

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,
Case No. GE-2020-0295, Spire Missouri

FROM: Daniel Fitzpatrick, Associate Engineer, Safety Engineering Department
Clinton L. Foster, Associate Engineer, Safety Engineering Department

/s/ Kathleen A. McNelis, P.E. 07/31/2020 /s/ Robert S. Berlin 07/31/2020
Safety Engineering Department / Date Staff Counsel Division / Date

SUBJECT: Staff Recommendation Regarding Spire Missouri Request for Approval of a
Waiver from 20 CSR 4240-40.030(13)(BB)

DATE: July 31, 2020

Executive Summary

Spire Missouri Inc. (“Spire Missouri”) is requesting a waiver from the Commission’s pipeline safety rules requiring natural gas operators to test and perform inspections of pressure regulating and limiting devices installed on any service line that is directly connected to a production, gathering, or transmission line (20 CSR 4240-40.030(13)(BB)) for its farm taps. The term “Farm Tap” is not defined in state or federal pipeline safety rules; however, the U.S. Department of Transportation (DOT) provided the following explanation of the term in the preamble to a final rule amending 49 CFR 192¹: “Farm tap is industry jargon for a pipeline that branches from a transmission or gathering line to deliver gas to a farmer or other landowner.” Since Spire’s farm taps are service lines that are directly connected to transmission lines, the requirements of 20 CSR 4240-40.030(13)(BB) would be applicable to the pressure regulating and limiting devices installed on Spire’s farm taps.

In response to Staff Data requests, Spire Missouri stated that it has 546 farm taps in the Missouri East region and 542 farm taps in the Missouri West region. However, according to Spire, the number of farm taps in the Missouri West region where Spire Missouri is responsible for the regulator subject to 20 CSR 4240-40.030(13)(BB) is 187². Therefore, if granted, this waiver would apply to 733 farm tap service lines.

¹ Published in the Monday, August 14, 1995 Federal Register, 60 Fed Reg. 41821.

² The remaining 355 farm taps in the Spire Missouri West operating area are served from Southern Star Central Gas Pipeline’s natural gas transmission line. According to Spire’s response to Staff Data Request 0009, Southern Star Central Gas Pipeline owns and maintains these farm taps from the transmission line, through the pressure regulators subject to 20 CSR 4240-40.030(13)(BB), and up to a valve after the outlet of the pressure regulator on each service line.

** Denotes Confidential Information **

The Commission's Safety Engineering Department Staff (Staff) performed the following review and analysis to reach its recommendations:

- Reviewed Spire's Request for Waiver and additional information provided by Spire Missouri through data requests;
- Reviewed applicable Commission rules;
- Reviewed past Commission orders; and
- Coordinated with the U.S. Department of Transportation (U.S. DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) regarding federal pipeline safety requirements.

Staff is recommending that the Commission approve this waiver and also order that such approval is contingent on Spire Missouri complying with conditions outlined in the Staff Recommendations and Conditions section of this memo.

1.0 Background Information

Federal rule 49 CFR 192.740 was published in the Federal Register as a final rule on January 23, 2017 with an effective date of March 24, 2017. The final rule added the requirements in 49 CFR 192.740 to inspect and test each pressure regulating or limiting device for any service line directly connected to a production, gathering or transmission pipeline, and exempted these service lines from 49 CFR 192.1003.³ On September 18, 2017, the American Gas Association (AGA) requested the United States Department of Transportation's Pipeline and Hazardous Materials Administration (PHMSA) to consider revising 49 CFR 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections.

On March 26, 2019, PHMSA published an announcement in the Federal Register that it was exercising enforcement discretion while it considered AGA's request to revise 49 CFR 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. (A copy of the federal register notice is provided as Exhibit B of this memo.) In its announcement PHMSA stated, "PHMSA will not take any enforcement action relating to violations of § 192.740 with respect to operators that choose to include farm taps in their Distribution Integrity Management Program (DIMP) plans, and will instead require that such operators comply with the existing DIMP regulations of 49 CFR part 192, subpart P. This exercise of enforcement discretion provides operators with the flexibility to choose to either address the safety of farm taps under the current regulatory framework of §§ 192.740 and 192.1003(b), or under the regulatory framework that was in place prior to March 24, 2017, by including farm taps

³ 49 CFR 192.1003 sets forth the scope of Gas Distribution Pipeline Integrity Management, and was adopted into Missouri pipeline safety rules at 20 CSR 4240-40.030(17).

in their DIMP. Operators who choose the second option should continuously monitor their farm taps for heightened levels of risk under their DIMP.”

In the Federal Register announcement, PHMSA stated: “all operators of farm taps, moreover, should comply with other regulatory required programs,” and mentioned some specific examples: §§ 192.605(c)(4) Abnormal Operations⁴; 192.613(a) Continuing Surveillance; and, 192.617 Investigation of Failures. Further in the announcement, PHMSA clarified that the exercise of enforcement discretion may not be permanent, stating: “PHMSA is issuing this document while it continues to evaluate and analyze the technical aspects of this matter. This exercise of enforcement discretion will remain in effect until further notice. Nothing in this document prohibits PHMSA from rescinding this document and pursuing an enforcement action if it determines that a significant safety issue warrants doing so. Furthermore, this document does not relieve operators from compliance with any other applicable provisions of the pipeline safety regulations⁵.”

On March 20, 2020, Spire Missouri filed an Application for Waiver, requesting a waiver of compliance from the provisions of 20 CSR 4240-40.030(13)(BB), which, in relevant part, requires that the pressure regulating or limiting devices or relief device and associated equipment installed on any service line that is directly connected to a production, gathering or transmission pipeline be inspected and tested at least once every calendar year at intervals not to exceed 39 months. Specific inspection and testing requirements are provided in Section 2.1 of this memo.

In response to Staff Data Request 0004, Spire Missouri stated that this rule applies to 546 farm taps in Spire Missouri East, and 542 farm taps in Spire Missouri West. However, according to Spire, the number of farm taps in the Missouri West region where Spire Missouri is responsible for the regulator inspection subject to 20 CSR 4240-40.030(13)(BB) is 187.⁶ The Maximum Allowable Operating Pressure (MAOP) on the inlet side of the farm taps ranges from 135 pound per square inch gage pressure (psig) to 900 psig.

Spire Missouri indicated in response to Staff Data Request 0006 that if the waiver for 20 CSR 4240-40.030(13)(BB) is not granted, Spire Missouri estimates the cost to comply with the rule would be approximately \$1,020,195 initially and an additional \$8,885 each year for the additional inspections.

⁴ The March 26, 2019 Federal Register incorrectly referenced §§ 192.603(c)(4) for abnormal operations instead of §§ 192.605(c)(4). Staff received clarification on June 8, 2020 in an email from PHMSA that the Federal register should reference §§ 192.605(c)(4) in relation to abnormal operations.

⁵ Since publishing the March 26, 2019 Federal Register, PHMSA has made no changes to its decision to exercise enforcement discretion on 49 CFR Part 192.740, nor have any federal regulations regarding farm taps been updated.

⁶ Spire Missouri response to Staff Data Request 0009.

In its application, Spire Missouri stated that:

“Spire Missouri currently incorporates its farm taps into its DIMP and going forward, will manage its farm taps through its DIMP consistent with PHMSA’s March 26, 2019 announcement of enforcement discretion. The Company will therefore mitigate any future risk associated with the Company’s farm taps through compliance with the Company’s DIMP regulations.”

2.0 Applicable Commission rules

2.1 Pressure Regulating, Limiting and Overpressure Protection – Individual Service Lines Directly Connected to Production, Gathering, or Transmission Pipelines

The requirements of Commission rule 20 CSR 4240-40.030(13)(BB) do not differ in any substantive way from the requirements of the corresponding federal rule 49 CFR 192.740, although there are some minor formatting differences. Commission rule 20 CSR 4240-40.030(13)(BB) is copied below, and is the rule from which Spire Missouri is requesting a waiver.

20 CSR 4240-40.030(13)(BB) Pressure Regulating, Limiting, and Overpressure Protection—Individual Service Lines Directly Connected to Production, Gathering, or Transmission Pipelines (192.740)

1. This subsection applies, except as provided in paragraph (13)(BB)3. to any service line directly connected to a production, gathering, or transmission pipeline that is not operated as part of a distribution system.
2. Each pressure regulating or limiting device, relief device (except rupture discs), automatic shutoff device, and associated equipment must be inspected and tested at least once every three (3) calendar years, not exceeding thirty-nine (39) months, to determine that it is:
 - A. In good mechanical condition;
 - B. Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
 - C. Set to control or relieve at the correct pressure consistent with the pressure limits of paragraph (4)(DD)2.; and to limit the pressure on the inlet of the service regulator to sixty (60) psi (414 kPa) gauge or less in case the upstream regulator fails to function properly; and

D. Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

3. This subsection does not apply to equipment installed on service lines that only serve engines that power irrigation pumps.

2.2 Distribution Integrity Management

Consistent with guidance from PHMSA, Staff is recommending that during the effective period of the waiver, Spire Missouri must include the farm taps in its DIMP, and must continuously monitor its farm taps for heightened levels of risk under its DIMP.

The Commission's rules related to DIMP are provided in 20 CSR 4240-40.030(17). A copy is included as Exhibit A of this memo. In general, DIMP requires each 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.

The requirements of this Missouri rule 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.

2.3 Waivers of Compliance

Commission rule 20 CSR 4240-40.030(18) states that upon written request to the secretary of the commission⁷, the commission, by authority order and under such terms and conditions as the commission deems appropriate, may waive in whole or part compliance with any of the

⁷ As defined by 20 CSR 4240-40.030(1)(B)6., commission means the Missouri Public Service Commission.

requirements contained in this rule⁸. Waivers will be granted only on a showing that gas safety is not compromised. If the waiver request would waive compliance with a federal requirement in 49 CFR part 192, additional actions shall be taken in accordance with 49 U.S.C. 60118 except when the provisions of subsection (17)(G)⁹ apply.

2.4 Definition of Service line

As defined by 20 CSR 4240-40.030(1)(B)32., a service line means a distribution line that transports gas from a common source of supply to an individual customer, to two (2) adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

2.5 Definition of Transmission line

As defined by 20 CSR 4240-40.030(1)(B)36., a transmission line among other things means a pipeline¹⁰, other than a gathering line¹¹, that transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center. (A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.)

2.6 Commission Rules corresponding to federal regulations referenced in the March 26, 2019 Federal Register

2.6.1 Abnormal Operations [49 CFR 192.605(c)(4)]

The requirements of 20 CSR 4240-40.030 (12)(C)3.D. (corresponding to federal rule 49 CFR 192.605(c)(4)) are specific for transmission pipelines, and additionally require that for transmission lines the manual required by (12)(C)1. must include procedures to provide safety when operating design limits 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.

⁸ Rule in this context refers to 20 CSR 4240-40.030.

⁹ Code requirement 20 CSR 4240-40.030(17)(G) applies to an operator's gas distribution integrity management program and the requirement defines when an operator may deviate from required periodic inspections.

¹⁰ As defined by 20 CSR 4240-40.030(1)(B) 31., a pipeline means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

¹¹ As defined by 20 CSR 4240-40.030(1)(B)17., a gathering line means a pipeline that transports gas from a current production facility to a transmission line or main.

2.6.2 Continuing Surveillance [49 CFR 192.613(a)]

20 CSR 4240-40.030(12)(H)1. (corresponding to federal rule 49 CFR 192.613(a)) requires that each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements and other unusual operating and maintenance conditions.

2.6.3 Investigation of Failures [49 CFR 192.617]

20 CSR 4240-40.030(12)(L) (corresponding to federal rule 49 CFR 192.617) requires that each operator shall establish procedures for analyzing accidents and failures, including the selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence.

3.0 Previous Commission Decisions

There have been no previous requests to the Commission for waiver from 20 CSR 4240-40.030(13)(BB).

4.0 Coordination with U.S. DOT

The Commission has an annual certification from the U.S. DOT under 49 U.S. C. Section 60105 of 49 U.S. Code to implement its pipeline safety program. 49 U.S. C. 60118 addresses waivers of pipeline safety standards by state authorities. 49 U.S.C. 60118 (d) requires that:

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.

PHMSA has requested that copies of the Commission orders related to state waivers be sent to PHMSAOPSSStateWaivers@dot.gov .

In guidelines provided to state programs, PHMSA encourages state programs to coordinate review of waiver requests with PHMSA prior to finalizing state approval. Staff submitted a copy of the Spire Missouri Application waiver of compliance from testing and inspection of farm taps requirements to PHMSA on April 27, 2020.

Based on discussions with PHMSA, it is Staff's understanding that PHMSA would not object to a waiver from the state regulation 20 CSR 4240-40.030 (13)(BB) [corresponding to federal rule 49 CFR 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 49 CFR Section 192.740 or publishes a different regulation addressing the inspection and testing of the farm taps that are the subject of this waiver request. These conditions include continuously monitoring farm taps for heightened levels of risk in Spire Missouri's DIMP, and compliance with other regulatory required programs (e.g., §§ 192.605(c)(4) Abnormal Operations; 192.613(a) Continuing Surveillance; and, 192.617 Investigation of Failures).

4.1 Applicable Federal Regulations

Spire Missouri lists the Commission rules it is seeking a temporary waiver from as 20 CSR 4240-40.030(13)(BB). The corresponding federal regulation is 49 CFR 192.740 (Pressure Regulating, Limiting, and Overpressure Protection – Individual Service Line Directly Connected to Production, Gathering, or Transmission Pipelines).

Other applicable federal regulations discussed in this report include:

- 20 CSR 4240-40.030(12)(C)3.D. – Abnormal Operations is 49 CFR 192.605(c)(4)
- 20 CSR 4240-40.030(12)(H)1. Continuing Surveillance is 49 CFR 192.613(a)
- 20 CSR 4240-40.030(12)(L) Investigation of Failures is 49 CFR 192.617
- 20 CSR 4240-40.030(17) Gas Distribution Integrity Management (IM) is 49 CFR Subpart P

5.0 Staff Analysis

5.1 Federal Exercise of Enforcement Discretion

Staff agrees with Spire's statement that PHMSA has issued an exercise of enforcement discretion related to 49 CFR 192.740, the federal equivalent of the Commission rule 20 CSR 4240-40.030(13)(BB). However, Staff does not agree with Spire's statement that PHMSA "essentially waived the requirement". Staff's understanding is that while the exercise of

enforcement discretion is in effect, PHMSA will not take enforcement actions against operators who do not comply with the requirements of 49 CFR 192.740, provided the operator complies with the other requirements contained in the notice. Staff also notes that the PHMSA announcement explicitly 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 response to Staff Data Request 0003.1 requesting draft language Spire Missouri would propose to be included as a condition of the waiver to reflect that PHMSA may take an alternative course of action, Spire Missouri proposed: “The waiver shall be in effect until such time that PHMSA elects to enforce 49 CFR Section 192.740 or publishes a different regulation addressing the inspection and testing of the farm taps that are the subject of this waiver request.” Staff recommends including this language as a condition of the waiver.

5.2 Safety Considerations

5.2.1 Current Farm Tap Operations and Maintenance Activities Conducted by Spire

Spire Missouri conducts regular operations and maintenance activities on farm taps as required by Commission rules including, annual patrols of all feeder lines leading to farm taps, and annual odorant intensity tests at individually odorized service lines.¹²

Spire’s patrolling procedures require inspections of feeder lines including those leading to farm tap services once each calendar year at intervals not to exceed fifteen (15) months. These procedures require 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.

Spire’s odorization procedures require odor intensity tests at individually odorized services once each calendar year, at intervals not to exceed fifteen (15) months. The procedures define adequate odorization to be odorization such that 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.¹³

The procedures discussed in this section are required by Commission rules 20 CSR 4240-40.030(13)(L)3. and 20 CSR 4240-40.030(12)(P)6. These procedures do not include the inspections required by 20 CSR 4240-40.030(13)(BB).

¹² Spire Missouri response to Staff Data Request 0002.3.

¹³ Spire Missouri West procedure defines the lower explosive limit to be 4.5 percent gas-in-air, and one-fifth the lower explosive limit to be 0.9 percent gas-in-air.

Staff notes that in the event the Commission grants a waiver from 20 CSR 2420-40.030(13)(BB), Spire Missouri would still be required under Commission rules to continue patrols, leakage surveys and odorization. To ensure that this is clear, Staff proposes to add a condition to the waiver that Spire Missouri must continue to ensure that the requirements of all other applicable regulations regarding farm taps are met or exceeded.

5.2.2 DIMP

Spire Missouri provided its current DIMP to Staff via email on January 15, 2020, including the DIMP plan, its appendices, risk replacement model, and action plans. This is the DIMP that Spire Missouri has stated includes and manages the Spire's farm taps.¹⁴

Spire's DIMP does not currently address threats to farm taps as separate threat categories. In Staff Data Request 0005.1, Staff requested Spire Missouri to explain what data input, output and triggers in Spire's DIMP would indicate that there may be a heightened risk level on farm taps (specifically related to regulator failure, or overpressure events). Spire Missouri responded that ** _____

_____ **

Based on Spire's responses, it is Staff's interpretation that, Spire Missouri is in compliance with the existing DIMP regulations of 49 CFR part 192, subpart P. Additionally, with the conditions recommended by Staff, it is Staff's interpretation that Spire Missouri will meet the requirement in the March 26, 2019 Federal Register, that operators who forgo the maintenance and inspection requirements contained in 49 CFR 192.740 must mitigate any future risks associated with farm taps through compliance with the existing DIMP regulations in 49 CFR part 192, subpart P. Further, Staff has no reason to believe that Spire Missouri following the approach required in the March 26, 2019 Federal Register would compromise gas safety. In the March 26, 2019 Federal Register Notice, PHMSA states that it believes that the two regulatory sections (referring to 49 FR 192.740 and 192.1003) provide equivalent levels of safety.

However, since Spire Missouri has not historically monitored farm taps separately from other service lines in its DIMP, the risks associated with Spire's farm taps have not yet been evaluated or ranked independently of Spire's other service lines. Staff proposes that if the Commission

¹⁴ Spire Missouri response to Staff Data Request 0008.

grants this waiver it include a condition requiring quarterly reporting to Staff of failures and leaks associated with farm taps as follows:

- a. For each failure of a pressure regulating or limiting device, reporting shall include:
 - i. Failure location
 - ii. Failure date
 - iii. Consequences of failure
 - iv. Actions taken to correct failure
 - v. Applicable Distribution Integrity Management Program (DIMP) action plan, if no applicable action plan has been developed indicate in Spire's opinion why the applicable threat does not warrant one.
- b. For each leak, reporting shall include:
 - i. Leak ID number
 - ii. Leak date
 - iii. Leak location
 - iv. Leak classification
 - v. Leak cause
 - vi. 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.

Staff also recommends that Spire Missouri be required to provide annual reports to Staff that include at a minimum an analysis of annual trends of leaks on Spire's farm taps.

Staff will review the data reported and will notify the Commission in the event it appears that additional actions, such as compliance with the requirements of 20 CSR 4240-40.030(13)(BB), are necessary to ensure that gas safety is not compromised.

5.2.3. Leak History

Staff requested the leak history on Spire's farm taps from the previous five (5) years¹⁵. Spire Missouri provided a list of 23 total leaks on farm taps that occurred in both the Spire Missouri East and Spire Missouri West operating areas from 2015 through 2019, and included an additional two leaks that occurred in 2020. Of the 23 total leaks from 2015 through 2019, 16 occurred in the Spire Missouri East operating area and 7 occurred in the Spire Missouri West operating area. In response to Staff Data Request 0002.1, Spire Missouri indicated that none of the 23 leaks from the previous five years would have been detected and/or prevented by an inspection as required

¹⁵ Staff Data Request 0002.

by 20 CSR-4240-40.030(13)(BB). Spire Missouri indicated the DIMP action plans that would include each leak as follows.¹⁶

- Corrosion on Unprotected Steel Services and Yardline
- Fitting Replacement Program
- MO East Risk Replacement Model
- MO East Non-Blighted Areas Risk Replacement Model
- Damage Prevention Program
- Leak Repair Data Improvements
- MO West Vehicle Damage Action Plan
- Fire Explosion Leaks

Commission rule 20 CSR-4240-40.030(13)(BB) requires an inspection to determine if the pressure regulator or limiting device is operating correctly. **

_____ .¹⁷ _____¹⁸

_____.¹⁹ ** According to Spire, for farm taps served by Southern Star's transmission line, Spire Missouri owns and maintains sections of the service line piping to the customer. Spire Missouri stated that Spire's ownership and maintenance responsibility starts at a valve downstream of the regulator located and directly upstream of the meter.²⁰ **

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The leak history data Spire Missouri provided for the previous five (5) years shows that there were no failures or leaks relating to farm tap regulator failures on Spire Missouri facilities. The types of leaks that were found during this five year period would be detected during routine leak surveys, and may also be identified by the annual patrols of these facilities as described in Section 5.2.1 above.

Staff concludes that Spire's current operations and maintenance practices are sufficient to discover leaks of the nature it has experienced on its farm tap facilities during the past five years.

¹⁶ Spire Missouri response to Staff Data Request 0002.1.

¹⁷ Spire Missouri response to Staff Data Request 0002.

¹⁸ Spire Missouri email to Staff on June 26, 2020 and responses to Staff Data Requests 0002, 0002.1, 0005.3, and 0009.

¹⁹ Spire Missouri email to Staff on June 26, 2020 and response to Staff Data Request 0009.

²⁰ Spire Missouri response to Staff Data Request 0009.

5.2.4. Incidents

Staff requested incident history on Spire's farm taps from the previous five (5) years. Spire Missouri indicated that it has not had a Federal or State reportable incident on a farm tap in the past 5 years.²¹ In Staff's opinion, there does not appear to be a reason to believe that the number of incidents on Spire's facilities would be reduced by compliance with 20 CSR 4240-40.030(13)(BB).

Staff's Recommendation and Conditions

Staff has reviewed Spire's Request for Waiver, Spire's responses to Staff Data Requests, applicable Commission Rules, past Commission orders, and has coordinated with the PHMSA regarding federal pipeline safety requirements. Based on Staff's review, Staff is recommending that the Commission approve this waiver request subject to the following conditions:

1. Waiver shall be in effect until such time that PHMSA elects to enforce 49 CFR Section 192.740 or publishes a different regulation addressing the inspection and testing of the farm taps that are the subject of this waiver request.
2. Spire Missouri must continuously monitor its farm taps for heightened levels of risk under its Distribution Integrity Management Program (DIMP).
3. 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:
 - a. 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.
 - b. 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)].
 - c. 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.

²¹ Spire Missouri response to Staff Data Request 0002.

4. 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.
 - a. For each failure of a pressure regulating or limiting device, these reports shall include:
 - i. Failure location
 - ii. Failure date
 - iii. Consequences of failure
 - iv. Actions taken to correct failure
 - v. Applicable Distribution Integrity Management Program (DIMP) action plan, if no applicable action plan has been developed indicate in Spire's opinion why the applicable threat does not warrant one.
 - b. For each leak, these reports shall include:
 - i. Leak ID number
 - ii. Leak date
 - iii. Leak location
 - iv. Leak classification
 - v. Leak cause
 - vi. Applicable Distribution Integrity Management Program (DIMP) action plan, if no applicable action plan has been developed indicate in Spire's opinion why the applicable threat does not warrant one.
5. 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.

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 Waiver from Commission)
Rule 20 CSR 4240-40.030 (13)(BB))

Case No. GE-2020-0295

**AFFIDAVIT OF CLINTON L. FOSTER AND
DANIEL FITZPATRICK**

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COME NOW Clinton L. Foster and Daniel Fitzpatrick, on their oath declare that they are of sound mind and lawful age; that they contributed to the foregoing *Staff Memorandum*; and that the same is true and correct according to their best knowledge and belief, under penalty of perjury.

Further your Affiants sayeth not.

/s/ Clinton L. Foster
Clinton L. Foster

/s/ Daniel Fitzpatrick
Daniel Fitzpatrick

EXHIBIT A
COPY OF 20 CSR 4240-40.030(17) – DIMP

Section (17) [Subpart P] – Gas Distribution Integrity Management (IM)

(A) What Are the Required Elements of an Integrity Management Plan?

A written integrity management plan must contain procedures for developing and implementing the following elements:

1. *Knowledge*. An operator must demonstrate an understanding of its gas distribution system developed from reasonably available information.

A. Identify the characteristics of the pipeline's design and operations and the environmental factors that are necessary to assess the applicable threats and risks to its gas distribution pipeline.

B. Consider the information gained from past design, operations, and maintenance.

C. Identify additional information needed and provide a plan for gaining that information over time through normal activities conducted on the pipeline (e.g., design, construction, operations or maintenance activities).

D. Develop and implement a process by which the IM program will be reviewed periodically and refined and improved as needed.

E. Provide for the capture and retention of data on any new pipeline installed. The data must include, at a minimum, the location where the new pipeline is installed and the material of which it is constructed.

2. *Identify threats*. The operator must consider the following categories of threats to each gas distribution pipeline: corrosion, natural forces, excavation damage, other outside force damage, material or welds, equipment failure, incorrect operation, and other concerns that could threaten the integrity of its pipeline. An operator must consider reasonably available information to identify existing and potential threats. Sources of data may include, but are not limited to, incident and leak history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, and excavation damage experience.

3. *Evaluate and rank risk*. An operator must evaluate the risks associated with its distribution pipeline. In this evaluation, the operator must determine the relative importance of each threat and estimate and rank the risks posed to its pipeline. This evaluation must

consider each applicable current and potential threat, the likelihood of failure associated with each threat, and the potential consequences of such a failure. An operator may subdivide its pipeline into regions with similar characteristics (e.g., contiguous areas within a distribution pipeline consisting of mains, services and other appurtenances; areas with common materials or environmental factors), and for which similar actions likely would be effective in reducing risk.

4. *Identify and implement measures to address risks.* Determine and implement measures designed to reduce the risks from failure of its gas distribution pipeline. These measures must include an effective leak management program (unless all leaks are repaired when found).

5. *Measure performance, monitor results, and evaluate effectiveness.*

A. Develop and monitor performance measures from an established baseline to evaluate the effectiveness of its IM program. An operator must consider the results of its performance monitoring in periodically re-evaluating the threats and risks. These performance measures must include the following:

(I) Number of hazardous leaks either eliminated or repaired as required by paragraph (14)(C)l. (or total number of leaks if all leaks are repaired when found), categorized by cause;

(II) Number of excavation damages;

(III) Number of excavation tickets (receipt of information by the underground facility operator from the notification center);

(IV) Total number of leaks either eliminated or repaired, categorized by cause;

(V) Number of hazardous leaks either eliminated or repaired as required by paragraph (14)(C)l. (or total number of leaks if all leaks are repaired when found), categorized by material; and

(VI) Any additional measures the operator determines are needed to evaluate the effectiveness of the operator's IM program in controlling each identified threat.

6. Periodic Evaluation and Improvement. An operator must re-evaluate threats and risks on its entire pipeline and consider the relevance of threats in one (1) location to other areas. Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure. An operator must conduct a complete program re-evaluation at least every five (5) years. The operator must consider the results of the performance monitoring in these evaluations.

7. Report results. Report, on an annual basis, the four (4) measures listed in (17)(D)5.A.(I)-(IV), as part of the annual report required by 4 CSR 240-40.020(7)(A). An operator also must report the four (4) measures to designated commission personnel as part of the annual report required by 4 CSR 240-40.020(7)(A).

(I) FM stations must certify that they were licensed and transmitting at the facility implicated by the Incentive Auction on April 13, 2017.

(iii) If an eligible entity seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment.

(iv) Eligible entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith.

(2) *Final Allocation Deadline.* (i) Upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, all eligible entities that received an initial allocation from the Reimbursement Fund must provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau (the “Final Allocation Deadline”).

(ii) If an eligible entity has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

(3) *Final accounting.* After completing all construction or reimbursable changes, eligible entities that have received money from the Reimbursement Fund will be required to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

(4) *Documentation requirements.* (i) Each eligible entity that receives payment from the Reimbursement Fund is required to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less than 10 years after the date on which it receives final payment from the Reimbursement Fund.

(ii) Each eligible entity that receives payment from the Reimbursement Fund must make available all relevant

documentation upon request from the Commission or its contractor.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket ID: PHMSA–2018–0086]

Pipeline Safety: Exercise of Enforcement Discretion Regarding Farm Taps

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Announcement of enforcement discretion.

SUMMARY: PHMSA is announcing its exercise of enforcement discretion with respect to portions of its regulations that pertain to farm taps. Pursuant to the exercise of enforcement discretion announced in this document, PHMSA will not take enforcement action against operators who forego the new maintenance and inspection requirements established in March 2017 and instead mitigate any future risk associated with farm taps through compliance with the existing Distribution Integrity Management Program (DIMP) regulations. This will provide regulatory flexibility to pipeline operators while at the same time maintaining an equivalent level of safety.

DATES: This action is effective March 26, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information or questions, contact Chris McLaren at chris.mclaren@dot.gov or 281–216–4455.

SUPPLEMENTARY INFORMATION:

I. Background

On January 23, 2017, PHMSA published in the *Federal Register* a final rule titled, “Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes.”¹ This final rule, effective March 24, 2017, modified 49 CFR 192.1003 by adding an exemption from the distribution integrity management program (DIMP) regulations for an individual service line directly connected to a transmission, gathering,

or production pipeline. Additionally, PHMSA added maintenance and inspection requirements in a new section (§ 192.740) to ensure the safety of pressure regulating, limiting, and overpressure protection for individual service lines directly connected to production, gathering, or transmission pipelines.

Individual service lines directly connected to transmission, gathering, or production pipelines are also called “farm taps.” Farm taps are typically located in rural areas, and provide gas to a customer. Prior to the final rule, PHMSA worked with stakeholders to best identify how to address risk with farm taps in an appropriate and cost efficient manner. The result of this work is contained in the final rule with the exemption of farm taps from the DIMP regulations in § 192.1003(b), and the addition of § 192.740, which requires certain maintenance and inspection tasks be performed on a periodic basis.

On September 18, 2017, the American Gas Association (AGA) sent to PHMSA a Regulatory Impact Position Paper titled, “Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes Final Rule.” In its paper, AGA encourages PHMSA to consider revising §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. On November 9, 2017, AGA, the American Petroleum Institute, and the Interstate Natural Gas Association of America submitted joint comments to DOT’s Regulatory Reform Docket, which sought comment on whether existing regulations may be repealed, replaced, or modified without compromising safety (e.g., for burdening domestic energy production, for imposing costs that exceed benefits, or for eliminating jobs or inhibiting job creation).² The joint comments endorsed the recommendations of the AGA paper, and included that paper as an appendix.

AGA believes that PHMSA significantly underestimated the costs associated with the new farm tap inspection requirements. AGA also questions the pipeline safety enhancements attributed to the new regulatory requirements, noting that operators have continuously monitored farm taps for heightened levels of risk under their DIMP plans since 2011, when the DIMP rule became effective. AGA also notes that operators currently are obligated to periodically perform leak surveys on farm taps under

¹ 82 FR 7972, also available in Docket No. PHMSA 2013–0163 at www.regulations.gov.

² See <https://www.regulations.gov/document?D=DOT-OST-2017-0069-1504>.

§ 192.723(b)(2), and these activities provide operators an opportunity to verify their functionality and identify any existing abnormal operating conditions.

As part of DOT's regulatory review process, PHMSA is considering AGA's request to revise §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. AGA contends that this action would provide industry with cost savings, while simultaneously improving pipeline safety by allowing operators to mitigate any future risk associated with farm taps through their DIMP plans. PHMSA believes that the two regulatory sections provide equivalent levels of safety.

II. Announcement of Exercise of Enforcement Discretion

PHMSA is exercising enforcement discretion while it considers AGA's request to revise §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. PHMSA will not take any enforcement action relating to violations of § 192.740 with respect to operators that choose to include farm taps in their DIMP plans, and will instead require that such operators comply with the existing DIMP regulations of 49 CFR part 192, subpart P. This exercise of enforcement discretion provides operators with the flexibility to choose to either address the safety of farm taps under the current regulatory framework of §§ 192.740 and 192.1003(b), or under the regulatory framework that was in place prior to March 24, 2017, by including farm taps in their DIMP. Operators who choose the second option should continuously monitor their farm taps for heightened levels of risk under their DIMP. All operators of farm taps, moreover, should comply with other regulatorily required programs (e.g., §§ 192.603(c)(4) Abnormal Operations; 192.613(a) Continuing Surveillance; and, 192.617 Investigation of Failures).

PHMSA is issuing this document while it continues to evaluate and analyze the technical aspects of this matter. This exercise of enforcement discretion will remain in effect until further notice. Nothing in this document prohibits PHMSA from rescinding this document and pursuing an enforcement action if it determines that a significant safety issue warrants doing so. Furthermore, this document does not relieve operators from compliance with any other applicable provisions of the pipeline safety regulations.

Issued in Washington DC on March 20, 2019, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XF559

Fisheries of the Exclusive Economic Zone Off Alaska; Essential Fish Habitat Amendments; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery management plan amendments; notification of correction.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing the correction of Amendment 115 to the fishery management plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP). NMFS is correcting the numbering of the sections in Amendment 115 describing species-specific essential fish habitat (EFH).

DATES: The correction to Amendment 115 is effective March 26, 2019.

ADDRESSES: The corrected FMP may be obtained at <https://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf>.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

On July 5, 2018, NMFS announced the final approval of EFH amendments to five of its six FMPs, including the BSAI Groundfish FMP (83 FR 31340), in effect as of May 31, 2018 (July 2018 notification) and published availability information for the amendments. These amendments updated the description and identification of EFH based on the best scientific information available to comply with the regulatory requirement to review and update EFH every five years. Species-specific EFH sections are numbered in Section 4.2.2 of the BSAI Groundfish FMP; however, a number for the dusky rockfish section was inadvertently left out. This correction provides a number for the dusky

rockfish section, and rennumbers subsequent species sections sequentially. No regulations were promulgated as part of the July 2018 notification, therefore no regulatory changes are needed to effect this correction.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and opportunity for public comment on this correction, as notice and comment would be unnecessary and contrary to public interest. This notification announces the correction of the unintentional omission of a number for the dusky rockfish EFH section, as described above, and does not change operating practices in the fisheries. Therefore, in order to avoid any negative consequences that could result from this error, the AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This correction notification makes only minor change to the numbers of the species-specific EFH sections and does not change the operating practices in the fisheries. For these reasons, the AA finds good cause to waive the 30-day delay in the effective date of this action.

Description of Correction

In the BSAI Groundfish FMP Amendment 115, described in the July 2018 notification (see **ADDRESSES** for availability), the section for dusky rockfish on page 10 is numbered as follows:

4.2.2.2.20 Dusky Rockfish

Species-specific EFH sections following dusky rockfish are corrected to be numbered sequentially up to the last species section numbered 4.2.2.2.30 for yellow Irish lord, which was numbered 4.2.2.2.29 in the text described in the July 2018 notification.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2019-05599 Filed 3-25-19; 8:45 am]

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