BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Cause of the February 2021 Cold Weather Event and its Impact on Investor Owned Utilities	)))	File No. AO-2021-0264

<u>COMMENTS OF SYMMETRY ENERGY SOLUTIONS, LLC</u>

Symmetry Energy Solutions, LLC ("Symmetry") files these Comments in response to statements presented by Spire Missouri, Inc. and its operating unit, Spire Missouri West (collectively "Spire") to the Public Service Commission of the State of Missouri (the "Commission") at its March 23, 2021 workshop (the "March Workshop").[1]

Introduction

During its presentation at the March Workshop, Spire indicated that it has assessed $195,000,000 in total OFO penalties against various marketers. Those penalties are calculated as a multiple that is many times the actual cost of the gas provided by Spire to Missouri customers during the 2021 Cold Weather Event. Spire then claims that no Missouri customers will suffer any hardship as a result. That is simply not true. In reality, thousands of Missouri customers will suffer extreme financial hardship if Spire persists in seeking to impose these OFO penalties, rather than asking to waive them, as a number of area pipelines have done.

Two points warrant special emphasis in connection with the potential for Spire's Missouri customers to suffer the very serious and wholly unnecessary financial impacts of these OFO penalties. *First*, Spire seeks to deflect attention from its own inexplicable decision not to waive the OFO penalties—as many area interstate pipelines in a similar situation to Spire have already done—by portraying marketers like Symmetry as bad actors that simply refused to supply natural

[1] Symmetry will limit its comments in this setting to addressing issues raised in the Commission's March 23, 2021 Workshop. There are other issues related to Spire's issuance of OFO penalties which are more properly addressed in Symmetry's complaint pending before the Commission.

gas during the 2021 Cold Weather Event. Nothing could be further from the truth. From the beginning of the weather crisis until the natural gas markets had stabilized after the extreme weather winter event, Symmetry supplied as much gas it could to Missouri customers. Symmetry communicated early and often during the storm with Missouri customers regarding the potential effects of the 2021 Cold Weather Event, including the potential effects of gas prices and OFO penalties, and encouraged them to limit consumption. Symmetry made every effort to locate and procure additional gas supply as its gas supply was being cut and incurred extraordinary costs in an effort to serve Missouri customers.[2]

Despite Symmetry's tireless efforts, however, Symmetry lost significant sources of gas it would otherwise have been able to deliver to Missouri customers as a result of the impacts of the extended period of extremely low temperatures on natural gas infrastructure. Symmetry's suppliers were, quite simply, unable to provide gas.[3] Symmetry received numerous force majeure notices pursuant to which suppliers failed to provide gas they would have otherwise delivered. *Symmetry was in this respect like all other gas marketers whose supply was cut.* Spire's own marketing affiliate, Spire Marketing Inc., described the situation well when it cited the extraordinary circumstances of the 2021 Cold Weather Event as the reason it sought the waiver of all OFO penalties issued to it by Panhandle Eastern Pipeline: "[t]he imbalances were not the result of intentional bad behavior and were instead the result of the impact of Winter Storm Uri and the

[2] Unlike a regulated utility such as Spire, with a Tariff that governs and protects its monopoly, Symmetry does not have the ability to recover costs from its customers from future gas prices or a guaranteed rate of return but is subject to market forces.

[3] As a marketer of natural gas, Symmetry arranges purchases and sales of natural gas to satisfy its customer's natural gas needs. Unlike pipeline companies or local distribution companies, a marketer does not own physical assets commonly used in the supply of natural gas, such as pipelines or storage fields. Symmetry competes with other marketers in the industry, such as Spire Marketing, which provides similar purchases and sales services, but which is an affiliate of Spire Missouri Inc. rather than an independent company. As a marketer, Symmetry does not set or have any control over natural gas availability or price. Instead, it is subject to the market's inherent laws of supply and demand, including loss of supply of natural gas from upstream suppliers such as pipelines and natural gas producers.

unprecedented chaos and confusion in the natural gas market."[4] The same is true of Symmetry with respect to Spire's system. Similarly, there was no "bad behavior" by Symmetry either—only the cascading effect of an unprecedented weather event throughout the natural gas supply chain that affected gas producers, marketers, pipelines, and ultimately gas consumers.

Second, Spire told the Commission at the March Workshop that the "OFO penalties are assessed to marketers and not our firm customers." That simply is not true. Spire's own Feb. 24, 2021 Demand Letter to Symmetry seeking to collect $150 million in OFO penalties unequivocally stated, "If we are unable to reach payment terms by Friday, February 26, *Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff*."[5] Those customers are Spire's Missouri customers. They include schools, hospitals and small commercial customers. Each has its own transportation agreement with Spire, while Symmetry provides gas to them. As Spire noted in its demand letter to Symmetry, those customers served by Symmetry are responsible for OFO penalties under the terms of the applicable Spire Tariff and would bear the entirety of the $150 million in OFO penalties.

Imposing penalties on Missouri ratepayers at a multiple of 2.5 times the already stratospheric price of natural gas does not serve any legitimate purpose under the circumstances of the 2021 Cold Weather Event. That is the reason so many pipelines have sought to waive the penalties—with the enthusiastic backing of Spire itself, when it was faced with paying them. Those penalties should also be waived by Spire.

---

[4] A true and correct copy of Spire Marketing Inc.'s Motion to Intervene, Comments, and Limited Protest to Panhandle Eastern Pipe Line Company, LP's Request for Limited Waiver Determination before the Federal Energy Regulatory Commission, Docket No. RP21-616-000 is attached hereto as Appendix D. FERC approved Panhandle's application on March 25, 2021, finding that the requested limited waiver of OFO penalties in that case "is not unduly discriminatory and is consistent with Panhandle's tariff."

[5] A true and correct copy of Spire's February 24, 2021 Demand Letter to Symmetry is attached hereto as Appendix A.

The 2021 Cold Weather Event was an extraordinary weather event that had dramatic impacts on the availability of natural gas.

Extraordinary weather conditions had a dramatic impact on natural gas production, while at the same time widespread power outages further limited production of natural gas and presented serious operational and logistical challenges at many levels in the natural gas market. On Sunday, February 14, 2021, an arctic air mass originating at the Canadian border reached the Midwest region, bringing snow, ice, and extreme cold temperatures. The 2021 Cold Weather Event[6] caused record winter power demand and impacted all types of power generation, including natural gas generation. The Southwest Power Pool ("SPP"), which includes Missouri, declared Energy Emergency Alert Level 3 due to operating reserves falling below the required minimum as high demands related to the ongoing severe winter weather event exceeded available generation capacity. At the same time, gas production in the U.S. South Central Region, including Texas and Oklahoma, which supplies much of the gas on Spire's system was down approximately 6.3 Bcf per day due to wellhead freeze-offs, natural gas processing plant outages, and power outages.[7]

During this Commission's March workshop, Spire portrayed this lack of supply as being the result of willful bad acts by marketers. That is not true. Symmetry, and like other gas marketers, suffered extensive supply cuts from its suppliers and the producers who were unable to produce and deliver large quantities of natural gas—at all—as they normally would. Customers who needed gas supplies for heating purposes—such as schools and hospitals—continued to pull gas off Spire's system and Spire was able to serve those customers' needs. Imposing exorbitant OFO penalties on those Missouri ratepayers, or indeed on anyone at all, would be grossly inequitable under these

[6] This series of events has been popularly described as the 2021 Polar Vortex and Winter Storm Uri, but we will refer to it here as the 2021 Cold Weather Event in keeping with the nomenclature of this proceeding.

[7] U.S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, *Extreme Cold & Winter Weather Update #1*, https://www.energy.gov/ceser/downloads/extreme-cold-winter-weather-hub-situation-update-1 (Feb. 16, 2021) ("*DOE Update #1*").

circumstances. _*Spire's own marketing affiliate, Spire Marketing*_, has stated with respect to OFO penalties issued by pipelines, "recent weather events resulted in significant and unanticipated disruptions, all of which impeded shippers' ability to match deliveries to nominated volumes, as required by the OFO."[8] As previously noted, Spire Marketing also claimed that "_*[t]he imbalances were not the result of intentional bad behavior and were instead the result of the impact of Winter Storm Uri and the unprecedented chaos and confusion in the natural gas market*_."[9] Symmetry agrees with Spire Marketing on these points. There was, in fact, unprecedented chaos and confusion in the natural gas market as a result of the 2021 Cold Weather Event. This argument applies with equal force to Spire Marketing—when it seeks waiver of OFO penalties issued by other pipelines—and to the OFO penalties issued by Spire. Symmetry worked in good faith, amidst extremely difficult operational conditions, to obtain gas to mitigate the effect of any shortfalls, and Spire should not be permitted to assess exorbitant penalties in connection with what was, in its affiliate's own words, the "unprecedented chaos and confusion in the gas market" that was no one's fault, and not within the control of the Missouri ratepayers, the gas marketers, or the gas suppliers to remedy.

Spire's Tariff mandates that its transportation customers, not gas marketers, are financially responsible for the OFO penalties.

On Wednesday, February 24, 2021, Spire issued a Demand Letter to Symmetry stating that Spire was "assessing an OFO penalty" "in the amount of $150,862,557.92" and demanding payment within two days. Contrary to what Spire told this Commission in the March Workshop,[10]

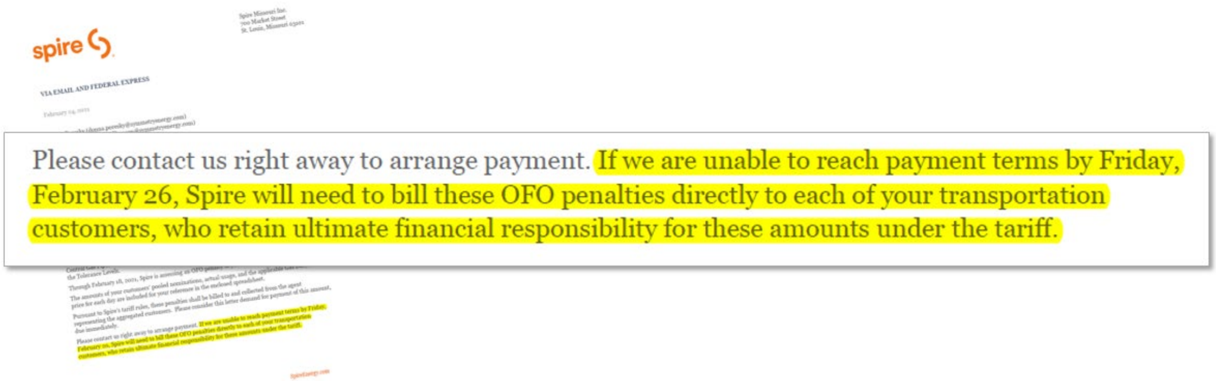
---

[8] Appendix D. Spire Marketing Inc.'s Motion to Intervene, Comments, and Limited Protest to Panhandle Eastern Pipe Line Company, LP's Request for Limited Waiver Determination before the Federal Energy Regulatory Commission, Docket No. RP21-616-000. FERC approved Panhandle's application on March 25, 2021, finding that the requested limited waiver of OFO penalties in that case "is not unduly discriminatory and is consistent with Panhandle's tariff."

[9] *Id.*

[10] A true and correct copy of Spire's Presentation at the March Workshop is attached hereto as Appendix B. Spire's statement in its presentation "[t]he OFO penalties are assessed to marketers and not our firm

Spire's Feb. 24, 2021 Demand Letter to Symmetry made it clear that Spire would bill its own transportation customers for the OFO penalties, which it notes "retain ultimate financial responsibility under the terms of the Tariff":[11]


Please contact us right away to arrange payment. If we are unable to reach payment terms by Friday, February 26, Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff.

Under the terms of the Spire's Tariff, Symmetry acts on behalf of Spire's transportation customers, each of which has a separate Transportation Agreement with Spire. Symmetry is not a transportation customer under the Spire Tariff but instead has separate Aggregation Service Agreements with Spire pursuant to which Symmetry acts on behalf of Spire's transportation customers for "the pooling of gas supplies on [Spire's] natural gas distribution system." Spire's own Tariff is clear that Spire's transportation customers remain responsible for OFO penalties.[12]

The customers whom Spire has threatened to imminently bill for these OFO penalties include Missouri hospitals and rehabilitation centers, school districts, and additional corporate, industrial, small business and non-profit end users of natural gas. Symmetry has filed a separate

---

customers" is inaccurate. Exhibit B, at 15. Missouri customers contract directly with Spire for transportation and have separate agreements with marketers such as Symmetry who supply their gas.

[11] Spire's insistence on collecting exorbitant OFO Penalties despite numerous discrepancies in the invoices and demands for immediate payment, which have no basis in the Tariff, are the subject of Symmetry's pending Complaint against Spire.

[12] Section B(5)(d) of Spire's Missouri West Tariff provides: "Responsibility for Payment: Unauthorized Over- or Under-Delivery Penalties for individually balanced customers shall be billed to and collected from the applicable customer. Unauthorized Over- or Under- Delivery Penalties for pools shall be billed to and collected from the agent representing the aggregated customers. Customers will continue to have ultimate responsibility for all charges on the account." Spire Missouri Inc.'s Tariff for Spire Missouri West, P.S.C. MO., No. 8, GR-2017-0216; YG-2018-0118, Sheet No. 16.14.

Complaint with the Commission challenging the propriety and accuracy of the OFO penalties, because Spire has refused to seek even a partial waiver of OFO penalties as many pipelines—recognizing the injustice of collecting OFO penalties during an unprecedented winter storm—have done.

At the March Workshop, Spire sought to characterize the OFO penalties it seeks as "cover damages."[13] The Tariff defines OFO penalties as penalties to be calculated as a multiple of the index price of gas. In this case, by definition, the calculation results in a dollar figure many times higher than any costs Spire could actually have incurred.[14] Symmetry has requested information regarding the actual costs Spire incurred in connection with the gas Spire supplied to its customers. Spire has refused to provide that information, almost certainly because the cost is not correlated to the amount sought from their customers. This Commission should compel Spire to disclose this information and, if it does not order Spire to do as other pipelines have done and simply waive the penalties altogether, should examine the actual cost incurred by Spire of providing gas to its transportation customers during the OFO period.

Pipelines such as Southern Star, Gulf South,[15] and Panhandle Eastern sought waiver of imposing OFO penalties from the 2021 Cold Weather Event.

In contrast to Spire's position on OFO penalties from the 2021 Cold Weather Event, pipeline operators in the same geographic area as Spire's system who also experienced the same

---

[13] March 23, 2021 Workshop Transcript, 16:10-17:2. A true and correct copy of the Transcript is attached hereto as Appendix C.

[14] The first of the month Index gas price for Southern Star for February was $2.52 per MMBtu. On February 19, 2021, the first day following the OFO period, the Gas Daily Index gas price was $7.94 per MMBtu. The peak penalty rate of $1,556.96 per MMBtu during the OFO Period is therefore 617 times the first of the month Index price and 195 times the Gas Daily Index price on the first day following the OFO period, in and of itself an abnormally high price.

[15] While Gulf South does not operate in Missouri, it does operate in Alabama where Spire also operates.

2021 Cold Weather Event, including Southern Star,[16] Panhandle Eastern Pipeline Company,[17] and Gulf South,[18] are seeking a waiver of OFO penalties under their respective tariffs. Other pipelines such as Texas Eastern Transmission, LP simply posted waiver notifications on their electronic bulletin boards, meaning they will not seek to collect OFO penalties from any shipper.

Southern Star's request for a waiver is illustrative of a pragmatic approach with respect to both the operational needs of the pipeline in having the power to issue OFO penalties, but also the ruinous financial effects such OFO penalties can have for Missouri transportation customers and other market participants. Southern Star proposed to FERC that "[i]n lieu of customers spending time reviewing invoices associated with OFO penalties, and in recognition of the historic nature of the Polar Vortex event, Southern Star proposes to waive all OFO penalties for all Shippers and Point Operators who may have incurred penalties during the OFO Period." *Id.* at 2. Southern Star's request for waiver noted that "[t]he purpose of issuing OFOs under Southern Star's tariff is to deter certain behaviors by Shippers and Point Operators on its system to ensure the integrity and

---

[16] On March 11, 2021 Southern Star Central Gas Pipeline formally requested that the Federal Energy Regulatory Commission ("FERC") grant a "waiver of the collection and crediting of operational flow order ("OFO") penalties that may have been incurred by Shippers and/or Point Operators during the period from gas day February 11, 2021, through gas day February 19, 2021…" Southern Star Central Gas Pipeline, Inc., Request for OFO Penalties Waiver, Docket No. RP21-618-000. Spire has intervened but has neither opposed nor supported Southern Star's request. A true and correct copy of Southern Star's waiver application is attached hereto as Appendix E.

[17] Panhandle Eastern Pipe Line Company, LP has submitted a Request for Limited Waiver Determination for certain OFO penalties that shippers recently incurred on Panhandle's system. *See* Panhandle Eastern Pipe Line Company, LP has submitted a Request for Limited Waiver Determination before the Federal Energy Regulatory Commission, Docket No. RP21-616-000. The Federal Energy Regulatory Commission approved Panhandle Eastern Pipeline Company's application on March 25, 2021, finding that the request "is not unduly discriminatory and is consistent with Panhandle's tariff." A true and correct copy of Panhandle Eastern Pipeline Company's waiver application is attached hereto as Appendix F.

[18] On March 19, 2021, Gulf South Pipeline Company, LLC ("Gulf South") requests that the Federal Energy Regulatory Commission ("Commission") approve a waiver of "the assessment, invoicing, collection, and crediting of potential operational flow order ("OFO") penalties associated with the unprecedented extreme winter weather of mid-February that impacted its customers, supply sources, and delivery locations." Gulf South Pipeline Company, LLC, Request for OFO Penalties Waiver, Docket No. RP21-630-000. A true and correct copy of Gulf South Pipeline Company's waiver application is attached hereto as Appendix G.

reliability of its pipeline and storage operations during an event." With regard to the events of the 2021 Cold Weather Event itself, Southern Star noted:

> During this OFO Period, Shippers and Point Operators as a whole behaved in a manner that allowed Southern Star to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service. Although many Shippers and Point Operators were unable to adhere completely to the OFOs, and without a waiver would be subject to OFO penalties, many of those same Shippers and Point Operators also took actions that assisted Southern Star during this Polar Vortex event and helped enable the pipeline to continue to provide firm service without curtailment; however, the current OFO tariff provisions provide no mechanism for recognizing such equitable collaborations in the calculation of penalties. Southern Star believes that a waiver of all such penalties is appropriate in these circumstances. The aggregate level of compliance with the OFOs was sufficient to address the strain on the system due to the Polar Vortex event. Because of the collaborative effort among Shippers and Point Operators, the amount of OFO non-compliance did not impair Southern Star's ability to operate its system. In addition, given that standard OFO penalties are calculated at 2.5x the average Gas Daily Index -- and that index peaked on one day at over $600 per Dth – the OFO penalties would add an enormous burden to what were already exorbitant gas costs for customers.

Id. at 2.

Spire acknowledged in its own motion to intervene in the proceeding on Southern Star's request for waiver of its OFO penalties, "the operational challenges Southern Star experienced during the recent extreme cold weather were largely caused by insufficient gas supplies."[19] Symmetry suffered the same circumstance, and its inability to obtain sufficient gas, like many other marketers and other industry participants during the 2021 Cold Weather Event, should not afford Spire the opportunity to impose financially ruinous penalties.

[19] Appendix H at 3. A true and correct copy of Spire's Motion to Intervene and Comments in Southern Star Central Gas Pipeline, Inc.'s Request for OFO Penalties Waiver is attached hereto as Appendix H.

Spire improperly seeks to use OFO penalties to subsidize gas costs of retail gas sales customers who purchase their gas from Spire.

In the March Workshop, Spire expressed its intent to use the OFO penalties to subsidize the gas costs of its other retail gas sales customers, describing the $195 million in total OFO penalties—"flow[ing] right back into our PGA as an offset to what our firm utility customers will need for gas."[20] Assuming for purposes of argument only that Spire can flow penalties through its PGA, then Spire has thus declared its intent to shift costs from one class of its customers to another. The Commission should consistently seek to minimize cost shifts between classes.[21]

The issue of Spire's OFO penalties directly affects Missouri transportation customers under Spire's Tariff and is not a dispute between Spire and Symmetry. Imposing penalties on Missouri ratepayers at a multiple of 2.5 times the already stratospheric natural gas prices does not serve any legitimate purpose under the circumstances of the 2021 Cold Weather Event. That is the reason so many pipelines have sought to waive the penalties. The issue of those penalties should be resolved by the Commission requiring waiver of the OFO penalties in recognition of the unique circumstances of the 2021 Cold Weather Event to avoid imposing unnecessary hardship on Missouri customers.

---

[20] Appendix C, March 23, 2021 Hearing Transcript at 16:22-25.

[21] *In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*, Case No. GR-2002-356, 2002 Mo. PSC LEXIS 1367 at *22 (Mo. P.S.C. Oct. 3, 2002); *see also State ex rel. Public Counsel v. Mo. PSC*, 289 S.W.3d 240, 251 (Mo. App. W.D. 2009).

Respectfully submitted,

HEALY LAW OFFICES, LLC

By: */s/ Peggy A. Whipple*
Peggy A. Whipple, #54758
Douglas L. Healy, #51630
Terry M. Jarrett, #45663
3010 E. Battlefield, Suite A
Springfield, MO 65804
peggy@healylawoffices.com
doug@healylawoffices.com
terry@healylawoffices.com
Telephone: (417) 864-7018
Attorneys for Complainant Symmetry Energy Solutions, LLC

JACKSON WALKER L.L.P.

By: */s/ Luke Gilman*
Amy L. Baird (*Admitted Pro Hac Vice*)
Texas Bar No. 24044090
abaird@jw.com
Richard A. Howell (*Admitted Pro Hac Vice*)
Texas Bar No. 24056674
rahowell@jw.com
Luke J. Gilman (*Admitted Pro Hac Vice*)
Texas Bar No. 24074279
lgilman@jw.com
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April 2021, a copy of the foregoing **Comments by Symmetry Energy Solutions LLC** 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