

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

2
3 Joshua Michael Kearney,

4 Complainant,

5 vs.

6 Spire, Inc.

7 Respondent,

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) File No. GC-2024-0172
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8 **Complainant's response to Staff's Recommendation**

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10 The Complainant would like to respectfully respond to the document titled
11 "Staff's Recommendation" and the attached "Appendix A" filed on 2/14/2024 listed as
12 docket item No. 17 in docket file No. GC-2024-0172. The Complainant would also like to
13 state that he is shocked and appalled after reading the "Staff's Recommendation" filed
14 by Mr. Eric Vandergriff and the included report referred to as "Appendix A" titled
15 "Recommendation to the staff" composed by Mr. David Sommerer. The documents contain
16 erroneous claims, misinformation, fallacies, blatant manipulation of the Complainant's
17 Formal Complainant, undeniable manipulation to the context of the charges brought
18 against the Respondent, and lastly unintentional admission of scenarios using the
19 "charge for gas used" to calculate the Purchased Gas Adjustment and therefor
20 effectively charging the consumer twice for the same service as alleged by the
21 Complainant in their Formal Complaint. Furthermore the Complainant would like to
22 respectfully ask the Commission and Court to reconsider continuing Mr. Eric
23 Vandergriff's duties as the acting legal liaison for the Commission and Mr. David
24 Sommerer's duties as researcher for the staff of the Commission for reasons mentioned
25 herein.

26 To begin, in the document titled "Staff's Recommendation" in line item No. 2 Mr.
27 Vandergriff claims "The complainant concerns whether the entire PGA gas cost line-item
28 should be classified as an "adjustment"." The Complainant would like to attest he has

1 not stated whether he does or does not "concerns" "whether the entire PGA gas cost
2 line-item should be classified as an "adjustment"." However, the tariff clearly states
3 what the Purchased Gas Adjustment's definition is on sheet No.2 in the Schedule of
4 Rates and it is as follows "Purchased Gas Adjustment - the charge for gas used as
5 specified in this schedule shall be subject to an adjustment per CCF for increases and
6 decreases in the companies cost of purchased gas". Therefor Mr. Vandergriff's claim
7 that "The complainant concerns whether the entire PGA gas cost line-item should be
8 classified as an "adjustment"." is clearly erroneous.

9 Also in Item No.2 Mr. Vanergriff claims that the Complainant once again
10 "concerns" "if the company (Respondent) correctly interpreted and applied the "charge
11 for gas used"." The Complainant would once again like to attest that he has not stated
12 whether he does or does not "concerns". However, The Complainant does accuse the
13 Respondent of "engaging in unjust enrichment and avoiding regulatory compliance. By
14 charging customers a charge for gas used and also charging the adjusted charge for gas
15 used amount known as the PGA or Purchased Gas Adjustment." Additionally, The
16 Complainant has not stated whether he does or does not "concerns" if the Respondent
17 has correctly interpreted the "charge for gas used". Forgoing the "charge for gas
18 used"'s legal and literal definition as used by the Complainant in their Formal
19 Complaint and as used in the tariff's schedule of rates, the only "interpretation" of
20 the "charge for gas used" was made by the Respondent in the Respondent's answer to the
21 Complainant's Formal Complainant. To which, the Complainant has motioned this court to
22 strike on legal grounds located in this docket file No. GC-2024-0172 listed as item
23 No. 7 titled "Motion to Strike Respondent's Answer". Furthermore item No.7 listed by
24 Mr. Vandergriff in the document titled "Staff's Recommendation" specifically states
25 the staff does not take a position on the Complainant's motions to strike. Making it
26 clear Mr. Vandergriff only used this statement as an attempt to preemptively set
27 course to misdirect the Complainant's accusations in their Formal Complaint as later
28 describe herein.

1 Line item No.3 in the document titled "Staff's recommendation" is where
2 Mr.Vandergriff egregiously manipulates the Complainant's Formal Complainant by
3 altering the wording. The portion of the Complainant's Formal Complaint in question
4 states "*they have done so by placing the charge on the customer's bill as (natural gas*
5 *charges - usage). Which according to the schedule of rates in the tariff is not a*
6 *lawful charge. It is being done this way because the PGA or Purchased Gas Adjustment*
7 *is calculated using the previous charge for gas used, therefor effectively charging*
8 *the consumer twice for the same service."* Mr.Vandergriff's version reads "*and has done*
9 *so by placing the charge on the customers bill as natural gas charges - usage. The*
10 *Complainant further alleges that based on the schedule of rates in the tariff, this is*
11 *not a lawful charge because the PGA or Purchased Gas Adjustment is calculated using*
12 *the previous charge for gas used, thereby effectively charging the consumer twice for*
13 *the same service."* While some words in these statements maybe similar. Their intended
14 meanings are vastly different. It's clear this was intentionally done by Mr.
15 Vandergriff in an effort to manipulate and divert the Commission's attention and
16 understanding away from the Complainant's actual documented Formal Complaint. The only
17 correct version is the Complainant's version. The portion in question is meant to
18 bring attention to the fact the Respondent is purposefully misrepresenting the PGA
19 charge on the customers bill under the title (natural gas charges - usage). The next
20 sentence in the Complainant's Formal Complainant infers since the item (natural gas
21 charges - usage) doesn't exist in the tariff's schedule of rates it is therefor in
22 fact not a lawful charge to be included on a customers bill, not "because the PGA or
23 Purchased gas adjustment is calculated using the previous charge for gas used, thereby
24 effectively charging the consumer twice for the same service." as stated in Mr.
25 Vandergriff's version of the Complainant's Formal Complaint. The Complainant's simple,
26 concise, and direct Complaint has been tactfully and distastefully manipulated in an
27 attempt to misconstrue the direct charges stated by the Complainant of engaging in
28 unjust enrichment and avoiding regulatory compliance and to clearly misdirect the

1 Commission's focus to ideals better suited for the Respondents preferred outcome.
2 Additionally, Mr. Vandergriff does not address the charges of "unjust enrichment and
3 avoiding regulatory compliance" in his document titled "Staff's Recommendation".

4 Item No.4 is the only factual information provided in the document titled
5 "Staff's Recommendation" by Mr. Vandergriff.

6 Item No.5 clearly shows further misinformation and misleading by Mr.Vandergriff.
7 Mr. Vandergriff states The summer usage charge or "charge for gas used" aims to
8 recuperate costs included in the cost of service in spire's most recent general rate
9 case. However, please note Mr. Vandergriff doesn't reference any specific "costs" in
10 the tariff that the "charge for gas used" is "aimed to recuperate". He does however
11 state In the first sentence of line item No.5 that this is in accordance with the
12 companies tariff. When in fact it is not in accordance with the tariff because no
13 where in the tariff does it state that the "charge for gas used" is for anything else
14 other then the literal and legal definition of the term "charge for gas used". He then
15 goes on to say the natural gas charge or "Purchase Gas Adjustment" "covers costs and
16 services not included in GR-2022-0179, like the federal energy regulation commission
17 regulated interstate pipeline services, deregulated gas supply costs subject to
18 competitive market forces, and other natural gas cost." None of which is necessary,
19 because the tariff's schedule of rates and charges states the "costs" of the
20 Respondent that are covered under the Purchased Gas Adjustment. The information is
21 found starting on sheet No.11 and ends on sheet No.11.8 of the tariff's schedule of
22 rates and charges.

23 In Item No.6 Mr. Vandergriff states that the burden of proof rests with the
24 complainant". Which in fact, the Complainant has provided in full and explained in
25 detail in their Formal Complainant. Then once again Mr.Vandergriff attests that "staff
26 has found no evidence that spire (Respondent) has violated any statute, tariff, or
27 commission rule with respect to the allegations in the amended complaint." While this
28 does not surprise the Complainant after the long lengths Mr.Vandergriff has gone

1 through to mislead the Commission as well as the blatant manipulation of the
2 Complainant's Formal Complaint. It is in fact irresponsible and negligent to make this
3 claim as a recommendation to the Commission with the information provided in the
4 attached document known as "Appendix A" and titled as "Recommendation of the Staff".
5 Furthermore, it shows Mr. Vandergriff is not qualified to act as a legal liaison to
6 the Commission.

7 Next, the Complainant would like to directly address the findings of Mr. David
8 Sommerer in the attached document labeled as "Appendix A" and titled "Recommendation
9 of the Staff".

10 Under the heading "Introduction and Background" in the first paragraph when
11 referring to the "charge for gas used" Mr. Sommerer states "that charge is designed to
12 recover costs included in the cost of service in spire's most recent general rate
13 case." However, once again no where in the tariff is it stated the "charge for gas
14 used" is for anything other than it's legal and literal meaning of the term "charge
15 for gas used". Furthermore, the Complainant would like to point out to the Commission
16 that, in this paragraph Mr. Sommerer does not state any specific charges listed in the
17 tariff that the "charge for gas used" is supposed to recover. Rather, in similar
18 fashion to Mr. Vandergriff he makes a general statement that it recovers "costs".
19 Then, without giving specific "costs" he abruptly states in the beginning of the next
20 paragraph that "This rate is absolutely distinguishable from the Purchased gas
21 adjustment".

22 In the second paragraph Mr. Sommerer then goes on to misquote the definition of
23 the Purchased Gas Adjustment in the tariff's schedule of rates on sheet No.2 he states
24 "the current charge for gas used as specified in this schedule shall be subject to an
25 adjustment per ccf for increases and decreases in the companies cost of purchased gas,
26 as set out on sheet No. 11" whereas the correct quote is "the charge for gas used as
27 specified in this schedule shall be subject to an adjustment per CCF for increases and
28 decreases in the companies cost of purchased gas, as set out on Sheet No.11." then Mr.

1 Sommerer states "P.S.C MO. No.9 Original Tariff Sheet No.11 including subparts,
2 describes, in detail the types of costs included in the PGA." Then he egregiously
3 makes a leap of logic to the fallacy "Therefor, Tariff Sheet No.2 authorizes a "charge
4 for gas used" and an adjustment to the "charge for gas used" known as a "purchased gas
5 adjustment" implying that the Respondent can legally charge both of the aforementioned
6 charges simultaneously. However, this is not stated anywhere in the tariff (Mr.
7 Sommerer relies on the tariff to make this claim). Upon full review of the tariff, the
8 Commission will find no where does it state that the Purchased Gas Adjustment is to be
9 charged in conjunction with, along side of, on top of, or any other phrasing of such
10 with respect to the "charge for gas used" and Purchased Gas Adjustment being charged
11 simultaneously. Once again, Mr. Sommerer is implying the tariff provides the right to
12 charge both the "charge for gas used" and the Purchased Gas Adjustment simultaneously
13 which it does not. This is in fact for good reason and is further explained herein.

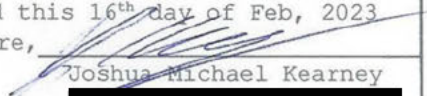

14 In paragraph 3 Mr. Sommerer goes on to list his findings of what he claims are
15 the "costs" relating to the "charge for gas used" and the Purchased Gas Adjustment in
16 an attempt to show the difference between them. In doing so he inadvertently yet
17 clearly states specific scenarios of using the "charge for gas used" to calculate the
18 Purchased Gas Adjustment therefor effectively charging the consumer twice for the same
19 service as stated in the Complainant's Formal Complaint. Mr. Sommerer states "one
20 relates to general rate case costs such as distribution pipe, Company operation and
21 maintenance expense, rate-of-return, and income taxes. The other charge, Designated as
22 the PGA, is intended to recover cost of gas supply and FERC-regulated transportation
23 cost. The customer is not paying twice for the same service." However, the Complainant
24 would like to address one clear and easily understandable example of using the "charge
25 for gas used" to calculate the Purchased Gas Adjustment therefor effectively charging
26 the consumer twice for the same service as Stated in the Complainant's Formal
27 Complaint. If the "charge for gas used" is in fact charged to the consumer to
28 recuperate costs associated with "Operation and Maintenance" costs as stated by Mr.

1 Sommerer. Then, in conjunction with the schedule of rates and charges in the tariff on
2 sheet No. 11.2 under item B. titled as calculation of the current purchased gas
3 adjustment (CPGA) where it states, that both the fixed and variable transportation
4 expenses of Spire Missouri Inc. are included as part of the calculation of the CPGA.
5 The customer would in fact be charged twice for the Respondent's Operation and
6 Maintenance costs in the form of fixed and variable transportation charges. The CPGA
7 is included in calculating the Purchased Gas Adjustment. Both fixed and variable
8 transportation charges are placed under Operation and Maintenance costs in the Cost-
9 of-services rates manual provided by the Federal Energy Regulatory Commission. This
10 unequivocally shows according to Mr. Sommerer's findings and in conjunction with the
11 items defined in the tariff, the Operation and Maintenance costs are included in the
12 "charge for gas used" (as stated by Mr. Sommerer in his findings for the recommendation
13 to staff) and also used to calculate the Purchased Gas Adjustment (as defined in the
14 tariff).

15 Therefor, this is one example of many scenarios where the Respondent would in
16 fact be using the "charge for gas used" to calculate the Purchased Gas Adjustment and
17 therefor effectively charging the consumer twice for the same service. Additionally,
18 the Complainant has alleged the Respondent has committed the aforementioned in the
19 Complainant's Formal Complaint. Moreover, this results in the Respondent engaging in
20 unjust enrichment and the avoidance of regulatory compliance as accused by the
21 Complainant in their Formal Complaint.

22 In conclusion, the Complainant would like to respectfully let the record show
23 that the Respondent is in fact, as stated by the Complaint in their Formal Complaint
24 using the "charge for gas used" to calculate the Purchased gas Adjustment therefor
25 effectively charging the consumer twice for the same service" based on the findings of
26 the Commission's staff in this docket file No. CG-2024-0172 in docket item No.17
27 titled "Staff's Recommendation" in "Appendix A". The Complainant also respectfully
28 asks the Commission and Court to reconsider the continued duties of Mr. Eric

1 Vandergriff and Mr. David Sommerer on the grounds they are falsely perpetuating the
2 defense of the Respondent whilst the Commission's Staff research shows conclusive
3 evidence towards the contrary. Moreover, they are misleading the Court and the
4 Commission which is unacceptable and should not be tolerated.

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6 Dated this 16th day of Feb, 2023
7 Signature, 
8 Joshua Michael Kearney
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