STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of May, 2021.

Constellation NewEnergy-Gas Division, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0315**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS

Issue Date: May 26, 2021 Effective Date: May 26, 2021

Constellation NewEnergy – Gas Division, LLC (CNEG) filed a complaint against Spire Missouri, Inc. and its operating unit Spire Missouri West (Spire) on March 26, 2021. The complaint alleges that Spire has failed to comply with the requirements of its tariff in assessing approximately $35 million in operational flow order penalties following the February 2021 cold weather event. Spire filed a motion to dismiss the complaint along with its answer to the complaint on April 28, 2021. CNEG responded in opposition to the motion to dismiss on May 19, 2021.

Spire's motion to dismiss argues that CNEG has failed to allege facts in its complaint that would support a conclusion that Spire has violated its tariff by assessing Operational Flow Order penalties against CNEG. To the contrary, Spire argues that CNEG's complaint is that Spire has followed its tariff in assessing large penalties against CNEG arising from the events of February 2021 and refuses to waive the collection of those penalties. Spire

contends those concerns do not support a complaint against Spire under controlling statutes and the Commission's rules.

Spire's motion is a motion to dismiss the complaint for failure to state a cause of action. In ruling on that motion, the Commission merely considers the adequacy of the complaint.[1] It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.[2] Further, "[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition 'fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.'"[3] Section 386.390(1), RSMo (Supp. 2020), gives the Commission jurisdiction to hear complaints about:

> any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission; …

After examining CNEG's complaint in light of the guiding legal standard, the Commission finds that the complaint is sufficient to state a cause of action that can be addressed by the Commission. Specifically, the complaint alleges that Spire violated its tariff regarding the justification for issuance of operational flow orders, the notice provided to shippers about those operational flow orders, the duration of the operational flow orders,

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[1] *State ex rel. Laclede Gas Company v., Public Service Com'n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App W.D. 2012).
[2] *Foremost Ins. Co. v. Public Service Com'n of Missouri,* 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).
[3] *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission,* 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission,* 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).

and calculation of the penalties it seeks to impose. The Commission cannot make any findings or reach any conclusions about the truth of those allegations at this time, but the allegations are sufficient to properly place this complaint within the Commission's jurisdiction.

Spire's motion to dismiss and CNEG's response also discuss whether the Commission has authority to order Spire to "waive" its claim to collect operational flow order penalties from CNEG and other shippers, and whether such a "waiver" would be appropriate. Those questions are about the remedy the Commission may impose if it finds that Spire has violated its tariff or other law or order. They may be addressed in the complaint, but they are not relevant to the question of whether CNEG's complaint states a cause of action against Spire.

The Commission finds that CNEG's complaint states a cause of action against Spire, and Spire's motion to dismiss will be denied.

THE COMMISSION ORDERS THAT:

1. Spire's Motion to Dismiss is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer 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 26th day of May, 2021.

Morris L. Woodruff
Secretary

Digitally signed by MOPSC
DN: CN=MOPSC, O=MOPSC, OU="", E=kim.happy@psc.mo.gov, C=US
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MISSOURI PUBLIC SERVICE COMMISSION

May 26, 2021

File/Case No. GC-2021-0315

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

Sincerely,



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.