

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24<sup>th</sup> day of July, 2024.

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

**ORDER GRANTING, IN PART, AND DENYING, IN PART,  
MOTION TO DISMISS CASE**

Issue Date: July 24, 2024

Effective Date: July 24, 2024

On November 17, 2023, Joshua Michael Kearney (Complainant) filed a formal complaint pursuant to Commission Rule 20 CSR 4240-2.070 against Spire Missouri Inc. d/b/a Spire. The complaint alleges Spire violated numerous federal statutes and violated its tariffs on file at the Commission. The complaint also requests relief of fifty million dollars in civil penalties. On December 26, 2023, and June 24, 2024, the Complainant filed Amended Complaints. On February 14, 2024, Staff filed a recommendation finding no evidence that the Respondent violated any statute, tariff, or Commission rule with respect to the allegations of double-charging. Staff filed no recommendation as to the disposition of the case. On April 8, 2024, the Commission issued an order directing an answer to the complaint.

A Procedural Schedule was issued on May 22, 2024, and the Complainant failed to meet all of the deadlines in that schedule. On July 1, 2024, an Order and Notice was issued with a new procedural schedule deadline of July 11, 2024. When the Complainant had previously failed to follow the deadlines in the first procedural schedule, an order was issued with a second set of deadlines for procedural schedule filings. The Complainant also failed to file the documents required in the second procedural schedule and on July 12, 2024, filed a Motion for Leave to File Out of Time. That motion cited no authority or cogent reason to compel the Commission to grant the motion. The Commission will deny the motion.

On July 8, 2024, Spire filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted and further cited 20 CSR 4240-2.070(7) regarding the dismissal of a complaint for failure to state a claim upon which relief may be granted. Spire states in its motion to dismiss that the Complainant has not established that Spire violated any rule or order or decisions of the Commission. Spire further states that the Complainant has alleged no facts demonstrating a violation of any law, rule, order, decision of, or within the jurisdiction of the Commission; but instead alleges violations of law outside the Commission's jurisdiction. Spire argues the Commission must grant its motion to dismiss because Complainant failed to state a claim upon which relief can be granted.

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.<sup>1</sup> Commission

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<sup>1</sup> See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm'n*, 406 S.W.2d 5, 8 (Mo. 1966); *State ex rel GS Technologies Operating Co. v. PSC of Mo.*, 116 S.W.3d 680, 696 (Mo. App. 2003).

Rule 20 CSR 4240-2.070(7) states that the Commission may after notice dismiss a complaint for failure to state a claim on which relief may be granted or for failure to comply with any provision of these rules or an order of the Commission. Further, Section 386.390.1, RSMo (Supp. 2023) provides that the Commission shall hear complaints regarding “a violation, of any provision of law, or of any rule or order or decision of the commission.”

A motion to dismiss for failure to state a claim tests only the adequacy of the complaint.<sup>2</sup> Whether or not a claim for relief has been stated is a question of law.<sup>3</sup> All of the complainant’s factual allegations must be taken as true.<sup>4</sup> The factual allegations must be construed liberally in favor of the complainant and the factual allegations must be granted every reasonable inference.<sup>5</sup> The factual allegations are not weighed for credibility or persuasiveness, and factual determinations are not made when reviewing a motion to dismiss for failure to state a claim.<sup>6</sup>

In this case, the Complainant alleges that Spire is violating its tariff by “charging the ‘charge for gas used’ and the purchase gas adjustment”.<sup>7</sup> However, as stated by Staff in its recommendation, Spire’s tariff authorizes Spire to charge for both the usage charge and the purchased gas adjustment.<sup>8</sup> Therefore, billing for both items is lawful and this claim will be dismissed as a matter of law.

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<sup>2</sup> *State ex rel. Community Treatment, Inc. v. Mo. Comm’n on Human Rights*, 561 S.W.3d 107, 111 (Mo. App. 2018) (internal quotation and citation omitted).

<sup>3</sup> *State ex rel. Community Treatment, Inc.*, 561 S.W.3d at 111.

<sup>4</sup> *State ex rel. Community Treatment, Inc.*, 561 S.W.3d at 111.

<sup>5</sup> *State ex. rel. Community Treatment, Inc.*, 561 S.W.3d at 111.

<sup>6</sup> *State ex rel. Community Treatment, Inc.*, 561 S.W.3d at 111.

<sup>7</sup> *Second Amended Complaint*, (filed June 24, 2024), paragraph 1.

<sup>8</sup> *Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 9, Sheet No. 2 (Residential Gas Service) and Sheet Nos. 11 through 11.8 (Purchased Gas Adjustment)*.

With regard to Complainant's allegations in paragraphs 2, 3, 4, 6, and 7, the Complainant does not allege that Spire violated any law, rule, or order or decision of the Commission. The Complainant alleges only that Spire violated federal statutes and failed to file information with the Federal Energy Regulatory Commission (FERC). The Commission finds that because the complaint alleges in these paragraphs claims outside of the scope of the Commission's authority, good cause exists to dismiss those parts of the complaint for failure to state a claim under 20 CSR 4240-2.070(7).

The Complainant also alleges Spire did not "have [a] retail gas marketer listed on their website as required by tariff sheets 9 through 9.12 [*sic*]." <sup>9</sup> Spire's tariff at Sheet 9.4, paragraph C.1.a., <sup>10</sup> requires that certain information be posted on Spire's website. Because the Complainant claims this posting was not made on the website, this is a disputed fact and the Commission cannot dismiss this claim as a matter of law. Therefore, the Commission will deny this portion of Spire's Motion to Dismiss.

Finally, Complainant requests relief in the form of civil damages totaling \$50 million. The Commission has the authority to determine which rate should apply to a customer, and it can determine whether a party has been charged an incorrect rate. <sup>11</sup> The Commission does not, however, have the power to award monetary damages. <sup>12</sup> The Commission also has no power to grant equitable relief. <sup>13</sup> Dismissal of the claim for damages is appropriate because Complainant has failed to state a claim that is susceptible to the relief requested.

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<sup>9</sup> *Second Amended Complaint*, (filed June 24, 2024), paragraph 5.

<sup>10</sup> Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 9, Sheet No. 9.4 (Transportation Service).

<sup>11</sup> *State ex rel. GS Operating Technologies Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 696 (Mo. App. 2003).

<sup>12</sup> *State ex rel. GS Operating Technologies Co., Inc.*, 116 S.W.3d at 696.

<sup>13</sup> *State ex rel. GS Operating Technologies Co., Inc.*, 116 S.W.3d at 696.

Because this case is set for hearing on August 7, 2024, the Commission finds it reasonable to make this order effective in less than 30 days.

**THE COMMISSION ORDERS THAT:**

1. The motion for leave to file out of time filed by the Complainant on July 12, 2024, is denied.
2. The motion to dismiss filed by Spire on July 8, 2024 is granted in part and denied in part.
3. The allegations contained in paragraphs 1, 2, 3, 4, 6, and 7 of the complaint filed on November 17, 2023, and last amended on June 24, 2024, are dismissed.
4. This order shall be effective on July 24, 2024.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell  
Secretary

Hahn, Ch., Coleman, Holsman  
Kolkmeier, and Mitchell CC., concur.

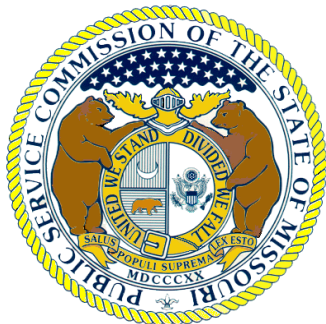
Karolin S. Walker, Regulatory Law Judge

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 24<sup>th</sup> day of July 2024.**



*Nancy Dippell*  
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**Nancy Dippell**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 24, 2024**

**File/Case No. GC-2024-0172**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Nancy Dippell  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.