

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

Symmetry Energy Solutions, LLC,     )  
   )  
                  Complainant,                     )  
   )  
v.   )  
   )  
The Empire District Gas Company     )  
d/b/a Liberty Utilities or Liberty,     )  
   )  
                  Respondent.                     )

Case No. GC-2022-0062

**NON-UNANIMOUS STIPULATION AND AGREEMENT**

COME NOW Symmetry Energy Solutions, LLC (“Symmetry”), The Empire District Gas Company d/b/a Liberty Utilities or Liberty (“Empire”), and the Staff of the Missouri Public Service Commission (collectively, “the Parties”), by and through undersigned counsel, and for this Stipulation and Agreement (“Stipulation”), respectfully state as follows to the Missouri Public Service Commission (the “Commission”):

**BACKGROUND**

1. In mid-February 2021, a major snow and ice storm, known as Winter Storm Uri, imposed extreme and unprecedented freezing weather conditions across the United States, Northern Mexico and parts of Canada. The extensive nature of the storm, coupled with the heavy snow and damaging ice, produced some of the coldest temperatures in decades. Winter Storm Uri prompted health and safety concerns, sudden and sustained natural gas supply disruptions, widespread infrastructure and operational failures and freeze-offs of facilities that were necessary for the delivery of natural gas. In particular, the storm had significant and unprecedented effects on the supply of gas in Missouri and elsewhere in the Midwest.

2. Symmetry has contracts with Empire pursuant to which Empire transports natural gas to certain of Symmetry's customers in Missouri. Pursuant to those contracts, Symmetry has agreed to the terms of Empire's Transportation Provisions tariff on file with the Commission.

3. During the storm, Empire issued system-wide Operational Flow Orders ("OFOs") for the Empire system. During the OFO period, Symmetry delivered less gas to Empire's city gate on certain days than Symmetry's customers consumed on those days. Empire claims that, as a result, Symmetry owes Empire OFO penalties pursuant to its tariff.

4. Symmetry challenged Empire's issuance of the February 2021 OFOs, contending that they were invalid because they failed to comply with the requirements of Empire's tariff, and therefore Symmetry owes no OFO penalties to Empire.

5. On August 30, 2021, Symmetry brought a complaint against Empire before the Commission with Case No. GC-2022-0062 (the "Action") challenging the propriety of Empire's February 2021 OFOs and associated penalties under Empire's tariff. On September 17, 2021, Empire filed a Motion for Summary Determination and supporting papers. On November 17, 2021, the Commission issued an Order denying that Motion. Empire was served with and responded to discovery and information requests. On March 16, 2022, the Commission issued an order establishing a Protective Order.

6. The Parties have engaged in extensive negotiations, including participating in a settlement conference that took place on March 21 and March 22, 2022. The Parties are entering into this Stipulation taking into account the implications of prolonged litigation, the potential cost implications of rising interest rates on the Parties' customers, and the significant adverse financial impact of Winter Storm Uri, among other considerations. The Parties acknowledge that this Stipulation constitutes a settlement of the Action and is not an admission of liability of any

signatory. The Parties request that the Commission approve the resolution of the issues in these proceedings as detailed below.

7. The Parties are entering into this Stipulation to resolve fully and finally all claims that each Party may have against any of the other Parties related to OFO penalties relating to Empire's provision of natural gas to Symmetry's customers in February 2021, including, without limitation, all matters at issue in the Action. This Stipulation is intended to forever discharge and extinguish all claims and causes of action that the Parties have against each other relating to the Action, Empire's February 2021 OFOs, and Empire's provision of natural gas to Symmetry's customers in February 2021.

### **AGREEMENTS**

8. Contingent upon Commission approval of this Stipulation without modification, the Parties hereby agree as follows.

9. The Parties agree that, to settle the Action, Empire will accept from Symmetry a payment of \$5 million (the "Settlement Payment"), payable as described in paragraphs 10-12 below.

10. Symmetry shall make a payment of \$1.5 million to Empire payable on the first day of the month following the effective date of a Commission order approving this Stipulation. Symmetry shall pay the remaining \$3.5 million over 36 equal monthly installments, plus a 2.0% per annum carrying charge calculated monthly, commencing on the first day of the month that is 30 days after the Commission issues its order on this Stipulation.

11. Timing of payment is of the essence: if Symmetry defaults on a payment obligation under this Stipulation, it shall have 10 days to cure that default. If Symmetry fails to cure the default, the full amount claimed by Empire in its letter to Symmetry dated April 15,

2021, plus interest, shall become immediately due and payable, and Symmetry shall, at Empire's option, exercised in writing, be precluded from serving customers in Empire's service area. This preclusion shall be a remedy in addition to those included in the Empire tariff as it is amended from time to time.

12. Within five business days of a Commission Order accepting this Stipulation, Energy Capital Partners (Symmetry's parent company) shall execute and provide to Empire a corporate guarantee in the amount of Symmetry's \$3.5 million balance, plus interest calculated at 2% per year for a 36-month period, and such corporate guarantee shall remain in place until the balance of Symmetry's Settlement Payment is paid in full. Symmetry agrees to pay all reasonable legal fees incurred in enforcing this corporate guarantee.

13. Empire shall include the Settlement Payment received from Symmetry in the Empire PGA/ACA by allocating the amounts 0.35% to North and 99.65% to South (this allocation may be subject to review in the ACA process). As soon as Empire receives Symmetry's payments, it will credit the ACA account and include interest at the tariff rate of prime minus 2%. All gas purchases and gas purchasing decisions made by Empire remain subject to potential offsets and/or disallowances pursuant to the applicable Purchased Gas Adjustment/Actual Cost Adjustment reviews, including purchases and decisions related to Winter Storm Uri, and the terms of this agreement do not restrict the Staff of the Public Service Commission or the Office of the Public Counsel from recommending offsets and/or disallowances to the Commission in those dockets, except on the basis of the execution of this Stipulation. No such offset and/or disallowance will affect the amounts owed by Symmetry to Empire as set forth in this agreement and Symmetry will have no liability for any such offset and/or disallowance or any costs related thereto.

14. Within 30 days of the effective date of the Commission's order approving this Stipulation, Symmetry will certify that it has returned to Empire or destroyed all materials that Empire submitted to Symmetry as "Highly Confidential," pursuant to the Protective Order in this proceeding. Such certification will be made by each person who received and/or reviewed the information provided by Empire to Symmetry by providing a signed letter to Empire's General Counsel, certifying that he/she has returned and/or destroyed materials provided by Empire to Symmetry in connection with this Action.

15. As part of this Settlement Agreement, Symmetry agrees that it will withdraw its challenge to Empire's issuance of the OFOs in February 2021 and will continue to comply with all OFOs lawfully issued by Empire in the future. Recourse for any future violation of a lawfully issued OFO will be governed exclusively by the terms of Empire's tariff.

16. Empire shall not, on or after the date hereof, invoice any of Symmetry's customers for any amounts or on any claims that are encompassed by the released Empire Claims (as defined in paragraph 21 below). Empire acknowledges that Symmetry's customers on the Empire system have paid any and all monies previously invoiced by Empire for natural gas transported, distributed, provided, delivered and/or supplied to such customers in February 2021. For the avoidance of doubt, nothing in this paragraph shall be construed to limit the release set forth in paragraph 21 below.

17. Upon entry by the Commission of an order approving this Stipulation and Agreement, and provided Symmetry makes the total settlement payments in accordance with the terms of this Stipulation, Symmetry will have paid Empire all amounts owed by Symmetry associated with the natural gas transported, distributed, provided, delivered and/or supplied by Empire to Symmetry's customers in February 2021.

18. In the event a subsequent federal or state court or government agency issues a final order of general applicability finding the existence of market manipulation, fraud, unlawful restraint of trade, or any other unlawful activity in the establishment of the Gas Daily Index or natural gas prices paid by Empire during February 2021 that requires financial relief in the form of profit disgorgement, refunds, penalties, or other civil suit relief to Empire, then Empire will credit, on a *pro rata* basis to Symmetry any proceeds that Empire receives as a direct result of such proceeding that relate to the Settlement Payment paid by Symmetry. This paragraph shall not be construed to mean that all proceeds Empire could receive as a direct result of such proceeding would necessarily relate to the Settlement Payment paid by Symmetry. Staff and Public Counsel reserve for future proceedings the right to recommend credits to any other customers for any proceeds that Empire receives as a direct result of such proceeding that relate to February 2021 gas costs paid to Empire by customers not a party to this agreement. Moreover, in the event a final order referenced above that the market manipulation, fraud, unlawful restraint of trade, or any other unlawful activity was committed by any Symmetry or Transportation Customer, this paragraph shall not apply to that Symmetry or Transportation Customer, and no amounts that would have been credited to Symmetry or Transportation Customers shall be credited under this paragraph to Symmetry or Transportation Customer.

19. Based on their knowledge of the facts and circumstances, review and analysis of the Empire tariff and applicable law, and consideration of the relevant interests and the risk of litigation, the Parties hereby recommend to the Commission that this Stipulation be approved by the Commission without modification.

20. Within five business days of the effective date of a final, non-appealable Commission approval of this Stipulation without modification, each of the Parties shall

undertake any action necessary for the purpose of terminating, withdrawing and/or dismissing the Action, with prejudice. Such dismissal with prejudice will not impair any Party's ability to initiate any action necessary to enforce the provisions of this Stipulation. Each Party represents and warrants that it now possesses, and that it has not assigned to any other person or entity, the claims that it is releasing herein.

21. Upon the effective date of a final, non-appealable Commission order approving this Stipulation without modification, in consideration of the Settlement Payment set forth in paragraph 9, the sufficiency of which is hereby acknowledged, Empire and its agents, successors, assigns, heirs, executors and administrators (hereinafter collectively referred to as the "Empire Releasers") hereby fully release and forever discharge Symmetry and all subsidiary and affiliated companies, and all of their respective directors, officers, employees, agents, customers, successors, assigns, heirs, executors and administrators, insurers, co-insurers, reinsurers, and insurance brokers (hereinafter collectively referred to as the "Symmetry Releasees") from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, warranties, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, that any Empire Releaser has, possesses, and asserts, or that any Empire Releaser may have, possess or assert, at any point in time, against Symmetry Releasees arising out of or relating to the Action or Empire's transportation, distribution, provision, delivery and/or supply of natural gas to Symmetry's customers in February 2021 (the "Empire Claims"). It is the intent of the Empire Releasers that this Stipulation irrevocably bars any claims of any kind or manner that can or may be asserted by the Empire Releasers against Symmetry Releasees arising

out of or relating to the Action or Empire's transportation, distribution, provision, delivery and/or supply of natural gas to Symmetry's customers in February 2021.

22. Upon the effective date of a final, non-appealable Commission order approving this Stipulation without modification, Symmetry and its agents, successors, assigns, heirs, executors and administrators (hereinafter collectively referred to as the "Symmetry Releasors") hereby fully release and forever discharge Empire and all of its subsidiary and affiliated companies, and all of their respective directors, officers, employees, agents, successors, assigns, heirs, executors and administrators, insurers, co-insurers, reinsurers, and insurance brokers (hereinafter collectively referred to as the "Empire Releasees") from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, warranties, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, that any Symmetry Releasor has, possesses, and asserts, or that any Symmetry Releasor may have, possess or assert, at any point in time, against any of the Empire Releasees arising out of or relating to the Action or Empire's transportation, distribution, provision, delivery and/or supply of natural gas to Symmetry's customers in February 2021. It is the intent of the Symmetry Releasors that this Stipulation irrevocably bars any claims of any kind or manner that can or may be asserted by the Symmetry Releasors against the Empire Releasees arising out of or relating to the Action or Empire's transportation, distribution, provision, delivery and/or supply of natural gas to Symmetry's customers in February 2021.

23. This Stipulation has resulted from negotiations among the Parties, and the terms hereof are interdependent. If the Commission does not approve this Stipulation unconditionally



and without modification, then this Stipulation shall be void and no Party shall be bound by any of the agreements or provisions hereof.

24. This Stipulation embodies the entirety of the agreements among the Parties in this case on the issues addressed herein, and may be modified by the Parties only by a written amendment executed or authorized in writing by all of the Parties.

25. If approved and adopted by the Parties, this Stipulation shall constitute a binding agreement among the Parties. The Parties shall cooperate in defending the validity and enforceability of this Stipulation and the operation of this Stipulation according to its terms.

26. Nothing in this Stipulation is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including that the Stipulation is equitable, and in the public interest.

27. If the Commission accepts the specific terms of this Stipulation without condition or modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to RSMo. § 536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to § 536.080.2, their respective rights to seek rehearing pursuant to § 386.500, and their respective rights to judicial review pursuant to § 386.510. This waiver applies only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior orders, to subsequent Commission proceedings, or to any matters not explicitly addressed by this Stipulation.

WHEREFORE, the Parties respectfully request that the Commission issue an order in this case approving the Stipulation subject to the specific terms and conditions contained herein.

IN WITNESS WHEREOF, the Parties have executed and approved the terms of this Stipulation, effective as of May 27, 2022, by subscribing their signatures below.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May 2022, a copy of the foregoing **Non-Unanimous Stipulation and Agreement** 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*

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Peggy A. Whipple