BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Cause of the February	)	
2021 Cold Weather Event and its Impact	)	File No. AO-2021-0264
On Investor Owned Utilities	)	

SPIRE MISSOURI INC.'S RESPONSE TO THE COMMENTS OF SYMMETRY ENERGY SOLUTIONS, LLC AND CONSTELLATION NEWENERGY-GAS DIVISION, LLC

COMES NOW Spire Missouri Inc. ("Spire Missouri" or "Company"), and for its Response to the Comments of third-party marketers Symmetry Energy Solutions, LLC ("Symmetry") and Constellation NewEnergy-Gas Division, LLC ("Constellation"), states as follows:

INTRODUCTION

On April 8, 2021, Symmetry and Constellation filed comments in this docket. Not coincidentally, Symmetry and Constellation are the two marketers responsible for the largest failures to deliver their retail customers natural gas supply during the polar vortex period. Despite the broad range of topics at issue in this docket, the Symmetry and Constellation comments lash out solely against Spire Missouri and read as a litany of excuses for their own delivery failures. The purpose of these comments appears to be to avoid the consequences, set forth clearly in Spire Missouri's tariffs, of inadequate supply planning by Symmetry and Constellation.

Faced with these marketers' delivery failures, Spire Missouri stepped up with tens of millions of dollars' worth of incremental delivered supply to keep the gas on for hundreds of Missouri transportation customers. Now that the crisis has passed, these marketers are engaged in a gaslighting campaign against Spire Missouri to deflect from their own failures, while pocketing large charges from retail customers. The Commission should not enable this behavior.

SPIRE MISSOURI'S RESPONSE
TO SYMMETRY'S AND CONSTELLATION'S EXCUSES

The Symmetry and Constellation comments in this docket consist primarily of several excuses for why they should not be required to pay the operational flow order ("OFO") penalties prescribed by Spire Missouri's tariff. The Company's comments will address each in turn.

1. "Other Pipelines Are Waiving Penalties"

Spire Missouri is not an interstate pipeline. It is a regulated Missouri local distribution company. As such, Spire Missouri has a statutory obligation to serve customers. The Company takes this obligation very seriously, but never more than during an event like the February 2021 polar vortex. During such times, Spire Missouri provides critical energy needed by our communities. Spire Missouri, and other Missouri utilities, serve as the backstop to make sure that life-sustaining energy and water show up for Missourians where they live and work. Contrary to the suggestions of marketers, Spire Missouri doesn't have the luxury of simply turning customers off when markets are challenging.

Symmetry and Constellation trot out a cavalcade of OFO penalty waiver examples from the polar vortex (Panhandle Eastern, Southern Star Central, Gulf South)[1] for the proposition that, because interstate pipelines have sought to waive OFO penalties on their systems, Spire Missouri should do the same. But interstate pipelines have different considerations than an LDC like Spire Missouri. Contractual overruns on interstate pipelines are just that—contractual breaches. To the extent interstate pipelines experience operational limitations as a result, they risk having to curtail large, sophisticated and direct-connect users with alternative energy sources.

[1] In their Complaint cases, the marketers also refer to Algonquin Gas Transmission Pipeline, ANR Pipeline Company, Tallgrass Interstate Gas Transmission, and Texas Eastern Transmission.

The interstate pipeline analogy should be rejected. Spire Missouri is not aware of any other LDC in the country that has sought to waive OFO penalties as a result of the February 2021 polar vortex.[2] That's likely because natural gas utilities rely on deliveries from marketers to serve their transportation customers. Without that supply, LDCs risk not having enough gas in the distribution system to serve the needs of the entire community. This includes the operational need for flowing supply that keeps pressures up and the gas distribution system functional.

Symmetry's and Constellations' failure to meet their delivery obligations in Missouri could have had catastrophic consequences if this February polar vortex was a peak day event. Spire Missouri and other gas utilities in the state plan their systems to serve their firm customers on a historical peak day. This supply planning does not include the needs of transportation customers. This time, Spire was able to acquire enough incremental supply to cover the failures of these marketers. If this event had happened near a peak day, the Company would have had to turn off gas to hundreds of businesses and industries. This would have impacted the economy, employment, small businesses, and could have caused equipment and property damage, livestock losses, and other consequences. Marketers operating in Missouri need to take seriously the potentially dire consequences of failing to meet their delivery obligations.

That is precisely why OFO penalties exist. They serve to discourage marketers from shorting natural gas utilities at critical times, because they risk unplanned system outages to residential customers, hospitals, and other critical care facilities. Without collection of these penalties, the cost of procuring additional natural gas to cover the marketers' delivery failures would fall on firm utility customers, including low-income customers. Waiver would also

[2] As the marketers note, Vectren later cancelled its operational flow order for its Indiana utilities, which are located in a region less impacted by the polar vortex event.

undermine the deterrent effect of OFO penalties on future marketer delivery failures.

As Symmetry and Constellation well know, Spire Missouri does not have the power to unilaterally waive tariff provisions, including OFO penalties. That discretion lies squarely with the Commission. For interstate pipelines, that discretion lies with the pipelines and with FERC.

The marketers accuse "Spire" of having it both ways by opposing OFO penalty waivers here, while supporting them at FERC. That is not accurate. Specifically, Spire Missouri intervened in the Southern Star Central OFO penalty waiver docket specifically to **oppose** waiver of OFO penalties on that system. The Company made millions of dollars' worth of incremental gas purchases on Southern Star to ensure that it remained a compliant shipper on that system. Many of those purchases were made specifically as a result of Symmetry's and Constellations' failure to deliver their customers' natural gas supply to Spire Missouri's city gates, including Symmetry's failure to deliver any gas to Spire Missouri's city gates on the worst day of the crisis.

Of course, Symmetry is a big proponent of penalty waivers on interstate systems, too. Without the OFO penalty waiver recently issued by FERC on the Southern Star system, many of Symmetry's municipal natural gas system customers would have been subject to large OFO penalties due to Symmetry dropping their nominations to zero during the polar vortex. See Southern Star Response to FERC Staff data request, dated April 6, 2021, in RP21-618-000. Symmetry's failure to perform its contractual obligations was premised on the gamble that the Missouri Public Service Commission would bail it out of Missouri LDC OFO penalties at the state level, too.

Finally, Spire Missouri does not agree with Spire Marketing's position in the Panhandle

Eastern waiver case. That case also presents a different factual scenario in all respects. Panhandle's waiver request was limited to Gas Day 15, and was based solely on Panhandle's own acknowledged failure to provide adequate notice of its OFO to shippers. Moreover, Spire Missouri actually received penalty credits from Panhandle Eastern as a compliant shipper on that system—credits that will flow back to utility customers through Spire Missouri's Purchased Gas Adjustment ("PGA"). Spire Missouri and Spire Marketing are under different management, located in different states, and are represented by different counsel. Moreover, Spire Missouri billed OFO penalties to Spire Marketing for its own supply failures during the OFO period. Spire Marketing, unlike Symmetry and Constellation, has paid those penalties to Spire Missouri as required by the tariff.

2. "It's Unfair to Bill These Penalties to Retail Customers"

The only parties that may be billing OFO penalties through to Missouri retail customers at this time are the marketers subject to those penalties. Spire Missouri has been very clear, and has already represented to the Commission in this docket, that it does not intend to bill any OFO penalties to end user transportation customers at this time.

Spire Missouri's Tariff Sheet 16.14, section B.5, regarding OFO penalties states that "Unauthorized Over- or Under-Delivery Penalties for pools shall be billed to and collected from the agent representing the aggregated customers. Customers will continue to have ultimate responsibility for all charges on the account."

The Company interprets this language to mean that penalty charges are to be billed to and collected from the non-compliant marketers in the first instance, and that customers bear the "ultimate responsibility" only if the marketers are unable to pay. Spire Missouri would encourage transportation customers to carefully review their marketers' contracts and invoices. OFO penalty pass through charges would be inappropriate if Symmetry and Constellation are selling a firm service to their transportation customers.

Accordingly, Spire Missouri has not billed penalties to any customers, and doesn't plan to unless the marketers become unable to pay. This interpretation makes sense, because the delivery failures were not the result of any end user's actions. Rather, it was the defaulting marketers' failure of adequate capacity planning that led to the OFO violations. It is therefore logical that the marketers, and not the end user customers, would be responsible for payment of these penalties. Under the tariff, "ultimate" responsibility" for these charges remains with the end users as a last resort to make sure the gas cost is paid by those who received the gas, and not Spire Missouri's firm utility customers.

Again, Spire Missouri has been crystal clear that it is holding marketers responsible for payment of these penalties, and has initiated litigation in federal court to collect them. No end user transportation customers have received any penalty invoices, nor are they parties to the collection actions. Symmetry and Constellation rely on one line from an initial demand letter—intended to convey the gravity of the situation—to create a bogeyman of imminent invoices. No such action is planned. Symmetry and Constellation can ensure it never happens by paying the OFO penalties themselves.

The remainder of the arguments raised by Symmetry and Constellation on this point are arguments about the equity of imposing penalties on the marketers themselves. The essence of this argument is that "index prices for gas were too high." Spire Missouri does not control the index price of natural gas in any market.[3] However, OFO penalties tied to index prices have always been a part of Spire Missouri's transportation tariff. Tellingly, no marketer ever questioned the propriety of this arrangement (index prices as a proxy for cover costs) prior the February 2021 polar vortex event.

These tariff provisions are even incorporated into the terms of Spire Missouri's contracts with transportation marketers (including Symmetry and Constellation). In fact, those agreements require marketers who dispute a penalty invoice to pay the invoice in full while pursuing the dispute in good faith (see paragraph 12 of Spire's Agent Agreements with marketers). However, neither Symmetry nor Constellation has paid for **any** of the cover gas Spire Missouri purchased to supply to their end user transportation customers (Spire previously requested that Symmetry and Constellation pay actual imbalance volumes at the daily index price, which was rejected). Instead, Symmetry and Constellation have left Spire Missouri and its firm utility customers to shoulder the entire burden of the cost of cover gas during the polar vortex, including its carrying costs. Meanwhile, Symmetry and Constellation are billing (and presumably collecting) these gas costs from their customers. The Commission should not allow them to continue to profit as a result of their failure to perform, on the backs of captive ratepayers.

3. "This Was Outside Our Control"

In Symmetry's and Constellation's re-telling of the polar vortex story, they should be relieved of any OFO penalties because it was simply impossible to get any gas to Spire Missouri's city gates, despite their Herculean efforts. This argument provides a compelling equitable

[3] Moreover, Spire Missouri believes that Symmetry and Constellation use the same market indices for pricing in their contracts with customers.

narrative, and a sort of force majeure stunt double.[4]

One problem with this argument is that Encore and other marketers were able to deliver all of their retail customers' gas to Spire Missouri's city gates throughout the polar vortex period. Other marketers performed admirably, incurring only minor OFO penalties and continuing to support the integrity of Spire Missouri's distribution system during the entirety of the February 2021 polar vortex period.

The other, bigger, problem with this argument is that Spire Missouri was able to go out in the market, on a daily basis and on the coldest days of the polar vortex, and secure enough natural gas to cover the Symmetry and Constellation shortfalls—and actually have that gas delivered to its gates with almost no notice. Clearly then, this was **not** an impossible task.

So what happened? The logical conclusion is that defaulting marketers made the business decision to avoid the high daily index prices for natural gas that Spire had to pay to cover their shortfalls. Spire Missouri has yet to be reimbursed for any of these high cost purchases. This is not a risk or responsibility that either Spire Missouri or its firm utility customers signed up for. That is precisely what OFO penalties are designed to protect against, and the reason why they ultimately flow back to firm customers through the PGA.

In Symmetry's case, its delivery failures were also result of its apparent business decision to hold no firm capacity to Spire Missouri's city gates. Rather, to serve customers behind Spire Missouri's city gates Symmetry relied solely on an Asset Management Agreement with another utility. When that utility asserted its superior rights to those assets, Symmetry was left with no way

[4] Spire Missouri's contracts with Symmetry and Constellation do not contain force majeure clauses, for the same reason OFO penalties exist.

to serve its Missouri customers, sending its nomination for those customers to zero.[5]

In short, the performance of Symmetry and Constellation during the February 2021 polar vortex period was well outside the norm, and that of the otherwise relatively commendable performance of most other marketers. These failures are the result of the risky business decisions made by these entities to either (i) not incur the high costs of cover themselves, (ii) not hold any firm capacity to Spire Missouri's city gates to serve their customers, or (iii) both. Neither Spire Missouri nor its firm customers should be left holding the bag for Symmetry's and Constellation's risky business decisions.

CONCLUSION AND RECOMMENDATIONS

It is quite clear that none of the excuses offered by Symmetry or Constellation would be persuasive if offered by Spire Missouri in the face of such a large-scale supply failure. Rather, Spire Missouri discharged its obligation to provide safe and adequate service throughout the February 2021 polar vortex period, and even covered for the delivery failure of the marketers operating behind its gate, drawing upon all of its peak day and capacity planning resources.

Moving forward, Spire Missouri is committed to ensuring that these critical shortages never happen again in Missouri, and that Missouri transportation customers are supplied by capable, reliable marketers. The Company therefore recommends that the Commission investigate the following actions:

1. Consider raising the transportation rate class threshold substantially;
2. Investigate the extent to which marketers held firm capacity to Missouri LDC city

[5]This action also exposed point operators using Symmetry as a marketer to potential OFO penalties on the Southern Star system. Symmetry had by far the largest overrun charges on Southern Star, effectively allowing them to take other shippers' (including Spire Missouri's) storage gas rather than buying millions of dollars of supply during the event.

gates, and require a certain percentage of transportation customer demand to be held firm;

3. Investigate the propriety of marketer contractual charges to their customers; and

4. Recognize that until Symmetry and Constellation pay cover gas damages at the Southern Star *Platt's Gas Daily* daily index price, and post a parental guaranty or other adequate security for full amount of OFO penalties and take responsibility for the impact their actions have had on Spore customers, their comments should be given limited weight in this proceeding.

Respectfully submitted,

Matthew Aplington

Matthew Aplington MoBar #58565
General Counsel
Spire Missouri Inc.
700 Market Street, 6th Floor
St. Louis, MO 63101
(314) 342-0785 (Office)
Email: matt.aplington@spireenergy.com

Goldie T. Bockstruck MoBar #58759
Director, Associate General Counsel
Spire Missouri Inc.
700 Market Street, 6th Floor
St. Louis, MO 63101
314-342-0533 Office
314-421-1979 Fax
Email: Goldie.Bockstruck@spireenergy.com

Rachel Lewis Niemeier MoBar #56073
Regulatory Counsel
Spire Missouri Inc.
700 Market Street, 6th Floor
St. Louis, MO 63101
314-390-2623 Office
Email: rachel.niemeier@spireenergy.com

ATTORNEYS FOR SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Response to Comments of Spire Missouri Inc. was served on all parties of record on this 16th day of April, 2021 by e-mail, fax, or by placing a copy of such document, postage prepaid, in the United States mail.

/s/ Matt Aplington