

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

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2022-0062
	)	
The Empire District Gas Company	)	
d/b/a Liberty Utilities or Liberty,	)	
	)	
Respondent.	)	

**SYMMETRY’S MOTION FOR RELIEF FROM ORDER ON  
EMPIRE’S CORRECTED MOTION FOR PROTECTIVE ORDER AND  
SYMMETRY’S PROPOSED ALTERNATE PROTECTIVE ORDER**

Pursuant to 20 CSR 4240-2.050, 20 CSR 4240-2.080(13), 20 CSR 4240-2.135 and Rule 74.06 of the *Missouri Rules of Civil Procedure*, Symmetry Energy Solutions, LLC (“Symmetry”) hereby seeks relief from the February 22, 2022 Order granting The Empire District Gas Company d/b/a Liberty Utilities or Liberty’s (“Empire’s”) Corrected Motion for Protective Order filed herein on February 11, 2022. Pursuant to 20 CSR 4240-2.050(1), Symmetry’s response to Empire’s Motion for a Protective Order is due by the end of today, February 22, 2022, which is ten (10) days after February 11, 2022, taking into account the legal holiday which occurred on February 21, 2022. However, on February 22, 2021, the Commission issued an Order granting Empire’s Corrected Motion for Protective Order before Symmetry filed its response. Accordingly, Symmetry respectfully requests relief from the Commission’s February 22, 2022 Order, and hereby submits its full response to Empire’s Corrected Motion for Protective Order, as well as Symmetry’s Proposed Alternate Protective Order as set forth below.

Symmetry does not seek to preclude the use of a “Highly Confidential” designation, but instead proposes an alternate protective order that would also permit the disclosure of Highly Confidential information to a limited number of key employees who are subject matter experts and/or those who may file testimony to view information necessary for such testimony, after signing a Commission approved non-disclosure agreement.

### **Response to Empire’s Motion and Proposed Alternate Protective Order**

In this case in which Empire must produce information in support of its demand that Symmetry, and the Missouri customers that Symmetry and Empire jointly serve, pay over \$11 million in unlawful OFO penalties, Empire sought and this Commission just ordered, that all but Symmetry’s “attorneys of record” and “outside consultants” are forbidden from accessing anything that Empire chooses to label “Highly Confidential” (the “Current Protective Order”). Empire’s Motion at 2. Thus, the Current Protective Order prevents Symmetry’s employees who work as subject matter experts and those who intend to file testimony from accessing Empire’s information, even though these persons would have access under this Commission’s standard “Confidential” procedure.

Empire contended in its motion that the “Highly Confidential” or “HC” procedure is needed “due to the nature of certain material regarding commodity prices and actual or planned purchases, as well as competitively sensitive and confidential information regarding natural gas retail and transportation customers and suppliers, including natural gas usage and meter data by customer.” Empire’s Motion at 2. At this time, Symmetry does not agree that Empire’s discussions on gas pricing and premiums as well as how it determines its firm sales obligations would constitute Highly Confidential materials. *See* Empire’s Statement of Material Facts As to Which There is No Genuine Dispute, filed herein on September 17, 2021 in support of Empire’s

Motion for Summary Determination ¶¶ 1, 4. Further, the only other parties to this case are Staff and the Office of Public Counsel, and there will be no dispute that neither compete in the market with Empire or with Symmetry.

However, Symmetry understands that relevant information could arise that may require a Highly Confidential designation. In addition to the parties' attorneys of record, it is important for certain of Symmetry's employees who act as witnesses or subject-matter experts for its attorneys to be able to evaluate and analyze information designated as Highly Confidential to participate in the preparation of Symmetry's case. Because employees who can review Highly Confidential information will be limited in number and will be required to sign and file Commission approved non-disclosure agreements to view such information, there can be no prejudice to Empire.

Accordingly, in furtherance of an approach that would address the concerns of both Parties, Symmetry hereby proposes the following Alternate Protective Order, which is the same Order entered in Case Nos. GC-2021-0315, GC-2021-0316 and GC-2021-0353, and which was jointly proposed by all parties to those cases, even though the Complainants there are direct competitors. That Order has been modified here only to permit all counsel of record to view Highly Confidential information as requested by Empire, and as needed to apply to this case in which the only parties are non-competitors (Symmetry, Empire, Staff and the Office of Public Counsel):

- a. The Regulations set forth in 20 CSR 4240-2.135 regarding Confidential Information are incorporated by reference herein in their entirety.
- b. Materials and information that the designating party reasonably believes, in good faith, to be so competitively sensitive that it is entitled to extraordinary protections, such as potentially, commercially-sensitive competitive information regarding gas pricing and premiums shall be considered to be "Highly Confidential" if so designated at the time of disclosure.

c. Empire shall not share any “Confidential” or “Highly Confidential” information from this case with any personnel associated with its marketing affiliate(s).

d. With regard to entities and individuals other than the Staff of the Commission and the Office of the Public Counsel:

i. Disclosure of materials or information designated by Symmetry or Empire as “Confidential” shall be made only in accordance with 20 CSR 4240-2.135.

ii. Disclosure of materials or information designated by Symmetry or Empire as “Highly Confidential” may be made only to the other party’s (a) attorneys of record including the party’s in-house attorneys, and paralegal, clerical and secretarial staff employed by such in-house counsel; (b) outside consultants who have executed a Commission-approved Nondisclosure Agreement; and (c) up to, but no more than, 6 of the other party’s employees who are acting as witnesses or subject-matter experts for such attorneys who have executed a Commission-approved Nondisclosure Agreement.

iii. In all cases in which a person is required to execute a Commission-approved Nondisclosure Agreement before receiving “Confidential” or “Highly Confidential” information, the party intending to disclose such information to such person must provide to the other party a copy of the Commission-approved Nondisclosure Agreement executed by the person to whom disclosure is being made before disclosing the information to that person.

iv. Persons afforded access to materials or information designated “Confidential” or “Highly Confidential” shall neither use nor disclose such materials or information for purposes of business or competition or any other purpose other than in regard to the case referenced above, and shall keep the materials and information secure and confidential and in accordance with the purposes and intent of the protective order.

v. Consistent with 20 CSR 4240-2.135(13), this provision (d) shall not prevent the Commission’s Staff or the Office of the Public Counsel from using “Confidential” or “Highly Confidential” information obtained in this case as the basis for additional investigations or complaints against any public utility.

e. All material and information any other party has designated “Confidential” or “Highly Confidential”, as well as any notes pertaining to such information, must be returned to the party that produced it or destroyed upon the conclusion of the referenced case. Consistent with 20 CSR 4240-2.135(16), this provision (e) shall not apply to officers or employees of the Commission or the Public Counsel or employees of the Office of the Public Counsel, who are subject to the nondisclosure provisions of Section 386.480, RSMo.

f. In addition to the obligations set forth in 20 CSR 4240-2.135(15) and Paragraph 10(e) herein, each party entitled to access “Confidential” or “Highly Confidential” information shall certify in writing that they have complied with 20 CSR 4240-2.135(15) and Paragraph 10(e) herein. Consistent with 20 CSR 4240-2.135(16), this provision (f) shall not apply to officers or employees of the Commission or the Public Counsel or employees of the Office of the Public Counsel, who are subject to the nondisclosure provisions of Section 386.480, RSMo.

g. In addition to obligations set forth in 20 CSR 4240-2.135(13), each person entitled to have access to “Confidential” or “Highly Confidential” information under this rule shall take appropriate measures to safeguard the confidentiality of the “Confidential” or “Highly Confidential” information to prevent the willful or inadvertent disclosure thereof and to assure that the provisions of the protective order are accomplished. Any and all “Confidential” or “Highly Confidential” information shall be kept so that they are not amenable to being read or seen by anyone other than persons who have permission to view or obtain such documents and materials.

h. The burden of establishing that a document (or portion thereof) or prefiled testimony (or portion thereof) contains “Confidential” or “Highly Confidential” information that is entitled to the protection of this protective order shall remain on the designating party.

i. If a party disagrees with the “Confidential” or “Highly Confidential” designation of any information, the party shall follow the informal discovery dispute resolution procedures set forth in Commission Rule 20 CSR 4240-2.090(8). If the party exhausts these dispute resolution procedures, the party may file a motion challenging the designation. Further, a party is not obliged to challenge the propriety of a “Confidential” or “Highly Confidential” designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. If a party determines in good faith that information which was not previously designated as “Confidential” or “Highly Confidential” should have been so designated as “Confidential” or “Highly Confidential”, that party may make such designation at that time. A designation under this paragraph shall take effect at the time it is made.

j. Each individual who receives any “Confidential” or “Highly Confidential” information agrees to subject himself, herself, or itself to the

jurisdiction of this Commission for the purpose of any proceedings relating to the performance under, compliance with, or violation of this protective order.

k. In the event that any party is dismissed as a party to this action, it shall continue to be bound by and have rights under this protective order, and a party that is in possession of “Confidential” or “Highly Confidential” information at the time it is dismissed from this action shall comply with Paragraph 10(e) promptly after the dismissal becomes final (i.e., when all appeals have concluded or when the time to appeal has expired without a notice of appeal being filed).

l. Except as specifically provided herein, the terms, conditions, and limitations of this protective order shall survive the termination of this action.

Attached to this motion are nondisclosure forms that are similar to those approved by the Commission in Case Nos. GC-2021-0315, GC-2021-0316 and GC-2021-0353 – one for confidential information (Exhibit A) and one for highly confidential information (Exhibit B). These modified nondisclosure forms are similar to those called for by Commission Rule 20 CSR 240-2.135 and accord with the provisions of the protective order requested herein.

**WHEREFORE**, Symmetry respectfully requests that this Commission grant relief from its premature Order granting Empire’s Corrected Motion for Protective Order by vacating that Order, and instead enter an order granting the Alternate Protective Order proposed herein by Symmetry, directing the exclusive use in these proceedings of the Nondisclosure Agreement forms attached hereto as Exhibits A and B, and such other and further relief as is just and proper under the circumstances.

Respectfully Submitted,

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*Attorneys for Symmetry Energy Solutions,  
LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>th</sup> day of February 2022, a copy of the foregoing **Symmetry's Motion for Relief from Order on Empire's Corrected Motion for Protective Order and Symmetry's Proposed Alternate Protective Order** has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

*/s/ Peggy A. Whipple*

\_\_\_\_\_  
Peggy A. Whipple



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

**NONDISCLOSURE AGREEMENT  
For Case No.: GC-2022-0062  
(To Access Confidential Information)**

I, \_\_\_\_\_, have reviewed the Commission's Rule at 20 CSR 4240-2.135  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

I have requested review of confidential information produced in Case No. GC-2022-0062  
on behalf of \_\_\_\_\_.

I hereby certify that I understand and agree that:

(a) I have reviewed the Commission's Protective Order in this docket, and the Commission's  
Rule at 20 CSR 4240-2.135.

(b) I am an attorney/consultant/employee of \_\_\_\_\_ acting  
as \_\_\_\_\_ [state role from list of eligible persons]  
for \_\_\_\_\_;  
and

(c) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135 and all  
terms of the Protective Order issued by the Commission in this docket.

**NONDISCLOSURE AGREEMENT**

**For Case No.: GC-2022-0062**

(To Access Confidential Information)

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature & Title

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail Address

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

**NONDISCLOSURE AGREEMENT  
For Case No.: GC-2022-0062  
(To Access Highly Confidential Information)**

I, \_\_\_\_\_, have reviewed the Commission's Rule at 20 CSR 4240-2.135  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

I have requested review of highly confidential information produced in Case No. GC-2022-0062  
on behalf of \_\_\_\_\_.

I hereby certify that I understand and agree that:

(a) I have reviewed the Commission's Protective Order in this case. Only the individuals listed  
in paragraph 10(d) of the Protective Order may receive information and documents  
designated by a Complainant as **highly confidential** in this case.

(b) I am an attorney/consultant/employee of \_\_\_\_\_ acting  
as \_\_\_\_\_ [state role from list of eligible persons  
from Protective Order] for \_\_\_\_\_;  
and

(c) I have read and agree to abide by the Commission's Rule at 20 CSR 4240-2.135 and all  
terms of the Protective Order issued by the Commission in this docket.

**NONDISCLOSURE AGREEMENT**

**For Case No.: GC-2022-0062**

(To Access Highly Confidential Information)

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_

Signature & Title

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail Address