

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 11th day of June, 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 APPROVING APPLICATION FOR TEMPORARY WAIVER
AND DIRECTING WRITTEN NOTICE**

Issue Date: June 11, 2020

Effective Date: August 12, 2020

Spire Missouri Inc. d/b/a Spire filed an application on May 15, 2020, seeking temporary waiver of compliance with certain gas safety rules on behalf of operating units Spire Missouri East and Spire Missouri West. Spire's application seeks, in part, temporary waiver of compliance with some provisions of Commission rules governing the frequency of inspections to monitor atmospheric corrosion, 20 CSR 4240-40.030(9)(Q), and surveys to control leakage in distribution systems, 20 CSR 4240-40.030(13)(M). Spire contends COVID-19 social distancing orders and guidelines obstruct Spire's timely completion of some inspection and survey requirements under Commission rules because of difficulty accessing customer premises.

To facilitate Spire's request for expedited treatment, the Commission takes up Spire's application in two orders. This order concerns only Spire's request for waiver of compliance with Commission rules 20 CSR 4240-40.030(9)(Q)1, 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, addressing only the portion of Spire's application that requires notice to the U.S. Secretary of Transportation. The Commission considers all other requests, including Spire's request for waiver of the notice requirement under 20 CSR 4240-4.017, in a separate order.

On May 26, 2020, the Commission's Staff recommended that the Commission grant conditional approval of some of Spire's requests for temporary waiver and deny others.¹ Spire responded with additional information on June 3, 2020, and clarified that Spire is not seeking waiver of any of the specific provisions of gas safety rules at issue in this order for which Staff recommended denial. Spire's response indicated general agreement to the conditions and limitations recommended by Staff. In light of Spire's response, Staff on June 5, 2020, submitted updated recommendations. Spire provided additional clarifications in a June 8, 2020 response, and Staff again revised its recommendations in a June 9, 2020 filing.

The Commission may waive compliance with any of the requirements of Rule 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 application, Staff's updated recommendation and Spire's additional filings and determines temporary waiver, with appropriate limitations and conditions, will not compromise gas safety. Waiver is limited to facilities inside customer premises, and Spire will be required to continue timely inspections of such facilities whenever feasible. Spire will also be

¹ Staff recommended the Commission should not grant temporary waiver of compliance with the following rules: 20 CSR 4240-40.30(9)(Q)2, 20 CSR 4240-40.30(9)(Q)3, 20 CSR 4240-40.030(13)(M)2.C and 20 CSR 4240-40.030(13)(M)3. Spire's response, filed on June 3, 2020, clarified that it is not seeking waiver of compliance with those rules.

required to provide notice of inspection delays, conduct weekly odorant intensity tests in affected areas and bring all facilities into compliance by no later than December 31, 2020.

The Commission will also require that no incident of noncompliance remain uncorrected for more than one year. To complete inspections and surveys in a timely manner, Spire must coordinate with customers and deploy resources efficiently. However, facilities that have been noncompliant for the longest periods should be addressed with urgency. Therefore, as Staff recommends, the temporary waiver requires Spire to complete inspection of each facility within one year after the date the facility became noncompliant because of a missed inspection or survey. For purposes of the temporary waiver, this date is the “delinquent date,” as provided in Staff’s recommendation filed on June 9, 2020.² Although a waiver is granted through no later than December 31, 2020, each facility is eligible for waiver of compliance for a maximum of only one year after the delinquent date. As a result, depending on the delinquent date, some facilities must be brought into compliance before the December 31, 2020, deadline, while all facilities should be in compliance by no later than December 31, 2020.

Spire’s waiver request includes gas safety rules under federal regulation. As indicated in 20 CSR 4240-40.030(18), federal law requires at least 60 days’ written notice to the U.S. Secretary of Transportation when a state commission approves waiver of a requirement under 49 C.F.R. part 192.³ Specifically, 49 U.S.C. § 60118(d) provides,

² In regard to inspections for atmospheric corrosion, 20 CSR 4240-40.030(9)(Q)1 requires inspections at intervals not exceeding 39 months, so the delinquent date is 39 months after a facility’s most recent inspection; Commission Rule 20 CSR 4240-40.030(13)(M) requires leakage surveys at intervals not exceeding 15 months for some facilities and 39 months for others. A facility’s delinquent date would be 15 or 39 months after the most recent survey.

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.

emphasis added:

If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect,⁴ 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.

Given Spire's request for expedited treatment, the Commission directed Spire and Staff to file pleadings regarding compliance with 49 U.S.C. § 60118. In response, Staff and Spire confirmed the 60-day notice requirement. However, Spire requests the Commission grant a waiver to take effect at such time as the Department of Transportation's Pipeline and Hazardous Materials Safety Administration completes review. Spire neither explains how the Commission can provide 60 days' notice of a contingent effective date nor cites authority or precedent for such a practice. Similarly, Staff requests the Commission make waiver contingent on PHMSA's notice to the Commission that it has no objection. However, under 49 U.S.C. § 60118 any waiver by this Commission is already contingent on the Secretary's review. Based on the parties' filings and 49 U.S.C. § 60118, the Commission concludes it is obligated to provide at least 60 days' notice. Should Spire wish to seek adjustment of the effective date after PHMSA review, the issue may be taken up at that time.

Finally, contact information posted on the U.S. Department of Transportation

⁴ Staff's memorandum filed on May 26, 2020, confirms the Commission has a certification in effect with the U.S. Department of Transportation, pursuant to 49 U.S.C. § 60105.

website requests electronic communications rather than correspondence by mail because of the COVID-19 pandemic.⁵ 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. To accommodate the notice requirement, the Commission will make this order effective 62 days after the date of issuance.

THE COMMISSION ORDERS THAT:

1. Spire's application for temporary waiver from Commission Rule 20 CSR 4240-40.030(9)(Q)1 is granted, subject to the following limitations and conditions:
 - a. Waiver is granted through December 31, 2020;
 - b. Waiver of atmospheric corrosion monitoring applies only to Spire facilities inside customer premises and does not apply to facilities outside customer premises;
 - c. Spire shall document the number of incidents of noncompliance and provide a monthly update to the Commission by submission directly to Staff;
 - d. Despite this waiver, Spire shall identify accessible customer premises, such as schools and other buildings now closed to the public, and complete timely inspections of those facilities;
 - e. Spire shall conduct additional public awareness efforts to notify customers when inspection of facilities is delayed pursuant to this temporary waiver. Spire shall file in this case a report on such efforts;

⁵ Assistance to the Public During COVID-19, U.S. Department of Transportation (Mar. 27, 2020), <https://www.phmsa.dot.gov/news/assistance-public-during-covid-19> (visited June 9, 2020) (posting requests electronic correspondence and provides a list of email addresses; email addresses listed at link under "related documents").

f. 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 is delayed pursuant to this temporary waiver;

g. Spire shall complete inspections of all noncompliant facilities, as required by 20 CSR 4240-40.030(9)(Q)1, by no later than December 31, 2020;

h. Spire shall complete inspections of each noncompliant facility by no later than one year after the facility's delinquent date;

i. The one-year limit serves only to require compliance before December 31, 2020, for eligible facilities. The one-year limit does not extend the waiver period beyond December 31, 2020.

2. Spire's application for temporary waiver from Commission rules 20 CSR 4240-40.030(13)(M)1, 20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B is granted, subject to the following limitations and conditions:

a. Waiver is granted through December 31, 2020;

b. Waiver of leakage surveys applies only to Spire facilities inside customer premises and does not apply to facilities outside customer premises;

c. Spire shall document the number of incidents of noncompliance and provide a monthly update to the Commission by submission directly to Staff;

- d. Despite this waiver, Spire shall identify accessible customer premises, such as schools and other buildings now closed to the public, and complete timely surveys of those facilities;
- e. Spire shall conduct additional public awareness efforts to notify customers when inspection of facilities is delayed pursuant to this temporary waiver. Spire shall file in this case a report on such efforts;
- f. 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 leakage surveys are delayed pursuant to this temporary waiver;
- g. Spire shall complete surveys of all noncompliant facilities, as required by 20 CSR 4240-40.030(13)(M)1, 20 CSR 4240-40.030(M)2.A and 20 CSR 4240-40.030(M)2.B, by no later than December 31, 2020;
- h. Spire shall complete inspections of each noncompliant facility by no later than one year after the facility's delinquent date;
- i. The one-year limit serves only to require compliance before December 31, 2020, for eligible facilities. The one-year limit does not extend the waiver period beyond December 31, 2020.

3. By no later than 5 p.m. on June 12, 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 August 12, 2020.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge