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**

REPLY BRIEF OF STAFF

Respectfully submitted,

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INTRODUCTION

COMES NOW the Staff of the Missouri Public Service Commission and submits the following Reply Brief in reply to the initial brief of Spire Missouri Inc. ("Spire" or "Company"). The purpose of a Reply Brief is for a party to respond to the opposing arguments made by the other parties to a proceeding. Rather than replying to every individual statement made by Spire in its initial brief, having presented and argued its positions in its initial brief Staff is limiting its replies to those matters which Staff believes will most aid the Commission in its determinations. Therefore, the failure of this Reply Brief to address any matter raised in Spire's initial brief should not be construed as agreement in any way therewith.

Although the Commission's *Order Adopting Procedural Schedule* provided that "Briefs shall follow the same list of issues as filed in the case," as shown in its Table of Contents, Spire's initial brief does not really follow the list of issues, making it impossible for this Reply Brief to do so. However, this Reply Brief will reference the statement/argument of Spire to which it is responding when addressing a specific statement or argument of Spire.

ARGUMENT

It should first be noted that when read in its entirety Spire's initial brief effectively admits that its request for an accounting authority order (AAO) / tracker does *not* meet the Commission's previously articulated and court-approved criteria for authorizing AAO/tracker deferrals. Rather than arguing how it meets that expressed criteria, Spire's initial brief presents its opinion as to why it should be singled out for favorable special treatment and what, in its opinion, is wrong with traditional cost-of-service ratemaking. The Commission should recognize these arguments for what they are and give them no credence.

In the Introduction section of its initial brief Spire states that the PSC assessment "is not a normal expense related to the actual provision of utility services" because it is "an expense related directly and exclusively to the regulatory structure established by statute . . . but for this mandated regulatory structure, there would be no assessment." First, the PSC assessment is in fact a normal, recurring expense for a regulated utility such as Spire, and has been since the enactment of the assessment statute, Section 386.370, RSMo. Commission assessments are in no way unusual, unique or not recurring; rather, assessment expense is very much of a routine and ongoing nature and is not associated with the type of rare and unanticipated events, such as natural disasters, for which AAOs are used.[1] Second, although Spire claims that "but for" the mandated regulatory structure there would be no assessment, Spire fails to mention that "but for" the mandated regulatory structure Spire would have no right to be the *de facto* monopoly provider of natural gas service it is today. As Mr. Poston of the

[1] Oligschlaeger Rebuttal, Ex. 100, p. 7 lines 19-21.

Office of the Public Counsel described it at the hearing, “The assessment Spire pays is equally beneficial to Spire as it is to the public that pays for the assessment through rates. If not for the Commission, Spire wouldn’t enjoy the benefits of being a monopoly provider of a necessary service.”[2]

On page 5 of its initial brief Spire refers to an April 19, 2012, Commission order as though it supports its position; however, upon further examination of the order it does not. First, although not mentioned by Spire, the quoted order was an order approving a stipulation and agreement to which no party had objected rather than after a contested hearing.[3] Second, the AAO at issue in that case was requested in response to Missouri’s then-recently enacted Renewable Energy Standard Law.[4] Third, even that portion of the order quoted by Spire does not support its position. Spire attempts to interpret the quoted portion of the order as saying that the Commission has not limited AAOs to extraordinary circumstances. However, the quotation merely says that the power to grant AAOs is not limited “to any particular set of circumstances.” Clearly, more than one “particular set of circumstances” can qualify as extraordinary, so this does not eliminate the “extraordinary” requirement. Furthermore, the footnote accompanying the quotation, which Spire fails to mention in its brief, states that “Extraordinary has been defined as meaning of a nonrecurring nature.” Finally, even if it supported Spire’s position (which it does not), the quoted order was issued in 2012 – four years *before* the Western District Court of Appeals’ 2016 opinion cited in Staff’s initial brief in which the court, while affirming the Commission, stated that

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[2] Tr. 27-28.

[3] *In the Matter of the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for the Issuance of an Accounting Authority Order Relating to Their Electrical Operations*, 2012 WL 1454510 (Mo.P.S.C.), Case No. EU-2012-0131, April 19, 2012.

[4] *Id.*

"In deciding that **only extraordinary costs qualify for deferral**, the PSC has followed the USOA's guidance that 'it is the intent that net income shall reflect all items of profit and loss during the period.' 18 C.F.R. Part 101, General Instruction 7. An exception to this general rule is for 'extraordinary items' as defined by the USOA."[5] (Emphasis added) Only extraordinary costs qualify for deferral.

Beginning on page 6 and continuing on to page 9 of its brief, Spire attempts to make the argument that the *increase* in its PSC assessment qualifies as "extraordinary." However, as discussed at length in Staff's initial brief and as shown by the cases cited therein, this is not the criteria or "test" for being considered "extraordinary." Rather, the underlying event giving rise to the cost in question – in this case, the Commission's annual process of billing jurisdictional utilities for the PSC assessment – must be unusual, unique and not recurring in order to be considered extraordinary. Although Spire points to the increase in its most recent assessment as compared to its prior assessment as the justification for its request, this is precisely the type of request – an increase in an annual, long-standing, recurring cost – which was denied in the cases quoted in Staff's initial brief.

The fallacy of Spire's argument that the magnitude of the increase (in this case, 51.2% according to Spire's brief) in an expense qualifies as an "extraordinary" event can be seen from a simple example. Assume hypothetically that Spire has historically spent $100 annually for pencils. Now assume that due to a worldwide pencil-lead shortage the price of pencils rises to $200 annually – an increase of 100%, or almost twice the magnitude of increase in this case. Does this 100% increase constitute an

[5] *In the Matter of Kansas City Power & Light v. Missouri Public Service Commission,* 509 S.W.3d 757, 769 (Mo. App. 2016).

extraordinary event? Certainly not. Beyond the dollar value of the increase being clearly immaterial, Spire's focus on the magnitude of the increase percentage, rather than on the underlying event (in this case the PSC assessment; in the hypothetical example, buying pencils), is misplaced and contrary to the cases discussed at length in Staff's initial brief.

On pages 9 and 10 of its brief Spire argues that PSC assessment expense and rate case expense are similar, and since in the Company's last rate cases[6] the Commission ordered that shareholders and ratepayers should share in rate case expense, PSC assessment expense should also be shared. However, once again Spire is focused solely on the increase in its assessment, not on the underlying assessment itself. Spire makes the completely erroneous statement that without its requested deferral, "there is no way that the shareholders and customers will have an opportunity to share [the PSC assessment expense].[7]" By focusing only on the increase in assessment, Spire would have the Commission believe that only shareholders – not customers – are being forced to pay. What Spire's argument completely ignores is that customers – not shareholders – are paying the entire amount of the PSC assessment which was included in rates in the Company's last rate cases.[8] According to the chart on page 4 of Spire's brief, that amount is $3,242,612. In other words, if all other factors are assumed to be equal and unchanged from the rate cases,[9] if Spire's argument is correct that shareholders are solely responsible for the $1,661,778 increase in

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[6] Case Nos. GR-2017-0215 and GR-2017-0216

[7] Spire's brief inappropriately refers to the PSC assessment as "rate case expenses" at page 10 of its brief.

[8] Tr. 66-67.

[9] In fact, it is certainly possible that Spire has or will experience concurrent decreases in costs in other areas that would offset all or part of the alleged shortfall in its recovery of the Commission assessment. Oligschlaeger Rebuttal, Exhibit 100, page 11 line 22 through page 12 line 2.

assessment, Spire's customers/ratepayers are still paying the $3,242,612 included in rates for assessment expense.[10] In other words, ratepayers are already paying nearly twice as much as shareholders are paying.

If Spire truly wanted to treat PSC assessment expense similarly to rate case expense in regard to the 50%-50% sharing of expense, it should start with the total 2019 assessment expense of $4,904,390 (as reflected in the chart on page 4 of Spire's brief) and divide that in half, which would result in an amount of $2,452,195 being borne by both shareholders and ratepayers. Instead, Spire would have its ratepayers pay the $3,242,612 included in rates plus half of the $1,661,778 increase, for a total of $4,073,501 – while shareholders would only be responsible for half of the $1,661,778 increase, or $830,889. In other words, Spire's version of "sharing" PSC assessment expense means ratepayers pay more than they already are paying; whereas under a true 50/50 sharing of the expense, ratepayers would actually pay less than what they already are paying as a result of the last rate cases. Unsurprisingly, Spire did not advocate for sharing of assessment expense during the last rate cases.[11]

On pages 11 and 12 of its brief Spire begins a topic it denominates as "Never recoverable under traditional rate mechanisms," in which Spire essentially laments being a regulated utility subject to traditional cost-of-service ratemaking, and seeks special treatment. Once again, Spire focuses solely on the fact that its 2019 assessment increased from its 2018 assessment and complains that shareholders will bear 100% of the increase, while ignoring the very real

[10] Tr. 65-67.
[11] Tr. 65.

possibility that future assessments will be lower[12] while rates continue to include the $3,242,612 included in rates in the last rate cases. In that case, shareholders would receive 100% of the benefit. Simply put, Spire does not like being regulated under traditional cost-of-service ratemaking.

However, cost-of-service ratemaking is the rate regulation approach employed in Missouri. As the Commission has previously decided – and been affirmed by the court of appeals – the "use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively **under the rate regulation approach employed in Missouri**."[13] (Emphasis added)

Spire's brief also talks again about "sharing" the expense between shareholders and ratepayers, but as shown above, what Spire wants is not really "sharing" in the sense of an equal responsibility, but special treatment for Spire shareholders and a larger assignment of costs to ratepayers. Spire's request should be recognized for what it is – a request for special treatment.

Finally, on page 13 of its brief Spire admits that the increase in its assessment fails to meet the Commission's second expressed criteria for authorizing AAO/tracker deferrals – whether the cost is "material." As stated in Staff's initial brief and as testified by Mr. Oligschlaeger "The 'yardstick' generally used by the Commission to measure materiality of a cost proposed for deferral treatment is whether the cost in question is at least equal to 5.0% of the utility's net income."[14] Spire's brief admits the increase in

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[12] Oligschlaeger Rebuttal, Ex. 100, p. 12 line10 through p. 13 line 2.
[13] *In the Matter of Kansas City Power & Light v. Missouri Public Service Commission*, 509 S.W.3d 757, 769 (Mo. App. 2016).
[14] *Id.* at p. 11 lines 4-6.

assessment does not meet the 5% standard; in fact, as stated in Staff's initial brief, the increase in Spire's assessment is closer to 1% than 5%.[15]

CONCLUSION

Spire's request for an AAO / tracker fails to meet the Commission's previously expressed and court-approved criteria for authorizing AAO / tracker deferrals in that the cost at issue is neither "extraordinary" nor "material." Accordingly, Spire's AAO / tracker request should be unequivocally denied in its entirety by the Commission.

WHEREFORE, for the reasons set forth herein and in Staff's initial brief, Staff prays that the Commission will issue an order finding in its favor on each issue in this case and denying Spire Missouri Inc.'s accounting authority order / tracker request, and granting such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

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[15] Tr. 14.

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 11th day of January, 2019.

<u>/s/ Jeffrey A. Keevil</u>