BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Clearwater Enterprises, L.L.C.,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case No. GC-2021-**
	)	
Spire Missouri, Inc. and its operating unit Spire Missouri West,	)	
	)	
Respondents.	)	

COMPLAINT

COMES NOW Clearwater Enterprises, L.L.C. ("Clearwater"), pursuant to §386.390 *Revised Statutes of Missouri* ("RSMo"), 20 C.S.R. 4240-2.070 and hereby files this Formal Complaint against the aforementioned Respondents Spire Missouri, Inc. and its operating unit Spire Missouri West ("Spire"). In support of this filing, Complainant states as follows:

1. Clearwater is a natural gas retail sales, marketing, and investment company based in Oklahoma City, Oklahoma. Clearwater provides competitively priced natural gas to its customers, advising them on the current natural gas environment and enabling them to make educated decisions in purchasing their gas supply.

2. Clearwater's customers include end-users in Spire's Missouri West service territory (the former Missouri Gas Energy ("MGE") service territory). Clearwater serves as a "Customer's Agent" under the provisions of Spire's TRPR tariffs (P.S.C. MO. No. 8 Original SHEET No. 1, et seq.) ("Spire's Tariff"). Clearwater entered into an Agent Aggregation Service Agreement-LGS/LVS (the "Aggregation Agreement") with MGE in 2015 to allow Clearwater to aggregate its authorizing customers' usages for purposes of nominating and balancing transportation deliveries on the Spire system. That agreement is still in effect between Clearwater and Spire. The

Aggregation Agreement and Spire's Tariff provisions generally govern the commercial relationship between the two entities.

3. Spire Missouri, Inc. is a public utility and a "gas corporation" pursuant to Section 386.020(18) incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101.

4. Clearwater supplies over 18,000,000 mcf of gas per year to over 1500 end-users in 6 states, including Missouri. In February 2021, Clearwater served 43 locations for end-user customers in the Spire service territory, all of them served through the pipeline system of Southern Star Central Gas Pipeline, Inc. ("SSCGP"). As complies with the Aggregation Agreement, Clearwater has aggregated such customers into a single pool, denominated "Clearwater Enterprises LLC SSCGP Pool." Such customers include hospitals and medical centers, municipalities, YMCA centers, small manufacturers, restaurants, a candy store, a hardware store, a dry cleaner, and a wide range of other types of customers. Clearwater's address is 5637 N Classen Blvd., Oklahoma City, OK 73118.

5. Clearwater has directly communicated with Spire about the facts underlying this Complaint.

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

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

8. Commencing on or around February 12, 2021 and continuing until on or around February 19, 2021, Missouri and many other states across the Midwest, South and Southwest experienced Winter Storm Uri and its impact on the pricing and supply of natural gas. At page 15 of its PowerPoint filed with the Commission on March 24, 2021 ("Spire's Slides"), Spire states that it implemented a standard Operational Flow Order ("OFO") for the Spire West territory. Spire announced that OFO on February 10, and it went into effect on February 12 and terminated on February 18, 2021. Spire asserts that it implemented the OFO in part because "Marketers were reducing supply to end user transportation customers (commercial & industrial, and schools), and in some cases not providing any supply." (Spire's Slides, page 15) At the time Spire announced the OFO on February 10, Clearwater had not reduced supply to any of its customers, and certainly was not failing to provide any supply. Clearwater has no information to indicate whether any other marketers on Spire's West system were doing so.

9. Spire did not at any time during the period February 12, 2021 through February 19, 2021 physically curtail the delivery of gas to any Missouri transportation customer on its system. "A curtailment period was issued but we fortunately did not have to turn any customers off." (Spire's Slides, page 16)

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

11. As required by the Aggregation Agreement and the tariff, the aggregated volume of gas delivered to Spire by Clearwater for customers servedby Clearwater was in physical balance with the gas used by such customers at the end of every month, including at the end of February 2021.

12. On February 24, 2021, Spire declared to Clearwater in writing that Spire Missouri West Tariff Sheets 16.13 – 16.14 required Spire to assess Operational Flow Order ("OFO") penalties and charges against certain of its Missouri transportation customers (whose gas is supplied by Clearwater) in the amount of approximately $7.3 Million ("Demand Letter," attached hereto as Exhibit A). In an invoice ("Invoice," attached hereto as Exhibit B) dated March 16, 2021, Spire revised the amount of penalties and charges to approximately $8.3 Million.

13. In a letter from Clearwater to Spire dated March 26, 2021, Clearwater indicated that it disputed the amounts calculated in the Invoice.

14. OFO penalties under the Tariff are "the greater of $5 or 2½ times the daily midpoint state on Gas Daily's Index for Southern Star Central Gas Pipeline (Oklahoma) times the MMBtu of Unauthorized Over-or Under-deliveries, that exceed the tolerance level applicable under Section B-5-a Tolerance Levels."

15. The Aggregation Agreement requires that daily volumes of gas delivered to customers should, "to the extent practicable," match Spire's receipts for the customers less any amount retained by Spire. Indeed, Clearwater used its best efforts to comply with such obligation, including during the OFO, and despite such best efforts could not obtain sufficient supply to fulfill end user usage requirements. Clearwater did not manipulate potential supply to Spire to profit from the circumstances of Winter Storm Uri; rather amounts invoiced to Clearwater's customers will not make Clearwater whole for its cost of gas delivered to them through Spire, even prior to the imposition of any OFO penalties.

16. Spire's Tariff Sheet No. 16.8(B) 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." (Spire's Tariff TRPR B-2.) Spire's Tariff also requires that Spire's "actions with respect to its OFO's shall be reasonable, objective, non-discriminatory and consistent with the

General Terms and Conditions for Gas Service, R-16 Priority Service and R-17." Neither the OFO nor the associated penalties comply with the requirements of the tariff. The February 2021 OFO was put in place without sufficient justification and kept in place beyond the time Spire knew or should have known that it was no longer necessary.

17. Spire's tariff requires that "Notice of an OFO shall specify the nature of the problem sought to be addressed, the anticipated duration of the required compliance and the parameters of such compliance. Upon termination of an OFO, Spire West will post on its website the rationale for lifting that particular OFO." Spire's OFO notices did not provide the requisite specification of the nature of the problem to be addressed, the anticipated duration ofthe required compliance and the parameters of such compliance, as required by the Tariff.

18. In addition, Spire's tariff requires that "Before issuing an OFO, Spire West will attempt to identify specific customers causing the conditions that give rise to the need for the OFO, and attempt to remedy those problems through requests for voluntary action." Neither Spire's implementation of the OFO nor the notices of the OFO comply with this requirement.

19. As of the date of the filing of this Complaint, Spire has not sought a waiver or variance from this Commission for the tariff provisions cited by Spire in its Demand Letter. Utilities similarly situated to Spire have not imposed OFO penalties, and SSCGP has explicitly sought authority to waive such penalties, acknowledging "OFO penalties would add an enormous burden to what were already exorbitant gas costs for customers." Spire's imposition of OFO penalties against Clearwater under these circumstances is not reasonable or properly limited as required by the Tariff. Such penalties impose an unreasonable burden on Clearwater and its customers and create an unjustified windfall to Spire and its customers, far exceeding any actual cost incurred by Spire including with regard to cover volume used by Clearwater's customers in excess of actual deliveries during the OFO period ("Unauthorized Under-Deliveries"), even if such windfall were to be applied

to gas cost recovery.

20. In the Commission's investigation case, Spire has asserted that the OFO penalties will be borne by marketers such as Clearwater and not the customers. (Spire Slides, page 15; AO-2021-0264 Transcript - Volume 1 (Workshop - Jefferson City, MO via WebEx - March 23, 2021) page 18, line 14-17). This assertion is contradicted by Spire's own statements and its own tariff. In its Demand Letter, Spire demanded payment of OFO penalties then calculated at greater than $7 million, stating: "If we are unable to reach payment terms by Friday, February 26, Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff." Spire's Tariff confirms that such end-users indeed have ultimate responsibility for OFO Penalties. (Spire's Tariff TRPR B-5-d.)

21. The Commission should recognize the extraordinary hardship to Missouri customers if Spire is allowed to impose the penalties it has demanded of Clearwater, and act to protect those customers.

WHEREFORE, Clearwater respectfully requests the Commission:

(1) issue an Order voiding the OFO penalties, or in the alternative granting Spire a waiver or variance from the requirements of Tariff Sheets 16.13-16.14 and/or prohibiting Spire from billing or otherwise attempting to collect from Clearwater or any Missouri customer any portion of the approximately $8.3 million in penalties demanded by Spire;

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

(3) pursuant to Section 20 CSR 4240-2.070(11), direct the Staff of the Commission to conduct an investigation and file a report of its findings;

(4) stay Spire from taking any retaliatory measures against Clearwater or its Missouri customers as a result of seeking the relief requested herein or in refusing to pay approximately $8.3 million penalties and charges claimed by Spire, which would include but is not limited to terminating

or altering the services provided to Clearwater or its Missouri customers until the resolution of this Complaint; and

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

Respectfully submitted,

BY: /s/ Lewis Mills
Lewis Mills, MO Bar No 35275
BRYAN CAVE LEIGHTON PAISNER LLP
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
573-556-6627 – Telephone
573-556-7447 – Facsimile
lewis.mills@bryancave.com

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed on this 15th day of April, 2021, to counsel for MoPSC Staff, OPC and Spire.

/s/ Lewis Mills

Spire Missouri Inc.
700 Market Street
St. Louis, Missouri 63101

VIA EMAIL

February 24, 2021

Clearwater Enterprises, LLC
Ashley Orewiler (aorewiler@clearwaterenterprises.net)
5637 N Classen Blvd.
Oklahoma City, OK 73118

Re: OFO Penalties

Dear Ashley,

As you know, you serve as the natural gas marketer and appointed agent of various transportation customers on Spire's Missouri West distribution system.

Due to extreme weather and unprecedented demand for natural gas, this month we placed an operational flow order ("OFO") in effect on that system from Gas Day 12 through Gas Day 18.

During the OFO, many transportation customers consumed more natural gas than their marketer had nominated and confirmed for delivery for that day. Spire is required to assess OFO penalties in these situations. See Spire Missouri West Tariff Sheets 16.13-16.14. Pursuant to Spire's tariff rules, the standard OFO penalty is 2.5 times the daily midpoint stated on Gas Daily's Index for Southern Star Central Gas Pipeline (Oklahoma), multiplied by the MMBtu amount of the under-delivery that exceeds the Tolerance Levels.

Through February 18, 2021, Spire is assessing an OFO penalty to you in the amount of $7,329,801.39.

The amounts of your customers' pooled nominations, actual usage, and the applicable Gas Daily Index price for each day are included for your reference in the enclosed spreadsheet.

Pursuant to Spire's tariff rules, these penalties shall be billed to and collected from the agent representing the aggregated customers. Please consider this letter demand for payment of this amount, due immediately.

Please contact us right away to arrange payment. If we are unable to reach payment terms by Friday, February 26, Spire will need to bill these OFO penalties directly to each of your transportation customers, who retain ultimate financial responsibility for these amounts under the tariff.

Sincerely,

Matt Aplington
General Counsel

cc: Jason Dye (jdye@clearwaterenterprises.net)
Jenny Thompson (jthompson@clearwaterenterprises.net);
Jerff Geis (jgeis@clearwaterenterprises.net); Ramsey Payne (rpayne@clearwaterenterprises.net)

EXHIBIT B
IS CONFIDENTIAL
IN ITS ENTIRETY