BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Symmetry Energy Solutions, LLC Complainant, v. Empire District Gas Company d/b/a Liberty Respondent.	))))))))))	**File No. GC-2022-0062**

CERTIFIED MAIL

NOTICE OF COMPLAINT AND ORDER TO NOT DISCONTINUE SERVICE

Issue Date: August 31, 2021 Effective Date: August 31, 2021

On August 30, 2021, Symmetry Energy Solutions, LLC (Symmetry) filed a complaint against The Empire District Gas Company d/b/a Liberty (Liberty). Pursuant to Commission Rule 20 CSR 4240-2.070, Liberty has 30 days from the date of this notice to file an answer. Since this notice is being issued on August 31, 2021, the answer is due no later than September 29, 2021.

Provisions governing procedures before the Commission are found in Commission Rule 20 CSR 4240, Chapter 2. In particular, the procedures relating to discovery are found at Commission Rule 20 CSR 4240-2.090.

Symmetry's complaint disputes the propriety of approximately $11.9 million in operational flow order (OFO) penalties related to the February 2021 cold-weather event, and alleges that Liberty has threatened to shutoff the flow of gas to Symmetry and its customers unless the penalties are paid by August 31, 2021. Because the OFO penalties are in dispute, Symmetry's failure to pay those penalties is not a basis for discontinuance of service under Commission Rule 20 CSR 4240-13.050. The Commission will order Liberty to not discontinue service to Symmetry or Symmetry's customers during the pendency of this complaint, or until further order of the Commission.

THE COMMISSION ORDERS THAT:

1. The Commission's Data Center shall send, by certified mail, a copy of this notice and order and a copy of the complaint to Liberty at:

The Empire District Gas Company
Legal Department
P.O. Box 127
602 S. Joplin Ave.
Joplin, MO 64802

2. Liberty shall file its answer to this complaint no later than September 29, 2021. All pleadings shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360,

or shall be filed using the Commission's electronic filing and information service.

3. Liberty shall not discontinue service to Symmetry or Symmetry's customers during the pendency of this complaint, or until further order of the Commission.

4. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Morris L. Woodruff, Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 31st day of August, 2021.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2021- _____
	)	
Empire District Gas Company d/b/a Liberty Utilities or Liberty,	)	
	)	
Respondent.	)	

COMPLAINT AND MOTION FOR EXPEDITED TREATMENT

Symmetry Energy Solutions, LLC ("Symmetry"), pursuant to §386.390 Revised Statutes of Missouri ("RSMo"), 20 C.S.R. 4240-2.070, 20 C.S.R. 4240-2.080(14), and the facts and law cited below, complains as follows regarding the Empire District Gas Company d/b/a Liberty Utilities or Liberty ("Empire").

I. INTRODUCTION

1. Symmetry files this Complaint because Empire is failing to comply with the requirements of its tariff by demanding that Symmetry—and Symmetry's customers—pay over $11 million in Operational Flow Order ("OFO") penalties, and because Empire is threatening to shut off Symmetry's access to Empire's distribution system if Symmetry does not pay the demanded amount in full by August 31, 2021. Symmetry seeks an order from the Commission prohibiting Empire from further attempts to collect these penalties, and from terminating Symmetry's and its customers' access to Empire's system during the pendency of this case.

2. The OFO penalties Empire is seeking to recover are improper under Empire's tariff. Empire issued the OFO in question in connection with the February 2021 Winter Storm Event known as Winter Storm Uri. The *only asserted basis* for Empire's OFO was that an

upstream pipeline had itself issued an OFO. However, that upstream pipeline later asked the Federal Energy Regulatory Commission ("FERC") to waive *all* penalties associated with its OFO. The pipeline explained that Winter Storm Uri was a historic and unprecedented event, and entities involved—including shippers like Symmetry—had collaborated to ensure system reliability, but many shippers were nevertheless "unable to adhere completely to the OFOs" due to circumstances wholly out of their control.[1] Empire's parent company tried to block the waiver, filing an official protest, but FERC granted the pipeline's request. In so doing, FERC acknowledged that Winter Storm Uri presented unprecedented circumstances, shippers collaborated with the pipeline to ensure system reliability, and imposing "extreme penalties [would] not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability."[2] Furthermore, FERC explained that "*no shipper (including Empire) has a right to a windfall as the result of administration of penalties on other entities*."[3]

3. Because FERC has waived the upstream pipeline's OFO penalties, the situation that purportedly justified Empire's OFO—namely the threat of OFO penalties from an upstream supplier—no longer exists. And that FERC concluded that system integrity was maintained, and the entities involved collaborated, rendering any such penalties unnecessary as a deterrent, further undermines any argument that Empire has a basis to continue to press for their imposition. Empire's tariff requires that any OFO and associated penalties be limited "to address only the problem(s) giving rise to the need for the OFO." Because the basis on which Empire's OFO was issued no longer exists, and because no such problems arose and no associated deterrent is required, Empire is not entitled to collect the penalties it seeks.

[1] Exhibit A ¶¶ 4-5.
[2] *Id*. ¶ 25.
[3] *Id*. ¶ 26 (emphases added).

4. Nevertheless, Empire is demanding that Symmetry and its customers pay the *maximum* penalties for violation of an improper and unjustified OFO, which total over $11 million. Empire has provided no justification for this demand, and has certainly not explained how these penalties are limited or necessary to address the particular “problem” giving rise to the OFO, as required pursuant to Empire’s tariff. The penalties are improper under Empire’s tariff, and Empire should not be permitted to collect them.

5. Moreover, Empire’s parent has already tried, and failed, to argue that penalties on this gas system are appropriate. As noted above, Empire filed a protest with FERC to try to stop the penalty waiver. Empire’s protest failed, and FERC granted the waiver. Empire should not be permitted to end run its loss before FERC, and unilaterally impose penalties based on those that were waived.

6. For these reasons, the Commission should prohibit Empire from collecting these improper OFO penalties.

7. In addition, at this time the Commission should order that Empire refrain from terminating Symmetry and its customers’ access to Empire’s system during the pendency of this case, as Symmetry has complied with all terms of Empire’s tariff, and brings this dispute regarding the application of the relevant tariff provisions in good faith, and disputes the amounts billed to it by Empire.[4]

[4] *See Whitsett v. City of St. Clair*, 80 S.W.2d 696 (Mo. App. 1935); *State ex rel. Spanish Lake Serv., Inc. v. Luten*, 500 S.W.2d 46 (Mo. App. 1973) (holding that a utility cannot threaten discontinuation of service over a billing dispute); Exhibit B (Aggregator Agreement between Empire Gas and Symmetry) ¶ 8 (limits Empire’s right to discontinue services to situations where Marketer/Aggregator fails to pay *undisputed* invoices); Empire Gas Tariff Sheet No. 29, paragraph 16; Tariff Sheet No. 31, Paragraphs 22, 27. Symmetry has complied with all tariff obligations and has a good faith dispute over billing.

II. BACKGROUND

A. The Parties

8. Empire is a public utility and gas corporation incorporated under the laws of the State of Kansas, with its principal office located at 602 South Joplin Avenue, Joplin, Missouri. Empire is a wholly-owned subsidiary of The Empire District Electric Company ("Empire Electric") and an indirect subsidiary of Liberty Utilities.

9. Empire is primarily engaged in the business of distributing and transporting natural gas to customers in 42 counties in the State of Missouri. Empire is subject to the jurisdiction of the Commission under Chapters 386 and 393 of the Revised Statutes of Missouri.

10. Symmetry is a leading retail natural gas marketer providing over one trillion cubic feet of natural gas per year to approximately one hundred thousand (100,000) customers in thirty-five states, including Missouri. Symmetry's customers in certain areas of Missouri rely on Empire to transport to them the natural gas supplied by Symmetry. Symmetry's address is 1111 Louisiana Street, Houston, Texas 77002.[5]

11. Symmetry is authorized to file this Complaint against Empire under 20 C.S.R. 4240-2.070.

12. Prior to this filing, representatives from Symmetry directly communicated with Empire about this Complaint.

13. 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.

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[5] Effective September 30, 2021, Symmetry's address will change to 9811 Katy Freeway, Suite 1400, Houston, TX 77024.

14. 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.

B. Empire's Tariff

15. Empire's current tariff (the "Tariff") was issued on August 17, 2020 and became effective on October 16, 2020.

16. Tariff Sheets 23 through 46 govern Empire's provision of transportation service. The transportation services program "allows non-residential customers the opportunity to purchase natural gas directly from producers and arrange their own delivery or to purchase gas from marketers or aggregators [such as Symmetry] who have entered into contracts with [Empire] to act on behalf of customers to supply gas to [Empire's] city gate for delivery on a firm or interruptible basis on [Empire's] distribution system." (Sheet No. 23.)[6]

17. The Tariff allows Empire to issue OFOs in certain specified circumstances. An OFO is "[a]ny order from [Empire] or applicable Interstate Transportation pipeline(s) that requires Customer, Aggregator or Marketer to maintain the daily delivery of specified quantities of natural gas to the Receipt Point." (Sheet No. 26 at ¶ 29.) The Tariff provides that Empire may call an OFO when (1) it "experiences failure of transmission, distribution or gas storage facilities"; (2) "transmission system pressures or other unusual conditions jeopardize the operation of [Empire's] system"; (3) Empire's "transportation, storage and supply resources are being used at or near their maximum rate deliverability"; (4) "any of [Empire's] transporters or suppliers call the equivalent of an OFO or Critical Day"; or (5) Empire "is unable to fulfill its

[6] Empire and Symmetry's predecessor Seminole Energy Services, LLC also entered into a Marketer/Aggregator Agreement in April 2012 (attached hereto as Exhibit B).

firm contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of [its] system." (Sheet No. 43 at ¶ 1.)

18. If a customer uses more or less gas than a marketer provides during an OFO, the customer and/or marketer may be subject to penalties. Specifically, if "Customer, Aggregator or Marketer ... take[s] delivery of an amount of natural gas from [Empire] that is ... more than the hourly or daily amount being received by [Empire] from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account," then "Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline for such Unauthorized Overruns during the duration of the OFO," "with the exception of a 5% daily tolerance[.]" (Sheet No. 43 at ¶ 2(A).)

19. Importantly, the Tariff 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*." (Sheet No. 43 at ¶ 1 (emphases added).)

C. The February 2021 Winter Storm And Empire's OFO

20. In mid-February 2021, Missouri and many other states across the Midwest, South and Southwest experienced a severe winter storm known as Winter Storm Uri. Winter Storm Uri had a severe impact on the supply and transportation of natural gas in Missouri and surrounding states.

21. The vast majority of natural gas that Symmetry supplies to its customers on Empire's system is transported to Empire on the Southern Star Central Gas Pipeline, Inc. ("Southern Star").

22. On information and belief, Empire receives a substantial portion of its gas from the Southern Star pipeline.

23. On February 9, 2021, Southern Star issued an OFO because of feared impacts of Winter Storm Uri on the integrity of Southern Star's pipeline.[7] Southern Star's OFO was in effect from February 11 to February 17, 2021. Empire's Tariff allows it to issue an OFO when "any of [its] transporters or suppliers call the equivalent of an OFO or Critical Day[.]" (Sheet No. 43 at ¶ 1.) Therefore, in response to Southern Star's OFO, Empire issued its own OFO, writing to Symmetry, as follows:[8]

> All,
>
> Please be advised Southern Star has issued an OFO effective the start of gas day **Tuesday, February 9, 2021 until Wednesday, February 17, 2021**.
>
> Empire will do the same.

Critically, Empire provided no basis for its OFO beyond the mere fact of the Southern Star OFO.

24. On March 30, 2021, Empire sent letters to Symmetry's customers on Empire's system, stating that Symmetry failed to properly nominate or deliver gas during Empire's OFO, that Empire was assessing an OFO penalty under its tariff, and that, "[w]hile these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers [i.e., Symmetry], and then we would bill any unrecovered balances to you."[9]

25. On April 15, 2021, Empire sent letters to Symmetry demanding payment of a total of $11,871,298.69 in OFO penalties.[10]

26. On April 29, 2021, Symmetry sent a letter to Empire stating that Symmetry disputes the asserted penalties.[11]

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[7] Exhibit C at 1 ("Southern Star … issued various OFOs to protect the integrity of its pipeline system under Section 10 of the General Terms and Conditions (GT&C) of its tariff during a period of sustained cold and severe winter conditions on the Southern Star System.").
[8] Exhibit D.
[9] Exhibit E.
[10] Exhibit F.
[11] Exhibit G.

D. FERC Subsequently Waives Southern Star's OFO Penalties

27. The only stated justification for Empire's OFO was that Southern Star issued an OFO for the same period.[12] But the very same Southern Star OFO on which Empire predicated its OFO and associated penalties has since been waived, the concerns that resulted in the OFO did not materialize, and FERC found that the penalties were not required as a deterrent.

28. On March 11, 2021, Southern Star submitted to FERC a request to waive all penalties associated with its OFOs during Winter Storm Uri, and on April 9, 2021, FERC granted that request.

29. As FERC explained:

> In its filing, Southern Star proposes to waive all OFO penalties for all shippers and delivery point operators who may have incurred penalties during the OFO period, in recognition of the historic nature of the winter weather event. Southern Star states that the purpose of OFOs is to deter behavior by shippers and point operators, and ensure the integrity and reliability of its pipeline and storage operations. Southern Star reports that shippers and point operators in aggregate behaved in a manner that allowed it to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service. [¶] Southern Star acknowledges that many shippers and delivery point operators were unable to adhere completely to the OFOs and would be subject to penalties absent waiver. Nevertheless, Southern Star reports that many of the shippers and delivery point operators assisted Southern Star during the event and helped it to provide firm service without curtailment. Southern Star believes that a waiver of all OFO penalties is appropriate where the aggregate level of compliance alleviated the strain on its system and the collaborative effort among shippers and delivery point operators avoided impairment of Southern Star's ability to operate its system.[13]

30. Southern Star further stated that it "believe[d] that the totality of the circumstances presented during the OFO Period, including the collaborative behavior by its

[12] *See* Exhibit D.
[13] Exhibit A ¶¶ 4-5.

shippers and delivery point operators who worked with Southern Star and assisted Southern Star in continuing to provide firm service without curtailment, warrants waiver of OFO penalties incurred during this period ... in addition to the steep increases to the costs of gas supplies during the event."[14]

31. Nine parties—including multiple local distribution companies—filed comments supporting Southern Star's waiver request.[15] *Only one party—Empire Electric, Empire's parent company—filed a protest*.[16] In its protest, Empire Electric argued, among other things, "that it believe[d] that it complied with all OFOs during the event and that it st[ood] to receive OFO penalty credits" under Southern Star's tariff unless the penalties were waived.[17]

32. FERC agreed with Southern Star (and the numerous parties who supported Southern Star's request) and granted the waiver over Empire Electric's protest. FERC noted that Southern Star has the authority under its tariff "to waive penalties incurred by shippers as a result of an OFO violation," and it granted Southern Star's further request for a waiver of penalties incurred by delivery point operators.[18] In doing so, FERC explained:

> [W]e find that Southern Star acted in good faith by collaborating with shippers and delivery point operators to ensure system reliability during the extreme weather event.... [Additionally,] we find that the requested waiver addresses a concrete problem because, absent the waiver, Southern Star's delivery point operators would face extreme penalties. ***Moreover, these extreme penalties do not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability.*** The extreme weather event presented circumstances ***outside the control*** of the delivery point operators. Southern Star found no evidence of gamesmanship by any entity incurring penalties during this critical time. Rather, based upon the record in this proceeding, it appears that the cooperation of the pipeline's customers (including delivery

[14] *Id*. ¶ 17.
[15] *Id*. ¶ 8.
[16] *Id*.
[17] *Id*. ¶ 14.
[18] *Id*. ¶¶ 21-22.

> point operators), helped maintain system integrity and, as a result, they should not be burdened by extreme penalties.[19]

33. FERC specifically addressed Empire Electric's objections to the waiver and determined they were meritless:

> [W]e find that the requested waiver does not result in undesirable consequences, such as harm to third parties. Empire argues that a blanket waiver would reward delivery point operators who jeopardized pipeline security and reliability by violating Southern Star's OFO. We disagree. As noted above, Southern Star found no evidence of gamesmanship by parties incurring penalties. Instead, Southern Star explained that the cooperation of delivery point operators helped maintain system integrity. Likewise, ***no shipper (including Empire) has a right to a windfall as the result of administration of penalties on other entities***.[20]

III. THE IMPOSITION OF OFO PENALTIES VIOLATES EMPIRE'S TARIFF AND SYMMETRY'S DUE PROCESS RIGHTS

34. Empire's demand for payment of over $11 million in OFO penalties, after FERC has waived Southern Star's underlying OFO, violates Empire's Tariff and Symmetry's rights to due process.

35. Empire's Tariff provides 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." (Sheet No. 43 at ¶ 1.) The only "problem" giving rise to the purported "need" for Empire's OFO was the fact that Southern Star issued an OFO, and if Empire and other parties failed to comply with Southern Star's OFO, they faced possible penalties. However, now that Southern Star's OFO penalties have been waived, there is no "problem" for Empire's OFO to address. Therefore, pursuant to the clear terms of Empire's Tariff, Empire's OFO penalties must be waived.

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[19] *Id*. ¶¶ 23, 25 (emphases added).
[20] *Id*. ¶ 26 (emphases added).

36. Moreover, to the extent that Empire argues that the relevant "problem" was the underlying threat to the integrity of the system, or the potential that system participants would not act in a collaborative way to protect the system, neither problem arose. FERC specifically found that integrity and reliability were maintained, and that participants acted cooperatively. Indeed, FERC found that the true problem was the opposite from that which Empire appears to be positing. FERC held that the waiver, rather than the penalties, "addresses a concrete problem because, absent the waiver, Southern Star's delivery point operators would face extreme penalties. Moreover, these extreme penalties do not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability." The imposition of OFO penalties against Symmetry would contravene both the letter and the spirit of FERC's order.

37. Additionally, Empire is in violation of Tariff Sheet No. 43 because Empire has billed Symmetry and its customers for OFO penalties which are not allowable under the Tariff.

38. Last, penalizing Symmetry in the amount of $11 million would violate Symmetry's right to due process. As FERC specifically found, OFO penalties here do not serve the purpose of penalties because they serve no deterrent effect. To the contrary, as FERC recognized, during the unprecedented conditions of Winter Storm Uri, the relevant parties—like Symmetry—acted cooperatively and collaboratively. They tried their best to deliver gas, even though sometimes they could not do so, for reasons wholly out of their control.[21] Notably, to the extent Symmetry was short on any given day during the storm, Symmetry was balanced in its deliveries and had made Empire whole by the end of February. Understanding that the Commission has no authority to determine the constitutionality of laws,[22] to preserve this issue

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[21] *See* Exhibit A ¶ 25.

[22] *Duncan v. Missouri Bd. For Architects, Professional Engrs., & Land Surveyors*, 744 S.W.2d 524, 530-31 (Mo. App. 1988).

for appellate review Symmetry asserts that Empire's attempt to collect over $11 million in penalties when Empire suffered no actual system integrity issues, Empire was not damaged, and Symmetry engaged in no misconduct, is a violation of the due process clauses of both the Missouri and United States Constitutions.

IV. MOTION FOR EXPEDITED TREATMENT TO PROHIBIT EMPIRE FROM DISCONNECTING SERVICE TO SYMMETRY AND ITS CUSTOMERS DURING THE PENDENCY OF THIS CASE

39. Symmetry moves this Commission for an order prohibiting Empire from disconnecting Symmetry and its customers from Empire's system, and from taking other retaliatory measures, during the pendency of this case. Empire has threatened to unlawfully terminate Symmetry's access to Empire's system if Symmetry does not pay the demanded amount by August 31, 2021. This is an abuse of Empire's market power and tariff, and Empire has no lawful justification for taking such drastic action.

WHEREFORE, Symmetry respectfully requests the Commission:

a. on or before August 31, 2021, issue a preliminary Order prohibiting Empire from taking any retaliatory measures against Symmetry or its Missouri customers as a result of seeking the relief requested herein or in refusing to pay the approximately $11 million in disputed penalties and charges claimed by Empire, which would include but is not limited to terminating or altering the services provided to Symmetry or its Missouri customers during the pendency of this case;

b. issue an Order voiding the OFO, or in the alternative waiving the provisions of Tariff Sheet 43 authorizing the levying of OFO penalties, or in the alternative prohibiting Empire from billing or otherwise attempting to collect from Symmetry or any Missouri customer any portion of the over $11 million in penalties claimed by Empire;

c. review this Complaint and require Empire to file a full, itemized Answer;

d. set an appropriate intervention period;

e. order Empire 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;

f. direct Staff to conduct the necessary investigation and render the necessary recommendations under the circumstances; and

g. order such other relief to Symmetry and its Missouri customers that the Commission deems just and necessary.

Respectfully submitted,

HEALY LAW OFFICES, LLC

By: /s/ Douglas L. Healy
Peggy A. Whipple, #54758
Douglas L. Healy, #51630
Terry M. Jarrett, #45663
3010 E. Battlefield, Suite A
Springfield, MO 65804
peggy@healylawoffices.com
doug@healylawoffices.com
terry@healylawoffices.com
Telephone: (417) 864-7018

Attorneys for Complainant Symmetry Energy Solutions, LLC

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*)

LATHAM & WATKINS LLP
Steven M. Bauer
California Bar No. 135067
Margaret A. Tough
California Bar No. 218056
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600

LATHAM & WATKINS LLP
Katherine A. Sawyer
California Bar No. 330412
Nathan M. Saper
California Bar No. 294492
355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Telephone: (213) 485-1234

175 FERC ¶ 61,015
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Southern Star Central Gas Pipeline, Inc. Docket No. RP21-618-000

ORDER GRANTING WAIVER REQUEST

(Issued April 9, 2021)

1. On March 11, 2021, Southern Star Central Gas Pipeline, Inc. (Southern Star) submitted a request for waiver of the invoicing, collection and related crediting of penalties associated with Operational Flow Orders (OFO) issued February 11 through February 19, 2021 (OFO Period), during the recent extreme winter weather event. As discussed below, we grant Southern Star's request for waiver of the invoicing, collection, and crediting of penalties as provided for in section 10 of the General Terms and Conditions (GT&C) of its tariff for non-compliance associated with the OFOs issued during the OFO Period.

I. <u>Background and Southern Star's Filing</u>

2. Southern Star states that it submitted reports to the Commission on February 12 and 19, 2021 to notify the Commission that it had issued OFOs to protect the integrity of its pipeline system during the extreme weather event. Southern Star reports that it issued "standard" OFOs as provided for under GT&C section 10.[1] Section 10 provides for penalties of $5 per dekatherm (Dth) or 2.5 times an index price. Furthermore, any storage shipper who exceeds withdrawal limits is assessed a penalty equal to 365 times the maximum daily reservation rate for the applicable area per Dth, subject to tolerance levels.

3. Southern Star states that it issued Storage and Delivery Location OFOs during the February weather event. The Storage OFOs were addressed to firm storage customers, requiring shippers to remain within their contractual quantities, while the Delivery Location OFOs were addressed to delivery point operators and required takes at delivery

[1] Section 10, Operational Flow Orders, is located on Sheet Nos. 249 through 256A in Southern Star's tariff.

points to not exceed the sum of the confirmed scheduled transportation quantities at the delivery point.

4. In its filing, Southern Star proposes to waive all OFO penalties for all shippers and delivery point operators who may have incurred penalties during the OFO period, in recognition of the historic nature of the winter weather event. Southern Star states that the purpose of OFOs is to deter behavior by shippers and point operators, and ensure the integrity and reliability of its pipeline and storage operations. Southern Star reports that shippers and point operators in aggregate behaved in a manner that allowed it to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service.[2]

5. Southern Star acknowledges that many shippers and delivery point operators were unable to adhere completely to the OFOs and would be subject to penalties absent waiver. Nevertheless, Southern Star reports that many of the shippers and delivery point operators assisted Southern Star during the event and helped it to provide firm service without curtailment. Southern Star believes that a waiver of all OFO penalties is appropriate where the aggregate level of compliance alleviated the strain on its system and the collaborative effort among shippers and delivery point operators avoided impairment of Southern Star's ability to operate its system.

6. Southern Star contends that GT&C section 8.8 provides it with discretion to waive any one or more defaults by a shipper.[3] Southern Star, however, states that it is appropriate to inform the Commission and seek its approval of Southern Star's proposal to waive the collection and crediting of the OFO penalties incurred for deviations from

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[2] Southern Star Filing at 2.

[3] *Id.* Southern Star cites its OFO Report in Docket No. RP15-194-000 (Nov. 21, 2014) as an example of how it has used this authority in the past. Section 8.8, Operating Conditions for Transportation Service, located on Sheet No. 225 of Southern Star's tariff, provides:

> Southern Star shall not be required to perform or continue service on behalf of any Shipper that fails to comply with the terms contained in this Section 8 and the terms of the applicable rate schedule and service agreement. Southern Star shall have the right to waive any one or more specific defaults thereof by any Shipper; provided, however, that no such waiver shall operate or be construed as a waiver of any other existing or future default or defaults, whether of a like or different character.

OFOs that occurred during this OFO Period, rather than wait until its annual report is filed to address any issues related to such waivers.

7. Southern Star also asks the Commission to approve waiver of the invoicing, collection, and related crediting of OFO penalties incurred by shippers and delivery point operators during the OFO Period. Southern Star contends a waiver serves the public interest and is consistent with prior Commission approvals under similar circumstances.[4] Southern Star requests that the Commission approve this request no later than April 9, 2021 to provide certainty regarding this billing issue prior to the issuance of invoices for the month.

II. Notice, Intervention, and Responsive Pleadings

8. Public notice of Southern Star's filing was issued on March 15, 2021. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[5] Atmos Energy Corporation (Atmos Energy), City Utilities of Springfield, Missouri (City Utilities), The Evergy Companies (Evergy),[6] Exelon Corporation (Exelon),[7] Symmetry Energy Solutions, LLC (Symmetry), Union Electric Company d/b/a Ameren Missouri (Ameren Missouri), and WoodRiver Energy, LLC and BlueMark Energy, LLC (WoodRiver and BlueMark) filed comments supporting the filing. Spire Missouri Inc. (Spire Missouri) filed comments reserving the right to add future comments based on further evaluation of the proposal and the events that unfolded during the OFO Period. Empire District Electric Company (Empire) filed a protest.

9. On March 19, 2021, Black Hills Service Company, LLC (Black Hills) filed late comments in support of the proposal. On March 23, 2021, Midwest Energy, Inc. (Midwest Energy) also filed a late intervention and comments in support of the waiver request. On March 24, 2021, Southern Star filed a motion to leave to answer and an answer. On March 26, 2021, Empire filed a motion to leave to answer and an answer. Pursuant to Rule 214, all timely motions to intervene and any unopposed motion to

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[4] Southern Star Filing at 3 (citing *E. Tenn. Nat. Gas, LLC*, 166 FERC ¶ 61,096 (2019); *Tex. E. Transmission, LP*, 155 FERC ¶ 61241 (2016); *E. Tenn. Nat. Gas, LLC,* 151 FERC ¶ 61,106 (2015); *El Paso Nat. Gas Co.*, 136 FERC ¶ 61,219 (2011)).

[5] 18 C.F.R. § 154.210 (2020).

[6] The Evergy Companies consist of Evergy Kansas Central Inc., Evergy Metro, Inc., and Evergy Missouri West, Inc.

[7] Exelon Corporation includes its subsidiaries Exelon General Company, LLC and Constellation NewEnergy-Gas Division, LLC.

intervene out-of-time filed before the issuance date of this order are granted.[8] Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. We also accept Black Hills' and Midwest Energy's late-filed comments, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.[9]

10. Furthermore, pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[10] answers to protests and answers to answers are prohibited unless otherwise ordered by the decisional authority. We accept the answers of Southern Star and Empire because they provide information that will assist us in our decision-making process.

11. Commenters supporting the requested waiver note that the unprecedented weather event caused extreme disruptions which made normal operation during the OFO Period nearly impossible.[11] Additionally, some commenters argue that because shippers and delivery point operators behaved in a manner that allowed Southern Star to continue operations without curtailment, the Commission should approve the proposal.[12] Exelon states that during the OFO Period their primary focus was ensuring that the needs of essential human needs customers were met amid wildly variable market conditions.[13] Commenters also note that the Commission has granted waivers previously for similar unprecedented conditions.[14]

12. Some commenters assert that the penalties that Southern Star wishes to waive did not work to deter the bad behavior that they are meant to deter, and that collecting the

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[8] 18 C.F.R. § 385.214 (2020).

[9] *Am. Elec. Power Serv. Corp.*, 173 FERC ¶ 61,264, at P 32 (2020).

[10] 18 C.F.R. § 385.213(a)(2) (2020).

[11] Exelon Comments at 2-3; Symmetry Comments at 2.

[12] City Utilities Comments at 3; Ameren Missouri Comments at 2; Atmos Comments at 4.

[13] Exelon Comments at 3.

[14] BlueMark and WoodRiver Comments at 2 (citing *El Paso Nat. Gas Co.*,136 FERC ¶ 61,219, at P 16); Symmetry Comments at 3 (citing *E. Tenn. Nat. Gas, LLC*, 166 FERC ¶ 61,096; *Tex. E. Transmission, LP*, 155 FERC ¶ 61,241 (2016); *E. Tenn. Nat. Gas, LLC*, 151 FERC ¶ 61,106; *El Paso Nat. Gas Co*., 136 FERC ¶ 61,219).

penalties is not intended to make other shippers whole.[15] Symmetry argues that collecting the penalties would be unjust, unreasonable, and inequitable because of the extreme natural gas prices in the region at the time of the OFO event.[16]

13. Some commenters argue that the proposal would alleviate the burden on customers, both the time spent reviewing and disputing OFO invoices and the high prices that would be paid.[17] Evergy states that the proposal will help align the competing priorities of natural gas generators in the electric and natural gas markets as both markets work to recover from the cold snap fallout.[18]

14. In its protest, Empire states that it believes that it complied with all OFOs during the event and that it stands to receive OFO penalty credits pursuant to GT&C section 10.4 unless penalties are waived.[19] Empire argues that Southern Star's authority to waive shipper defaults under GT&C section 8.8 does not relieve Southern Star of obligations under the tariff to collect and credit OFO penalties.[20] Empire asserts that GT&C section 8.8 does not apply to delivery point operators.[21] As a result, Empire contends that the proposal violates the filed rate doctrine by avoiding these obligations and that Southern Star failed to provide adequate support for waiving penalties based on individual actions.[22]

15. Empire further contends that Southern Star's request fails to address the provisions of the Commission four-factor test for granting waivers.[23] Empire asserts that a blanket waiver of penalties for all parties does not qualify as a solution that is narrowly tailored to

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[15] BlueMark and WoodRiver Comments at 2; Exelon Comments at 3; Evergy Comments at 2-3.

[16] Symmetry Comments at 3.

[17] Exelon Comments at 3; Symmetry Comments at 3; Atmos Comments at 4.

[18] Evergy Comments at 1-2.

[19] Empire Comments at 1.

[20] *Id.* at 7.

[21] *Id.*

[22] *Id.* at 6

[23] *Id.* at 7

address a specific need.[24] Empire argues Southern Star has not identified a specific concrete problem but has only offered that the waiver would save customers time, recognize the seriousness of the storm, and prevent those who cooperated with the pipeline from being penalized.[25]

16. Finally, Empire argues that the requested waiver would have undesirable consequences. Empire asserts that a blanket waiver would reward shippers and delivery point operators who jeopardized pipeline security and reliability by violating Southern Star's OFOs. Empire contends that such a broad waiver is likely to have the undesirable consequence of degrading the deterrence value of OFO penalties.[26]

17. In its answer, Southern Star states that it believes that the totality of the circumstances presented during the OFO Period, including the collaborative behavior by its shippers and delivery point operators who worked with Southern Star and assisted Southern Star in continuing to provide firm service without curtailment, warrants waiver of OFO penalties incurred during this period. Southern Star asserts that denial of the waiver request will result in undesirable consequences. Southern Star cites particular concern for small shippers, such as municipalities that may be unable to absorb the cost of such penalties in addition to the steep increases to the cost of gas supplies during the event.[27]

18. Southern Star also commits to review its tariff, and to seek customer input, regarding possible changes to enhance operations in an equitable and efficient manner, while at the same time protecting the operational integrity of the Southern Star system and its ability to meet primary firm obligations to customers. Southern Star intends to review with all its customers any potential tariff revisions prior to filing revised tariff provisions with the Commission for review and approval.

19. In its answer, Empire argues that Southern Star is essentially asking the Commission to trust that the waiver request satisfies the four-part waiver test. Empire argues that it is unclear to what extent Southern Star has actually evaluated the behavior of any individual shippers because it has not shared basic facts with the participants in this docket or the Commission. Additionally, Empire states that the waiver request is not of limited scope because of its indiscriminate application across all offenders equally.

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[24] *Id.* at 8

[25] *Id.*

[26] *Id.*

[27] Southern Star Answer at 7-8.

Lastly, Empire argues that Southern Star has not provided any support showing there will be no undesirable consequences to the waiver.

20. On April 2, 2021, Commission staff issued a data request to Southern Star asking for more information on the delivery point operators on its system, including a classification of the entities according to type of business and the level of penalties incurred during the OFO Period. In a response dated April 6, 2021, Southern Star provided a list of delivery point operators and levels of penalties for each entity. Southern Star also classifies each delivery point operator by type of business, such as distribution companies and direct end-users. The data provided by Southern Star showed impacts to a wide range of customers, including but not limited to, municipal utilities, industrial customers and local distribution companies. In general, the majority of impacted companies were small distribution companies and small direct customers.

III. <u>Discussion</u>

21. Under its tariff, Southern Star has the authority to waive penalties incurred by shippers as a result of an OFO violation. Specifically, section 8.8 of the GT&C provides that Southern Star may waive defaults by shippers of the applicable rate schedules and service agreements. Southern Star's rate schedules and service agreements incorporate by reference the GT&C, including section 10 pertaining to OFOs and related penalties.[28] Accordingly, we find Southern Star's proposal to waive these penalties for shippers is not an unduly discriminatory application of its tariff.

22. However, section 8.8 does not apply to delivery point operators. Regarding the penalties incurred by delivery point operators, we grant Southern Star's request for waiver of GT&C section 10. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.[29] We find that the circumstances of the instant case satisfy the foregoing criteria.

23. First, we find that Southern Star acted in good faith by submitting this filing on March 11, 2021, in advance of the requested date for Commission action and the issuance of invoices for penalties incurred during the February weather event. Additionally, we

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[28] *See, e.g.*, FTS Rate Schedule, Sheet No. 122, and Form of Service Agreement – FTS, Sheet No. 417.

[29] *See, e.g.*, *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

find that Southern Star acted in good faith by collaborating with shippers and delivery point operators to ensure system reliability during the extreme weather event.

24. Second, we find that the waiver request is limited in scope because Southern Star seeks a one-time waiver of the relevant tariff provision, and only for penalties incurred during the specific time period of the February weather event (i.e., February 11 through February 19, 2021).[30]

25. Third, we find that the requested waiver addresses a concrete problem because, absent the waiver, Southern Star's delivery point operators would face extreme penalties. Moreover, these extreme penalties do not accomplish the purpose of penalties, which is to deter behavior that could impair system reliability. The extreme weather event presented circumstances outside the control of the delivery point operators. Southern Star found no evidence of gamesmanship by any entity incurring penalties during this critical time.[31] Rather, based upon the record in this proceeding, it appears that the cooperation of the pipeline's customers (including delivery point operators), helped maintain system integrity and, as a result, they should not be burdened by extreme penalties.[32]

26. Finally, we find that the requested waiver does not result in undesirable consequences, such as harm to third parties. Empire argues that a blanket waiver would reward delivery point operators who jeopardized pipeline security and reliability by violating Southern Star's OFOs. We disagree. As noted above, Southern Star found no evidence of gamesmanship by parties incurring penalties. Instead, Southern Star explained that the cooperation of delivery point operators helped maintain system integrity. Likewise, no shipper (including Empire) has a right to a windfall as the result of administration of penalties on other entities. The Commission requires pipelines to

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[30] Southern Star informed the Commission that it issued nine OFOs between February 11 and February 19, 2021. *See* Southern Star Supplemental Notice of Issuance of Operational Flow Orders (Feb. 19, 2021).

[31] Southern Star Answer at 6.

[32] Southern Star informed the Commission that the price of gas on its system exceeded $600 per Dth at one point during the weather event. Because standard OFO penalties are calculated at 2.5 times the average price, the OFO penalties would add an enormous financial burden to delivery point operators. In Southern Star's April 6, 2021 data response, Southern Star reports that 27 different delivery point operators each incurred penalties exceeding $1 million. Furthermore, Southern Star estimates that in the aggregate delivery point operators incurred a total of $158 million in penalties.

credit penalties to shippers so they will not be a source of revenue to the pipeline.[33] Similarly, penalties are not intended to provide a windfall for other shippers, and these penalties do not reimburse shippers for any cost or relate to any service received by those shippers. In these circumstances, we find no harm to third parties resulting from the waiving of penalties.

27. We disagree with Empire's assertion that Southern Star's waiver request is inconsistent with the filed rate doctrine. We find that Southern Star's request is prospective in nature. In this case, Southern Star filed its request for waiver on March 11, 2021, prior to the deadline for the issuance and collection of penalties related to the February weather event. The Commission previously has granted waiver where the company has filed for authority to not issue invoices for OFO penalties in similar situations, prior to the billing date.[34]

<u>The Commission orders</u>:

Southern Star's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[33] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,315 (2000) (cross-referenced at 90 FERC ¶ 61,109).

[34] *E. Tenn. Nat. Gas, LLC*, 166 FERC ¶ 61,096.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern Star Central Gas Pipeline, Inc. Docket No. RP21-618-000

(Issued April 9, 2021)

DANLY, Commissioner, *concurring*:

1. I concur with today's order regarding the request filed by Southern Star Central Gas Pipeline, Inc. (Southern Star) to prospectively waive the invoicing, collection and related crediting of penalties incurred by shippers and delivery point operators following the issuance of Operational Flow Orders (OFOs). I agree that the waiver as it applies to shippers is consistent with section 8.8 of the General Terms and Conditions (GT&C) of Southern Star's tariff.[1] I also agree that we should grant the waiver of GT&C section 10 regarding invoicing, collecting, and crediting the penalties incurred by delivery point operators.

2. I write separately to express two concerns. *First*, OFOs are necessary to protect the integrity of pipeline systems. I am therefore generally disinclined to waive tariff provisions related to the issuance of OFOs and their corresponding penalties. However, in this case, where there were extraordinary circumstances and there is no evidence of gamesmanship by the parties subject to penalties, I support waiving those tariff provisions.

3. *Second*, I write to express my anxiety that this order may later serve as a model for an end-run around the filed rate doctrine. The tariff provisions establishing OFOs and associated penalties were not themselves the subject of this waiver request, but instead waiver was sought for the tariff provisions that relate to the ministerial actions that perfect already-incurred penalties. In cases such as this, it is doubly important for the Commission to make an honest and clear-eyed assessment of the propriety of the requested waiver under its four-part test. In particular, the Commission must engage in a searching examination of whether there are unintended consequences such as harm to third parties under the test's fourth factor. In this case, I am satisfied that no third party is being deprived of payments to which they would otherwise be entitled.

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[1] While the waiver request is consistent with GT&C section 8.8 and Commission policy, the language in that section appears to be overly broad and potentially inconsistent with Commission precedent. *See Panhandle E. Pipe Line Co., LP*, 174 FERC ¶ 61,237 (2021) (Danly, Comm'r, concurring).

For these reasons, I respectfully concur.

____
James P. Danly
Commissioner

continuum energy

February 19, 2016

Dear Valued Counterparty,

As you may be aware, Continuum Energy, L.L.C. ("Continuum") has entered into an agreement to sell its wholly owned subsidiary Continuum Retail Energy Service, L.L.C. and Continuum's natural gas wholesale business, currently operated by Continuum through its wholly owned subsidiary Continuum Energy Services, L.L.C., to CenterPoint Energy Services, Inc. (an indirect, wholly-owned subsidiary of CenterPoint Energy, Inc. (NYSE: CNP) (collectively "CenterPoint") (the "Transaction"). A copy of the press release announcing and further describing this transaction is attached.

As you are also aware, Continuum has an operational relationship with you and has entered into certain agreements with you as Continuum Energy Services, L.L.C. (f/k/a Seminole Energy Services, L.L.C.) as shown in the attached Schedule A. In anticipation of Continuum and CenterPoint closing the contemplated transaction, Continuum is requesting that the current agreements with you and **Continuum Energy Services, L.L.C.** be assigned to **Continuum Retail Energy Services, L.L.C**. effective with the Transaction, currently anticipated to be March 1, 2016.

We at Continuum understand that some documentation and information may be required for this assignment to be complete and we will work quickly to complete the requirements to effectuate the assignment. We will be in touch shortly to discuss such documentation. However, if no additional documentation is necessary for your company, please sign below (by an authorized representative) where indicated to memorialize your consent to assignment to those agreements shown on the attached Schedule A.

Below we have listed to some pertinent information about the entities to assist in the process. Please let us know what additional information be necessary.

Assignor: Continuum Energy Services, L.L.C.
Duns#: [redacted]
EIN:
W-9 EIN:*
* Entity is a Single Member LLC and Disregarded for IRS W-9 purposes

Assignee: Continuum Retail Energy Services, L.L.C.
Duns#: [redacted]
EIN:
W-9 EIN:*
* Entity is a Single Member LLC and Disregarded for IRS W-9 purposes

Both Assignor and Assignee are wholly subsidiaries of Continuum Energy, L.L.C.

For additional information you may contact your normal point of contact or me, Jay House VP of Corporate Business Development at (918) 492-2840.

Phone (918) 492-2840
continuumenergyservices.com
1323 East 71st Street
Suite 300
Tulsa, OK 74136

Thank you in advance for you time and attention to this matter.

Sincerely,

Jay House, VP Corporate Business Development

Assignment agreed and consented to this 19 day of February, 2016, to be effective on the closing of the Transaction.

The Empire District Gas Company
Print Company Name

By: ____________________
Sign Name Authorized Representative

Ron Gatz
____
Print Name

Vice President and COO Gas
Print Title

Enclosure

SCHEDULE A
LIST OF CONTRACTS TO BE ASSIGNED

SEMINOLE ENERGY SERVICES, L.L.C
DATED APRIL 22, 2012 (AGREEMENT IS ATTACHED)

THIS AGREEMENT WAS SUBSEQUENTLY ASSIGNED TO CONTINUUM ENERGY SERVICES, L.L.C.
DATED JULY 2, 2014 (ASSIGNMENT ATTACHED)

MARKETER/AGGREGATOR AGREEMENT

This Marketer/Aggregator Agreement ("Agreement") is made and entered into by and between **Seminole Energy Services, L.L.C.** ("Marketer/Aggregator") and The Empire District Gas Company ("Company").

WHEREAS, the Company's tariff sheets on file with the Missouri Public Service Commission ("Commission") allow qualified Customers of the Company to secure natural gas supplies directly from Company approved third parties and transport such supplies on the Company's local gas distribution system(s);

WHEREAS, the Company's tariff sheets on file with the Commission also allow a Marketer (as defined in the Company's transportation service tariff sheets) to combine and aggregate nominations, usage and balancing of natural gas receipts and deliveries for Customers; and, if a Marketer becomes responsible for the aggregation of Customers into an aggregation pool as prescribed in the Company's transportation service tariff sheets, then a Marketer will also become an Aggregator under the terms of the Company's transportation service tariff sheets and this Agreement;

WHEREAS, Marketer/Aggregator will provide natural gas to certain Customers pursuant to agreement(s) between such Customers and the Marketer/Aggregator, and the Marketer/Aggregator desires to transport such gas to Company's local gas distribution system(s) on behalf of the Customers;

WHEREAS, Company will transport gas supplies sold by Marketer/Aggregator to Customers over Company's local distribution system(s) to Customer's delivery points, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants contained herein, Marketer/Aggregator and Company hereby agree as follows:

1. **Customer Authorization and Verification.** Marketer/Aggregator has entered into, or will enter into one or more agreements with various Customers pursuant to which Marketer/Aggregator will sell and Customers will purchase natural gas. Marketer/Aggregator will obtain from each Customer a signed Customer Verification form. Marketer/Aggregator shall forward the Customer Verification form to the Company. All Customer forms must be received at least 30 days prior to the beginning of the month in which the Customer will begin transportation services subject to the Company's transportation service tariff sheets. Notice to the Company must be made by Marketer/Aggregator pursuant to the terms of the Company's transportation service tariff sheets on file with the Commission prior to a Customer leaving the services of Marketer/Aggregator or an aggregation pool.

2. **Rate.** Rates applicable to Marketer/Aggregator are identified in the Company's tariff sheets on file with the Commission, as the same may be amended from time to time.

3. **Balancing.** Imbalances created by Customer and/or Marketer/Aggregator will be reconciled in accordance with the Company's transportation service tariff sheets on file with the Commission.

4. **Capacity Assignment.** The assignment of capacity hereunder will be subject to the provisions of the Company's transportation service tariff sheets on file with the Commission.

5. **Termination of Participation of Aggregation Program.** Marketer/Aggregator shall notify Company of its intent to terminate its aggregation pooling program at least 90 days prior to the applicable month in which the pool program can be terminated subject to the Company's transportation service tariff sheets on file with the Commission.

6. **Billing and Payment.** Company shall read Customer's meters and Company shall provide the results of such meter readings to Marketer/Aggregator. Company will bill Customers directly for the Customer Charge, Delivery Charge, Imbalance Fees, (if not in a pool) Franchise Tax, State Tax, City Tax, Federal Tax and associated interim ACA, Refund, and any other applicable costs as described in the Company's tariff sheets on file with the Commission. Company will bill Marketer/Aggregator separately and directly for any applicable Marketer and/or Aggregator charges as provided in the Company's tariff sheets on file with the Commission.

7. **Security Performance.** In the Company's sole discretion and subject to the Company's tariff sheets on file with the Commission, Marketer/Aggregator will be responsible for providing the Company with a cash deposit, surety bond, irrevocable letter of credit, corporate guarantee or such other financial instrument satisfactory to the Company.

8. **Default.** In the event Customer and/or Marketer/Aggregator fails to pay Company's undisputed charges as billed by Company or are otherwise in default under this Agreement, Company may discontinue service to the Customer and/or Marketer/Aggregator and/or take any such actions as are authorized by the Company's tariff sheets on file with the Commission and other applicable law.

9. **Term.** This Agreement shall take effect when signed by both the Company and the Marketer/Aggregator. This Agreement may be terminated by either party upon 90 days written notice to the other party, and this Agreement may be terminated by the Company as otherwise provided in the Company's transportation service tariff sheets on file with the Commission.

10. **Curtailment and Operational Flow Orders.** Marketer/Aggregator is subject to and shall comply with Company's gas curtailment and Operational Flow Order policies when it provides gas to Customers and may be subject to the penalties and charges as set forth in the Company's tariff sheets on file with the Commission.

11. **Indemnification.** Marketer/Aggregator shall indemnify and hold Company harmless from and against all costs, damages, claims and expenses including but not limited to attorneys' fees, pipeline charges, penalties and all other charges assessed against or incurred by the Company as a result of Marketer/Aggregator's acts, omissions, or

nonperformance under this Agreement, the Company's tariff sheets on file with the Commission, and/or Marketer/Aggregator's customer agreement(s).

12. **Nominations.** Marketer/Aggregator shall comply with the nomination procedures, guidelines and requirements of all applicable upstream transporting pipelines.

13. **Notices.** Notices required or otherwise given under this Agreement shall be provided in writing, either by facsimile, email, or first class mail, to the other party at the addresses provided below.

The Empire District Gas Corporation
Attention: Connie Carlile
602 S. Joplin
Joplin, Mo. 64801
Phone: 417-625-4291
Fax: 417-625-4251
E-Mail: ccarlile@empiredistrict.com

Marketer/Aggregator: Seminole Energy Services, L.L.C.
Contact Person: Joyce Moore
Address: 1323 East 71st Street, Suite 300
Tulsa, OK 74136
Phone: 918-477-3417 Fax: 918-492-3075
E-Mail: jmoore@seminoleenergy.com

14. **Assignment.** This Agreement may not be assigned by Marketer/Aggregator without the prior written consent of Company.

15. **Governing Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to principles of conflicts of law. Marketer/Aggregator shall operate pursuant to and in compliance with the Company's tariff sheets on file with the Commission, as the same may be revised, amended, and/or superseded from time to time, all applicable orders, rules, and regulations of the Commission, all applicable statutes, all applicable federal orders, rules, and regulations, and all rules and regulations of any upstream interstate pipeline companies. **In the event of any conflict between this Agreement and the Company's tariff sheets, the Company's tariff sheets then in effect and on file with the Commission shall control.**

16. **No Waiver.** Any failure or delay by either party to exercise any right, in whole or in part, hereunder shall not be construed as a waiver of the right to exercise the same, or any other right, at any time thereafter.

Marketer/Aggregator: JA
Seminole Energy Services, L.L.C.

By: [signature]
Title: Mike Westbrock, Vice President
Date: April 22, 2012

The Empire District Gas Company:

By: Connie Carlile
Title: Manager Gas Operation
Date: 4-24-12

Seminole
Energy Services

Depend on Seminole Energy.

July 2, 2014

RE: Notice of Name Change

This letter is being sent to you to make you aware that effective July 1, 2014, Seminole Energy Services, L.L.C. changed its name to **Continuum Energy Services, L.L.C.**

This change does not affect our contractual relationship. The contracts we have with you will be unaffected by this change and will continue operating as they did prior to the change.

Enclosed for your records are the Amended Certificate of Limited Liability Company and an updated W-9. Please note that our tax ID, our DUNS number ([redacted]), our billing addresses and our payment instructions (as set forth below) have not changed.

Payment by Check:	Continuum Energy Services, L.L.C. P.O. Box 26706, Sect. 4130 Oklahoma City, OK 73126-0706
Payment by Wire:	International Bank of Commerce ABA: [redacted] Account: [redacted] Branch: Oklahoma
Payment by ACH:	International Bank of Commerce ABA: [redacted] Account: [redacted]

If you have any questions regarding this matter, please contact me at (918) 477-3421.

Sincerely,

Julie M. Agro

Julie M. Agro
Attorney

Enclosures

Stay tuned for more from
continuum energy

Form **W-9**
(Rev. August 2013)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
Continuum Energy Services, LLC

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☑ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ P

☐ Other (see instructions) ▶

Exemptions (see instructions):
Exempt payee code (if any) ______
Exemption from FATCA reporting code (if any) ______

Address (number, street, and apt. or suite no.)
1323 East 71st Street, Suite 300

Requester's name and address (optional)

City, state, and ZIP code
Tulsa, OK 74136

List account number(s) here (optional)

Part I **Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
[ ][ ][ ] – [ ][ ] – [ ][ ][ ][ ]

Employer identification number
[redacted]

Part II **Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶ Date ▶ 7/1/14

Brendelee Marshall
Tax Manager
p. (918) 477-3426
f. (918) 858-4819
bmarshall@seminoleenergy.com

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at *www.irs.gov/w9*. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

OFFICE OF THE SECRETARY OF STATE

STATE OF OKLAHOMA

AMENDED CERTIFICATE
OF
LIMITED LIABILITY COMPANY

WHEREAS, the Amended Articles of Organization of

CONTINUUM ENERGY SERVICES, L.L.C.

an Oklahoma limited liability company has been filed in the office of the Secretary of State as provided by the laws of the State of Oklahoma.

NOW THEREFORE, I, the undersigned, Secretary of State of the State of Oklahoma, by virtue of the powers vested in me by law, do hereby issue this certificate evidencing such filing.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.

GREAT SEAL OF THE STATE OF OKLAHOMA 1907

Filed in the city of Oklahoma City this 12th day of June, 2014.

Secretary of State

Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
P.O. Box 20010
Owensboro, Kentucky 42304-0010
Phone 270/852-5000

Scott LaMar
Director, Rates
Phone: (270) 852-4560
Email: g.scott.lamar@southernstar.com

March 11, 2021

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Southern Star Central Gas Pipeline, Inc.
Request for OFO Penalties Waiver
Docket No. RP21-___-000

Dear Ms. Bose:

Southern Star Central Gas Pipeline, Inc. ("Southern Star") respectfully requests that the Federal Energy Regulatory Commission ("Commission") approve Southern Star's waiver of the collection and crediting of operational flow order ("OFO") penalties that may have been incurred by Shippers and/or Point Operators during the period from gas day February 11, 2021, through gas day February 19, 2021 (the "OFO Period"). The OFO period coincides with the unprecedented severe and extreme cold and winter weather conditions experienced on Southern Star's system during that period ("Polar Vortex").

Reference is made to the Report dated February 12, 2021 and the Supplemental Report dated February 19, 2021, (collectively, the "OFO Reports") where Southern Star notified the Commission that it had issued various OFOs to protect the integrity of its pipeline system under Section 10 of the General Terms and Conditions (GT&C) of its tariff during a period of sustained cold and severe winter conditions on the Southern Star system. The specific details of the OFOs and Southern Star's actions in response to the extreme winter conditions are summarized in the OFO Reports.

Southern Star issued Storage and Delivery Location OFOs during the Polar Vortex event. The Storage OFOs were addressed to Southern Star's firm storage customers, requiring those Shippers to remain within their contractual quantities, specifically (i) not to withdraw more than the applicable Maximum Daily Withdrawal Quantity ("MDWQ") under each agreement and (ii) to maintain Storage inventories at or above 0% of its contractual Maximum Storage Quantity ("MSQ") under each agreement. The Delivery Location OFOs were addressed to delivery Point Operators requiring takes at delivery points to not exceed the sum of the confirmed scheduled transportation quantities at the delivery point, plus any available no-notice Maximum Daily Quantities (MDQs) at that point. At the onset of the Polar Vortex, the delivery location OFOS were addressed to Specific Line Segments. As the Polar Vortex continued, Southern Star expanded the Delivery Location OFO to System Wide which covered delivery locations on all line segments through the bulk of the Polar Vortex. As the Polar Vortex event was ending, Southern Star was able to reduce the Delivery Location OFO to Specific Line Segments.

All of the OFOs issued during the Polar Vortex event were standard OFOs under GT&C Section 10. Generally, the penalty for violating a standard OFO is the greater of $5 per dekatherm or 2.5 times the average Gas Daily Index for Southern Star for each day the OFO is in effect. However, a different penalty is assessed to any storage shipper who exceeds its MDWQ; the penalty for violating this Storage OFO is equal to 365 times the maximum daily reservation rate for the applicable area per Dth. OFOs are subject to tolerance levels and, in the case of delivery location OFOs, at least 97% of the authorized delivery quantity must be measured by electronic flow measurement (EFM). Instead of the normal ten days to make payment once an invoice is rendered, GT&C Section 10.4 gives Shippers 30 days to review and dispute OFO invoices due to "the unusual nature of OFO penalty invoices."[1]

In lieu of customers spending time reviewing invoices associated with OFO penalties, and in recognition of the historic nature of the Polar Vortex event, Southern Star proposes to waive all OFO penalties for all Shippers and Point Operators who may have incurred penalties during the OFO Period. The purpose of issuing OFOs under Southern Star's tariff is to deter certain behaviors by Shippers and Point Operators on its system to ensure the integrity and reliability of its pipeline and storage operations during an event. During this OFO Period, Shippers and Point Operators as a whole behaved in a manner that allowed Southern Star to sustain pipeline operations during a critical weather event and continue serving its markets without curtailing primary firm service. Although many Shippers and Point Operators were unable to adhere completely to the OFOs, and without a waiver would be subject to OFO penalties, many of those same Shippers and Point Operators also took actions that assisted Southern Star during this Polar Vortex event and helped enable the pipeline to continue to provide firm service without curtailment; however, the current OFO tariff provisions provide no mechanism for recognizing such equitable collaborations in the calculation of penalties. Southern Star believes that a waiver of all such penalties is appropriate in these circumstances. The aggregate level of compliance with the OFOs was sufficient to address the strain on the system due to the Polar Vortex event. Because of the collaborative effort among Shippers and Point Operators, the amount of OFO non-compliance did not impair Southern Star's ability to operate its system. In addition, 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 has discretion under GT&C Section 8.8 to waive any one or more defaults by a Shipper under its tariff. Southern Star has used this discretion in the past, on a non-discriminatory basis, to waive certain OFO penalties.[2] Southern Star is required to credit payments received for OFO penalties each year and to file a refund plan related to such payments no later than November 1. Given the unprecedented confluence of events on its system during the Polar Vortex, Southern Star believes it is appropriate to inform the Commission and seek its approval of Southern Star's proposal to waive the

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[1] This differs from GT&C Section 18 which requires Shippers to make payment within 10 days from when the invoice is rendered.

[2] *See* Southern Star's Annual Operational Flow Order Report dated November 21, 2014 in Docket No. RP15-194 (implementing proposed waivers that the Commission was advised of in Southern Star's tariff filing in Docket No. RP14-1206).

collection and crediting of the OFO penalties incurred for deviations from OFOs that occurred during this OFO Period, rather than wait until its annual report is filed to address any issues related to such waivers.

Accordingly, Southern Star asks the Commission to approve waiver of the invoicing, collection, and related crediting of operational flow order penalties incurred by Shippers and Point Operators during the OFO Period. Granting a waiver serves the public interest and is consistent with prior Commission approvals under similar circumstances.[3] To provide certainty regarding this billing issue prior to the issuance of bills, Southern Star respectfully requests that the Commission approve this request no later than April 9, 2021.

Southern Star respectfully requests that all Commission orders and correspondence, as well as pleadings and correspondence from other persons, concerning this request for waiver be served upon each of the following:

Scott LaMar
Director, Rates
Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
Owensboro, KY 42301
Phone: (270) 852-4560
g.scott.lamar@southernstar.com

Douglas Field
Senior Attorney
Southern Star Central Gas Pipeline, Inc.
4700 State Route 56
Owensboro, KY 42301
Phone: (270) 852-4657
w.doug.field@southernstar.com

Stefan M. Krantz
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
202-637-5517
stefan.krantz@hoganlovells.com

If there are any questions pertaining to this filing, please contact any of the parties listed above.

Copies of this filing are being served upon all of Southern Star's jurisdictional customers and interested state commissions, as well as posted on CSI, Southern Star's online customer service system.

Sincerely,

SOUTHERN STAR CENTRAL GAS PIPELINE, INC.
By: */s/ Scott LaMar*
Scott LaMar
Director, Rates
(270) 852-4560

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[3] *See East Tennessee Natural Gas, LLC*, 166 FERC ¶ 61,096 (2019); *Texas Eastern Transmission, LP*, 155 FERC ¶ 61241 (2016); *East Tennessee Natural Gas, LLC*, 151 FERC ¶ 61,106 (2015) *El Paso Natural Gas Co.*, 136 FERC ¶ 61,219 (2011).

From: Keen, Michael
Sent: Tuesday, February 9, 2021 12:48 PM
To: Tatiana Earhart; Wolf, Mark; Pemberton, Rick
Cc: Deborah Gilbertson
Subject: RE: SSSCGP**OFO** February 9, 2021
Attachments: Critical, Operational Flow Order,20210211, Southern Star, 007906233

The OFO is in effect GD11-16

Michael H. Keen

Gas Scheduler III
713.207.4676 w. | 832.218.0371 c.
SymmetryEnergy.com

From: Tatiana Earhart <Tatiana.Earhart@libertyutilities.com>
Sent: Tuesday, February 9, 2021 2:37 PM
To: Wolf, Mark <mark.wolf@symmetryenergy.com>; Pemberton, Rick <rick.pemberton@symmetryenergy.com>; Keen, Michael <michael.keen@symmetryenergy.com>
Cc: Deborah Gilbertson <Deborah.Gilbertson@libertyutilities.com>
Subject: SSSCGP**OFO** February 9, 2021
Importance: High

All,

Please be advised Southern Star has issued an OFO effective the start of gas day **Tuesday, February 9, 2021 until Wednesday, February 17, 2021**.

Empire will do the same.

Please adjust your nominations to ensure you are <u>NOT SHORT</u>. OFO Penalties will apply to unauthorized deliveries.

O. OPERATIONAL FLOW ORDERS (OFO)

1. Issuance: Company will have the right to issue an Operational Flow Order that will require actions by the Customer to alleviate conditions that, in the sole judgment of the Company, jeopardize the operational integrity of Company's system required to maintain system reliability. Customer shall be responsible for complying with the directives set forth in the OFO. Any 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.

Company may call an OFO by pipeline, delivery zone or town border station when:

- Company experiences failure of transmission, distribution or gas storage facilities;
- When transmission system pressures or other unusual conditions jeopardize the operation of Company's system;
- When Company's transportation, storage and supply resources are being used at or near their maximum rate deliverability;
- When any of Company's transporters or suppliers call the equivalent of an OFO or Critical Day;
- When Company is unable to fulfill its firm contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of Company's system.

2. Customer Compliance: Upon issuance of an OFO, the Company will direct customer to comply with one of the following conditions:

A. Unauthorized Deliveries: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no more than the hourly or daily amount being received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account. All volumes delivered to the Customer, Aggregator or Marketer in excess of volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Overrun by Customer, Aggregator or Marketer on the Company's system. Customer, Aggregator or Marketer shall be charged a penalty of $25.00 per Mcf, plus the Gas Daily Index price for the applicable Interstate Pipeline for such Unauthorized Overruns during the duration of the OFO.

B. Unauthorized Receipts: Customer, Aggregator or Marketer must take delivery of an amount of natural gas from the Company that is no less than the hourly or daily amount being received by the Company from the Connecting Pipeline Company for the Customer's account. All volumes delivered to the Customer, Aggregator or Marketer which are less than volumes received by the Company from the applicable Interstate Pipeline for the Customer's, Aggregator's or Marketer's account, that are in violation of the above condition, with the exception of a 5% daily tolerance, shall constitute an Unauthorized Delivery by Customer to Company. Customer shall be charged a penalty of $25.00 per Mcf for such Unauthorized Deliveries to Company's system.

Thank you for your cooperation,

Tatiana

Tatiana Earhart | **Liberty Utilities** (Missouri) | Gas Transportation Supervisor
P: 417-625-4245 | C: 417-438-2307 | E: Tatiana.Earhart@libertyutilities.com
602 S Joplin Ave, Joplin, MO 64801

From: csinotices@southernstar.com
Sent: Tuesday, February 9, 2021 7:13 AM
Subject: Critical, Operational Flow Order,20210211, Southern Star, 007906233

TSP Name: Southern Star Central Gas Pipeline, Inc.
TSP: 007906233
Notice ID: 9676
Critical: Y
Notice Type: Operational Flow Order
Notice Stat Desc: Initiate
Notice Eff Date / Time: 2/11/2021 9:00 AM
Notice End Date / Time: 2/17/2021 9:00 AM
Reqrd Rsp Desc: No response required.
Post Date / Time: 2/9/2021 8:45 AM
Subject: Storage Operational Flow Order (OFO) – System Wide

Notice Text

Per Section 10.2 of the General Terms and Conditions ("GT&C") of its FERC approved tariff, Southern Star Central Gas Pipeline ("Southern Star") is issuing a system wide Standard Operational Flow Order ("Standard OFO"), to be effective at 9:00 A.M. CST February 11, 2021. This notice is being issued to all storage customers under Rate Schedules TSS, STS, FSS, and FS1 to protect the integrity of the Southern Star's storage facilities due to high withdrawal levels from Southern Star's storage fields.

This OFO requires each shipper with an agreement or agreements under Rate Schedules TSS, STS, FSS, or FS1 to adjust its receipts and/or deliveries so as to maintain

1. Storage withdrawals at or below the applicable Maximum Daily Withdrawal Quantity ("MDWQ") under each agreement; and
2. Storage inventories at or above 0% of its contractual Maximum Storage Quantity ("MSQ") under each agreement.

Failure to specifically adhere to this OFO will result in penalties for all quantities withdrawn from storage on any day above the applicable MDWQ and/or for inventories below 0% of the MSQ. Penalties for failure to comply will be as set forth in GT&C Sections 10.3 and 10.4.

Customer specific information is available on CSI (https://csi.southernstar.com). Storage Operators can review their daily storage balances by running report CSI041 Storage Information found in the Reports Section of CSI under the Imbalance heading.

This OFO shall remain in effect through the February 16, 2021 gas day; however, Southern Star will monitor storage withdrawals and may, by additional notice, either adjust this Standard OFO to an Emergency OFO, extend it beyond such date or terminate it earlier as operational conditions warrant. Thank you in advance for your cooperation in this matter. If you have any questions regarding this notice, please contact one of the Customer Service Representatives listed below.

Scott Warren	Office: (270) 852-4559	Cell: (270) 302-6433
Chris Williams	Office: (270) 852-4544	Cell: (270) 302-1143
Buster Ashley	Office: (270) 852-4546	Cell: (270) 314-1436
Will Wathen	Office: (270) 852-4483	Cell: (270) 925-1969
Robin Joska	Office: (270) 852-4565	Cell: (270) 302-5007
Scheduling	Office: (855) 730-2926	

Liberty™

Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

Under Liberty's applicable Missouri tariff Large Volume Firm Transportation Service and contracts, we believe that customers and their marketers or aggregators together have responsibility for nominations, for compliance with OFOs, and for any related Unauthorized Deliveries or Unauthorized Overruns. When a customer, marketer, or aggregator fails in any of these respects, and the tariff provides for penalties, Liberty will calculate the penalty amount for the relevant account.

The penalty amount calculated for your account during this billing cycle is $290,608.13. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

Energy
and water
for life

We recognize the nature of this winter weather event and its impact on you and our other customers. Please contact me if you have questions or concerns or need additional information or support at 417-625-4245

Sincerely,

Tatiana Earhart

Energy
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Liberty
602 S. Joplin Ave.
Joplin, MO 64801
T: 1-800-424-0427
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March 30, 2021

[redacted]

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The penalty amount calculated for your account during this billing cycle is $68,345.50. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

[redacted]

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The penalty amount calculated for your account during this billing cycle is $708,178.16. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

[redacted]

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The penalty amount calculated for your account during this billing cycle is $9,914.34. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Joplin, MO 64801
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March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

Under Liberty's applicable Missouri tariff Large Volume Firm Transportation Service and contracts, we believe that customers and their marketers or aggregators together have responsibility for nominations, for compliance with OFOs, and for any related Unauthorized Deliveries or Unauthorized Overruns. When a customer, marketer, or aggregator fails in any of these respects, and the tariff provides for penalties, Liberty will calculate the penalty amount for the relevant account.

The penalty amount calculated for your account during this billing cycle is $158,860.62. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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T: 1-800-424-0427
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March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

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The penalty amount calculated for your account during this billing cycle is $204,782.00. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Sincerely,

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March 30, 2021

[redacted]

Dear [redacted]

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The penalty amount calculated for your account during this billing cycle is $1,011,887.46. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Sincerely,

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T: 1-800-424-0427
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March 30, 2021

[redacted]

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The penalty amount calculated for your account during this billing cycle is $80,780.07. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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March 30, 2021

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The penalty amount calculated for your account during this billing cycle is $1,231,890.10. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

Under Liberty's applicable Missouri tariff Large Volume Firm Transportation Service and contracts, we believe that customers and their marketers or aggregators together have responsibility for nominations, for compliance with OFOs, and for any related Unauthorized Deliveries or Unauthorized Overruns. When a customer, marketer, or aggregator fails in any of these respects, and the tariff provides for penalties, Liberty will calculate the penalty amount for the relevant account.

The penalty amount calculated for your account during this billing cycle is $30,132.30. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

Energy and water for life

We recognize the nature of this winter weather event and its impact on you and our other customers. Please contact me if you have questions or concerns or need additional information or support at 417-625-4245.

Sincerely,

Tatiana Earhart

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for life

Liberty

Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
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March 30, 2021

[redacted]

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The penalty amount calculated for your account during this billing cycle is $111,724.37. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Sincerely,

Tatiana Earhart

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Liberty™

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Joplin, MO 64801
T: 1-800-424-0427
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March 30, 2021

[redacted]

Dear [redacted]

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During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

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The penalty amount calculated for your account during this billing cycle is $370,827.30. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Joplin, MO 64801
T: 1-800-424-0427
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March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

During the event, Operational Flow Orders ("OFOs") were issued to help make sure that the gas system continued to operate effectively. Natural gas marketers or aggregators for some customers, however, did not properly nominate or deliver gas (or both) despite these OFOs. This created situations for which penalties are assessable. We wanted to alert you about such penalties and how we expect to apply them.

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The penalty amount calculated for your account during this billing cycle is $5,067,227.94. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

We recognize the nature of this winter weather event and its impact on you and our other customers. Please contact me if you have questions or concerns or need additional information or support at 417-625-4245

Sincerely,

Tatiana Earhart

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Liberty™

Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
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March 30, 2021

[redacted]

Dear [redacted]

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The penalty amount calculated for your account during this billing cycle is $24,022.33. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Tatiana Earhart

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March 30, 2021

[redacted]

Dear [redacted]

We wanted to provide you with information regarding the recent winter weather event, known as Winter Storm Uri, and its impact on your account. The increase in natural gas prices that Liberty and other utilities experienced are reflected on the enclosed bill.

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The penalty amount calculated for your account during this billing cycle is $7,942.47. Liberty is first billing this amount to your marketer or aggregator. While these charges are ultimately the responsibility of the customer, we will first attempt to recover these costs from marketers, and then we would bill any unrecovered balances to you. Interest, accrued from the date of the initial billing to your marketer or aggregator, will be added to any such unpaid amount. You may consider reaching out to your marketer or aggregator regarding the penalty amount above to ensure that your marketer and aggregator makes timely payment.

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Sincerely,

Tatiana Earhart

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Liberty

Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

April 15, 2021

Symmetry Energy Solutions LLC
f/k/a Seminole Energy Services, L.L.C.
1111 Louisiana St. B-241
Houston, TX 77002-5228

Amounts Owed for Operational Flow Order Penalties

Ladies and Gentlemen:

This letter is a bill for amounts owed by your company to The Empire District Gas Company ("Empire") with respect to Operational Flow Order ("OFO") penalties. These penalties were incurred by your company for transportation of gas by Empire and delivery to customers for which your company is the marketer or aggregator.

The total penalty amount due is $9,377,123.08, not including the penalties in our separate enclosed letter concerning the small volume pool SEM SSCP MKTZNE for which your company is the aggregator. Please pay Empire in accord with the enclosed invoice.

Your company is a Marketer/Aggregator pursuant to a Marketer/Aggregator Agreement executed by it on April 22, 2012 (the "Agreement) and the related Empire tariff on file with the Missouri Public Service Commission (the "Tariff"). Under Section 5 of the Agreement, Empire bills your company "separately and directly for any applicable Marketer and/or Aggregator charges as provided in the" Tariff. Under Section 10 of the Agreement, your company is "subject to the penalties and charges as set forth in the Company's Empire's tariff sheet on file with the Missouri Public Service Commission."

During the peak demand days of the severe winter weather event in Empire's service area in February, 2021, OFOs were in place for the interstate pipeline or pipelines from which your company acquired gas for transport on the Empire network to your company's customers. Equivalent OFOs were in place from Empire during those same days. During those OFOs, more gas was transported for you to your customers than permitted by the OFOs. These deliveries

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constituted "Unauthorized Overruns" or "Unauthorized Deliveries" for purposes of the Tariff.

Under Section O.E of Sheet 44 of the Transportation Service Natural Gas provisions of the Tariff, "Aggregators and Marketers who fail to deliver to Company Empire for the account of Customer(s) specified operational flow ordered quantities of gas shall be bill appropriate 'Unauthorized Delivery' charges." Under Section O.2.A of Sheet 43 of the Transportation Service Natural Gas provisions of the Tariff, the penalties for "Unauthorized Deliveries" and "Unauthorized Overruns" are calculated based on the Gas Daily Index Price per MMBtu. Under that same Section, an additional $25.00 per Mcf is added to the resulting price penalty. The penalty amount assessed above has been calculated in accord with these provisions.

This letter concerns only OFO penalties. Empire reserves its rights with respect to any other amounts that may be due from your company. Empire looks forward to receiving payment in full for the penalty amount above within 30 days.

Sincerely,

Tatiana Earhart

Tatiana Earhart

Encl.

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Liberty

Liberty
602 S. Joplin Ave.,
Joplin, MO 64801
T: 1-800-424-0427
Libertyutilities.com

April 15, 2021

Symmetry Energy Solutions LLC
f/k/a Seminole Energy Services, L.L.C.
1111 Louisiana St. B-241
Houston, TX 77002-5228
Facsimile: 918-492-3075

RE: **Amounts Owed by Symmetry Energy Solutions LLC for Undernominations for a Small Volume Pool**

Ladies and Gentlemen:

This letter is to provide Seminole Energy Services, L.L.C., now Symmetry Energy Solutions, LLC ("Symmetry"), with notice of amounts owed by Symmetry to The Empire District Gas Company ("Empire") with respect to a small volume pool (SEM SSCP MKTZNE or the "Pool") for which Symmetry is the aggregator. This pool uses gas from the Southern Star pipeline transported by Empire.

Symmetry owes Empire $2,494,175.61 in penalties for the period February 11, 2021 through February 18, 2021 pursuant to the terms of the Empire tariff for Small Volume Firm Transportation Services Rate Schedule SVFT [1] and the Marketer/Aggregator Agreement executed April 4 and 22, 2012 by Seminole Energy Services, L.L.C. with Empire (the "Symmetry Contract").

The Pool consists largely of schools. From February 1 through February 18, 2021, Symmetry failed properly to nominate gas for the pool. Rather than nominating amounts reflecting predicted use, Symmetry nominated amounts roughly two to five times smaller than would reasonably be expected for the needs of the Pool. This caused Empire to deplete reserves which it then had to renew to maintain service and reliability for other customers. Symmetry further failed to nominate

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[1] See P.S.C. Mo. No. 2, 1st Revised, Sheets 34-35 and Transportation Service Natural Gas, P.S.C. Mo. No. 2, 1st Revised, Sheets 41-44 (eff. Apr. 1, 2020, and collectively the "Tariff")

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required volumes of gas for the actual use made by the Pool during a period in which an Operational Flow Order ("OFO") was in place, worsening this situation.

Under the standard Empire District Gas Company Small Volume Customer Transportation Agreement with the members of the Pool, Symmetry, as the aggregator for the Pool, is "responsible for all daily gas nominations and balancing activities required by the tariff on behalf of Customer and must abide by all terms, rules and regulations applicable to this service as stated in the EDG tariffs on file with the Missouri Public Service Commission." Consistent with this, Symmetry was obliged to Empire and the members of the Pool to comply with the relevant tariff requirements of the members of the Pool. Under Section M.1 at Sheet No. 41 of the Tariff (emphasis added), Symmetry was therefore responsible "for providing daily natural gas Receipts adjusted for L&U gas to the Company [Empire] . . . *which accurately reflects the customer's expected consumption*." As Symmetry's drastic undernominations of gas indicate, it failed to do that from at least February 1 through February 18, 2021.

While the Tariff provides for monthly balancing of nominations and usage of gas by customers, that provision for monthly balancing does not permit Symmetry to breach the separate obligation to nominate amounts that would "accurately reflect[]" the expected daily needs of the Pool. Nor does monthly balancing excuse Symmetry from liability for the additional costs, damages, and expenses caused by its breach of those nomination obligations.

In addition, in the time period of February 11 through 18, 2021, an OFO was issued requiring the Pool not to take from the Empire distribution system more than (within a tolerance of 5%) the amount of gas actually nominated by Symmetry for transport to the Pool. There was no question that the Pool needed gas and would be burning gas. But Symmetry failed to nominate the gas required by the Pool. This included almost no nomination on February 16, 2021 and zero nominations on February 17 and 18, 2021. (Note that the zero nominations violated yet another provision, Section L.1, of the applicable Tariff that "Aggregator(s) must nominate at least 1 MMBtu on a daily basis.") This meant that Empire had to buy gas at higher rates than would otherwise have been the case to replace the now-critical amounts depleted by Symmetry's pervasive undernominations before and during that time.

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In its calculation of the amounts owed to Empire for this undernomination scheme, Empire has at this point credited the value of gas subsequently overnominated by Symmetry for the Pool from February 19 through 28, 2021, even though those overnominations are also accounted for in the monthly balancing calculation benefiting Symmetry. Those overnominations do not offset the cost of Symmetry's earlier breaches of contract and tariff, however, because the price of gas was much lower at the end of February than in the middle, when Empire had to buy gas.

Symmetry owes Empire these damages for breach of the obligation properly to nominate gas because, under Section 11 of the Symmetry Contract (emphasis added), Symmetry has promised that it:

> *shall* indemnify and hold Company [Empire] harmless from and against *all* costs, damages, . . . and expenses, including but not limited to attorneys' fees, pipeline charges, penalties and all other charges assessed against or incurred by the Company as a result of Aggregator/Marketer's [Symmetry's] acts, omissions, or nonperformance under this Agreement, the Company's tariff sheets on file with the Commission, and/or Marketer/Aggregator's [Symmetry's] customer agreement[s].

As the aggregator for the Pool, Section 10 of Symmetry Contract makes Symmetry "subject to the penalties and charges as set forth in the Company's [Empire's] tariff sheet on file with the Commission" in Missouri for Unauthorized Overruns during the OFO period. By using 2020 historical usage to predict 2021 actual usage during this period, Empire has calculated that Symmetry undernominated 8,673.8 MMBtu, or 8,277.1 Mcf, of gas for the Pool, producing "Unauthorized Overruns" of that amount under Section O.2.A of the Tariff. The "Gas Daily Index Price" for that amount ranged from $9.620 to $622.785 per MMBtu on the relevant days. Under the Tariff, an additional $25.00 per Mcf is added to the resulting price penalty. This results in a penalty (calculated as Gas Daily Index Price per MMBtu plus $25 per Mcf) that totals $2,494,175.61 for the Unauthorized Overruns for which Symmetry is responsible. *See also* Symmetry Contract §§ 2, 3, 6, 10.

None of the problems resulting in the damages and penalties described above were unknown to Symmetry. Empire communicated with Symmetry as the problems worsened in mid-February, but Symmetry simply did not comply with its obligations. Empire looks forward to receiving payment in full from Symmetry for the amounts above within 30 days.

Sincerely,

Tatiana Earhart

Tatiana Earhart

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John Williamson
Chief Financial Officer
John.Williamson@symmetryenergy.com
1111 Louisiana St., Ste. B-241
Houston, TX 77002

symmetry
ENERGY SOLUTIONS

April 29, 2021

VIA EMAIL AND FEDERAL EXPRESS

LIBERTY UTILITIES
602 S. Joplin Ave.
Joplin, Missouri 64801
Attn: Ms. Tatiana Earhart
Via Email: Tatiana.Earhart@libertyutilities.com

RE: NOTICE OF DISPUTE OF DEMAND LETTER

Dear Ms. Earhart:

Symmetry Energy Solutions, LLC ("***Symmetry***") is in receipt of written correspondence from you dated April 15, 2021, including (a) a letter demanding payment for alleged Operational Flow Order Penalties of $9,377,123.08, and (b) a separate letter demanding payment for alleged undernominations for a Small Volume Pool of $2,494,175.61. We note that your letters include no invoice(s) or calculations to substantiate any of the amounts demanded or the volumes on which they may be based.

Symmetry hereby notifies Liberty that Symmetry disputes the Operational Flow Order Penalties in the amount of $9,377,123.08 and the alleged undernominations for a Small Volume Pool of $2,494,175.61.

Symmetry welcomes the opportunity to have our respective companies work together to expeditiously resolve this matter.

Best regards,

John Williamson

John Williamson
Chief Financial Officer

cc: Ms. Donna M. Poresky
SVP and General Counsel
Symmetry Energy Solutions, LLC

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 31st day of August, 2021.

Morris L Woodruff

Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

August 31, 2021

File/Case No. GC-2022-0062

Missouri Public Service Commission
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounselservice@psc.mo.gov

Office of the Public Counsel
Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@opc.mo.gov

Liberty (Empire)
Legal Department
602 S Joplin Avenue
P.O. Box 127
Joplin, MO 64801
Diana.Carter@LibertyUtilities.com

Symmetry Energy Solutions, LLC
Douglas Healy
3010 E. Battlefield, Suite A
Springfield, MO 65804
doug@healylawoffices.com

Symmetry Energy Solutions, LLC
Terry M Jarrett
3010 East Battlefield, Suite A
Springfield, MO 65804
terry@healylawoffices.com

Symmetry Energy Solutions, LLC
Peggy A Whipple
3010 East Battlefield, Suite A,
Springfield, MO 65804
Springfield, MO 65804
peggy@healylawoffices.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

Morris L Woodruff

Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.