

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

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

**STAFF RESPONSE TO CITY UTILITIES  
OF SPRINGFIELD’S MOTION TO DISMISS**

**COMES NOW**, Staff of the Missouri Public Service Commission (“Staff”), by and through the Office of Staff Counsel of the Missouri Public Service Commission (“PSC” or Commission”) and in response to City Utilities of Springfield’s (“City Utilities” or “CU”) Motion to Dismiss, states as follows:

**FACTUAL BACKGROUND**

1. On April 7, 2025, Staff filed a formal Complaint against City Utilities (“Respondent”) in this case, alleging violations of certain sections of the Commission’s Gas Pipeline Safety Rules in 20 CSR 4240-40.030, related to a natural gas pipeline incident that occurred in Springfield, Missouri on July 17, 2023, in an area served by City Utilities.
2. On April 8, 2025, the Commission entered a Notice of Case Filing and Order Directing Answer, requiring CU to file its Answer no later than May 8, 2025.
3. On April 24, 2025, CU filed its Motion to Dismiss the Commission’s Complaint.
4. The Commission ordered Staff to respond to said Motion no later than May 15, 2025.

## **STANDARD OF REVIEW**

5. Commission Rule 20 CSR 4240-2.070(7) states, “The commission, ... on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted or failure to comply with any provision of these rules or an order of the commission, or may strike irrelevant allegations.”

6. “Rule 55.05 delineates what pleadings must include to set forth a claim for relief: ‘(1) a short and plain statement of the facts showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader claims to be entitled.’ The party seeking relief need only plead ultimate facts, not evidentiary facts. *Barrett v. Cole Cnty.*, 687 S.W.3d 685, 695 (Mo.App.W.D., 2024), citing, *R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 568 S.W.3d 420, 425 (Mo. banc 2019).

7. In ruling on a motion to dismiss, the Commission merely considers the adequacy of the complaint. *State ex rel. Laclede Gas Co. v. Public Service Com’n of Missouri*, 392 S.W.3d 2, 38 (Mo.App. W.D. 2012). The Commission assumes that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive. *Foremost Ins. Co. v. Public Service Com’n of Missouri*, 985 S.W.2d, 793, 9\796 (Mo.App. W.D. 1998). Further... “[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint petition ‘fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.’” *State ex rel. Chicago B. & Q. R. Co. v. Public Service Com’n.* 334 S.W.2d 54. 58 (MO 1060), citing *State ex rel., Kansas City Terminal Ry. Co. v. Public Service Com’n.* 308 Mo. 359 (Mo. 1925).

## **ARGUMENT**

### **JURISDICTION**

8. In general, the Commission is authorized to hear and adjudicate complaints against public utilities for acts done or omitted by that corporation “in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission...” See, section 386.390.1, RSMo.

9. The Commission is authorized by § 386.310.1, RSMo, after a hearing upon a complaint, to require a municipal gas system to maintain and operate its line, plant, systems, and equipment in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to require the performance of any other act which the health or safety of its employees, customers or the public may demand.

10. Specifically, section 386.572.1, RSMo, gives the Commission the jurisdiction over the regulation and discipline of municipally-owned natural gas systems 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.)

11. As set forth in the Complaint, City Utilities operates a gas plant and must comply with all rules and requirements of the Commission’s natural gas safety rules contained in 20 CSR 4240-40.030 *Safety Standards – Transportation of Gas by Pipeline*. The statute does not indicate that any particular rule is more important than another or that a violation of one rule must be the main or “root” cause of an incident for the utility to be held responsible or subject to the gas safety standards, statutes, rules, and orders of the commission.

12. During the time interval between when the incident occurred in July 2023, and through December 11, 2024, when Staff filed its findings and recommendations in its *Staff's Gas Incident Report* in Case No. GS-2024-0024, the Commission's pipeline safety program was operating under a certification and agreement with the federal United States Department of Transportation (US DOT), in accordance with the requirements of 49 U.S. Code Section 60105. Certification under 49 U.S. Code Section 60105 requires in part that the Commission adopts and enforces federal regulatory standards and practices through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of Title 49.

13. The Commission's regulatory jurisdiction to adopt each applicable standard prescribed under 49 U.S.C. 60105 is cited as the *Authority* for its rules pertaining to pipeline safety<sup>1</sup> as sections 386.250, 386.310 and 393.140 RSMo 2016.

14. According to the Complaint, Respondent violated three regulations as a result of its actions arising from the July 17, 2023 incident, specifically, 20 CSR 4240-40.030(12)(C)2.A., 20 CSR 4240-40.030(13)(V)2., and 20 CSR 4240-40.030(17)(C).

15. City Utilities argues that because neither of the three violations was the "root cause" of the incident, therefore no violation of the regulation actually occurred, and therefore, a cause of action against the Respondent does not lie.

16. However, nowhere in the statute does it require a particular violation to be a "root cause" or "main cause" of any incident for the utility to be subject to the jurisdiction and authority of the Commission. As long as the utility, whether it is an investor owned or municipality, violates "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

---

<sup>1</sup> 20 CSR 4240-40.020, 20 CSR 4240-40.030, 20 CSR 4240-40.033 and 20 CSR 4240-40.080.

natural gas safety standards,” it falls under the statute and can be held liable, and a complaint may be brought against it by the Staff of the Commission.

### **COUNT I**

#### **Failure to Have a Procedure That Included Inspection and Maintenance of Valves Necessary to Achieve 100% Isolation of the System or Any Portion of it as Valves Necessary for the Safe Operation of the System<sup>2</sup>** **Is a Violation of 20 CSR 4240-40.030(12)(C)2.A.**

17. Commission Rule 20 CSR 4240-40.030(12)(C)2. sets forth the requirements for the manual of written procedures for conducting operations and maintenance activities and for emergency response required by subdivision (12)(C)1., and subdivision (12)(C)2.A. requires that the manual must include procedures for operating, maintaining and repairing the pipeline in accordance with each of the requirements in Sections (12), (13) and (14) of 20 CSR 4240-40.030. Specifically, 20 CSR 4240-40.030(12)(C)2.A. 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:
  - A. Operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this section and sections (13) and (14)<sup>3</sup>;
  - B. Controlling corrosion in accordance with the operations and maintenance requirements of section (9);
  - C. Making construction records, maps, and operating history available to appropriate operating personnel;
  - D. Gathering of data needed for reporting incidents under 20 CSR 4240-40.020 in a timely and effective manner;
  - E. Starting up and shutting down any part of a pipeline in a manner designed to assure operation within the MAOP limits prescribed by this

---

<sup>2</sup> As required by 20 CSR 4240-40.030(13)(V)3.A.

<sup>3</sup> Sections (13) and (14) apply to Maintenance and Gas Leaks, respectively

rule, plus the build-up allowed for operation of pressure limiting and control devices;

- F. Maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service;
- G. Starting, operating, and shutting down gas compressor units;
- H. Periodically reviewing the work done by operator personnel to determine the effectiveness and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found;
- I. Inspecting periodically to ensure that operating pressures are appropriate for the class location;
- J. Taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available, when needed at the excavation, emergency rescue equipment including a breathing apparatus and a rescue harness and line;
- K. Systematically and routinely testing and inspecting pipe-type or bottle-type holders including:
  - (I) Provision for detecting external corrosion before the strength of the container has been impaired;
  - (II) Periodic sampling and testing of gas in storage to determine the dew point of vapors contained in the stored gas that, if condensed, might cause internal corrosion or interfere with the safe operation of the storage plant; and
  - (III) Periodic inspection and testing of pressure limiting equipment to determine that it is in a safe operating condition and has adequate capacity;
- L. Continuing observations during all routine activities including, but not limited to, meter reading and cathodic protection work, for the purpose of detecting potential leaks by observing vegetation and odors. Potential leak indications must be recorded and responded to in accordance with section (14);

- M. Testing and inspecting of customer-owned gas piping and equipment in accordance with subsection (12)(S);
- N. Responding promptly to a report of a gas odor inside or near a building, unless the operator's emergency procedures under subparagraph (12)(J)1.C. specifically apply to these reports; **and**
- O. Implementing the applicable control room management procedures required by subsection (12)(T). (Emphasis added.)

18. As stated in its Complaint, Staff maintains that the manual must include all of the applicable procedures in its manual. Staff recognizes that not all requirements of sections (12), (13), and (14) will be applicable to all gas operators. For example, the requirements of 20 CSR 4240-40.030(13)(Z) – *Protecting or Replacing Disturbed Cast Iron Pipelines* would not be applicable to operators who do not have cast iron pipelines. However, the requirements of 20 CSR 4240-40.030(13)(V) – *Valve Maintenance – Distribution Systems*, is applicable to CU's gas distribution system.

19. Furthermore, when promulgating the rule, the commission drafted the "purpose" of the rule to specifically state, "[t]his rule prescribes **minimum** safety standards regarding the design, fabrication, installation, construction, metering, corrosion control, testing, uprating, **operation, maintenance**, leak detection, repair, replacement, and integrity management of pipelines used for the transportation of natural and other gas." (Emphasis added.) "The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning." *Laclede Gas Co.'s Verified Application to Re-Establish and Extend the Financing Authority Previously Approved by the Commission v. MO PSC*, 526 S.W.3d 245, 249 (Mo.App. W.D. 2017), citing *Dieser v. St. Anthony's Med. Ctr.*, 498 S.W.3d 419, 430 (Mo. banc 2016).

20. With respect to applicability, Staff acknowledges that not all provisions of the Commission's rule will be applicable to all operators. However, CU operates a natural gas distribution system. CU's natural gas distribution system contains valves. Therefore, Staff maintains that the requirements of 20 CSR 4240-40.030(13)(V) - *Valve Maintenance - Distribution Systems* are applicable to CU's distribution system valves, and that CU must have procedures to address these requirements. Failure to do so, is a violation and will be noted and set out as a violation on a report as it was in this report and subsequent Complaint.

## **COUNT II**

### **Failure to Inspect and Service Each Feeder Line Valve, The Use of Which May Be Necessary for the Safe Operation of a Distribution System at Intervals not Exceeding 15 Months but at Least Once Each Calendar Year Is a Violation of 20 CSR 4240-40.030(13)(V)2.**

21. Title 20 CSR 4240-40.030(13)(V)2. requires the following regarding "valve maintenance – distribution systems:"

2. 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 (15) months but at least once each calendar year. At a minimum, the valves that are metallic must be partially operated during alternating calendar years.

22. Specifically, the Staff alleged that the closure of one non-DOT designated valve on the West Leg and three non-DOT designated valves (which included two unnumbered valves at the Old Lowes Regulator Station plus another non-DOT valve) on the North Leg of the feeder lines were required to provide 100% isolation of the West Leg and the North Leg of the feeder line. However, these valves were not inspected or maintained in accordance with 20 CSR 4240-40.030(13)(V)2.

23. This allegation has little to do with the cause of the incident or whether the damage would have been increased, but the fact that CU failed to follow the protocol required of the regulation. This goes back to its responsibility for properly maintaining the proper



valves; part of which is inspecting and operating them to make sure they are in proper working order at certain intervals throughout their lifetime. Failure to do so resulted in the Staff citing CU with a violation.

### COUNT III

#### Failure to Implement Its Written DIMP Plan Is a Violation of 20 CSR 4240-40.030(17)(C)

24. The failure to implement and update a written DIMP plan is a violation of law. The commission rule upon which 20 CSR 4240-40.030(17)(C) is based on the Commission's statutory rulemaking authority found in section 386.250, RSMo.

25. Not only does 20 CSR 4240-40.030(17)(C) require CU to develop an integrity management program, but it also requires it to *implement* it "as specified in subsection (D) of that rule. It must do both. What Staff alleges, and supports with information provided by CU, is that CU failed to implement the provisions of its DIMP Plan, not that CU failed to develop a DIMP Plan prior to August 2, 2011.

26. Specifically subdivision (D)6. requires "periodic evaluation and improvement" of the plan:

An operator must re-evaluate threats and risks on its entire pipeline and consider the relevance of threats in one (1) location to other areas. **Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure.** An operator must conduct a complete program re-evaluation at least every five (5) years. The operator must consider the results of the performance monitoring in these evaluations. (Emphasis added.)

27. As Staff stated on page 44 of its *Gas Incident Report* filed in GS-2024-0024 on December 11, 2024, CU determined that the appropriate interval for program evaluation was 3 years. Staff further stated at that time that due to the relatively \*\* [REDACTED]

[REDACTED], \*\* the staleness of data available to CU for re-evaluation, and the size and

complexity of the CU gas distribution system, Staff agreed that re-evaluation on a three-year interval was reasonable.

28. Staff additionally notes that 20 CSR 4240-40.030(1)(J)1. requires each operator to submit to designated commission personnel, all plans, procedures and programs required by this rule, including but not limited to distribution integrity management program, and to submit each change within 20 days after the change is made. CU cannot on one hand submit its DIMP Plan to Staff to demonstrate compliance with the requirements of section (17), and then on the other hand claim that the document is only an internal policy. If the document that CU provided to Staff is merely an “internal policy,” then CU is not in compliance with the requirement of either 20 CSR 4240-40.030(1)(J)1. to provide its DIMP Plan to Staff, or with 20 CSR 4240-40.030(17)(C) to develop and implement a written plan.

29. As such, Staff maintains that failure to implement a provision of the plan that is required to be included by 20 CSR 4240-40.030(17)(D)6, specifically conducting a program re-evaluation at the interval determined by CU to be appropriate based on the complexity of its system, is a violation of 20 CSR 4240-40.030(17)(C).

#### **COUNT IV**

##### **Staff Recommendations**

30. City Utilities argues the Commission exceeds its jurisdiction to order CU to implement any of the “Staff’s recommendations for CU’s future methods of operation.” It claims it can only be liable for the violations cited by Staff in its Complaint and nothing else.

31. However, Courts have found on multiple occasions that the Commission has the authority to interpret statutes and regulations, make recommendations based on them, and have companies take actions to implement them. *See, State ex rel., Missouri Energy Development Ass’n v. Public Service Comm’n*, 386 S.W.3d. 165, 173-174 (Mo.App. W.D. 2012).

32. Furthermore, under section 386.310, RSMo, the Commission has an obligation to require every ... municipal gas system and public utility to maintain its line, plant, system, equipment, apparatus, and premises in such as manner as to promote and safeguard the health and safety of its employees, customers, and the public, **and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety and other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand...** (Emphasis added.)

33. Therefore, not only may Staff request the Commission grant certain recommended actions be taken by City Utilities to remedy its violations, the Commission has the authority and duty to grant those requests.

**WHEREFORE**, Staff prays this Commission deny Respondent's Motion to Dismiss for the reasons set forth above, set this matter for hearing, grant the Staff the relief prayed for in its *Complaint*, and for any other such orders and relief as this Commission deems just and reasonable under the circumstances.

Respectfully submitted,

**/s/ Carolyn H. Kerr**

Carolyn H. Kerr  
Missouri Bar No. 45718  
Senior Staff Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
573-751-5397 (Voice)  
573-526-6969 (Fax)  
[Carolyn.kerr@psc.mo.gov](mailto:Carolyn.kerr@psc.mo.gov)

Attorney for Staff of the  
Missouri Public Service Commission

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, prepaid to counsel of record on this 15<sup>th</sup> day of May, 2025.

**/s/ Carolyn H. Kerr**