

**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 )	Case No. GU-2019-0011
Assessment for the 2019 Fiscal Year. )	

**PUBLIC COUNSEL’S REPLY BRIEF**

The Office of the Public Counsel (“OPC”) respectfully offers this reply brief in response to the initial brief filed by Spire Missouri, Inc.’s (“Spire”):

**1. Spire Failed to Request a Change to the Assessment Expense**

Spire argues the Public Service Commission (“Commission”) should grant Spire an accounting authority order (“AAO”) because Spire disagrees with the amount of assessment expense included in current rates.<sup>1</sup> The opportunity to challenge that calculation occurred in the rate cases, where Spire chose not to challenge the amount of assessment expense before it was included in rates approved by the Commission. The Company presented no evidence that it made any effort in the rate cases to determine the assessment expense. Spire should have known from past assessments and from the data presented in Spire’s own direct testimony in this case that the assessment would increase.<sup>2</sup> If Spire wishes to change the manner in which assessments are determined in rate cases, the proper forum is to raise it as an issue in a rate case.<sup>3</sup>

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<sup>1</sup> Spire Brief, pp. 11-12.

<sup>2</sup> Exhibit (Ex.) No. 1, Weitzel Direct, p. 6.

<sup>3</sup> There are other problems with how Spire claims the Commission should calculate the assessment, including the problem that Spire’s proposed method would inflate the assessment for all years between rate cases, and the problem that most inputs that determine the next year’s

## 2. Spire Never Seeks AAOs for Cost Savings

Spire acknowledges the Commission reduced Spire's rates in its most recent rate cases.<sup>4</sup> This was due to Spire experiencing cost savings and/or revenue increases that allowed it to earn unreasonably high returns. During those periods of over-earning, Spire chose not to come forward with requests to defer cost savings or revenue increases to benefit Spire's customers in future periods. This is one significant problem with AAO deferrals – they only *increase* future rates. AAO requests to defer expense increases would seem more reasonable if utility companies also followed a practice of identifying such cost savings and revenue increases between rate cases and requesting deferrals for those changes, which could potentially *decrease* future rates. Instead, utility AAO requests, and Spire's AAO requests,<sup>5</sup> are always one-sided and seek to defer cost

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assessment are unknown during the rate case. Those issues are not proper here, and to the extent Spire wishes to address them, the proper forum is the rate case.

<sup>4</sup> Spire Brief, p. 3.

<sup>5</sup> See Spire's AAO requests in Case Nos. **GU-2011-0392** (*Application of Missouri Gas Energy for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations*); **GU-2010-0015** (*Application of Missouri Gas Energy for an Accounting Authority Order Concerning Kansas Property Tax for Gas in Storage*); **GU-2007-0480** (*Application of Gas Energy for an Accounting Authority Order Concerning Environmental Compliance Activities*); **GU-2007-0138** (*Application of Laclede Gas Company for an Accounting Authority Order...Complying With the Permanent Amendment to the Commission's Cold Weather Rule*); **GU-2007-0137** (*Application of Laclede Gas Company for an Accounting Authority Order...Complying With the Emergency Amendment to the Commission's Cold Weather Rule*); **GR-2007-0208** (*In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules, see Report and Order, Attachment B, July 9, 2007*); **GR-2006-0422** (*Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service, AAOs requested for Emergency Cold Weather Rule and Kansas Property Taxes, see Report and Order, pp. 25, 28, March 22, 2007*); **GU-2005-0095** (*Application of Missouri Gas Energy...for an Accounting Authority Order Concerning the Kansas Property Tax for Gas in Storage*); **GA-2002-429** (*Application of Laclede Gas Company to Defer...Costs of Providing Public Utility Service...Due Solely to the Extraordinary Impact of Record Warm Weather*); **GA-2002-377** (*Application of Missouri Gas Energy...for an Accounting Authority Relating to Commission Rule 4 CSR 240-13.055(13)*); **GO-2002-175** (*Missouri Natural Gas Local Distribution Companies' Application for Recognition of Uncollectibles Expense Under the*

increases, which provides further reason why, absent a rare and extraordinary event, such mechanisms distort the true cost-of-service and are contrary to the public interest.

### 3. The Impact to Income Determines Materiality

Spire's characterization of the issue as a 51% increase in the Commission assessment<sup>6</sup> is misleading because for AAO purposes the Commission bases the calculation of whether the amount is significant or material relative to the company's income, not the percentage increase to the individual expense.<sup>7</sup> Defining what is material or significant as a percentage of income ensures the profit or loss in question is material *to the company*, and not simply material to the level of the expense. Otherwise, if a \$2,000 expense doubled to \$4,000 annually, Spire or any other company could claim a 100% increase is material to the expense, justifying an AAO and deferred accounting for the additional \$2,000. Spire's new materiality standard is not the Uniform System of Accounts (USOA) standard followed by the Commission, the Federal Energy Regulatory Commission (FERC), or the National Association of Regulatory Utility Commissioners (NARUC). Individual costs are constantly increasing and decreasing, and only when

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*Terms of 4 CSR 204-13.055(10));* **GO-2002-48** (*Missouri Gas Energy's Application for Determination of Certain Matters Pertaining to its Safety Line Replacement Program*); **GR-99-315** (*Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*, AAO requested for Safety Replacement Program, *see Report and Order*, p. 8, December 14, 1999); **GR-98-374** (*In the Matter of Laclede Gas Company's Tariff Designed to Increase Rates*, AAO for OPEB, *see Order Approving Stipulation and Agreement*, p. 2, October 15, 1998); **GR-98-140** (*Missouri Gas Energy's Tariff Designed to Produce an Increase of \$27,817,140*, AAO for Safety Replacement Program, *see Report and Order*, pp. 13-15, August 21, 1998.); **GR-96-193** (*Laclede's Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service*, AAOs requested, *see Report and Order*, pp. 12-14, August 28, 1996); and **GO-94-234** (*Application of Missouri Gas Energy for the Issuance of an Accounting Order Relating to Gas Safety Projects*).

<sup>6</sup> Spire Brief, p. 2.

<sup>7</sup> Uniform System of Accounts, Instruction No. 7, states, "To be considered as extraordinary...an item should be more than approximately 5 percent of income..."

those costs are so large to be material to the company's income do those items become worthy of consideration for deferral beyond the period incurred.

#### **4. Spire's Assessment is an Ordinary Expense**

Spire argues the Commission assessment is different from other expenses because it "is not a normal expense related to the actual provision of utility services" and is "instead, an expense related directly and exclusively to the regulatory structure established by statute."<sup>8</sup> However, the assessment directly relates to Spire's provision of utility service because without the Commission, Spire would not enjoy the luxury of operating free from competition in its service area. Spire is able to operate under Missouri's "regulatory structure" by routinely requesting and receiving rate increases for general rates and special surcharges whenever Spire believes its profits are insufficient to earn a reasonable return for its investors. Because of this regulatory structure, Spire's customers have no choice but to pay the increases or forego natural gas service altogether. The regulatory structure that allows Spire to be the exclusive provider of gas heat in the St. Louis and Kansas City regions is a privilege made possible by the Commission, not a regulatory burden.

#### **5. Spire's Tracker Proposal Would Penalize Customers**

Spire's brief incorrectly asserts its request would be neutral between investors and customers because it would track increases and decreases in assessments alike. The balance Spire alleges is highly unlikely to result in a liability that favors customers because Spire enjoyed a low assessment in the test year period used to set rates, just as Spire likely experienced offsetting higher than average test-year amounts for other

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<sup>8</sup> Spire Brief, p. 2.

expenses. Spire would not be seeking such a deferral if it anticipated the result would be a liability and deferral of a cost savings to lower future rates.

A mechanism that makes Spire 100% whole would not provide the important incentive to be mindful of managing the expense, which is inherent in traditional cost-of-service ratemaking. Spire argues for different treatment of the Commission assessment because the company should neither profit from nor suffer a loss from this “sort of expense.”<sup>9</sup> However, the assessment is very much like other expenses in that thoughtful practices can reduce the expense to Spire’s benefit and the benefit of Spire’s customers, or can incent Spire to reduce other expenses.<sup>10</sup>

Spire is not requesting a true 50/50 sharing mechanism comparable to the Commissions’ rate case sharing decision or Spire would have offered to divide the \$3.2 million test year assessment between investors and customers. Rather, this case is about Spire identifying one expense that was less in the test year period than in the first year following the rate case, which is a normal occurrence. Expenses increase and decrease year-to-year, and under a test year ratemaking approach (and absent a truly extraordinary event), expenses balance in the end to provide reasonable rates going forward.

## **6. Spire Settles General Rate *Increase* Cases in 7 Months, but Spire’s General Rate *Decrease* Cases Continue 21 Months Later**

Spire argues that the statistics OPC cited regarding Spire’s most recent rate cases support Spire’s argument that the assessment increase is unusual and infrequent.<sup>11</sup> However, the statistics specific to Spire’s recent rate cases only show Spire’s heavy

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<sup>9</sup> *Id.*

<sup>10</sup> Ex. 100, Oligschlaeger Rebuttal Testimony, pp. 11-12.

<sup>11</sup> Spire Brief, p. 7.

influence on the assessment increase, not whether the increase is abnormal. As OPC explained in its initial brief, the evidence demonstrates assessments over \$4 million following rate cases is normal, and these statistics will recur frequently as Spire continues to file simultaneous rate cases for its East and West divisions.<sup>12</sup>

The statistic Spire chose not to discuss is the comparison between Spire's most recent rate cases, where Spire anticipated rate *decreases*, and Spire's prior rate cases over the last ten years whenever Spire anticipated rate *increases*. When anticipating increases, Spire's cases settle early, usually within seven (7) months of an otherwise eleven (11) month process.<sup>13</sup> This occurs despite the fact that OPC and other consumer interests have no incentive to agree to early rate increases, yet routinely agreed to allow rate increases to take effect within seven months.<sup>14</sup> When facing a rate decrease, Spire's 2017 rate cases *continue today*, twenty-one (21) months later.<sup>15</sup>

## **7. Conclusion**

Spire's request in this case seeks to establish a new and weaker standard for accounting deferrals that would discard decades of consistent Commission and court

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<sup>12</sup> Roth Rebuttal, Ex 200, pp. 4-6; Oligschlaeger Rebuttal, Ex.100, pp. 7-8.

<sup>13</sup> Missouri Gas Energy (MGE) Case No. GR-2014-0007 settled all issues in 7 months for a \$7.8 million revenue increase, *Order Approving Stipulation and Agreement*, May 1, 2014. Laclede Gas Company (Laclede) Case No. GR-2013-0171 settled all issues in 5 months, *Order Approving Unanimous Stipulation and Agreement*, June 26, 2013. Laclede Case No. GR-2010-0171 settled all issues in 8 months for a \$31.4 million revenue increase, *Report and Order*, August 18, 2010. MGE Case No. GR-2009-0355 settled all issues in 7 months except cost of capital, rate design and energy efficiency, *Report and Order*, February 10, 2010. Laclede Case No. GR-2007-0208 settled all issues in 7 months for a \$38.6 million increase, *Order Approving Unanimous Stipulation and Agreement and Authorizing Tariff Filing*, July 19, 2007.

<sup>14</sup> *Id.*

<sup>15</sup> *Spire Missouri, Inc. v. Public Service Commission*, Case No. SD35485.

decisions.<sup>16</sup> Spire has faced similar assessment increases following rate cases in the past, yet chose not to file requests for deferrals. One difference this time, as Spire and the Commission's Staff point out,<sup>17</sup> is Spire's disapproval of how the Commission resolved Spire's rate cases, and in particular, the Commission's resolution of rate case expense, an issue Spire has appealed.<sup>18</sup> Ironically, the appeal of that issue continues to use Commission and OPC resources for the rate case twenty-one (21) months after initially filing the cases. When addressing rate case expense in its *Amended Report and Order*, the Commission made a point that is relevant here when the Commission concluded, "full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment." The same analysis applies to Spire's assessment – full reimbursement of all assessment expenses, as Spire seeks in this case, does nothing to encourage Spire to be mindful of regulatory resources. OPC strongly urges the Commission to maintain the current deferral standards and deny Spire's requested AAO.

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<sup>16</sup> *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*, Case No. WU-2017-0351, *Report and Order*, December 20, 2017; *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Case No. GO-91-358, consolidated with *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Authority Order Relating to its Purchased Power Commitments*, Case No. EO-91-360, *Report and Order*, December 20, 1991, 129 P.U.R.4<sup>th</sup> 381, 1 Mo. P.S.C. 3d 200; and *State ex rel. Office of the Public Counsel v. Public Service Commission*, 858 S.W.2d 806 (Mo. App. W.D. 1993).

<sup>17</sup> Staff Brief, p. 2; Spire Brief, p. 9.

<sup>18</sup> *Spire Missouri, Inc. v. Public Service Commission*, Case No. SD35485.

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 11<sup>th</sup> day of January 2019.

/s/ Marc Poston