

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 30th day of December, 2020.

In the Matter of the Request of Spire)
Missouri Inc. d/b/a Spire for a Temporary)
Waiver from Commission Rules 20 CSR)
4240-40.030 (9)(Q), (13)(M), (15)(C),)
(15)(D) and (15)(E) and Orders Pertaining)
to Inspections and Replacements)

File No. GE-2020-0373

ORDER ON MOTION TO MODIFY EFFECTIVE DATE OF ORDER

Issue Date: December 30, 2020

Effective Date: January 9, 2021

On December 21, 2020, Spire Missouri Inc. d/b/a Spire filed a motion to modify the effective date of the Commission's *Order Modifying Temporary Waiver and Directing Written Notice*, which was issued on December 2, 2020, with an effective date of February 1, 2021 (December Order). The December Order extended the period of waiver granted in the Commission's *Order Approving Application for Temporary Waiver and Directing Written Notice*,¹ issued on June 11, 2020 (June Order).

Under the December Order, the period of waiver is extended from December 31, 2020, to March 31, 2021, for residential facilities under specified circumstances. Spire's motion asks the Commission to modify the February 1, 2021 effective date of that order to January 1, 2021, to avoid a period of potential noncompliance when the period of waiver under the June Order expires on

¹ The Commission's June 16, 2020 *Order Nunc Pro Tunc* corrected citations and a footnote in the June 11, 2020 order. All references to the June Order incorporate those corrections.

December 31, 2020, before the waiver extension under the December Order takes effect on February 1, 2021. Spire requests expedited treatment.

The June Order granted conditional, temporary waiver of compliance with certain gas safety rules that apply to Spire's operating units, Spire Missouri East and Spire Missouri West. The order temporarily waives compliance with some provisions of Commission rules governing the frequency of inspections to monitor atmospheric corrosion² and surveys to control leakage in distribution systems.³ Spire requested waivers to accommodate COVID-19 social distancing orders and guidelines that may interfere with access to customer premises. In October 2020, Spire requested an extension of the waiver period for residential customers, and the December Order granted that request, under specified circumstances and with conditions.

The Commission set the effective dates of both orders to comply with 49 U.S.C. § 60118(d), which requires at least 60 days' written notice to the U.S. Secretary of Transportation before the effective date of a state commission order approving waiver of a requirement under federal gas safety regulations.⁴ On December 21, 2020, the Staff of the Commission (Staff) filed notice of a December 17, 2020 letter from the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA),

² Commission Rule 20 CSR 4240-40.030(9)(Q).

³ 20 CSR 4240-40.030(13)(M).

⁴ 49 U.S.C. § 60118(d) provides:

If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

indicating PHMSA does not object to extension of the waiver period under the December Order. The PHMSA letter is attached to Staff's notice.

Spire's motion contends the PHMSA letter demonstrates the purpose "behind the PHMSA notice requirement has been fulfilled," so the Commission should modify the effective date of the December Order to January 1, 2021, to help Spire avoid apparent noncompliance with Commission rules.

In response to Spire's latest motion, the Commission directed Staff to file an expedited recommendation and directed Spire to file an additional pleading to advise the Commission of the practical consequences for the company or customers of any apparent period of noncompliance between the waiver in effect through December 31, 2020, and the February 1, 2021 effective date of the December Order.

On December 23, 2020, Spire responded to the Commission's order and advised that unless the effective date of the December Order is modified to January 1, 2021, the Commission's Staff could "find the company out of compliance with gas safety rules" for any work not completed by December 31, 2020, despite the waiver extension granted under the December Order.⁵ As an alternative to modifying the effective date of the December Order, Spire proposes in its response that the Commission could issue an order finding that the "February 1, 2021 effective date may be applied retroactively to January 1, 2021."⁶ This alternative proposal amounts to a rephrasing of Spire's original request: modification of the effective date of the December Order.

On December 28, 2020, Staff filed a recommendation that the Commission grant

⁵ *Response to the Commission's December 22, 2020 Order Directing Expedited Response*, File No. GE-2020-0373, ¶6 (Dec. 23, 2020).

⁶ *Id.*

Spire's request and modify the effective date of the December Order to January 1, 2021. Staff notes the "exigent circumstances stemming from the COVID-19 pandemic."⁷ Staff proposes that now that the letter from PHMSA has been received, "there is no rule or law preventing the Commission from modifying the effective date of its order to be effective on January 1, 2021."⁸

The Commission has reviewed and considered Spire's motion and additional pleading and Staff's recommendation and determines the Commission will grant Spire's request to modify the effective date of the December Order to the extent possible. The Commission's action is intended to clarify, pursuant to the December Order, that the Commission has approved extension of the waiver period – under the terms and conditions specified in the order – from December 31, 2020, through March 31, 2021, a period that includes January 2021.

Despite the change in the effective date, extension of the period of waiver under the December Order remains subject to the U.S. Department of Transportation's authority to issue a written objection and stay the waiver at any time before February 1, 2021. While the PHMSA letter indicates no objection to extension of the waiver, 49 U.S.C. § 60118(d) provides the Secretary of the U.S. Department of Transportation (USDOT) may issue a written objection and stay such a waiver during the notice period. As 49 U.S.C. § 60118(d) provides:

[T]he [state] authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed.

In this case, the Commission provided at least 60 days' notice as required by law and

⁷ *Staff Recommendation*, File No. GE-2020-0373, ¶13 (Dec. 28, 2020).

⁸ *Id.*

informed USDOT that the effective date of the waiver is February 1, 2021. Therefore, § 60118(d) provides that USDOT may make a written objection to the waiver granted to Spire at any time before February 1, 2021. While the December 17, 2020 letter from PHMSA would appear to make that outcome unlikely, the Commission cannot presume PHMSA's letter overrides federal law, particularly when the parties have not cited any precedent or other authority to support such a view. Thus, extension of the waiver under the December Order remains subject to possible objection by USDOT at any time before February 1, 2021.

Consistent with the Commission's notice to USDOT in prior orders in this case, the Commission will direct immediate written notice of this order to the Secretary of the U.S. Department of Transportation by email to the address provided on the department's website.

Finally, in addition to the limitation imposed by federal law in this instance, the Commission is obliged to set a reasonable effective date for this order. Statute establishes that Commission orders take effect 30 days after service, except as otherwise provided.⁹ The Commission has discretion to set an effective date fewer than 30 days from the date an order is issued, and Missouri courts have approved the Commission's use of a 10-day effective date for urgent orders.¹⁰ Therefore, to minimize any potential period of noncompliance to the degree possible, the Commission will make this order

⁹ Section 386.490.2, RSMo (2016).

¹⁰ *Harter v. Pub. Serv. Comm'n*, 361 S.W.3d 52, 58 (Mo. App. W.D. 2012)(holding 10-day effective date allowed reasonable period to seek rehearing); *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 236 S.W.3d 632, 637 (Mo. banc 2007)(holding Commission has discretion to set a reasonable effective date of less than 30 days but disapproving as unreasonable 80-minute period to seek rehearing); *State ex rel. Kansas City, Independence & Fairmount Stage Lines Co. v. Pub. Serv. Comm'n*, 63 S.W.2d 88, 93 (Mo. 1933)(holding statute grants Commission discretion to set effective date of order and approving effective date set 10 days from issuance of order).

effective on January 9, 2021, which is 10 days after the date of issuance.

THE COMMISSION ORDERS THAT:

1. The effective date of the Commission's December 2, 2020 *Order Modifying Temporary Waiver and Directing Written Notice* is modified to January 9, 2021.
2. Extension of the period of waiver under the December Order remains subject to the U.S. Department of Transportation's authority pursuant to 49 U.S.C. § 60118(d) to issue a written objection and stay the waiver at any time before February 1, 2021.
3. By no later than 5 p.m. on December 30, 2020, the Commission's data center shall provide written notice of this order to the U.S. Secretary of Transportation by attaching a copy of this order in an email message addressed to PHMSA.Pipelinesafety@dot.gov with "Notice to Secretary of Transportation" indicated in the subject line.
4. This order shall be effective on January 9, 2021.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge