



September 15, 2021

**BY EMAIL**

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

Dear Mr. Aplington and Mr. Cooper:

When Spire announced after last February's unprecedented winter storm that it would seek to collect \$150 million in "OFO penalties" from Symmetry Energy and its customers, Symmetry promptly challenged that demand and requested the evidence both supporting and undermining it. That was on March 26, but as of this morning, it appears the situation is this:

1. Spire has disclosed a total of only 45 documents — three on April 28, 25 more on August 6, one on August 10, and 16 on September 9.
2. Although Spire withdrew its boilerplate objections to 96 of our requests, it has not confirmed that it has revealed "all documents, correspondence, etc." relevant to these requests. As you and my colleagues have discussed, for the vast majority of these requests, Spire has produced very few or no documents, but has not confirmed that it searched for additional responsive documents and found none, suggesting that there may be as-yet undisclosed evidence.
3. As of September 9, 167 days after Symmetry requested written responses to its questions, Spire had only answered 25 of Symmetry's 37 interrogatories (not including responses that merely referenced other responses or documents), and has not confirmed that the answers were complete.

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We have accepted at face value Spire's representations that it has been "work[ing]" on its responses to Symmetry's requests, and that Spire's responses "are close to complete." But now, after we have rather patiently had two phone conferences and exchanged approximately 15 emails with you about Spire's responses, we are running out of time. Symmetry is entitled, by law, to "any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party"; "[i]nformation within the scope of discovery need not be admissible in evidence to be discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Mo. R. Civ. Pro. 56.01(b)(1). We are approaching six months since Spire publicly announced that it was entitled to OFO penalties against Symmetry and its customers, and Symmetry's direct testimony in this case is due on December 3.

So here is our request: Complete 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.

Thank you for your attention to this matter.

Very truly yours,



Steven M. Bauer  
Of Latham & Watkins, LLP

cc:

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