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	))))	**File No. GO-2019-0356**
In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	))))	**File No. GO-2019-0357**

SPIRE MISSOURI INC'S APPLICATION FOR REHEARING

COMES NOW Spire Missouri Inc. ("Spire Missouri" or "Company"), on behalf of itself and its two operating units, Spire Missouri East ("Spire East") and Spire Missouri West ("Spire West") and, pursuant to 20 CSR 4240-2.160(1) and Sections 386.500 and 386.510 RSMo., applies for rehearing of the Commission's October 30, 2019 Report and Order (the "Order"). In support thereof, Spire Missouri states as follows:

A. THE APPLICANT

1. Spire Missouri Inc. (hereinafter "Spire Missouri" or "Company") is a public utility and gas corporation incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101. A Certificate of Good Standing evidencing Spire Missouri's standing to do business in Missouri was submitted in Case No. GR-2020-0121 and is incorporated herein by reference. The information in such Certificate is current and correct.

2. Through its Spire Missouri East operating unit, the Company is engaged in the business of distributing and transporting natural gas to customers in the City of St. Louis and the

Counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler in Eastern Missouri, as a gas corporation subject to the jurisdiction of the Commission. Through its Spire Missouri West operating unit, the Company is engaged in the business of distributing and transporting gas to customers in the City of Kansas City and the Counties of Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte Ray, Saline, Stone, and Vernon Counties in Western Missouri, as a gas corporation subject to the jurisdiction of the Commission.

3. Communications in regard to this Application should be sent to the undersigned counsel.

4. Other than cases that have been docketed at the Commission, the Company has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates within three years of the date of this application.

5. The Company is current on its annual report and assessment fee obligations to the Commission; no such report or assessment fee is overdue.

B. REQUEST FOR REHEARING

6. On October 30, 2019, the Commission issued the Order in the above-captioned cases in which it rejected the tariffs originally filed by Spire Missouri in these cases and authorized the Company to file new revised tariff sheets sufficient to recover ISRS revenues in the amount of $ 4,763,180 for its Spire East service territory and $3,996,543 for its Spire West service territory.

Consistent with the statutory deadline set forth in the ISRS Statute[1] for processing ISRS applications, the Commission made its Order effective on November 12, 2019.

7. At the outset, the Company would note that the matters addressed in the Application for Rehearing are also, in one form or another, the subject of appeals before the Western District Court of Appeals. To preserve its rights to a remedy in the event the Company prevails in those appeals, this Application for Rehearing is being submitted with respect to two of the issues decided by the Commission that the Company believes were erroneously decided in its October 30, 2019 Report and Order. Both relate to the ISRS Statute.

8. The first error involves the Order's misapplication of the eligibility requirement in the ISRS Statute which provides that plant being replaced must generally be in a worn-out or deteriorated condition to qualify for ISRS treatment. The Order misapplies this eligibility requirement by using it as a basis for excluding costs relating to replacement rather than reuse of plastic components even though the clear and undisputed evidence showed that the replacement of such components did not increase the ISRS costs and revenues being sought in the proceeding but rather decreased them. The second error involves the Order's disregard of another eligibility requirement in the ISRS statute – namely, the provision which specifies that plant *is* eligible for ISRS inclusion as long as it was not included in the rate base of the utility in its last general rate case proceeding. The Order ignores this clear eligibility requirement by excluding any consideration of ISRS eligible costs that were incurred subsequent to the Company's last rate case because an appeal involving such cost is underway. By imposing this additional eligibility requirement, the Order fundamentally transforms the ISRS process into one in which the recovery of plainly ISRS-eligible plant can be delayed for many months and even years beyond the

[1] S*ee* Sections 393.1009-1015 RSMo.

timeframes contemplated by the General Assembly when it enacted the Statute. Each of these errors is discussed below.

Misapplication of Worn-Out or In a Deteriorated Condition Requirement

9. At pages 37 to 41 of its Report and Order, the Commission once again applies an arbitrary percentage-based method to exclude ISRS costs on the theory that they were incurred to replace plastic components that were not worn out or in a deteriorated condition. As in previous ISRS cases, the Commission has taken this approach even though: (a) there is no evidence on the record to suggest that the percentage based method actually captures the cost impact of replacing or bypassing plastic components nor (b) any evidence disputing the Company's detailed engineering analysis showing that ISRS costs were affirmatively decreased rather than increased as a result of replacing or bypassing these plastic components.

10. In these cases, this basic truth regarding the impact of replacing or bypassing plastic components was demonstrated once again by a series of analyses comparing the costs of the Company's systematic replacement approach (which involves some bypassing of plastic components) to the Company's previous "piecemeal" approach that replaced only those segments of facilities that posed an immediate safety threat. Even though these undisputed analyses showed that the customer's systematic approach is some 18% to 200% cheaper than the piecemeal approach, the Commission nevertheless misapplied the Western District Courts previous opinion on this issue by suggesting that the ISRS Statute effectively requires that a financial penalty be paid whenever plastic is being replaced or bypassed regardless of whether costs or being increased or decreased.

11. The Company respectfully submits that such a result rests on a completely untenable interpretation of both the ISRS statute and the Courts previous opinion on this matter.

The Commission should accordingly grant rehearing on this issue and render a result that conforms with the actual evidence in this case and a more logical interpretation of the meaning and effect of the ISRS statute. In the absence of such a modification, the Commission Report and Order is unlawful, arbitrary and capricious.

Disregard of ISRS Eligibility Language Mandating Consideration of Costs Not Previously Recovered in Rate Case Proceeding

12. At page 8 of its Report and Order, the Commission once again disregarded the ISRS Statute's eligibility requirement found at Section 393.1009(3)(c). That provision specifically defines "eligible infrastructure system replacements" as those gas utility plant projects that "were not included in the gas corporation's rate base in its most recent general rate case."

13. It is undisputed that the older ISRS investments that the Company sought to include in its ISRS filings in these cases met this eligibility requirement given that they were all made after the conclusion of the Company's last rate case. As a consequence, the Order's decision not to consider these costs on jurisdictional grounds constitutes a direct and obvious nullification of this explicit eligibility requirement. Nowhere in its Order does the Commission reconcile this explicit statutory directive of what ISRS costs it is required to consider with its conclusion that it lacks jurisdiction to do so, other than to suggest that the ISRS Statute does not necessarily sanction more than one request to recover otherwise eligible ISRS costs and that its jurisdictional determination is consistent with settled case law.

14. The Company would respectfully suggest that neither of these assertions provide a valid basis for essentially eliminating the clear eligibility language. Simply put, there is nothing in the language of the ISRS Statute that even implies, let alone states, that that the right to recover ISRS costs not reflected in a previous Rate Case Order is a "one-time only" right that cannot be pursued again when, as the Commission acknowledges in

its Report and Order, new evidence supporting the recovery of those costs is presented. Indeed, such a construction of the Statute is wholly at odds with the both well settled practice and case law governing the right of parties to present new evidence and seek a different Commission determination if warranted by that new evidence.

15. Such an interpretation of the ISRS Statute to bar consideration of such costs is also contrary to the Western District Court of Appeal decision in ***Matter of the Determination of Carrying Costs for the Phase–In Tariffs of KCP&L Greater Missouri Operations Company, AG Processing Inc. v. Missouri Public Service Commission***, 408 S.W.3d 175 (Mo.App.W.D. 2013). In that case, the Court stated the following at page 185 regarding the ***Mo. Cable*** case relied on by the Commission:

> …once a writ of review is filed from an order of the PSC, "exclusive jurisdiction vest[s] in the circuit court where the appeal [is] filed; leaving the PSC without jurisdiction ***to alter or modify its order***." Mo. Cable Telecomms. Ass'n, 929 S.W.2d at 772 (emphasis in original). The orders entered by the PSC in the Carrying Costs Case do not alter or modify the orders under review in the Rate Change Case; rather, they merely implement the orders in the Rate Change Case that approved a phase-in of $7 million of the approved increase and authorized carrying costs.

16. Substituting the current and prior ISRS cases for the Carrying Cost and Rate Change cases show that the present scenario fits the KCP&L case like a glove. In the instant case, Spire Missouri is not asking the PSC to alter or modify its order under review in various appellate cases but instead to permit recovery of eligible ISRS costs on a going forward basis based on the evidence presented in these proceedings.

17. While these considerations alone would fully justify the Commission asserting jurisdiction and considering the older ISRS investments included in the Company's filing, the fact there is an explicit statutory directive telling the Commission to consider such costs eliminates any uncertainty on the matter. It is important to keep in mind that it is the General Assembly, through

statute, that establishes the general parameters governing how courts are to review administrative decisions.[2] The General Assembly has explicitly told the Commission that it is to consider the older ISRS investments that were included in the Company's filing and neither the Commission nor the courts can overrule that statutory directive.

18. Finally, in light of these considerations, the Company would again request that the Commission reconsider its decision on this issue. In effect, the Commission is voluntarily surrendering a key component of its regulatory powers without any directive by the courts to do so. In the future, it is the courts and the parties that appear before the Commission that will determine what and when the Commission can exercise its ratemaking powers to consider key ratemaking issues. If a party wants to delay or prevent the Commission from considering a cost or revenue issue based on new evidence all it needs to do is file an appeal and drag it out as long as possible. Conversely, if a party wants to appeal a Commission decision it must now consider how long such appeal may prevent the Commission from looking at an issue again – a chilling circumstance that is a direct affront to the right to seek judicial review. For all of these reasons the Commission should grant rehearing on this issue.

WHEREFORE, for all the foregoing reasons, Spire Missouri respectfully requests that Commission grant this Application for Rehearing on the issues identified herein and, upon rehearing, issue an Order consistent with the recommendations set forth herein.

Respectfully submitted,

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[2]*See e.g.* Sections 386.500 to 386-540 RSMo.; Sections 536.130 to 536.160 RSMo.

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ATTORNEYS FOR Spire Missouri Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Application of Spire Missouri was served to all counsel of record on this 11th day of November, 2019 by hand-delivery, fax, electronic or regular mail.

/s/ *Goldie T. Bockstruck*