

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

Mary Ann Jackson,	)	
	)	
Complainant,	)	
	)	
v.	)	<b>File No. GC-2019-0331</b>
	)	
Spire Missouri, Inc. d/b/a Spire,	)	
	)	
Respondent.	)	
	)	
	)	

**NOTICE OF RECOMMENDED REPORT AND ORDER**

Issue Date: November 20, 2019

The regulatory law judge is issuing the recommended report and order attached.

The parties have until the end of the day, December 2, 2019, to file comments supporting or opposing this recommended order.<sup>1</sup>

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Charles Hatcher, Regulatory Law Judge,  
by delegation of authority pursuant to  
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,  
on this 20<sup>th</sup> day of November, 2019.

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<sup>1</sup> The ten day limit for comments would expire November 30, 2019, and by rule is extended to the immediately following Monday. 20 CSR 4240-2.050.

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Complainant,	)	
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v.	)	<b><u>File No. GC-2019-0331</u></b>
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Spire Missouri, Inc. d/b/a Spire,	)	
	)	
Respondent.	)	

## REPORT AND ORDER

### **I. Procedural History**

On April 29, 2019, Mary Ann Jackson filed a complaint with the Missouri Public Service Commission (Commission) against Spire Missouri, Inc. d/b/a Spire (Spire). Ms. Jackson complained primarily that she has been charged for gas she has not used.<sup>1</sup> The case proceeded under the small formal complaint process. Spire filed its answer denying Ms. Jackson's allegations. Staff filed its report determining that Spire has not violated any tariff, rule, regulation, or statute. Ms. Jackson, Spire, and Staff filed a *Stipulation of Undisputed Facts* on September 6, 2019.

Because there were material facts in dispute, the Commission held an evidentiary hearing on September 13, 2019, in St. Louis, Missouri, to address Ms. Jackson's

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<sup>1</sup> Ms. Jackson's initial complaint also alleged that the Company estimated her usage and requested a monetary award of \$700. As the allegation and request for monetary damages were not included in the jointly filed *List of Issues and Witnesses, and Position Statements*, nor raised in the hearing, and as the Commission has no authority to award monetary damages, these points will not be discussed further.

allegations.<sup>2</sup> At the conclusion of the hearing, Ms. Jackson requested that certain information in this case be deemed non-confidential in order to let other customers know they have a right to file a complaint.<sup>3</sup>

Subsequent to the hearing, Ms. Jackson requested that the complainant identification in the caption be clarified to include her middle name, in order to avoid confusion. The Commission notes that it has the authority to set the identifiers in the caption as part of its recordkeeping duties, and will exercise that authority to reflect Ms. Jackson's full name in the caption.

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Mary Ann Jackson currently resides at 5641 Summit Place in St. Louis, Missouri, and was, at all times relevant hereto, a customer of Spire for gas service.<sup>4</sup>

2. Ms. Jackson presented her own sworn testimony as evidence of her claim that she is being overcharged for gas by Spire.<sup>5</sup>

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<sup>2</sup> Transcript, Volume 2 (hereinafter, "Tr."). In total, the Commission admitted the testimony of three witnesses and received seven exhibits into evidence. Several topics surrounding Ms. Jackson's account were discussed during the hearing, including: the process of auto-enrolling ratepayers in budget billing; a case of mistaken identity with a complaint file from a separate Mary Jackson; and the disconnection of Ms. Jackson's gas service during the pendency of this case, which was due to human error and rectified the same day. These topics were important to discuss, but are not relevant to Ms. Jackson's allegation of overbilling and will not be addressed in this Order.

<sup>3</sup> Tr., p. 136-142.

<sup>4</sup> *Stipulation of Undisputed Facts*.

<sup>5</sup> Tr., p. 20-68.

3. Ms. Jackson's home was rehabbed by her and her husband in 2008, shortly after they purchased it.<sup>6</sup> The rehab included adding insulation and drywall.<sup>7</sup>

4. The furnace in Ms. Jackson's home was installed new in 2010.<sup>8</sup> The furnace filter was replaced in 2016 by Spire after contact from Ms. Jackson.<sup>9</sup>

5. The roof of Ms. Jackson's home suffered damage when a tree limb falling into it created a hole, large enough to see through.<sup>10</sup> Ms. Jackson insulated the attic when repairing the hole in the roof.<sup>11</sup>

6. Ms. Jackson repaired the roof of her home using thick plywood.<sup>12</sup>

7. The windows of Ms. Jackson's home were described as old, but with plastic covering on the two bedroom windows.<sup>13</sup>

8. Pictures submitted into evidence show Ms. Jackson's home with at least 18 windows.<sup>14</sup>

9. Ms. Jackson's home was built in 1919, and is 100 years old.<sup>15</sup>

10. Ms. Jackson uses several methods to keep her gas consumption low: turning off the gas supply to the stove when not in use; using electric heaters; keeping the furnace thermostat set low; and not using hot water.<sup>16</sup>

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<sup>6</sup> Tr., p. 20-21, and 32-33.

<sup>7</sup> Tr., p. 22, 28, and 38.

<sup>8</sup> Tr., p. 24.

<sup>9</sup> Tr., p. 24.

<sup>10</sup> Tr., p. 30-31.

<sup>11</sup> Tr., p. 31.

<sup>12</sup> Tr., p. 41.

<sup>13</sup> Tr., p. 34, and 55.

<sup>14</sup> Exhibit 7.

<sup>15</sup> Tr., p. 49, and 92.

<sup>16</sup> Tr., p. 28, and 43.

**11.** Ms. Jackson's home has a total of three gas appliances installed: a furnace, an energy-efficient hot water tank, and a gas stove.<sup>17</sup>

**12.** The gas bills at Ms. Jackson's home show a decrease in usage from 2016 to 2017.<sup>18</sup> The gas bills show an increase in usage from 2017 to 2018, which continues to increase for three of the first four months of 2019.<sup>19</sup> The increase in usage correlates to an increase in heating degree days for 2018 and 2019.<sup>20</sup>

**13.** A heating degree day is the difference between the normal temperature and the average temperature for the day. Normal temperature is set at 65, and if the average daily temperature is less than 65, it is subtracted and the remainder is the number of heating degree days for that day. For example a day with an average temperature of 40 degrees will produce 25 heating degree days for that day.<sup>21</sup> An increase in heating degree days indicates the weather is colder compared to a prior year.

**14.** Spire gas bills are based on actual readings.<sup>22</sup>

**15.** A high bill inspection was performed by a Spire technician on Ms. Jackson's home on February 13, 2017. The technician found that both Spire's meter and Ms. Jackson's gas appliances were operating as designed with no problems noted.<sup>23</sup>

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<sup>17</sup> Tr., p. 25, and 82; Exhibit 4, p. 3.

<sup>18</sup> Tr., p. 74, and 83; Exhibit 2.

<sup>19</sup> Exhibit 2.

<sup>20</sup> Tr., p. 86-87; Exhibit 6.

<sup>21</sup> Tr., p. 87-88.

<sup>22</sup> Tr., p. 70. This finding is contrary to Ms. Jackson's allegation that Spire estimates her bills. Tr., p. 57 and 65. Ms. Jackson offered hearsay evidence that when she called to complain about her bill, Spire customer service agents referred her to the bill for that month in the previous year. There is confusion as to whether the Spire agent was explaining that the bill has decreased as compared to the previous year's bill to explain why Spire did not believe they were overcharging, or if the Spire agent was commenting that the bill for that month in the previous year is the basis to estimate Ms. Jackson's gas bill in the current year. See Tr., p. 57 and p. 73-74; and Exhibit 1, Memorandum p. 5 of 6; and Exhibit 3, p. 1. The Commission finds the testimony and evidence provided by Spire and Staff to be more credible on the issue of whether Spire estimates its bills.

16. A meter test was performed on the gas meter at Ms. Jackson's home in April 2018, upon the request of Ms. Jackson.<sup>24</sup> The test results show that the meter passed inspection as being within a two percent accuracy range.<sup>25</sup>

17. Ms. Jackson's home has not had a blower door test, which is one method of testing for air leaks.<sup>26</sup>

### **III. Conclusions of Law**

A. Spire is a "gas corporation" and a "public utility" as those terms are defined in Section 386.020, RSMo 2016.

B. Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo.

C. Complaints are authorized to be brought before the Commission by any person under Sections 386.390 and 386.400.

D. As Ms. Jackson brought the complaint, she bears the burden of proof.<sup>27</sup>

E. The burden of proof is the preponderance of the evidence standard.<sup>28</sup> In order to meet this standard, Ms. Jackson must convince the Commission it is "more likely

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<sup>23</sup> *Stipulation of Undisputed Facts*; Tr., p. 78; Exhibit 4.

<sup>24</sup> Tr., p. 83-84; Exhibit 5.

<sup>25</sup> Tr., p. 85; Exhibit 5.

<sup>26</sup> Tr., p. 54.

<sup>27</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).

<sup>28</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

than not” that Spire violated an applicable statute, rule, or provision of a Commission-approved tariff.<sup>29</sup>

**F.** Complaint procedures are set forth in Commission rule 20 CSR 4240-2.070.

**G.** Complaint cases that involve a dispute of less than \$3,000, as does this case, are further governed by the small rate case procedure encompassed in Commission rule 20 CSR 4240-2.070(15).

#### **IV. Decision**

Ms. Jackson claims Spire is overcharging her. Ms. Jackson does not claim a meter malfunction, nor does she complain about high prices per cubic foot of gas used. Rather, she believes she could not have used as much gas as her meter shows. Ms. Jackson puts forth her theory of being overcharged based on evidence that her house is well-insulated, that she turns off gas stove at the shut-off valve, keeps her furnace turned low, has seen her children grow-up and move out of the family house, and Ms. Jackson stays the night away from home often, turning her furnace down (further than usual) before she leaves. Ms. Jackson is essentially claiming that she’s taking multiple actions to conserve gas, and the evidence speaks for itself in showing that Spire has been overcharging her. The Commission finds Ms. Jackson’s factual testimony to be credible, but cannot agree with her conclusion.

Ms. Jackson is to be applauded for her efforts in energy conservation, installing insulation, patching the hole in the roof, lowering her thermostat, and shutting off gas appliances when not in use. However, the evidence shows Ms. Jackson’s home has at

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<sup>29</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

least eighteen (18) windows, but only two of them covered with plastic insulation. The Commission need look no further to find a likely alternative culprit of Ms. Jackson's high gas bills. Non-insulated windows plus the number of heating degree days both directly impact gas usage at Ms. Jackson's home. Given the increase in heating degree days and the sixteen (16) non-insulated windows that were described by their owner as old, it can reasonably be concluded that even with the stove shut off at the valve, the furnace thermostat set low but still on, and the water heater on; consumption of gas by the hot water heater and furnace would increase due to the weather and likely in part due to the heat-retention loss of non-insulated windows.

Ms. Jackson put forth no evidence aside from her testimony of her home's insulation and her efforts to conserve gas. Ms. Jackson put forth no evidence to show how she was being overcharged by Spire. She did not present any evidence that Spire violated a statute, rule, or tariff. Given the lack of evidence, and with an opposing theory to explain the amount of gas used, Ms. Jackson's theory fails the test of being more likely than not the reason for her high gas bills. The Commission, considering the standard of "more likely than not" whether Ms. Jackson's theory is correct, must find against her complaint. The Commission believes Ms. Jackson's testimony, but finds that Ms. Jackson's evidence did not support the burden necessary, to establish that her high gas bills were more likely than not caused by a Spire violation of law or its tariff.

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Ms. Jackson has failed to meet, by a preponderance of the



evidence, her burden of proof to demonstrate that Spire violated any statute, Commission rule, order, or tariff provision. Ms. Jackson's complaint will be denied on the merits.

No parties objected to Ms. Jackson's request to have certain pleadings deemed non-confidential. Ms. Jackson's unopposed request is reasonable and the Commission will grant it.

**THE COMMISSION ORDERS THAT:**

1. Mary Ann Jackson's complaint is denied.
2. Per the request of Mary Ann Jackson, the following pleadings in the case shall have their designations as confidential removed:
  - a. *Formal Complaint* (filed April 29, 2019);
  - b. *Spire Missouri Inc.'s Answer* (filed May 29, 2019);
  - c. *Staff Report* (filed June 13, 2019);
  - d. *Stipulation of Undisputed Facts* (filed September 6, 2019); and
  - e. *List of Issues and Witnesses, and Position Statements* (filed September 10, 2019).

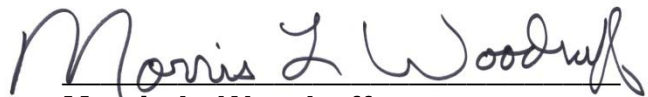
**STATE OF MISSOURI**

**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 20<sup>th</sup> day of November 2019.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**November 20, 2019**

**File/Case No. GC-2019-0331**

**Missouri Public Service  
Commission**

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

***Sincerely,***

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

**Morris L. Woodruff  
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.