

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

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2021-0316
	)	
Spire Missouri, Inc. and its operating unit	)	
Spire Missouri West,	)	
	)	
Respondents.	)	

**MOTION FOR ADOPTION OF PROCEDURAL SCHEDULE**

Complainant Symmetry Energy Solutions, LLC (“Symmetry”) hereby files this Motion for Adoption of Procedural Schedule. In support of this Motion, Symmetry states as follows:

1. On May 27, 2021, after denying the Motion to Dismiss filed by respondent Spire Missouri, Inc. (“Spire”), the Missouri Public Service Commission (“Commission”) issued an *ORDER DIRECTING THE PARTIES TO FILE A PROPOSED PROCEDURAL SCHEDULE* (“*ORDER*”), directing that the parties file a jointly proposed scheduling order by June 10, 2021.<sup>1</sup>

2. In compliance with that *ORDER*, Symmetry prepared a draft procedural schedule and circulated the draft schedule to counsel for the Commission Staff, Office of the Public Counsel, intervenors Missouri Energy Consumers Group, Missouri School Board Association, and Spire (the “Parties”). After receiving input from all Parties, the Parties were

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<sup>1</sup> Spire similarly moved to dismiss complaints filed by Constellation NewEnergy-Gas Division, LLC and Clearwater Enterprises, LLC, which, like Symmetry, allege that Spire violated its Tariff in seeking to impose Operational Flow Order penalties in connection with Winter Storm Uri. See Spire’s Motion to Dismiss and, in the Alternative, Answer, File No. GC-2021-0315 (Apr. 28, 2021); Spire’s Motion to Dismiss and, in the Alternative, Answer, File No. GC-2021-0353 (May 17, 2021). The Commission denied Spire’s motion to dismiss Constellation’s complaint on May 26, 2021; Spire’s motion to dismiss Clearwater’s complaint is still pending.

unable to agree to a procedural schedule. Symmetry therefore submits the proposed procedural schedule below which will allow sufficient time for the Parties, including Symmetry, to obtain written discovery, perform depositions of fact and expert witnesses, and adequately prepare testimony for the Commission in order to aid the Commission in arriving at a fair and just outcome in this matter.

3. This is an unusual, and highly complex, matter with far reaching and financially significant implications for end use customers across this State. Spire is attempting to assess approximately \$150 million in Operational Flow Order (“OFO”) penalties against Symmetry—and ultimately against Symmetry’s Missouri customers<sup>2</sup>—because of a purported imbalance between Symmetry’s gas deliveries and Symmetry customers’ gas consumption during Winter Storm Uri. *See* Complaint ¶¶ 1, 18, 31; *see also* Complaint Ex. A (letter from Spire to Symmetry threatening “to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff”). Symmetry brought the present action because it believes the OFO did not comply with the terms of Spire’s Tariff for at least four independent reasons, and therefore Spire is violating its Tariff in attempting to assess penalties pursuant to that OFO. *See* Complaint ¶¶ 14, 29, 31.<sup>3</sup>

4. It is important to note that as the Complainant, Symmetry bears the burden of proof. In cases where a complainant alleges that a regulated utility is violating the law or its

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<sup>2</sup> “While Symmetry provides sales services to these customers by means of a ‘pool’ of natural gas supplies, the transportation contracts of these Missouri customers are directly with Spire” and as such they are also Spire’s customers. *See* Complaint ¶¶ 10.

<sup>3</sup> Indeed, in a filing before the Federal Energy Regulatory Commission, Spire Missouri Inc. acknowledged it did not face any imminent threats to its system reliability. *See* Protest and Request for Maximum Suspension and Hearing of Spire Missouri Inc., *Southern Star Central Pipeline, Inc.*, No. RP21-778-000, at 9 (FERC) (“Spire Missouri relied heavily on storage to meet its customer’s [sic] requirements during the recent Polar Vortex, and it had sufficient storage in inventory to do so.”).

own tariff, or is otherwise engaging in unjust or unreasonable action, the burden of proof rests with the complainant. *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. W.D. 2003).

5. In recognition of its burden, the complexity of the case, and the fact that a substantial amount of relevant evidence lies within Spire's possession, Symmetry propounded detailed discovery requests at the time it filed its Complaint on March 26, 2021. This was not done in an attempt to harass or encumber Spire, but rather to allow for Spire to produce documents related to Winter Storm Uri so that Symmetry could begin preparing its case and avoid delays.

6. Unfortunately, Spire has entirely refused to comply with its discovery obligations to date. Instead of cooperating with Symmetry to produce documents to allow timely prosecution of this case, Spire chose to produce a mere handful of self-serving emails, and declined to produce any further documents or responses to data requests. Today, nearly two and a half months after Symmetry propounded its requests, Symmetry has yet to receive additional discovery while Spire seeks to rush to a hearing seemingly in the hopes that its obstructive tactics will relieve it of its obligations and provide a strategic advantage.

7. A fair, thorough, and deliberate determination of this case is appropriate particularly where, as here, Spire seeks to impose a colossal penalty—over \$150 million—on Symmetry and its customers arising out of the winter storm which resulted in unheard-of and market-wide price spikes for natural gas. Indeed, considering the complexities of the issues and the substantial sums of money involved, this case more closely resembles a rate case than it does a standard complaint against a utility. Symmetry expects discovery to be extensive and to require substantial time to analyze. It would unjustly prejudice, and violate the due process

rights of, Symmetry and Missouri customers if the Commission were to set a procedural schedule that does not afford the Parties sufficient time to conduct discovery into the central issues of the case.<sup>4</sup>

8. For the aforementioned reasons, Symmetry suggests the following schedule to the Commission:

<b>Event</b>	<b>Date</b>
Complaint Filed/Discovery Begins	March 26, 2021
Direct Testimony of Complainants	November 12, 2021
Rebuttal Testimony (Respondents, Staff and Intervenors)	January 7, 2022
Surrebuttal Testimony of Complainants	January 21, 2022
Response time for all DRs changed to 5 calendar days and to 2 business days to object or notify that more than 5 calendar days will be needed to provide the requested information.	January 28, 2022
Deadline for Answering Discovery	February 4, 2022
Joint list of issues, order of witnesses, order of parties for cross-examination, order of opening statements	February 7, 2022
Position statements	February 8, 2022
Evidentiary Hearing	February 14-18, 2022
Initial Briefs	February 28, 2022
Reply Briefs	March 7, 2022
Date of Order requested by Complainants	April 27, 2022

WHEREFORE, Symmetry respectfully requests that the Commission adopt the procedural schedule proposed herein. If the Commission is not inclined to adopt Symmetry’s proposed schedule, Symmetry alternatively requests that the Commission schedule a prehearing conference pursuant to Commission Rule 2 CSR 4240-2.080(4) or hold oral argument regarding a procedural schedule that accommodates the needs of all parties.

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<sup>4</sup> The United States Supreme Court has held that in context of discovery, “where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government’s case must be disclosed to the individual so that he has an opportunity to show that it is untrue.” *Goldberg v. Kelly*, 397 U.S. 254, 270, 90 S. Ct. 1011, 1021, 25 L.Ed.2d 287 (1970); *see also Dolic v. Mo. Dep’t of Soc. Servs., Family Support Div.*, 493 S.W.3d 22, 29-30 (Mo. App. E.D. 2016). Here, Spire has asserted that its Commission-approved Tariff is forcing it to impose over \$150 million in OFO penalties against Symmetry. Due process requires that Symmetry is entitled to all information and facts in Spire’s possession to disprove the assertion that Spire is entitled to impose OFO penalties.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June 2021, a copy of the foregoing **Motion for Adoption of Procedural Schedule** has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

/s/ Douglas L. Healy  
Douglas L. Healy