

**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)

**STAFF POSITION REGARDING HOW TO MOVE REMANDED CASES FORWARD
AND THE NEED FOR ADDITIONAL EVIDENCE**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, pursuant to the Commission’s *Order Denying Motion to Consolidate, Directing Filings, Setting a Procedural Conference, and Finding Additional Time is Needed for a Commission Decision* (Order) issued April 15, 2020, and states as follows:

1. The Commission’s Order directed, in part, that “...parties shall file a proposal or position on how Files GO-2018-0309 and GO-2018-0310 should move forward and statements about the need for additional evidence...” no later than April 22, 2020.

2. In considering its position in response to the Commission’s Order, Staff first looks to the instructions given by the Western District Court of Appeals in its Opinion issued on November 19, 2019:

“The Commission’s Report and Order is reversed and remanded to the extent it allowed ISRS recovery for structures not shown to be worn out or deteriorated. The case is remanded for the sole purpose of removing the cost incurred to replace cast iron and bare steel mains and service lines not shown to be worn out or deteriorated from the ISRS revenue awarded to Spire. Ratepayers shall be

refunded that amount by the most expeditious and authorized means available....”¹

3. The Court’s instructions to the Commission are a mandate and they are specific. The Court found the Commission’s Report and Order had allowed ISRS recovery for structures not shown to be worn out or deteriorated. These cases were remanded to the Commission “...for the *sole purpose of removing the cost incurred to replace cast iron and bare steel mains and service lines not shown to be worn out or deteriorated* from the Commission’s authorized revenue requirement awarded to Spire. Further, the Court instructed that *ratepayers shall be refunded that amount by the most expeditious and authorized means available. (emphasis added)*

4. On remand, all proceedings of the circuit court must be in accordance with the appellate court's mandate. Frost v. Liberty Mut. Ins. Co., 813 S.W.2d 302, 304 (Mo. banc 1991); see also Assoc. Indus. of Mo. v. Dir. of Revenue, 918 S.W.2d 780, 782 (Mo. banc 1996). “There are two types of remands: (1) a general remand, which does not provide specific direction and leaves all issues open to consideration in the new trial; and (2) a remand with directions, which requires the trial court to enter a judgment in conformity with the mandate.” State ex rel. St. Charles Cnty. v. Cunningham, 401 S.W.3d 493, 495 (Mo. banc 2013). The appellate court's mandate, in conjunction with its opinion, serves to instruct the circuit court as to which type of remand has been ordered.

¹ Matter of Spire Missouri, Inc., 593 S.W.3d 546,555 (Mo. Ct. App. 2019), reh’g and/or transfer denied (Dec. 12, 2019), transfer denied (Mar. 17, 2020).

5. With specific instructions from the Court, the Commission must do exactly and only what the Court has directed. A remand with instructions confers no discretion on the trial court. Moving forward, the Commission may open the record only so far as to take in facts necessary for the Commission to carry out its mandate.

6. For the Commission to meet its mandate, Staff must perform a calculation of the value of the cast iron and bare steel mains and service lines that were not shown to be worn out or deteriorated. This new calculated amount will be removed from the ISRS revenue requirement previously authorized by the Commission and collected by Spire from ratepayers. Consistent with the Court's instructions, new rates that include the amount of refund due ratepayers will need to be determined by the Commission. That said, Staff advises the Commission to open the record to take in new facts only so far as would allow the Commission to accomplish its mandate from the Court.

7. On April 21, 2020, the parties filed a proposed *Joint Procedural Schedule* that will allow the Commission to open the record to collect new facts for the Commission to carry out its mandate.

WHEREFORE, Staff submits this position for the Commission's consideration pursuant to the Commission's April 15, 2020 *Order* issued herein.

Respectfully submitted,

/s/ Robert S. Berlin

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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 22nd day of April, 2020.

/s/ Robert S. Berlin