BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Symmetry Energy Solutions, LLC, Constellation NewEnergy-Gas Division, LLC, and Clearwater Enterprises, LLC Complainants, v. Spire Missouri, Inc. and its operating unit Spire Missouri West, Respondents.	)))))))))))))	Case Nos. GC-2021-0316, GC-2021-0315, and GC-2021-0353

STIPULATION AND AGREEMENT

COME NOW Symmetry Energy Solutions, LLC ("Symmetry"), Constellation NewEnergy-Gas Division, LLC ("CNEG"), Clearwater Enterprises, LLC ("Clearwater", and together with Symmetry and Constellation, the "Marketers"), Spire Missouri, Inc. ("Spire"), and the Staff of the Missouri Public Service Commission ("Staff", and together with the Marketers, and Spire, the "Parties"), by and through undersigned counsel, and for this Stipulation and Agreement ("Stipulation"), respectfully state as follows to the Missouri Public Service Commission (the "Commission"):

BACKGROUND

1. In mid-February 2021, a major snow and ice storm, known as Winter Storm Uri, imposed extreme and unprecedented freezing weather conditions across the United States, Northern Mexico and parts of Canada. The extensive nature of the storm, coupled with the heavy snow and damaging ice, produced some of the coldest temperatures in decades. Winter Storm Uri prompted health and safety concerns, sudden and sustained natural gas supply disruptions, widespread infrastructure and operational failures and freeze-offs of facilities that were

necessary for the delivery of natural gas. In particular, the storm had significant and unprecedented effects on the supply of natural gas in Missouri and elsewhere in the Midwest.

2. The Marketers have contracts with Spire pursuant to which Spire transports natural gas to certain of the Marketers' customers in Missouri (the "Spire-Marketer Agreements"), which includes but is not limited to an Agent Aggregation Service Agreement with each Marketer. Pursuant to those Spire-Marketer Agreements, each Marketer has agreed to the terms of Spire's Transportation Provisions tariff on file with the Commission.

3. During the storm, Spire issued a system-wide Operational Flow Order ("February 2021 OFO") for the Spire Missouri West system. Spire contends that during the OFO period, each of the Marketers delivered less natural gas to Spire's city gate on certain days than such Marketer's customers consumed on those days. Spire claims that, as a result, the Marketers owe Spire OFO penalties pursuant to its tariff. Specifically, Spire demanded $150,862,557.92 in OFO penalties from Symmetry, $39,451,576.78 in OFO penalties from CNEG, and $8,321,268.39 in OFO penalties from Clearwater.

4. The Marketers challenged Spire's issuance of the February 2021 OFO, contending that it was invalid because it failed to comply with the requirements of Spire's tariff, and therefore the Marketers owe no OFO penalties to Spire. The Marketers note further that they had over-delivered by the end of February 2021, meaning that they had each delivered more gas to Spire's city gate than such Marketer's customers consumed that month.

5. In March 2021, Spire brought suits against the Marketers seeking payment of the OFO penalties and damages for unjust enrichment. Those cases, which are currently pending before the United States District Court for the Western District of Missouri, Western Division, are captioned *Spire Missouri Inc. v. Symmetry Energy Solutions, LLC*, Case No. 4:21-cv-00182-

MDH, *Spire Missouri Inc. v. Clearwater Enterprise, L.L.C.*, Case No. 4:21-cv-00180-MDH, and *Spire Missouri Inc. v. Constellation NewEnergy Gas Division, LLC*, Case No. 4:21-cv-00181-MDH (collectively, the "Federal Actions").

6. Also in March 2021, the Marketers brought complaints against Spire before the Commission with Case Nos. GC-2021-0316, GC-2021-0315, and GC-2021-0353 (the "Commission Actions") challenging the propriety of Spire's February 2021 OFO and associated penalties under Spire's tariff. The Federal Actions and Commission Actions are together referred to as the "Penalty Disputes."

7. The Parties have engaged in extensive negotiations, including participating in a two-day settlement conference on February 17 and February 18, 2022. The Parties are entering into this Stipulation taking into account the risks and implications of prolonged litigation and the significant adverse financial impact of Winter Storm Uri, among other considerations. The Parties acknowledge that this Stipulation constitutes a settlement of the Penalty Disputes and is not an admission of any signatory. The Parties request that the Commission approve the resolution of the issues in the Commission Actions as detailed below.

8. The Parties are entering into this Stipulation to resolve fully and finally all claims that each Party may have against any of the other Parties related to Spire's provision of natural gas to the Marketers' customers in February 2021, including, without limitation, the OFO penalties and all matters at issue in each and all of the Penalty Disputes. This Stipulation is intended to forever discharge and extinguish all claims and causes of action that the Parties have against each other relating to the Penalty Disputes, Spire's February 2021 OFO, and Spire's provision of natural gas to the Marketers' customers in February 2021.

9. With respect to Spire, all gas purchases and gas purchasing decisions made by Spire nevertheless remain subject to potential offsets and/or disallowances pursuant to the applicable Purchased Gas Adjustment/Actual Cost Adjustment reviews, including purchases and decisions related to Winter Storm Uri, and the terms of this agreement do not restrict the Staff of the Public Service Commission or the Office of the Public Counsel from recommending offsets and/or disallowances to the Commission in those dockets. For the avoidance of doubt, any such offsets and/or disallowances have no impact on the Marketers or their customers.

10. Counsel for the Office of the Public Counsel and intervenors Missouri School Boards' Association and Midwest Energy Consumers Group have indicated that those parties do not oppose the Stipulation. No other party is involved in these matters. Therefore, the Commission may treat this Stipulation as a unanimous stipulation and agreement pursuant to Commission Rule 20 CSR 4240-2.115.

AGREEMENTS

11. Contingent upon Commission approval of this Stipulation without modification, the Parties hereby agree as follows.

12. The Parties agree that, to settle the Penalty Disputes, Spire will accept payment as set forth below. These amounts provide a reasonably timely recovery of amounts relating to the natural gas provided to the Marketers' customers during the February 2021 OFO period, as declared by Spire, and will benefit Spire's Purchase Gas Adjustment ("PGA") customers without the uncertainty associated with protracted litigation and the additional carrying costs that may be associated with delayed recovery. Further, in light of the risks and delays associated with protracted litigation, these amounts reasonably achieve the purpose of the OFO provisions of

Spire's Transportation Tariff by reasonably incentivizing Marketers and their customers to comply with lawful OFO orders. The required payments are as follows:

(a) Symmetry owes Spire $34,170,359.39 ("Symmetry Settlement Payment") and Spire owes Symmetry $6,301,771.73 in cashout payments (the "Symmetry Cashout Payment") as a result of Symmetry's over supply of natural gas to Spire from February 2021 through February 2022. Crediting the Symmetry Cashout Payment against Symmetry's Settlement Payment, Symmetry shall pay Spire a net amount of $27,868,587.66 ("Symmetry Net Settlement Payment").

(b) CNEG owes Spire $11,642,060.49 ("CNEG Settlement Payment") and Spire owes CNEG $201,771.39 in cashout payments (the "CNEG Cashout Payment") as a result of CNEG's over supply of natural gas to Spire from February 2021 through February 2022. Crediting the CNEG Cashout Payment against CNEG's Settlement Payment, CNEG shall pay Spire a net amount of $11,440,289.10 ("CNEG Net Settlement Payment").

(c) Clearwater owes Spire $2,574,073.46 ("Clearwater Settlement Payment") and Spire owes Clearwater $78,325.65 in cashout payments (the "Clearwater Cashout Payment") as a result of Clearwater's over supply of natural gas to Spire from February 2021 through February 2022. Crediting the Clearwater Cashout Payment against Clearwater's Settlement Payment, Clearwater shall pay Spire $2,495,747.81 ("Clearwater Net Settlement Payment").

13. CNEG shall pay the CNEG Net Settlement Payment to Spire within 60 days of a Commission Order approving this Stipulation.

14. Symmetry shall pay the Symmetry Net Settlement Payment to Spire in full no later than six (6) years from the effective date of a Commission order approving this Stipulation.

Clearwater shall pay the Clearwater Net Settlement Payment to Spire no later than five (5) years from the date of a Commission order approving this Stipulation. Symmetry and Clearwater shall make payments in monthly installments, plus a simple interest rate equal to the prime bank lending rate (as published in the Wall Street Journal on the first business day of the following month) minus two (2) percentage points (but not less than zero), to Spire on the third business day of each month. The first such installment shall be due on the third business day of the month following the effective date of a Commission order approving this Stipulation. Symmetry and Clearwater each have the discretion to pay the full amount of its remaining net settlement payment at any time. The payment obligations of Symmetry shall be secured by either a standby letter of credit in the full amount of the Symmetry Net Settlement Payment, or by a written payment guaranty from Energy Capital Partners. Clearwater's payment obligation shall be secured by either a standby letter of credit in the then current amount of the outstanding balance owed for the Clearwater Net Settlement Payment, or by other sufficient security. In the event any Marketer defaults on the obligations above, the Marketer will have thirty (30) days to cure the default. If the default is not cured by midnight of the thirtieth day, the full OFO penalty due from the defaulting Marketer, as reflected in paragraph 3 above, shall immediately be due and payable by the defaulting Marketer.

15. All proceeds of the settlement payments set forth in Paragraph 12 above will be credited to Spire Missouri West's sales customers through the PGA/ Annual Charge Adjustment ("ACA") process, as set forth in Spire Missouri's tariffs. As soon as Spire Missouri receives Marketer payments, it will credit the ACA account and include interest at the tariff rate of prime minus 2%. All gas purchases and gas purchasing decisions made by Spire are still subject to potential offsets and/or disallowances pursuant to the applicable PGA/ACA reviews, including

purchases and decisions related to Winter Storm Uri, and the terms of this agreement do not restrict the Staff of the Public Service Commission or the Office of the Public Counsel from recommending offsets and/or disallowances to the Commission in those dockets. No such offset and/or disallowance will affect the amounts owed by Marketers to Spire as set forth in this agreement and Marketers will have no liability for any such offset and/or disallowance.

16. Based on the settlement payments, and gas purchases by Marketers in February 2021, Spire's sales customers are benefitting in an aggregate amount of at least the combined Settlement Payments and other gas purchases, in the form of an offset, through the PGA/ACA schedule, to the extraordinary gas costs incurred during Winter Storm Uri. Complainants estimate such offset to be at least $125 million.

17. Spire acknowledges it has no claims for payment against any of the Marketers' customers for natural gas transported, distributed, provided, delivered and/or supplied to that customer in February 2021, or any associated OFO penalty. Such acknowledgment does not include the amounts of any unpaid direct customer charges for fixed or volumetric distribution system charges, or miscellaneous charges such as electronic metering charges, due under preexisting direct contracts between Spire and such customers and for which Spire's sole remedy shall be directly against such customers and not against any Marketer. The Marketers likewise acknowledge that upon the exchange of value reflected in the Cash Out payments referenced in paragraph 12 above, Marketers and their customers will have no claim for payment against Spire for gas over-deliveries by the end of February 2021.

18. Upon entry by the Commission of an order approving this Stipulation, such order will constitute a final binding determination of all amounts due and owing between the Parties associated with the natural gas transported, distributed, provided, delivered and/or supplied by

Spire to the Marketers' customers in February 2021 as described in paragraph 12 above, and Spire will not seek against any individual Marketer, and each individual Marketer will have no obligation to pay Spire, any other amounts associated with February 2021, provided such individual Marketer pays their Net Settlement Payment in accordance with the terms of this Agreement. The Commission's approval of this Stipulation constitutes a final, binding determination as to all liability incurred by Marketers under the Spire tariff during February 2021. Spire and the Marketers acknowledge and agree that, to the extent of Marketers' under-deliveries during the February 2021 OFO period, the Marketers have paid for all natural gas supplied to each Marketer's customers by Spire in February 2021, and that Spire supplied such gas on behalf of the relevant Marketers.

19. Spire has not and agrees that it will not terminate any of the Spire-Marketer Agreements with any Marketer for any reason arising out of the Penalty Disputes, an alleged violation of the Spire-Marketer Agreements in February 2021, an alleged violation of Spire's Transportation Provisions tariff during February 2021, or Spire's transportation, distribution, provision, delivery and/or supply of natural gas to the Marketers' customers in February 2021.

20. In the event a subsequent federal or state court or government agency issues a final order of general applicability finding the existence of market manipulation, fraud, unlawful restraint of trade, or any other unlawful activity in the establishment of the Gas Daily Index or natural gas prices paid by Spire during February 2021 that requires financial relief in the form of profit disgorgement, refunds, penalties, or other civil suit relief to Spire, then Spire will credit, on a *pro rata* basis to each Marketer any proceeds that Spire receives as a direct result of such proceeding that relate to the gas cost settlements, described in paragraph 12 above, paid by such Marketers. This paragraph shall not be construed to mean that all proceeds Spire could receive as

a direct result of such proceeding would necessarily relate to the gas cost settlements described in paragraph 12 above paid by such Marketers. Staff reserves for future proceedings the right to recommend credits to any other customers for any proceeds that Spire receives as a direct result of such proceeding that relate to February 2021 gas costs paid to Spire by customers not a party to this agreement. Moreover, in the event a final order referenced above that the market manipulation, fraud, unlawful restraint of trade, or any other unlawful activity was committed by any Marketer or their customer, this paragraph shall not apply to that Marketer or customer, and no amounts that would have been credited to the remaining Marketers or the customer shall be credited under this paragraph to any other Marketer or customer.

21. Based on its knowledge of the facts and circumstances, review and analysis of the Spire tariff and applicable law, and consideration of all relevant interests and the risk of litigation, the Staff hereby recommends to the Commission that this Stipulation be approved by the Commission without modification.

22. Within ten business days of the effective date of a final, non-appealable Commission order approving this Stipulation without modification, each of the Parties shall undertake any action necessary for the purpose of terminating, withdrawing and/or dismissing each of the Penalty Disputes, with prejudice. Such dismissal with prejudice will not impair any Party's ability to initiate any action necessary to enforce the provisions of this Stipulation. Each Party represents and warrants that it now possesses, and that it has not assigned to any other person or entity, the claims that it is releasing herein.

23. Upon the effective date of a final, non-appealable Commission order approving this Stipulation without modification, in consideration of the settlement payments set forth in Paragraph 12 above, the sufficiency of which is hereby acknowledged, Spire and its agents,

successors, assigns, heirs, executors and administrators (hereinafter collectively referred to as the "Spire Releasors") hereby fully release and forever discharge each of the Marketers and all subsidiary and affiliated companies of each Marketer, and all of their respective directors, officers, employees, agents, customers, successors, assigns, heirs, executors and administrators, insurers, co-insurers, reinsurers, and insurance brokers (hereinafter collectively referred to as the "Marketer Releasees") from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, warranties, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, that any Spire Releasor has, possesses, or asserts, or that any Spire Releasor may have, possess or assert, at any point in time, against any of the Marketer Releasees arising out of the Penalty Disputes, Spire's transportation, distribution, provision, delivery and/or supply of natural gas to the Marketers' customers in February 2021, or any alleged breach of the Spire-Marketer Agreements in February 2021. It is the intent of the Spire Releasors that this Stipulation irrevocably bars any claims of any kind or manner that can or may be asserted by the Spire Releasors against the Marketer Releasees arising out of the Penalty Disputes, Spire's transportation, distribution, provision, delivery and/or supply of natural gas to the Marketers' customers in February 2021, or any alleged breach of the Spire-Marketer Agreements in February 2021.

24. Upon the effective date of a final, non-appealable Commission order approving this Stipulation without modification, each of the Marketers and their agents, successors, assigns, heirs, executors and administrators (hereinafter collectively referred to as the "Marketer Releasors") hereby fully release and forever discharge Spire and all of its subsidiary and affiliated companies, and all of their respective directors, officers, employees, agents, successors,

assigns, heirs, executors and administrators, insurers, co-insurers, reinsurers, and insurance brokers (hereinafter collectively referred to as the "Spire Releasees") from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, warranties, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or equity, that any Marketer Releasor has, possesses, or asserts, or that any Marketer Releasor may have, possess or assert, at any point in time, against any of the Spire Releasees arising out of the Penalty Disputes, Spire's transportation, distribution, provision, delivery and/or supply of natural gas to the Marketers' customers in February 2021, or any alleged breach of the Spire-Marketer Agreements in February 2021. It is the intent of the Marketer Releasors that this Stipulation irrevocably bars any claims of any kind or manner that can or may be asserted by the Marketer Releasors against the Spire Releasees arising out of the Penalty Disputes, Spire's transportation, distribution, provision, delivery and/or supply of natural gas to the Marketers' customers in February 2021, or any alleged breach of the Spire-Marketer Agreements in February 2021. This Stipulation has resulted from negotiations among the Parties, and the terms hereof are interdependent. If the Commission does not approve this Stipulation unconditionally and without modification, then this Stipulation shall be void and no Party shall be bound by any of the agreements or provisions hereof.

25. This Stipulation embodies the entirety of the agreements among the Parties in this case on the issues addressed herein, and may be modified by the Parties only by a written amendment executed or authorized in writing by all of the Parties.

26. If approved and adopted by the Parties, this Stipulation shall constitute a binding agreement among the Parties. The Parties shall cooperate in defending the validity, enforceability, and operation of this Stipulation according to its terms.

27. Nothing in this Stipulation is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including that the Stipulation is equitable, and in the public interest.

28. The Parties consent to the admission of all written testimony that has been filed in the Commission Actions and request that the Commission admit all such written testimony into the record in this proceeding, without the need for witnesses sponsoring pre-filed testimony to take the stand. Each party waives their right to cross-examine such witnesses.

29. If the Commission accepts and approves the specific terms of this Stipulation without condition or modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to RSMo. § 536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to § 536.080.2, their respective rights to seek rehearing pursuant to § 386.500, and their respective rights to judicial review pursuant to § 386.510. This waiver applies only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior orders, to subsequent Commission proceedings, or to any matters not explicitly addressed by this Stipulation.

WHEREFORE, the Parties respectfully request that the Commission issue an order in these cases approving the Stipulation subject to the specific terms and conditions contained herein.

IN WITNESS WHEREOF, the Parties have executed and approve the terms of this Stipulation, effective as of May 11, 2022, by subscribing their signatures below.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May 2022, a copy of the foregoing **Stipulation and Agreement** has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

s/ *Douglas L. Healy*
Douglas L. Healy