

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

The Staff of the Missouri Public Service Commission,)	
Complainant,)	
v.)	File No. GC-2025-0273
)	
City Utilities of Springfield, Missouri,)	
Respondent.)	

**CITY UTILITIES OF SPRINGFIELD’S
MOTION TO DISMISS
MISSOURI PUBLIC SERVICE COMMISSION STAFF’S COMPLAINT**

****Denotes Confidential Information****

City Utilities of Springfield, Missouri (“CU”) respectfully moves to dismiss Staff’s Complaint pursuant to 20 CSR 4240-2.070 (4)(G) and (7) and related case law. Simply put, based on the face of Staff’s Complaint, the Commission lacks jurisdiction. Specifically, Staff fails to state a claim upon which relief may be granted because Staff has admitted that the undisputed root cause of the incident at issue in the Complaint was *not* a violation by CU of any applicable gas safety laws, rules or orders. Therefore, the Commission should not accede to the overreach of authority Staff invites in the pending Complaint.

JURISDICTION

The Commission lacks jurisdiction to hear Staff’s Complaint against CU because it does not adequately allege that CU violated any natural gas safety law, rule or order:

Just last year, this Commission dismissed a complaint for lack of jurisdiction, acknowledging that “the Commission is an administrative body of limited jurisdiction, having

only the powers expressly granted by statutes and reasonably incident thereto.”¹ The Commission dismissed that complaint – which failed to allege that the regulated respondent violated any law, rule or order or decision of the Commission – because the Commission’s jurisdiction is limited by Section 386.390.1 *Revised Statutes of Missouri* (“*RSMo*”) to hear complaints of “a violation, of any provision of law, or of any rule or order of decision of the commission.”² The Commission’s acknowledgement of its limited jurisdiction is well-grounded in Missouri case law precedent holding that “neither convenience, expediency [n]or necessity are proper matters for consideration in the determination of whether or not an act of the Commission is authorized by statute...[because] if a power is not granted to the Commission by Missouri statute, then the Commission does not have that power.”³

In this case, given that CU is a municipally-owned utility, the Commission’s jurisdiction is even more limited than it would be if Staff had filed a complaint against an investor-owned utility.⁴ Yet Staff overreaches in its allegations of “Jurisdiction” at Paragraph 13 of its Complaint by alleging that CU is a “‘municipal gas system’ within Section 386.310 *RSMo*, that operates a ‘gas plant’ as defined in Section 386.020(19), and thus subject to the jurisdiction of

¹ *Shamera E. Williams, Complainant v. Evergy Metro, Inc. d/b/a Evergy Missouri Metro*, No. EC-2024-0328, 2024 MO PSC LEXIS 100, at *1-2 n. 2 (July 12, 2024); citing *State ex rel. City of St. Louis v. Missouri Public Service Commission*, 73 S.W.2d 393, 399 (Mo. banc 1934); *State ex rel. Kansas City Transit, Inc. v. Public Service Commission*, 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. W.D. 2003).

² *Id.*

³ *Staff of the Missouri Public Service Commission v. Consolidated Public Water Supply District C-1 of Jefferson County Missouri*, 474 S.W.3d 643, 649 and 652 (Mo. App. W.D. 2015); citing *City of O’Fallon v. Union Electric Co.*, 462 S.W.3d 438, 442 (Mo. App. W.D. 2015).

⁴ *Love 1979 Partners v. Public Service Commission*, 715 S.W.2d 482, 489 (Mo. banc 1986)(“The legislature, in it [sic] wisdom, has given the Commission jurisdiction only over investor-owned utilities, and has specifically exempted public agencies....”).

this Commission and the provisions of the Public Service Commission Law Chapters 386 and 393....”

Significantly, Missouri’s appellate courts have consistently ruled contrary to Staff’s jurisdictional allegations in the pending Complaint. “Though provisions within Chapters 386 and 393 have purported to grant the Commission the authority to regulate and control municipalities in their manufacture, distribution, supply and transmission of utilities, and in fixing the rates to be charged therefore, the Supreme Court long ago declared that the Commission does not have this power.”⁵

The Commission’s limited jurisdiction over a municipally-owned natural gas system such as CU’s is narrowly defined by RSMo §386.572.1 as follows:

No corporation, person, public utility, or municipality that owns any gas plant shall violate any law or any order, decision, decree, rule, direction, demand or requirement of the commission or any part or portion thereof relating to federally mandated natural gas safety standards. *Notwithstanding the above, a municipality that owns any gas plant shall be subject to the provisions of this section only for violations of natural gas safety laws, rules or orders.* (Emphasis added).

Staff’s Complaint establishes that the root cause of the incident at issue was not a violation of any natural gas safety law, rule or order:

In its Complaint, Staff has admitted that the undisputed “**root cause**” of the natural gas incident was not a violation of any applicable natural gas safety law, rule or order.

⁵ *Staff of the Missouri Public Service Commission v. Consolidated Public Water Supply District C-1 of Jefferson County Missouri*, 474 S.W.3d at 649; citing *Forest City v. City of Oregon*, 569 S.W.2d 330, 332-333 (Mo. App. W.D. 1978); *City of Columbia v. State Public Service Commission*, 43 S.W.2d 813 (Mo. 1931); *State ex rel. Union Electric Light & Power Co. v. Public Service Commission*, 62 S.W.2d 742 (Mo. 1933); *State ex rel. City of Sikeston v. Public Service Commission*, 82 S.W.2d 105 (Mo. 1935).

At Paragraph 7 of Staff's Complaint, Staff admits that its "initial investigation of this incident determined that the gas was released when the pipe separated at a Dresser mechanical fitting that was installed on the North Leg of the feeder line upstream of the closed valve." However, Staff's Complaint fails to provide Staff's admitted conclusion about whether the "root cause" of the incident involved a violation by CU of any applicable law. Fortunately for the sake of a full and complete Record of Evidence now before the Commission within Staff's pleading, Staff's "Gas Incident Report" dated December 11, 2024 and filed in Case No. GS-2024-0024 has been incorporated into Staff's Complaint as "Attachment A." At Page 2 of Attachment A, Staff admits as follows:

Commission rule 20 CSR 4240-40.030 currently requires that the pipeline must be designed and installed so that each joint will sustain the longitudinal pullout or thrust forces caused by contraction or expansion of the piping or by anticipated external or internal loading. The root cause analysis indicates to Staff that the Dresser mechanical fitting from which the pipe separated in this incident **
* and therefore was not designed and installed in accordance with the currently effective Commission rule. *However, due to the year this fitting was installed, Staff does not believe that this requirement from 20 CSR 4240-40.030(6)(B)1 was applicable to this installation, and is therefore not enforceable.* (Emphasis added).

Consequently, Staff has admitted that the root cause of the natural gas incident which was the subject of its investigation and which is the subject of Staff's pending Complaint does not involve a violation by CU of any applicable natural gas safety law, rule or order. Staff's attempt to exercise this Commission's authority over CU should have stopped upon that determination and the pending Complaint should therefore be dismissed.

COUNT I

Regarding **Count I** of Staff's Complaint, Staff complains that CU's *Natural Gas Operations and Maintenance Manual* ("Manual") fails to contain all of the specific words

allegedly required by law. Staff alleges at Paragraph 24 of its Complaint that 20 CSR 4240-40.030(12)(C)2 sets forth the “minimum” requirements for CU’s Manual. But, this is not the actual rule. In Complaint Paragraph 24 Staff has presumed to add the word “minimum” to the language of 20 CSR 4240-40.030(12)(C)2, and to conflate the language of Section (12)(C)2 with Subsection (12)(C)2.A. The result of Staff’s “editing” of the actual rule is the mistaken assertion that this rule requires CU’s Manual to include, at a minimum, the full description of every single requirement that is listed in Sections (12), (13) and (14). Building Count I on this edited rule, Staff alleges at Paragraph 26 that CU’s Manual violates 20 CSR 4240-40.030(12)(C)2.A.

To the contrary, 20 CSR 4240-40.030(12)(C)2 does not set forth “minimum” requirements, or mandate that CU’s Manual include all possible procedures, or that CU employ all possible wording. The rule states as follows:

2. Maintenance and normal operations. The manual required by paragraph (12)(C)1 must include procedures for the following, *if applicable*, to provide safety during maintenance and normal operations: (Emphasis added).

Consequently, only the “applicable” procedures described in the subsections that follow 20 CSR 4240-40.030(12)(C)2 are required by law to be included in CU’s Manual.

Undaunted, Staff complains at Paragraph 26 of the Complaint that the wording of CU’s Manual “contained only two of the four criteria identified in 20 CSR 4240-40.030(13)(V)(3)” (because Section 12(C)2.A incorporates the requirements of Sections 13 and 14). Significantly, Staff does *not* allege in its Complaint that CU failed to actually employ all four criteria in either its normal operations or its emergency response. Moreover, at Page 30 of Attachment A, Staff admitted that “CU’s O&M Manual procedures within Chapter 15 for performing inspections and maintenance of its DOT valves (emergency valves) was consistent with the requirements of 20 CSR 4240-40.030(13)(V).”

The Commission's jurisdiction over CU regarding the natural gas incident is limited to claims that the incident was caused by CU's violation of any applicable natural gas safety law, rule or order. Significantly, Staff has admitted that CU's Manual "was consistent with" the applicable law, and that the words that were contained within or omitted from CU's Manual was not the root cause of the incident. Consequently, Count I of Staff's pending Complaint does not involve a violation by CU of any applicable natural gas safety law, rule or order and must be dismissed.

COUNT II

At **Count II** of its Complaint, Staff has no criticism of the frequency of CU's inspection and maintenance of its DOT/emergency valves, or of the performance of CU's DOT/emergency valves during and after the natural gas incident. Indeed, Staff admits at Page 30 of Attachment A that "CU inspects and maintains the valves with a designation of DOT [emergency valves which provide 100% isolation of the system] in accordance with Commission rules." Staff's Attachment A evidences that Staff found no failure of any DOT/emergency valve.

Nonetheless, Staff grounds Count II of its Complaint, Paragraphs 33-35, in pure speculation that CU's post-incident "belt and suspenders" act of closing and attempting to close additional valves along with those DOT/emergency valves somehow proves that the system could not have been 100% isolated with the DOT/emergency valves alone, and that therefore the non-DOT valves that were touched should have been previously designated, inspected and maintained as DOT/emergency valves, but were not. Page 30 of Attachment A reveals that it is only Staff's speculation that CU's closure of both DOT/emergency and non-DOT valves "increased the time required to stop the flow of gas to the incident location, and likely increased the severity of the damages that resulted from this incident." At Pages 31 and 32 of Attachment

A, Staff basically repeats its conclusory speculation that the closure of non-DOT valves was necessary to achieve 100% isolation and also lengthened the time in which 100% isolation was achieved.

Staff's speculation about how the incident might have resolved differently under different facts is, of course, insufficient legal grounds for Count II of this Complaint. 20 CSR 4240-40.030(13)(V)1-3.A requires "each valve,...the use of which may be necessary for the safe operation of a distribution system" to be inspected and serviced "at intervals not exceeding fifteen (15) months but at least once each calendar year." Valves "necessary for the safe operation of a distribution system" include, but are not limited to, those which provide "one hundred percent (100%) isolation of the system or any portion of it."

Thus, every valve that is necessary to achieve 100% isolation of the system is to be inspected and serviced at the mandated intervals not exceeding 15 months but at least once each calendar year. Significantly, the rule *does not set a time frame within which 100% isolation of the system is to be achieved*. Therefore, Staff's speculation about an unspecified but shorter time period within which isolation of CU's system should have been achieved is not based on an applicable law, rule or order. Moreover, Staff's Attachment A found no violation by CU regarding the designation, inspection or maintenance of its DOT/emergency valves, or of the performance of those DOT/emergency valves during and after the incident.

The Commission's jurisdiction over CU regarding the natural gas incident is limited to claims that the incident was caused by CU's violation of any applicable natural gas safety law, rule or order. Significantly, Staff has not alleged that CU violated any law regarding the designation, inspection, maintenance or performance of its actual DOT/emergency valves. Staff has not cited any law that forbade CU from closing or attempting to close secondary, non-DOT

valves along with its DOT/emergency valves during the incident. Similarly, it has not cited any law, rule or order providing notice that doing so would result in a retroactive determination that those secondary valves should have been treated at DOT/emergency valves. Nor has Staff cited any law, rule or order that required CU to have accomplished 100% isolation of its system within a time period shorter than that achieved by CU on the date of the incident. Finally, of course, Staff has admitted that nothing it alleges in Count II was the root cause of the incident. Consequently, Count II of Staff's pending Complaint does not involve a violation by CU of any applicable natural gas safety law, rule or order and must be dismissed.

COUNT III

Regarding **Count III** of the Complaint, Staff does *not* complain that CU violated any *law* regarding the updating of its Distribution Integrity Management Program ("DIMP") Plan, but Staff instead expects this Commission to stretch its jurisdiction to punish an alleged violation of CU's own internal policy.

20 CSR 4240-40.030(17)(C) mandates that "no later than August 2, 2011, a gas distribution operator must develop and implement an integrity management program that includes a written integrity management plan as specified in subsection (17)(D)." Staff does not allege that CU failed to develop and implement an integrity management program plan "no later than August 2, 2011" as required. In fact, Staff implicitly acknowledges at Paragraph 41 of its Complaint that CU complied with that requirement by noting Staff "reviewed the Fifth Revision of CU's DIMP Plan, dated July 1, 2020, as well as CU's records of implementation of its DIMP."

Regarding a DIMP Plan, 20 CSR 4240-40.030(17)(D)6 requires a gas distribution operator such as CU to "conduct a complete program re-evaluation at least every five (5) years."

Staff notes, at Paragraph 44 of its Complaint, that CU's own lawful DIMP Plan set a shorter time period for "re-evaluation" in three (3) years. Staff admits, at Paragraph 45 of the Complaint, that CU accomplished the "re-evaluation" of its DIMP Plan in 4 years, 2 months – well within the five (5) year requirement of law.

However, Staff complains at Paragraph 46 of its Complaint that "CU's failure to conduct a complete program re-evaluation within the *three year* interval required by CU's written DIMP Plan is a violation of 20 CSR 4240-40.030(17)(C)."

The Commission's jurisdiction over CU regarding the natural gas incident is limited to claims that the incident was caused by CU's violation of any applicable natural gas safety law, rule or order. Significantly, Staff has not claimed that CU violated any *law* regarding the re-evaluation of its DIMP Plan. Additionally, of course, Staff has admitted that nothing it alleges in Count III was the root cause of the incident. Consequently, Count III of Staff's pending Complaint does not involve a violation by CU of any applicable natural gas safety law, rule or order and must be dismissed.

COUNT IV

In **Count IV** of its Complaint, Staff asks this Commission to exceed its limited jurisdiction over CU provided by *RSMo* §386.572 and the case law cited herein. At Paragraph 49 of its Complaint, Staff asks this Commission to exert ongoing regulatory authority over CU by ordering CU to implement Staff's recommendations for CU's future methods of operation. But, *RSMo* §386.572 grants this Commission only the authority to decide whether CU has violated any applicable natural gas safety law, rule or order, and in that unlikely event here, it is

left to a court to order statutory penalties,⁶ not the equitable relief Staff presumes to seek. The Commission “does not have the authority to do equity or grant equitable relief” – particularly not over an entity such as CU that is not regulated by the Commission.⁷ Count IV of Staff’s pending Complaint must be dismissed.

CONCLUSION AND PRAYER FOR RELIEF

Because Staff’s pending Complaint “alleges no violation of any statute, rule, regulation, or tariff over which the Commission has jurisdiction, good cause exists to also dismiss the Complaint under 20 CSR 4240-2.070(7).”⁸

The Commission’s jurisdiction over CU regarding the natural gas incident is limited to claims that the incident was caused by CU’s violation of any applicable natural gas safety law, rule or order. Staff has admitted that the root cause of the natural gas incident which was the subject of its investigation, and which is the subject of Staff’s pending Complaint, was not a violation by CU of any applicable natural gas safety law, rule or order. Therefore, Staff’s attempt to exercise this Commission’s authority over CU should have stopped at that determination and the pending Complaint should be dismissed.

Additionally, (1) as to Count I, Staff has admitted that CU’s O&M Manual “was consistent with” the applicable law, and that the words that were contained within or omitted

⁶ Paragraph 16 of Staff’s Complaint erroneously alleges that the maximum penalty for each violation by CU of natural gas safety laws, rules or orders would be \$25,000 up to \$250,000 for multiple violations. Because this natural gas incident occurred in July 2023, the maximum penalty for each violation would instead be \$15,000 up to \$150,000 for multiple violations.

⁷ *Staff of the Missouri Public Service Commission v. Consolidated Water Supply District of Jefferson County Missouri*, 474 S.W.3d at 657-658; citing *State ex rel. GS Techs. Operating Co. v. Public Service Commission*, 116 S.W.3d 680, 696 (Mo. App. W.D. 2003); *Am. Petroleum Exch. v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943).

⁸ *Williams v. Evergy*, No. EC-2024-0328, 2024 MO PSC LEXIS 100, at *2-3.

from CU's Manual were not the root cause of the incident; (2) as to Count II, Staff has not claimed that CU violated any law regarding the designation, inspection, maintenance or performance of its DOT/emergency valves, nor cited any law that forbade CU from closing or attempting to close non-DOT valves along with its DOT/emergency valves, nor cited any law that required CU to have accomplished 100% isolation of its system within some time period shorter than that achieved by CU, nor claimed that CU's emergency/DOT valves were the root cause of the incident; (3) as to Count III, Staff has not claimed that CU violated any *law* regarding the re-evaluation of its DIMP Plan nor claimed that CU's DIMP Plan was the root cause of the incident, or even related to the incident at all; and (4) as to Count IV, governing law does not authorize the Commission to order the equitable relief Staff requests.

Consequently, this Commission lacks jurisdiction to hear Staff's Complaint, and Counts I, II, III and IV of the Complaint do not involve a violation by CU of any applicable natural gas safety law, rule or order and thus do not state a claim upon which relief may be granted. CU respectfully requests this Commission to dismiss Staff's Complaint and grant any such other relief that is lawful and reasonable.

Respectfully Submitted,

/s/ Peggy A. Whipple

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **City Utilities of Springfield's Motion to Dismiss Missouri Public Service Commission Staff's Complaint** has been filed within the EFIS system to all counsel/parties of record this 24th day of April 2025.

/s/ Peggy A. Whipple
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