

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference
on the 3rd day of March, 2021.

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 EXTENDING TEMPORARY WAIVER
AND DIRECTING WRITTEN NOTICE**

Issue Date: March 3, 2021

Effective Date: May 2, 2021

On January 18, 2021, Spire Missouri Inc. d/b/a Spire filed a *Motion to Modify the Commission's Order Extending Waiver and Motion for Expedited Treatment*. Spire's motion requested the Commission extend the waiver granted to Spire for compliance with certain gas safety rules that apply to Spire's operating units, Spire Missouri East and Spire Missouri West. Unless it is extended, the waiver will expire on March 31, 2021. Because the gas safety rules at issue are subject to federal regulation, 49 U.S.C. § 60118(d)¹ requires at least 60 days' notice to the U.S. Department of Transportation (USDOT).

¹ 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.

CASE HISTORY

By order issued on June 11, 2020, and effective on August 12, 2020, the Commission granted Spire a conditional, temporary waiver of compliance with provisions of Commission Rule 20 CSR 4240-40.030 that govern the frequency of inspections to monitor atmospheric corrosion² and surveys to identify distribution system leaks³ (June Order).⁴ Spire requested waiver to accommodate COVID-19 social distancing orders and guidelines that may interfere with access to customer premises.

The June Order granted waiver through December 31, 2020. The waiver applies only to Spire facilities inside customer premises.⁵ In addition, the June Order requires that inspection of each noncompliant facility be completed by no later than one year after the date that facility became noncompliant because of a missed inspection or survey.⁶ Depending on when a facility became noncompliant, the one-year limit may operate to require compliance before the waiver period ends.

On October 16, 2020, Spire filed a motion to modify the June Order to extend the waiver period through March 31, 2021, citing the refusal of some customers to allow access for inspection because of COVID-19.⁷ By order issued on December 2, 2020, and

² Commission Rule 20 CSR 4240-40.030(9)(Q)1, which corresponds to the federal regulation at 49 C.F.R. 192.481(a). See *Staff Recommendation*, Appendix A: Memorandum, p. 9 n.7 (Feb. 19, 2021).

³ 20 CSR 4240-40.030(13)(M)1, 20 CSR 4240-40.030(13)(M)2.A, and 20 CSR 4240-40.030(13)(M)2.B. These Commission rules correspond to federal regulations at 49 C.F.R. 192.723(a) and (b)(1). See *Staff Recommendation*, Appendix A: Memorandum, p. 9, n.7 (Feb. 19, 2021).

⁴ *Order Approving Application for Temporary Waiver and Directing Written Notice* (June 11, 2020). The June Order was corrected by *Order Nunc Pro Tunc* (June 16, 2020). All references to the June Order incorporate those corrections.

⁵ *Order Approving Application for Temporary Waiver and Directing Written Notice*, p. 5, 7 (June 11, 2020).

⁶ Spire is required to complete inspection of each facility under the June Order within one year after the date the facility became noncompliant because of a missed inspection or survey. That date is the “delinquent date.” See *Order Approving Application for Temporary Waiver and Directing Written Notice*, p. 3, 6-7 (June 11, 2020).

⁷ Spire’s October 16, 2020 motion also requested the Commission remove or modify the one-year limit on noncompliance, but Spire later withdrew the request. *Response of Spire Missouri to Staff’s Recommendation*, ¶ 3 (Nov. 24, 2020).

effective February 1, 2021, the Commission extended the waiver period to March 31, 2021, for residential facilities occupied or controlled by customers who, because of COVID-19 concerns, either refuse Spire entry for inspection or refuse to schedule an appointment for inspection (December Order).⁸ The December Order did not remove or modify the one-year limit on noncompliance.

On December 30, 2020, the Commission modified the effective date of the December Order to January 9, 2021, subject to the authority of USDOT to issue a written objection and stay the waiver at any time before February 1, 2021, pursuant to 49 U.S.C. § 60118(d).⁹ Spire requested the Commission modify the effective date of the order after USDOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a letter stating no objection to the extended waiver.¹⁰ The modification was intended to minimize a period of potential noncompliance when the waiver period under the June Order expired on December 31, 2020, before the limited extension under the December Order took effect on February 1, 2021.

SPIRE'S CURRENT MOTION

In the motion now before the Commission, Spire reports about 277 customers have refused inspection because of concern about COVID-19, and the company anticipates additional customers may refuse to cooperate with inspections.¹¹ Spire points out that the company's only options, when customers refuse inspection, are to disconnect service or risk noncompliance with gas safety rules.¹² Spire's motion anticipates that COVID-19

⁸ *Order Modifying Temporary Waiver and Directing Written Notice* (Dec. 2, 2020).

⁹ *Order on Motion to Modify Effective Date of Order* (Dec. 30, 2020). USDOT submitted no objection.

¹⁰ *Motion to Modify Effective Date of Commission's Dec. 2, 2020 Order and Motion for Expedited Treatment* (Dec. 21, 2020).

¹¹ *Motion to Modify the Commission's Order Extending Waiver and Motion for Expedited Treatment*, ¶ 8 (Jan. 18, 2021).

¹² *Motion to Modify the Commission's Order Extending Waiver and Motion for Expedited Treatment*, ¶ 8

vaccines will be widely available by the end of October 2021, and Spire initially requested the Commission extend the waiver period through October 31, 2021.¹³ In addition, Spire requested the Commission remove or modify the one-year limit on noncompliance.

Spire's motion requested an order issued no later than January 30, 2021, to allow for 60 days' notice to USDOT for an order effective April 1, 2021. In an effort to accommodate Spire's request, the Commission directed the Staff of the Commission (Staff) to file an expedited recommendation. On January 25, 2021, Staff filed a request for extension and explained that Staff required time to review data requests and consult with PHMSA. The Commission granted that request and granted another extension on February 17 to allow Staff to consult with PHMSA.

On February 19, 2021, Staff filed its recommendation, which Staff supplemented with a clarification filed on February 24, 2021, at the Commission's direction.¹⁴ Staff recommends the Commission grant an extension of the waiver period through July 31, 2021, and proposes the extended period be subject to the conditions already applicable to the extended waiver, with some added conditions to bolster customer knowledge of gas safety.

Staff also recommends the Commission should not remove the one-year limit on noncompliance. Instead, Staff recommends the Commission allow a limited exception that will excuse Spire from disconnecting noncompliant residential facilities when "medical necessity" to maintain service has been documented. Finally, Staff recommends the

(Jan. 18, 2021).

¹³ *Motion to Modify the Commission's Order Extending Waiver and Motion for Expedited Treatment*, ¶ 8 (Jan. 18, 2021).

¹⁴ *Staff Responses to Orders Directing Clarification* (Feb. 24, 2021). References to Staff's recommendation in this order include Staff's recommendation and clarification, collectively.

Commission order Spire to report on the status of all noncompliant facilities on June 30, 2021, and provide a schedule to either complete inspections or, if necessary, disconnect service before the end of the waiver period. Staff also suggests this report should advise the Commission of any “actions Spire might request from the Commission.”¹⁵

Spire’s response to Staff’s recommendation indicates agreement, except for the suggested waiver period. Spire proposes that extension through August 31, 2021, will allow more time for customers to receive a vaccine, including those customers who are not considered to be “high risk.”¹⁶ In reply, Staff advised that the recommendation to extend waiver through July 31, 2021, is based on Staff’s consultation with PHMSA about the appropriate duration of an extended waiver.¹⁷

DECISION

The Commission may waive compliance with any of the requirements of 20 CSR 4240-40.030 upon a showing that gas safety is not compromised, pursuant to 20 CSR 4240-40.030(18). The Commission has reviewed and considered Spire’s motion, Staff’s recommendation and Spire’s response and determines extension of the temporary waiver period will not compromise gas safety under the conditions in place under the Commission’s prior orders and with additional conditions as recommended by Staff.

Staff recommends extension of the waiver period through July 31, 2021, consistent with Staff’s consultation with PHMSA. Given USDOT’s authority to issue a stay and prevent a waiver from taking effect, the Commission will adopt Staff’s recommendation to

¹⁵ *Staff Responses to Orders Directing Clarification*, p. 4 (Feb. 24, 2021).

¹⁶ *Response of Spire Missouri to Staff’s February 2021 Recommendation*, ¶ 3 (Feb. 24, 2021).

¹⁷ *Staff Reply to Spire’s Response*, ¶¶ 2, 3 (Feb. 26, 2021).

grant extension through July 31, 2021.

Based on Staff's recommendation, the Commission will condition the extended waiver period on specified conditions, carrying forward the conditions from the December Order and adding additional measures to require Spire to provide additional information to customers. As required by the December Order, waiver applies only to residential facilities and only when Spire documents customer refusal to allow inspections because of COVID-19 concerns. In addition to the existing requirements to provide notice of inspection delays and conduct weekly odorant intensity tests in affected areas, the Commission will require Spire to provide customers in affected areas additional educational material to explain how to respond to gas odor and the safety risks of corrosion and gas leaks, as Staff recommends. The Commission will require Spire to document delivery of such educational material to each customer who, because of COVID-19 concerns, refuses entry or refuses to schedule an appointment for inspection.

While the waiver period will be extended through July 31, 2021, the Commission will not grant Spire's request to remove the requirement that no incident of noncompliance remain uncorrected for more than one year. However, as Staff has recommended, the Commission will excuse failure to disconnect service to noncompliant residential facilities when "medical necessity" requires maintaining gas service. Staff's recommendation refers the Commission to a definition found in the Commission's "Cold Weather Rule," which provides for a form submitted by a physician to attest that natural gas service is necessary to maintain life or health.¹⁸ As proposed by Staff, this narrow exception¹⁹ will

¹⁸ 20 CSR 4240-13.055(1)(D)2.

¹⁹ Exception to the one-year limit for medical necessity applies only to residential facilities. See *Staff Responses to Orders Directing Clarification*, ¶ 2 (Feb. 24, 2021).

avoid imposing undue hardship in those circumstances when customers have demonstrated that medical necessity requires the maintenance of gas service.

Maintaining the one-year limit is necessary for gas safety, even when taking into consideration the special challenges posed by the pandemic. The Commission finds that adapting the concept of medical necessity, as stated in Commission rule, is appropriate in this case to avoid imposing unwarranted risks to a select group of customers who require natural gas service because of health needs. Therefore, under this order, medical necessity will excuse failure to disconnect a noncompliant residential facility when a physician submits a form attesting the customer's household must have gas service to maintain life or health. Such incidents will be excused only when Spire maintains documentation to demonstrate medical necessity. The limited exception for medical necessity should insure that the vast majority of inspections and surveys are completed on time.

The Commission concludes that Staff's recommendation to extend the waiver through July 31, 2021, while requiring additional customer education about the risks of gas leaks, properly recognizes both the concerns about COVID-19 and Spire's responsibility to complete timely inspections to preserve gas safety. Gas safety inspections are essential to safe service. As noted by Staff, Spire's routine atmospheric corrosion inspections revealed more than 1,000 indications of corrosion during each year from 2018 through 2020.²⁰ In each of those instances, Spire applied "remedial measures" to provide protection.²¹ Staff reports that Spire's surveys for leaks in "inside facilities"

²⁰ *Staff Recommendation*, Attachment A: Memorandum, p. 4 n.2 (Feb. 19, 2021).

²¹ *Staff Recommendation*, Attachment A: Memorandum, p. 4 n.3 (Feb. 19, 2021).

discovered 16 leaks in 2018, 18 leaks in 2019 and 18 leaks in 2020.²² Staff advises that these leaks were discovered as the result of leak surveys, rather than customer reports of gas odor.²³

Staff also recommends Spire be required to notify the Commission on June 30, 2021, regarding the status of all facilities that are not compliant with atmospheric corrosion inspection and leak survey requirements as of that date. The Commission will adopt that requirement. However, the Commission notes that a timely application to extend waiver beyond July 31, 2021, would have to be filed in time to allow for an order issued no later than June 2, 2021, to take effect on August 1, 2021. Thus, a June 30, 2021 notice that anticipates the need for a waiver extension will, like Spire's present motion, come too late to provide 60 days' notice to USDOT before the effective date. Spire is advised to monitor its progress in completing the required inspections and surveys so that it can complete inspections as required. Further requests for relief should be made in a timely manner.

To provide the mandated notice to USDOT, the Commission will make this order effective on May 2, 2021, which is 60 days after the date of issuance. As previously ordered 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.²⁴

The Commission acknowledges that the waiver period under the December Order

²² *Staff Recommendation*, Attachment A: Memorandum, p. 4 n.4 (Feb. 19, 2021).

²³ *Staff Recommendation*, Attachment A: Memorandum, p. 4 (Feb. 19, 2021).

²⁴ At this time, USDOT requests electronic communications rather than correspondence by mail because of the COVID-19 pandemic. Assistance to the Public During COVID-19, USDOT, PHMSA (Mar. 27, 2020), <https://www.phmsa.dot.gov/news/assistance-public-during-covid-19> (visited Feb. 28, 2021) (requests electronic correspondence and provides a list of email addresses; email addresses listed at link under "related documents").

expires on March 31, 2021. The purpose of this order is to extend the waiver period from March 31 through July 31, 2021. Should PHMSA issue a letter indicating no objection to extension of the waiver period at any time before the May 2, 2021 effective date of this order, the Commission encourages Staff and Spire to promptly file notice and seek relief as necessary.

THE COMMISSION ORDERS THAT:

1. Spire's request to extend the period of waiver under the Commission's December 2, 2020 *Order Modifying Temporary Waiver and Directing Written Notice* is granted, in part, to extend the waiver period through July 31, 2021.

2. The following conditions apply to extension of the waiver period:

- a. The last day of the extended waiver period shall be July 31, 2021;
- b. As required by the June Order, waiver applies only to Spire facilities inside customer premises and does not apply to facilities outside customer premises. As required by the December Order, the extended waiver period applies only to residential facilities occupied or controlled by customers who, because of COVID-19 concerns, either refuse Spire entry for inspection or refuse to schedule an appointment for inspection;
- c. As required by the December Order, Spire shall document each instance of refused entry or refusal to schedule an appointment for inspection because of COVID-19 concerns. In addition, Spire shall document delivery of educational material that explains how to respond to gas odor and the safety risks of corrosion and gas leaks to each customer

who, because of COVID-19 concerns, refuses entry or refuses to schedule an appointment for inspection;

d. As required by the December Order, Spire shall continue to document all noncompliant facilities eligible for extended waiver pursuant to this order and shall provide a monthly report to the Commission, by submission directly to Staff, listing all noncompliant facilities and providing documentation required by provision (c) above. In addition, Spire shall notify the Commission, by filing in this case on June 30, 2021, of the completion status of the remaining atmospheric corrosion inspections and leakage surveys for each noncompliant facility. Such filing shall provide an estimated schedule to complete inspections or surveys or disconnect service;

e. As required by the December Order, Spire shall conduct additional public awareness efforts to notify customers when inspection of facilities is delayed pursuant to the temporary waiver. In addition, Spire shall provide educational material to customers that explains how to respond to gas odor and the safety risks of corrosion and gas leaks; and

f. As required by the December Order, Spire shall conduct weekly odorant intensity tests, in accordance with the test requirements of 20 CSR 4240-40.030(12)(P)6, in areas where atmospheric corrosion monitoring and leakage surveys are delayed pursuant to the temporary waiver.

3. Spire's request to remove the one-year limit on noncompliance, as required by the Commission's June 11, 2020 *Order Approving Application for Temporary Waiver and Directing Written Notice*, is denied.

4. The one-year limit on noncompliance is modified by this order only to excuse Spire's failure to disconnect service to noncompliant residential facilities when medical necessity requires maintenance of natural gas service. Adapting the definition of medical necessity from 20 CSR 4240-13.055(1)(D)2 for the limited purpose of the extended waiver granted in this case only, medical necessity shall be established for a customer with the submission of a medical form in which a physician attests that the customer's household must have gas service to maintain life or health. Spire shall retain copies of such forms to document any instances of medical necessity.

5. By no later than 5 p.m. on March 3, 2021, 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" stated in the subject line.

6. This order shall be effective on May 2, 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