

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its offices in Jefferson City, Missouri on the 17th day of November, 2021.

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

ORDER DENYING MOTION FOR SUMMARY DETERMINATION

Issue Date: November 17, 2021

Effective Date: November 17, 2021

On August 30, 2021, Symmetry Energy Solutions, LLC (Symmetry) filed a complaint against The Empire District Gas Company d/b/a Liberty (Liberty). Liberty filed its answer to that complaint on September 17, 2021, and on the same date filed a motion for summary determination. Symmetry responded in opposition to the motion for summary determination on October 18, 2021. Liberty replied to Symmetry’s response on November 4, 2021.

The procedures regarding summary determination before the Commission are established by Commission Rule 20 CSR 4240-2.117.1. Subsection (E) of that rule provides in part that the Commission:

may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.

Except for the requirement that the Commission determine that a granting of summary determination is in the public interest, this standard largely mirrors the standard for civil procedure established by Supreme Court Rule 74.04. As a result, court pronouncement regarding summary determination in the civil courts are a good guide for such determinations at the Commission.

The party moving for summary determination, in this case Liberty, has the burden of establishing a right to judgment as a matter of law.¹ Facts contained in affidavits or otherwise in support of a party's motion are to be accepted as true unless they are contradicted by the response to the motion for summary determination.² Only genuine disputes as to material facts preclude summary determination.³

Many of the facts in this case are undisputed. Liberty is a public utility that owns a natural gas distribution network in portions of Missouri. Symmetry is a retail natural gas marketer operating in 35 states, including Missouri. As a natural gas marketer, Symmetry purchases and resells gas to various consumers and uses Liberty's natural gas pipeline network to distribute that gas to its customers. Under Symmetry's transportation agreement with Liberty, subject to Liberty's tariff, Symmetry is supposed to put sufficient supplies of gas into the pipeline network to meet the needs of its customers. Symmetry's complaint against Liberty alleges that Liberty has inappropriately billed it for approximately \$11.9 million in Operational Flow Order (OFO) penalties arising from Symmetry's failure to supply enough gas to meet the needs of its customers during the cold weather event of February 2021, sometimes known as

¹ *Wilmes v. Consumers Oil Co. of Maryville*, 473 S.W. 3d 705, 714 (Mo. App. W.D. 2015).

² *Allen v. Continental Western Ins. Co.* 436 S.W.3d 548, 551 (Mo. banc 2014).

³ *Id.*

Winter Storm Uri. As a result of that supply failure, Liberty was required to provide the missing gas to those customers from its own gas supply.

After reviewing the pleadings of the parties, the Commission concludes that Liberty's motion for summary determination should not be granted. It appears that summary determination is not appropriate because there are genuine disputes about material facts. In particular, there is a genuine dispute about whether Liberty sufficiently limited the OFO in compliance with its tariff provision that requires that the OFO be limited to the problems giving rise to the OFO. Further, there appears to be a genuine dispute about whether Liberty would be obtaining a financial windfall, albeit largely upon behalf of its customers, by enforcing the terms of its tariff. That tariff provides that if during an OFO, Symmetry or its customers take more gas from Liberty's pipeline than they put in they are to 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. Liberty indicates the explicit penalty portion of its bill to Symmetry, the portion derived from the \$25.00 per MCF penalty, amounts to only \$839,732 of the \$11,871,299 of the total OFO bill Liberty seeks to collect from Symmetry. The bulk of the total bill is derived from charging Symmetry the Gas Daily Index price for the shorted gas used by its customers during the OFO. It is not clear, however, that Liberty actually had to pay the Gas Daily Index price for the gas it was forced to put into the system to supply Symmetry's customers. Symmetry suggests that Liberty instead was able to draw much or all of the needed gas from its storage capacity at a lesser cost.

In describing what may be two disputed material facts, the Commission is only illustrating its finding that summary disposition should not be granted. The Commission

is not making any findings, or reaching any conclusions about the validity of the complaint, or about the facts that Symmetry must prove to support its complaint.

In addition to the existence of disputed material facts, the Commission must also consider whether it is in the public interest to grant summary determination. This complaint concerns more than just a commercial dispute between two large gas companies. The collection of an \$11.9 million penalty from Symmetry could have dire consequences for Symmetry's Missouri customer if those costs are passed on to them by Symmetry. Under those circumstances, the Commission would like to have a full and clear understanding of the results of its decision on this complaint. For that reason, granting of summary determination is not in the public interest at this time.

THE COMMISSION ORDERS THAT:

1. Liberty's Motion for Summary Determination is denied.
2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Woodruff, Chief Regulatory Law Judge

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 17th day of November, 2021.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 17, 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
staffcounsel@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)

Diana C Carter
428 E. Capitol Avenue, Suite 303
Jefferson City, MO 65101
Diana.Carter@LibertyUtilities.com

Liberty (Empire)

Christopher M Mason
55 West 46th Street, Tower 46
New York 10036
New York, NY 10036
cmason@nixonpeabody.com

Liberty (Empire)

Benjamin N Reiter
799 9th Street N.W., Ste. 500
Washington, MO 20001
breiter@nixonpeabody.com

Liberty (Empire)

Elizabeth W Whittle
799 9th Street N.W., Ste. 500
Washington, DC 20001
ewhittle@nixonpeabody.com

**Missouri Public Service
Commission**

Karen Bretz
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Karen.Bretz@psc.mo.gov

**Symmetry Energy Solutions,
LLC**

Steven M Bauer
505 Montgomery St., Suite 2000
San Francisco, CA 94111-6538
steven.bauer@lw.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**

Nathan M Saper
355 South Grand Avenue, Suite
100
Los Angeles, CA 90071
nathan.saper@lw.com

**Symmetry Energy Solutions,
LLC**

Katherine A Sawyer
355 South Grand Ave., Suite 100
Los Angeles, CA 90071
katherine.sawyer@lw.com

**Symmetry Energy Solutions,
LLC**

Margaret A Tough
505 Montgomery St., Suite 2000
San Francisco, CA 94111-6538
margaret.tough@lw.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,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent initial "M".

**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.