

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Structural Glass Systems, Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	File No. GC-2023-0143
	)	
Spire Missouri, Inc. d/b/a Spire,	)	
	)	
Respondent	)	

**SPIRE MISSOURI’S MOTION TO DISMISS COMPLAINT**

COMES NOW Spire Missouri Inc. (“Spire Missouri” or the “Company”), by and through counsel, and moves to dismiss the formal complaint (“Complaint”) filed by Structural Glass Systems, Inc. (“Complainant”) pursuant to Missouri Rules of Civil Procedure 55.27(a)(7) and 20 CSR 4240-2.070(7) for failure to state a claim for which relief can be granted, stating as follows:

**I. Introduction**

Spire Missouri is a natural gas utility providing service within the State of Missouri. Complainant filed this Complaint against Spire Missouri on October 27, 2022 after pursuing previously the informal complaint procedure established by the Missouri Public Service Commission (“Commission”). The Complaint concerns amounts rebilled by the Company to the Complainant for undercharges from November 24, 2021 to April 12, 2022. The Complainant alleges that the undercharges resulted from the Company setting the Complainant’s meter with an incorrect PTZ corrector configuration, which caused the meter to register only six digits of usage while transmitting five digits of usage to the Company’s billing system. Complainant requests that the Commission find that amount that has been rebilled, \$7,822.66, cannot be billed or assessed to the Complainant because the undercharges were the result of the Company’s negligence. The Complainant states that its claim is actionable under *Laclede Gas Company v. Solon Gershman*,

*Inc.*, 539 S.W.2d 574 (Mo. App. 1976), and that the Complainant is entitled to damages. The only damages claimed, however, is relief from the re-bill for the undercharged amount, plus unspecified “consequential damages.” Spire Missouri moves to dismiss this Complaint, for reasons set forth below.

## **II. Argument**

Under 20 CSR 4240-2.070(7), the Commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted. Spire Missouri moves to dismiss the complaint for failure to state a claim on which relief may be granted, as Complainant has failed to cite any regulation, law, or Spire Missouri tariff or rules that the Company has violated. Therefore, Complainant has not alleged any violation that would give rise to an actionable claim against Spire Missouri for the amounts rebilled.

A formal complaint may be filed against a utility, “setting forth any act or thing done or omitted to be done by any...public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.” 20 CSR 4240-2.070(4). However, under 20 CSR 4240-2.070(7), the Commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted. Where a customer has been undercharged for its usage, pursuant to 20 CSR 4240-13.025(1) and (1)(B), a utility may make a billing adjustment for the period where the errors existed.

During the period from November 24, 2021 to April 12, 2022, Complainant was undercharged for natural gas usage. After receiving the rebill for the undercharges, Complainant pursued the informal complaint process at the Commission. Filed with this Complaint were two letters sent by the Commission’s customer service representative investigating the informal complaint to Complainant regarding the rebilled amount. The letters detailed the steps that the

representative took to investigate the informal complaint, including contacting the Company to determine if there were issues with Complainant's meter. The Company performed a differential meter test, which confirmed that the meter was operating accurately. After concluding its investigation, the customer service representative issued two letters to Complainant, stating that the Company acted in accordance with both the rules and regulations of the Commission and the Company's filed and approved tariffs. Complainant then filed the present formal complaint against Spire Missouri.

The Complainant omits that the Commission's representative determined the Company did not violate any law, rule, or Commission approved tariff. Nor does the Complaint allege that the Company violated any law, rule, or Commission approved tariff, which is a pleading requirement under 20 CSR 4240-2.070(4).

Inadvertently setting a meter with an incorrect configuration does not violate any law, rule, or tariff. Neither is rebilling the Complainant for the undercharged usage. In fact, Spire Missouri was acting in accordance with Commission rules, specifically 20 CSR 4240-13.025(1) and (1)(B), and its own Commission-approved tariff rules when rebilling Complainant for undercharged amounts. 20 CSR 4240-13.025(1) directs utilities to determine the probable period during which the billing errors occurred and make billing adjustments, and 20 CSR 424-13.025(1)B) authorizes the utility, where an undercharge exists, to make an adjustment for the entire period, not to exceed twelve months from the date the Company learned of the error. Spire Missouri determined that a bill correction was necessary for the period of November 24, 2021 to April 12, 2022, and, as authorized by the Commission's rules, properly rebilled Complainant for the undercharge on its next monthly bill, dated May 11, 2022. This period, from November 24, 2021 to April 12, 2022, was also well within the twelve-month requirement set by the Commission. Spire Missouri's own

tariff rules, included in Complainant's filing and approved by the Commission, incorporate these same rules. Further, when inadvertent undercharges occur, a utility is not only authorized to perform a rebill but is required to do so to avoid any rate discrimination. The civil case cited by Complainant actually recognizes this principle. *Laclede Gas Company v. Solon Gershman, Inc.*, 539 S.W.2d at 576.

In *Laclede Gas Company v. Solon Gershman, Inc.*, the utility had installed an index on the meter that had recorded only one-half of the usage of the customer, a real estate management company, for over four years. The utility sued the customer for the rebilled amounts. However, due to the rebilling occurring after the customer had already billed its tenants, the customer was unable to recover those amounts from its tenants.

On appeal, the court held that the utility must be compensated the rates set by the Commission and concluded that the utility could collect the full amount owed. The court also noted that the utility may still be held accountable for any proven damages, separate from the rebilled amounts, caused to the customer, but only if negligence of the utility in the assembly and installation of an inaccurate meter was proven as well.

Here, however, Complainant fails to allege any facts demonstrating consequential damages separate and apart from the re-billed usage. In *Laclede v. Gershman*, the customer was a real estate management company, and was unable to recover passed-through utility bills from tenants because the billing error was not discovered for four years. Complainant here does not assert it is unable to pay the rebilled amounts because it will be unable to properly collect them in its normal course of business. Nor does it allege any other facts giving rise to a claim for consequential damages. The Complaint should be dismissed accordingly.

### **III. Conclusion**

Complainant has failed to state a claim on which relief can be granted under the Commission's formal complaint rules, in that (1) Complainant has not alleged any violation of law, rule, or Commission-approved tariff, and (2) Complainant has also not sufficient facts to support a finding of negligence or any consequential damages. As such, Spire Missouri respectfully requests that the Commission dismiss this Complaint and order any other relief that the Commission deems proper.

Respectfully submitted,

*/s/ J. Antonio Arias*

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**ATTORNEYS FOR SPIRE MISSOURI INC.**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail to all counsel of record on this 23rd day of November, 2022.

*/s/ Lew Keathley*

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Lew Keathley