

**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)

STATEMENT OF POSITION OF SPIRE MISSOURI INC.

COMES NOW Spire Missouri Inc. (“Spire” or “Company”), on behalf of itself and its two operating units, Spire Missouri East and Spire Missouri West, and, pursuant to the Commission’s procedural orders in these proceedings, submits the following statement of position on the various issues identified in the Parties’ List of Issues filed on this date, May 21, 2020.

ISSUES

Issue #1. What is the amount of refund, if any, due to ratepayers for replacement of cast iron and bare steel mains and service lines not shown to be worn out or deteriorated?

Spire’s Position:

The Commission has taken the position that no party is permitted to introduce testimony that is not already in the record from the first phase of these cases (the “2018 Cases”) that took place in 2018. Spire asserts that this position conflicts with the Court’s mandate and violates Spire’s due process rights. That argument will be addressed in Issue #3 below. In responding to this issue, Spire will first provide its position using evidence from the first phase of the 2018 Cases, and next provide its position that includes all of its evidence.

A. The evidence from the first phase of the 2018 Cases provides three alternative answers to this question. The alternatives are addressed below.

1. Zero.

The evidence demonstrates that Spire's cast iron and bare steel were all worn out or in deteriorated condition, so no cost was incurred to replace cast iron and bare steel that was not worn out or in deteriorated condition. This evidence includes pages 8-14 of the direct testimony of Spire engineer and expert witness Craig Hoeflerlin, and excerpts from pages 373-74 of the transcript of his testimony at the hearing. The evidence also includes page 7 of Exhibit A in the 2018 Cases, a clear statement by OPC to the Western District Court that the ISRS Statute was enacted to help pay for the costs of replacement programs. The cast iron and bare steel replaced in those programs were necessarily worn out or in a deteriorated condition, since the program costs are necessarily ISRS-eligible.

Most of this evidence was not even considered by the Court, because Spire was not allowed to participate in OPC's appeal of the Commission's order in the 2018 Cases. Nor did the Court consider the legal argument that, because Missouri's Rule 40.030(15) safety replacement programs for cast iron and bare steel are more stringent than the federal minimum safety standards for replacing these materials, the State of Missouri has therefore deemed cast iron and bare steel to be worn out or in a deteriorated condition as a matter of law.

Finally, the Legislature has changed the ISRS Statute (HB 2120) to clarify that cast iron and steel are specifically ISRS-eligible, as the Legislature intended when it enacted the ISRS Statute in 2003, which is consistent with how the parties treated cast iron and bare steel for the first 15 years the ISRS Statute was in effect, and is reflected in what the OPC told the Court in its 2017 briefs (Exhibit A (p. 7) and B (pp. 6-10)). Based on that clarification, and the evidence in the record, the Commission should find that Spire's cast iron and bare steel pipes are worn out or in deteriorated condition, and the costs to replace them are ISRS-eligible.

2. \$2,719,898.

If the Commission declines to follow Alternative 1, Spire presents Alternative 2 based on a review of the age of cast iron and bare steel, according to the work order authorization sheets in the 2018 Cases, compared to their Commission-approved depreciation lives, referred to as average service lives.¹ In its Opinion, the Court found that depreciation lives were a factor in whether pipes were worn out or deteriorated, and identified some cast iron and bare steel pipes that were replaced before their average service lives had expired. The amount above represents a cumulative refund for Spire Missouri East and West, based on a calculation using the percentage of cast iron and bare steel that were replaced before their average service lives had expired, multiplied by the total cost to replace cast iron and bare steel.

3. \$4,992,303.

Like Alternative 2, this amount is also based on the percentage of cast iron and bare steel that was replaced prior to the end of its average service life, but uses the 69-year average service life for Spire Missouri West steel mains recommended by Staff in the most recent Spire Missouri West rate case, rather than the actual depreciation life of 50 years approved by the Commission for Spire West mains. Using a 69-year service life caused fewer mains to qualify as worn out or in deteriorated condition compared to a 50-year service life.

B. Considering all of the evidence presented by Spire in this case, there should be no adjustment to the Company's previously approved revenue requirement, because all of the cast iron and bare steel pipes replaced in the 2018 Cases were shown to be worn out or deteriorated.

¹ Most of the work order authorization sheets were not technically in the record of the 2018 Cases, but using them is consistent with the Staff's approach in calculating a refund amount, and consistent with OPC's position in its direct testimony.

Spire's offer of proof evidence irrefutably shows that the cast iron and bare steel replaced in the 2018 Cases were all worn out or in a deteriorated condition. This evidence includes testimony from Robert Leonberger, the long-time head of the Commission's Safety Staff; David Norfleet, a metallurgist who confirmed how and why cast iron and bare steel are worn out or deteriorated; Company experts Timothy Goodson and Craig Hoeflerlin, Union foreman William Honeycutt, who has replaced cast iron and bare steel and witnessed first-hand their poor condition, John Spanos, a depreciation expert, and Wesley Selinger, who is familiar with ISRS rules and Company records. In addition, numerous pieces of cast iron and bare steel for both Spire Missouri East and West were recovered and will be on display at the hearing in the Company's offices in Shrewsbury. Mr. Leonberger, Mr. Goodson and Mr. Hoeflerlin have each inspected these pieces, and they, along with Dr. Norfleet, who has also analyzed certain pieces of pipe, all agree that the pieces they have seen are worn out or in deteriorated condition. These witnesses, along with Mr. Spanos, Mr. Honeycutt and Mr. Selinger, will testify that all of the Company's cast iron and bare steel is, at the very least, in a deteriorated condition, because, as the Missouri Supreme Court has defined "deteriorated," these pipes have grown worse, become inferior in quality or value, or have become impaired in quality, state or condition.

Issue #2. By what method should any refund be returned to ratepayers?

Spire's Position:

The appropriate amount of refund is zero. However, should the Commission disagree, Spire has provided two alternatives in the first part of its position on Issue #1. Spire agrees with Staff that any refund may be distributed as a one-time bill credit to current customer accounts, notwithstanding §386.520.2 RSMo.

Issue #3. Does due process require the consideration of the additional evidence submitted by the Company to demonstrate the condition of its cast iron and bare steel facilities?

Spire's Position:

Yes. Spire is entitled to a full and fair opportunity to present evidence on whether its cast iron and bare steel facilities are worn out or in a deteriorated condition. Due process requires that the Commission consider that evidence. If Spire is denied that opportunity, then it will have been deprived of its due process rights.

Due process dictates that Spire and the other parties be permitted to introduce testimony that is not already in the record from the first phase of the 2018 Cases, and to rebut and cross-examine witnesses regarding that testimony. Spire asserts that this position is consistent with the court's mandate, and is necessary to afford Spire its due process rights.

Spire should have the right to supplement testimony from the first phase of the 2018 Cases, because the issue of whether cast iron and bare steel is worn out or deteriorated was not an issue in the first phase, and OPC's argument on this non-issue was completely contrary to the parties' position and practice for the 15 years that preceded the 2018 Cases. As a result, Spire did not have adequate notice or a full and fair opportunity to present evidence on this issue. Nevertheless, the Commission addressed the issue in the 2018 Cases and found that cast iron and bare steel was worn out or deteriorated. OPC appealed the Commission's decision, but the Western District denied Spire the opportunity to participate in that appeal.

As a result, Spire had no opportunity to exercise its due process rights either at the Commission or at the court of appeals. Now the matter is back at the Commission on remand, finally giving Spire an opportunity to present evidence focused on whether cast iron and bare steel

is worn out or in a deteriorated condition. Due Process requires that Spire be able to present that evidence, and that the Commission consider it.²

Respectfully submitted,

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ATTORNEYS FOR SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21st day of May, 2020.

/s/ Goldie T. Bockstruck

² The Court may not direct how the Commission makes its findings, and the Court's Mandate appropriately leaves open the issue of how the Commission determines whether cast iron and bare steel is shown to be worn out or deteriorated. The Court recognizes that it is the Commission's duty to make finding of facts and apply the law. The Court's duty is simply to determine whether the Commission's decisions are lawful and reasonable. In the remand of the 2016 ISRS Cases, the Commission determined to open the record so it could receive the evidence it needed to make a reasonable decision. In this case the Commission has thus far chosen to interpret the mandate in a way that hamstrings its own ability to gather evidence to make a reasonable decision, while at the same time denying a party its right to due process.