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Case No.: GC-2021-0353
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: GC-2021-0353

DIRECT TESTIMONY

OF

ANDREW R. FELLON

ON BEHALF OF

CLEARWATER ENTERPRISES, LLC

December 20, 2021

***** _____ **** Designates “Confidential” Information.

****** _____ ****** Designates “Highly Confidential” Information.

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TABLE OF CONTENTS

I. INTRODUCTION	3
II. EVENTS LEADING UP TO THE COLD WEATHER EVENT	5
III. THE OFO.....	7
IV. NOTICE.....	15
V. SPIRE’S FAILURE TO MITIGATE.....	19
VI. PENALTIES	27
VII. CONCLUSION	33

**DIRECT TESTIMONY
OF
ANDREW R. FELLON
Case No. GC-2021-0353**

I. INTRODUCTION

1 **Q: Please state your name and business address.**

2 A: Andrew R. Fellon. My business address is 3 Overbrook Road, Louisville, KY 40207.

3 **Q: By whom and in what capacity are you employed?**

4 A: I am the president of Alliance Advisory Services. In this capacity, I provide consulting
5 services regarding energy procurement & management as well as sustainability to energy
6 intensive companies and organizations, energy service providers, and private investment
7 firms globally. For 35 years I have provided these services to commercial & industrial,
8 federal, state, and local government, utility, and generation consumers of energy, as well
9 as private-equity firms. I have provided these services through several companies that I
10 have either worked for and or founded/owned and or held leadership positions.

11 **Q: On whose behalf are you testifying?**

12 A: I am testifying on behalf of Clearwater Enterprises, LLC. For the purpose of this
13 testimony, I will refer to Clearwater Enterprises, LLC as "Clearwater."

14 **Q: Please describe your education, experience and employment history.**

15 A: Upon receiving my engineering degree in 1986, I have worked directly, and as a
16 consultant, for natural gas utilities, independent, as well as utility-affiliated natural gas
17 marketing companies. In 1992, I co-founded/owned and co-managed a global
18 independent energy procurement & management consultancy firm (Fellon-McCord) that
19 grew to provide services to all types of energy consumers, managing their annual spend
20 of over \$14 billion. In 1993, I co-founded/owned a natural gas marketing company
21 (Alliance Energy Services) that grew, organically and through mergers and acquisitions,
22 to \$3.5 billion in annual revenues in 2007. Alliance Energy Services, the natural gas
23 marketing business I started in 1993 is the original natural gas marketing company that
24 today is known as Constellation NewEnergy- Gas Division (CNEG), one of the parties
25 involved in this proceeding.

1 Through my 35-year career working for, creating, owning, partnering, and serving some
2 of the largest energy industry players and customers, respectively, I have worked with all
3 aspects of the energy supply chain dealing extensively including the physical, financial,
4 regulatory, and legislative aspects of the energy markets. In addition to my paid work, I
5 serve as an appointed member of the U.S. Department of Energy's (DOE) Electricity
6 Advisory Committee (EAC) in support of the nation's electricity grid resilience and
7 reliability strategy development. My resume is attached as ARF-1.

8 **Q: Do you believe you have sufficient expertise, experience, and education to provide**
9 **expert opinions in this matter regarding the propriety of Spire's attempt to impose**
10 **penalties upon Clearwater, and if so, why?**

11 A: Yes, as noted above, my career since earning my engineering degree has been entirely
12 within the regulated and non-regulated jurisdictions of the natural gas and electricity
13 industries working with and for utilities, and third-party energy supply and services
14 providers as well as co-founding several companies that continue to serve the energy
15 supply needs of customers domestically and internationally. My career's work gives me
16 unique experience in the physical, financial, regulatory and legislative segments of the
17 energy supply chain, which is relevant to the issues involving Spire and Clearwater in
18 this matter.

19 **Q: Have you previously testified in a proceeding at the Missouri Public Service**
20 **Commission ("MPSC" or "Commission") or before any other utility regulatory**
21 **agency?**

22 A: I have not previously testified in a MPSC proceeding, but I have testified as an energy
23 expert before other state commissions and in federal court on regulatory and contract
24 dispute matters related to natural gas supply and sales and marketing issues.

25 **Q: What is the purpose of your direct testimony?**

26 A: I have been retained by Clearwater and its counsel to provide expert testimony with
27 respect to Spire's attempt to impose penalties against Clearwater resulting from natural
28 gas supply interruptions caused by Winter Storm Uri in February 2021, which I also refer
29 to as the Cold Weather Event.

1 **Q: Based on your experience and review of relevant information, have you developed an**
2 **opinion regarding whether Spire is entitled to impose a penalty against Clearwater in**
3 **this matter?**

4 A: Yes, my opinion is detailed below.

5 **Q: Please describe the documents and other information you have reviewed or relied**
6 **upon in formulating your expert opinions in this matter?**

7 A: In preparing for my testimony, I have reviewed the pertinent utility tariff provisions for
8 Spire Missouri Inc. d/b/a Spire for Spire West; the Agent Aggregation Service Agreement-
9 LGS/LVS dated May 5, 2015, between Laclede Gas Company d/b/a Missouri Gas Energy
10 and Clearwater Enterprises, LLC; Clearwater Aggregation Agent Affidavits; the
11 Clearwater customer contracts for those customers involved in the Winter Storm Uri;
12 MPSC's Case No. AO-2021-0264 docket items including a review of all participant
13 testimony; all of Spire's responses to the data requests issued by Clearwater and by the
14 Commission's Staff, and the Joint Motion to Approve Non-unanimous Settlement
15 Agreement of Kansas Commission matter No. 21-KGSG-332-GIG. Additionally, I have
16 spoken in detail with Jennifer Thompson, Ashley Oweiler, Todd Thompson, and Laurie
17 Walker, each of Clearwater, to become familiar with Clearwater operations before, during,
18 and after Winter Storm Uri.

19 **Q: Based on your expertise and review of the information you just described, what is**
20 **your opinion regarding the propriety of the penalty being requested by Spire?**

21 A: Based on my review of all such documents and information, in my opinion, Spire
22 mismanaged its operations during Winter Storm Uri, failed to follow its Commission-
23 approved tariff, and the Spire OFO penalties charged to Clearwater are unreasonable and
24 discriminatory.

25

II. EVENTS LEADING UP TO THE COLD WEATHER EVENT

26 **Q: Describe the events leading up to the Cold Weather Event.**

27 A: Clearwater operated in good faith and was in good standing with Spire under the Spire
28 tariffs and Agent Aggregation Service Agreement-LGS/LVS, et. al. since May 5, 2015.
29 From May 2015 - January 2021, Clearwater had at all times performed in compliance with

1 the Spire tariff rules and regulations provisions, the Agent Aggregation Agreement, or as
2 an agent on behalf of its end-user customers.

3 **Q: What happened in February 2021?**

4 A: The severe weather situation of February 2021 occurred, which Chairman Silvey of the
5 Commission has described as an “unprecedented weather event” with “unprecedented
6 impacts on the energy sector” *See* ARF-2, AO-20210264, *In re: The Cause of the*
7 *February 2021 Cold Weather Event. Etc.*, Transcript of Proceedings of March 23, 2021
8 Workshop (“Transcript”), 4:10-15, 18, 20-24. Spire has also recognized that the storm
9 brought unusually cold temperatures, stating “For February, we saw heating degree days
10 33 percent colder in the Kansas City area and about 34 percent colder in the St. Louis,
11 east side of the state” ARF-2, Transcript, 7:16-19. Spire has acknowledged the weather
12 event “spanned most of the Midwest.” ARF-2, Transcript 7:20-21. Spire has
13 acknowledged that the freezing weather spanned a large region across Kansas,
14 Oklahoma, and Texas, and “that’s where a lot of production is sourced from and then
15 transported over to Missouri.” ARF-2, Transcript 7:1-13. The Cold Weather Event
16 impacted all parties along the natural gas supply chain from wellhead to burner tip, but
17 especially at the wellheads. “So with the cold we [Spire] saw some operational issues
18 mostly on the supply side with the producers out in the field.” ARF-2, Transcript, 7:22-
19 24. Spire told the Commission, “We were starting to witness freeze offs where the wells
20 were being shut in. This was causing concerns and stress with the producers and the
21 marketers. They were issuing Force Majeure notices, which were saying hey, we’re being
22 shut off, we’re ceasing operations for the time being. When those started happening, we
23 also saw constraints on interstate pipelines that supplied Missouri.” ARF-2, Transcript,
24 8:1-9. “Southern Star [Central Gas Pipeline] is the main pipeline serving the west side of
25 the state, Kansas City, Joplin area.” ARF-2, Transcript, 8:10-11. Spire explained to the
26 Commission, “I just want to kind of highlight that Missouri is a pretty captive state when
27 it comes to interstate pipelines. We basically have predominantly one pipe serving the
28 west side of the state...when you’re captive, you’re limited to where you can buy gas.”
29 ARF-2, Transcript, 11: 5-7. According to Spire, “[W]e were seeing 200, 300, \$600 price
30 for gas when usually we’re paying \$2 to \$3 per MMBTU. So this supply shut in, supply
31 constrain increased demand really had an impact on price. So [Southern Star], again

1 that's the primary pipe serving the west side of the state. Those are some of the highest
2 prices in the Midwest Midcontinent market. So that is where a lot of this strain is those
3 utilities that are provided with Southern Star or Panhandle Midcontinent pricing" ARF-2,
4 Transcript, 9:13-23.
5

III. THE OFO

6 **Q: What does the Spire tariff say about protocols during an unprecedented cold**
7 **weather event and the issuance of OFOs?**

8 A: With regard to OFOs, Spire's tariff provides:

9 1. Notice of Operational Flow Orders (OFO's) and Periods of
10 Curtailment shall be provided as far in advance as practicable and
11 prospectively may be changed by Company upon reasonable advance
12 notice as conditions warrant. Where practicable, OFO's will be issued by
13 12 noon Central time and will be effective the second day after issuance,
14 thereby providing time for Transportation Customers to adjust their
15 nominations in accordance with the OFO. Company may make OFO's
16 effective with a shorter notice if *necessary to protect the integrity of its*
17 *system* and/or where such actions are necessary to insure compliance with
18 the requirements of upstream pipeline companies and shall permit
19 Transportation Customers to adjust nominations as necessary to
20 reasonably comply with the OFO.

21
22 Notice shall be given to each affected customer by telephone and in
23 writing, in the manner elected by the customer or its agent, including
24 facsimile and electronic mail. Notification of the customer's agent shall
25 fulfill the requirement of this paragraph. During emergency situations, if
26 providing notice to customers by one of the previously identified methods
27 is not practicable, Company may use commercial radio and/or television
28 to notify customers.
29

1 Spire West will also make every reasonable effort to provide direct
2 notification by electronic or telephonic means to each affected
3 customer. Notice of an OFO shall specify the nature of the problem
4 sought to be addressed, the anticipated duration of the required
5 compliance and the parameters of such compliance. Upon termination
6 of an OFO, Spire West will post on its website the rationale for lifting
7 that particular OFO.”

8 See ARF-3, Spire Missouri Inc. Schedule of Rates and Charges Apply to Spire
9 Missouri West Service Areas (“Spire West Rates Tariff”), Transportation
10 Provisions (“TRPR”), Sheet 16.8, B.1 Priority of Service/Notice (emphasis
11 added).

12
13 The Spire tariff further provides:

14 2. Operational Flow Orders: Company may issue Operational Flow
15 Orders (OFO’s) to Transportation Customers as necessary to protect the
16 integrity of its system or any portion thereof and/or to insure compliance
17 with the requirements of upstream pipeline companies. Any OFO, along
18 with associated conditions and penalties, shall be limited, as practicable
19 to address only the problem(s) giving rise to the need for the OFO.

20 Company may issue notice of an OFO as provided in section (1) above
21 to instruct all customers or agents served through a given pipeline
22 segment, on a distribution system or any portion thereof or any
23 individual agent or customer to control their usage to avoid either
24 Under-Deliveries or Over-Deliveries. The Company will specify in the
25 OFO whether customers or agents are required to avoid Under-
26 Deliveries, Over-Deliveries, or both. Conditions which threaten the
27 integrity of the Company’s distribution system may include but are not
28 limited to, exceeding the maximum allowable operating pressure of the
29 distribution system segment, loss of sufficient line pressure to meet
30 distribution system delivery obligations, or other conditions which may
31 cause the Company to be unable to deliver natural gas consistent with

1 its tariff. Conditions relevant to compliance with the requirements of
2 upstream pipelines may include, but are not limited to, 1) situations
3 where relevant Company resources are being used at or near their
4 maximum tariff or contractual limits; and, 2) situations where actions
5 are necessary to comply with a relevant OFO or the functional
6 equivalent of a relevant upstream pipeline OFO, Critical Notice or Force
7 Majeure. Company's actions with respect to its OFO's shall be
8 reasonable, objective, non-discriminatory and consistent with the
9 General Terms and Conditions for Gas Service, R-16 Priority of
10 Service, and R-17. Before issuing an OFO, Spire West will attempt to
11 identify specific customers causing the conditions that give rise to the
12 need for the OFO, and attempt to remedy those problems through
13 requests for voluntary action; provided, however, exigent circumstances
14 may exist which require immediate issuance of an OFO.

15 (a) Standard OFO: A Standard OFO shall require the customer
16 to take, during a period specified by the company, preemptive or
17 preventive actions and/or measures in order to neutralize or reduce
18 threats to, or to otherwise preserve the integrity of all or a portion
19 of Company's system or as necessary to insure compliance with the
20 requirements of upstream pipeline companies.

21 (b) Emergency OFO: An Emergency OFO shall require the
22 customer to take immediate actions and/or measures in order to
23 neutralize or reduce threats to, or to otherwise preserve the integrity
24 of all or a portion of Company's system or as necessary to insure
25 compliance with the requirements of upstream pipeline companies.

26 (c) Authorized Usage: A transportation service customer's
27 authorized usage during an OFO shall be equal to that customer's
28 daily retainage-adjusted confirmed nomination in MMBtus.

29 (d) Interrupted Supply: On any day on which a transportation
30 service customer's supply is partially or totally interrupted for any
31 reason, that customer's authorized usage shall be limited to the

1 retainage-adjusted confirmed nomination in MMBtus being
2 delivered to Company on behalf of that customer.

3 (e) Spire West will not apply an OFO penalty to a
4 Transportation Customer whose conduct during an OFO is
5 compliant with the OFO or Spire West directives.

6 (f) Curtailment of Transportation Service: A transportation
7 service customer shall not be required to curtail as long as the
8 customer's gas is delivered to Company's delivery system and the
9 Company's system capacity is adequate to make deliveries as
10 provided in Section A-10, Limitations"

11 See ARF-3 (Spire West Rates Tariff, TRPR, Sheet 16.8, B.2 Priority of
12 Service/Operational Flow Orders (emphasis added).

13
14 **Q: What did Spire actually do during the Cold Weather Event?**

15 A: During the Cold Weather Event, Spire instituted an OFO for the stated purpose "to
16 maintain and protect the integrity of our distribution system." See ARF-4, Spire OFO
17 Notice (email from Theresa Payne dated February 10, 2021 9:20 AM). Spire instituted
18 an OFO when not necessitated by pipeline operation conditions, without identifying
19 specific customers causing the conditions, without providing adequate or meaningful
20 notice to Clearwater or the Spire/Clearwater transportation customers about the
21 parameters required for compliance with the OFO, and without curtailing the receipts of
22 any transportation customer in accordance with its tariff obligations. Winter Storm Uri
23 was unprecedented. Spire was in the best position to mitigate the effects of the Storm and
24 impacts on end-users. Its failure to follow its tariff obligations exacerbated under-
25 deliveries by Clearwater during the OFO, to the benefit of Spire.

26
27 Instead of working with the marketers and customers in a collaborative manner, Spire
28 chose to acquire additional natural gas supplies for the transportation customers Spire
29 suspected were having short falls, exacerbating the demand for gas supplies on an already
30 limited pipeline system driving up the already high costs of natural gas during the Cold
31 Weather Event. In this regard, Spire created more challenges for smaller natural gas

1 marketers like Clearwater in their ability to find and buy additional supplies as Spire was
2 competing against Clearwater and others for supply

3
4 Further Spire's actions as to Clearwater's customers was different than its actions with
5 respect to other customers, its actions as to Clearwater were different than as to
6 Symmetry or Constellation, and its actions to gas marketers were different than as to third
7 parties (such as ** **). All of these differences were to the detriment of Clearwater
8 and its end-users. In addition, Spire's actions as to Clearwater were wholly inconsistent
9 with the actions of other similarly situated utilities with which Clearwater has a
10 relationship, also to the detriment of Clearwater and its end-users.

11 **Q: What were Spire's obligations under the tariff prior to issuing any OFO?**

12 **A:** Under the Commission approved tariff, prior to issuing an OFO, Spire should have (1)
13 attempted to identify specific customers causing the conditions that gave rise to the need
14 for an OFO and (2) attempted to remedy those problems through requests for voluntary
15 action. *See* ARF-3, Spire West Rates Tariff, TRPR, Sheet 16.8, B.2 Priority of
16 Service/Operational Flow Orders.

17 **Q: Were Spire's actions consistent with its obligations in Spire West Rates Tariff,**
18 **TRPR, Sheet 16.8, B.1 Priority of Service/Notice and B.2 Priority of**
19 **Service/Operational Flow Orders?**

20 **A:** No.

21 **Q: Is Spire relieved of its obligations in Spire West Rates Tariff, TRPR, Sheet 16.8 B.1**
22 **Priority of Service/Notice and B.2 Priority of Service/Operational Flow Orders**
23 **because of "exigent circumstances"?**

24 **A:** No. Spire had plenty of time to perform the diligence required under such tariff
25 provisions. Spire admits it had been monitoring the situation since February 8, 2021.
26 *See* ARF-20, Godat Deposition Transcript, December 13, 2021 ("Godat Depo"), 39:17-
27 40:5; 243:5-11.

28 **Q: What type of OFO did Spire issue?**

29 **A:** Spire issued a Standard OFO. A Standard OFO requires "customers to take, during
30 a period specified by the company, preemptive or preventive actions and/or
31 measure in order to neutralize or reduce threats to, or to otherwise preserve the

1 integrity of all or a portion of Company’s system or as necessary to ensure
2 compliance with the requirements of upstream pipeline companies.” See ARF-3,
3 Spire West Rates Tariff, TRPR, Sheet 16.8, B.2 Priority of Service/Operational
4 Flow Orders.

5 **Q: What was the basis for Spire issuing an OFO in February 2021?**

6 A: Spire was required to provide notice of any OFO that specifies “the nature of the
7 problem sought to be addressed, the anticipated duration of the required compliance
8 and the parameters of such compliance.” ARF-3, Spire West Rates Tariff, TRPR,
9 Sheet 16.8, B.1 Priority of Service/Notice. Spire noticed that the purpose of the
10 OFO was “to maintain and protect the integrity of our distribution system.” ARF-
11 4, Spire OFO Notice. In its OFO notice, Spire makes no mention of upstream
12 pipeline company concern.

13 **Q: On February 10, 2021, at the time the OFO notice was sent, was Spire experiencing**
14 **a system integrity issue?**

15 A: No. Instead Spire now asserts that “[t]he OFO was issued to protect the overall supply
16 availability for our customers given the supply challenges caused by Winter Storm Uri.”¹
17 Spire explains that its actions were “based upon its concern as to whether sufficient supply
18 would be present to allow it to *maintain* pressure”² indicating that then current pressures
19 were adequate. Spire now acknowledges that it instituted the OFO because it was “starting
20 to have concern that supply was going to disappear and then Southern Star issued their
21 OFO on the 9th. So after reviewing that we - we moved in lockstep and issued ours on the
22 10th, effective for the same gas date, nine a.m. on the 12th.” ARF-20, Godat Depo, 17:25-
23 18:23. Spire instituted the OFO “to give incentive for marketers to bring supply in.” ARF-
24 20, Godat Depo, 60:1-2. Spire *anticipated a possible* future supply problem: “[i]t was an
25 overall supply issues... It was an overall supply availability into Southern Star that was
26 the issue” (ARF-20, Godat Depo, 60:21-25), *not because there then existed a current*
27 *integrity problem.*

¹ Spire Response to Clearwater DR 5.

² Spire Response Clearwater DR 6 (emphasis added).

1 Indeed, Spire never suffered operational problems on its system during the Cold Weather
2 Event. When the OFO was instituted on February 10, 2021 to be effective on February
3 12, 2021, operations of Spire’s Missouri West system were not actually compromised.
4 As acknowledged by Spire, it was not until later, on February 15, 2021, *Southern Star*
5 experienced low pressure on only a segment of Southern Star’s system upstream of Spire
6 system Crenshaw delivery point, which *might* have affected Spire’s system, but actually
7 never did. *See* ARF-5, Pressure; ARF-20, Godat Depo, 47:4-15.

8 **Q: Were Spire’s actions in compliance with its tariff?**

9 A: No. Under the Commission approved tariff, Spire should only issue an OFO when
10 “necessary to protect the integrity of its system.” Spire has admitted, at the time of the
11 issuance of the OFO, the integrity of its system was not at issue. The only low pressure
12 that ultimate arose was actually on Southern Star’s system upstream of Spire’s system
13 ARF-20, Godat Depo, 47:4-15.

14
15 Further, Spire did not attempt to identify customers causing conditions or circumstances
16 giving rise to the need for the OFO. Spire confirmed as much, responding to
17 Clearwater’s request for any attempts by Spire to identify specific customers causing the
18 conditions or circumstances giving rise to the need for the OFO, responding “None were
19 taken as the circumstances indicated that problems were system-wide, and not due to
20 individual customers.”³

21 **Q: Were Spire’s actions in issuing the OFO reasonable?**

22 A: No. Spire has indicated that it did not rely on any quantitative data in issuing the OFO,
23 but instead relied solely on the weather forecast and speculation regarding supply,
24 pressure, and future events. -20, Godat Depo, 238:8-239:5; 244:3-245:3. Further, Spire
25 did not consult its own history regarding cold weather events (ARF-20, Godat Depo,
26 295:25-296:22) or consult with other utilities to determine industry standards or best
27 practices. ARF-20, Godat Depo, 295:1-4.

28
29 Operationally, seasoned utility operators, looking at the longer-term forecasts, could have
30 seen that the temperatures were forecast to rise for the balance of the month and that the

³ Spire Response to Clearwater DR 4.

1 marketers' nominations could have balanced out the system, as ultimately happened,
2 either avoiding the need for the OFO altogether or delaying it until if and when the
3 integrity of operations was actually, if ever, threatened.
4

5 Spire now suggests that it anticipated the possibility of inadequate supply for its system
6 during Cold Weather Event, but Spire had fifty percent of its storage gas available to
7 support operating conditions in February 2021. ARF-20, Godat Depo, 67:15-19.

8 Although Spire faced limitations on how much storage gas it could withdraw daily under
9 Southern Star's tariff requirements (ARF-20, Godat Depo, 119:1-5), Spire has
10 acknowledged with hindsight that it did not maximize its possible storage withdrawals to
11 the fullest extent possible. ARF-20, Godat Depo, 274:8-11.
12

13 Based on my experience, and from my review of the testimonies of the other natural gas
14 utilities in the area during the Cold Weather Event, Spire overreacted in issuing the OFO
15 on its system. See ARF-6, "Summit Material" (Submissions of and testimony by Summit
16 Natural Gas of Missouri, Inc. ("Summit")) set forth in [Summit]'s Written Responses to
17 Commission Questions, Commission File No. AO-2021-0264; *see also* ARF-2,
18 Transcript, 52:3-61:12.
19

20 For comparison purposes, Summit did not issue operational flow orders as to its system;
21 but it did send notification to its interruptible transportation customers of the potential for
22 OFO penalties associated with OFOs from upstream interstate pipeline that would be
23 passed through to such transportation customers. During the cold weather event, Summit
24 closely monitored its system and sent messaging to all customers about how to conserve
25 gas usage. Additionally, Summit asked interruptible customers to reduce usage to heat
26 load only but did not fully curtail any customers. Those asked to reduce to heat load
27 complied and Summit was able to avoid any curtailments.
28

29 Similarly, Oklahoma Natural Gas ("ONG") did not institute an OFO, but communicated
30 with Clearwater, other marketers, and ONG transportation customers with great

1 specificity about permitted usage, explicitly curtailing certain usage to manage supply.
2 *See* ARF-7, ONG Communications.

3 **Q: Was Spire’s overreaction consistent with its tariff?**

4 No. Under the Commission approved tariff, any OFO must be “limited, as practicable to
5 address only the problem(s) giving rise to the need for the OFO.”
6

IV. NOTICE

7 **Q: What does Spire’s tariff require of Spire with respect to an OFO Notice?**

8 A: The Notice must state three things:

- 9 (1) The nature of the problem sought to be addressed;
10 (2) The anticipated duration of the required compliance; and
11 (3) The parameters of such compliance.

12 **Q: According to Spire’s OFO Notice, what was “the nature of the problem”?**

13 A: Spire’s Notice explained the OFO was being issued to “protect the integrity of [its]
14 distribution system.”

15 **Q: According to Spire’s OFO Notice, what was the “anticipated duration of the
16 required compliance”?**

17 A: That is unclear. While it indicates when the OFO will begin (February 12, 2021 at 9:00
18 a.m.), it provided no specific date or time when Spire expected to lift the OFO. It simply
19 stated, “until further notice.”

20 **Q: Were Spire’s actions with respect to notification of the duration of the OFO
21 consistent with its tariff?**

22 A: No. Even if Spire expected a lengthy OFO, it was required to state an end date. “Until
23 further notice” does not satisfy the requirement to state the “duration” of an OFO. It also
24 is inconsistent with the tariff’s requirement that any OFO must be “limited, as practicable
25 to address only the problem(s) giving rise to the need for the OFO.” Contrast Spire’s
26 OFO Notice with the OFO notice from Southern Star. *See* ARF-8, Southern Star OFO
27 Notice. Southern Star issued an OFO on February 11, 2021, explaining it would go into
28 effect on February 13, 2021, and also stating:

29 This OFO will remain in effect at least through February 16, 2021 gas day;
30 however SGP will monitor operations and may, by additional notice, either adjust

1 this standard OFO to an Emergency OFO, extend it beyond such date or terminate
2 it earlier as operational conditions warrant.

3 Given the tariff provisions, Spire was required to state an end date in its notice, which
4 Spire failed to do (even if, like Southern Star, it chose to extend the initial period).

5 **Q: According to Spire’s OFO Notice, what were the “parameters for compliance”?**

6 A: The parameters for compliance are unclear from the Notice. Spire simply “request[ed]
7 that all end-users control their usage to avoid any Under-Deliveries.” Contrast Spire’s
8 notice with the OFO Notice from Southern Star, which provided:

9 Takes at any delivery point on ALL Line Segments shall not exceed the sum of
10 the quantity scheduled by Southern Star and confirmed by the Receiving Party for
11 the account of all Shippers delivering gas at that point, plus the remaining
12 MDQ(s) for that Delivery Point under Rate Schedules TSS and STS.

13 ARF-8, Southern Star OFO Notice.

14 Contrast also ONG’s specific guidance to marketers about usage permissible by ONG’s
15 transportation customers. ARF-7, ONG emails with Clearwater.

16 **Q: What should Spire have done in addition to putting parameters in the notice?**

17 A: Spire should have provided more frequent and meaningful communication with
18 Clearwater and the Spire/Clearwater transportation customers about requirements for
19 compliance with the OFO. Amounts being consumed by end-users were not as expected
20 at the first of February 2021 and changed daily. Spire’s meter reading data is always two
21 (2) gas days behind. In addition to the 2-day meter information delay, three of Spire’s
22 meters for Clearwater’s customers were inoperable during the OFO, leaving Clearwater
23 to guess at its customers’ usage. Clearwater did not know what quantity of gas was
24 actually being used by its customers real-time during Winter Storm Uri. It therefore
25 could not have known what quantities to source and nominate under such conditions or
26 how to advise customers about what gas was permissible for them to consume. Spire did
27 not communicate with Clearwater or the end-users about appropriate consumption or
28 facilitate knowledge among each of Spire, Clearwater and the transportation customer
29 about supply and usage. Rather, Spire’s communication to end-users, not provided to
30 Clearwater until discovery in this matter, indicated mixed messages, such as “rest assured
31 we continue providing natural gas service with no interruption due to the weather” (ARF-

1 9, Website Screen Capture), in essence encouraging the transportation customers to
2 continuing using natural gas as needed, while also vaguely requesting voluntary
3 “conservation” but not requiring limited consumption identified with specificity to
4 individual customers. Spire’s communications include such vague statements as “we’re
5 urging your business to conserve energy as much as possible” (ARF-10) and “we
6 appreciate your collaboration as we work tighter to avoid any significant disruption to
7 service.” ARF-11. Such vague communications (to the extent they were actually sent to
8 customers at all) leave customers to assess for themselves what feels like adequate
9 conservation, or doubt whether there is any need to change their operations at all. These
10 inadequate communications by Spire contributed to the difficulties all parties faced
11 during Winter Storm Uri and the over-consumption compared to supply delivered for
12 Clearwater end-users.

13 **Q: Who benefits from the lack of communication?**

14 A: No one, but potentially Spire. Spire benefitted by way of more transportation fees from
15 more gas flowing to end-users rather than less. Spire loses the opportunity to collect
16 transportation fees for curtailed volumes. Further, Spire is now claiming a right to assess
17 OFO penalties against all marketers, while also suing such marketers for cover costs of
18 under-deliveries calculated based on the highest priced incremental gas purchased by
19 Spire during Winter Storm Uri (ARF-20, Godat Depo, 313:2-5), **

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24 **

25 **Q: What was the effect of Spire’s actions during Winter Storm Uri?**

26 A: Based on my 35 years of working in the natural gas industry serving and working with all
27 types of customers and partners, respectively, through the worst of winter, hurricane, and
28 summer weather events and financial crises (e.g., 09/11/2001, Enron collapse), I believe
29 it takes all parties along the supply chain working together and following established
30 policies and procedures to meet contracted commitments to residential, commercial, and
31 industrial customers. Clear communication and collaboration are paramount. Tariff

1 policy and procedures are established to maintain predictability and overall system
2 integrity and especially so during an extreme cold weather event where supply and
3 demand must be considered. Customers and marketers have entered various service
4 obligations (i.e., tariff services and or transportation agreements) trusting that the utility
5 will follow the Commission-approved tariffs and the agreement terms and conditions.
6 Spire did not do so. Spire did not follow its own tariff regarding its issuance and
7 management of the OFO nor, once it issued the OFO, did it manage customer usage from
8 its system. It only looked to the supply-side of the problem at a time when additional
9 supply was simply not available due to Winter Storm Uri. Better management of the
10 demand or usage side of the equation to bring supply and demand into balance could
11 have been achieved through clear communication and curtailment of the customers and
12 instruction for use of alternative fuel options where available. Spire's failure to curtail
13 customer usage in accordance with its Commission-approved tariff curtailment protocols
14 contributed to customer usage of more gas than delivered on their behalf. Spire's actions
15 were unlike other utilities during the Cold Weather Event and exacerbated the difficult
16 circumstances of Winter Storm Uri. It seems as if Spire was more interested in
17 maintaining its system throughput, in support of its revenues, at the expense of the
18 transportation customers and the marketers, than genuinely concerned about system
19 integrity. Spire's actions were deferential to non-transportation customers and
20 detrimental to the transportation customers, in each case due to Spire not following its
21 established curtailment protocols. Spire's actions with respect to the OFO were not
22 "reasonable, objective, non-discriminatory and consistent with the General Term and
23 Conditions for Gas Services, R-16 Priority of Service and R-17".

24 **Q: Explain why you say additional supply was simply not available due to Winter**
25 **Storm Uri.**

26 A: Additional supply was not available to Clearwater beyond what was delivered to Spire.
27 There was a legitimate Force Majeure situation taking place as a result of Winter Storm
28 Uri, beyond anyone's experience, expectation, or reasonable control, which limited
29 available natural gas supplies due to freeze offs, etc. Although parties were buying
30 everything possible, supply would fail to deliver, making the traders feel like **

1 ** See ARF-12,

2 Spire/Symmetry ICE Transcript.

3 **Q: Explain why you conclude Spire’s actions were unlike other utilities during the Cold**
4 **Weather event**

5 A: Other utilities communicated more frequently, directly, and meaningfully with
6 Clearwater, and also used their curtailment policies and procedures to navigate through
7 the Cold Weather Event. During the Cold Weather Event, ONG did not institute an
8 operational flow order, but instead specifically curtailed large transport customers with
9 details communications to their marketers, including Clearwater. See ARF-7. Summit
10 did not institute an OFO. See ARF-6. Kansas Gas Service (“KGS”) did institute an OFO
11 but has apparently delayed invoicing penalties to permit negotiation with affected parties
12 to achieve settlement to recover only the utility’s cost for under-deliveries. See ARF-13,
13 Joint Motion to Approve Non-unanimous Settlement Agreement of Kansas Commission
14 matter No. 21-KGSG-332-GIG. Clearwater has never received any invoice from any
15 OFO penalties from KGS, or any party other than Spire.

16
17 Although not a utility, Southern Star pipeline sought a waiver from the Federal Energy
18 Regulatory Commission (“FERC”) of its obligation to impose any OFO penalty despite
19 shippers being unable to adhere to its OFO, which waiver the FERC approved,
20 acknowledging the historic nature of the Cold Weather Event and the collaborative effort
21 among shippers and delivery point operators that helped Southern Star avoid impairment
22 of its ability to operate its pipeline. See ARF-14, Southern Star’s FERC Order Granting
23 Waiver Request, Issued April 9, 2021, Docket RP:21-618-000.

24
25 **V. SPIRE’S FAILURE TO MITIGATE**

26 **Q: What does the Spire tariff say about curtailment?**

27 A: Regarding curtailment, Spire’s tariff provides:

28 “3 Period of Curtailment: Consistent with the provisions of Section
29 A(10) Limitations, curtailment may be initiated due to a supply deficiency
30 or limitation of pipeline capacity or a combination of both. Company may
require its sales service and transportation service customers to limit, in

1 whole or in part, their use of Company's facilities during a Period of
2 Curtailment (POC), taking into consideration priority of use or other factors
3 it deems necessary to ensure public health and safety.

4 (a) Authorized Usage: Company shall, at its sole discretion,
5 authorize customers a usage level which is appropriate to the
6 conditions of the POC.

7 (b) Curtailment Priority: Curtailment shall first apply to the
8 lowest priority category (Category Three) and successively to each
9 higher priority category as required. The categories to be used by
10 Company to allocate available service, listed from highest to
11 lowest priority, are:

12 (i) For a Spire West Sales Service Supply Deficiency

13 (a) Category 1.

14 Sales service to residential customers, public
15 housing authorities, public schools, hospitals, and
16 other human needs customers receiving firm sales
17 service from the Company

18 (b) Category 2.

19 Commercial sales service

20 (c) Category 3.

21 Industrial sales service

22 (ii) For a Spire West Distribution System Capacity Deficiency

23 (a) Category 1.

24 Sales or transportation service to residential
25 customers, public housing authorities, public
26 schools, hospitals, and other human needs
27 customers receiving firm sales service from the
28 Company

29 (b) Category 2.

30 Commercial sales service and commercial transportation
31 service

1 (c) Category 3.

2 Industrial sales service and industrial transportation service

3 (c) Exception to Curtailment Priority: Company may curtail
4 customers in higher priority categories before curtailing customers
5 in lower priority categories only if curtailing lower priority category
6 customers would not be useful in maintaining deliveries to the
7 higher priority customers.

8 (d) Allocation of Partial Capacity: Should partial service only
9 be available to an affected category, deliveries to individual
10 customers shall be limited to the customer's pro rata share of
11 available supply, such allocation to be based on the ratio of the
12 customer's requirements in the category for which partial service is
13 available to the aggregate requirements of all the Company's
14 customers in the same category.

15 (e) Emergency Usage during POCs: A customer may request to
16 use gas above authorized levels to forestall irreparable injury to life
17 or property. Requests by telephone shall be followed immediately by
18 a written request. Written requests shall state the nature, cause, and
19 expected duration of the emergency and may be submitted by
20 facsimile (fax) or electronic transmission. The customer must act to
21 eliminate the cause of the emergency as soon as practicable. The
22 charge for usage above authorized levels shall be determined at the
23 time Company receives the customer's request. Disputes concerning
24 this charge shall be referred to the Commission for resolution.

25 (f) Relief from Liability: Company shall be relieved of all
26 liabilities, penalties, charges, payments, and claims of whatever
27 kind, contractual or otherwise, resulting from or arising out of
28 Company's failure to deliver all or any portion of the volumes of
29 gas desired by a customer or group of customers during a POC.
30 Company's relief shall apply if curtailment is according to these
31 General Terms and Conditions or any other orders or directives of

1 duly constituted authorities including, but not limited to, the
2 Missouri Public Service Commission.
3 ARF-3, Spire West Rates Tariff, TRPR, Sheet 16.8, B.3 Priority of Service/Period
4 of Curtailment (emphasis added).

5
6 Spire's Rules and Regulations Tariff further provides:

7 20.0 In order to preserve the Company's ability to serve adequately the
8 requirements of its existing customers and to provide for the orderly and
9 equitable attachment of new loads during periods of possible insufficient
10 supply, the Company will allocate its available natural gas supplies
11 according to the manner and priorities hereinafter set out:

12 Category One: The Company shall continue to provide all natural
13 gas service to be used by:

14 A: Residential and small commercial or industrial
15 customers under the terms of the Company's General
16 Service Rate, by

17 B. Any customer during off-peak periods under the
18 terms of the Company's Interruptible Rate, or by

19 C. Resale customers to provide service for uses as
20 described under A and B above.

21 Category Two: As sufficient pipeline gas supplies are available
22 over and above those required to serve Category One uses, the
23 Company will provide new or additional gas service requested for
24 use under its Large Volume Service Rate or any individual large
25 user contract. Such additional pipeline supplies will be allocated
26 to the applicants within this Category Two in the order of priority
27 as set forth below:

28 First Priority: All applicants where the maximum daily new
29 requirement does not exceed 100 Mcf.

1 Second Priority: All applications where the maximum daily
2 new requirement exceeds 100 Mcf and at least 50% of such
3 requirement results from new or additional construction.

4 Third Priority: All applications in existing construction
5 resulting from conversion of coal fired equipment or new
6 processing use and such requirements are not included
7 within either the First or Second Priority.

8 Fourth Priority: All other applicants including applications
9 in existing construction resulting from conversion of oil fired
10 equipment.

11 Within each of the priority groups set out above, preference
12 will be given to applications in the order of maximum daily
13 new requirement, from smallest to largest as follows:

14 Maximum Daily Requirement

15 (Mcf per Day)

0	-	100
101	-	200
201		-
401		-
1,001		-
Over		-

16 Applicants will be attached within each priority and each
17 daily requirement group on a "first come - first served"
18 basis.

19 ARF-15, Spire Missouri Inc. Standard Rules and Regulations Applying to Missouri
20 Service Areas ("Spire Rules and Regs Tariff"), Section 20.0 (emphasis added).

21
22 Spire's Rules and Regulations Tariff continues, with regard to curtailment:

23 21. Emergency Curtailment Plan

24 In the event the Company is unable to meet total natural gas requirements
25 due to extreme weather conditions, reduction in supply, or other system
26 operating conditions, or a combination thereof, the Company shall
27 temporarily curtail natural gas loads to the extent necessary to maintain

1 service required to protect basic human needs. This reduction shall be
2 accomplished through the following steps which are designed to protect
3 industry, commercial enterprise, and basic human needs to the extent
4 possible during such periods of supply deficiency. Company reserves the
5 right to deviate from the prescribed steps on a system-wide basis in the
6 event that it becomes necessary to protect isolated areas from a supply
7 deficiency. This deviation shall be limited to the extent required to protect
8 basic human needs within such areas.

9 21.1 Curtailment Steps

10 Step 1. All sales service to seasonal, interruptible and basic transportation
11 customers is to be interrupted.

12 Step 2. All sales service to both firm sales customers and firm transportation
13 customers with alternate fuel capabilities is to be curtailed to the extent of
14 such alternate fuels.

15 Step 3. Before implementing further curtailment steps, the Company shall request
16 voluntary load reduction of all customers.

17 Step 4. Curtail all schools using natural gas for heating to the lowest temperature
18 levels consistent with building protection and suspend operations of all
19 industrial customers with firm contracts with gas usage to be reduced to
20 minimum volumes essential only for dormant plant and product
21 protection. Such curtailment shall not be applicable to essential food
22 processors and applications or uses required for the maintenance of
23 essential public services.

24 Step 5. Curtail remaining commercial and industrial customers to minimum
25 building protection volumes. Such curtailment shall not be applicable to
26 hospitals, nursing homes, apartments, and other human needs application

27 ARF-15, Spire Missouri Inc. Standard Rules and Regulations Applying to Missouri
28 Service Areas (“Spire Rules and Regs Tariff”), Section 21.

29
30 Regarding unauthorized deliveries, Spire’s tariff provides:

1 4. Unauthorized Deliveries: Over-Deliveries and/or Under-Deliveries
2 which vary from customer's authorized usage level under an OFO or during
3 a POC, shall be subject to the penalties described in Section B-5 Penalties
4 for Unauthorized Usage.

5 (a) Individual Customers: Unauthorized Deliveries for
6 individually balanced customers shall be calculated by comparing
7 each customer's retainage-adjusted confirmed nominations with
8 actual usage less contract demand.

9 (b) Pools: Unauthorized Deliveries for pools subject to
10 aggregated balancing as defined under Section A-4 Aggregation,
11 shall be calculated by comparing the group members' total
12 retainage-adjusted confirmed nominations with their total actual
13 usage less contract demand.

14 (c) Meter Reading: Actual usage during an OFO shall normally
15 be provided by electronic gas measurement (EGM) equipment. *If*
16 *Company is unable to obtain data from a customer's EGM device,*
17 *the customer's usage shall be determined by actual meter reads.*

18 (d) Refusal to Comply: Company may disconnect from its
19 system or refuse to accept the nomination of a customer which
20 endangers system stability and/or safety by continuing to incur
21 Unauthorized Deliveries

22 ARF-3, Spire West Rates Tariff, TRPR, Sheet 16.8, B.4 Priority of
23 Service/Unauthorized Deliveries (emphasis added).

24 **Q: Explain your interpretation of Spire's curtailment protocols.**

25 A: Utilities have established curtailment protocols within their tariffs to limit the impact of
26 situations like the Cold Weather Event. By focusing primarily on the supply component,
27 and only secondarily, at most, on the demand component of the Cold Weather Event,
28 Spire did not help the natural gas supply situation for the marketers trying to source
29 replacement supplies. Instead, Spire and the marketers competed in the market to buy gas
30 supplies, and therefore increasing demand for natural gas on Southern Star, which in turn
31 contributed the scarcity of gas supply, and therefore, to the run up of already increasing

1 prices. Once Spire instituted the OFO, its tariff required “customer’s authorized usage
2 shall be limited to the retainage-adjusted confirmed nomination in MMBtus being
3 delivered to Company on behalf of that customer.” ARF-3, Spire West Rates Tariff,
4 TRPR, Sheet 16.8, B.2(d). Spire did not comply with such tariff obligation but permitted
5 virtually unlimited consumption by end-users. Spire controlled the pipelines, valves and
6 meters delivering to Clearwater’s end-users; Clearwater did not.

7 **Q: Explain the basis for your assertion that Spire did not curtail any customers.**

8 A: Spire has admitted so in its answer to Clearwater’s Complaint⁴ and in multiple of its
9 responses to Clearwater’s data requests.

10 **Q: How do you assess Clearwater’s performance during Winter Storm Uri.**

11 A: As stated previously, Clearwater had proven to be a good actor for many years. It was
12 not until the Cold Weather Event that any alleged performance issues arose, and those
13 issues were the result of Force Majeure, or the impossibility of obtaining additional
14 supply in the constrained environment, which issues were only exacerbated by Spire’s
15 actions. The Clearwater team worked diligently through the entirety of the Cold
16 Weather Event to try to replace lost first-of-month natural gas supplies, contracted for an
17 incremental supply when available, and ensured it had all necessary transportation to
18 move its supplies to the Spire city-gates. Clearwater’s actions were clearly within the
19 scope of the Agent Aggregation Service Agreement-LGS/LVS between Clearwater and
20 Spire ***

21
22 *** ARF-16.

23 Clearwater did perform to the standard of the agreement. To the extent it had knowledge
24 upstream supplies would be reduced by a Force Majeure event of its upstream suppliers
25 or that its end user customers were consuming more gas than anticipated at the first of the
26 month, Clearwater worked to replace and add to supplies, at any cost. Clearwater timely
27 updated its nominations to Spire in accordance with the nomination scheduling
28 requirements. Regardless of its knowledge of Clearwater’s expected deliveries, Spire did

⁴ See Spire’s Motion to Dismiss and, in the Alternative, Answer, (GC-2021-0353, Dkt. # 6, ¶9 (“Spire did not at any time during the period February 12, 2021 through February 19, 2021 physically curtail the delivery of gas to any Missouri transportation customer on its system.”)).

1 not curtail deliveries in conformity with Clearwater’s nominated volumes but permitted
2 end-users to take without restraint. To the extent the full volume of Clearwater’s
3 nominations did not flow, the cause was again due to the Force Majeure by upstream
4 suppliers occurring after the last deadline for Clearwater to report nomination changes,
5 again beyond Clearwater’s control. During the storm, volumes nominated and confirmed
6 during ID, could fail and scheduled volumes be cut unexpectedly. **

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VI. PENALTIES

Q: What does the Spire tariff say about penalties?

A: Regarding penalties for unauthorized usage, Spire’s tariff provides:

“5 Penalties for Unauthorized Usage: A customer or pool’s unauthorized
18 usage under an OFO or during a POC shall cause the incurrence of penalties. All
19 revenues received from unauthorized use charges will be considered as gas cost
20 recovery and will be used in the development of the gas cost recovery amount
21 during the ACA audit as set forth in the Purchased Gas Adjustment schedule
22 (PGA).

(a) Tolerance Levels: Penalties shall be assessed:

(i) During an OFO or POC, when Unauthorized Over-Deliveries to EGM meters exceed 5% of authorized daily delivery levels.

(ii) During an OFO, when Unauthorized Under-Deliveries to EGM meters exceed 5% of authorized daily delivery levels.

(b) Penalties during POCs shall be:

1 (i) The greater of \$10 or 5 times the daily midpoint stated on Gas
2 Daily's Index for Southern Star Central Gas Pipeline (Oklahoma) for
3 each day of the POC, for each MMBtu of Unauthorized Over
4 Delivery that exceeds the Tolerance Levels set in Section B-5-a
5 Tolerance Levels but is no greater than 10% of the authorized
6 delivery level for the customer or the aggregated balancing group,
7 and

8 (ii) The greater of \$20 or 10 times the daily midpoint stated on
9 Gas Daily's Index for Southern Star Central Gas Pipeline
10 (Oklahoma) for each day of the POC, for each MMBtu of
11 Unauthorized Over Delivery in excess of 10% of the authorized
12 delivery level for the customer or the aggregated balancing group.

13 (c) Penalties during OFOs: Penalties for Unauthorized Over-deliveries
14 or Under-deliveries shall be calculated as follows:

15 (i) Standard OFO Penalties: For each day of the Standard OFO,
16 the greater of \$5 or 2^{1/2} times the daily midpoint stated on Gas
17 Daily's Index for Southern Star Central Gas Pipeline (Oklahoma)
18 times the MMBtu of Unauthorized Over- or Under-deliveries that
19 exceed the tolerance level applicable under Section B-5-a
20 Tolerance Levels.

21 (ii) POC and Emergency OFO Penalties: For each day of the
22 POC or Emergency OFO, the greater of \$10 or 5 times the daily
23 midpoint stated on Gas Daily's Index for Southern Star Central
24 Gas Pipeline (Oklahoma) times the MMBtu of Unauthorized
25 Over-or Under-deliveries that exceed the tolerance level
26 applicable under Section B-5-a Tolerance Levels.

27 (a) Responsibility for Payment: Unauthorized Over- or Under-
28 Delivery Penalties for individually balanced customers shall be billed to
29 and collected from the applicable customer. Unauthorized Over- or
30 Under- Delivery Penalties for pools shall be billed to and collected from

1 the agent representing the aggregated customers. *Customers will*
2 *continue to have ultimate responsibility for all charges on the account”*

3 ARF-3, Spire West Rates Tariff, TRPR, Sheet 16.8, B.3 Priority of
4 Service/Penalties for Unauthorized Usage (emphasis added).

5 **Q: Is it your opinion that OFO penalties are warranted under the circumstances?**

6 A: No. Because the OFO was issued in violation of the tariff, no penalties are warranted. In
7 addition, for the same reasons FERC found that waiver was appropriate and in the public
8 interest for the Southern Star penalties, waiver of Spire’s OFO penalties is appropriate
9 and in the public interest here. *See* ARF-14, Southern Star’s FERC Order Granting
10 Waiver Request, Issued April 9, 2021, Docket RP:21-618-000.

11
12 **Q: Spire’s tariff provides for penalties based on S&P Global Platt’s Gas Daily daily**
13 **index pricing for the delivery point of Southern Star pipeline. How would you**
14 **describe such index pricing during Winter Storm Uri?**

15 A: My concern is that there were limited deals reported on which to assess an accurate
16 market price. My concern is supported by communications between Spire’s marketing
17 affiliate and S&P Global Platts (copying employees of Spire, including George ARF-20,
18 Godat and Justin Powers), **

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See ARF-18, Global Platts Emails.

Even if penalties were warranted, which Clearwater disputes, basing penalties on a formula that has questionable data is simply wrong. Moreover, regardless of

1 questionable prices, it is clear that the index prices were extraordinary, rising as high as
2 \$622.785/MMBtu for deliveries on February 17, 2021 for deliveries at Southern Star. It
3 is my contention that the Commission could not have expected or intended to authorize a
4 penalty for under-deliveries based on a daily index price of \$622.785/MMBtu, which was
5 247 times February 2021's first of month price of \$2.52/MMBtu. The tariff requirement
6 that Spire manage its OFO using reasonable actions makes application penalties and the
7 use of such index pricing inappropriate.

8 **Q: How do you believe the OFO penalty assessed by Spire against Clearwater**
9 **compares to the cost of gas incurred by Spire on behalf of Clearwater customers**
10 **during the OFO period.**

11 A: Spire has admitted that its costs incurred were far below the value of the OFO penalty
12 amount invoiced to Clearwater of ** ** Specifically, Spire has disclosed
13 to Clearwater that its total cover cost for Clearwater's under-deliveries was
14 ** **, a value Spire has explained
15 reflects the highest priced cost of certain incremental gas purchases made by Spire during
16 the OFO period, plus certain transportation charges ARF-19, Spire Cover Costs; ARF-20,
17 Godat Depo, 313:2-5. However, Clearwater disputes that Spire's cover cost of such gas
18 was even that high.

19
20 First, Spire's allocation of certain higher priced gas purchases to Clearwater's customers
21 seems inappropriate, including because Spire always intended to be in the spot market
22 sourcing its own supply. Specifically, during the Commission's Cold Weather Event
23 Workshop, Spire explained, "there's always a certain portfolio mix that's going to be at
24 the daily market. That's the prudent thing to do. And so we're always going to float a little
25 bit with the daily market. 20 to 27 percent of that floated with the daily market. That's
26 really when we get into price impacts, that's that piece that was the most impactful when
27 we're seeing 200, 300, \$600 price of gas." ARF-2, Transcript, 13:21-14:3. Further, some
28 of Spire's own first-of-month purchases failed due to Winter Storm Uri. And lastly,
29 Spire's supply customers, like the transportation customers it shares with Clearwater,
30 used more than expected quantities of gas due to the cold of Winter Storm Uri.
31 Therefore, incremental purchases by Spire covered its own supply customers' usage in

1 addition to usage by Clearwater end-users. Thus, it seems more appropriate that the cost
2 of incremental supply be determined from a weighted average cost of such purchases not
3 by allocating only higher prices to Clearwater customers. Clearwater and I observe from
4 invoices produced by Spire regarding its February gas purchases that **

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8 **

9
10 Second, Clearwater disputes Spire's calculation of its cover costs because **

11 ** during the OFO

12 period. Therefore, **

13 ** ***

14
15 *** Acknowledging Spire incurred out-of-
16 pocket costs for withdrawal and reinjection fees plus transportation for such storage
17 volume of \$0.83/MMBtu, Clearwater calculates that the weighted average cost for the
18 volume sourced from incremental purchases and from storage gas during the OFO period,
19 based on Spire's own invoices, appears to be **

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21 **

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23 During Winter Storm Uri, **

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30 If Spire were to recover a windfall over its actual out of pocket cover costs for under-
31 delivered gas, transportation customers, who are ultimately responsible for the OFO

1 penalty, will be subsidizing the cost of gas for Spire's supply customers, which is not
2 permitted by Spire's tariff which requires any OFO to be managed so as to be non-
3 discriminatory.

4 **Q: You state Spire's transportation customers are ultimately responsible for the OFO**
5 **penalty. Why do you say that?**

6 A: Spire's tariff explicitly says so, as does Spire's Agent Aggregation Agreement with
7 Clearwater. *See* ARF-3, ARF-16. It is odd to me that Spire suggested otherwise to the
8 Commission during the Cold Weather Event workshop. *See* ARF-2. Clearwater is only a
9 limited agent sourcing gas for end-users who remain Spire's transportation customers.
10 Clearwater acts to fulfill customers' supply needs, but all obligations, including payment
11 obligations, between Spire and the end user customers remain in full force and effect
12 according to both the Agent Aggregation Agreement and Spire's tariff.
13

VIII. CONCLUSION

14 **Q: Who was in a better position to mitigate the effects of winter Storm Uri- Clearwater**
15 **or Spire? Why?**

16 A: Spire. The Commission-approved tariff authorizes and, in some cases, requires Spire to
17 take steps which would have mitigated the issues present in this case.

18 **Q: What steps could Spire have taken that would have prevented the penalties at issue**
19 **in this case?**

20 A: While I dispute whether Spire should have instituted the OFO at all, once it issued the
21 OFO, it still could have mitigated or avoided penalties. Specifically, I believe that Spire
22 should have taken the following steps:

23 (1) Spire should have attempted to identify specific customers causing the conditions
24 that gave rise to the need for an OFO and attempted to remedy those problems
25 through more specific directions. Such instructions could first have been requested
26 on a voluntary, but they could have become compulsory, if truly necessitated by
27 operational conditions.

28 (2) Spire should have been in constant communication with Clearwater and end-users
29 (just as other utilities were) during February 2021 and such communication should
30 have been clear and consistent. This additional information could have allowed end-

1 users and Clearwater to work together to mitigate the effects of the Winter Storm
2 (e.g., switching to alternatives sources of fuel).

3 (3) Spire could have purchased additional gas from Spire Missouri East.

4 (4) Spire could have used its Storage Gas to aid transportation customers instead of third
5 parties (like ** **).

6 (5) Spire could have physically curtailed transportation customers, which would have
7 mitigated undelivered volume.

8 **Q: How would you summarize your opinion about Spire's demand for OFO penalties**
9 **from Clearwater in connection with Winter Storm Uri?**

10 A: Given the quick development, severity and then dissipation of the Cold Weather Event,
11 the loss of natural gas supply contracted for by Clearwater, and the following facts:

- 12 - that Clearwater delivered all supply it could during the storm,
- 13 - there were limited sources of supply serving the west side of the Spire system
14 generally,
- 15 - pressure and operational concerns were not so dire as to necessitate an OFO,
- 16 - Clearwater's limited knowledge about its customers' usage due to the two-day lag
17 in information and out of service meters,
- 18 - Spire's inadequate, unclear, and mixed messages with Clearwater and its end-
19 users about acceptable usage during the Cold Weather Event,
- 20 - Spire's failure to curtail customers,
- 21 - Spire competing for gas supply against the marketers as Spire too was sourcing
22 supplies,
- 23 - natural gas supply pricing index disparities,
- 24 - the sheer outrageousness of the Gas Daily daily prices, and
- 25 - the penalty amount far exceeds out of pocket costs incurred by Spire to supply
26 under-delivered volumes,

27 I conclude that Spire's actions in issuing the OFO and charging Clearwater OFO
28 penalties are not authorized by Spire's tariff and are further unreasonable, subjective,
29 discriminatory and inconsistent.

30 **Q: Does this conclude your testimony?**

31 A: Yes.

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

Symmetry Energy Solutions, LLC,)
 Constellation NewEnergy-Gas Division,)
 LLC, and Clearwater Enterprises, LLC)
)
 Complainants,)
)
 v.)
)
)
 Spire Missouri, Inc. and its operating unit)
 Spire Missouri West,)
)
 Respondents.)

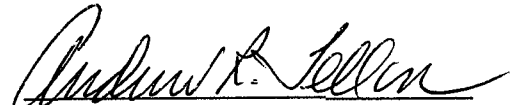
Case Nos. GC-2021-0316, GC-2021-0315,
 and GC-2021-0353

AFFIDAVIT OF ANDREW R. FELLON


STATE OF KENTUCKY)
) ss
 CITY OF LOUISVILLE)

Andrew R. Fellon, being first duly sworn on her oath, states:

1. My name Andrew R. Fellon. I am the President of Alliance Advisory Services, having its principal place of business at 3 Overbrook Road, Louisville, Kentucky 40207.
2. Attached to this affidavit and made a part hereof for all purposes is my Direct Testimony (testimony) on behalf of Clearwater Enterprises, LLC. The testimony is 34 pages and has been prepared in the appropriate format to be introduced into evidence in the case above.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


 Andrew R. Fellon

Sworn to and subscribed before me this 20th day of December, 2021.


 Notary Public

My commission expires: 05-03-2025

Caleb Terry NOTARY PUBLIC STATE AT LARGE KENTUCKY NOTARY ID# KYNP28909 MY COMMISSION EXPIRES May 3, 2025
