



IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

FILED²

Judge or Division: Missouri Public Service Commission	Mo. P.S.C. Case Numbers: GO-2018-0309 and GO-2018-0310		DEC 11 2018 Missouri Public Service Commission 1:29pm MA (Date File Stamp)
Plaintiff/Petitioner: Spire Missouri Inc.	Appellate Number:	<input type="checkbox"/> Filing as an Indigent	
	Date of Judgment/Decree/Order: (ATTACH A COPY) September 20, 2018	Court Reporter:	
vs.	Date Post Trial Motion Filed: September 28, 2018	<input type="checkbox"/> Sound Recording Equipment	
Defendant/Respondent: Missouri Public Service Commission	Date Ruled Upon: November 15, 2018	The Record on Appeal will consist of: ____ Legal File only or <input checked="" type="checkbox"/> Legal File and Transcript	

Notice of Appeal to Missouri Court of Appeals - Civil

District: Western Eastern Southern

Notice is given that Spire Missouri Inc. appeals from the judgment/decree/order entered in this action on September 20, 2018

Appellant's Name (If multiple, list all or attach additional pages) Spire Missouri Inc.	Respondent's Name (If multiple, list all or attach additional pages) Missouri Public Service Commission
Address 700 Market Street Saint Louis Mo. 63101	Address 200 Madison Street PO Box 360 Jefferson City, Mo. 65102
Appellant's Attorney/Bar Number (If multiple, list all or attach additional pages) Michael C. Pendergast, Mo. Bar No. 31763 Rick Zucker, Mo. Bar No. 49211	Respondent's Attorney/Bar Number (If multiple, list all or attach additional pages) Shelley Bruggemann, Mo. Bar No. 52173
Address 423 South Main Street (R) Saint Charles MO 63301	Address 200 Madison Street PO Box 360 Jefferson City, Mo. 65102
E-mail Address mcp2015law@icloud.com zuckerlaw21@gmail.com	E-mail Address shelley.brueggemann@psc.mo.gov
Telephone (314) 288-8723	Telephone (573) 751-7393
Brief Description of Case (May be completed on a separate page) Application of Laclede Gas Company (n/k/a Spire Missouri Inc.) to Change its Infrastructure System Replacement Surcharge (ISRS) in its Missouri Gas Energy (n/k/a Spire West) and Laclede Gas (n/k/a Spire East) service territories	
Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.) The Public Service Commission's erroneous determination that certain costs incurred by Laclede Gas Company (n/k/a Spire Missouri, Inc) were not eligible for recovery through its ISRS mechanism because some plastic facilities were retired or replaced in connection with various ISRS projects. Such a determination was erroneous because the undisputed evidence on the record showed: (a) that the retirement or replacement of such plastic facilities served to decrease rather than increase the level of ISRS charges sought by the Company, (b) the method relied upon by the Commission to quantify the amount of ISRS costs and charges that allegedly resulted from such plastic retirements or replacements did not, according to its own proponents, make any attempt to ascertain what impact such retirements actually had on ISRS costs and charges; and (c) that the method relied upon by the Commission to quantify the impact of plastic retirements on ISRS charges did not comply with the legal guidance given by this Court in its remand instructions.	
Signature of Attorney or Appellant Rick Zucker	Date 12-11-2018

By: *Wiana Castro*
#50527

Certificate of Service on Persons other than Registered Users of the Missouri eFiling System

I certify that on December 11, 2018 (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

Missouri Public Service Commission

Marc Poston, Acting Division Director -- Office of the Public Counsel

Box: Diana Carter
Rick Zucker #50527
Appellant or Attorney for Appellant

Directions to Clerk

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute.

Memorandum of the Clerk

I have this day served a copy of this notice by regular mail registered mail certified mail facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, Western District.

Docket fee in the amount of \$70.00 was received by this clerk on 12/11/18 (date) which will be disbursed as required by statute.

No docket fee was received because:

a docket fee is not required by law under _____ (cite specific statute or other authority).

a motion to prosecute the appeal in forma pauperis was received on _____ (date) and was granted on _____ (date).

12/11/18
Date

Melissa Anderson
Clerk

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

Party Name	Attorney Name
Office of the Public Counsel (Intervenor)	Marc Poston
Address	Address
200 Madison Street, Suite 650	200 Madison Street, Suite 650
City, State, Zip Code	City, State, Zip Code
Jefferson City, MO 65102	Jefferson City, MO 65102
	E-mail Address
	opcservice@ded.mo.gov
	Telephone
	(573) 751-5318
Party Name	Attorney Name
Address	Address
City, State, Zip Code	City, State, Zip Code
	E-mail Address
	Telephone
Party Name	Attorney Name
Address	Address
City, State, Zip Code	City, State, Zip Code
	E-mail Address
	Telephone
Party Name	Attorney Name
Address	Address
City, State, Zip Code	City, State, Zip Code
	E-mail Address
	Telephone

STATEMENT OF THE ISSUES

(As Required by Section 386.510 RSMo)

Appellant Spire Missouri Inc. will raise the following issues on appeal:

Spire Missouri Inc. challenges the lawfulness and reasonableness of the Public Service Commission's September 20, 2018 Report and Order in Case Nos. GO-2018-0309 and GO-2018-0310 in that the Commission erroneously determined that certain costs incurred by Spire Missouri Inc. were not eligible for recovery through its ISRS mechanism because some plastic facilities were retired or replaced in connection with various ISRS projects.

Such a determination was erroneous because (i) the undisputed evidence on the record showed that the retirement or replacement of such plastic facilities served to decrease, rather than increase, the level of ISRS charges sought by the Company; and (ii) the Commission adopted a method to quantify the amount of ISRS costs and charges that allegedly resulted from such plastic retirements or replacements that, according to its own proponents, did not attempt to actually ascertain what impact such retirements actually had on ISRS costs and charges, and did not otherwise comply with the legal guidance given by this Court in its remand instructions.

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

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) File No. GO-2018-0309
Replacement Surcharge in its Spire Missouri)
East Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) File No. GO-2018-0310
Replacement Surcharge in its Spire Missouri)
West Service Territory)

ORDER APPROVING RECONCILIATIONS OF CONTESTED ISSUES

Issue Date: October 12, 2018

Effective Date: October 12, 2018

Section 386.420.4, RSMo 2016, requires the Commission to prepare and approve a detailed reconciliation regarding the dollar value and rate or charge impact of the contested issues decided by the Commission in these cases. The law requires the Commission to allow the parties an opportunity to provide written input regarding that reconciliation.

On September 28, 2018, the Commission directed its Staff to prepare the required reconciliations. Staff filed the reconciliations on October 9, 2018. No other party objected or responded to the reconciliations by the deadline established by the Commission. The Commission finds that the reconciliations submitted by Staff are an accurate representation of the dollar value and rate or charge impact of the issues decided by the Commission. The Commission further finds that the submitted reconciliations satisfy the requirements of Section 386.420.4, RSMo 2016, so the Commission will approve the reconciliations filed by Staff.

THE COMMISSION ORDERS THAT:

1. The reconciliations filed by Staff on October 9, 2018, are approved.

2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large, prominent "M" and "W".

Morris L. Woodruff
Secretary

Michael Bushmann, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 12th day of October, 2018.

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

In the Matter of the Application of Spire)
Missouri Inc. to Change its Infrastructure)
System Replacement Surcharge in its)
Spire Missouri East Service Territory) Case No. GO-2018-0309

STAFF RECONCILIATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and hereby submits the reconciliation ordered by the Commission to be filed herein no later than October 9, 2018, and further states as follows:

1. Attached hereto are two appendices, Appendix A which consists of one page, and Appendix B which consists of three pages. Appendix A reflects the total ISRS revenue requirement positions of each of the parties to this case (Staff, Spire East, and the Office of the Public Counsel or "OPC"). The Commission's Report and Order adopted Staff's position contained on Appendix A, which reflects the removal of plastic pipe.

2. Appendix B, which consists of three pages, reflects the ISRS charges which would result from each party's ISRS revenue requirement position, with each party's position and resulting ISRS charges shown on a separate page. Appendix B also reflects the applicable billing determinants used to arrive at the ISRS charges.

WHEREFORE Staff submits the attached reconciliation and requests the Commission accept the attached and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil
Deputy Counsel
Missouri Bar No. 33825
Attorney for the Staff of the
Missouri Public Service Commission
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Jefferson City, MO 65102
(573) 526-4887 (Telephone)
(573) 751-9285 (Fax)
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CERTIFICATE OF SERVICE

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 9th day of October, 2018.

/s/ Jeffrey A. Keevil

Spire East
ISRS Case No. GO-2018-0309
Reconciliation of Contested Issues

	Staff	Spire East	OPC
<hr/> Total Revenue Requirement	\$ 2,607,610	\$ 4,827,329	\$ -

The only issue was the removal of plastic pipe. Staff's position reflects removal of plastic pipe. OPC's position was the Company should not be granted any recovery of the ISRS costs.

SPIRE MISSOURI INC. - EAST
CASE NO. GO-2018-0309
RECONCILIATION - Spire's Rev. Requirement

Spire's Total ISRS Rev Req					\$4,827,329		
<u>Customer Rate</u>	<u>Cust #</u>	<u>Customer Charge</u>	<u>Ratio To Res</u>	<u>Weighted Cust #</u>	<u>Customer Percentage</u>	<u>Cal ISRS Charge</u>	<u>ISRS Revenues</u>
Residential	604,973	\$22.00	1.0000	604,973	86.0152%	\$0.57	\$4,152,237
SGS (Small Gen. Service	36,743	\$35.00	1.5909	58,455	8.3111%	\$0.91	\$401,205
LGS-Large Gen. Service	3,882	\$125.00	5.6818	22,057	3.1360%	\$3.25	\$151,387
LV-Large Volume Service	67	\$914.25	41.5568	2,784	0.3959%	\$23.77	\$19,110
SL-Unmetered Gas Light	84	\$6.00	0.2727	23	0.0033%	\$0.16	\$157
IN-Interruptable	20	\$837.40	38.0636	761	0.1082%	\$21.77	\$5,225
General LP	36	\$17.94	0.8155	29	0.0042%	\$0.47	\$201
Vehicular Fuel	8	\$23.38	1.0627	9	0.0012%	\$0.61	\$58
LVTSS-Large Volume Transport & Sales Service	147	\$2,131.41	96.8823	14,242	2.0249%	\$55.41	\$97,748
TOTAL	645,960			703,333	100.00%		\$4,827,329

SPIRE MISSOURI INC. - EAST
CASE NO. GO-2018-0309
RECONCILIATION - OPC's Rev. Requirement

OPC's Total ISRS Rev Req					\$0	Cal	ISRS
<u>Customer Rate</u>	<u>Cust #</u>	<u>Customer Charge</u>	<u>Ratio To Res</u>	<u>Weighted Cust #</u>	<u>Customer Percentage</u>	<u>Charge</u>	<u>Revenues</u>
Residential	604,973	\$22.00	1.0000	604,973	86.0152%	\$0.00	\$0
SGS (Small Gen. Service	36,743	\$35.00	1.5909	58,455	8.3111%	\$0.00	\$0
LGS-Large Gen. Service	3,882	\$125.00	5.6818	22,057	3.1360%	\$0.00	\$0
LV-Large Volume Service	67	\$914.25	41.5568	2,784	0.3959%	\$0.00	\$0
SL-Unmetered Gas Light	84	\$6.00	0.2727	23	0.0033%	\$0.00	\$0
IN-Interruptable	20	\$837.40	38.0636	761	0.1082%	\$0.00	\$0
General LP	36	\$17.94	0.8155	29	0.0042%	\$0.00	\$0
Vehicular Fuel	8	\$23.38	1.0627	9	0.0012%	\$0.00	\$0
LVTSS-Large Volume Transport & Sales Service	147	\$2,131.41	96.8823	14,242	2.0249%	\$0.00	\$0
TOTAL	645,960			703,333	100.00%		\$0

SPIRE MISSOURI INC. - EAST
CASE NO. GO-2018-0309
RECONCILIATION - Staff's Rev. Requirement

<u>Customer Rate</u>	<u>Cust #</u>	<u>Customer Charge</u>	<u>Ratio To Res</u>	<u>Weighted Cust #</u>	<u>Customer Percentage</u>	<u>Cal ISRS Charge</u>	<u>ISRS Revenues</u>
Residential	604,973	\$22.00	1.0000	604,973	86.0152%	\$0.31	\$2,242,941
SGS (Small Gen. Service	36,743	\$35.00	1.5909	58,455	8.3111%	\$0.49	\$216,721
LGS-Large Gen. Service	3,882	\$125.00	5.6818	22,057	3.1360%	\$1.76	\$81,776
LV-Large Volume Service	67	\$914.25	41.5568	2,784	0.3959%	\$12.84	\$10,323
SL-Unmetered Gas Light	84	\$6.00	0.2727	23	0.0033%	\$0.08	\$85
IN-Interruptable	20	\$837.40	38.0636	761	0.1082%	\$11.76	\$2,822
General LP	36	\$17.94	0.8155	29	0.0042%	\$0.25	\$109
Vehicular Fuel	8	\$23.38	1.0627	9	0.0012%	\$0.33	\$32
LVTSS-Large Volume Transport & Sales Service	147	\$2,131.41	96.8823	14,242	2.0249%	\$29.93	\$52,801
TOTAL	645,960			703,333	100.00%		\$2,607,610

\$2,607,610

Staff's Total ISRS Rev Req

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

In the Matter of the Application of Spire)
Missouri Inc. to Change its Infrastructure)
System Replacement Surcharge in its)
Spire Missouri West Service Territory) Case No. GO-2018-0310

STAFF RECONCILIATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and hereby submits the reconciliation ordered by the Commission to be filed herein no later than October 9, 2018, and further states as follows:

1. Attached hereto are two appendices, Appendix A which consists of one page, and Appendix B which consists of three pages. Appendix A reflects the total ISRS revenue requirement positions of each of the parties to this case (Staff, Spire West, and the Office of the Public Counsel or "OPC"). The Commission's Report and Order adopted Staff's position contained on Appendix A, which reflects the removal of plastic pipe.

2. Appendix B, which consists of three pages, reflects the ISRS charges which would result from each party's ISRS revenue requirement position, with each party's position and resulting ISRS charges shown on a separate page. Appendix B also reflects the applicable billing determinants used to arrive at the ISRS charges.

WHEREFORE Staff submits the attached reconciliation and requests the Commission accept the attached and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Jeffrey A. Keevil

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CERTIFICATE OF SERVICE

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 9th day of October, 2018.

/s/ Jeffrey A. Keevil

Spire West
ISRS Case No. GO-2018-0310
Reconciliation of Contested Issues

	Staff	Spire West	OPC
Total Revenue Requirement	\$ 5,411,793	\$ 7,267,650	\$ -

The only issue was the removal of plastic pipe. Staff's position reflects removal of plastic pipe. OPC's position was the Company should not be granted any recovery of the ISRS costs.

SPIRE MISSOURI INC. -WEST
CASE NO. GO-2018-0310
Reconciliation - Spire's Rev. Requirement

Spire's Total ISRS Rev Req					\$7,267,650		
<u>Customer Rate Class</u>	<u>Cust #</u>	<u>Customer Charge</u>	<u>Ratio To Residential</u>	<u>Weighted Cust #</u>	<u>Customer Percentage</u>	<u>Cal ISRS Charge</u>	<u>ISRS Revenues</u>
Residential	469,947	\$20.00	1.0000	469,947	82.9794%	\$1.07	\$6,030,655
SGS (Small Gen. Service)	31,727	\$30.00	1.5000	47,591	8.4031%	\$1.60	\$610,711
LGS-Large Gen. Service	3,628	\$130.17	6.5085	23,613	4.1694%	\$6.96	\$303,015
LV-Large Volume Service	460	\$1,095.27	54.7635	25,191	4.4481%	\$58.56	\$323,269
<u>TOTAL</u>	<u>505,762</u>			<u>566,342</u>	<u>100.00%</u>		<u>\$7,267,650</u>

SPIRE MISSOURI INC. -WEST
CASE NO. GO-2018-0310
Reconciliation - OPC's Rev. Requirement

OPC's Total ISRS Rev Req					\$0		
<u>Customer Rate Class</u>	<u>Cust #</u>	<u>Customer Charge</u>	<u>Ratio To Residential</u>	<u>Weighted Cust #</u>	<u>Customer Percentage</u>	<u>Cal ISRS Charge</u>	<u>ISRS Revenues</u>
Residential	469,947	\$20.00	1.0000	469,947	82.9794%	\$0.00	\$0
SGS (Small Gen. Service)	31,727	\$30.00	1.5000	47,591	8.4031%	\$0.00	\$0
LGS-Large Gen. Service	3,628	\$130.17	6.5085	23,613	4.1694%	\$0.00	\$0
LV-Large Volume Service	460	\$1,095.27	54.7635	25,191	4.4481%	\$0.00	\$0
<u>TOTAL</u>	<u>505,762</u>			<u>566,342</u>	<u>100.00%</u>		<u>\$0</u>

SPIRE MISSOURI INC. -WEST
CASE NO. GO-2018-0310
Reconciliation - Staff's Rev. Requirement

Staff's Total ISRS Rev Req					\$5,411,793		
<u>Customer Rate Class</u>	<u>Cust #</u>	<u>Customer Charge</u>	<u>Ratio To Residential</u>	<u>Weighted Cust #</u>	<u>Customer Percentage</u>	<u>Cal ISRS Charge</u>	<u>ISRS Revenues</u>
Residential	469,947	\$20.00	1.0000	469,947	82.9794%	\$0.80	\$4,490,675
SGS (Small Gen. Service)	31,727	\$30.00	1.5000	47,591	8.4031%	\$1.19	\$454,761
LGS-Large Gen. Service	3,628	\$130.17	6.5085	23,613	4.1694%	\$5.18	\$225,637
LV-Large Volume Service	460	\$1,095.27	54.7635	25,191	4.4481%	\$43.61	\$240,720
<u>TOTAL</u>	<u>505,762</u>			<u>566,342</u>	<u>100.00%</u>		<u>\$5,411,793</u>

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 15th day of
November, 2018.

In the Matter of the Application of Spire Missouri)	
Inc. to Change its Infrastructure System)	<u>File No. GO-2018-0309</u>
Replacement Surcharge in its Spire Missouri)	
East Service Territory)	

In the Matter of the Application of Spire Missouri)	
Inc. to Change its Infrastructure System)	<u>File No. GO-2018-0310</u>
Replacement Surcharge in its Spire Missouri)	
West Service Territory)	

ORDER DENYING APPLICATIONS FOR REHEARING

Issue Date: November 15, 2018

Effective Date: November 15, 2018

On September 20, 2018, the Missouri Public Service Commission issued a *Report and Order* effective October 1, 2018, regarding Spire Missouri Inc.'s application to change its infrastructure system replacement surcharge. The Office of the Public Counsel and Spire Missouri Inc. filed timely applications for rehearing.

Section 386.500.1, RSMo 2016, states that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." In the judgment of the Commission, the applications for rehearing do not demonstrate sufficient reason to rehear the matter. Also, Spire Missouri Inc.'s alternative request for an accounting deferral of excluded costs is inappropriate as part of an application for rehearing. The Commission will deny the applications for rehearing.

THE COMMISSION ORDERS THAT:

1. The Office of the Public Counsel's Application for Rehearing is denied.
2. Spire Missouri Inc.'s Application for Rehearing and Contingent Request for Authorization to Defer Revenue Amounts Excluded from ISRS Rates Pending Satisfaction of New Evaluation Requirements is denied.
3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

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

In the Matter of the Application of Spire Missouri)
Inc. to Establish an Infrastructure System) **File No. GO-2018-0309**
Replacement Surcharge in its Spire Missouri)
East Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Establish an Infrastructure System) **File No. GO-2018-0310**
Replacement Surcharge in its Spire Missouri)
West Service Territory)

**SPIRE MISSOURI INC'S APPLICATION FOR REHEARING AND CONTINGENT
REQUEST FOR AUTHORIZATION TO DEFER REVENUE AMOUNTS EXCLUDED
FROM ISRS RATES PENDING SATISFACTION OF NEW EVALUATION
REQUIREMENTS**

COMES NOW Spire Missouri Inc. (f/k/a Laclede Gas Company, and referred to herein as "Spire Missouri" or "Company"), on behalf of itself and its two operating units, Spire Missouri East ("Spire East") and Spire Missouri West ("Spire West," f/k/a Missouri Gas Energy), and, pursuant to Section 386.500.1 RSMo and 4 CSR 240-2.160 of the Commission's Rules, submits this Application for Rehearing of the Commission's Report and Order issued on September 20, 2018 (the "Order"), and this Contingent Request for Authorization to Defer for Potential Recovery the Costs excluded from ISRS Rates Pending Satisfaction of New Evaluation Requirements. In support thereof, Spire Missouri States as follows:

A. APPLICATION FOR REHEARING

1. In the Order, the Commission determined, among other things, that Spire East and West had failed to demonstrate the eligibility of ISRS investments representing approximately \$4 million in ISRS revenues. In support of this determination, the Commission relies principally on the November 21, 2017 Opinion (the "Opinion") of the Western District Court of Appeals which reversed and remanded the Commission's Report and Order in Case Nos. GO-2016-0332 and GO-2016-0333, to the extent that the Commission allowed ISRS charges to recover the cost to replace

plastic components that were not in a worn out or deteriorated condition. The Court recognized that replacement of worn out or deteriorated facilities will at times require the replacement of nearby components that are not worn out or deteriorated.¹ The Court also recognized that some plastic facilities may themselves be worn out or deteriorated.² The Court made no finding, however, as to the amount of cost to replace plastic facilities that were not worn out or in a deteriorated condition, or how to determine that amount, but instead remanded the cases to the Commission to determine the extent of those costs.

2. As discussed below, the Company appreciates the fact the Commission set forth a roadmap in its Order that could be followed by the Company to confirm the eligibility of ISRS installation costs in those instances where some plastic facilities are retired or replaced. The Company has also filed tariffs in compliance with the Commission's Order and requested that they become effective no later than October 5, 2018 which is the statutory deadline for implementing the Company's ISRS filings as modified by the Commission.

3. The Company conceptually agrees with the primary components of the roadmap provided by the Commission in its Order for establishing the ISRS eligibility of investments that involved the retirement of plastic facilities. The Company believes the Commission's incorporation in the roadmap of the kind of engineering analysis that was performed by the Company to demonstrate the actual impact of plastic retirements on ISRS costs is particularly helpful. Between now and its next ISRS filing the Company intends to work with the Commission Staff and other interest parties to build upon this roadmap so that it can be more efficiently and effectively implemented in future ISRS filings.

¹ Opinion, p. 6

² *Id.*, p. 5

4. In the meantime, however, the Company must respectfully disagree with the Commission's exclusion of approximately \$4 million in ISRS revenues in these cases on the grounds that the such a decision is unlawful, unreasonable, arbitrary and capricious and was decided in a in a manner that violated the Company's due process rights to a full and fair hearing held at a meaningful time and in a meaningful manner. The Commission should grant rehearing and approve recovery of the ISRS costs that have been excluded. Failing that, the Commission should authorize the Company to defer for potential recovery in its next ISRS filing the costs and revenues excluded in these cases subject to the Company satisfying the new standard for ISRS inclusion first articulated by the Commission in its Order.

5. The Commission's decision is unlawful because it fails to comply with the legal principles set forth in in the Opinion, including the specific remand instructions given to the Commission. As the parties to this case unanimously agreed, the Opinion directed the Commission to determine what costs, if any, were included in the Company's ISRS charges relating to the replacement of plastic facilities that were not worn out or in a deteriorated condition. In its Order, however, the Commission decided not to use, at least for purposes of these cases, the only methodology that actually quantified the impact of plastic retirements on ISRS costs in favor of one that even its own proponent freely conceded was never designed to -- and in fact did not -- address the ultimate question of what impact, if any, the replacement of plastic facilities had on the Company's ISRS costs and charges.³ Such actions by the Commission resulted in costs being

³As the Company discussed at length in its Brief, Staff witness Bolin repeatedly criticized the percentage method endorsed by the Commission in its Order, and testified on cross-examination that she did not know whether or to what extent the percentage of plastic retired on a particular project actually affected the ultimate cost of that project. In fact, it was apparent that Ms. Bolin had no idea what the cost drivers were for any of the projects for which she excluded costs based on these simple percentages. (Tr. 451, 469-71). Staff witness Sommerer also conceded that the percentage of plastic in the old main had no effect on the cost of installing the new main, because the cost to install new main that bypassed the old main would be the same regardless of the amount of interspersed plastic in the old main. (Tr. 497-498). This truism, which was not even acknowledged by the Commission, directly contradicts Staff's percentage based methodology.

excluded from the Company's ISRS even though such costs were not in any way caused by the retirement of plastic facilities – a result that is clearly not in keeping with the Court's remand instructions.

6. The rationale given by the Commission for making this determination was also arbitrary and unsupported by competent and substantial evidence in the record. When the Commission decided that a new evidentiary hearing with an expedited schedule was necessary to assess the plastics issue, the Company responded by producing two highly qualified engineering witnesses who conducted 9 additional engineering analyses of specific ISRS projects. The engineering analyses used the very same sample of ISRS projects that was handpicked by OPC in the prior ISRS cases and cited by the Court of Appeals in its Opinion. Similar to the finding presented at the rate case, no party to this proceeding challenged either the accuracy or validity of these analyses or the results they produced – results which clearly supported the Company's sworn testimony that the retirement of plastic facilities served to reduce rather than increase the Company's ISRS costs and charges, thus showing that the full costs of these projects were indeed ISRS eligible. Nor did any party challenge the sworn testimony of the Company's witnesses that the sample of projects used by the Company was representative of other ISRS projects and therefore produced results that would be consistent across other projects. In fact, Staff witness Sommerer testified in response to a question from Commissioner Hall that the "likely result" of extending the same analysis to all ISRS projects would be "to show that *virtually all* of the plastic replacements resulted in a cost reduction."⁴

7. Despite this record evidence, the Commission nevertheless determined in its Order that the number of projects and work orders analyzed by the Company were "far too few" to

⁴ Tr. p. 498, line 23 to p. 499, line 2 (*emphasis supplied*).

support the proposition that the retirement of plastic facilities reduced rather than increased its ISRS costs and charges. (Order, p. 15). Nowhere in its Order does the Commission explain, however, what academic or scientific literature it consulted, what expert advice it received, or how it otherwise arrived at this extra-record conclusion. All of these critical considerations are simply unexplained and unknown. In the end, while the Commission properly recognized the validity of the Company's engineering analysis, it arbitrarily determined that the Company's undisputed evidence was inadequate solely because the analysis was not performed on all ISRS projects.⁵

8. The Commission's rejection of using a representative sample to determine the impact of plastic retirements on ISRS costs is also at odds with the widely accepted use of such samples when evaluating large data bases like those involved in an ISRS filing. Representative samples have been regularly used by internal and external auditors, including the Commission Staff, to evaluate financial transactions that are too numerous to audit individually.⁶ They have also been used to evaluate the operational characteristics of utility infrastructure, including their fitness for a particular purpose. For example, one of the most critical components of utility infrastructure are the meters by which customers are billed for their usage of utility service. For many years now, the Commission has permitted electric and gas utilities to use a statistical sampling of a limited number of meters to verify the accuracy of a significantly larger population

⁵The Commission apparently utilized the same new standard in upholding Staff's proposal to remove the cost of blanket work orders in the same proportion as the plastic it found in the main replacement programs. Again, the record evidence showed that these blanket work orders, which were not related to the Company's cast iron or bare steel replacement programs, contained numerous small projects covering facilities that needed to be replaced because they had become worn out or were in a deteriorated condition. Such work is ISRS-eligible as verified by Company witness Glenn Buck's analysis of a typical blanket work order, which determined that out of more than 100 tickets for individual jobs, every replacement was done for a safety-related reason, including leaks, corruptions and removal of copper pig tails. (Ex. 6, p. 6). The Commission simply ignored the Company's sample evidence and instead adopted a Staff approach that was unsupported by the competent and substantial evidence on the record and was arbitrary and capricious.

⁶See e.g. *Re: United Telephone Company*, Case Nos. TR-93-181 and TO-93-309, Report and Order issued October 27, 1993, for a discussion of various sampling methods used to calculate Cash Working Capital in utility rate cases.

of meters in the same vintage or class.⁷ Given this routine use by the Commission of representative sampling for various regulatory purposes, and the undisputed testimony that the Company's use of a sample of ISRS projects was representative of the results that would be experienced across other ISRS projects, the Commission decision to summarily reject the sample employed for assessing the impact of plastic retirements on ISRS costs was arbitrary, capricious and unreasonable.⁸

9. The Commission also erred in introducing this entirely new standard after the close of the evidentiary record and the briefing process in these cases. By doing so, the Commission denied the Company any opportunity to rebut this determination with evidence or otherwise address it. The end result is that the Company was denied its due process right to have a full and fair hearing on this issue at a meaningful time and in a meaningful manner.⁹

⁷ See *Re: Union Electric Company, d/b/a AmerenUE*, Case No. EO-2001-521, *Order Granting Variance* issued September 11, 2001; *Re: Atmos Energy Corporation*, GE-2003-0007, *Order Granting Variance* issued August 20, 2002, *Aquila, Inc.*, GE-2006-0330, *Order Granting Variance* issued March 30, 2006.

⁸The Commission's determination that the representative sample used by the Company was inadequate and that the Company should have conducted such an analysis on all ISRS projects established a standard that could not possibly have been satisfied by the Company given the time constraints of these cases. There were only 5 business days between the date the Commission determined that a new evidentiary hearing on the plastic issue should be held and when testimony was due. In that limited amount of time, it was challenging enough for the Company to produce four witnesses and conduct 9 additional engineering analyses of ISRS projects. It would have been impossible within that time frame to conduct additional analyses on hundreds of additional ISRS projects. This is especially true in the absence of any communication of this new standard or notice that the sole, undisputed evidence that the full costs of these projects were ISRS eligible was "based on far too few work orders for such a conclusion to be reasonable." Under such circumstances, the Company reasonably concluded its sample was sufficient.

⁹As the Western District Court of Appeals has observed, due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *State ex rel Fischer v. Public Service Commission*, 645 S.W.2d 39, 43 (Mo. App. W.D. 1983), citing *Tonkin v. Jackson County Merit System Commission*, 599 S.W.2d 25, 32-33[7] (Mo.App.1980) and *Jones v. State Department of Public Health and Welfare*, 354 S.W.2d 37, 39-40[2] (Mo.App.1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. *Id.*, citing *Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty*, 131 N.J.Super. 412, 330 A.2d 370, 373-374[7] (1974). Obviously, a hearing is neither full nor fair – nor in any way meaningful – when it is never held on a critical issue.

10. For all of these reasons, the Commission should grant rehearing and permit the Company to recover the ISRS costs that were excluded in the Order. The Company provided the Commission with ample evidence for the Commission to comply with the Missouri Court of Appeals' remand instruction to assess the impact that plastic retirements had on ISRS costs. The Company's replacement programs have been carried out in a manner that reduced cost, not added to them, and has enhanced the safety of its customers and the public generally as well as the employees doing this critical work. The Company should not be penalized for all of this by having non-existent costs excluded. All of these considerations strongly suggest that the Commission should evaluate the evidentiary record anew and modify its decision to permit recovery of the ISRS costs excluded in its Order.

REQUEST FOR AUTHORIZATION TO DEFER REVENUE AMOUNTS
EXCLUDED FROM ISRS RATES PENDING SATISFACTION
OF NEW EVALUATION REQUIREMENTS

11. In the event the Commission does not grant rehearing or otherwise change the requirements set forth in the Order, the Company respectfully requests that it authorize the Company to defer for potential recovery in its next ISRS filing the revenues and costs excluded in these cases subject to the Company satisfying the roadmap for ISRS inclusion first articulated by the Commission in its Order.

12. The granting of such relief is both warranted by the circumstances of these cases and well within the Commission's lawful discretion to approve. In terms of the first consideration, the Company explained in detail above how it could not possibly have complied with the Commission's new standard for justifying inclusion of ISRS costs since it was not articulated by the Commission until it issued the Order after the hearing process had ended. The Company has also pointed out how it would have been impossible, in any event, to conduct the more extensive

analyses suggested by the Commission given the 5 business days allowed to perform such analyses.

13. Granting the deferral authority requested herein would largely cure these serious inequities, by providing the Company with adequate time to actually conduct such analyses and include their results in its next ISRS filing. At the same time, it would not financially penalize the Company in the interim for its understandable inability to anticipate in advance the new standard set forth in the Commission's Order. The Company would, of course, have to provide and successfully defend the analyses outlined in the Commission's Order in order to recover such amounts. But assuming it does, fairness dictates that it should be able to recover the costs that were excluded.

14. It is also clear that the Commission has abundant authority to grant such relief. The Western District Court of Appeals has repeatedly upheld the Commission's power to grant such accounting authorizations. *See Office of the Public Counsel v. Pub. Serv. Comm'n*, 301 S.W.3d 556 (Mo.App.W.D. 2009); *Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330 (Mo.App.W.D. 2007); *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 434, 438 (Mo.App.W.D.1998). Moreover, before the ISRS Statute was enacted, the Commission routinely authorized the deferral of safety-related investments such as those included in the Company's ISRS filing for recovery in subsequent cases. *See e.g. Re: Laclede Gas Company*, Case No. GR-99-315, *Report and Order* issued September December 24, 1999; *Re: Missouri Gas Energy*, Case No. GR-98-140, *Report and Order* issued September 2, 1998.

15. The power to grant such accounting authorizations is separate and distinct from the ISRS statute. There is also nothing in the provisions of the ISRS statute to suggest that the Commission cannot independently exercise this authority in the manner it deems appropriate. For all of these reasons, the Company respectfully requests that the Commission authorize it to defer

for potential recovery in its next ISRS filing the revenues and costs excluded in these cases subject to the Company satisfying the roadmap for ISRS inclusion first articulated by the Commission in its Order.

WHEREFORE, for the foregoing reasons, Spire Missouri Inc. respectfully requests that the Commission grant rehearing of its September 20th Report and Order in these cases and upon rehearing, modify its Order to permit recovery of the ISRS revenues and costs previously excluded. In the alternative, the Company respectfully requests that the Commission authorize it to defer for potential recovery in its next ISRS filing the revenues and costs excluded in these cases subject to the Company satisfying the roadmap for ISRS inclusion first articulated by the Commission in its Order.

Respectfully submitted,

SPIRE MISSOURI INC.

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CERTIFICATE OF SERVICE

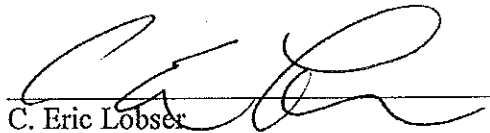
The undersigned certifies that a true and correct copy of the foregoing pleading was served on Staff and the Office of the Public Counsel, on this 28th day of September 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker

VERIFICATION

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

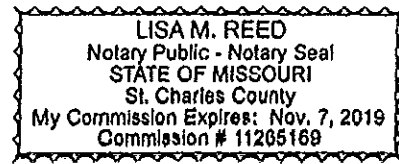
C. Eric Lobser, being duly sworn, on his oath states that he is Vice-President, Regulatory and Government Affairs, of Spire Missouri Inc., that he has read the foregoing application and that the matters set forth therein are true and correct to the best of his knowledge, information and belief.


C. Eric Lobser

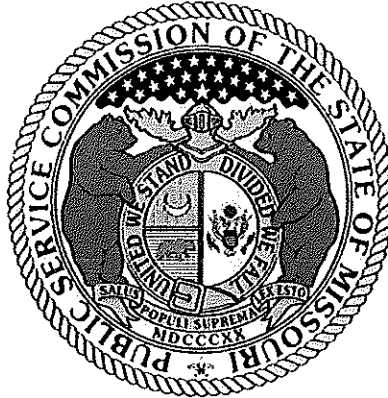
Subscribed and sworn to before me, a Notary Public, in the City of St. Louis, State of Missouri, this 28th day of September, 2018.


Notary Public, State of Missouri

My Commission expires on: November 7, 2019



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



In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) File No. GO-2018-0309
Replacement Surcharge in its Spire Missouri)
East Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) File No. GO-2018-0310
Replacement Surcharge in its Spire Missouri)
West Service Territory)

REPORT AND ORDER

Issue Date: September 20, 2018

Effective Date: October 1, 2018

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

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) File No. GO-2018-0309
Replacement Surcharge in its Spire Missouri)
East Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) File No. GO-2018-0310
Replacement Surcharge in its Spire Missouri)
West Service Territory)

APPEARANCES

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Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

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Whitney Payne, Associate Counsel, PO Box 360, 200 Madison Street,
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SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On June 7, 2018, Spire Missouri, Inc. ("Spire Missouri") filed applications and petitions with the Missouri Public Service Commission ("Commission") to change its Infrastructure System Replacement Surcharge ("ISRS") in its East and West service territories. Spire Missouri requests an adjustment to its ISRS rate schedules to recover costs incurred in connection with infrastructure system replacements made during the period October 1, 2017 through April 30, 2018, with pro forma ISRS costs updated through June 30, 2018. The Commission issued notice of the applications and provided an opportunity for interested persons to intervene, but no intervention requests were submitted. The Commission also suspended the filed tariffs until October 5, 2018.

On August 6, 2018, the Staff of the Commission filed its reports proposing a number of corrections and adjustments to Spire Missouri's calculations. Staff recommended that the Commission reject the original tariff sheets and approve ISRS adjustments for Spire Missouri based on Staff's determination of the appropriate amount of ISRS revenues. Staff updated its reports in direct testimony, providing corrections and information for the update months of May and June 2018.

On August 16, 2018, Spire Missouri filed a motion objecting to the Staff recommendations and requesting that the Commission schedule an evidentiary hearing. The Office of the Public Counsel filed a motion to dismiss Spire Missouri's applications. The Commission held an evidentiary hearing on August 27, 2018 in response to the Spire Missouri request for hearing.¹ In total, the Commission admitted the testimony of ten witnesses and 29 exhibits into evidence and took official notice of several documents.

¹ Transcript ("Tr."), Volume 3.

Post-hearing briefs were filed on September 6, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.²

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East and Spire Missouri West.³

2. Spire Missouri is a "gas corporation" and a "public utility", as each of those phrases is defined in Section 386.020, RSMo 2016.

3. The Office of the Public Counsel ("OPC" or "Public Counsel") "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."⁴ Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding."⁵ Public Counsel did participate in this matter.

4. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁶

² "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

³ Ex.1 and 2, p. 2.

⁴ Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁵ Section 386.710(3), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁶ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

5. The last general rate cases applicable to Spire Missouri are File Nos. GR-2017-0215 and GR-2017-0216, which were decided by the Commission by order issued on March 7, 2018 and effective on March 17, 2018, with new rates effective on April 19, 2018.⁷ As part of those general rate cases, Spire Missouri's existing ISRS were reset to zero.⁸

6. Spire Missouri filed verified applications and petitions ("Petitions") with the Commission on June 7, 2018 for its East and West service territories, requesting an ISRS to recover eligible costs incurred with infrastructure system replacements made during the period October 1, 2017 through April 30, 2018, with pro forma ISRS costs updated through June 30, 2018.⁹ These Petitions are Spire Missouri's first ISRS filings since the rate cases described above.¹⁰

7. Sections 393.1009 through 393.1015, RSMo 2016, permit gas corporations to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on its customers' bills. In conjunction with its Petitions, Spire Missouri filed tariff sheets that would generate a total annual revenue requirement for Spire Missouri East in the amount of \$4,807,507 and for Spire Missouri West in the amount of \$7,085,762.¹¹

8. The ISRS requests in the Petitions exceed one-half of one percent of Spire Missouri's base revenue levels approved by the Commission in Spire Missouri's most recent general rate case proceedings, and Spire Missouri's cumulative ISRS revenues,

⁷ Amended Report and Order, *In the Matter of Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service*, GR-2017-0216, March 7, 2018; Order Approving Tariff in Compliance with Commission Order, *In the Matter of Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service*, GR-2017-0216, issued April 4, 2018.

⁸ Section 393.1015.6, RSMo 2016.

⁹ Ex. 1 and 2.

¹⁰ Ex. 102, Newkirk Direct, Schedule CNN-d1, p. 7; Ex. 104, Arabian Direct, Schedule AA-d1, p. 7.

¹¹ Ex. 102, Newkirk Direct, Schedule CNN-d1, p. 6; Ex. 104, Arabian Direct, Schedule AA-d1, p. 6.

including the Petitions, do not exceed ten percent of the base revenue levels approved by the Commission in the last Spire Missouri rate cases.¹²

9. Spire Missouri attached supporting documentation to its Petitions for completed plant additions. This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.¹³ The company also provided estimates of capital expenditures for projects completed through June 2018, which were subsequently replaced with updated actual cost information and provided to Staff.¹⁴

10. Spire Missouri also attached tables to its Petitions identifying the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.¹⁵ Spire Missouri is required to implement a program to replace cast iron and steel pipes.¹⁶

11. Historically, Spire Missouri had used a piecemeal approach to pipe replacement by replacing pipes when they were failing or about to fail. After careful analysis, in approximately 2010 the company changed to a more systemic and economical approach where it retires pipes in place and installs new plastic pipes often in a different location. The new location is more accessible and efficient to maintain than the location of the old pipes which were often under a street.¹⁷

12. Spire Missouri's current neighborhood replacement program replaces, or retires in place and no longer uses, cast iron, steel, and plastic pipes.¹⁸

¹² Ex. 102, Newkirk Direct, Schedule CNN-d1, p. 8; Ex. 104, Arabian Direct, Schedule AA-d1, p. 8. See, Section 393.1012.1, RSMo.

¹³ Ex. 1 and 2, Appendix A, Schedules 1 and 2.

¹⁴ Ex. 102, Newkirk Direct, p. 2; Ex. 104, Arabian Direct, p. 2.

¹⁵ Ex. 1 and 2, Appendix A, Schedule 3.

¹⁶ Tr. Vol. 3, p. 413.

¹⁷ Tr. Vol. 3, p. 388-391; Ex. 103, Sommerer Direct, p. 5.

¹⁸ Tr. Vol. 3, p. 368.

13. Most of the cast iron pipes being replaced are over a hundred years old. Cast iron pipes are unsafe to use because they undergo a process called graphitization, in which the iron leaches out making the pipe subject to cracking and leaking. The steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced.¹⁹

14. Some of the plastic pipes that Spire Missouri replaced or retired in place are not worn out or in a deteriorated condition.²⁰ Spire Missouri did not conduct a review to determine if that plastic pipe was worn out or deteriorated before replacing it.²¹ The polyethylene plastic pipe that Spire Missouri uses should last indefinitely.²²

15. Spire Missouri's work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated.²³

16. Spire Missouri did not provide sufficient information for Staff to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.²⁴

17. Spire Missouri has not attempted to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition.²⁵

18. Staff reviewed more than 100 work orders provided by Spire Missouri, which excluded work orders for projects totaling less than \$25,000, some blanket work orders, and some estimates.²⁶

¹⁹ Tr. Vol. 3, p. 373-374.

²⁰ Tr. Vol. 3, p. 368.

²¹ Tr. Vol. 3, p. 369.

²² Tr. Vol. 3, p. 375.

²³ Tr. Vol. 3, p. 449.

²⁴ Tr. Vol. 3, p. 466.

²⁵ Tr. Vol. 3, p. 483.

²⁶ Tr. Vol. 3, p. 473-474, 502.

19. Blanket work orders are not designed for a specific project and do not have a specific end date.²⁷ Some of the blanket work orders involved replacing or repairing plastic pipes that were not worn out or deteriorated.²⁸

20. Staff reviewed the work orders provided by Spire Missouri and developed a recommendation for the Commission, also based on the opinion of the Western District Court of Appeals in previous Spire Missouri ISRS cases, File Nos. GO-2016-0332 and GO-2016-0333 (“2016 cases”), which were considered by the Commission on remand from the Court concurrently with the present cases.²⁹

21. In these present cases, Staff followed the methodology used in the remand 2016 cases to remove the cost of the replacement of ineligible plastic mains and service lines from Spire Missouri’s ISRS cost recovery. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.). Staff applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order. Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, and meter and regulator replacement work orders.³⁰

22. For work order authorizations that Spire Missouri did not provide, or that included estimations, Staff calculated an average of plastic mains and service lines

²⁷ Tr. Vol. 3, p. 379, 446.

²⁸ Tr. Vol. 3, p. 377-378.

²⁹ Ex. 100, Bolin Direct, p. 2. See, *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

³⁰ Ex. 100, Bolin Direct, p. 2-3.

replaced for the work order authorizations that had actual information provided and applied that percentage to work order authorizations that were not provided or estimated.³¹

23. In evaluating Spire Missouri's work orders, Staff did not consider any cost savings resulting from Spire Missouri's replacement program. Staff only looked at the percentage of plastic pipe replaced.³²

24. Staff's witnesses provided credible testimony on the correct methodology for determining the costs of ineligible plastic pipe replacements, and Staff's evidence on this issue was the best evidence presented at the hearing.

25. Staff made appropriate adjustments to Spire Missouri's ISRS request based on the plastic pipe replaced and calculated a revised ISRS revenue requirement (the "Adjusted ISRS").³³ The Adjusted ISRS as recommended by Staff results in Spire Missouri collecting ISRS revenues in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory.³⁴

26. The Adjusted ISRS does not include any refunds or credits for ineligible ISRS amounts from Spire Missouri's previous ISRS cases, File Nos. GO-2016-0332, GO-2016-0333, GO-2017-0201, or GO-2017-0202.³⁵ The submitted calculation regarding refunds or credits is calculated separately.³⁶

27. Staff also recommended an updated rate design based on the billing determinants from Spire Missouri's most recent rate cases, GR-2017-0215 and GR-2017-

³¹ Ex. 100, Bolin Direct, p. 3.

³² Tr. Vol. 3, p. 451.

³³ These adjustments do not include any refunds related to over-collections from previous ISRS cases.

³⁴ Ex. 102, Newkirk Direct, Schedule CNN-d2; Ex. 104, Arabian Direct, Schedule AA-d2; Ex. 108; Ex. 109.

³⁵ Ex. 108 and 109.

³⁶ *Id.*

0216. The updated rate design included an adjustment to return to customers the credit recommended by Staff in the previous 2016 and 2017 Spire Missouri ISRS cases.³⁷

28. Neither OPC nor Spire Missouri provided a calculation of the amount of ineligible plastic pipe included in Spire Missouri's work orders in these cases.³⁸

29. The verified Petitions of Spire Missouri state that any relocation projects listed in the appendix to the Petition are eligible for ISRS cost recovery because they are "unreimbursed infrastructure facility relocations due to the construction or improvement of a highway, road, street, public way or other public work required by or on behalf of the United States, the State of Missouri, a political subdivision of the State of Missouri, or another entity having the power of eminent domain."³⁹

III. Conclusions of Law and Discussion

Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016.⁴⁰ Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as the one proposed in the Petitions. Since Spire Missouri brought the Petitions, it bears the burden of proof.⁴¹ The burden of proof is the preponderance of the evidence standard.⁴² In order to meet this standard, Spire Missouri must convince the Commission it is "more likely than not" that its allegations are

³⁷ Ex. 103, Sommerer Direct, p. 3, Schedule DMS-d3; Ex. 105, Sommerer Direct, p. 3, Schedule DMS-d3.

³⁸ Tr. Vol. 3, p. 483, 560, 569.

³⁹ Ex. 1, p. 4; Ex. 2, p. 4.

⁴⁰ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

⁴¹ "The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue". *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

⁴² *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

true.⁴³ Section 393.1015.2(4), RSMo, states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015”.

OPC Motion to Dismiss

The first issue for determination is whether the Commission should dismiss Spire Missouri’s ISRS Petitions. OPC alleges that Spire Missouri’s Petitions should be dismissed because (1) Spire Missouri failed to submit sufficient supporting documentation at the time the Petitions were first filed, and (2) included claims for the cost of infrastructure replacements that the Western Dist. Court of Appeals has determined do not qualify for ISRS recovery.

The standard for review for consideration of a motion to dismiss for failure to state a claim has been clearly established by Missouri’s courts as follows:

A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the plaintiff’s petition. It assumes that all of plaintiff’s averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.⁴⁴

By that standard, the Commission must consider OPC’s motion to dismiss based on the facts alleged in Spire Missouri’s Petitions.

⁴³ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁴⁴ *Eastwood v. North Central Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo. App. 2000).

With regard to OPC's first allegation, the Court of Appeals has stated in two prior Spire Missouri ISRS cases that Spire Missouri's supplementation of ISRS applications with supporting documentation after they were filed is not unlawful or unreasonable, so long as such late supplementation does not prevent a full and thorough review of the applications.⁴⁵ In this case, Staff had sufficient time to review a much larger sample of work orders than were reviewed in prior cases even though some documentation was provided after the Petitions were filed. The Commission concludes that Spire Missouri's late filing of some supporting documentation did not prevent Staff or OPC from conducting a thorough review of the Petitions or impede the fair resolution of these cases, so dismissal on those grounds is not appropriate.

Regarding OPC's second allegation, for purposes of ruling on a motion to dismiss for failure to state a claim, the Commission must accept the allegations made in the Petitions as true. The Petitions allege that the infrastructure system replacements included in the Petitions and submitted for ISRS cost recovery are eligible under the ISRS statutes. If that fact is accepted as true, then Spire Missouri has successfully stated a claim that can only be resolved through the hearing process. Therefore, dismissing the Petitions without considering the evidence in the record is not appropriate, and OPC's motion to dismiss will be denied.

Eligible Expenses

Section 393.1012.1, RSMo, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for "eligible infrastructure

⁴⁵ *Matter of Verified Application & Petition of Laclede Gas Co.*, 504 S.W.3d 852, 860 (Mo. App. 2016); *Laclede Gas Co. to Change its Infrastructure Sys. Replacement Surcharge in its Laclede Gas Serv. Territory v. Office of the Pub. Counsel*, 523 S.W.3d 27, 33-34 (Mo. App. 2017).

system replacements”, which is defined in Section 393.1009(3), RSMo.⁴⁶ In order to be eligible, the project must meet the definition of a “gas utility plant project” in Section 393.1009(5), RSMo.⁴⁷

The issue presented in these cases is whether certain main and service line replacements installed by Spire Missouri are eligible for ISRS recovery. Spire Missouri’s position is that it should be able to collect all of the ISRS charges it requested in the Petitions, since all the projects and work orders included are ISRS-eligible. Staff argues that the plastic pipe that Spire Missouri replaced was not worn out or deteriorated and recommends that the Commission issue an order that excludes all plastic pipe replacements from the amounts Spire Missouri is permitted to recover. OPC argues that Spire Missouri’s ISRS Petitions should be denied in their entirety because 1) Spire Missouri has failed to present any evidence showing that any of the pipes (plastic, cast-iron, and steel) it was replacing were worn out or deteriorated, and 2) Spire Missouri has failed to present any evidence showing that the relocations it is claiming as ISRS-eligible meet the requirements of section 393.1009(5)(c).

⁴⁶ “Eligible infrastructure system replacements”, gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation’s rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure.

⁴⁷ “Gas utility plant projects” may consist only of the following:

- (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;
- (b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and
- (c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.

In its review of the Commission's Report and Order in the 2016 Spire Missouri ISRS cases, the Missouri Western District Court of Appeals stated that Section 393.1009(5)(a) "sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition."⁴⁸

With regard to replacements of cast iron and steel pipes, the evidence showed that Spire Missouri is required to implement a program to replace cast iron and steel pipes and identified the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order. The evidence also showed that cast iron pipes are unsafe to use because they are subject to cracking and leaking, and the steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced. The Commission concludes that the cast iron and steel pipes were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition, so they are eligible for cost recovery under ISRS.

The primary dispute in these cases is whether the plastic pipe replaced by Spire Missouri is also eligible for ISRS cost recovery. The Court of Appeals addressed this identical issue in the 2016 ISRS cases, finding that there was no evidence in those cases of a state or federal safety requirement that mandated the replacement of plastic mains and service lines, and that the plastic mains and service lines at issue in those cases "were not in a worn out or deteriorated condition".⁴⁹ The Court concluded "that recovery of the costs for replacement of plastic components that are not worn out or in a deteriorated condition is

⁴⁸ *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018)

⁴⁹ *Id.* at p. 839-840.

not available under ISRS”, so the Commission’s Report and Order was reversed and “remanded for further proceedings consistent with this opinion”.⁵⁰

On remand, the Commission concluded that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated, and therefore not eligible for ISRS recovery.⁵¹ The Commission also found that Staff’s methodology for calculating the cost of those ineligible pipe replacements was reasonable.⁵² Although the Commission found Spire Missouri’s plastic pipe replacements to be ineligible, it also concluded that it did not have statutory authority to refund those ineligible costs to customers, including in these present cases.⁵³ The Commission found that neither the ISRS statute, Section 393.1015, in light of the intervening general rate case, nor the general statute regarding temporary rate adjustments following appeal of a Commission order, Section 386.520, provide any legal authority for the Commission to order refunds to return ineligible costs from the 2016 or 2017 cases.⁵⁴

As with the 2016 cases, in these present cases the evidence showed that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated. The polyethylene plastic pipe that Spire Missouri uses should last indefinitely, but Spire Missouri did not conduct a review to determine if that plastic pipe was worn out or deteriorated before replacing it. Spire Missouri’s work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated, and the company made no

⁵⁰ *Id.* at p. 841.

⁵¹ Report and Order on Remand, *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, File No. GO-2016-0332 and *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, File No. GO-2016-0333, issued September 20, 2018.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ This determination should not be considered as a restriction to the normal reconciliation process required in Section 393.1015, subsections 5 and 6.

attempt to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition. In addition, Spire Missouri did not provide sufficient information to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Spire Missouri argues that no adjustment to the company's ISRS charges should be made in connection with plastic pipe replacements because those replacements resulted in no incremental increase in ISRS costs, but instead decreased them. Thus, there are no ineligible costs to exclude. In support of this argument, Spire Missouri presented an analysis of ten work orders from the 2016 cases purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them. Spire Missouri asks the Commission to extrapolate from those nine work orders and reach a similar result in the hundreds of work orders that Spire Missouri did not analyze. However, Spire Missouri's analysis is based on far too few work orders for such a conclusion to be reasonable. Spire also argues that no adjustment to its ISRS revenues or costs is appropriate under ratemaking and cost allocation principles. This argument improperly intermixes the issue of prudence, which is determined in a general rate proceeding, with eligibility, which is the appropriate determination in an ISRS proceeding. So, Spire Missouri's arguments regarding prudence, cost avoidance, and economic efficiency are irrelevant to the Commission's conclusion in these cases.

In the future, if Spire Missouri wishes to renew its argument that plastic pipe replacements result in no cost or a decreased cost of ISRS, it should submit supporting evidence to be considered, such as, but not limited to, a separate cost analysis for each project claimed, evidence that each patch was worn out or deteriorated, or evidence

regarding the argument that any plastic pipe replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Here, Staff provided the best evidence of a methodology to calculate the costs of those ineligible plastic pipe replacements, which is consistent with Staff's methodology that the Commission approved in the 2016 cases. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe, and then applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

Based on Staff's adjustments to exclude the ineligible costs related to plastic pipe replacements, those corrected ISRS calculations result in Spire Missouri collecting ISRS revenues in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory. The Commission also concludes that the appropriate rate design is that provided by Staff based on the most recent rate case billing units and allocated using the traditional ISRS rate design, but revised to utilize the ISRS revenues recommended by Staff and approved in this Report and Order.

In its brief, OPC argues that the Commission should exclude from Spire Missouri's ISRS any costs for relocations, alleging that Spire Missouri failed to present sufficient evidence that the relocations meet the requirements for eligibility in Section 393.1009(5)(c) (see footnote 47 above). The only evidence in the record relating to this issue are the Petitions of Spire Missouri, verified under oath, which first state that any relocation projects listed in the appendix to the Petition are eligible for ISRS cost recovery because they are "unreimbursed infrastructure facility relocations due to the construction or improvement of a highway, road, street, public way or other public work required by or on behalf of the United

States, the State of Missouri, a political subdivision of the State of Missouri, or another entity having the power of eminent domain”, and second, identify in the attached tables to its Petitions the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order. OPC did not present any evidence in support of its contention. Since Spire Missouri’s uncontroverted evidence satisfies the eligibility requirements of Section 393.1009(5)(c), the Commission concludes that Spire Missouri has provided sufficient evidence to demonstrate that the relocation projects are ISRS-eligible.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that that Spire Missouri has met, by a preponderance of the evidence, its burden of proof to demonstrate that the Petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo, subject to the adjustments recommended by Staff. The Commission concludes that Spire Missouri shall be permitted to establish an ISRS to recover ISRS surcharges for these cases in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory. Since the revenues and rates authorized in this order differ from those contained in the tariffs the company first submitted, the Commission will reject those tariffs. The Commission will allow Spire Missouri an opportunity to submit new tariffs consistent with this order.

Section 393.1015.2(3), RSMo, requires the Commission to issue an order to become effective not later than 120 days after the petition is filed. That deadline is October 5, 2018, so the Commission will make this order effective on October 1, 2018.

THE COMMISSION ORDERS THAT:

1. The Office of Public Counsel's Motion to Dismiss Spire Missouri, Inc.'s Infrastructure System Replacement Surcharge Applications for its Spire Missouri East and Spire Missouri West Service Territories filed on August 21, 2018, is denied.

2. Spire Missouri, Inc. is authorized to establish Infrastructure System Replacement Surcharges sufficient to recover ISRS revenues in the amount of \$2,607,610 for its East service territory and \$5,411,793 for its West service territory. Spire Missouri, Inc. is authorized to file an ISRS rate for each customer class as described in the body of this order.

3. The tariff sheets filed by Spire Missouri, Inc. on June 7, 2018, and assigned Tariff Tracking Nos. YG-2018-0163 and YG-2018-0164, are rejected.

4. Spire Missouri, Inc. is authorized to file new tariffs to recover the revenue authorized in this Report and Order.

5. This order shall become effective on October 1, 2018.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, and
Coleman, CC., concur.
Rupp, C., dissents.

Bushmann, Senior Regulatory Law Judge