

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

In the Matter of Union Electric Company d/b/a Ameren)
Missouri's Request for a Temporary Waiver of)
20 CSR 4240-40.030(13)(R) and (13)(V) for Waiver of)
60 Day Notice Requirement, and for Expedited Treatment)

File No. GE-2021-0143

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its Recommendation states:

Introduction

1. On November 19, 2020, Union Electric Company d/b/a Ameren Missouri ("Ameren"), filed an application requesting a waiver from certain Commission gas safety rules, 20 CSR 4240-40.030(13)(R) and (13)(V). Ameren also requested a waiver from the Commission's notice provision contained in 20 CSR 4240-4.017(1). Ameren stated that in light of impacts on internal and external workforce availability due to COVID-19 quarantine requirements, Ameren requests a temporary waiver of up to ninety (90) days or until April 1, 2021 to complete any remaining regulator station and distribution inspections under 20 CSR 4240-40.030(13)(R) and (13)(V) that would otherwise be required to be completed by December 31, 2020.

2. The Commission issued its *Order Directing Filing* on November 23, 2020, and ordered Staff to file a recommendation or status report no later than December 7, 2020, regarding Ameren's application.

3. Ameren filed an amended application on November 24, 2020, to include another subpart of 20 CSR 4240-40.030(13)(V) erroneously omitted from its initial application.

4. Staff filed a status report on December 7, 2020, stating it would file its *Recommendation* no later than December 21, 2020, or earlier.

**Staff Recommendation Regarding
Ameren's Application**

5. As further explained in the attached Memorandum, attached as "Appendix A" and incorporated herein, Staff reviewed Ameren's application as amended, reviewed applicable Commission rules and prior orders, reviewed applicable federal regulations, evaluated the safety implications of Ameren's request, and coordinated with the Pipeline Hazardous Materials Safety Administration (PHMSA) regarding federal pipeline safety requirements.

6. Commission rule 20 CSR 4240-40.030(18) allows the Commission to waive, in whole or part, compliance with any of the requirements contained in 20 CSR 42420-40.030, upon a showing that gas safety is not compromised. Additionally, Commission rule 20 CSR 4240-2.205 allows the Commission to grant a variance from, or waive, any rule promulgated by the Commission upon a finding of good cause. Based on Staff's review and investigation, Staff recommends the following:

1. The Commission approve Ameren's request for waiver from **20 CSR 4240-40.030(13)(R)1. [corresponding Federal regulation is 49 CFR 192.739(a)]** (Pressure Limiting and Regulating Stations: Inspection and Testing) with the conditions set forth in the attached Memorandum.

2. The Commission approve Ameren's request for waiver from **20 CSR 4240-40.030(13)(V)1. and 2. [corresponding Federal regulation is 49 CFR 192.747(a)]** (Valve Maintenance: Distribution Systems) with the conditions set forth in the attached Memorandum.
3. The Commission not approve Ameren's request for waiver to be effective no later than December 31, 2020 because Staff recommends the Commission set an effective date that allows 60 days for PHMSA to review the granted waiver extension and to have an opportunity to object prior to the effective date. Similarly, the Commission set an effective date allowing 60 days in a Spire Missouri gas waiver case (Case No. GE- 2020-0373).

7. Ameren's application contained a request that the Commission waive the 60-day filing notice required by 20 CSR 4240-4.017(1). Ameren's application provided a verified declaration that it had not had communication with the office of the commission (as defined by 20 CSR 4240-4.015(10)) within the prior 150 days regarding any substantive issues likely to be in the case, and therefore, Staff agrees good cause exists pursuant to 20 CSR 4240.017(1)(D) to waive the 60-day notice requirement.

WHEREFORE, Staff submits its *Staff Recommendation* and attached *Memorandum* and requests (1) the Commission issue an order approving Ameren's request for waiver subject to the conditions set forth in Section IV. Staff Recommendations on pages 8 and 9 of Staff's attached Memorandum "Appendix A", (2) not approve Ameren's request for waiver to be effective by December 31st, and grant such other and further relief as the Commission considers just in the circumstances.

Respectfully submitted,

/s/ Robert S. Berlin

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via e-mail on counsel for the parties of record to this case on this 11th day of December, 2020.

/s/ Robert S. Berlin

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,
Case No. GE-2021-0143, Union Electric Company d/b/a Ameren Missouri

FROM: Kathleen A. McNelis, PE, Engineer Manager, Safety Engineering Department
John D. Kottwitz, Associate Engineer, Safety Engineering Department

/s/ Kathleen A. McNelis, PE 12/11/2020 /s/ Robert S. Berlin 12/11/2020
Safety Engineering Department/ Date Staff Counsel Division / Date

SUBJECT: Staff Recommendation Regarding Union Electric Company d/b/a Ameren Missouri Request for Approval of a Temporary Waiver from 20 CSR 4240-40.030(13)(R) and 20 CSR 4240-40.030(13)(V)

DATE: December 11, 2020

I. Background Information

The Union Electric Company d/b/a Ameren Missouri (Ameren) filed its original application on November 19, 2020, requesting a waiver from the requirements of 20 CSR 4240-40.030(13)(R)1. (pertaining to the frequency of pressure limiting and regulating station inspections), and 20 CSR 4240-40.030(13)(V)2. (pertaining to distribution system valve inspections). Subsequently on November 23, 2020, the Commission ordered Staff to file a recommendation or status report no later than December 7, 2020. Ameren filed an amended application on November 24, 2020 to include a request for waiver from the provisions of 20 CSR 4240-40.030(13)(V)1. (containing additional requirement pertaining to servicing of distribution system valves).

Ameren notes that in order for certain tasks to be performed on a pipeline, the person performing the task must be "Operator Qualified," which means that they have been trained, evaluated and confirmed to be qualified to perform those tasks. In its application, Ameren states that COVID-19 quarantine requirements have had an impact on the availability of its trained and qualified gas operations field workforce. Ameren is therefore requesting a temporary waiver of up to ninety (90) days or until April 1, 2021 to complete any remaining regulator station inspections under 20 CSR 4240-40.030(13)(R)1. [corresponding federal regulation is 49 C.F.R. 192.739(a)] that would otherwise be required to be completed by December 31, 2020. Ameren further requests a temporary waiver of up to ninety (90) days or until April 1, 2021 to complete any remaining distribution system valve inspections

under 20 CSR 4240-40.030(13)(V)1. and 2. [corresponding federal regulation is 49 C.F.R. 192.747(a)] that would otherwise be required to be completed by December 31, 2020. At paragraph 34 of the amended application, Ameren also requests that a decision on the amended application be effective no later than December 31, 2020.

Ameren noted that Governor Parson declared a State of Emergency arising from the COVID-19 pandemic in Executive Order 20-02 in March of 2020, which has been extended until December 30, 2020 through Executive Orders 20-09 and 20-12. Staff notes that on November 19, 2020, Executive Order 20-19 was issued and extended the State of Emergency to March 31, 2021.

II. Applicable Commission and Federal Requirements

Pressure Limiting and Regulating Station Inspection and Testing Requirements

In paragraph 21 of its amended application, Ameren requests a temporary waiver from the requirements of Commission rule 20 CSR 4240-40.030(13)(R)1. (corresponding federal regulation 49 CFR 291.739(a)). 20 CSR 4240-40.030(13)(R)1. requires that each pressure limiting station, relief device (except rupture discs) and pressure regulating station and its equipment must be subjected at intervals not exceeding fifteen (15) months, but at least once each calendar year, to inspections and tests to determine that it is—

- A. In good mechanical condition;
- B. Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
- C. Except as provided in paragraph (13)(R)2., set to control or relieve at the correct pressures that will prevent downstream pressures from exceeding the allowable pressures under subsections (4)(FF) and (12)(M)–(O);
- D. Properly installed and protected from dirt, liquids, and other conditions that might prevent proper operation;
- E. Properly protected from unauthorized operation of valves in accordance with paragraph (4)(EE)8.;
- F. Equipped to indicate regulator malfunctions in accordance with paragraphs (4)(EE)10. and 11. in a manner that is adequate from the standpoint of reliability of operation; and

G. Equipped with adequate over-pressure protection in accordance with paragraph (4)(EE)9. The requirements in the corresponding federal regulation at 49 C.F.R. 192.739(a) are substantially the same requirements as found at 20 CSR 4240-40.030(13)(R)1.A – D. The requirements of 20 CSR 4240-40.030(13)(R)1.E. – G. are in addition to the federal requirements.

Distribution System Valve Maintenance Requirements

In paragraphs 21 and 23 of its amended application, Ameren requests a temporary waiver from the requirements of Commission rule 20 CSR 4240-40.030(13)(V)1. and 2. (corresponding federal regulation 49 CFR 291.747(a)). 20 CSR 4240-40.030(13)(V)1. requires that each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked for accessibility and serviced at interval not exceeding fifteen months, but at least once each calendar year.

20 CSR 4240-40.030(13)(V)2. requires that feeder line and distribution line valves, the use of which may be necessary for the safe operation of a distribution system, shall be inspected at intervals not exceeding fifteen months but at least once each calendar year. At a minimum, the valves that are metallic must be partially operated during alternating calendar years. This rule in combination with 20 CSR 4240-40.030(13)(V)1. is essentially the same as 49 C.F.R. 192.747(a), except that it adds the minimum requirement to partially operate metallic valves.

Operator Training and Qualification Requirements

Ameren is not requesting a waiver from Commission rules in 20 CSR 4240-40.030(12)(D) requiring operators to use trained and qualified individuals to perform work on its pipelines. Ameren's explanation in paragraph 8 of its application refers to "covered tasks" and "Operator Qualified", so Staff is providing further explanation here. The applicable Commission rule, 20 CSR 4240-40.030(12)(D), sets forth the minimum requirements for operator qualifications of individuals performing covered tasks on a pipeline facility. For purposes of subsection (12)(D), a covered task is defined as an activity defined by the operator that:

1. Is performed on a pipeline facility,
2. Is an operations, maintenance or emergency response task,
3. Is performed as a requirement of this rule, and

4. Affects the operation or integrity of the pipeline.

Inspections of distribution valves and pressure limiting and regulating stations are activities meeting the four conditions listed above and are, therefore, “covered tasks” requiring personnel performing the inspections to be “qualified” under Ameren’s operator qualification program.

Applicable Commission Orders

The Commission has granted temporary waivers of compliance of pipeline safety rules that either directly or indirectly necessitate gas operations personnel entering customer premises in Case Nos. GE-2020-0297 and GE-2020-0373. Ameren’s application represents the first request to the Commission for a temporary waiver of the provisions of 20 CSR 4240-40.030(13)(R)1. and 20 CSR 4240-40.030(13)(V)1. and 2. due to COVID-19.

In Case No. GE-2020-0373, the Commission addressed a request by Spire that if the Commission granted a waiver:

... that the order allows the waiver to go into effect 60 days after the issuance of the Commission order or at such time that PHMSA completes its review, so that if PHMSA were to complete its review prior to the end of the 60 day review period, and provides such notice of completion to the Commission, that the waiver be made effective at that time.¹

Ameren has similarly requested that if the Commission grants a waiver this case, that the decision be effective no later than December 31, 2020. An effective date of December 31, 2020 would not allow written notice to be provided to U.S. DOT 60 days prior to the effective date as required by U.S. DOT.

Addressing the similar request by Spire, the Commission stated:

Given Spire’s request for expedited treatment, the Commission directed Spire and Staff to file pleadings regarding compliance with 49 U.S.C. § 60118. In response, Staff and Spire confirmed the 60-day notice requirement. However, Spire requests the Commission grant a waiver to take effect at such time as the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration completes review. Spire neither explains how

¹ Paragraph 3 of *SPIRE MISSOURI INC’S RESPONSE TO ORDER DIRECTING FILING* filed in Case No. GE-2020-0373 on May 22, 2020.

the Commission can provide 60 days' notice of a contingent effective date nor cites authority or precedent for such a practice. Similarly, Staff requests the Commission make waiver contingent on PHMSA's notice to the Commission that it has no objection. However, under 49 U.S.C. § 60118 any waiver by this Commission is already contingent on the Secretary's review. Based on the parties' filings and 49 U.S.C. § 60118, the Commission concludes it is obligated to provide at least 60 days' notice. Should Spire wish to seek adjustment of the effective date after PHMSA review, the issue may be taken up at that time.²

III. Coordination with PHMSA and Staff Analysis

Staff Coordination with PHMSA

The Commission has an annual certification from the U.S. DOT under 49 U.S.C. Section 60105 of 49 U.S. Code to implement its pipeline safety program. 49 U.S.C. 60118 addresses waivers of pipeline safety standards by state authorities. 49 U.S.C. 60118 (d) requires that:

If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

In guidelines provided by PHMSA to state pipeline safety programs, PHMSA encourages state programs to coordinate review of waiver requests with PHMSA prior to finalizing state approval. Staff submitted a copy of the Ameren application to PHMSA for review on November 23, 2020. PHMSA requested to review waiver terms proposed by Staff, and Staff provided these to PHMSA

² Page 4 of *ORDER APPROVING APPLICATION FOR TEMPORARY WAIVER AND DIRECTING WRITTEN NOTICE* issued in Case No. GE-2020-0373 on June 11, 2020.

for review on December 07, 2020. In its response to Staff on December 8, 2020, PHMSA staff had no additional comments concerning Staff's recommendations.

Staff Analysis

Staff has reviewed Ameren's waiver request and submitted two data requests. Staff agrees that the number of qualified personnel Ameren has available to complete the remaining pressure relief and regulating station and distribution valve inspections on or before December 31, 2020 as required by the pipeline safety regulations is a concern. Staff concurs with Ameren that only trained and qualified personnel may be used to perform these covered tasks. As stated in paragraph 25 of the amended application, Ameren intends to continue to complete as many of the outstanding regulator station and valve inspections by year-end as possible, and this waiver will only be used if necessary. As stated in paragraph 27, Ameren agrees to:

- Prioritize the outstanding regulator station inspections based on the size/number of customers served,
- Prioritize the outstanding valve inspections based on the number of customers or outage counts within the valve zone, and
- To submit monthly reports to the Commission regarding the inspections completed, inspections then-outstanding, prioritization system, and plan to complete inspections then-outstanding.

Staff agrees with the proposals by Ameren in the amended application as noted above and recommends they be made conditions to the waiver.

Staff's opinion is that the primary safety concern related to delayed inspection of pressure limiting and relief stations would be a potential for over-pressurization of the downstream distribution system in the event of regulator or relief device failure. In response to Staff Data Request 0001, Ameren stated that as of November 29 a total of 92 regulator station inspections were outstanding to be completed by December 31, 2020, and that Ameren anticipates no need to use this waiver request for any of the remaining regulator inspections barring an increase in the COVID-19 quarantine rate in qualified employees. In the event that COVID-19 quarantines continue to significantly impact available qualified resources, Ameren stated it anticipates that this waiver

request would apply to no more than 20 regulator stations. Ameren also stated that pressure is monitored by Ameren's gas control room on 10 of the remaining 92 stations that remain to be inspected. Staff recommends priority be given to inspection of the 82 regulator stations that do not have the outlet pressure monitored by Ameren's gas control, and recommends that this prioritization be included as an additional condition of the waiver.

Staff's opinion is that the primary safety concern related to delayed inspection and maintenance of valves would be that a valve does not operate in the event of an emergency when system isolation is needed. Ameren's response to Staff Data Request 0002 stated that as of November 29, a total of 267 valve inspections were outstanding to be completed by December 31, 2020, and that Ameren anticipates no need to use this waiver request for any of the remaining valve inspections barring an increase in the COVID-19 quarantine rate in qualified employees. In the event that COVID-19 quarantines continue to significantly impact available qualified resources, Ameren stated it anticipates that this waiver request would apply to no more than 50 valves. Additionally, Ameren stated in response to Staff Data Request 0002 that its Emergency Plan allows for isolating areas during emergency situations by squeezing steel or plastic pipe and/or the use of stopper fittings. Since Ameren has alternative means to isolate areas during an emergency, Staff's opinion is that a delay in performing valve inspections would not compromise safety.

For the above reasons and because the waiver would only be temporary for up to 90 days, in Staff's opinion, safety will not be compromised if the Commission grants the waiver request subject to certain conditions.

Regarding Ameren's request to make the effective date no later than December 31, 2020 if the Commission grants the waiver request, Staff refers to the Commission's action regarding a similar request in Case No. GE-2020-0373. Because setting the effective date on December 31 would not allow for the required written notice to U.S. DOT at least 60 days prior to the effective date, Staff recommends the Commission take the same action in this case and deny Ameren's request regarding the effective date.

IV Staff Recommendations

1. Staff recommends that the Commission grant Ameren's request to grant a temporary waiver of compliance with the requirements of 20 CSR 4240-40.030(13)(R)1. (corresponding federal regulation 49 CFR 192.739(a)) and 20 CSR 4240-40.030(13)(V)1. and 2. (corresponding federal regulation 49 CFR 192.747(a)), subject to the limitations and conditions listed below. Staff further recommends that the Commission establish an effective date that allows 60 days for PHMSA to review the granted waiver extension and have an opportunity to object prior to the effective date.³ Staff requests that the Commission's Order be promptly emailed to PHMSA. Recommended limitations and conditions relevant to the waiver extension are as follows:
 - A. Waiver ends on March 31, 2021;
 - B. Waiver of regulator station inspections and valve inspections applies only to Ameren facilities in instances when qualified personnel are unable to conduct the inspection due to COVID-19 related restrictions;
 - C. Ameren shall document the number of instances of noncompliance as of January 1, 2021 and file a list of affected regulator stations and valves to the Commission on January 11, 2021, supplemented by monthly updates to the Commission regarding the number of inspections completed, the number of inspections then-outstanding, the prioritization system being used, and the plan to complete inspections then-outstanding;
 - D. Ameren shall prioritize inspections of regulator stations based on the pipe size and number of customers served, and of regulators stations that do not have pressure monitoring of the outlet system pressure by Ameren gas control; and
 - E. Ameren shall prioritize inspections of valves based on the number of customers or outage counts within the valve zone.

³ Staff advises that waiver of 20 CSR 4240-40.030(13)(R)1. requires waiver of 49 C.F.R. 192.739(a) and waiver of 20 CSR 4240-40.030(13)(V)1. and 2. requires waiver of 49 C.F.R. 192.747(a).

2. Staff recommends that the Commission deny Ameren's request to make the effective date no later than December 31, 2020, and recommends that the Commission set an effective date that allows for written notice to U.S. DOT at least 60 days prior to the effective date and promptly forward a copy of the Commission Order to U.S. DOT consistent with the Commission practice of providing such notice in waiver Case No. GE-2020-0373.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company)
d/b/a Ameren Missouri's Request for a)
Temporary Waiver of 20 CSR 4240-) **File No. GE-2021-0143**
40.030(13)(R) and (13)(V) for Waiver of)
60 Day Notice Requirement and for)
Expedited Treatment)

AFFIDAVIT OF KATHLEEN A. MCNELIS, PE AND JOHN D. KOTTWITZ

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COME NOW Kathleen A. McNelis, PE, and John D. Kottwitz, and on their oath declares that they are of sound mind and lawful age; that they contributed to the foregoing *Staff's Memorandum*; and that the same is true and correct according to their best knowledge and belief, under penalty of perjury.

Further the Affiants sayeth not.

/s/ Kathleen A. McNelis, PE
Kathleen A. McNelis, PE

/s/ John D. Kottwitz
John D. Kottwitz