

LATHAM & WATKINS LLP

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BY EMAIL

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Re: *Symmetry v. Spire*, Missouri PSC Case No. GC-2021-0316

Dear Sirs:

We write to follow up on our letter dated January 19, 2022, to which we requested a response by January 26, 2022. When you failed to respond, we requested on January 31, 2022 that you provide a written response before our discovery conference with the Administrative Law Judge. As you have still not responded to the letter, we write again to raise concerns over the conduct of discovery in this matter. As you are aware, Symmetry served data requests on March 26, 2021, January 7, 2022, January 11, 2022 and January 28, 2022.

Most notably, in Symmetry's first set of requests served on March 26, 2021, Symmetry requested, among other materials, correspondence¹ and documents related to:

¹ "Correspondence" was defined in these requests as "any document that reflects or constitutes the transmittal of information in any form, including through letters, faxes, e-mails, text messages, online chats, messaging apps, and recorded conversations or audio or video conferences or broadcasts."

- “Spire’s evaluation, actions, and decisions regarding the need for [any] OFO[.]” Symmetry’s Data Request No. 3;
- “Spire’s evaluation, actions, and decisions regarding the protection of the integrity of the Spire MO West System.” Data Request No. 7;
- “Spire’s evaluation, actions, and decisions regarding the timing of issuance of the OFO.” Data Request No. 31;
- “Spire’s evaluation, actions, and decisions regarding the duration of [any] OFO, including . . . the basis of Spire’s decision regarding when to terminate the OFO.” Data Request No. 33;
- “Spire’s efforts to insure compliance with requirements of upstream pipeline companies (including [Southern Star]) regarding the Spire MO West System.” Data Request No. 47;
- “all correspondence and other documents related to Spire’s issuance of OFOs affecting the Spire MO West System” “[t]o the extent not produced in response to other Data Requests” Data Request No. 58;
- “Spire’s evaluation, actions, and decisions regarding whether to initiate any POC affecting the Spire MO West System.” Data Request No. 64;
- “correspondence between Spire and Spire Marketing.” Data Request. No. 72; and
- “all gas purchase, sale, exchange, and other transactions made by Spire related to the SS System or the Spire MO West System[.]” Data Request No. 74.

By September 9, 2021, Spire had produced only 45 documents. Symmetry repeatedly sought additional responsive materials or, in the alternative, Spire’s confirmation that it had no additional responsive documents. The parties had conference calls about Spire’s production on August 4 and August 13, 2021, and Symmetry sent Spire a letter on September 15, 2021 requesting that Spire “[c]omplete Spire’s disclosure of evidence and responses to our requests, and confirm that you have done so, by September 17 — which is 142 days after Spire certified in its initial pleading that Spire’s OFO and asserted penalties are warranted and factually supported under 20 CSR 4240-2.080(6) — or dismiss Spire’s request for penalties.”

On September 17, 2021, Spire’s counsel sent a letter representing that “Spire has no additional documents to produce at this time.” As was made clear by Spire’s February 9, 2022 production, that statement was false.

On November 15, 2021, Symmetry noticed the deposition of Spire’s corporate representative, including topics relating to Spire’s collection and production of documents in this matter and its document retention policies. At the deposition, on December 13, 2021, Spire’s

corporate representative, Mr. George Godat, was unprepared to testify on a number of topics², including topics relating to Spire's collection and production of documents in this matter and its document retention policies. But, Mr. Godat stated under oath that:

- “Spire’s produced all the documents that Symmetry has requested.” Deposition Tr. at 25:3-4.
- “[I]t’s Spire’s position that the documents that Symmetry has requested have been collected and turned over.” *Id.* at 25:7-9.
- “Spire’s position is that they’ve turned over all the documents that – that Symmetry has requested and have been responsive to the questions that Symmetry has asked.” *Id.* at 26:12-15.
- “[Spire] is generally familiar with [the data request] process and goes above and beyond to try to be responsive to data requests as they come in.” *Id.* at 26:25-27:2.

Spire’s production of last week also proves that this testimony was not true.

On February 2, 2022, the day a procedural order was issued reflecting the parties’ agreement to schedule a settlement conference for the week of February 14, 2022, Symmetry reached out to Spire to again request production of, among other documents, the following subset of documents responsive to the aforementioned requests, which are necessary for Symmetry to meaningfully participate in the anticipated settlement conference:

- documentation regarding Spire’s available gas supply for each day in February 2021, including baseload gas, callable gas, storage gas, and spot purchases;
- trade confirmations and invoices for all of Spire’s gas purchases and sales in February 2021;
- a daily record of all sources of supply to the Spire Missouri West system in February 2021, including:
 - whether the gas was baseload, callable, storage, or spot purchases;
 - the price basis for the gas (whether FOM, GDD, or otherwise);
 - the actual price Spire paid for the gas;
 - the volume of gas, both as contracted and as actually delivered;
 - the date the gas was contracted to be purchased;
 - the date, or date range, for delivery;

² Spire served objections regarding two of the topics, including one topic relating to Spire’s collection and production of documents, but did not move for a protective order. *See generally* Symmetry Energy Solutions, LLC's Motion to Compel Further Deposition Testimony from Spire Missouri, Inc.'s Corporate Representative (February 4, 2022), Dkt. 91.

- whether the supply was firm or interruptible—and if interruptible, any exceptions to that; and
- any applicable reservation or demand charges assessed to Spire’s sales customers for the use of certain volumes of gas including, but not limited to, callable options and storage;
- all forecasts regarding supply, customer demand, storage, and weather in February 2021 (including any regression analyses referred to by Mr. Godat in his deposition);
- daily supply cuts faced by Spire (regardless of whether notice was verbal or written) during February 2021 and all force majeure notices provided to Spire by its suppliers during February 2021; and
- daily throughput on the Missouri West system, broken down between sales customers and transportation customers.³

After Spire committed to providing a response by February 7 but failed to do so, Symmetry moved on February 8, 2022 to compel further production of documents by Spire.⁴

³ In that same correspondence, counsel for Symmetry indicated its intent to move to compel the production of the aforementioned categories to the extent not produced by close of business on February 7, and the following categories of documents (which are responsive to Symmetry’s Data Requests Nos. 3, 7, 31, 33, 47, 58, 64, 73 and 74):

- a. Email and chat communications, from February 2021 through the present, relating to the following:
 - The need for, issuance, duration and termination of the OFO, including discussions of supply and demand, correspondence with upstream pipelines and suppliers, and correspondence regarding system integrity.
 - Spire’s gas transactions in February 2021, including Spire’s decisions to (or to not) purchase gas, utilize storage inventory, and sell gas and capacity.
 - The decision not to curtail any customers during February 2021.
- b. Agreements and correspondence during or relating to February 2021 with Southern Star.
- c. A complete set of all gas supply/demand and weather forecasts and projections for the days February 5-22, 2021 and any correspondence relating thereto.
- d. Documentation, including trade confirmations and invoices, for any gas purchases, sales, or other transactions in February 2021 not covered by the categories listed above, including Spire’s daily portfolio summary or position report.

⁴ See Symmetry Energy Solutions, LLC’s Motion to Compel Production of Responsive Documents by Spire Missouri, Inc. and Motion for Expedited Treatment (February 8, 2022), Dkt. 95.

The day after Symmetry filed its motion to compel, and nearly a year after Symmetry served its data requests, Spire produced an additional 68 documents previously withheld from Symmetry—more than doubling the size of its initial production. The production consisted of:

- A compilation of seemingly-incomplete transaction confirmations, stamped with the date “February 9, 2022”;
- Tradesheets limited to the dates of February 12-13 and 16-19, 2021;
- Sendout Forecasts for the dates of February 1-20, 2021;
- Two weather forecasts for the month of February for Kansas City, MO and Oklahoma City, OK;
- Southern Star ID3 cut reports for the dates of February 12-18, 2021;
- An invoice summary providing certain information relating to Spire’s gas supply for February 2021;
- A one-page summary of forecasted and actual temperature and STS for the dates of February 5-24, 2021;
- 13 chats;
- 13 emails with Southern Star; and
- 3 miscellaneous emails relating to the OFO.

Spire did not explain why it has withheld these documents, which are clearly responsive to Symmetry’s almost year-old data requests. Nor did Spire explain why Mr. Aplington or Mr. Godat had represented, falsely, that Spire’s document productions were complete as of last year.

The production also reveals that Spire had not previously even attempted to collect ICE chats, and other communications by and among Spire gas traders and schedulers that Symmetry has been specifically pressing for. Moreover, the evidence also demonstrates that Spire did not properly collect other basic categories of documents, such as emails or contracts. The newly produced documents show that they were not collected until the day before the production—all of the produced emails, for example, reflect that they were forwarded by Justin Powers to Spire’s counsel, Mr. Aplington, on February 8, 2022, and the transaction confirmations are date-stamped February 9, 2022. The Southern Star ID3 cut reports also show a “Statement Date” of February 7, 2022. That Spire had not collected these clearly responsive documents until almost 11 months after receiving Symmetry’s data requests demonstrates that Spire’s misrepresentations were knowing and willful⁵, and that Spire disregarded its discovery obligations. That the emails we

⁵ Indeed, certain of the responsive emails produced this week involved Mr. Godat himself—who testified under oath that Spire was in possession of no additional responsive documents.

received this week were forwarded by Mr. Powers to Mr. Aplington, and Mr. Aplington's explanation to the ALJ of an ad hoc manual collection of ICE chats, also reveal a lack of regard for basic document collection processes.

Spire's noncompliance is further proven by its failure, at the beginning of the litigation, to issue a routine document retention notice. That basic step did not occur until April 22, 2021. This likely has led to destruction of evidence, the fact of which Spire's representatives have been concealing from Symmetry throughout this case.

The long-overdue production of last week—consisting of materials that Spire has withheld for the better part of a year—also indicates that Spire's production remains far from complete. For example:

- The tradesheets and cut reports produced exclude many days in February, including the dates leading up to Spire's initiation of the OFO.
- The production did not include transaction confirmations for multiple purchases listed on the previously produced "Confidential Actual Cover Costs Spire.xls" spreadsheet and on the document titled "MOWEST FEB 2021 Portfolio HIGHLY CONFIDENTIAL," including, for example, the transaction with Mieco on February 9, 2021 that is referenced in the testimony of Justin Powers.⁶
- The purported "transaction confirmations" that Spire produced are themselves incomplete, and do not appear to be copies of the original documents. For example, it is unclear from many of these documents whether the volumes indicated are the contracted volumes or the volumes delivered. Even more importantly, the transaction confirmations do not reflect the dates on which the transactions were entered into, but instead each transaction confirmation reflects a date of February 9, 2022—almost a year after the transactions in question. It appears that instead of producing the original transaction confirmations, Spire created new transaction confirmations based on data from its systems, and produced those to Symmetry (which is why they all bear the same date of February 9). But what Symmetry requested, and is entitled to, are the original transaction confirmations as they existed at the time of the transactions, not documents that were apparently created retroactively and do not reflect key terms of the transactions.
- The production does not include documents reflecting the terms of Spire's long-term deals. Spire represents that there exist no transaction confirmations for such deals. Symmetry has requested all correspondence and documents relating to "all gas purchase, sale, exchange, and other transactions made by Spire related to the SS System or the Spire MO West System[.]" Data Request No. 74. If Spire does

⁶ See Testimony of Justin Powers at 3:16-19 (January 27, 2022).

not have transaction confirmations for its long-term deals, Spire must produce the documentation that does exist reflecting the terms of those transactions.

- The production appears to still be missing multiple weather forecasts. For example, on September 9, 2021, Spire produced to Symmetry a document titled “DR KC Weather Forecast,” dated February 12, 2021. Symmetry assumes that Spire has similar forecasts for the other days in February, but no such forecasts have been produced. Similarly, Mr. Godat’s witness preparation binder included a differently formatted forecast, titled “February 10 Weather Forecast,” which provided additional information. Again, this type of forecast was not produced.
- The production does not include any force majeure notices.
- Spire’s previous production of invoices remains incomplete.
- The production of ICE chats is incomplete. For example, the chats involving Justin Powers are undated, but the chats involving Greg Hayes again exclude many days in February, including the dates leading up to Spire’s initiation of the OFO.⁷ Coupled with Mr. Aplington’s explanation of a manual and ad hoc collection of chats, as opposed to using a forensically sound collection method (which should have been utilized months ago), it is plain that Spire continues to withhold responsive ICE chats.
- The production of correspondence with Southern Star is facially incomplete. For example, Justin Powers testifies that a chart included in his testimony was provided to him by Southern Star⁸, but no correspondence reflecting that communication was produced. And, as previously mentioned, the methodology of email collection indicated on the face of the emails provides no basis for Symmetry to conclude that the collection process was designed to, or in fact did, collect all responsive materials.
- There is no document providing a breakdown of daily throughput broken down by sale and transportation customers.

Spire is a major corporation represented in this case by two law firms and its in-house counsel department. We are concerned that Spire is using claimed attorney-client privilege to hide its efforts to provide false certifications about its document retention and production and, in

⁷ We also note that the production of ICE chats on February 9, 2022 included a more complete version of the ICE chat produced to Symmetry on September 9, 2021 between Justin Powers and Shon Purcell, indicating that Spire deliberately excerpted the previously produced version of the ICE chat.

⁸ See Testimony of Justin Powers at 6:14-16 (January 27, 2022).

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general, to obstruct this proceeding. We are still waiting for Spire's privilege log in order to investigate our concerns.

In an effort to deflect attention from its conduct, Spire has now served additional data requests on Symmetry, and says that it intends to move to compel production of documents by Symmetry in response to previously issued data requests. These data requests include, for example, the following requests:

- “For the time period of February 1, 2021 to the present, produce email, correspondence and other documents related to the OFO issued by Spire on February 12, 2021.” Data Request 3, First set of Data Requests.
- “Did Symmetry take any actions in response to the OFO issued by Spire on February 12, 2021? If so, please identify those actions taken by Symmetry in response to the OFO issued by Spire on February 12, 2021. Please provide email, correspondence and other documents with upstream suppliers or other third parties related to any such actions.” Data Request 7, First set of Data Requests.
- “Please provide a list of the incremental purchases that you made during February for your markets on Southern Star. For each purchase please include the following:
 - a. The counterparty name;
 - b. Price paid;
 - c. Scheduled volume; and
 - d. Actual volume that flowed.”

Data Request 1, Second set of Data Requests.

- “Please provide internal communication related to Symmetry's decisions regarding the amount of gas supply Symmetry planned to provide for its customers during February 2021.” Data Request 8, Second set of Data Requests.

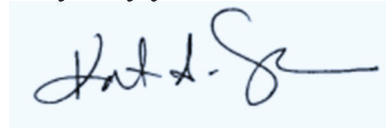
Symmetry has sought for almost 11 months, and continues to seek, Spire's documents relating to the OFO and transactions made by Spire during February 2021. Please explain why Spire believes that Symmetry—whose actions are not the focus of this litigation, making the documents sought by Spire irrelevant—is obligated to disclose these documents, but Spire is not obligated to disclose (or, apparently, even collect) its own documents relating to these issues.

Please provide your response (and Spire's privilege log) before February 15, 2022, to allow Symmetry to consider Spire's position prior to providing its objections to Spire's Second Set of Data Requests.

Thank you for your attention to this matter.

LATHAM & WATKINS^{LLP}

Very truly yours,

A handwritten signature in black ink on a light blue rectangular background. The signature is cursive and appears to read "K.A. Sawyer".

Katherine A. Sawyer
Of Latham & Watkins, LLP

cc: Doug Healy, Esq.
Peggy Whipple, Esq.
Terry Jarrett, Esq.