would add an enormous burden to what were already exorbitant gas costs for customers.

Appendix F at 2.

As Spire acknowledged in its own motion to intervene in the proceeding on Southern Star's request for waiver of its OFO penalties, "the operational challenges Southern Star experienced during the recent extreme cold weather were largely caused by insufficient gas supplies."[15]

Spire's own marketing affiliate, Spire Marketing, Inc., has argued in response to OFO penalties from this same period "the deterrent purpose underlying the Commission's OFO policy is not fully applicable here because shippers' behavior was dictated by the extreme and changing conditions, rather than bad faith motivation," that "recent weather events resulted in significant and unanticipated disruptions, all of which impeded shippers' ability to match deliveries to nominated volumes, as required by the OFO," that "[t]he imbalances were not the result of intentional bad behavior and were instead the result of the impact of Winter Storm Uri and the unprecedented chaos and confusion in the natural gas market," and that "the unique circumstances of the emergency conditions warrant some degree of equitable relief from what would otherwise be an unwarranted burden on market participants."[16] CNEG agrees. CNEG worked in good faith, amidst difficult operational conditions, to obtain gas to mitigate the effect of any shortfalls, and Spire should not be permitted to assess exorbitant penalties in connection with what was, in its affiliate's own words, the "unprecedented chaos and confusion in the gas market" that was no one's fault, and not within the control of the Missouri customers, the gas marketers, or the gas suppliers to remedy.

Spire improperly seeks to use OFO penalties to subsidize gas costs of regulated customers.

In the March 23, 2021 workshop, Spire expressed its intent to use the OFO penalties to subsidize the gas costs of its other regulated customers, describing the $195 million in total OFO penalties—"flow[ing] right back into our PGA as an offset to what our firm utility customers will need for gas."[17]

Spire thus has declared its intent to shift costs from one class of its customers to another. The

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[15] Appendix I at 3. A true and correct copy of Spire's Motion to Intervene and Comments in Southern Star Central Gas Pipeline, Inc.'s Request for OFO Penalties Waiver is attached hereto as Appendix I.

[16] Appendix E, Spire Marketing Inc.'s Motion to Intervene.

[17] Appendix C, March 23, 2021 Transcript of Proceedings, 16:22-25.

Commission should consistently seek to minimize cost shifts between classes.[18]

The issue of Spire's OFO penalties directly affects Missouri transportation customers under Spire's Tariff and is not merely a dispute between Spire and CNEG. Imposing penalties on Missouri ratepayers at a multiple of 2.5 times the already stratospheric natural gas prices does not serve any legitimate purpose under the circumstances of the 2021 Cold Weather Event. That is the reason so many pipelines have sought to waive the penalties. The issue of those penalties should be resolved by the Commission's waiving the OFO penalties to benefit the Missouri transportation customers of Spire.

Respectfully submitted,

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[18] *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); *see also State ex rel. Public Counsel v. Mo. PSC*, 289 S.W.3d 240, 251 (Mo. App. W.D. 2009).

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April 2021, a copy of the foregoing **Comments of Constellation NewEnergy-Gas Division, LLC** 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/ Peggy A. Whipple
Peggy A. Whipple

Appendix

A. Spire’s Feb. 24, 2021 Demand Letter to CNEG

B. Agent Aggregation Service Agreement between CNEG and Spire

C. Transcript of Proceedings March 23, 2021 Workshop before the MoPSC

D. Spire’s March 23, 2021 Workshop Presentation before the MoPSC

E. Spire Marketing Inc.’s Motion to Intervene in the Request for a Limited Waiver Determination that Panhandle Eastern Pipe Line Company, LP

F. Southern Star Waiver Request

G. Panhandle Waiver Request

H. Gulf South Waiver Request

I. Spire's Motion to Intervene and Comments (Southern Star)