

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

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

**SPIRE MISSOURI’S REPLY TO ENVIRONMENTAL DEFENSE FUND AND PUBLIC
COUNSEL’S RESPONSES TO STAFF’S ACA RECOMMENDATION**

Spire Missouri, Inc. (“Spire Missouri or “the Company”) respectfully submits this Reply to the Comments of the Environmental Defense Fund (“EDF”) and the Office of the Public Counsel’s (“OPC”) Response to Staff’s ACA Recommendation per 20 CSR 4240-2.080(13) as follows:

BACKGROUND

1. On October 30, 2020, Spire Missouri filed tariff sheets to change its Purchased Gas Adjustment (“PGA”) clause for its eastern service territory and Actual Cost Adjustment (“ACA”), thereby initiating File No. GR-2021-0127. This ACA review period will reconcile the actual gas costs Spire Missouri incurred for the 2019-2020 ACA period.

2. The Staff of the Public Service Commission (“Staff”) filed its full ACA Review Recommendation and Report on May 27, 2022. Staff’s Report explains its investigation into the Company’s PGA filing, including the costs related to Spire Missouri’s firm transportation contract with Spire STL Pipeline. Staff’s Report concludes that Spire Missouri’s decision to contract with Spire STL Pipeline was reasonable and prudent, complied with the Commission’s affiliate transaction rule, and shielded Missouri customers from cost overruns. However, the Report also recommends that the Commission disallow approximately \$1.2 million in cost recovery attributed to an asset management agreement (“AMA”) with Spire Marketing unrelated to Spire STL Pipeline.

3. Spire Missouri submitted its Response to Staff ACA Review Recommendation and Report on July 11, 2022. The Company's Response explains why Staff's review of Spire STL Pipeline was appropriate, while also objecting to Staff's recommended disallowance. Spire Missouri requested that the Public Service Commission ("Commission") establish successive technical conferences for parties to discuss and review further supporting documents regarding the AMA.

4. The Commission has not yet ruled on Spire Missouri's request, but it granted the EDF, OPC, and Consumers Council of Missouri an extension of time to file any response to Staff's Report or Spire Missouri's Response by August 1, 2022. OPC filed its Response on July 29, 2022, and EDF followed with its own on August 1, 2022.

REPLY TO OPC

5. OPC's Response predominately focuses on the legal principle that the Commission should not presume affiliate transaction costs are prudent.¹ The Company agrees with this principle, and Staff did not presume Spire Missouri's affiliate costs were prudent when it evaluated the Company's PGA costs. Staff instead reviewed each affiliate transaction to confirm that they were less than or equal to both the fair market price and fully distributed cost per 20 CSR 4240-40.015(2)(A). Although Spire Missouri disputes Staff's ultimate conclusions as to the AMA, the Company does not believe that Staff employed a presumption of prudence to any transaction.

6. OPC nonetheless contends that the nature of Staff developing an ACA Review Recommendation and Report for other parties to review creates a presumption of prudence.² This

¹ *Off. of the Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 371, 376-77 (Mo. banc 2013).

² Pub. Counsel's Response to Staff's ACA Recommendation, *In the Matter of Spire Missouri, Inc. d/b/a Spire (East) Purchased Gas Adjustment (PGA) Tariff Filing*, GR-2021-0127 p. 4-5 (July 29, 2022).

practice does not presume in Spire Missouri's favor, though. Staff's review instead audits Spire Missouri's costs for compliance with the Commission's affiliate transaction rule. Under this analysis, Spire Missouri must provide adequate documentation for each affiliate transaction and defend those transactions should evidence of prudence be lacking. This is not a presumption of prudence.

7. There is also nothing unusual about Staff developing a report near the outset of a case. This is the same procedure the Commission has adopted in other ACA cases,³ weather normalization adjustment rider rate changes,⁴ and applications for Certificates of Convenience and Necessity.⁵ Having Staff prepare a report is an economical way to potentially narrow the scope of contested issues in a case. At the same time, other parties, including OPC, are free to conduct discovery and develop their own challenges to the Company's prudence. On this point, Spire Missouri notes that OPC's Response does not identify any specific imprudence beyond Staff's findings.

8. OPC's Response concludes by describing "productive" discussions between Spire Missouri, Staff, and OPC on July 28, 2022.⁶ According to OPC, "Continued discussions and data review with Spire and the Commission's Staff could help resolve issues related to the gas costs incurred during this ACA period and the ACA process."⁷ Spire Missouri agrees and, for that

³ See, e.g., Staff Recommendation for Spire East's 2018-2019 Actual Cost Adjustment (ACA) Period, *In the Matter of Spire Missouri*, GR-2020-0121 (Dec. 15, 2020).

⁴ See, e.g., Staff Recommendation for Approval of Tariff Sheets to Adjust the Weather Normalization Adjustment Rider (WNAR) Rates of Spire East and Spire West and Motion to Direct Staff to Investigate Spire's WNAR Billing Errors, *In the Matter of Spire Missouri, Inc.*, GR-2021-0280 (Mar. 11, 2021).

⁵ See, e.g., Staff Report and Recommendation, *In the Matter of the App. of Spire Missouri*, GA-2020-0236 (May 13, 2020).

⁶ Pub. Counsel's Response to Staff's ACA Recommendation, GR-2021-0127 p. 8.

⁷ *Id.*

reason, renews its request that the Commission order a procedural conference for parties to schedule opportunities for further discussions rather than require the Company to prepare testimony and be strictly adversarial.

REPLY TO EDF

9. EDF's Comments raise five main arguments, paraphrased as follows: 1) Spire Missouri should not have relied on Spire STL Pipeline, 2) The Commission should investigate Spire Missouri's retention of certain documents, 3) The ACA review and reconciliation process is unfair, 4) The Commission should enhance restrictions in the affiliate transaction rule, and 5) Spire Missouri's customers should not pay for any legal expenses related to Spire STL Pipeline. The Company will respond to each in turn.

10. The first argument conflates the decisions of Spire Missouri with those of its pipeline affiliate. EDF maintains that Spire Missouri should not have relied on service from an affiliate pipeline until all certificate appeals were exhausted, and should have sought another transportation pipeline once the federal District of Columbia Court of Appeals vacated the Federal Energy Regulatory Commission's ("FERC") certification of Spire STL Pipeline.⁸ This complaint ignores the separation between Spire Missouri and Spire STL Pipeline. The contract between the two required the Company to accept transportation service once Spire STL Pipeline was operational, and Spire Missouri had no control over Spire STL Pipeline's decision to continue construction during its appeal. As Staff observed, it was still prudent to maintain this contract because of the customer protection terms Spire Missouri negotiated.⁹

⁸ Comments of Environmental Defense Fund, *In the Matter of Spire Missouri, Inc. d/b/a Spire (East) Purchased Gas Adjustment (PGA) Tariff Filing*, GR-2021-0127 p. 5-6 (Aug. 1, 2022).

⁹ Response to Staff ACA Review Recommendation and Report, *In the Matter of Spire Missouri, Inc. d/b/a Spire (East) Purchased Gas Adjustment (PGA) Tariff Filing*, GR-2021-0127 p. 2 (July 11, 2022).

11. As for EDF's second argument, its desire to investigate the Company's document retention practices relies on a selective presentation of disputes from over a decade.¹⁰ EDF's list of grievances includes Staff's complaint against Laclede Gas Company ("Laclede") in 2010, a former Staff employee complaining that Laclede did not supply affiliate invoices in its 2010 general rate case, and a Staff investigation from 2016.¹¹ None of these matters relate to costs in the 2019-2020 ACA period. Furthermore, EDF was not involved in any of those case discussions and has no first-hand knowledge of their resolution. EDF's Comments also ignore Spire Missouri's acknowledgment that some Spire STL Pipeline-related documents could not be immediately produced to Staff because they were not in the Company's control and subject to confidentiality agreements.¹² The Commission should therefore disregard EDF on this point because it is not responding to the actual documents at issue.

12. EDF's third complaint relates to the ACA review process generally. EDF believes that the Commission should reform the PGA rate calculation process to require the Company to prepare a pre-filed case for each ACA filing.¹³ This complaint is similar to, and mistaken for the same reasons as, OPC's position that Staff's preliminary report on Spire Missouri's PGA amounts to a presumption of prudence. EDF likewise does not appreciate the breadth of Staff's review that corroborates the Company's prudence. If EDF disagrees, it may submit discovery requests to Spire Missouri and conduct its own review, contrary to its argument that it must await Staff's report filing.¹⁴

¹⁰ Comments of Environmental Defense Fund, GR-2021-0127 p. 10-11.

¹¹ *Id.* (referencing Surrebuttal Testimony of Charles R. Hyneman, *In the Matter of Laclede Gas Co.*, GR-2017-0215 p. 28 (Nov. 21, 2017)).

¹² Response to Staff ACA Review Recommendation and Report, GR-2021-0127 p. 6.

¹³ Comments of Environmental Defense Fund, GR-2021-0127 p. 12-13.

¹⁴ *Contra id.* at 14.

13. EDF also claims that Spire Missouri has not supplied sufficient evidence to justify its affiliate PGA costs and that the Commission should make the affiliate transaction rule stricter. EDF is wrong, and the Commission need not amend its affiliate transaction rule. Staff was able to confirm that the agreement with Spire STL Pipeline is less than or equal to the fair market price and fully distributed cost for the same service. Staff is also scrutinizing an AMA with another affiliate, demonstrating that Staff is not giving a cursory review of the Company's affiliate costs. In light of Staff's review, general complaints are insufficient to support EDF's recommended regulatory reforms.

14. Finally, EDF's fifth point argues that legal expenses associated with Spire STL Pipeline should not be recovered from customers. Without speaking to any particular litigation expense, Spire Missouri responds that the Commission should reject this approach to auditing. It does not analyze particular litigation costs to determine what specific strategies or costs should be disallowed. Legal expenses are a normal course of business for a public utility and should be evaluated for prudence like any other cost.

15. Furthermore, any such legal expenses are the direct result of EDF's litigation strategy. EDF challenged FERC's certificate for Spire STL Pipeline. EDF chose to threaten Spire Missouri's natural gas supply for the 2021-2022 winter. And it is EDF that wants Missouri ratepayers to risk the proverbial "100 miles per hour" joy ride down Interstate-70 by foreclosing reliable transportation service.¹⁵ The Commission should consider these actions as it reviews EDF's words regarding legal expenses.

WHEREFORE, Spire Missouri submits this Reply and renews its requests that the Commission issue an order rejecting Staff's ACA Review Recommendation and Report and

¹⁵ *Id.* at 7.

Staff's adjustments to the ending ACA balances for the period of October 1, 2019, through September 30, 2020, and scheduling a procedural conference to establish subsequent technical conferences on the AMA, or, in the alternative, such other relief as the Commission deems proper.

Respectfully submitted,

/s/ Matthew Aplington

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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 to all counsel of record on this 8th Day of August, 2022.

/s/ Matthew Aplington

Matthew Aplington