

**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
REPLY IN SUPPORT OF MOTION TO DISMISS
MISSOURI PUBLIC SERVICE COMMISSION STAFF’S COMPLAINT**

****Denotes Confidential Information****

City Utilities of Springfield, Missouri (“CU”), in further support of its pending *Motion to Dismiss* (“*Motion*”), respectfully replies as follows to Staff’s *Response to City Utilities of Springfield’s Motion to Dismiss* (“*Response*”):

Jurisdiction is the Threshold Issue

Staff agrees with CU that the Commission’s jurisdiction over Staff’s Complaint is a threshold issue that must first be determined before any consideration of the merits, or lack thereof, of Staff’s Complaint. At Page 2, Paragraph 7 of its *Response*, Staff acknowledges the law limiting the Commission’s authority to rule over Complaints to those which “fall[] within the jurisdiction of the Commission....”¹ Also at Page 2, Paragraph 6 of its *Response*, Staff cites to the authority of *Barrett v. Cole County*, for the proposition that “[t]he party seeking relief need

¹ *State ex rel. Chicago B.&Q.R.Co. v. Public Service Commission*, 334 S.W.2d 54, 58 (Mo. 1960); citing *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission*, 308 Mo. 359 (Mo. 1925).

only plead ultimate facts, not evidentiary facts.” However, the sentence in that case law precedent which precedes Staff’s selected quote holds that “[j]urisdiction is a threshold matter that we must consider before addressing the merits” of the case.²

The parties disagree, however, on whether Staff’s Complaint falls within the Commission’s jurisdiction to adjudicate. At Paragraphs 8, 9, 11³ and 13-16 of its *Response*, Staff asserts that multiple sections of Chapters 386 and 393 provide Staff and this Commission with broad authority over CU. But, at no point in its *Response* does Staff dispute, distinguish or even address Missouri’s long-standing case law precedent cited at Page 3 of CU’s *Motion* holding that “[t]hough 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.”⁴

Staff does acknowledge, at Page 3, Paragraph 10 of its *Response*, the governing law of Section 386.572 *Revised Statutes of Missouri* (“RSMo”), which specifically delineates the Commission’s limited authority over CU 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*

² *Barrett v. Cole County*, 687 S.W.3d 685, 695 (Mo. App. W.D. 2024).

³ It is unclear why, at Paragraph 12 of its *Response*, Staff cites to 49 U.S.C. Section 60105, given that Staff’s Complaint does not allege any violations of, or relevance of, any federal law. Indeed, 49 U.S.C. Section 60105(b)(7) invokes the “law of the State.”

⁴ *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 (Mo. App. W.D. 2015); 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).

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).

However, at Page 4, Paragraph 16 of its Response, Staff mischaracterizes the Commission’s authority granted by Section 386.572 *RSMo* to apply equally to all utilities, “whether it is an investor owned or municipality.”

Staff's argument is directly contrary to the plain language of the statute and to the controlling case law precedent. This Commission has lawful authority over Staff's Complaint against CU "only for violations of natural gas safety laws, rules or orders," period.

Counts I, II, III and IV of Staff's Complaint Fail to Allege Violations of Laws, Rules or Orders over which the Commission may exercise Jurisdiction

To determine whether the Commission has jurisdiction over Staff's pending Complaint, this question must be answered: *Does Staff's Complaint allege that CU violated any natural gas safety laws, rules or orders?* For the following five (5) reasons, the answer to this question is "No." Therefore, the Commission lacks jurisdiction over the Complaint which must be dismissed for failure to state a claim upon which relief may be granted:

1. Staff has admitted that the **cause** of the natural gas incident was *not* a violation by CU of any law, rule or order. At Page 2 of Attachment A to Staff's Complaint, Staff admits that "[t]he root cause analysis indicates to Staff that the Dresser mechanical fitting from which the pipe separated in this incident ** [REDACTED]
- [REDACTED]
- [REDACTED] ** 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). At Page 1, Paragraph 1

of Staff's *Response*, Staff further admits the limits of its authority, through its pending Complaint, to be "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." Given Staff's admission that the cause of the natural gas incident was not a violation of law, and Staff's admission that any allegations of violations of law made in its Complaint must be related to that incident, Staff's Complaint must be dismissed as it falls outside this Commission's jurisdiction and fails to state a claim upon which this Commission may grant relief.

2. In **Count I** of its Complaint, Staff alleges that CU's *Natural Gas Operations and Safety Maintenance Manual* ("*Manual*") fails to contain all of the specific words allegedly required by law. However, in its *Response*, Staff now admits⁵ that the plain language of 20 CSR 4240-40.030 (12), (13) and (14) clearly states that "not all provisions of the Commission's rule will be applicable to all operators." Thus, Staff's Complaint fails to allege any violation of law within CU's *Manual*. Moreover, there can be no dispute that Staff's Complaint fails to allege any "relation" between the natural gas incident and the "words" that were included in or omitted from CU's *Manual*.
3. In **Count II** of its Complaint, Staff speculates that CU's cautionary choice during the incident to close both DOT/emergency valves and also secondary valves retroactively rendered those secondary valves to have been in reality necessary to provide 100% isolation of the system, and thus necessarily should have always been designated DOT/emergency valves. But, at Page 8, Paragraph 23, Staff now admits that its

⁵ Page 5, Paragraph 17; Page 7, Paragraph 18 and Page 8, Paragraph 20.

“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 of the regulation.” This “protocol of the regulation,” of course, being applicable only to DOT/emergency valves which Staff admits at Page 30 of Attachment A to the Complaint that CU “inspects and maintains...in accordance with Commission rules.” Staff’s Count II therefore invites the Commission to retroactively designate certain valves as DOT/emergency valves, based on Staff’s speculation that said valves were necessary, and then find CU in violation of the Commission’s rule which Staff confirms CU dutifully followed for all actual DOT/emergency valves. Count II is grounded on a circular argument, not on a violation of a law, rule or order.

4. In **Count III** of its Complaint, Staff alleges that CU violated 20 CSR 4240-40.030(17)(C) and (D) because CU re-evaluated that DIMP Plan within the rule’s required 5-year timeframe, but not within the shorter 3-year timeframe that CU voluntarily chose. Now, at Page 10 of its *Response*, Staff admits that its allegation in Count III is not based on any violation of the Commission’s actual rule. Nevertheless, Staff “maintains” that the Commission’s rule was amended by Staff’s prior approval of CU’s laudatory choice. It cannot be denied that the Commission’s rulemaking process is not so implemented.
5. **Count IV** of Staff’s Complaint does not allege that CU violated any law, rule or order, and thus, on that ground alone, falls outside the Commission’s jurisdiction. Count IV is instead, a list of Staff’s “recommendations” that Staff wishes the Commission to order against CU. But, in its *Response* Pages 10-11, Paragraphs 30-33, Staff fails to deny, distinguish or even address the controlling law cited at CU’s *Motion* Page 3, Footnote 5 prohibiting the Commission from exercising its general powers of Chapters 386 and 393

against municipal utilities such as CU. Staff's *Response* further fails to deny, distinguish or even address the controlling law cited at CU's *Motion* Pages 9-10, Footnote 7, prohibiting the Commission from ordering the equitable relief against CU that is Staff's recommendations.

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 Reply in Support of Motion to Dismiss Missouri Public Service Commission Staff's Complaint** has been filed within the EFIS system to all counsel/parties of record this 27th day of May 2025.

/s/ Peggy A. Whipple
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