

**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)

**RESPONSE TO STAFF ACA REVIEW
RECOMMENDATION AND REPORT**

Spire Missouri, Inc. (“Spire Missouri” or “the Company”) respectfully submits this Response to the Public Service Commission Staff’s (“Staff”) ACA Review Recommendation and Report 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. Staff initially recommended on November 9, 2020, that the Public Service Commission (“Commission”) approve the PGA and ACA rate changes on an interim basis until Staff could produce a full review by December 15, 2021. The Commission accepted Staff’s recommendation, approved Spire Missouri’s filed ACA rate changes on an interim basis on November 12, 2020, and directed Staff to file its full ACA review by December 15, 2021. Staff subsequently requested further extensions and sought the assistance of Schumaker & Company (“Schumaker”) to adequately review Spire Missouri’s PGA filings. The Commission granted each extension request.

3. Staff ultimately filed its full ACA Review Recommendation and Report on May 27, 2022. Staff’s report explains their investigation into the Company’s PGA filing, including the costs related to Spire Missouri’s firm transportation contract with Spire STL Pipeline currently being

paid by customers in Spire Missouri's eastern service territory. Staff and its consultants conclude 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. Staff does, however, recommend that the Commission disallow approximately \$1.2 million in cost recovery from the PGA attributed to an unrelated asset management agreement ("AMA") with Spire Marketing.

4. The Commission ordered Spire Missouri to respond to Staff's recommendation by July 11, 2022. The Company accordingly submits this Response.

GENERAL RESPONSE TO STAFF ACA REVIEW RECOMMENDATION AND REPORT

5. The Company agrees with Staff's conclusions as to the costs related to Spire STL Pipeline and the compliance of this transaction with Commission affiliate transaction rules. Staff correctly notes that the Company's decision to engage with Spire STL Pipeline was reasonable, prudent, and based on a 2017 precedent agreement that shields Missouri customers from cost overruns. Staff reached these findings after reviewing all available information with assistance from Schumaker. Key factors influencing Staff's prudence conclusion include:

- Spire Missouri is capping the transportation rate at twenty-five cents (\$0.25) per MMBtu over the twenty-year term of the contract with Spire STL Pipeline;
- The transportation rate on Spire STL Pipeline is less than both the fully distributed cost and fair market price to engage in similar transportation services;
- Spire Missouri is holding Spire STL Pipeline liable for nearly all construction cost over-runs; and

- Spire STL Pipeline provides Spire Missouri access to the Marcellus Basin and improves operating pressures in the North and West portions of the Company’s distribution system.

6. Staff’s findings build on results from previous investigations. Staff began investigating Spire STL Pipeline in response to a Commission order on July 28, 2021, due to concerns about service disruptions stemming from the U.S. Court of Appeals for the District of Columbia’s decision in *Environmental Defense Fund v. Federal Energy Regulatory Commission*.¹ The Court’s decision vacated Spire STL Pipeline’s Federal Energy Regulatory Commission (“FERC”) issued certificate to operate. Staff subsequently confirmed that Spire STL Pipeline enables Spire Missouri to access greater supply pressures on the MoGas Pipeline interconnection west of St. Louis. Having this pressure means that Spire Missouri is able to avoid the cost of improving its distribution system to obtain the same pressure benefits. Staff also acknowledged that “Spire Missouri cannot reasonably reconfigure its system to replace or restore former capacity, or replace reliance on Spire STL for transportation before or during the Winter of 2021-2022.”² Any reconfiguration would be infeasible because Spire STL Pipeline provides approximately one-third of Spire Missouri’s transportation and on-system storage capacity for Spire Missouri’s East service territory.³ Staff’s findings demonstrate the critical role that Spire STL Pipeline plays in Spire Missouri’s portfolio. Spire Missouri attaches Staff’s referenced investigation as **Appendix A**.

¹ 2 F.4th 953 (D.C. Cir. 2021).

² Staff’s Investigation of Spire STL Pipeline’s Application at FERC for a Temporary Certificate to Operate, *In the Matter of Staff’s Investigation of Spire STL Pipeline’s Application at FERC for a Temp. Cert. to Operate*, GO-2022-0022 p. 3 (Aug. 16, 2021).

³ *Id.* at 7.

7. Staff’s latest ACA Review Recommendation and Report also corroborates the earlier findings of Concentric Energy Advisors (“Concentric”) and Charles River Associates (“CRA”). After the U.S. Court of Appeals for the District of Columbia vacated Spire STL Pipeline’s certificate to operate, the Company retained Concentric to analyze potential capacity alternatives to Spire STL Pipeline. Concentric explored the possibility of the Company using three other options: (1) Existing unsubscribed pipeline capacity on other pipelines, (2) Liquid propane-peaking facilities, and (3) Liquefied or compressed natural gas delivery trucks. Concentric concluded that none of these options can reliably replace the 350,000 Dth/day of natural gas supplied by Spire STL Pipeline. Spire Missouri attaches Concentric’s report as **Appendix B**.

8. Spire Missouri likewise retained CRA to assess the risks of using alternative natural gas supplies in case Spire STL Pipeline had not been available for the 2021-2022 winter season. CRA analyzed four alternative supply options: (1) Rely on compressed natural gas, (2) Use the Line 880 Pipeline (“Line 880”) to access the Enable Mississippi River Transmission, LLC’s (“MRT”) East Line, (3) Re-install propane-peaking facilities, and (4) Contract with a third-party to secure liquefied natural gas (“LNG”). All of these options were riskier from an operational, safety, supply, and environmental perspective. The Line 880 and LNG, in particular, presented unacceptable risks for public safety. CRA also concluded that none of these options could replace Spire STL Pipeline’s supply even if the risks were sufficiently mitigated. Spire Missouri attaches CRA’s risk assessment as **Appendix C**.

9. The thoroughness of Staff’s review should instill confidence that Spire Missouri’s transportation service on Spire STL Pipeline will not increase service costs for Spire Missouri’s customers.

10. Staff does state that it has lingering concerns regarding the *Environmental Defense Fund v. FERC* opinion. Staff contends that the remaining risk of FERC not approving the STL Pipeline should be borne by Spire Missouri and not customers. Spire Missouri appreciates Staff's concerns. However, we note FERC Staff's recent issuance of a favorable draft Environmental Impact Statement, and Spire Missouri has no obligation to maintain its agreement with Spire STL Pipeline should FERC not authorize the pipeline to continue operating. Furthermore, the crux of the Environmental Defense Fund's challenge to the Spire STL Pipeline Certificate relates to whether the affiliate transaction was appropriate or improperly burdens utility customers with unnecessary costs. This is a question that is squarely within the jurisdiction of this Commission, not FERC.

11. The Commission itself has explained to FERC on multiple occasions that it and Staff would review the prudence of Spire Missouri's engagement with Spire STL Pipeline.⁴ As the Commission explained, "The MoPSC specifically declined to preapprove or pre-reject the Precedent Agreement at this time, and noted that the opportunity to review the prudence of such an agreement would be in a future Actual Cost Adjustment case submitted to the MoPSC."⁵ Spire attaches the Commission's comments on point as **Appendix D**.

That "future" ACA case is now, and Staff's review demonstrates that Spire Missouri was prudent when it contracted with Spire STL Pipeline. Given the extent of Staff and Schumaker's analyses, the Company does not believe that cause for remaining concern exists regarding the rate

⁴ *Response of the Pub. Serv. Comm'n of the State of Missouri to the App. of Spire STL Pipeline LLC for a Temp. Emergency Cert., or, in the Alternative, Limited-Term Cert.*, FERC CP-17-40 (July 29, 2021) ("The MoPSC will review the reasonableness and prudence of Spire Missouri's actions with respect to the STL Pipeline in upcoming cases").

⁵ *Motion for Leave to Answer and Answer of Mo. Pub. Serv. Comm'n to Spire's Response to Data Request at Pages 2 and 6*, FERC CP-17-40-000 (Mar. 23, 2018).

for this transportation service. Spire Missouri will continue to seek transportation services to benefit its customers, and the Commission will maintain its ability to review the prudence of the Company's actions in future proceedings.

12. Spire Missouri will continue to work with Staff to address remaining concerns regarding the availability and access to supporting documentation for the contract with Spire STL Pipeline. Staff's expressed frustration on pages 4 and 5 of its memorandum over a delay in providing Request for Proposal ("RFP") documents is valid in part. This delay was due to the requested documents being subject to confidentiality agreements, and not in Spire Missouri's control. The Company needed additional time to retrieve these documents before they could be produced to Staff. Since these documents further demonstrate the prudence of the transaction, there was no reason for the Company to delay their production. Importantly, these RFP documents and negotiated term sheets were actually provided to Staff for review. They were not permanently destroyed or lost, as suggested in certain media outlets.

13. Staff also voices initial criticism of Spire Missouri's decision to release some MRT storage capacity to Spire Marketing on page 8 of its memorandum. Although Staff does not recommend any disallowances on point, it notes that this release will be closely monitored in the 2020-2021 ACA period. Spire Missouri will support the prudence of its storage release to Spire Marketing in that proceeding.

14. Spire Missouri acknowledges that it failed to fully report its demand resource capacity as referenced in Staff's review of Spire Missouri's resource planning on pages 10 and 11 of its memorandum. Spire Missouri will correct this practice going forward. Given that Staff's ACA review is coinciding with Spire Missouri's active rate case in GR-2022-0179, the Company will coordinate with Staff to address these points in that proceeding. Spire Missouri will also make

it a priority, in coordination with Staff, to potentially enhance future resource plans and update the Company's reliability reports accordingly.

15. The Company appreciates Staff's discussion of earthquake risks in the New Madrid Seismic Zone concerning the MRT Pipeline and Spire STL Pipeline. The Company notes that Spire STL Pipeline provides access to natural gas supplies that are not transported across the most active portions of the New Madrid Seismic Zone, and for this reason believes that continuing to engage with Spire STL Pipeline is a key step towards minimizing loss-of-reliability risks due to earthquakes. Spire Missouri will continue to confer with Staff in current and future proceedings to ensure that all risks from earthquakes are mitigated.

16. As the Company expressed in its Response to Staff's Recommendation in GR-2021-0128, Spire Missouri will continue its reserve margin practices, and agrees to have discussions with Staff regarding potential improvements to its gas hedging program. The Company continually evaluates changes in market conditions as part of its gas procurement process, and its hedging strategy is designed to account for such market-driven changes to achieve a cost-effective hedging outcome by balancing the cost of hedging against the goal of price stabilization. The Company regularly evaluates its hedging strategy and the timing of its hedging purchases. The Company will continue such evaluations in the future and will outline its gas supply strategies, including current hedging strategies, at its annual formal presentations to Staff and the Office of Public Counsel ("OPC") in advance of the winter period.

17. On page 3, Staff also recommends that Spire Missouri's general gas supply RFP evaluation⁶ and award documentation for its annual gas supply purchases contemporaneously

⁶ This is an annual process that is completely separate and apart from the one-time Spire STL Pipeline RFP evaluation process.

capture the forward price and index of the contract awarded. The Company will review its current documentation processes and evaluate potential options to revise materials in line with Staff's recommendation.

RESPONSE TO STAFF'S RECOMMENDED DISALLOWANCE

18. Spire Missouri disagrees with Staff's assessment of its AMA with Spire Marketing. Spire Marketing is an unregulated affiliate that Spire Missouri regularly contracts with for natural gas purchasing, sales, storage, and transportation services. Spire Marketing is one of only a handful of marketers that serve Spire Missouri East through Enable Gas Transmission ("EGT") or MRT. Spire Marketing's services are particularly important for acquiring gas supplies on the western side of EGT gas system where it is relatively more difficult to manage flowing gas at Spire Missouri's primary receipt points. The AMA also provides Spire Missouri flexibility on warmer days during the winter when its load is reduced. This flexibility enables Spire Missouri to turn off this package of gas while concurrently allowing Spire Missouri the ability to purchase at a first-of-the-month price.

19. Staff objects to the agreement with Spire Marketing on the basis that there is supposedly not a similarly situated unaffiliated transaction available through an open bidding process and questions whether Spire Missouri benefits by releasing gas capacity to Spire Marketing. As a result, Staff recommends that the Commission disallow approximately \$1.2 million based on its repricing of the agreement with Spire Marketing.

20. The Company fears that Staff's concerns and recommendations are based on a misunderstanding of Spire Missouri's process for awarding this agreement. Spire Missouri entered into the AMA at issue after issuing an RFP for firm natural gas supplies in the summer of 2019.

Spire Missouri's RFP is attached as a confidential **Appendix E**. Spire Missouri developed the RFP in line with previous AMA agreements that were reviewed in previous ACA periods without issue.

21.

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25. Importantly, Spire Marketing’s bid provided the nomination flexibility that Spire Missouri requested in its RFP at no additional charge. The flexibility provided by Spire Marketing’s bid enabled Spire Missouri to turn its natural gas use off when customer demand was lower such as during warmer winter days. Without the flexibility, the contracted supply would effectively be baseload and Spire Missouri would have been required to take, and purchase, the natural gas regardless of demand. Spire Missouri would then have to sell the excess natural gas during times of low demand, most likely at a loss.

26. AMAs with flexibility privileges typically carry daily demand charges. As stated previously, Spire Missouri received offers that allowed flexibility but they would have cost Spire Missouri a daily demand between ** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ** Staff’s analysis of the AMA is incomplete because it does not consider the value of Spire Marketing’s offered flexibility. ** [REDACTED]

[REDACTED] **

27. Spire Missouri did not accept the other bids because they failed to provide optimal service or cost for Spire Missouri and its customers. The Company instead selected Spire Marketing’s AMA bid because it was the best offer and provided Spire Missouri with the lowest overall cost, driven in part by the flexibility it provided.

28. Additionally, the calculation for its recommended disallowance reveals Staff’s flawed assumption. Staff is not recommending a full disallowance for the AMA. Instead, Staff “is repricing this agreement [AMA] for disallowance purposes using a typical western gas supply

index rather than the EGT Enable eastern gas supply index used in the contract.”⁷ This “western gas supply index” refers to a Panhandle flat index price from the Panhandle Eastern Pipeline. This repricing incorrectly assumes Spire Missouri was able to acquire baseload EGT supplies at a Panhandle flat index price. **

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

** Therefore, using a western gas supply index as Staff proposes would have increased costs for consumers beyond the recommended disallowance.

29. Because Staff’s recommended disallowance of approximately \$1.2 million is based on a flawed and incomplete analysis, Spire Missouri requests that the Commission order a procedural conference for parties to schedule opportunities for further discussions on the AMA. The Company hopes that technical conferences or further discussions will provide the reasoning and documentation for Staff to understand and accept the AMA. The Company reserves the right to contest Staff’s ordered adjustment in this case in the event an agreed resolution is not reached.

WHEREFORE, Spire Missouri submits this Response and requests that the Commission issue an order rejecting Staff’s ACA Review Recommendation and Report and Staff’s adjustments to the ending ACA balances for the period of October 1, 2019, through September 30, 2020, and

⁷ Staff Memorandum, *Staff’s Recommendation for Case No. GR-2021-0127, Spire Missouri, Inc., d/b/a Spire 2019-2020 Actual Cost Adjustment Filing*, GR-2021-0127 p. 8 (May 27, 2022).

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,



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ATTORNEY 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 11th Day of July 2022.

/s/ Matthew Aplington

Matthew Aplington