

Exhibit No.:

Issue(s): Spire STL Pipeline

Witness: Gregory M. Lander

Sponsoring Party: EDF

Type of Exhibit: Surrebuttal Testimony

Case No.: GR-2021-0127

Date Testimony Prepared: June 16, 2023

**BEFORE THE PUBLIC SERVICE COMMISSION OF
THE STATE OF MISSOURI**

In the Matter of Spire Missouri, Inc.)
d/b/a Spire (East) Purchased Gas)
Adjustment (PGA) Tariff Filing)

Case Number GR-2021-0127

**SURREBUTTAL TESTIMONY OF GREGORY M. LANDER
ON BEHALF OF
ENVIRONMENTAL DEFENSE FUND**

June 16, 2023

1 **Q. Please state your name and business address.**

2 A. My name is Gregory M. Lander. My business address is 83 Pine Street, Suite 101, West
3 Peabody, MA 01960.

4 **Q. Are you the same Gregory M. Lander who provided Direct Testimony on behalf of
5 Environmental Defense Fund in this proceeding on April 28, 2023?**

6 A. Yes, I am.

7 **Q. What is the purpose of this surrebuttal testimony??**

8 A. This testimony responds to portions of the Spire Missouri, Inc. rebuttal testimony, and the
9 Public Service Commission Staff rebuttal testimony, both filed on or about May 26,
10 2023.

11 **RESPONSE TO COMPANY TESTIMONY**

12 **Q: Do you have an expert opinion regarding the situation recounted in Company's
13 Rebuttal Testimony?**

14 A: Yes. My evaluation of the Spire Missouri, Inc. d/b/a Spire (East) (Spire MOE or
15 Company) rebuttal testimony is that the Company got lucky, that the potentially serious
16 reliability issues created as a consequence of its actions taken and permitted, did not, in
17 the end result in loss of service to its St. Louis area customers. The Company's basic
18 position from my reading is that "all's well that ends well". This post-facto view is not
19 an indicia of prudence; but rather a recitation of a lucky outcome in spite of its imprudent
20 path to that outcome. In short, reliance on luck is not a prudent way to conduct any
21 business, particularly one where lives are at stake.

22 **Q: In the Rebuttal Testimony of Weitzel at page 11, lines 10-11 he states:**

23 “...Spire Missouri was contractually obligated to take service on
24 Spire STL Pipeline upon its in-service date.”

25 **What is your response to this statement?**

26 A: The contract that Mr. Weitzel is referring to is the Precedent Agreement (PA). The PA is
27 between the Pipeline (STL) and its affiliated shipper Spire MOE. It is in that agreement
28 that Spire MOE negotiated the provision that required payments to the pipeline and
29 associated service on the pipeline commence with the date the pipeline declares and/or is
30 permitted to go into service; a point commonly referred to as the “in-service date”. There
31 is no regulatory requirement that specifies that PAs must be formulated such that service
32 from and payments to the pipeline must commence prior to the pipeline’s certificate
33 becoming non-appealable.

34 **Q: So, are you saying that Spire MOE should have pursued and obtained through**
35 **negotiations a PA that specified service from and payments to the pipeline**
36 **commence the later of the in-service date or the date that the pipeline’s certificate**
37 **became non-appealable.**

38 A: Absolutely, yes. And this pursuit should have been successful because Spire MOE was
39 both the only shipper enabling the STL Pipeline to become an interstate pipeline; and, a
40 creditworthy shipper enabling the STL Pipeline to gain debt financing enabling its
41 construction and eventual operation.

42 **Q: Could Spire MOE have pursued a PA that specified that construction of the STL**
43 **Pipeline not commence prior to having a non-appealable certificate order from the**
44 **Federal Energy Regulatory Commission (FERC)?**

45 A: Yes. As with the above discussed approach (i.e., Spire MOE negotiating a PA that
46 specified payment for service commence on a date that would have been the later of in-
47 service date or the date the certificate granted by the FERC became non-appealable), so
48 too Spire MOE, could have negotiated a PA providing that construction of the STL
49 Pipeline would not commence prior to the date the certificate granted by the FERC
50 became non-appealable. And this pursuit should have been successful because; again,
51 Spire MOE was both the only shipper enabling the STL Pipeline to become an interstate
52 pipeline; and, a creditworthy shipper enabling the STL Pipeline to gain debt financing
53 enabling its construction and eventual operation. I further note that there were not time
54 pressures to get this new pipeline as the initial STL Pipeline FERC Application did not
55 identify an imminent growing market needing more service in any part of the Spire MOE
56 system. A need to better serve the Western part of the Spire MOE system was not
57 publicly identified until July 26, 2021,¹ after the Court decision presented to Spire MOE
58 and STL Pipeline the prospect of certificate revocation on June 22, 2021.

59 **Q: What would have been the implications of the two potential provisions that you say**
60 **could have been added to the PA between Spire MOE and its affiliate STL Pipeline?**

61 A: First, with respect to the no-pay no-service prior to the later of in-service date or having
62 an unappealable certificate order provision that could have been inserted into the PA, the
63 major implication would have been to ensure that the design and construction of the
64 entire project would have been such that Spire MOE would *not* have been physically

¹ See Direct Testimony of Gregory M. Lander on Behalf of Environmental Defense Fund, Schedule EDF-GML-4, Affidavit of Scott Carter, President, Spire Missouri, Inc; page 6, paragraph 12; where Carter states: “Second, and not contemplated during the certificate application process, higher pressure deliveries from STL Pipeline into MoGas (via a new interconnect) allowed Spire Missouri to forego making certain costly reinforcements to its own distribution system, which would have been absorbed by customers.”

65 alienated from MRT in the vicinity of the Line 880/MRT interconnect. As I outlined in
66 my direct, and Weitzel confirmed in his rebuttal, the effect of the facilities
67 reconfiguration had the effect of alienating Spire MOE from MRT as part of construction
68 completed prior to having an unappealable certificate. Had the PA required no service
69 commencement and no paying for service prior to having an unappealable certificate, the
70 design and construction would have to have maintained the direct connection between
71 Spire MOE and MRT enabling continued service to Spire MOE from MRT. Such project
72 design would also have entailed Spire MOE's retention of its MRT capacity contracts
73 until that point in time that was at least the later of in-service date or having an
74 unappealable FERC Certificate order.

75 **Q: Would this PA provision have led to the same situation facing Spire MOE, with**
76 **respect to loss of ability to serve its customers, upon revocation of the STL**
77 **certificate that it did in fact face?**

78 A: No, the required configuration that would have resulted from this no-pay no-service
79 provision would have left Spire MOE in a position to continue receiving service from
80 MRT without reliance upon facilities of STL Pipeline to receive such service.

81 **Q: Would such configuration, that is one that maintained direct connection between**
82 **Spire MOE and MRT until after an unappealable order, been possible?**

83 A: Yes. In response to an EDF data request EDF-SPMO-22 a., , attached as exhibit EDF-
84 GML-5, Mr. Weitzel stated:

85 “If the original Chain of Rocks station was to remain until after the order was no
86 longer appealable, it can be assumed that Spire STL Pipeline would have been
87 required to acquire land, build facilities in the floodplain adjacent to the old Chain
88 of Rocks station to allow for deliveries both into Enable MRT and into Spire

89 Missouri's distribution system. This station would have then been abandoned or
90 moved to the new Chain of Rocks site once the order was no longer appealable.”
91

92 **Q: Did Mr. Weitzel say anything about “operational issues” associated with the**
93 **original Chain of Rocks remain[ing] until after the order was no longer appealable?**

94 A: He stated that the operational issues would be the same, and of the same duration, were
95 the original Chain of Rocks station to remain until an unappealable order was achieved as
96 the operational issues would be had the station have then been abandoned or moved (after
97 unappealable order) to the new Chain of Rocks site.²

98 **Q: Did Mr. Weitzel say anything else in his response to EDF-SPMO 22 a.?**

99 A: Yes. In that response, which is attached as exhibit EDF-GML-5, he stated:

100 “...the cost of such additional construction activities and obtaining the required
101 permitting and approvals would be unduly burdensome and unnecessary for Spire
102 Missouri customers to bear.”
103

104 **Q: Do you agree that such costs would be borne by Spire MOE customers?**

105 A: No. As Mr. Weitzel and Staff witness Sommerer have stated, and I am paraphrasing here;
106 one of the most positive and noteworthy attributes of the Spire MOE – STL Pipeline contract
107 is that the costs to Spire MOE customers are fixed for the 20-year duration of the contract.
108 So, in my opinion, the costs of maintaining the direct connection between Spire MOE and
109 MRT until after the order was unappealable would have been covered by the fixed price
110 contract.

111 **Q: How can you say that such costs would have been covered by the PA the two parties**
112 **signed?**

² See response to EDF-SPMO 22 b. & c, attached as exhibit EDF-GML-5.

113 A: For the same reason that the reconfiguration, which added costs to STL Pipeline associated
114 with the build of STL to (and of) a new Chain of Rocks Station, did not change the maximum
115 rate to be paid by Spire MOE (i.e., costs to Spire MOE’s customers) the continuation of the
116 direct connect between Spire MOE and MRT would not have changed the maximum rate
117 paid by Spire MOE. In my judgement, the contract would have been signed at the same time
118 and the 20-year provision for service under the contract would just have started and ended at
119 somewhat different dates by operation of the contract as well as the regulatory and
120 construction processes.

121

122 **Q: In Weitzel’s Rebuttal testimony at page 15 lines 1-3; Weitzel is asked “Had the**
123 **pipeline certificate been revoked, would Spire Missouri have been able to reconnect**
124 **with MRT in the area of the original chain of rocks station?”, to which his answer is**
125 **“Yes”. My question is: If Spire MOE had the no-pay no-service provision in the PA,**
126 **would the referenced reconnection have been necessary in the event of revocation?**

127 A: No, because, as I discuss above, Spire MOE would not have been alienated from MRT –
128 thus, not requiring reconnection in the first place.

129 **Q: With respect to the second approach, what would have been the implications of that**
130 **potential provision that you say could have been added to the PA between Spire**
131 **MOE and its affiliate STL Pipeline?**

132 A: With respect to the no-construct before having an unappealable order provision, the only
133 implication would have been a delay to the start of construction. As noted above, there
134 was no urgency to constructing this pipeline from a service perspective. No change(s) to
135 the final configuration of facilities would have been required. With respect to contract

136 reductions undertaken by Spire MOE, these would have presumably been coordinated
137 with the in-service date of the STL Pipeline.

138 **Q: Mr. Weitzel, in his rebuttal testimony at page 21, lines 2-9, provides a chart that he**
139 **states is “that has sometimes been used” related to a potential ACA disallowance.**
140 **In that chart he basically presents that a disallowance must be proven to be the**
141 **result of both imprudency and harm to customers. My question is: Do you agree to**
142 **that formulation here in this ACA case?**

143 A: No. My analogy here is that just because the Company knowingly and continuously ran
144 red lights, (as regards how it agreed and/or did not oppose imprudent actions of itself and
145 its affiliate over a four-year period), yet did not hit, or get hit by, any other vehicles, (i.e.,
146 did not “harm” customers economically), and was not pulled-over during that period,
147 does not mean that the “traffic cameras” that recorded the imprudent behavior, (i.e., its
148 consent to reconfiguration, its retirement and removal of facilities as well as Mr.
149 Weitzel’s admissions in rebuttal) shouldn’t nonetheless be used to provide the basis for a
150 traffic ticket (i.e., a penalty in the form of a disallowance).

151 **Q: At Page 21 of his Rebuttal testimony, Mr. Weitzel states that for a disallowance to**
152 **occur:**

153
154 Generally, there must be a finding that: (1) the utility acted
155 imprudently (which, in ACA case, would be imprudent gas
156 purchasing practices); and, (2) such imprudence resulted in harm to
157 ratepayers (which, in ACA case, would be higher gas costs for
158 customers within the ACA period under review than otherwise
159 would have been experienced), and cites a legal case in footnote 10
160 there.

161
162 **Do you have a response to this statement?**
163

164 A: Yes. I am not an attorney. It is my understanding, upon advice of counsel, that under the
165 prudence standard that the Commission applies when setting rates, the Commission may
166 address contracting for unacceptably, unreliable gas service through a disallowance in an
167 ACA proceeding such as this one even if the service was not interrupted.

168 **Q: Did anything that Mr. Weitzel say in his rebuttal testimony to alter your**
169 **recommendation as to the disallowance you recommend?**

170 A: No. In fact, the Company's rebuttal did not rebut any of my findings as to the constituent
171 facts surrounding my findings that lead to the finding of imprudence.

172 **RESPONSE TO PUBLIC SERVICE COMMISSION STAFF TESTIMONY**

173 **Q: At page 3, lines 19-23 of Staff Witness Sommerer's Rebuttal Testimony states his**
174 **"understanding of the Missouri Public Service Commission's prudence standard is**
175 **that once a serious doubt has been created about an expenditure, the party**
176 **proposing the disallowance needs to evaluate the harm to customers of the alleged**
177 **imprudent decision and propose any necessary disallowances to hold the customers**
178 **'harmless.'"**

179 A: I discuss the standard as I understand it above. That said, we have evaluated and
180 described the harm to customers in qualitative terms. The Staff testimony appears to
181 indicate the standard requires quantification of the harm to customers. Sommerer
182 Rebuttal Testimony, p. 4, lines 1-6. I do not agree that EDF or the Commission is
183 compelled to quantify the harm to customers in this situation under either scenario, with
184 or without a service interruption, before it may address imprudent action. Such a
185 requirement would unreasonably restrict the Commission and in many circumstances be
186 unworkable.

187 In this case, under the potential loss of service scenario as described in the affidavit of
188 Mr. Carter of the Company, where he stated that such loss of service “would severely
189 jeopardize Spire Missouri's ability to provide needed energy to a large portion of the
190 650,000 households and businesses that Spire Missouri serves in Eastern Missouri.”
191 Affidavit of Scott Carter, Schedule EDF-GML-4, p.1. Also stated that: “This energy is
192 needed to fuel the economy, in addition to sustaining life through heating homes and
193 cooking food.” *Id.* He further described the expected result of service interruption as
194 follows:

195 STL Pipeline, Spire Missouri would very likely be forced to intentionally
196 curtail natural gas service to many of its customers during the upcoming
197 2021-2022 winter heating season. In addition, Spire Missouri faces the
198 very real threat that despite such mandated curtailments, its reduced gas
199 supply would lead to low pressure on its distribution system during cold
200 periods and cause uncontrolled loss of service to households and other
201 high priority consumers, such as hospitals, nursing homes, and schools.
202 Loss of natural gas service during cold periods would create the potential
203 for loss of life and severe impacts to essential services relied on by many
204 individuals and communities served by Spire Missouri.
205

206 *Id.*, p.2. (emphasis added). If this had happened, I suggest we would today likely not have
207 a quantification of all the harm to customers. We also do not have a quantification of the
208 harm of moving Spire MOE customers to the less reliable service of the STL Pipeline
209 while its certificate was still subject to appeal where interruption of service did not occur.
210 In my opinion, both scenarios are hard or impossible to quantify. Such a situation should
211 not leave the Commission unable to act.

212 **Q: Does this conclude your surrebuttal testimony?**

213 **A:** Yes.

EDF-SPMO-22

With respect to Weitzel Rebuttal testimony page 13 lines 9-12 where he states: “Moreover, there would be operational issues associated with making the move after the Spire STL Pipeline order became final and unappealable because moving the facilities would likely require service disruptions on both MRT and Spire STL Pipeline while the modifications occurred.”

- a. Please provide a narrative which details the specific “operational issues” that would attend to “making the move after the STL Pipeline order became unappealable” that would have been different than the operational issues that attended the construction completed while the order remained appealable?
 - a. If the original Chain of Rocks station was to remain until after the order was no longer appealable, it can be assumed that Spire STL Pipeline would have been required to acquire land, build facilities in the floodplain adjacent to the old Chain of Rocks station to allow for deliveries both into Enable MRT and into Spire Missouri’s distribution system. This station would have then been abandoned or moved to the new Chain of Rocks site once the order was no longer appealable. The operational issues would not necessarily be any different than those that were encountered when the station was originally moved, but would have occurred twice, rather than once, if the process were bifurcated. Additionally, as stated in Weitzel Rebuttal testimony, the cost of such additional construction activities and obtaining the required permitting and approvals would be unduly burdensome and unnecessary for Spire Missouri customers to bear.
- b. Please specify the nature and duration of the “service disruptions” that would occur “while the modifications occurred (i.e., post final and unappealable order).
 - a. It is likely that Spire Missouri would be unable to receive gas into its system at the Chain of Rocks site for a period of approximately two weeks.
- c. Please identify the nature and duration of the service disruption(s) that occurred during the construction that was completed while the order remained appealable.
 - a. Spire Missouri was unable to receive gas into its system at Chain of Rocks for a period of approximately two weeks. However, as stated above, it’s important to remember that a service disruption would have occurred twice if station modifications were to occur both during the original construction and then after a final and unappealable order.

