

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

Joshua Michael Kearney	)	
	)	
Complainant,	)	
	)	
v.	)	File No. GC-2024-0172
	)	
Spire Missouri Inc. d/b/a Spire,	)	
	)	
Respondent	)	

**RESPONSES TO COMPLAINANT’S MOTIONS**

COMES NOW Spire Missouri Inc. (“Respondent”) and submits its Responses to Complainant’s Motion to Strike Respondent’s Answer and Motion for Judgment for Failure to Present a Valid Defense filed by Joshua Michael Kearney (“Complainant”), stating the following:

**RESPONSE TO MOTION TO STRIKE RESPONDENT’S ANSWER**

1. Complainant first seeks to strike Paragraph 4 from Respondent’s Answer, which states that “Respondent admits that it is charging customers a delivery charge for gas used, which is based on the number of CCFs used, in accordance with its tariffs, specifically Sheet No. 2, approved by the Missouri Public Service Commission.”

2. Complainant moves to strike Paragraph 4 on the grounds that the phrase “delivery charge for gas used” is not found in Respondent’s tariffs, and therefore the phrase is immaterial, impertinent, and scandalous and subject to be stricken. However, all of Paragraph 4 is material.

3. The allegation of the Complaint is that Complainant is being charged twice for the same service. Conversely, Respondent’s position is that the rates charged to Complainant are the appropriate rates and do not result in Complainant being double-charged for the same service. As noted at the end of Paragraph 4, one of these rates is found in the Company’s Commission-approved Sheet No. 2. Moreover, the phrase “delivery charge for gas used,” while not found in the

tariffs, is meant to explain what the rate charged in Sheet No. 2 is for: the charge, based on the number of CCFs used by a customer, to deliver gas to a customer's meter. Therefore, the entirety of Paragraph 4 is material to Respondent's position and this case and should not be stricken from Respondent's Answer. Complainant's first Motion must be denied.

**RESPONSE TO MOTION FOR JUDGMENT FOR  
FAILURE TO PRESENT A VALID DEFENSE**

4. Second, Complainant moves for judgment on the pleadings because Respondent fails to present a valid legal or factual defense to Complainant's claims, citing Federal Rule of Civil Procedure 8 (c) (1) and § 509.090 RSMo., which require, in responding to a pleading, that a party affirmatively state any avoidance or affirmative defense. Complainant's logic appears to be that because Respondent did not assert any affirmative defenses in its Answer, Respondent violated procedural and substantive requirements, and Complainant is entitled to judgment on the pleadings.

5. However, Complainant misconstrues the purpose of Rule 8 (c) (1) and § 509.090 RSMo. The purpose of these rules is to require responding parties to state affirmative defenses in responding to a claim for relief, which in this instance is Respondent's Answer. If the responding party does not assert affirmative defenses in the initial responsive pleading, the affirmative defenses are waived. *Echols v. City of Riverside*, 332 S.W.3d 207, 211 (Mo.App. W.D. 2010). Requiring the affirmative defenses in the answer allows for all of the issues to be identified clearly for the court and the parties at the start of a case. *See id.* at 211. Notably absent from these rules, and Complainant's motion, is language that supports an assertion that the lack of a plead affirmative defense entitles a claimant to judgment on the pleadings. Further, in a situation such as the present, where Respondent is asserting that its actions are in accordance with the law and

do not result in the double-charging Complainant claims, a defense, whether affirmative or not, is unnecessary. As such, Complainant's second motion must also be denied.

6. Additionally, in submitting a motion for judgment on the pleadings, a party moving for such judgment admits, for the purposes of the motion, the truth of the facts in the opposing party's pleadings. *Angelo v. City of Hazelwood*, 810 S.W.2d 706, 707 (Mo.App.1991). For a motion for judgment on the pleadings filed by a complainant, a court would look to the pleading of the respondent, taking all alleged facts as true and construed in a light most favorable to the respondent. *Armstrong v. Cape Girardeau Physician Associates*, 49 S.W.3d 821, 824 (Mo.App. E.D.2001). In its Answer, Respondent has stated the fact that it has complied with its Commission-approved tariffs and charged the appropriate rates for natural gas service received by Complainant, rates that are found in Sheet Nos. 2 and 11 through 11.8 and do not result in Complainant being double-charged. Taking these pled facts as true, there would still be a material issue of fact existing between Complainant and Respondent, as Complainant's position is that the rates result in him being double-charged. And, in such a situation, a motion for judgment on the pleadings should not be granted. *See id.* Again, this second motion must be denied.

**WHEREFORE**, Respondent respectfully requests that the Commission deny both Motions responded to above and order any other relief as is just and reasonable.

Respectfully submitted,

*/s/ J. Antonio Arias*

---

Matthew Aplington MoBar #58565  
General Counsel  
Spire Missouri Inc.  
700 Market Street, 6<sup>th</sup> Floor  
St. Louis, MO 63101  
(314) 342-0785 (Office)  
Email: matt.aplington@spireenergy.com

J. Antonio Arias, MoBar #74475  
Senior Counsel, Regulatory  
Spire Missouri Inc.  
700 Market Street, 6<sup>th</sup> Floor  
St. Louis, MO 63101  
(314) 342-0655 (Office)  
Email: antonio.arias@spireenergy.com

**ATTORNEYS FOR SPIRE MISSOURI INC.**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail to all parties of record on this 4th day of January, 2024.

*/s/ J. Antonio Arias*

---

J. Antonio Arias