BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Spire Missouri Inc. for an Accounting Authority Order Concerning its Commission Assessment for the 2019 Fiscal Year.	))))	Case No. GU-2019-0011

PUBLIC COUNSEL'S INITIAL BRIEF

The Office of the Public Counsel ("OPC") respectfully urges the Public Service Commission ("Commission") to deny Spire Missouri Inc.'s ("Spire") request to defer the FY 2019 assessment increase for recovery in future rates. An accounting authority order ("AAO") is an exceptional mechanism applicable only under "extraordinary" circumstances since general accounting rules require the recording of all items of profit and loss in the period incurred.[1] Spire's $1,661,778 increase in assessment does not satisfy *any* of the criteria established by Commission rules and repeatedly followed by Commission orders for determining when an item is extraordinary.[2] The evidence demonstrates Spire's annual assessment and assessment increase is not unusual or abnormal, it will recur in the foreseeable future, and the effects are not significant.[3]

Spire's application repeatedly characterizes the assessment as an "act of government"; however, this characterization fails to recognize Spire's actions are the main cause for the assessment increase. Spire's assessment increased from FY 2018 to FY 2019 for two primary reasons: 1) Spire's simultaneous rate case filings that significantly increased the work necessary for the Commission, its Staff, and OPC to

[1] Roth Rebuttal, Exhibit (Ex) 200, pp. 2-3.

[2] *Id.*, pp. 4-6; Oligschlaeger Rebuttal, Ex.100, pp. 7-8.

process the case, which caused the assessment on *all* gas companies to increase.[4] 2) Spire's significant $76 million increase in operating revenues during a period in which Missouri's other gas companies experienced revenue losses, which caused Spire's portion of the allocation for gas companies to increase.[5] What Spire characterizes as an "act of government" is the normal, annual assessment that enables Spire to operate free from competition as a monopoly provider of a necessary service.

Spire's request to defer a small and predictable cost increase, if approved, could incentivize a wave of applications seeking deferrals for numerous minor cost increases. A $1,661,778 cost increase for a company the size of Spire is equivalent to a much smaller cost increase for all other gas companies in Missouri. Spire's gross operating revenues were $1.1 billion for 2017, whereas Empire Gas, Liberty Gas, Summit Gas and Ameren Gas had operating revenues of only 3%, 3%, 2% and 10% of Spire's revenues, respectively.[6] One could argue that an AAO for Spire in this case would justify comparable AAOs for Missouri's other gas companies of only 2% to 3% of Spire's requested AAO, which would be the equivalent of an AAO for a $33,000 to $50,000 cost increase. A misapplication of AAOs in the manner proposed by Spire would move the regulation of utilities far from the intended purpose of acting as a substitute for competition,[7] and would discourage Spire and other utilities from seeking cost savings.

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[3] *Id.*

[4] Roth Rebuttal, Ex. 200, p. 9; Oligschlaeger Rebuttal, Ex. 100, p. 8.

[5] Ex. 202.

[6] *Id.*.

[7] *State ex rel. Kansas City Power & Light v. P.S.C.*, 76 S.W.2d 343 (Mo. 1934). The Missouri Supreme Court stated, "the State through its commission takes the place of competition, and furnishes the regulation which competition cannot give…"

A. Spire's Assessment Increase is Not Extraordinary

AAOs are limited to *extraordinary* circumstances because the general rule under the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts (USOA) adopted by this Commission is to reflect all items of profit and loss during the period incurred, not deferred to a future period.[8] The USOA's General Instructions for natural gas companies describes an extraordinary item as follows:

> 7. *Extraordinary items.* It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. **Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items.** Accordingly, they will be events and transactions of significant effect which are **abnormal and significantly different from the ordinary and typical activities of the company**, and **which would not reasonably be expected to recur in the foreseeable future**. (In determining significance, items should be considered individually and not in the aggregate. However, 1 the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate.) To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.[9] (Emphasis added)

The evidence of this case demonstrates that Spire's assessment and assessment increase fails to meet the definition of an extraordinary item because it is a normal and immaterial occurrence that will recur in the foreseeable future.[10]

Spire's assessment is Spire's contribution to the Commission and OPC budgets and follows a simple formula from § 386.370 RSMo. To determine a utility's

[8] Roth Rebuttal Testimony, Ex. 200, pp. 4-5; Oligschlaeger Rebuttal Testimony, Ex. 100, pp. 7-8 *See also* 4 CSR 240-40.040.

[9] *Id.*

[10] *Id.*

assessment, the Commission estimates and allocates an amount to each utility group (electric, gas, water, etc.) based upon time spent by the Commission devoted to each group in the preceding fiscal year.[11] Each utility is then assessed a portion of their group's allocation "in proportion to their respective gross intrastate operating revenues during the preceding calendar year."[12]

Spire's AAO request is due to an increase in assessment from FY 2018 to FY 2019.[13] Between FY 2018 and FY 2019, the total Commission/OPC budgets assessed on utilities increased by only $12,317,[14] which means the increase in Spire's FY 2019 assessment is not due to the Commission/OPC budgets, and is instead due solely to the gas company's group allocation and/or Spire's gross intrastate operating revenues.

Time spent by the Commission and OPC on gas cases in FY 2018 determined the FY 2019 group allocation for gas companies.[15] The largest and most time-consuming cases in FY 2018 were the two Spire rate cases for Spire East and Spire West, which contributed significantly to Spire's FY 2019 assessment.[16] However, this was not an unusual or unexpected occurrence and Spire "should have reasonably expected a

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[11] Roth Rebuttal, Ex. 200, Schedule KNR-5 includes the detailed Commission Assessment Process provided to OPC by the Commission; *See also* Oligschlaeger Rebuttal, Ex. 100, pp. 5-7.

[12] Section 386.370.2 RSMo.

[13] Weitzel Direct, Ex. 1, p. 2.

[14] *In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2018*, Case No. AO-2018-0379, Assessment Order for Fiscal Year 2019, July 1, 2018 (total $18,750,109); and *In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2017*, Case No. AO-2017-0344, Assessment Order for Fiscal Year 2018, July 1, 2017 ($18,737,792).

[15] Roth Rebuttal Testimony, Ex. 200, Schedule KNR-5; Oligschlaeger Rebuttal, Ex. 100, pp. 5-7.

[16] Case Nos. GR-2017-0215 and 0216. Electronic Filing and Information System ("EFIS") submissions include well over 600 document submissions for these consolidated cases.

significant increase in its Commission Assessment amount in fiscal year 2019 on account of the level of its major case activity before the Commission."[17]

Spire's past assessments show a normal and expected pattern of assessment increases following rate cases. Increased assessments near or above $4 million have occurred following every Spire rate case for the last ten years. In FY 2008, the combined assessments for Spire East (f/k/a "Laclede") and Spire West (f/k/a "MGE") was over $4 million,[18] which followed Laclede and MGE rate cases processed in FY 2007.[19] In FY 2011, the combined assessment again increased over $4 million,[20] which followed Laclede and MGE rate cases processed in FY 2010.[21] In FY 2015, the combined Laclede/MGE assessment was $3.95 million, which once again followed Laclede and MGE rate cases processed in FY 2014.[22] Spire's combined East/West assessment for FY 2019 followed this same pattern and increased Spire's assessment over $4 million following Spire's FY 2018 rate cases. The average assessment following rate cases (FY 2008, 2011, 2015 and 2019) is **$4,268,710**.[23] The average assessment for years that do not follow rate cases (FY 2009, 2010, 2012, 2013, 2014, 2017, 2017 and 2018) is

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[17] Oligschlaeger Rebuttal, Ex. 100, p. 9; *See also* Roth Rebuttal, Ex. 200, p. 6.

[18] Weitzel Direct Testimony, Ex. 1, p. 6.

[19] MGE Case No. GR-2006-0422, Report and Order, March 28, 2007; and Laclede Case No. GR-2007-0208, Order Approving Unanimous Stipulation and Agreement, July 19, 2007.

[20] Weitzel Direct Testimony, Ex. 1, p. 6.

[21] Laclede Case No. GR-2009-0355, Order Denying Application for Rehearing, March 3, 2010; and MGE Case No. GR-2010-0171, Report and Order, August 18, 2010.

[22] Laclede Case No. GR-2013-0171, Order Approving Stipulation and Agreement, April 23, 2014; MGE Case No. GR-2014-0007, Order Approving Stipulation and Agreement, May 1, 2014.

[23] Weitzel Direct, Ex. 1, p. 6, average of $4,147,693, $4,041,676, $3,954,922 and $4,904,390. Even excluding the FY 2019 assessment from the average calculation, the average assessment following rate cases is still over $4 million.

$3,415,224.[24] Spire's FY 2019 assessment simply followed a normal pattern. Spire's assessment will recur annually, and assessments over $4 million will recur in the foreseeable future following Spire rate cases. "Spire will continue filing its rate cases for its operating units simultaneously, which will increase the hours worked by Commission Staff and OPC on Spire cases" and "Spire's increased assessment will be as frequent and recurring as Spire's rate cases."[25]

Spire also contributed to its assessment by unnecessarily increasing the work of the Commission and OPC required to review Spire's rate increase applications. The Commission found Spire "padded its revenue requirement…clearly to the benefit of shareholders over ratepayers" and "pursued more new, unique shareholder-focused ratemaking tools in this case to insulate shareholders from risk, such as three new tracking mechanisms…and a revenue stabilization mechanism."[26] The Commission also found Spire "pursued utility expenses that are highly discretionary, do not benefit customers, and are typically allocated entirely to shareholders."[27] This, along with a number of other FY 2018 cases unique to Spire,[28] naturally increased the work of the

[24] *Id.*; Average of $3,980,583, $3,585,137, $3,463,112, $3,384,578, $3,384,369, $3,364,459, $2,916,945, and $3,242,612.

[25] Roth Rebuttal, Ex. 200, p. 9.

[26] Case Nos. GR-2017-0215 and 0216, Amended Report and Order, March 17, 2018, pp. 49-54.

[27] *Id.*, pp. 49-50.

[28] Spire's customers filed six formal complaints against Spire in FY 2018, compared to *zero* formal complaints filed against any other Missouri gas utility. *See* Commission Case Nos. GC-2018-0096, *Tina Vora v. Spire*; GC-2018-0159, *Lisa Lambert v. Spire*; GC-2018-0199, *Church of Jesus & Hope v. Spire*; GC-2018-0267, *Locustwood Associates v. Spire*; GC-2018-0345, *Brett Felber v. Spire*; and GC-2018-0377, *Imri Meiron v. Spire*. The Commission also opened an investigation into improper disconnections during the Cold Weather Rule period, which required a seven-month investigation by the Commission's staff and corrective actions by Spire. *In the Matter of an Investigation of Customer Service Issues at Spire Missouri, Inc*., Case No. GO-2018-0251, Order Opening Investigation, March 22, 2018, and Order Closing File, October 23, 2018.

Commission and OPC and increased Spire's assessment. According to Staff witness Mr. Mark Oligschlaeger, "most rate cases feature settlements of at least some issues prior to hearings, making these (Spire) proceedings contentious and time-consuming compared to most other rate cases."[29] OPC witness Ms. Keri Roth testified, "It is clear that the number and type of cases, the number of Commission and OPC employees needed to work those cases, and the hours necessary to work those cases, compared to other natural gas utilities makes Spire the leading cause of a larger portion of the assessment to be allocated to natural gas utilities."[30]

The last input in the assessment formula prescribed by § 386.370 RSMo is the gross intrastate operating revenues of each Missouri public utility, which determines each company's share of their utility group's allocation. The gross intrastate operating revenues used to determine the assessments for FY 2019 are those earned in calendar year 2017.[31] Spire's gross operating revenues increased between calendar year 2016 and calendar year 2017 by a whopping ***$76 million***.[32] By comparison, the gross operating revenues of Ameren Gas, Empire Gas and Summit Gas all *decreased* between 2016 and 2017 by ($2,026,062), ($744,458) and ($221,318), respectively.[33] Liberty Gas was the

[29] Oligschlaeger Rebuttal, Ex. 100, p. 9.

[30] Roth Rebuttal, Ex. 200, p. 9.

[31] Section 386.370.2 RSMo. Spire's gross intrastate operating revenues for this period dwarfed those of its peers, with Spire earning 83% of all 2017 gross intrastate operating revenues of gas companies in Missouri. *See* Roth Rebuttal, Ex. 200, p. 8.

[32] OPC Exhibit 202 shows Spire's 2017 revenues of $1,148,910,623 ($458,760,278 for Spire West and $690,150,345 for Spire East), and Spire's 2016 revenues of $1,072,822,767 ($425,569,801 for Spire West and $647,252,966 for Spire East); $1,148,910,623 - $1,072,822,767 = $76,087,856.

[33] *See* Footnote 32, *see also* the 2016 and 2017 revenues for Ameren Gas ($119,985,427 - $122,011,489 = negative $2,026,062); Liberty Gas ($44,317,386 - 43,121,274 = positive

only other gas company to see an increase in gross operating revenues between 2016 and 2017 with an increase of $1,196,112.[34] Spire is far outpacing its peers, which contributed to an increase in its share of the gas company allocation for FY 2019.

As Spire's gross intrastate operating revenues increase, Spire's assessment increase is a normal occurrence under an established assessment formula used for decades,[35] and which will recur in the foreseeable future. There is nothing unusual or abnormal about Spire's assessment to warrant deferred treatment as an "extraordinary" expense. Spire is singling out one increased expense that is not extraordinary, and requesting special deferred treatment without consideration for other items of profit or loss, which is inconsistent with the Commission's Report and Order less than a year ago denying an AAO in Case No. WU-2017-0351.[36] There the Commission held:

> Some may argue that absent the Company timing the filing of a general rate case to include a known increase of property taxes, MAWC will unfairly incur an additional cost that it cannot recover in rates. While this is true, there are always increases and off-setting decreases in other costs that are not reflected in current rates. That is why the General Instructions for NARUC USOA indicates the intent should be for net income to reflect all items of profit and loss during the period. MAWC is requesting the Commission single out one increased expense for special deferred treatment without consideration for other items of profit or loss. This Commission recently denied Kansas City Power & Light Company's request to do that exact thing with a tracker for increased property tax expense.[37]

$1,196,112); Summit Gas ($28,429,649 - $28,650,967 = negative $221,318); Empire Gas ($35,998,118 - $36,742,576 = negative $744,458).

[34] *Id.*

[35] Section 386.370 RSMo.

[36] *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County,* Report and Order, December 20, 2017.

[37] *Id.*

For the same reasons identified by the Commission last year, Spire's assessment expense is not extraordinary and the request should be denied.

B. Spire's Assessment Increase is Not Material

In response to OPC's data request 1101, Spire responded that the Company is using total income for the 12 months ending June 2018 of $141.8 million to calculate whether Spire's request for an AAO meets the FERC USOA's 5% of income threshold.[38] Five percent of $141.8 million is approximately $7.1 million.[39] The increase in assessment from that used to set rates is only $1,661,778, or 1% of income.[40] This is not a significant nor a material amount, especially for Spire with well over $1 billion in gross intrastate operating revenues. For these reasons, OPC urges the Commission to conclude the amount in question is not material.

C. Conclusion

Spire suggested during the hearing that the Commission should follow an assessment sharing mechanism similar to how the Commission ordered rate case expense sharing between customers and shareholders.[41] Spire's customers are already paying $3,242,612.10 annually through rates for Spire's assessment, which means customers already paid the large majority of Spire's FY 2019 assessment.[42] Spire's annual assessments are on average $3.4 million in between rate cases, which means Spire's customers will most likely continue paying ninety-five percent (95%) of Spire's

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[38] Roth Rebuttal, Ex. 200, pp. 6-7.

[39] *Id.*

[40] *Id.*, Transcript p. 76.

[41] Transcript pp. 59-60.

assessment on average in future years. By bringing fewer issues and cases before the Commission in the future, Spire can reduce its assessment *below* the $3.2 million built into rates. Just as rate case expense sharing can incentivize Spire to reduce rate case expense, the assessment expense can also act as an incentive to reduce the number of unnecessary issues and cases before the Commission. The present case is a prime example. OPC respectfully requests the Commission deny Spire's requested AAO.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 28th day of December 2018.

/s/ Marc Poston

[42] Weitzel Rebuttal, Ex. 1, p. 9.