Staff Exhibit No. 298
Date 2-5-18 Reporter AT
File No. GR-2017-0215 & 0216

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's Request to Increase Its Revenue for Gas Service	))	**File No. GR-2017-0215**
In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service	)))	**File No. GR-2017-0216**

STAFF'S REPLY AFFIDAVIT REGARDING TAX CUTS AND JOBS ACT

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply Affidavit Regarding Tax Cuts and Jobs Act* in this matter hereby states:

1. The Commission issued an *Order* January 18, 2018, ordering Spire Inc. and Staff to file affidavits explaining the adjustments necessary to reflect changes in the cost of service for Spire Inc.'s LAC and MGE divisions resulting from the Tax Cuts and Jobs Act amending the Internal Revenue Code of 1986. Spire Inc. filed its *Affidavit* January 23. Staff now files its *Reply*.

2. Attachment A to this pleading outlines Staff's review of this issue and responds to certain points addressed by the Company in its *Affidavit* and related cover pleading. Attachment B to this pleading is an order of the Kansas Corporation Commission regarding deferral of the Tax Cuts and Jobs Act's impacts in Kansas. Staff has conducted the most comprehensive review of the impacts of the Act possible at this time due to the recent enactment of the Act and has provided for the Commission's consideration, several methodologies to address the effect of the Act on Spire Missouri going forward.

On December 22, 2017, President Trump signed into law the US Tax Cuts and Jobs Act (TCJA), which took effect on January 1, 2018. As part of this tax reform, there will be material financial impacts to large Missouri utility companies, many of which are not fully known at this time due to the infancy of this change. This new tax law consists of roughly 1,000 pages of new tax rules that will require significant study and interpretation. Much research will need to be performed to determine all sections of the new tax reform that has applicability to regulated utilities. In addition, after learning about these new rules, Staff discovered the new rules would have to be applied to each utility's specific tax situation, which will also require a significant amount of time. Simply put, there is not enough time to adequately respond to all of the changes that have occurred due to passage of the TCJA in the current rate cases filed by Laclede Gas Company ("Laclede" or "LAC") and Missouri Gas Energy ("MGE"). For this reason, the amounts provided in this filing regarding TCJA revenue requirement impacts are by necessity preliminary and do not purport to be a comprehensive quantification of all possible TCJA rate impacts. At this time, Staff does not have the information necessary to perform calculations for many of the items discussed below and thus has no ability to propose a revenue requirement adjustment with a reasonable degree of accuracy.

LAC's and MGE's tax returns are filed as part of a larger consolidated tax return that is filed by Spire Inc. Spire Inc. typically files its tax return no later than June each year. The ongoing corporate tax rate under the TCJA that would be applied to normalized taxable income for purposes of this rate case would be 21% effective January 1, 2018; however, Spire Missouri, consisting of the LAC and MGE divisions, has a financial closing date for financial reporting and tax purposes of September 30 each year. Even though the new corporate tax rate takes effect after Spire Missouri's fiscal year has already begun, any quantification of the ongoing level of deduction on new eligible business property. Under the new tax rules, utilities can only rely on the traditional Modified Accelerated Cost Recovery System (MACRS) depreciation rules under Section 168 of the Internal Revenue Service Code, which provide significantly less tax benefit to the utilities than the previously allowed bonus depreciation methodology. However, Staff understands that some limited bonus depreciation benefits may continue to be available to utilities for plant projects under construction at September 30, 2017, Staff's true-up cutoff date in the current rate proceeding. If the Commission's intent is to consider updating this particular rate base item along with other TCJA impacts effective January 1, 2018, due to the TCJA changes affecting LAC's and MGE's ongoing balance of accumulated deferred income taxes (ADIT), the Commission should be aware that Staff does not have the necessary information at this time to determine what an appropriate ADIT balance in rate base should be measured as of January 1, 2018.

(2) As part of Spire Missouri's current cost of service, state tax is a deduction in the calculation of federal tax. Spire Missouri has not incurred city tax since 2013, so no such deduction was included. As far as Staff is aware, the state and local tax rules have not been changed in response to the TCJA; but such changes are possible.

(3) As part of Staff's income tax calculation, a deduction is currently included in the cost of service for interest expense in an amount consistent with Staff's proposed capital structure and return on equity. Staff is aware of provisions within the TCJA that will affect the amount of interest expense deductions that companies in general can take. Further research and analysis is necessary before Staff can determine whether such

determine ratemaking adjustments that would accurately reflect these changes on a comprehensive basis within the context of the current LAC and MGE rate cases.

--Lisa M. Ferguson

As discussed in Spire's January 22, 2018, filing with the Commission, Staff has taken a consistent position in this case that isolated changes to LAC's and MGE's revenue requirements tied to events occurring after September 30, 2017 (the end of the ordered true-up period in this case), should not be included in LAC's and MGE's current rate cases. Staff's position on this matter has not changed with the recent passage of the TCJA. Staff does not recommend that the impacts of the federal tax law be reflected in LAC's and MGE's rates in the current rate cases. This position is based upon Staff's traditional stance that isolated adjustments outside an ordered test year/update period/true-up period generally should not be reflected in customer rates, and because a comprehensive and accurate revenue requirement impact from the TCJA cannot be calculated at this time. However, as discussed below, Staff does hold that the financial impact of TCJA changes on Laclede and MGE, and on Missouri's large utilities in general, is of the nature and magnitude that authorization of special accounting procedures should be considered to govern ongoing utility recording of TCJA revenue requirement impacts, and appropriately preserve the opportunity for ongoing TCJA revenue requirement changes to be reflected in customer rates in the future.

As the Commission is aware in the context of utility accounting authority applications (AAOs), it has the authority to order utilities to "defer" certain costs for regulatory accounting purposes; i.e., record the amounts on the company's balance sheet as a regulatory asset instead of charging the amount to expense as incurred. Deferral treatment allows the utility the opportunity two scenarios would be deferred to the utilities' balance sheet as a regulatory liability,[2] and preserved for consideration in the utilities' next general rate proceeding. In that manner, an opportunity will exist for ratepayers to be made "whole" over time for a reduction in income tax expense since immediate reflection in rates of the reduced income tax expense is not possible.

Deferral is the best option at the current time for consideration of TCJA impacts on LAC and MGE in the specific circumstances of their current rate proceedings. That is because it will take some time to appropriately quantify the ongoing rate impact of the TCJA regarding the impact of new tax rules and the necessary flow back of "excess" deferred income taxes, among other matters. It is reasonable to assume that it may take at least several months for the utilities, Staff, and other interested parties, to develop informed opinions as to a reasonably accurate quantification of the rate impact of the TCJA. In the context of the LAC and MGE rate proceedings now in their last stages, in Staff's view there is not sufficient time to reflect an estimate of the rate impact of the TCJA in the current rate case that would be consistent with normal standards of ratemaking accuracy.[3] For this reason, in lieu of ordering an immediate lowering of LAC's and MGE's revenue requirement in this case, Staff recommends that the reduction in income tax expense associated with the TCJA be deferred by Commission order.

One advantage of the deferral option for handling TCJA revenue requirement impacts in the short-term is that it allows for ongoing modifications to the quantifications of the impacts as more information becomes available regarding the provisions of the TCJA. While deferrals will be booked by LAC and MGE starting in January 2018 under Staff's recommended approach, the deferrals booked throughout the course of 2018 are subject to change up to and to the point that

[2] It is highly unlikely that the impact of the TCJA on any major Missouri utility would be to increase its cost of service on an overall basis.

[3] While passage of the TCJA is certainly a "known" event, in Staff's view the financial impact of the TCJA is not reasonably "measurable" at this time.

In its January 22, 2018, filing, LAC and MGE take the position that any rate action taken by the Commission to reflect TCJA impacts in the current rate cases should be "netted" against certain revenue requirement increases associated with property taxes and other items that LAC and MGE assert have already or will incur after September 30, 2017. Staff opposes any reflection of these items in either an adjustment to include TCJA impacts in the current rate cases or in any TCJA deferral that may be authorized by the Commission. The other revenue requirement changes sought by LAC and MGE pertain to normal, ongoing elements of utility cost of service, and are not in any way comparable to an extraordinary event such as passage of the TCJA.

In the event that the Commission would order reflection in rates of a quantification of the lowered federal corporate tax rate in the current LAC and MGE rate cases, Staff recommends that LAC and MGE still be ordered to defer all other revenue requirement impacts that may be associated with passage of the TCJA.

Finally, the positions taken by Staff in this case on TCJA impacts at this time apply only to LAC and MGE, specifically taking into account the very late stage of its current rate cases. Staff intends to present any general position it may take regarding TCJA ratemaking on February 15, 2018, in its report due that date in Case No. AW-2018-0174. This will allow Staff to review the filings scheduled to be made by all major utilities and other interested observers concerning the TCJA on January 31, 2018.

-- *Mark L. Oligschlaeger*

b. Requiring, through the use of an Accounting Authority Order (AAO), certain regulated public utilities that are taxed at the corporate level to track and accumulate in a deferred revenue account, with interest compounded monthly at the most current Commission-approved customer deposit interest rate, the reduction in their regulated cost of service that would occur in the event that a new lower federal income tax rate is signed into law. These deferrals should take effect at the same time as the new federal corporate tax rate change and the calculations should be performed using the cost of service data that was used to set the utilities' last Commission-approved revenue requirement (including any line-item surcharges that contain a provision for regulated income tax expense) or Kansas Universal Service Fund (KUSF) determination; and[3]

c. Confirming that the Commission's intention regarding the AAO is to preserve any potential tax benefits so that they may be evaluated in the context of a comprehensive evaluation of the reasonableness of the utilities' rates or KUSF distributions as well as notifying affected public utilities that this portion of their rates or KUSF distributions should be considered interim subject to refund until the Commission has an opportunity to review the reasonableness of the utilities' rates or KUSF distributions on a comprehensive and case-by-case basis. Lastly, the Commission should confirm that it intends to capture the reduction in Accumulated Deferred Income Tax (ADIT) balances that will occur in the event that a lower corporate federal income tax rate takes effect, over time, in a manner that comports with Internal Revenue Services (IRS) Tax Normalization Rules.[4]

[3] *Id.* at pp. 5-6.
[4] *Id.* at p. 6.

applicable tax expenses and the Commission is statutorily authorized to periodically review the costs of providing telecommunications service to determine if modifications to the KUSF are necessary.[11] Furthermore, Staff contended that the AAO is not an imposition of new rates but rather, an accounting order that requires a company to perform its regulatory accounting in a specific way so that the financial effects of a discrete issue can be examined in a future period.[12]

Jurisdiction

5. The Commission has full power, authority and jurisdiction to supervise and control the public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.[13] Specifically, the Commission is tasked with ensuring regulated utilities provide sufficient and efficient service at just and reasonable rates.[14] Upon its own initiative, the Commission may investigate all schedules of rates, rules, and regulations for electric public utilities,[15] natural gas public utilities,[16] local exchange carriers,[17] and miscellaneous public utilities.[18] Furthermore, each regulated public utility shall furnish to the Commission in such form and at such times as the Commission requires, such accounts, reports and information shown in itemized detail as the Commission may prescribe.[19] Likewise, the Commission has the authority to examine and audit all accounts, and all items shall be allocated to the accounts prescribed by the Commission.[20]

[11] *Id.* at p. 6.
[12] *Id.* at pp. 4-5.
[13] K.S.A. 66-101; K.S.A. 66-1,201; K.S.A. 66-1,188; K.S.A. 66-1,231.
[14] K.S.A. 66-101b; K.S.A. 66-1,202; K.S.A. 66-1,189; K.S.A. 66-1,232.
[15] K.S.A 66-101d.
[16] K.S.A. 66-1,204.
[17] K.S.A. 66-1,192.
[18] K.S.A. 66-1,234.
[19] K.S.A. 66-122.
[20] K.S.A. 66-129.

8. The Commission also gives notice to taxable utilities operating in Kansas that the portion of their regulated revenue stream that reflects higher corporate tax rates should be considered interim and subject to refund, with interest, until the Commission can more fully evaluate on a case-by-case basis the impact of the Tax Cuts and Jobs Acts. When the Commission's case-by-case evaluation is complete, if it is determined that a rate decrease is proper and would have been proper as of the effective date of the Tax Cuts and Jobs Act, any excessive collections in the deferred revenue subaccount, or other appropriate tracking mechanism approved the Commission, with appropriate adjustments, shall be refundable to ratepayers or the KUSF with interest.[26] Any balance remaining in the account shall be credited to the utility's operating revenue. Moreover, the Commission intends to capture excess ADIT for the benefit of ratepayers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Tax Normalization Rules, as applicable.

9. For the following reasons, the Commission rejects the RLECs' argument that prior to issuing an Order imposing restrictions on a utility's use of specific revenues requiring a specific regulatory process the Commission should afford affected utilities the opportunity to be heard as to how such restrictions and the resulting regulatory process and costs would affect the public interest generally, for good or ill, including consideration of how the potential extraordinary administrative costs of mandated proceedings might be recovered.[27]

10. First, even if the Commission accepted the RLECs' arguments, the accounting order recommended by Staff does not impose new rates upon affected utilities nor does it restrict or control utility resources. The AAO merely directs utilities to begin tracking their costs

[26] Interest shall be calculated at the rate being used for interest paid on customer deposits.
[27] Response to Motions by Staff and CURB p. 5.

THEREFORE, THE COMMISSION ORDERS:

A. A general investigation is opened for the purposes of examining the financial impact of the federal Tax Cuts and Jobs Act on regulated electric, natural gas, water, and telecommunications public utilities that are operating in Kansas and taxable at the corporate level.

B. Staff's request for the issuance of an Accounting Authority Order, as described herein, is granted.

C. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.[31]

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: JAN 18 2018

Lynn M. Retz
Secretary to the Commission

SF

EMAILED

JAN 18 2018

[31] K.S.A. 66-118b; K.S.A. 77-529(a)(1).

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OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's Request to Increase Its Revenues for Gas Service	)))	Case No. GR-2017-0215
In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service	)))	Case No. GR-2017-0216

AFFIDAVIT OF LISA M. FERGUSON

STATE OF MISSOURI)
) ss.
CAPE GIRARDEAU COUNTY)

COMES NOW LISA M. FERGUSON, and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff's Reply to Spire Inc.'s Affidavit in Response to Commission Order Re: Tax Cuts and Jobs Act*; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

Lisa M. Ferguson

LISA M. FERGUSON

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for Cape Girardeau County, State of Missouri, at my office in Jackson, Missouri on this 24 day of January, 2018.

NATASHA N GOOLSBY
Notary Public – Notary Seal
Cape Girardeau County – State of Missouri
Commission Number 17710443
My Commission Expires Aug 14, 2021

Notary Public