

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference
on the 2nd day of September,
2020.

In the Matter of the Request of Spire)
Missouri Inc. d/b/a Spire for Waiver from) **File No. GE-2020-0295**
Commission Rule 20 CSR 4240-)
40.030(13)(BB))

ORDER GRANTING REQUEST FOR WAIVER

Issue Date: September 2, 2020

Effective Date: November 1, 2020

On March 20, 2020, Spire Missouri Inc. d/b/a Spire filed an application seeking a waiver of Missouri Public Service Commission (Commission) Rule 20 CSR 4240-40.030(13)(BB) (hereinafter “40.030(13)(BB)”), the Commission’s farm tap inspection rule. In place of the inspections requested to be waived, Spire seeks to include its farm tap inspection program in its Distribution Integrity Management Program (DIMP)¹, which is governed by Commission Rule 20 CSR 4240-40.030(17). There are other provisions of the Commission’s rules that also address monitoring and investigations that are not being requested to be waived.²

The Commission’s farm tap inspection rule at issue, 40.030(13)(BB), is an adoption of the U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration’s (PHMSA) Rule 49 CFR § 192.740

¹ Spire’s DIMP was filed with the Commission in this case file as confidential.

² See 20 CSR 4240-40.030(12)(C)3.D (abnormal operations); 20 CSR 4240-40.030(12)(H)1 (continuing surveillance); and 20 CSR 4240-40.030(12)(L) (investigation of failures).

("DOT Rule § 192.740"). Commission Rule 40.030(13)(BB) and DOT Rule § 192.740 require periodic inspection and testing for each pressure regulating or limiting device, relief device, automatic shutoff device, and associated equipment on what are known as farm taps. The term farm tap is not defined in state or federal pipeline safety rules, but has been referred to in industry jargon as a pipeline that branches from a transmission or gathering line to deliver gas to a farmer or other landowner.³ Farm taps are equipment on service lines, but are not part of a distribution system.

Spire has 546 farm taps in its Missouri East region and 542 farm taps in its Missouri West region; however Spire is only responsible for the regulator inspections in 187 of the farm taps in its West region.⁴ If granted, the waiver would apply to a total of 733 farm tap service lines. Spire seeks to substitute the periodic inspections required under 40.030(13)(BB) with compliance with its DIMP.

Commission Rule 20 CSR 4240-40.030(18) allows the Commission to waive, in whole or in part, compliance with any of the requirements contained in 20 CSR 4240-40.030, which include periodic inspection and testing for each pressure regulating or limiting device, relief device, automatic shutoff device, and associated equipment on farm taps as required by 40.030(13)(BB). Waivers will be granted only on a showing that gas safety will not be compromised. There have been no previous requests from any utility for a waiver from 40.030(13)(BB).

³ DOT's preamble to a final rule amending 49 CFR 192, published in the Monday, August 14, 1995, Federal Register, 60 Fed Reg. 41821.

⁴ The remaining 355 farm taps in the West region are served from Southern Star Central Gas Pipeline's natural gas transmission line. Southern Star owns and maintains these farm taps from the transmission line, through the pressure regulators subject to 40.030(13)(BB), and up to a valve after the outlet of the pressure regulator on each service line.

On March 26, 2019, PHMSA issued an exercise of enforcement discretion related to the federal equivalent of 40.030(13)(BB), announcing that it would not take enforcement action relating to violations of DOT Rule § 192.740 with respect to operators that choose to include farm taps in their DIMPs. PHMSA stated this gives operators the flexibility to choose to either address the safety of farm taps under the current regulatory framework, or under the prior framework which included farm taps in an operator's DIMP.

If the waiver request would waive compliance with a federal requirement in 49 CFR Part 192, then pursuant to 49 U.S.C. § 60118(d), the Commission must give this Order at least sixty days notice before becoming effective so that this Order may be reviewed by the DOT. In its guidelines, DOT's PHMSA encourages state programs to coordinate review of waiver requests with PHMSA prior to finalizing state approval.

The Commission directed a recommendation from the Staff of the Commission ("Staff"), which Staff coordinated with PHMSA. Staff also submitted a copy of the application in this case to PHMSA on April 27, 2020. On July 31, 2020, Staff recommended the Commission approve the waiver request, contingent on Spire complying with certain conditions.

Consistent with guidance it received from PHMSA, Staff is recommending that during the effective period of the waiver, Spire must include the farm taps in its DIMP, and must continuously monitor its farm taps for heightened levels of risk under its DIMP. In general, the Commission's rules relating to DIMP require an operator of gas distribution systems to:

- Have an understanding of its gas distribution system developed from reasonably available information, identify additional information

needed, and provide and implement a process for gathering that information;

- Identify threats to its distribution pipeline, including corrosion, natural forces, excavation damage, other outside forces, material or welds, equipment failure, incorrect operation, and other concerns that could threaten the integrity of its pipeline;
- Evaluate and rank the risk of each applicable current and potential threat to its pipeline;
- Identify and implement measures to reduce risk of failure of its system;
- Measure performance, monitor results, and evaluate the effectiveness of its program; and
- Periodically evaluate and improve its program.⁵

The requirements of these Missouri rules do not differ in any substantive way from the requirements of the corresponding Federal Rule 49 CFR Subpart P, although there are some minor formatting differences.

Staff communicated with PHMSA, and concludes that PHMSA would not object to a waiver from the state regulation 40.030(13)(BB), which corresponds to DOT Rule § 192.740, provided that the waiver include conditions which were outlined in PHMSA's March 26, 2019, notification of enforcement discretion, and provided that the waiver will only be in effect until such time as PHMSA elects to enforce DOT Rule § 192.740 or publishes a different regulation addressing the inspection and testing of the farm taps that are the subject of this waiver request. The recommended conditions include continuously

⁵ 20 CSR 4240-40.030(17).

monitoring farm taps for heightened levels of risk in Spire's DIMP and compliance with other regulatory required programs as outlined in Staff's memorandum. Staff noted that the PHMSA announcement of enforcement discretion clearly states that nothing in the document prohibits PHMSA from rescinding the document and pursuing an enforcement action if it determines that a significant safety issue warrants doing so.

In addition to the pressure regulating device inspections required by 40.030(13)(BB), Spire conducts regular operations and maintenance activities on farm taps as required by Commission Rules 20 CSR 4240-40.030(13)(L)3 and 40.030(12)(P)6, including annual inspections of all feeder lines leading to farm taps, and annual odor intensity tests at individually odorized service lines. The patrol procedures require inspections once each calendar year, at intervals not to exceed fifteen months with general observation of pipeline facilities and right-of-ways for indications of leakage, erosion, new construction, demolition, excavation activities, inspection of pipeline markers, and any other factors affecting the safety and operation of the pipeline. The odorization procedures require odor intensity tests once each calendar year, at intervals not to exceed fifteen months, where a person with a normal sense of smell can readily detect the odorized natural gas at or below a concentration of one-fifth the lower explosive limit. Even if the Commission grants the requested waiver, Spire would still be required under Commission Rules 20 CSR 4240-40.030(13)(L)3 and 40.030(12)(P)6 to continue patrols, leakage surveys, and odorization. Staff has proposed a condition to the waiver to ensure that the continued applicability of these requirements is clearly communicated.

In the past five years, Spire has not had a failure or a leak relating to farm tap pressure regulating device failures. Based upon Spire's leak history data, the leaks Spire

has found in the previous five years would have been detected during routine leak surveys and also may have been identified by the annual patrols described above. Further, in the last five years, Spire indicated that it has not had a Federal or State reportable incident on a farm tap. Staff found no reason to believe that the number of incidents would be reduced by compliance with 40.030(13)(BB).

Spire submitted its current DIMP to Staff via email on January 15, 2020.⁶ Staff has reviewed the plan and submits that Spire is in compliance with the existing DIMP regulations of 49 CFR Part 192, Subpart P. Staff also submits that with its added recommended conditions, Spire will meet the requirements of PHMSA's March 26, 2019, notification of enforcement discretion. Staff found no reason to believe that gas safety would be compromised by Spire following the requirements in the notification of enforcement discretion. Moreover, PHMSA stated that it believes the two regulatory sections (periodic inspection and testing of farm taps under 40.030(13)(BB) versus the periodic inspection and odor tests in a DIMP under 40.030(17)) provide equivalent levels of safety.

Time for responses to Staff's recommendation was allowed, but none were received.

The Commission, based on its independent examination of the application, Staff's recommendation and memorandum, Spire's DIMP, and review of the applicable regulations and statutes, finds that the granting of the requested waiver from Commission Rule 40.030(13)(BB) will not compromise gas safety. The Commission will grant Spire's requested waiver, subject to certain conditions.

⁶ On August 28, 2020, Staff filed Spire's DIMP in this case file as confidential.

On April 7, 2020, Spire requested waiver of the Commission's requirement to give 60-days notice prior to filing of its application. The Commission finds good cause exists for the waiver of that requirement, based on Spire's verified declaration that it had no communication, regarding substantive issues in its application, with the Commission within 150 days prior to filing the application.

Pursuant to 49 U.S.C. § 60118(d), the Commission will give this Order sixty days notice before becoming effective so that this Order may be reviewed by the DOT.

THE COMMISSION ORDERS THAT:

1. Spire's application for a waiver from the requirements of 20 CSR 4240-40.030(13)(BB) is granted, subject to the conditions as set forth below.
 - a. This waiver shall be in effect until such time that PHMSA elects to enforce DOT Rule § 192.740 or publishes a different regulation addressing the inspection and testing of the farm taps that are the subject of this waiver request.
 - b. Spire Missouri must continuously monitor its farm taps for heightened levels of risk under its DIMP.
 - c. Spire Missouri must continue to meet or exceed the requirements of all applicable regulations regarding farm taps, including but not limited to those specified in the March 26, 2019, Federal Register:
 - i. Spire Missouri must continue to ensure that procedures required by 20 CSR 4240-40.030(12)(C)3.D [49 CFR 192.605(c)(4)] *Abnormal operation* include any necessary procedures to provide safety when operating design limits of farm taps have been exceeded by periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.
 - ii. Spire Missouri must continue to ensure that the continuing surveillance of its facilities include farm taps as required by 20 CSR 4240-40.030(12)(H)1 [49 CFR 192.613(a)].

- iii. Spire Missouri must continue to ensure that procedures required by 20 CSR 4240-40.030(12)(L) [49 CFR 192.617] *Investigation of Failures* include any necessary for analyzing incidents and failures on farm taps for the purpose of determining the cause of the failure and minimizing the possibility of recurrence.
 - d. Spire Missouri must provide quarterly reports to Staff related to failures of pressure regulating and limiting devices and leaks on Spire's farm taps. Reports must be submitted no later than one month following the end of quarter.
 - i. For each failure of a pressure regulating or limiting device, these reports shall include:
 - 1. Failure location
 - 2. Failure date
 - 3. Consequences of failure
 - 4. Actions taken to correct failure
 - 5. Applicable DIMP action plan, if no applicable action plan has been developed indicate in Spire's opinion why the applicable threat does not warrant one.
 - ii. For each leak, these reports shall include:
 - 1. Leak ID number
 - 2. Leak date
 - 3. Leak location
 - 4. Leak classification
 - 5. Leak cause
 - 6. Applicable DIMP action plan, if no applicable action plan has been developed indicate in Spire's opinion why the applicable threat does not warrant one.
 - e. Spire Missouri must provide annual reports to Staff that include at a minimum an analysis of annual trends of leaks on Spire's farm taps. Reports must be submitted by April 1 for the previous calendar year.
- 2. The Commission's data center shall email a copy of this order to PHMSA at PHMSAOPSSStateWaivers@dot.gov.
- 3. Staff shall notify the Commission if the PHMSA exercise of enforcement discretion and allowance to use a DIMP in place of the farm tap inspection rule ends or

otherwise substantively changes such that the waiver authority should be terminated or altered.

4. This order shall become effective on November 1, 2020.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Hatcher, Regulatory Law Judge