BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Constellation NewEnergy-Gas Division, LLC, Complainant, v. Spire Missouri, Inc. and its operating unit Spire Missouri West, Respondents.	)))))))))))	Case No. GC-2021-_____

<u>COMPLAINT AND MOTION FOR EXPEDITED TREATMENT</u>

COMPLAINT

Constellation NewEnergy-Gas Division, LLC ("CNEG"), pursuant to §386.390 *Revised Statutes of Missouri* ("RSMo"), 20 C.S.R. 4240-2.070 and the facts and law cited below, complains as follows regarding Spire Missouri, Inc. and its operating unit, Spire Missouri West (collectively, "Spire").

INTRODUCTION

1. CNEG files this Complaint to address Spire's failure to comply with the requirements of its Tariff in assessing approximately $35 million[1] in Operational Flow Order ("OFO") penalties following a cold weather event. As a result, hundreds of Missouri ratepayers could soon be receiving exorbitant bills based on penalties that on some days during the OFO Period reached as much as 600 times the beginning of the month price of gas. As Spire noted in its original Demand Letter, "…*<u>Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts</u>*."

[1] Spire's initial Demand Letter on February 24, 2021 requested immediate payment of $39,451,576.78. Spire subsequently revised that amount on March 17, 2021 to demand $35,526,510.86

2. Spire Missouri, Inc. is a public utility and gas corporation incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101.

3. Spire is primarily engaged in the business of distributing and transporting natural gas to customers in the State of Missouri, is subject to the jurisdiction of the Commission under Chapters 386 and 393 of the *Revised Statutes of Missouri*, and serves customers in the City of Kansas City and thirty counties in Western Missouri through its Spire Missouri West operating unit.

4. CNEG is a leading retail natural gas supplier providing over seven hundred billion cubic feet of natural gas per year to approximately one hundred twenty-five thousand (125,000) customers in thirty-six states, including Missouri, and is thus authorized to file this Complaint against Spire under 20 C.S.R. 4240-2.070. CNEG's address is 9400 Bunsen Parkway, Suite 100, Louisville, Kentucky 40220.

5. Prior to this filing, representatives from CNEG directly communicated with Spire about the subject of this Complaint.

6. The Commission has jurisdiction over this Complaint under RSMo §§393.130.1, 386.390.1, 393.260 and 20 C.S.R. 4240-2.070.

7. The Commission is required to determine the propriety of charges and set just and reasonable rates and has the authority to suspend and defer charges. Every unjust or unreasonable charge is prohibited. RSMo §§393.150, 393.130.1.

8. Spire's current Tariff was established by the Commission in its Report and Order issued in GR-2017-0215/0216 and made effective March 17, 2018.

9. CNEG currently serves nearly four hundred fifty (450) customer locations/meters in Missouri.

10. While CNEG provides sales services to these customers to form a pool, the transportation contracts of these Missouri customers are direct with Spire.

11. As described in more detail below, Spire has indicated it will imminently send bills for enormous sums of money to these hundreds of Missouri-based rate payers on the basis of these OFO penalties, including sixteen (16) hospitals and care centers, fifteen (15) schools and additional corporate, industrial, small business and non-profit customers.

12. Commencing on or around February 12, 2021 and continuing until on or around February 19, 2021, Missouri and many other states across the Midwest, South and Southwest experienced Winter Storm Uri and its alleged impact on the pricing and supply of natural gas.

13. Spire did <u>not</u> at any time during the period February 12, 2021 through February 19, 2021 physically curtail the delivery of gas to any Missouri transportation customer on its system.

14. Upon information and belief, Spire did not at any time during the period February 12, 2021 through February 19, 2021 experience an operational integrity issue on its system, nor was its ability to continue to make deliveries of gas as nominated on the system ever impaired.

15. The aggregated volume of gas delivered to Spire by CNEG for customers served by CNEG was in physical balance with the gas used by such Customers, as contractually obligated, at the end of February.

16. All gas delivered by Spire in February to customers served by CNEG had been made up to Spire by CNEG, in kind, by the end of the month, in accordance with the Tariff and applicable contracts.

17. Commencing on February 24, 2021 and continuing thereafter, representatives of CNEG and Spire discussed the events addressed in this Complaint.

18. On February 24, 2021, Spire declared to CNEG in writing that Spire Missouri West Tariff Sheets 16.13 – 16.14 required Spire to assess Operational Flow Order ("OFO") penalties

and charges against certain of its Missouri transportation customers (whose gas is supplied by CNEG) in the amount of $ 39,451,576.78 ("Demand Letter").[2]

19. Spire declared in its Demand Letter that it had calculated the approximately $39 million penalty by multiplying the alleged MMBtu amount of unauthorized gas usage by customers by the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipeline (Oklahoma), multiplied by 2.5.

20. CNEG has requested, on behalf of the Spire transportation customers, that Spire waive the exorbitant OFO penalties, just as other pipelines have done. Spire indicated it would be willing to seek a waiver of the OFO penalties from the Commission, but demanded financial performance assurances of the OFO penalties from CNEG's owners as a condition of supporting any Tariff variance.

21. Spire noted in its Demand Letter, that "…*Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts*."

22. Subsequently to that, Spire sent CNEG two invoices in the amounts of $39,197,396.85 and $35,526,510.86 which appear to include OFO penalties without any detailed explanation of the invoiced amounts.

23. OFO penalties under the Tariff are calculated at 2.5x the average *Gas Daily* Index for Southern Star, which peaked during the OFO period at stratospheric amounts of over $622 per MMBtu, resulting in OFO Penalties for one day at the unprecedented amount of over $1,555 per MMBtu.

[2] Attached hereto as **Exhibit A** is a true and correct copy of the February 24, 2021 Demand Letter.

24. To put the amount of the bills Missouri ratepayers are about to receive in perspective, the Inside F.E.R.C. first of the month Index gas price for Southern Star for February was \$2.52 per MMBtu. That is the Index price which many customers on Spire base their monthly business on. 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.

25. As of the date of the filing of this Complaint, Spire has not sought a waiver or variance from this Commission for the Tariff provisions cited by Spire in its Demand Letter.

26. In contrast, a number of pipeline operators proximate in location to Spire's system who also experienced the effects of Winter Storm Uri, including Southern Star,[3] and Panhandle Eastern Pipeline Company[4] are currently seeking waiver of OFO penalties. 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."

27. Southern Star is a key upstream pipeline providing the delivery of a majority of the gas consumed on Spire's system. In its Operational Flow Order Penalties Waiver Request, Southern Star states that "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." Southern Star

[3] Southern Star Central Gas Pipeline, Inc. has submitted an Operational Flow Order Penalties Waiver Request, which is currently pending before the Federal Energy Regulatory Commission, Docket No. RP21-618-000.

[4] 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.

thus recognizes that it is inequitable to charge OFO penalties in this situation, yet Spire has insisted that these penalties, calculated in an identical way and based on the same weather event, should be paid by its own customers, some of which would have been subject to the Southern Star OFO penalties.

28. Additional information is needed to determine if Spire complied with the Tariff provisions regarding the issuance of the OFO, the notice provided to customers, the duration of the OFO and any penalty calculations arising therefrom.

29. Spire's Tariff Sheet No. 16.8(B)(2) provides that Spire "may issue Operational Flow Orders (OFO's) to Transportation Customers *as necessary to protect the integrity of its system* or any portion thereof and/or to insure compliance with the requirements of upstream pipeline companies." Spire's Tariff Sheet No. 16.8(B)(2) also requires that "[a]ny OFO, along with associated conditions and penalties, shall be limited, as practicable to address *only the problem(s)* giving rise to the need for the OFO."

30. Spire's Tariff Sheet No. 16.8(B) provides that "Notice of an OFO shall specify the nature of the problem sought to be addressed, the anticipated duration of the required compliance and the parameters of such compliance. Upon termination of an OFO, Spire West will post on its website the rationale for lifting that particular OFO."

31. Spire did not curtail deliveries or, on information and belief, experience any operational integrity issue with its system. The aggregated volume of gas delivered to Spire customers served by CNEG was in physical balance with the gas used by such Customers, as contractually obligated, at the end of February. All gas delivered by Spire to CNEG's customers in February had been made up to Spire by CNEG, in kind, in accord with the Tariff and applicable contracts.

32. Furthermore, even if Spire did experience or anticipate limited, isolated pipeline integrity issues during the OFO period, the OFO in this case was kept in place beyond the time Spire knew or should have known that the conditions requisite for an OFO did not exist and were not necessary to protect the integrity of its system, as the Tariff requires. If so, Spire's OFO was thus not "limited, as practicable to address only the problem(s) giving rise to the need for the OFO." Once apparent that the Spire system had not in fact experienced system integrity issues, had seen no potentially harmful drop in system pressures not manageable in the ordinary course of business, had experienced no actual or likely interruption in their ability to make deliveries, Spire should have withdrawn the OFO.

33. Finally, it is not clear that Spire's OFO notices were properly given and provided the requisite specification of the nature of the problem to be addressed, the anticipated duration of the required compliance and the parameters of such compliance, as required by the Tariff.

34. Other pipeline companies upstream of Spire have applied for full waiver of all OFO penalties for the OFO period, noting that the penalties "would add an enormous burden to what were already exorbitant gas costs for customers" and result in economic hardship for a large number of affected customers. Other pipelines and LDCs have rescinded OFOs and voluntarily waived or sought waiver of OFO penalties for the same time period arising out of the same weather event.[5]

[5] Algonquin Gas Transmission Pipeline posted on its electronic bulletin board ("EBB") that it will waive all OFO penalties from February 15, 2021 through February 18, 2021; ANR Pipeline Company posted that it will waive all OFO penalties related to Winter Storm Uri; Tallgrass Interstate Gas Transmission announced that it will be waiving certain OFO penalties and reducing the penalties owed by using a lower priced index to calculate penalties; Texas Eastern Transmission, LP posted on its EBB that it will waive all OFO penalties for the period of February 15, 2021 through February 18, 2021; Vectren has taken action to relieve OFO costs for both its Indiana utilities, including the allowance of imbalance trading for the OFO days as well as reverting to an imbalance penalty structure based on non-OFO days.

35. Spire's imminent threat to issue bills to hundreds of Missouri gas transportation customers served by CNEG despite the issues raised above as to the justification, notification, calculation, and duration of the OFO penalties would unnecessarily sow confusion and cause collateral negative consequences for hundreds of Missouri customers.

MOTION FOR EXPEDITED TREATMENT

CNEG moves this Commission for expedited treatment to prohibit Spire from billing or otherwise attempting to collect from CNEG or any Missouri customer any portion of the approximately $35 million penalties claimed by Spire until the resolution of this Complaint and to prohibit Spire from taking any retaliatory measure, including but not limited to termination of service or of the related transportation, or aggregation agreements with any affected Missouri customer or with CNEG. CNEG's Motion and the relief requested herein are in the public interest within the meaning of RSMo §386.390 and 20 CSR 4240-2.080(14).

Spire issued an initial Demand Letter for "immediate" payment of approximately $39 million in OFO penalties. Further, Spire's Demand Letter includes a threat to imminently issue bills to hundreds of Missouri gas transportation customers served by CNEG. As a result, hundreds of Missouri ratepayers could soon be receiving bills seeking to impose penalties that are as high as 600 times the beginning of the month price of gas. Those customers could receive bills **as soon as April 1, 2021**.

Expedited action by the Commission is needed to bring clarity and resolution to an issue that affects hundreds of Missouri gas transportation customers who would otherwise face demand for immediate payment of substantial penalties even while the amount and propriety of those penalties is disputed.

WHEREFORE, CNEG respectfully requests the Commission:

(1) issue an Order voiding the OFO penalties, or in the alternative granting Spire a waiver or variance from the requirements of Tariff Sheets 16.13-16.14 and/or prohibiting Spire from billing or otherwise attempting to collect from CNEG or any Missouri customer any portion of the approximately $35 million penalties claimed by Spire until the resolution of this Complaint;

(2) review this Complaint and require Spire to file a full, itemized Answer;

(3) set an appropriately abbreviated intervention period;

(4) order Spire to preserve all evidence of its actual costs and expenses incurred, and nomination, scheduling, and balancing activities, regarding gas purchases, storage, sales and transportation service in Missouri during the month of February 2021;

(5) direct Staff to conduct the necessary investigation and render the necessary recommendations under the circumstances;

(6) stay Spire from taking any retaliatory measures against CNEG or its Missouri customers as a result of seeking the relief requested herein or in refusing to pay approximately $35 million penalties and charges claimed by Spire, which would include but is not limited to terminating or altering the services provided to CNEG or its Missouri customers until the resolution of this Complaint; and

(7) order such other relief to CNEG and its Missouri customers that the Commission deems just and necessary.

March 26, 2021.

Respectfully submitted,

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OF COUNSEL: *(Payment of Missouri Supreme Court Fee and Applications for Admission Pro Hac Vice to be filed immediately following assignment of Case Number to this Complaint)*

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