

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

In the Matter of the Request of Spire)
Missouri Inc. d/b/a Spire for a Temporary)
Waiver from Commission Rules 20 CSR) **File No. GE-2020-0373**
4240-40.030 (9)(Q), (13)(M), (15)(C),)
(15)(D) and (15)(E) and Orders Pertaining)
to Inspections and Replacements)

MOTION TO CORRECT ORDERS NUNC PRO TUNC

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and requests the Commission correct errors in its *Order on Application for Temporary Waivers* and *Order Approving Application for Temporary Waiver and Directing Written Notice*, both issued on June 11, 2020. In support of this request, Staff states as follows:

Order on Application for Temporary Waivers

1. On June 11, 2020, the Commission issued its *Order on Application for Temporary Waivers*, which among other things, granted Spire’s request for a waiver from certain Commission gas safety rules, with certain conditions. This order is to be effective on June 21, 2020.

2. In reviewing this order, Staff has noticed two typographical errors in rule citations on the top of page 5,

20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B.

3. The correct rule citations are,

20 CSR 4240-40.030**(13)**(M)2.A. and 20 CSR 4240-40.030**(13)**(M)2.B.

(Emphasis added).

4. Because the references to these rules appear to be merely typographical errors, it is appropriate for the Commission to correct them *nunc pro tunc*, to reflect the order's original intent.¹

**Order Approving Application for Temporary Waiver
and Directing Written Notice**

5. On June 11, 2020, the Commission issued its *Order Approving Application for Temporary Waiver and Directing Written Notice*, which among other things, grants Spire's request for a waiver from certain Commission gas safety rules, with certain conditions, and directs notice of this order to the Secretary of the U.S. Department of Transportation. The order is to be effective on August 12, 2020.

6. In reviewing this order, Staff has noticed four typographical errors in rule citations on pages 6 and 7,

20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B.

7. The correct rule citations are,

20 CSR 4240-40.030(13)(M)2.A. and 20 CSR 4240-40.030(13)(M)2.B.

(Emphasis added).

8. Also in reviewing this order, Staff has noticed a few errors in citing the federal rules and an incorrect statement regarding Staff's recommendation regarding the applicable federal rules, in the Commission's footnote 3, on page 3,

³ Staff advises waiver of 20 CSR 4240-40.030(9)(Q)1 requires waiver of 40 C.F.R. 192.481 and waiver of 20 CSR 4240-40.030(13)(M) likely requires waiver of 40 C.F.R. 192.723, although Staff was not able to pinpoint the precise extent of waiver of the federal rule required by Spire's application.

¹ *Meek v. Pizza Inn*, 903 S.W.2d 541, 544 (Mo. App. W.D. 1995).

9. First, the correct citations to the federal rules are 49 C.F.R. 192.481 and 49 C.F.R. 192.723. Second, staff suggests the Commission mistakenly included the clause “although Staff was not able to pinpoint the precise extent of waiver of the federal rule required by Spire’s application”. Staff did note on page 15 of its May 26, 2020 memo that Spire’s application was not specific enough to determine with certainty how many of the provisions of 49 CFR 192.723 would need to be waived. However, Staff’s analysis on pages 16 and 17 of the same memo formed the basis of Staff Recommendations 4 and 5, recommending in favor of granting a waiver from provisions of 49 CFR 192.723(a) and (b)(1), but not granting a waiver from provisions in 49 CFR 192.723(b)(2). Spire confirmed on Page 2 of its June 3, 2020 response that it did not intend to request a waiver from 49 CFR 192.723(b)(2). Further, in several sections of Staff’s Recommendation filed on May 26, 2020, and subsequent responses, Staff notes the following:²

20 CSR 4240-40.030(9)(Q)(1) - Federal regulation is 49 CFR 192.481(a)³

20 CSR 4240-40.030(13)(M)1 and 2.A. and B. – Federal regulation is 49 CFR 192.723(a) and (b)(1)⁴

10. In order to avoid confusion for the Secretary of the U.S. Department of Transportation during its review of this order, Staff requests the Commission correct its footnote 3, on page 3, to read as follows:

³ Staff advises waiver of 20 CSR 4240-40.030(9)(Q)1 requires waiver of 49 C.F.R. 192.481(a) and waiver of 20 CSR 4240-40.030(13)(M)1 and 2.A. and B. requires waiver of 49 C.F.R. 192.723(a) and (b)(1).

² See Staff Recommendation, filed May 26, 2020, pg.3, subparagraphs 2. and 4., pg. 5, paragraph 8.; and Staff Response to Spire’s June 8, 2020 Filing, pg. 3, subparagraphs 4 and 5; pg. 6 of 14, letter h., pg. 12 of 14, Staff Recommendation 4, pg. 13 of 14, Staff Recommendation 5.

³ 49 CFR 192.481 (2019) is attached hereto as Attachment 1.

⁴ 49 CFR 192.723 (2019) is attached hereto as Attachment 2.

11. Because the references to the federal code appear to be typographical errors and because it appears the Commission mistakenly misquoted Staff's recommendation and that misquote did not impact the Commission's finding, it is appropriate for the Commission to correct them *nunc pro tunc*, to reflect the order's original intent.

WHEREFORE, Staff respectfully requests the Commission correct its orders as set forth herein, and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

/s/ Jamie S. Myers

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via e-mail on counsel for the parties of record to this case on this 15th day of June, 2020.

/s/ Jamie S. Myers