

**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) Case No. GO-2019-0115
Surcharge in its Spire Missouri East)
Service Territory)

In the Matter of the Application of)
Spire Missouri Inc. to Change its)
Infrastructure System Replacement) Case No. GO-2019-0116
Surcharge in its Spire Missouri West)
Service Territory)

MOTION FOR REHEARING OR RECONSIDERATION

COMES NOW the Missouri Office of the Public Counsel (“OPC”) and for its *Motion for Rehearing or Reconsideration* of the Missouri Public Service Commission (“the Commission”)’s May 3, 2019, *Report and Order* (“Order”) in the above styled cases, states as follows:

Pursuant to RSMo. Section 386.500,¹ the OPC seeks rehearing and or reconsideration of the Commission’s Order because the Order is unlawful, unjust, and/or unreasonable for the reasons laid out herein.

The Commission’s Order is unlawful, unjust, and/or unreasonable because the amount of revenue that Spire is permitted to recover under the Order is incorrect due to the fact that the Order relied upon a report by the Commission’s Staff that improperly calculated the amount of net property taxes owed on the plant additions Spire made

1 All references are to the Revised Statutes of Missouri (2016) unless otherwise noted.

Spire Missouri, Inc. (“Spire”)’s initial application for its Spire West service territory included a revenue requirement calculation that claimed \$ 2,877,730.39 in net property taxes. *Verified Application and Petition of Spire Missouri, Inc. to Change Its Infrastructure System Replacement Surcharge for Its Spire Missouri West Service Territory and Tariff Revision (JG-2019-0139)*, GO-2019-0116, Appendix A Schedule 10. Spire’s initial application for its Spire East service territory also included a revenue requirement calculation that claimed \$1,655,809.42 in net property taxes. *Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for Its Spire Missouri East Service Territory and Tariff Revision (YG-2019-0138)*, GO-2019-0115, Appendix A Schedule 10. These net property tax values were later amended by the company to \$2,598,507 and \$1,539,224 for Spire West and Spire East respectively. *Staff Recommendation*, GO-2019-0115, Appendix C; *Staff Recommendation*, GO-2019-0116, Appendix C. The initial *Recommendation* file by the Commission’s staff (“Staff”) in these cases made further adjustments to Spire’s calculations that lowered the total net property tax owed for Spire West and Spire East to \$2,578,831 and \$1,532,107 respectively. *Id.* However, when Staff prepared its second round of revenue requirement calculations (pursuant to the Commission’s *Order Directing Filing and Setting Response Times*) it reverted to using the amended net property tax values that Spire had previously provided (\$2,598,507 and \$1,539,224 for Spire West and Spire East respectively). *Staff Report*, GO-2019-0115 & GO-2019-0116, Attachments A & B. These values were carried through in Staff’s two subsequent updates to its second revenue requirement

calculations and were thus utilized in the calculation of the final revenue requirement approved by the Commission. *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement*, GO-2019-0115 & GO-2019-0116, Attachments A & B.

As the situation currently stands, the ISRS revenues that Spire is permitted to collect according to the Commission's Order were calculated using total net property tax values of \$2,578,831 and \$1,532,107 for Spire West and Spire East respectively. *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement*, GO-2019-0115 & GO-2019-0116, Attachments A & B. These values, however, were developed based on total ISRS plant additions amounts of \$45,918,816 and \$54,558,741 for Spire West and Spire East respectively. *Staff Report*, GO-2019-0115 & GO-2019-0116, Attachments A & B. This is a problem because the Staff has since updated its calculations to include numerous disallowances (per the Commission's orders) which have lowered the total ISRS eligible plant addition to \$42,519,420 and \$48,243,324 for Spire West and Spire East respectively. *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement*, GO-2019-0115 & GO-2019-0116, Attachments A & B. Therefore, the net property tax values for Spire West and Spire East are currently higher than they should be, and the Commission's Order is thus unlawful, unjust, and/or unreasonable. The net property tax values used to calculate the revenue amounts that Spire will ultimately be permitted to attempt to recover through its ISRS should be calculated correctly and hence need to be lowered to account for the

decrease in the ISRS eligible plant additions that the Commission has ordered Staff to calculate.

**The Commission's Order is unlawful, unjust, and/or unreasonable
because it improperly permits Spire to recover costs for the replacement
of cast iron and bare steel mains and services that are not worn out or in a
deteriorated condition**

The Commission's Order concluded that the cast iron and bare steel mains and services that Spire replaced and claimed as ISRS eligible in these cases were worn out or in a deteriorated condition based on several different factors. *Report and Order*, GO-2019-0115 & GO-2019-0116, pg. 41. However, the OPC continues to maintain that none of these factors warrant that conclusion. For example, the Commission's conclusion relies in part on the fact that cast iron and bare steel replacements have "historically been found by the Commission to be in worn out or deteriorated condition." *Report and Order*, GO-2019-0115 & GO-2019-0116, pg. 39. But such information cannot be relied upon to prove that the pipes subject to **these cases** were worn out or deteriorated. To do so would be the equivalent of a prosecuting attorney relying on the fact that the majority of those who are arrested by the police have "historically" been found guilty by a jury as evidence of the criminal conduct of any one particular defendant, which is obviously not legally sound. In other words, the fact that Spire has met its burden of proof in **past cases** does not, and more importantly **cannot**, absolve them of the duty to meet that burden in **these cases**.

Another factor on which the Commission relied was the joint statement sent to Spire by the USDOT and PHMSA. *Report and Order*, GO-2019-0115 & GO-2019-0116, pg. 39. Contrary, to the Commission’s conclusion, however, this evidence does not state anything regarding the condition of the pipes Spire replaced in ***these cases*** and instead merely indicates that cast iron and bare steel should ***generally*** be replaced, which is a point that was never in dispute. This is something that Spire’s own witnesses openly admitted to during the evidentiary hearing. Tr. pg. 142 lns. 5 – 13 (“Q. And [DOT/PHMSA] have told you that all of your cast iron and bare steel is in a deteriorated condition? A. No. I’m re-- I’m re-- referring back to the letter that we showed in evidence that they are recommending replacement of -- they -- they -- specifically line out cast iron and bare steel systems at an accelerated rate and the use of ISRS for – for those replacement projects.”).

The Commission also relied upon the fact that Spire’s DIMP ranks cast iron and bare steel as posing a high risk and therefore prioritizes replacement of that type of material. *Report and Order*, GO-2019-0115 & GO-2019-0116, pg. 40. But the fact that Spire considers cast iron and bare steel to be a high risk for breaking down does not automatically mean that ***all*** cast iron and bare steel pipes the company replaces are “by definition” worn out or deteriorated. The same is true for the Commission’s reliance on the fact that cast iron and bare steel are subject to corrosion. *Report and Order*, GO-2019-0115 & GO-2019-0116, pg. 40. Again, the fact that cast iron and bare steel ***can*** deteriorate does not prove that ***all*** of the nearly two-hundred miles of cast iron and bare steel pipes that Spire replaced ***in these cases*** actually were worn out

or deteriorated. Finally, as to the Commission's reliance upon comments of Spire's witness regarding the condition of pipes, such evidence does not and cannot be used to establish that *all* of Spire's pipes were worn out or deteriorated because that same witness openly admitted that he could not recall how many of the pipes that were replaced he had personally seen or even how many pipes had been exposed at all during the replacement program. Tr. pg. 97 lns. 19 – 22; 11 – 18.

Finally, the Commission's Order relies on the age of the pipes being replaced or, more specifically, the fact that "[t]he testimony in this case supports that most of the cast iron mains being replaced have exceeded their useful service lives for depreciation purposes" to support its determination that the cast iron and bare steel was worn out or deteriorated. *Report and Order*, GO-2019-0115 & GO-2019-0116, pg. 40. In reaching this conclusion, however, the Commission has ignored the overwhelming evidence presented by the OPC that shows that average or "useful" service life for depreciation purposes is not a good indicator of the condition of any particular piece of pipe. For example, the OPC's depreciation expert Mr. John Robinett cited to well-established depreciation treatises that explained that service life is just "the number of years elapsing from the time a unit of property is placed into service until it is removed or abandoned." Ex. 200, *Direct Testimony of John A. Robinett*, pg. 9. These treatises further discuss the fact "that wear and tear do not account for all retirements[,] and that other factors such as "inadequacy, obsolescence, changes in art, changes in demand, *and requirements of public*

authorities” must all be given consideration when calculating service life. Ex. 200, *Direct Testimony of John A. Robinett*, pg. 8 (emphasis added).

The fact that wear and tear alone does not account for all retirements and that retirements performed to address the requirements of public authorities must also be considered is a crucial point because it shows how the average service life of Spire’s pipes may have been previously influenced by past retirements Spire made pursuant to the very replacement programs that give rise to this ISRS. In fact, the more pipe replacements Spire makes as part of its mandated replacement program, the lower one can expect the average service life for that type of plant to become in the future. This, in turn, means that a utility runs a high risk of engaging in untenable circular logic if it uses average service life to determine the ISRS eligibility of its replacements because there is a good possibility that the average service life of a utility’s pipes are being depressed when it makes a large number of early retirements even though those early retirements are themselves being justified by the depressed average service life.

In addition to the preceding, there are numerous other major issues with using average service life to try to prove pipes are worn out or deteriorated, starting with the fact that average service life is just that, an *average*. As Mr. Robinett explained in his direct testimony, “average service life of an account [is] the average of the lives of *all* such units within a plant account” and that, “[a]s a depreciation expert, I expect approximately half of assets to be retired before the average service and half of them to exceed the average service life.” Ex. 200, *Direct Testimony of John A. Robinett*, pg.

10. This means that it is impossible to tell whether any given piece of pipe is actually worn out or deteriorated solely by comparing the age of that pipe to the average service life of similar pipe. OPC expert witness Robert Schallenberg took this line of reasoning even farther in his rebuttal testimony where he explained how mains and services are booked to what is known as a “mass asset account.” Tr. pg. 296 ln. 22 – pg. 297 ln. 4. Consequently, depreciation expenses incurred by the utility simply represent an assignment of dollars that were capitalized and then charged to that mass asset account in different periods. Tr. pg. 297 ln. 19 – pg. 298 ln. 9. This, in turn, means that “depreciation has little relationship to the physical condition of the plant[,]” and that the use of an average service life from a depreciation schedule will thus have little to no meaning in trying to determine if any particular piece of pipe is worn out or deteriorated. Tr. pg. 296 lns. 17 – 19. Therefore, it should be very obvious why Spire’s pipes being past their average or “useful” service life is not evidence of their actual condition.

Having considered all of the evidence on which the Commission has based its conclusions regarding the condition of the cast iron and bare steel pipes Spire replaced, it should be plain why the OPC continues to argue that there is not sufficient evidence to support the Commission’s finding that those pipes are worn out or in a deteriorated condition. The Commission’s Order is consequently unlawful, unjust, and/or unreasonable to the extent that it found the cast iron and bare steel pipes Spire replaced to be worn out or in a deteriorated condition.

The Commission's Order is unlawful, unjust, and/or unreasonable because it permits Spire to over-recover the cost of replacing ineligible plastic components that Spire included in its blanket workorders.

As the OPC indicated in its *Response to Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East and Reply of Spire Missouri Inc. to OPC's Response to Commission Order and Staff Report*, the OPC does not intend to further contest the issue it has previously raised regarding the calculation of recoverable costs associated with the blanket workorders unless Spire chooses to pursue an appeal of these cases. To that end, the OPC requests rehearing or reconsideration on this issue in order to continue to bring to the Commission's attention what the OPC considers an improper methodology for calculating the disallowance to be applied to the blanket workorders in these cases and to serve as a perfunctory yet necessary measure to preserve its position on this matter.

Staff's methodology for calculating the disallowance to be applied to the blanket workorders that Spire seeks recovery for in these cases is incorrect for three reasons: (1) Staff used a ratio based on the number of individual projects falling into certain categories instead of the ratio of plastic to non-plastic pipes being replaced (which was the method Staff employed in the 2018 case with regard to blanket workorders); (2) the sheer size of the blanket workorders (which match or dwarf the amount of service plant additions otherwise being claimed in these ISRS proceedings) indicates that the relatively small disallowance Staff has applied is insufficient to

capture the true amount of ineligible plastic replacement costs being flown through these workorders, and (3) the designation of so many of the blanket workorders as “renewals,” when combined with the testimony elicited at the evidentiary hearing regarding renewals, strongly suggests that at least some of these projects were not ISRS eligible to a greater degree than Staff has previously calculated. *Compare Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, GO-2019-0115 & GO-2019-0116, pg. 2, with *Report and Order*, GO-2018-0309 & GO-2018-0310, pgs. 7 – 8; *see also Response to Commission Order Directing Filing and Staff Report*, GO-2019-0115 & GO-2019-0116, Appendix A; and Tr. pg. 82 ln. 12 – pg. 83 ln. 13.

For all three of the reasons listed above, the calculation of the disallowances Staff performed (and the Commission ultimately accepted) regarding these blanket workorders is inaccurate. Staff should have instead used the same method it previously employed in Spire’s 2018 ISRS case for determining the amount of costs that should be disallowed from these blanket workorders based on Spire’s inclusion of ineligible plastic replacements.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission either grant a rehearing or reconsideration of the May 3, 2019, *Report and Order* issued in the above styled cases pursuant to the authority of RSMo Section 386.500.

