

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

In the Matter of the Application of Spire Missouri)
Inc. for a Variance of its Tariff Rules and) Case No. GE-2023-0393
Regulations for Resale of Natural Gas)

RESPONSE OF THE CITY OF KANSAS CITY, MISSOURI

COMES NOW the City of Kansas City, Missouri (“City”), and respectfully presents to the Public Service Commission of the State of Missouri (“Commission” or “MPSC”) its Response to the Recommendation and Memorandum of the Staff of the MPSC (“Staff”), as filed in this Docket on June 28, 2024.

Summary.

1. The Staff has not presented evidence in this Docket, in accordance with applicable Missouri statutes, as set forth below, that supports Commission jurisdiction over the City’s natural gas operations at the Kansas City International Airport Terminal (“MCI Terminal”), hereinafter referred to as the “Airport.”

2. Spire Missouri West (“Spire”) has not presented evidence in this Docket, in accordance with applicable Missouri statutes, as set forth below, that supports Commission jurisdiction over the City’s natural gas operations at the Airport.

3. This Docket is specific to a Request for Variance filed by Spire.

4. The Staff has instead attempted, through its Recommendation and Memorandum to the Commission, to:

- (a) “convert” this Spire “Variance Docket,” to a Docket that examines whether the City is subject to the jurisdiction of the Commission,

- (b) use the “converted Variance Docket” to subject the City to Commission regulations applicable to “resellers” of natural gas,
- (c) use the “converted Variance Docket” to seek a Commission Order based on a Staff Recommendation, to (i) accede to the Staff’s position of jurisdiction and regulatory compliance, (ii) transfer gas distribution to Spire, or (iii) cease gas operations and convert the restaurants at the Airport to electric cooking.

5. This Docket, as “converted” by Staff, is a “contested” case, with both disputed facts, and differing views as to the applicable law. In addition, the City contends that statements in pleadings of Spire and the Staff that are set forth as “facts,” are incorrect, as detailed below.

6. Missouri statute 536.070 provides the way evidence is to be presented and accepted.

7. The Missouri statutory requirements that form the basis of due process protection in the State of Missouri, have not been followed in this “converted” Docket.

- There has not been a reasonable opportunity for the Parties to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not the subject of the direct examination, to impeach any witness regardless of which party first called him or her to testify, and to rebut the evidence against him or her;
- No witness testimony has been presented under oath, wherein the witness would be subject to cross examination.
- There has been no opportunity to object to exhibits.
- There has been no opportunity to object to Affidavits.

8. The City does not operate its gas system in a manner that establishes facts necessary for the Commission to exercise jurisdiction over the City’s operations.

9. For Commission jurisdiction, there must be record evidence in this Docket that the City “resold” natural gas at the Airport – and there is no such evidence. *See*, 20 CSR 4240-40.020(2).

10. Absent a “Resale” of natural gas by the City at the Airport, both federal and state law by delegation, provide that the natural gas pipeline regulations do not apply.

(b) This part does not apply to:

(ii) A single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place).
49 CFR 192.1(b)

11. There is no evidence in the record in that Docket that the City, at any time, made a “resale” of natural gas to any entity at the Airport.

12. No record evidence in this Docket, consistent with Missouri Revised statute 536.070, supports the designation of the City gas meter as a “Master Meter” that is subject to MPSC jurisdiction and regulation.

13. There is no record evidence in this Docket, consistent with Missouri Revised statute 536.070, other than some restaurants at the Airport use natural gas in cooking operations, and that forms no basis for Commission jurisdiction of the City’s gas operations at the Airport.

14. The City does not currently and has not at any time, and there is no evidence to the contrary in this Docket:

(i) Resold natural gas through a meter to any entity at the Airport (no resale of natural gas at the Airport has occurred at any time); or
(ii) Recovered as a part of any rent or lease from any entity at the Airport, any amounts that in any manner are a reimbursement of natural gas costs.

Affidavit of Melissa Cooper, attached hereto. (Exhibit A)

15. No lease or rental at the Airport provides that utilities, including natural gas, are provided as a part of and are inclusive within a rental amount.

Affidavit of Melissa Cooper, attached hereto. (Exhibit A)

16. **The City filed both a letter and supporting documentation in this Docket by the construction contractor at the Airport, that the City’s gas system at the Airport was designed, engineered, and constructed in accordance with all applicable laws.** (Document No. 29). (Emphasis added) (Exhibit B).

17. The City engaged in good faith with the Staff throughout this Docket to ascertain the best path forward to be in compliance with the applicable law **at such time in the future, if at all**, that the City would seek to recover natural gas costs at the Airport. That time has not yet occurred and may not ever occur. (Emphasis added).

18. The City reaffirms its intention to continue in good faith, to seek a resolution of this contested issue, that is mutually agreeable to all parties, and is thereafter approved as may be necessary, by the Commission.

19. Spire and the Staff incorrectly presented pleadings to the Commission in this Docket, which have been based on their incorrect statements and positions that the City was either reselling natural gas at the Airport, or receiving reimbursement in rent or lease payments for natural gas costs.

20. The Recommendation of the Staff should be denied by the Commission.

21. The Commission should Order a new and separate Docket be opened to address the Jurisdictional issue related to the City's natural gas operations, and a procedural Schedule for such new Docket.

Jurisdiction.

22. Title 49 of the Code of Federal Regulations regarding natural gas transportation, is set forth at 49 CFR Subchapter D, Subtitle B.

Title 49, Part 192.1 (b) of the code of federal regulations provides in part as follows:

(b) **This part does not apply to:**

(5) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place: or

(ii) **A single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place).** (Emphasis added)

23. A **Master Meter System** is defined as follows:

(H) Master meter system means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, **where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system.** The gas distribution pipeline system supplies **the ultimate consumer**

- **who either**
- **purchases the gas directly through a meter**
- **or by other means, for instance, by rents.** (Emphasis added).

CSR 4240-40.020(2).

24. On January 19, 2024, the Staff requested an “Interpretation” from the U. S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“PHMSA”).

25. PHMSA noted the following with regard to its PHMSA “interpretation:”

The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety provides written clarifications of the Regulations (49 CFR Parts 190-199) in the form of interpretation letters.

These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification.

Interpretations are not generally applicable, do not create legally-enforceable rights or obligations, and are provided to help the specific requestor understand how to comply with the regulations. (Emphasis added).

26. The PHMSA did not cite any statutory authority for its “interpretation,” and further, there is no deference to be accorded to Agency determinations of their jurisdictional authority.

27. The MPSC is not permitted by law to rely on the “interpretation” of PHMSA herein and must make its independent determination as its jurisdiction based on an examination of the applicable federal and state statutes, as applied to the evidence in this matter. *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce, et al.*, Supreme Court of the United States, Slip Opinion, No. 22-451, June 28, 2024.

Held: The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron* is overruled, at 7–35.

(a) Article III of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate “Cases” and “Controversies”—concrete disputes with consequences for the parties involved. The Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned that the final “interpretation of the laws” would be “the proper and peculiar province of the courts.” The Federalist No. 78, p. 525 (A. Hamilton). As Chief Justice Marshall declared in the foundational decision of *Marbury v. Madison*, “[i]t is emphatically the province and duty of the judicial department to say what the law is.” 1 Cranch 137, 177. In the decades following *Marbury*, when the meaning of a statute was at issue, the judicial role was to “interpret the act of Congress, in order to ascertain the rights of the parties.” *Decatur v. Paulding*, 14 Pet. 497, 515.¹

28. The requested “Interpretation” of Staff (Exhibit A) included the following.

“The following outlines the system in question:

8. The City furnishes utilities, including natural gas, to food and beverage providers (Sublessees) renting space with the terminal.

9. Sublessees utilize natural gas for cooking food which is sold within the airport terminal.”

29. The PHMSA “Interpretation” included the following:

“**Question 2c:** If the cost of gas was not directly passed on to sublessees through metering or prorating, but indirectly through rent of space?

¹ Available at, https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf

Response to Question 2c: No, the applicability of the definition would not be different (i.e., the system remains a master meter system) if the cost of gas was not directly passed on to sublessees through metering or prorating, **but indirectly through rent of space.** In this scenario, the City’s gas distribution pipeline system is supplying the ultimate consumer who purchases the gas by other means, such as rents.” (Emphasis added).

30. The PHMSA Interpretation explicitly states that it’s “Interpretations” do not create legally enforceable rights or obligations.

The Staff cannot rely upon the “Staff Interpretation” of the “PHMSA Interpretation” to base its “Recommendation.” There is no evidentiary record in this Docket that establishes any facts upon which an “Interpretation can be made –

“These letters reflect the agency's current application of the regulations to the specific facts presented by the person requesting the clarification.

31. The City does not agree with the apparent “Staff Interpretation” of the “PHMSA Interpretation” – i.e. that anyone that pays rent and receives natural gas service is sufficient to establish a “resale” relationship that establishes a “Master Meter.” There is no statutory support for such “interpretation” by either the PHMSA or the Staff.

Specific Responses to the Staff Recommendation and Recommendation.

32. The City states in specific Response to the Staff’s Recommendation:

No. 6 – the City has not been accorded due process of law on the issue of Commission jurisdiction over the City’s natural gas facilities at the Airport.

No. 7 – The City disputes the Staff’s assertion of noncompliance and cites to the statement of the City’s contractor that the City’s natural gas system was designed, engineered, constructed, and tested in compliance with all applicable federal, state, and local laws and regulations.

No. 7 – The City disputes the Staff’s assertion of noncompliance and notes that the Staff takes the position that is contested by the City, that Commission jurisdiction

has existed since February 2023, i.e. the Staff seeks to retroactively apply the regulations in a contested jurisdictional case.

Nos. 8-12 – the City disputes the Staff contentions and disputes and objects to the Staff Recommendations as not in accordance with law.

33. The City states in specific Response to the Staff’s Memorandum:

Section I – The City states that the statements attributed to Spire regarding submetering and resale, are incorrect.

Section I – The City asserts that the natural gas system at the Airport is in compliance with law.

The City filed both a letter and supporting documentation in this Docket by the construction contractor at the Airport, that the City’s gas system at the Airport was designed, engineered, and constructed in accordance with all applicable laws. (Document No. 29). (Emphasis added).

Section II - - The City states that its gas system is not a Master Meter system, and the MPSC has no jurisdiction over the City’s gas operations at the Airport.

Section II – the City has not been accorded due process of law at this point in time, by the Commission, and any Commission Order based on the Staff’s Recommendation and Memorandum would be arbitrary and capricious and not in accordance with Missouri law.

Section II – The Staff is seeking retroactive application of law based on its disputed analysis, more than one year after the fact. This Staff position of noncompliance is unreasonable and is arbitrary and capricious and not in compliance with Missouri law.

Section II – the Recommended actions of Staff to address the contested jurisdictional matter, exceed the Commission’s lawful authority, are arbitrary and capricious, and not in compliance with Missouri law.

Respectfully submitted,

/s/ James P. Zakoura

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Attorneys for the City of Kansas City, Missouri

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for The City of Kansas City, Missouri, that he has read and is familiar with the foregoing *Response of the City of Kansas City, Missouri* and that the statements therein are true to the best of his knowledge, information, and belief.


James P. Zakoura

SUBSCRIBED AND SWORN to before me this 18th day of July 2024.


Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July 2024, the foregoing pleading was electronically filed with the Missouri Public Service Commission and that one copy was delivered electronically to all parties as follows:

Missouri Public Service Commission Staff Counsel Department 200 Madison Street, Suite 800 P.O. Box 360 Jefferson City, MO 65102 staffcounsel@psc.mo.gov	Office of the Public Counsel Marc Poston 200 Madison Street, Suite 650 P.O. Box 2230 Jefferson City, MO 65102 opc@psc.mo.gov
Missouri Public Service Commission Staff Carolyn Kerr 200 Madison Street, Suite 650 P.O. Box 2230 Jefferson City, MO 64102 carolyn.kerr@psc.mo.gov	Sreenivasa Rao Dandamuci Director and Associate General Counsel – Regulatory Spire Missouri Inc. 700 Market Street, 6 th Floor St. Louis, MO 63101 sreenu.dandamudi@spireenergy.com
Spire J. Antonio Arias 700 Market Street, 6 th Floor St. Louis, MO 63101 antonio.arias@spireenergy.com	Spire Matthew Aplington 700 Market Street Saint Louis, MO 63101 matt.aplinton@spireenergy.com

/s/ James P. Zakoura

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Attorneys for the City of Kansas City, Missouri

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Inc. for a Variance of its Tariff Rules and) Case No. GE-2023-0393
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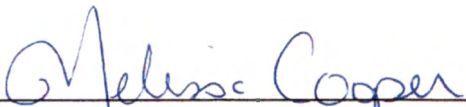
AFFIDAVIT OF MELISSA COOPER

STATE OF MISSOURI)
) ss.
COUNTY OF PLATTE)

COMES NOW Affiant, Melissa Cooper being first duly sworn and states upon her oath as follows:

1. I, Melissa Cooper am the Aviation Director of the Aviation Department of the City of Kansas City, Missouri.
2. In my position at the Aviation Department, I have direct knowledge with regard to natural gas operations for the new MCI Terminal (“Airport”).
3. At no time has the City of Kansas City:
 - (i) Resold natural gas through a meter to any entity at the Airport (no resale of natural gas at the Airport has occurred at any time); or
 - (ii) Recovered as a part of any rent or lease from any entity at the Airport, any amounts that in any manner are a reimbursement of natural gas costs.
4. No lease or rental at the Airport provides that utilities, including natural gas, are provided as a part of and are inclusive within a rental amount.

FURTHER AFFIANT SAITH NAUGHT.



Melissa Cooper, Aviation Director

Subscribed and sworn to before me on this 16th day of July 2024.

Erin M. Canseco
Notary Public



My Commission Expires:
March 21, 2027



June 12, 2024

City of Kansas City, Mo.
Law Department
City Hall, 21st Floor, Suite 2102
414 E 12th St.
Kansas City, MO 64106

Attn: Ms. Charlotte Ferns
Senior Associate City Attorney

RE: Kansas City International Airport Terminal Modernization Project
Clark, Weitz, Clarkson, JV (CWC) Project No. 17041
Design & Construction of Gas Service

Dear Ms. Ferns,

You requested that CWC confirm that the design and construction of the natural gas was in compliance with applicable regulations and was tested as to its safety and integrity – and passed all such tests – prior to placement into commercial use.

Attached to this letter is a compilation of the responses that we have shared previously on this subject including a letter from Henderson Engineers confirming the design of the gas service and a statement from Taliaferro & Browne regarding their involvement in the design. These documents are bookmarked in the attached file. Also included are the responses from US Engineering to the Data Request from PSC. With this information, CWC finds and confirms that the design and construction of the gas service was in compliance with the Development Agreement and applicable regulations, and was properly tested, prior to placement into commercial use.

You also asked that we provide the “as built” drawings of the natural gas system as installed, that includes diameter of pipelines and wall thickness of pipelines.

The as-built drawings are attached to this letter and bookmarked, as well as the design specifications that states the wall thickness of pipelines.

Please feel free to contact me (240-997-1392) if you have any questions regarding this matter.

Very Truly Yours,

Mark Goodwin
Vice President
Clark/Weitz/Clarkson, a Joint Venture

EXHIBIT B