

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

In the Matter of the Application of Spire)
Missouri Inc. d/b/a Spire, for Permission and)
Approval and a Certificate of Convenience)
and Necessity to Construct, Install, Own,)
Operate, Maintain, and Otherwise Control)
and Manage a Natural Gas Distribution)
System to Provide Gas Service in Platte)
County, Missouri as an Expansion of its)
Existing Certificated Areas)

File No. GA-2023-0441

**STAFF RECOMMENDATION FOR APPROVAL OF
CERTIFICATE OF CONVENIENCE AND NECESSITY**

COMES NOW the Staff of the Missouri Public Service Commission, (“Commission”) by and through counsel, and for its *Staff Recommendation for Approval of Certificate of Convenience and Necessity* (“Recommendation”), states as follows:

1. On June 28, 2023, Spire Missouri, Inc. d/b/a Spire (“Spire”) filed its *Application for Certificate of Convenience and Necessity for Platte County and Request for Waiver* (“Application”) with the Commission, requesting a certificate of convenience and necessity (“CCN”) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system in order to provide natural gas service in and around the Platte County, Missouri, as further expansion of its existing certificated area. The Application also included a request to waive the sixty (60) day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

2. On June 30, 2023, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention Requests, and Directing Filing of Staff Recommendation* directing Staff to file its recommendation regarding Spire’s Application no later than July 14, 2023.

3. On August 7, 2023, Spire filed an *Amended Application for Certificate of Convenience and Necessity for Platte County and Request for Waiver*, which corrected the legal description of the proposed area in Paragraph 7 of the original Application.

4. On August 11, 2023, Staff filed its *Motion for Extension of Time to File Staff Recommendation* in which Staff stated that it had submitted data requests to Spire and that Staff was in the process of reviewing the data request responses received from Spire Missouri. Staff also anticipated it would need to send follow up data requests. As such, Staff requested an extension of time to file its recommendation. The Commission granted Staff's request, and ordered Staff to file its recommendation no later than September 28, 2023.

5. Pursuant to § 393.170.2, RSMo, no gas corporation shall provide service to consumers without first having obtained approval from the Commission. In determining whether or not to grant such approval, the Commission has traditionally applied the five "Tartan Criteria" established in *In the Matter of Tartan Energy Company, et al.*, 3 Mo. PSC 3d 173, 177 (1994): (1) there must be a need for the service; (2) the applicant must be qualified to provide the service; (3) the applicant must have the financial ability to provide service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

6. The areas at issue in this case were part of an historical dispute between Empire District Gas Company's ("EDG") predecessor, Aquila, and Spire's predecessor, Missouri Gas Energy ("MGE")¹. In that case, the Commission ordered MGE to remove the area from the tariff. Then, as described more fully in Staff's Memorandum attached

¹ In two separate dockets (GA-96-130 and GA-96-285) the Commission ordered Staff and MGE to cooperate in preparing and filing a tariff defining the service territory of MGE.

hereto as **Appendix A**, in Case No. GA-2023-0110, EDG filed an application for a CCN for six sections in Platte County, one in which Spire claimed it had active facilities and was serving customers. That territory was the same territory which is the subject of this case. To resolve that dispute, EDG, Spire, and Staff negotiated a *Stipulation and Agreement*, apportioning the area between EDG and Spire. The Commission approved the parties' *Stipulation and Agreement* on June 1, 2023.²

7. In response to case number GA-2023-0110, Spire filed its *Application*, followed by its *Amended Application* to incorporate the apportioned area described in GA-2023-0110 into its Commission approved distribution area of its tariff.

8. Staff has reviewed Spire's *Amended Application* and conducted discovery. As more fully explained in Staff's Memorandum, attached hereto as **Appendix A** and incorporated herein by reference, Staff recommends the Commission approve Spire's *Amended Application*, subject to the conditions stated in the Staff Recommendation Section of Staff's Memorandum, as granting the requested CCN would be necessary and convenient for the public service.

9. Spire's *Amended Application* contained a request that the Commission waive the 60-day filing notice required by 20 CSR 4240-4.017(1). Spire's *Amended Application* provided a verified declaration that it had not had communication with the office of the Commission (as defined by 20 CSR 4240-4.015(10)) within the prior 150 days regarding any substantive issues likely to be in the case, and therefore, Staff agrees good cause exists, pursuant to 20 CSR 4240.017(1)(D), to waive the 60-day notice requirement.

² *Order Approving Stipulation and Agreement and Amending Order Granting Certificate of Convenience and Necessity*, File No. GA-2023-0110, Issued June 1, 2023, Effective June 11, 2023.

10. The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989). No party or individual has requested a hearing, so the Commission need not hold a hearing to grant a CCN to the Company.

WHEREFORE, for the reasons stated above and further explained in Staff's Memorandum, Staff recommends the Commission approve Spire Missouri, Inc. d/b/a Spire's *Amended Application* for a CCN in the Platte County, Missouri service areas described in its Amended Application, subject to the conditions set out in the Staff Recommendation Section of Staff's Memorandum; and grant such other and further relief as is appropriate under the circumstances.

Respectfully submitted,

/s/ Carolyn H. Kerr
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Attorney for Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 28th day of September, 2023, to all counsel of record.

/s/ Carolyn H. Kerr

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,
Case No. GA-2023-0441 Spire Missouri, Inc.

FROM: Francisco Del Pozo, Economist, Tariff/Rate Design Department
Seoung Joun Won, PhD., Regulatory Compliance Manager, Financial Analysis

/s/ Francisco Del Pozo 9/28/2023
Staff Economist / Date

SUBJECT: Staff Recommendation for Approval of CCN Application with Conditions

DATE: September 28, 2023

Overview

On June 28, 2023, Spire Missouri, Inc. (“Spire,” “Applicant,” or the “Company”), filed its *Application for Certificate of Convenience and Necessity for Platte County and Request for Waiver* (“Application”) with the Missouri Public Service Commission (“Commission”) for permission and approval and a certificate of public convenience and necessity (“CCN”) to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system¹ to provide gas service in Platte County, Missouri, as a further expansion of its existing certificated area. Spire seeks a waiver from Commission Rule 20 CSR 4240.4.017(1) that provides notice to the secretary of the Commission a minimum of 60 days prior to filing a case and a variance from filing requirements of Commission Rule 20 CSR 4240-3.205(1)(A).

On June 30, 2023, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention Requests, and Directing Filing of Staff Recommendation*. The application to intervene was set for no later than July 14, 2023. No parties intervened. The Commission directed Staff to file its recommendation regarding Spire’s *Application* or request an extension of time no later than August 14, 2023.

¹ The assets subject to this case have already been installed, owned, operated, maintained, and otherwise controlled and managed by Spire Missouri and its predecessor for several years.

On August 7, 2023, Spire filed an *Amended Application for Certificate of Convenience and Necessity for Platte County and Request for Waiver* (“Amended Application,”) which corrected the legal description of the proposed area in Paragraph 7 of the original *Application*.

On August 11, 2023, Staff filed a *Motion for Extension of Time* to file its recommendation to conduct further discovery, analyze newly acquired data and information from Spire, and complete its investigation. On August 14, 2023, the Commission issued its *Order Granting Extension of Time to File Staff Recommendation* and granted the Staff until September 28, 2023, to file its recommendation.

The following territories were part of an historical dispute between Empire District Gas Company’s (“EDG”) predecessor, Aquila, and Spire’s predecessor, Missouri Gas Energy (“MGE”)². In the GA-2007-0289 case, the Commission found as follows:

The Commission’s findings of fact reveal that despite the fact that Sections 4 and 5 of T52N, R33W, Sections 1, 2, 3, 4, 5, 6, of T52N, R34W, Sections 1, 2, 3, 4, 5, and 6 of T52N, R35W, and Section 1 of T52N, R36W are listed in MGE’s 1997 Commission- approved tariff for certificated service areas, there is no substantial or credible evidence in the record as a whole to support a conclusion of law that the Commission ever granted MGE a CCN for these fifteen particular sections.³

Fortunately, MGE is serving no customers in Sections 4 and 5 of T52N, R33W, Sections 1, 2, 3, 4, 5, 6, of T52N, R34W, Sections 1, 2, 3, 4, 5, and 6 of T52N, R35W, and section 1 of T52N, R36W, and has volunteered to remove these fifteen sections from its tariff.

And the Commission ordered that:

4. Missouri Gas Energy shall revise its current Tariff Sheet 6.15, in accordance with its representation to voluntarily correct its Tariff, to reflect it has no Certificate of Convenience and Necessity for Section 1 of T52N, R36W,

² In two separate dockets (GA-96-130 and GA-96-285) the Commission ordered Staff and MGE to cooperate in preparing and filing a tariff defining the service territory of MGE.

³ Case No. GA-2007-0289 Report and Order, Pages 62 and 63.

Sections 1, 2, 3, 4, 5 and 6 of T52N, R35W, and Sections 1, 2, 3, 4, 5, and 6 of T52N, R34W, and Sections 4, and 5 of T52N, R33W; all in Platte County, Missouri.⁴

Discussion

In Commission Docket No. GA-2023-0110, the Empire District Gas Company (“EDG”) filed an application for a CCN for six sections in Platte County. Staff recommended the approval of EDG’s CCN application, since no local distribution company included these sections in its Commission approved distribution areas of its tariff. No party intervened in that case. The Commission approved EDG’s application on January 25, 2023. Then, on February 24, 2023, Spire filed an *Application for Rehearing*, stating that it had active facilities and was serving customers in the area included in EDG’s pending CCN application, docket number GA-2023-0110. In response, EDG, Spire, and Staff negotiated a *Stipulation and Agreement*, apportioning the area between EDG and Spire. The Commission approved the parties’ *Stipulation and Agreement* on June 1, 2023.⁵

In response to case number GA-2023-0110, Spire filed its *Application*, followed by its *Amended Application* to incorporate the apportioned area described in GA-2023-0110 into its Commission approved distribution area of its tariff. Spire’s *Amended Application* describes the area as follows:

All of Section 1, Township 52 North, range 34 West; all of Section 2, Township 52 North, Range 34 West except the following: beginning at the Northwest corner of Section 2, Township 52 North, Range 34 West then south approximately 50’, then east approximately 2,000’, then north approximately 50’, then west approximately 2,000’ to point of beginning; and part of the Southeast Quarter of the Southeast Quarter of Section 35, Township 53 North, Range 34 West; beginning at the southeast corner of the southeast quarter then west approximately 795’, then north approximately 980’, then east approximately 795’, then south approximately 980’ to point of beginning.

⁴ Case No. GA-2007-0289 Report and Order, Page 80.

⁵ *Order Approving Stipulation and Agreement and Amending Order Granting Certificate of Convenience and Necessity*, File No. GA-2023-0110, Issued June 1, 2023, Effective June 11, 2023.

The assets installed in the requested area were installed⁶ by Spire's predecessor, MGE, which Spire acquired through its acquisition of MGE in 2013. MGE installed these assets in 1997 and 2004 and started providing service to these assets in 2000 and 2011, respectively⁷.

Economic Feasibility

In Paragraph 14 of its *Amended Application*, Spire requests a waiver from 20 CSR 4240-3.205(1)(A)(5), which requires a feasibility study. Staff submitted several DRs to inquire in detail about the cost of the existing assets in the proposed territory as well as the respective revenues historically generated by those assets. The assets in this area have historically served four customers in the residential rate class and one customer in the industrial class,⁸ so the rate revenues are limited. The Company states that "Spire does not have and cannot obtain the information required under this rule provision. The most recent assets in the area were installed nearly ten years prior to Spire taking ownership, and the oldest assets were installed over fifteen years prior. Any plans, specifications, or estimates are no longer available to the Company." However, some assets were included in the rate base and related depreciation expense in the Company's last general rate case, Docket No. GR-2022-0179⁹.

Financial Ability

Staff investigated whether Spire has the financial ability to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service in Platte County, Missouri, as a further expansion of its existing certificated area for which Spire is seeking a CCN. Spire's assets in this area were installed in 1997 and 2004 by Spire's predecessor, Missouri Gas Energy, Inc. ("MGE"), which Spire acquired through its acquisition of

⁶ The assets were installed prior to obtaining Commission approval in accordance with § 393.170 RSMo.

⁷ GA-2023-0441 Spire Application Paragraph 8.

⁸ Spire's Response to Staff Data Request 10.

⁹ Spire's Response to Staff Data Request 3.

MGE in 2013.¹⁰ There is no purchase price for this CCN.¹¹ Staff reviewed the financial effect of this CCN on the Company's credit quality. Because the main, service, and meter assets were included in the rate base and related depreciation expense in Spire's last general rate case, File No. GR-2022-0179, there would be no changes in its financial ratios and capital structure due to this CCN.¹² Staff has no concerns with the financial risk profile of the Company. Considering Spire's financial capacity, the Applicant has the financial ability to provide the service. According to The Standard & Poor's ("S&P"), Spire's capital expenditure averages about \$360 million annually, with a credit facility availability of about \$475 million.¹³ The Company is a wholly owned subsidiary of Spire Inc. The S&P expects that Spire Inc. will show robust capital expenditures of about \$650 million annually while maintaining a \$1.3 billion syndicated revolving credit facility to cover its short-term funding needs.¹⁴ S&P and Moody's rated both Spire and Spire Inc. as investment grade. S&P rated both Spire Missouri and Spire Inc. as "A-", while Moody's rated them as "Baa2" and "A1," respectively.¹⁵ Considering the fact that the proposed total cost of the project is less than 1% of the Company's capital expenditure average, it is reasonable to conclude that the Applicant has the financial ability to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide gas service for this CCN.

Potential risks and consequences of operating outside of Spire's certificated area

Per Commission Rule 20 CSR 4240-3.205, regulated gas utilities are required to apply to the Commission requesting an approval of a CCN meeting the requirements set forth in the rule prior to constructing or purchasing assets and/or operating in previously uncertificated area. As stated in the previous discussion, Spire has been operating in uncertificated territory. Operating as a

¹⁰ GA-2023-0441 Spire Application Paragraph 8.

¹¹ Spire's Response to Staff Data Request 4.

¹² Spire's Responses to Staff Data Requests 2 and 3.

¹³ RatingsDirect, S&P Global Ratings. Spire Missouri Inc., May 30, 2023.

¹⁴ RatingsDirect, S&P Global Ratings. Spire Inc., July 5, 2023.

¹⁵ S&P Capital IQ Pro.

regulated utility in an uncertificated area in Missouri poses several risks, including, but not limited to the following:

- Legal consequences – operating in an uncertificated area violates regulatory requirements. Utilities that operate in uncertificated area could face legal consequences such as fines, penalties, or a legal action for operating without proper certification.
- Lack of consumer protection – uncertificated areas lack the consumer protection measures provided by the Commission, potentially leaving customers vulnerable to unfair practices, improper billing, or inadequate quality of service.
- Regulatory intervention – The Commission has the authority to enforce compliance, initiate investigations, and take necessary actions to protect public interest.
- Reputation damage – Operating in uncertificated areas can harm the utility’s reputation. Customers may lose trust in the utility, resulting in negative public perception that can be hard to overcome.
- Financial risks – Operating in uncertificated area may lead to financial risks, as utilities may not have access to certain regulatory mechanisms, rate structures, or financial support available to certificated utilities.

Regulated utilities in Missouri are required to certify their area of operation to ensure that they have exclusive rights to serve customers within a specific territory. This helps prevent duplication of infrastructure and promotes efficiency in the provision of utility services. It also allows for effective regulation and oversight of utilities to protect consumer interests and maintain reliable service delivery. It is crucial for regulated utilities to operate within their certificated areas to ensure compliance, consumer protection, and long-term sustainability.

Tartan Criteria

In the *Tartan Energy Company* case, the Commission’s Order listed five criteria to include when considering making a determination on whether a utility’s proposal meets the standard of being “necessary or convenient for the public service” (A short description of how Staff believes each criteria has been met is also included):

- Is the service needed?
 - Yes. The assets in this area have historically served four customers in the residential rate class and one customer in the industrial class. The earlier discussion regarding existing customers addresses the need of the service.
- Is the Applicant qualified to provide the service?
 - Yes. Spire is a large public utility and gas corporation, as those terms are defined in §386.020, RSMo, and is a corporation incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri, 63101. As an existing utility operator, Staff believes Spire is qualified to provide the service.
- Does the Applicant have the financial ability to provide the service?
 - Yes. As stated above, no external funding was required for this project, and Spire has the financial ability to construct, install, own, operate, maintain, and otherwise control and manage a natural gas distribution system to provide natural gas service for the area as previously described.
- Is the Applicant's proposal economically feasible?
 - Spire has not provided justification of the economic feasibility of these assets, nor identified the original costs or current value of the assets.
- Does the service promote the public interest?
 - Yes, with the proposed conditions. Spire has been serving four customers in the residential rate class and one customer in the industrial class since 2018. It is Staff's position that granting the CCN with conditions is reasonable.

Staff Recommendation

Based on the information provided above, despite the inability of the Company to identify the costs associated with the assets in the area, Staff recommends the Commission approve the Company's requested CCN with the following conditions:

- Spire shall initiate an internal audit of its processes and procedures regarding compliance with Commission Rule 20 CSR 4240-3.205 to ensure all of its regulated area of operation has been certificated by the Commission. The report shall also include steps taken to avoid constructing and/or operating in uncertificated areas in the future.
- Spire shall provide its internal audit report to the Commission prior to filing for its next general rate case.
- Spire shall file an updated tariff sheet incorporating the apportioned area.
- Spire shall quantify the cost of the assets included in rate base located in the area subject to this CCN request.

- Spire shall hold ratepayers receiving service outside of the requested CCN area harmless from any expenses in excess of billed non-gas revenues.¹⁶

¹⁶ The calculation of billed non-gas revenues should also exclude infrastructure system replacement surcharge (ISRS) revenues.

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Platte County, Missouri as an Expansion of its)
Existing Certificated Areas)

File No. GA-2023-0441

AFFIDAVIT OF FRANCISCO DEL POZO

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

COMES NOW FRANCISCO DEL POZO, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation, in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

FRANCISCO DEL POZO



JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 29th day of September, 2023.

Dianna L. Vaught
Notary Public

DIANNA L. VAUGHT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: July 18, 2027
Commission Number: 15207377

**BEFORE THE PUBLIC SERVICE COMMISSION
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Platte County, Missouri as an Expansion of its)
Existing Certificated Areas)

File No. GA-2023-0441

AFFIDAVIT OF SEOUNG JOUN WON, PhD

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

COMES NOW SEOUNG JOUN WON, PhD, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation, in Memorandum form*; and that the same is true and correct according to his best knowledge and belief.

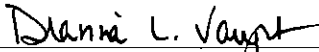
Further the Affiant sayeth not.



SEOUNG JOUN WON, PhD

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 29th day of September, 2023.



Notary Public

DIANNA L. VAUGHT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: July 18, 2027
Commission Number: 15207377