

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference
on the 31st 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 ON MOTION TO MODIFY EFFECTIVE DATE OF ORDER

Issue Date: March 31, 2021

Effective Date: April 10, 2021

On March 25, 2021, Spire Missouri Inc. d/b/a Spire filed a motion to modify the effective date of the Commission's *Order Extending Temporary Waiver and Directing Written Notice*, which was issued on March 3, 2021, with an effective date of May 2, 2021 (March 2021 Order). The March 2021 Order extended the period of waiver granted in the Commission's *Order Modifying Temporary Waiver and Directing Written Notice*, issued on December 2, 2020 (December 2020 Order). In addition, the March 2021 Order modified the one-year limit on noncompliance required by the Commission's *Order Approving Application for Temporary Waiver and Directing Written Notice*,¹ issued on June 11, 2020 (June 2020 Order).

Under the March 2021 Order, the period of waiver is extended from March 31, 2021, to July 31, 2021, for residential facilities under specified circumstances. Spire's motion asks the Commission to modify the May 2, 2021 effective date of that order

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 2020 Order incorporate those corrections.

to April 1, 2021, to avoid a period of potential noncompliance when the period of waiver under the December 2020 Order expires on March 31, 2021, before the waiver extension under the March 2021 Order takes effect on May 2, 2021. Spire requests expedited treatment.

The June 2020 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 2020 Order granted that request, under specified circumstances and with conditions. The waiver period was further extended by the March 2021 Order.

The Commission set the effective dates of the June 2020, December 2020, and March 2021 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 March 25, 2021, the Staff of the Commission (Staff) filed notice of a

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

March 23, 2021 letter from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), indicating PHMSA does not object to extension of the waiver period under the March 2021 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 March 2021 Order to April 1, 2021, to help Spire avoid apparent noncompliance with Commission rules. Spire asks the Commission to adopt the same approach it applied in a December 30, 2020 order⁵ and modify the effective date of the March 2021 Order subject to the authority of the U.S. Department of Transportation (USDOT) to issue a written objection and stay the waiver at any time before May 2, 2021.

In response to Spire's latest motion, the Commission directed Staff to file an expedited recommendation. On March 30, 2021, Staff filed a recommendation that the Commission grant Spire's request and modify the effective date of the March 2021 Order.

The Commission has reviewed and considered Spire's motion and Staff's recommendation and determines the Commission will grant Spire's request to modify the effective date of the March 2021 Order. As stated in the March 2021 Order, the purpose of the order is to extend the waiver period from March 31 through July 31, 2021.

Despite the change in the effective date, extension of the period of waiver under the March 2021 Order remains subject to USDOT's authority to issue a written objection and stay the waiver at any time before May 2, 2021. While the PHMSA letter indicates no

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.

⁵ *Order on Motion to Modify Effective Date of Order* (Dec. 30, 2020).

objection to extension of the waiver, 49 U.S.C. § 60118(d) provides the U.S. Secretary of Transportation 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 informed USDOT that the effective date of the waiver is May 2, 2021. Therefore, § 60118(d) provides that USDOT may make a written objection to the waiver granted to Spire at any time before May 2, 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 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.⁶ The Commission has discretion to set an effective date fewer than 30 days from the date an order is issued. Missouri courts have approved the Commission's use of a 10-day effective date,⁷ but have held that an effective date of less than 10 days is presumptively unreasonable absent extraordinary circumstances.⁸ Therefore, to minimize any potential period of noncompliance to the degree possible, the Commission will make

⁶ Section 386.490.2, RSMo (2016).

⁷ See *Harter v. Pub. Serv. Comm'n*, 361 S.W.3d 52, 58 (Mo. App. W.D. 2012); *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 236 S.W.3d 632, 637 (Mo. banc 2007); *State ex rel. Kansas City, Independence & Fairmount Stage Lines Co. v. Pub. Serv. Comm'n*, 63 S.W.2d 88, 93 (Mo. 1933).

⁸ *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 522, 529 (Mo. App. W.D. 2013).

this order effective on April 10, 2021, which is 10 days after the date of issuance.

THE COMMISSION ORDERS THAT:

1. The effective date of the Commission's March 3, 2021 *Order Extending Temporary Waiver and Directing Written Notice* is modified to April 10, 2021.
2. Extension of the period of waiver under the March 2021 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 May 2, 2021.
3. By no later than 5 p.m. on March 31, 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" indicated in the subject line.
4. This order shall be effective on April 10, 2021.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge