



IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, MISSOURI

Judge or Division:	Mo PSC Case Number: GO-2017-0201 and GO-2017-0202	
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:
Defendant/Respondent: Missouri Public Service Commission	Date Post Trial Motion Filed: September 28, 2018	<input type="checkbox"/> Sound Recording Equipment
	Date Ruled Upon: October 17, 2018	The Record on Appeal will consist of: ____ Legal File only or <input checked="" type="checkbox"/> Legal File and Transcript

FILED

5^{MA}
NOV 13 2018

Missouri Public Service Commission

5:03 pm Kt

(Date File Stamp)

Notice of Appeal to Missouri Court of Appeals - Civil

District: Western Eastern Southern

Notice is given that <u>Spire Missouri Inc.</u> appeals from the judgment/decree/order entered in this action on <u>September 20, 2018</u>	
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 By: Diana C. Carter #50522	Date 11-15-2018

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

I certify that on November 15, 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

Pick Zucker
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 11/15/2018 (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).

11/15/2018
Date

Kim Hopper
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 challenges the lawfulness and reasonableness of the Public Service Commission's September 20, 2018 Report and Order on Remand in Case Nos. GO-2017-0201 and GO-2017-0202 (the "Order") to the extent that the Order determined 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 is 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, and (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 did not otherwise comply with the legal guidance given by this Court in its remand instructions. The Commission also erred in summarily determining that the multiple engineering analyses relied upon by the Company to demonstrate the impact of plastic retirements on ISRS costs and charges was inadequate even though the Company analyzed the very projects that the Court relied on in its Opinion that remanded this case to the Commission and all of the testimony submitted by parties on the issue said that such analyses were representative of the results that would be expected across all ISRS projects.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day of
September, 2018.

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-2017-0201

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-2017-0202

ORDER DENYING REQUEST TO MODIFY COMMISSION ORDER

Issue Date: September 20, 2018

Effective Date: October 1, 2018

Procedural history

On September 30, 2016, Laclede Gas Company filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Missouri Gas Energy and Laclede Gas Service territories (collectively, “Spire Missouri”)¹. Spire Missouri requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with infrastructure system replacements made during the period March 1, 2016 through October 31, 2016. These two cases were opened by the Commission as File Nos. GO-2016-0332 and GO-2016-0333 (collectively, “2016 cases”). The Office of the Public Counsel (“OPC”) filed a motion

¹ The company subsequently underwent a corporate reorganization and changed its name to Spire Missouri, Inc. with East and West service territories.

requesting that the Commission reject the petition or schedule an evidentiary hearing. The Commission held an evidentiary hearing on January 3, 2017.

On January 18, 2017, the Commission issued a Report and Order in the 2016 cases permitting Spire Missouri to file new tariffs to recover certain ISRS revenues, including plastic pipe replacements. OPC appealed the 2016 Report and Order to the Missouri Western District Court of Appeals (WD80544), challenging the Commission's decision that certain plastic pipe replacements were eligible ISRS costs.

On February 3, 2017, Spire Missouri filed new ISRS applications for its East and West service territories requesting to change its ISRS to recover costs in connection with eligible infrastructure system replacements made during the period November 1, 2016 through February 28, 2017. These two cases were opened by the Commission as File Nos. GO-2017-0201 and GO-2017-0202 (collectively, "2017 cases"). On April 26, 2017, the Commission issued an *Order Approving Unanimous Stipulation and Agreement*, in which all parties agreed that the Commission should approve the rates Staff had recommended in the 2017 cases and put aside the dispute about plastic pipe replacements pending the outcome of OPC's appeal in the 2016 cases. That stipulation and agreement stated, in part:

If the courts make a final, non-appealable decision reversing the Commission's January 18 Order on the grounds that the Commission's decision on the Plastics Issue is unlawful or unreasonable, then the court's final decision shall be applied to the Current Cases [2017 cases] in the same manner as it is applied to the Prior Cases [2016 cases], as applicable. In such event, upon remand, any one or more Signatories may request that the Commission determine the amount of refund, if any, that shall be made in both the Prior Cases and the Current Cases as a result of such reversal. LAC, MGE [Spire Missouri] and Staff agree not to challenge OPC's right to make such request, and LAC and MGE [Spire Missouri] further agree to produce work order or other information in their possession necessary to determine the amount of plastic that was replaced in the Prior Cases and the Current Cases. All Signatories reserve

their rights to make any argument they wish regarding the methodology, propriety, and quantification of such refund, if any.²

On November 21, 2017, the Missouri Western District Court of Appeals issued an opinion in the 2016 cases (WD80544) that held that the recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission's 2016 Report and Order "as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further proceedings consistent with this opinion".³ On March 7, 2018, the Court of Appeals issued the mandate in the appeal after the Supreme Court of Missouri denied transfer.

On March 30, 2018, OPC filed in both the 2016 and 2017 cases a pleading titled *Public Counsel's Recommendation* referencing the Court of Appeals opinion in the 2016 cases and requesting changes to the ISRS. Specifically, OPC requested that the Commission determine which ISRS costs from Spire Missouri's 2016 and 2017 cases were ineligible for ISRS cost recovery and apply any over-collection to the rate base set in Spire Missouri's general rate cases, GR-2017-0215 and GR-2017-0216 ("rate cases"), as an offset in future ISRS filings pursuant to Section 393.1015.8, RSMo. On the date that OPC's pleading was filed, the Amended Report and Order in the rate cases had already become effective, although compliance tariffs had not yet been approved.⁴

² Unanimous Stipulation and Agreement, File Nos. GO-2017-0201 and GO-2017-0202, p. 3.

³ *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).

⁴ 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.

In compliance with the Western District Court of Appeals' opinion remanding the 2016 cases back to the Commission for further proceedings, the Commission conducted oral arguments and an evidentiary hearing to receive additional evidence for the 2016, 2017, and 2018 ISRS cases.⁵ In total, the Commission admitted the testimony of ten witnesses and 29 exhibits into evidence and took official notice of several documents. 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.⁶

Discussion

Although the Commission conducted an evidentiary hearing in these cases, no law requires one.⁷ Therefore, this action is not a contested case,⁸ and the Commission need not separately state its findings of fact.⁹

The Commission's Order Approving Unanimous Stipulation and Agreement, issued in these cases on April 26, 2017, was a final order and concluded these proceedings except for subsequent compliance tariff filings. OPC's subsequent pleading titled *Public Counsel's Recommendation* on March 30, 2018, ultimately requested (1) a determination to modify the ISRS amounts previously approved in the order approving the Unanimous Stipulation and Agreement in light of the Appeals Court decision, and (2) apply or offset the over-collected ISRS revenues of \$4,905,862.58 to the rate base from the rate cases pursuant to Section 393.1015.8, RSMo.

⁵ Transcript ("Tr."), Volume 3.

⁶ "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).

⁷ Section 393.1015.2(3), RSMo, provides that "The commission may hold a hearing on the petition and any associated rate schedules..." (emphasis added).

⁸ Section 536.010(4), RSMo 2016, states that "Contested case" means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.

⁹ *State ex rel. Public Counsel v. Pub. Serv. Comm'n*, 210 S.W.3d 344, 355 (Mo. App. 2006).

The first part of the requested relief would require the Commission to modify the final order approving the Unanimous Stipulation and Agreement and setting ISRS revenues in these ISRS cases. The second portion of the requested relief, however, would ultimately require the Commission to modify the Commission's Amended Report and Order from the rate cases, currently under appeal. In general, the Commission has the legal authority to modify or vacate its orders.¹⁰ Also, the Commission is entitled to interpret its own orders and to ascribe to them a proper meaning.¹¹ Section 393.1015.8, RSMo, permits the Commission to disallow in a general rate case the recovery of costs for eligible infrastructure system replacements previously included in an ISRS and offset a future ISRS to account for those over-collections. Those rate cases have been decided and are currently under appeal in case no. SD35485. The Commission is without authority to issue any substantive orders in those cases while on appeal.¹² Therefore, it would be improper for the Commission to attempt to modify the final order of those rate cases, especially in the context of a separate ISRS case, so the Commission will deny OPC's request to modify the Amended Report and Order in the rate cases.

Since OPC filed its request in these ISRS cases, the Commission will consider OPC's pleading as a request to modify the final Commission order approving the Unanimous Stipulation and Agreement issued on April 26, 2017, in these ISRS cases. The stipulation and agreement did provide for the situation that eventually occurred, where the Court of Appeals reversed the Commission's 2016 Report and Order on the grounds that

¹⁰ Section 386.490.2, RSMo, "Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission, unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States." (emphasis added)

¹¹ *State ex rel. Beaufort Transfer Co. v. Pub. Serv. Com'n of Missouri*, 610 S.W.2d 96, 100 (Mo. App.1980).

the Commission's decision to allow ISRS cost recovery for plastic pipe replacements was unlawful or unreasonable. In that situation, the signatories agreed that they may request that the Commission determine the amount of refund, if any, that shall be made in both the 2016 and 2017 cases as a result of such reversal, and that Spire Missouri and Staff agreed not to challenge OPC's right to make such request.

The signatories did not agree on a specific mechanism to effectuate such refunds. Even if they had so agreed, however, the Commission cannot order a refund of ISRS costs without statutory authority. In the remand of the 2016 ISRS cases, which was conducted concurrently with the hearing in these cases, the Commission found Spire Missouri's plastic pipe replacements to be ineligible, but it also concluded that it did not have statutory authority to refund those ineligible costs to customers.¹³ 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 in those 2016 cases to return ineligible costs.¹⁴

The same reasoning prevents the refund of ineligible ISRS costs in the 2017 cases. Even if the Commission now determines that some of those prior costs in the 2017 cases were improperly classified as ISRS-eligible, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.¹⁵ First, there

¹² *State ex rel. Missouri Cable Telecommunications Ass'n v. Missouri Pub. Serv. Com'n*, 929 S.W.2d 768 (Mo. App. 1996).

¹³ 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. The Commission takes official notice of this Report and Order on Remand.

¹⁴ *Id.*

¹⁵ *Matter of Missouri-Am. Water Co.*, 516 S.W.3d 823, 828 (Mo. 2017).

was not an appellate decision of the 2017 cases to allow the possibility of Section 386.520 rate adjustment mechanisms. Second, the ISRS statutes do not allow superseded ISRS tariffs to be corrected retroactively after a general rate case includes those infrastructure costs in base rates.¹⁶ Therefore, since there is no legal remedy, the Commission concludes that OPC's request to modify the final order approving the stipulation and agreement is moot and will be denied.

Since the Commission is issuing orders in related Spire Missouri ISRS cases concurrently with these cases, the Commission will, consistent with those other orders, make this order effective on October 1, 2018.

THE COMMISSION ORDERS THAT:

1. The requests submitted in the Office of the Public Counsel's pleading titled *Public Counsel's Recommendation*, filed on March 30, 2018, are denied.
2. This order shall become effective on October 1, 2018.



BY THE COMMISSION

A handwritten signature in blue ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Bushmann, Senior Regulatory Law Judge

¹⁶ *Id.*

MISSOURI PUBLIC SERVICE COMMISSION

September 20, 2018

File/Case No. GO-2017-0201 and GO-2017-0202

**Missouri Public Service
Commission**
Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

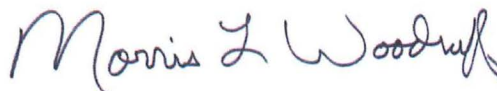
**Missouri Public Service
Commission**
Jeff Keevil
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jeff.keevil@psc.mo.gov

Spire
Michael C Pendergast
423 Main Street
St. Charles, MO 63301
mcp2015law@icloud.com

Spire
Rick E Zucker
14412 White Pine Ridge Ln
Chesterfield, MO 63017-6301
zuckerlaw21@gmail.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.

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

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System) **File No. GO-2016-0333**
Replacement Surcharge in its Laclede Gas Service)
Territory)

In the Matter of the Application of Laclede)
Gas Company to Change its Infrastructure) **File No. GO-2016-0332**
System Replacement Surcharge in its)
Missouri Gas Energy Service Territory)

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System) **File No. GO-2017-0201**
Replacement Surcharge in its Missouri Gas Energy)
Service Territory)

In the Matter of the Application of Laclede)
Gas Company to Change its Infrastructure) **File No. GO-2017-0202**
System Replacement Surcharge in its Laclede)
Gas Service Territory)

**SPIRE MISSOURI INC'S APPLICATION
FOR REHEARING OR RECONSIDERATION
OF THE COMMISSION'S REPORT AND ORDER ON REMAND**

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 386.500.1 RSMo, applies to the Commission for rehearing of its September 20, 2018 Report and Order on Remand (the “Remand Order”) in Case Nos. GO-2016-0332 and 0333 (the “2016 Cases”), or for reconsideration of the Remand Order.¹ In support thereof, Spire Missouri states as follows:

1. In the Remand Order, the Commission determined that Spire East and West failed

¹ The Commission’s order in Case Nos. GO-2017-0201 and 0202 is addressed below.

to demonstrate by a preponderance of the evidence that the cost to replace certain plastic pipe was ISRS-eligible, and found the costs of those plastic pipe replacements in the 2016 Cases collected in rates to be approximately \$3.1 million, consisting of \$2,283,628 for Spire East, and \$827,159 for Spire West.² The Commission further determined that it does not have the statutory authority to order a refund of ineligible ISRS costs from prior ISRS cases.³ As a result, the Commission decided that it would take no further action in the 2016 cases, including no action to refund any ISRS costs previously collected by the Company.⁴

2. In Case Nos. GO-2017-0201 and 0202 (the “2017 Cases”), the Commission issued an Order Denying Request to Modify Commission Order, in which the Commission denied Public Counsel’s request to modify the order in the Company’s rate cases to apply Public Counsel’s view of the effect of the Western District Court of Appeals’ November 21, 2017 Opinion (the “Opinion”) on the 2017 Cases.

3. In a separate order in Spire East and West’s current ISRS cases, Case Nos. GO-2018-0309 and 0310 (the “Current Cases”), the Commission excluded approximately \$4 million in ISRS revenues that it considered to be related to the cost to replace ISRS-ineligible plastic. By separate pleading, the Company is seeking rehearing of that order.

4. The Company does not take issue with the final outcome of the Remand Order, or of the order in the 2017 Cases, as both permit the Company to retain its previously collected ISRS revenues. If no party seeks rehearing or appeal of the Remand Order, the Company is willing to avoid the rehearing and appeal process in these cases, and address its disagreement on the cost issue in the Current Cases. However, Spire Missouri is filing this application in order to preserve

² Remand Order, p. 13

³ Id., p. 16

⁴ Id., p. 17

its rights to challenge the Commission's decision in these cases with respect to the amount of cost incurred to replace plastic facilities. To the extent that the Commission's decision regarding the cost to replace plastic facilities also applies in the 2017 Cases, Spire Missouri is filing this application in those cases as well.

5. As indicated above, the Remand Order arose from the Opinion, which reversed and remanded the Commission's Report and Order in the 2016 Cases, 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 Opinion instructed the Commission to determine what costs, if any, were incurred to replace such plastic facilities. 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.⁵ The Court also recognized that some plastic facilities may themselves be worn out or deteriorated.⁶ 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.

6. The Company respectfully submits that sufficient reasons exist for the Commission to grant rehearing under 386.500.1 RSMo, or to reconsider the Remand Order. Pursuant to Section 386.500.2, Spire Missouri must set forth each ground it considers to be unlawful, unjust or unreasonable or risk losing its right to raise that ground on appeal. Therefore, the Company is including all of its grounds in this application. Specifically, the Company submits that the Remand Order was unreasonable as it was not based on competent and substantial evidence, and because it reached a conclusion that was contrary to the overwhelming weight of the evidence. In doing so,

⁵ Opinion, p. 6

⁶ *Id.*, p. 5

the Remand Order failed to follow the court's instructions on remand to determine the cost incurred to replace plastic that was not worn out or in a deteriorated condition. The Remand Order also erred in arbitrarily disregarding a long history of permitting audit sampling where it is not feasible or practical to review every item. This decision also violated the Company's due process right to a full and fair hearing held at a meaningful time and in a meaningful manner.

7. Spire Missouri agrees that the primary directive of this remand proceeding was to determine the cost to replace plastic facilities that were not worn out or deteriorated. Meeting this directive calls for a cost calculation and not an evaluation of prudence. The evidence produced by the Company in the remand proceeding, and its arguments in this pleading, focus on cost and not on prudence.

8. In companion ISRS cases tried at the same time on the same facts as the above referenced cases, the Commission found that "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."⁷

9. The Commission also found that state or federal safety requirements mandate Spire Missouri to implement a cast iron and bare steel main replacement program. The Commission concluded that cast iron and steel pipes are worn out or deteriorated, and were replaced to comply with these requirements, so the costs of this program are ISRS eligible. Specifically, the Commission stated as follows:

"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*

⁷ Case Nos. GO-2018-0309 and 0310, Report and Order dated September 20, 2018, p. 6, par. 13; Tr. Vol. 3, p. 373-374

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.*⁸ (emphasis supplied)

10. Given the evidence and the Commission findings, there is no doubt that Spire Missouri incurs ISRS-eligible costs to replace cast iron and bare steel. This cost to replace cast iron and bare steel to comply with the mandate is the baseline ISRS-eligible cost of the program. The question the Court asked the Commission to answer is how much more above the baseline cost did Spire Missouri incur to bypass, replace or retire plastic, in addition to replacing cast iron and bare steel. So, for example, if replacing only the cast iron and bare steel would have cost \$1.0 million, then \$1.0 million would be the baseline ISRS cost customers would have paid. If replacing cast iron, bare steel and plastic would have cost \$1.2 million, the Commission could find that the incremental cost to replace plastic would be \$200,000.

11. Spire Missouri was the only party in the case to submit evidence that actually addressed the cost incurred to replace plastic. The evidence provided by two experienced Company engineers showed that the Company first addressed the matter in the 2011 time frame when it decided to ascertain the most cost-effective method to implement its systematic main replacement program.⁹ The Company gathered information from industry groups and its own field crews, and decided that a program that featured directional boring of plastic main to bypass the old cast iron and interspersed plastic was the most economic method available. The Company

⁸ Case Nos. GO-2018-0309 and 0310, Report and Order dated September 20, 2018, p. 13.

⁹ Ex. 3, p. 10, lines 14-22

experimented on some early projects and concluded that the new approach was very effective.¹⁰ With respect to service lines, the Company determined that it would transfer, or reuse, service lines where operationally and economically feasible, and renew (i.e. replace) them where this was not.¹¹ Since a main replacement required the reattachment of service lines to the main line regardless of the method chosen, the witnesses testified that the decision to replace plastic service lines did not change the fiscal superiority of the new replacement method.¹² Neither Staff nor OPC disputed these facts.

12. In short, replacing cast iron, bare steel and some plastic by bypassing the old main lines was less expensive than replacing just the cast iron and bare steel portions of the system. Recall that in the example above, replacing only the cast iron and bare steel would have cost \$1.0 million. The Company found that replacing cast iron, bare steel and plastic costs \$950,000. Since replacing cast iron, bare steel and plastic costs \$50,000 *less* than replacing just the cast iron and bare steel, there is no incremental cost to replace plastic.

13. Certainly Spire Missouri believes its approach to cast iron and bare steel replacement has been prudent. However, as emphasized above, this exercise is not about prudence; it's about the cost to replace plastic. And that cost is zero.

14. Returning to the evidence, the only party that provided competent and substantial evidence on the cost to replace plastic was Spire Missouri, through the testimony of its two engineers that the cast iron and steel main replacement programs were engineered to be cost efficient. The only party who supported its testimony with analysis was Spire Missouri, who analyzed 10 different projects, nine of which had been handpicked by OPC to support its original

¹⁰ Tr. 389-91.

¹¹ Lauber Direct, Ex. 4, p. 5, lines 1-10; Tr. 367

¹² Ex. 3, p. 4, lines 3-9; Ex. 6, p. 6, line 11 to p. 7; Tr. 390-91.

case. The 10 samples showed an average cost that was 5% less than the baseline cost that retained plastic instead of replacing it.

15. The Company witnesses testified that the 10 samples were representative of the larger population of ISRS-eligible safety projects. Staff witness Sommerer testified 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.”¹³ The Company’s analysis clearly confirmed the position of the Company engineers, the only technical experts to testify in the case.¹⁴ The analysis proved that no additional cost is driven by the replacement of plastic. In light of the agreement of Spire Missouri and Staff on this point, we sincerely urge the Commission to revisit and revise the Remand Order’s errant finding that Spire’s information was inadequate.

16. The other parties freely admitted that they did not consider what actually drove the costs. Instead they merely allocated cost based on a percentage of plastic compared to other materials. This mathematical exercise is completely irrelevant to determining the actual cost to replace plastic over and above the cost to replace cast iron and bare steel.

17. Competent and substantial evidence is evidence that, if believed, has probative force upon the issues.¹⁵ It is evidence which the trier of fact could reasonably use to make its findings.¹⁶ In this case, even though the Commission believed that Staff got its math right, Staff’s answer carries no probative force on the question of how much it cost to replace plastic. Within the context of an ISRS-eligible safety project that involves replacing cast iron and bare steel, the task here was to ferret out the incremental cost, if any, to replace plastic facilities that are not ISRS-eligible. The Commission cannot reasonably place any value on the simple proportion presented

¹³ Tr. p. 498, line 23 to p. 499, line 2 (*emphasis supplied*).

¹⁴ The Safety Staff also has engineers, but Staff chose not to proffer any testimony from them.

¹⁵ *Missouri Real Estate Appraisers Comm'n v. Funk*, 306 S.W.3d 101, 106 (Mo.App.W.D.2010)

¹⁶ *Spencer v. Zobrist*, 323 S.W.3d 391 (W.D. Mo. 2010)

by Staff to accomplish this task. This is especially true where Staff itself placed no value on its own methodology.¹⁷

18. The Remand Order is unlawful because it fails to comply with the legal principles set forth in the Opinion, including the specific remand instructions given to the Commission. Specifically, it fails to use the only methodology that actually quantified the impact of plastic retirements on ISRS costs, instead using Staff's methodology that even its own proponent freely conceded was never designed to -- and in fact did not -- address the ultimate question of the cost impact of replacing plastic facilities. The Remand Order resulted in ISRS costs being excluded even though they were not in any way caused by the replacement or retirement of plastic facilities -- a result that is clearly not in keeping with the Court's remand instructions.

19. Despite the evidence provided by the Company, the Remand Order concluded that the number of projects and work orders analyzed by the Company were "far too few" to support the proposition that no cost was incurred to retire plastic facilities.¹⁸ The Remand Order does not explain, however, what academic or scientific literature was consulted, what expert advice was 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 Remand Order properly recognized the validity of the engineering analysis approach taken by the Company, it arbitrarily

¹⁷ As the Company discussed at length in its Brief, Staff witness Bolin repeatedly criticized the percentage method endorse 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 could not identify the cost drivers 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.

¹⁸ Remand Order, p. 13

determined that approach was inadequate solely because it was not performed on all ISRS projects.¹⁹

20. The rejection of a representative sample to support the Company's position on the cost impact of plastic retirements is also at odds with the Commission's 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.²⁰ 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 employed by gas and electric utilities use to measure usage for billing. For many years now, the Commission has permitted these utilities to use a statistical sampling of a limited number of meters to verify the accuracy of a significantly larger population of meters in the same vintage or class.²¹ Given this routine use of representative sampling for various regulatory purposes, given the Company's testimony that its sample of ISRS projects was

¹⁹The 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 program, contained numerous small projects covering facilities that needed to be replaced because they had become worn out or were in a deteriorated condition. All of this work is ISRS-eligible, as verified by Company witness Glenn Buck's analysis of more than 100 individual tickets in a typical blanket work order. His analysis determined that every replacement was done for a safety-related reason, including leaks, corrosions and removal of copper pig tails. (Ex. 6, p. 6). The Remand Order 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.

²⁰See 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.

²¹See *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.

representative of the results that would be experienced across other ISRS projects, and given the Staff's acknowledgment that the cost savings shown by the sampling was likely representative of the larger universe of projects, the Remand Order's summary rejection of the sample employed to assess the cost impact of plastic retirements was arbitrary, capricious and unreasonable.²²

21. The Remand Order also erred in introducing this entirely new standard prohibiting sampling after the record closed on September 6. By doing so, the Company was denied any opportunity to present evidence to rebut this determination or to 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.²³

22. Under the circumstances, the Company provided sufficient evidence for the Commission to comply with the Missouri Court of Appeals' remand instruction to assess the impact of plastic retirements on ISRS costs. The Company requests that the Commission evaluate the evidentiary record anew and find that no incremental costs resulted from the plastic retirements.

²²The 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 decided to hold a new evidentiary hearing on the plastic issue and the date 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. Adding this element of futility to the new standard employed by the Commission for excluding ISRS costs in these cases only underscores the arbitrary and capricious nature of the Commission's decision.

²³As 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 on a critical issue cannot be full, fair or meaningful when it is never held.

WHEREFORE, Spire Missouri respectfully requests that the Commission grant rehearing or reconsideration, and modify the Remand Order to find that no ISRS costs are attributable to the replacement or retirement of plastic facilities

Respectfully submitted,

SPIRE MISSOURI INC.

/s/ Michael C. Pendergast (#31763)

Of Counsel, Fischer & Dority, P.C.

423 (R) South Main Street

St. Charles, MO 63301

Telephone: (314) 288-8723

Email: mcp2015law@icloud.com

/s/ Rick Zucker (#49211)

Zucker Law LLC

14412 White Pine Ridge

Chesterfield, MO 63017

Telephone: (314) 575-5557

E-mail: zuckerlaw21@gmail.com

CERTIFICATE OF SERVICE

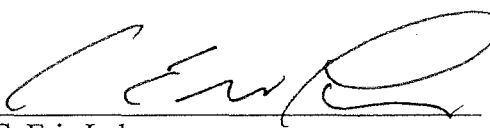
The undersigned certifies that a true and correct copy of the foregoing pleading was served on Staff and the Office of the Public Counsel, on this 28th day of September 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker

VERIFICATION

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

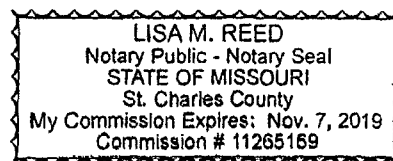
C. Eric Lobser, being duly sworn, on his oath states that he is Vice-President, Regulatory and Government Affairs, of Spire Missouri Inc., that he has read the foregoing application and that the matters set forth therein are true and correct to the best of his knowledge, information and belief.


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



**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 17th day of
October, 2018.

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-2017-0201

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-2017-0202

ORDER DENYING APPLICATIONS FOR REHEARING

Issue Date: October 17, 2018

Effective Date: October 17, 2018

On September 20, 2018, the Missouri Public Service Commission issued an *Order Denying Request to Modify Commission 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. 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 or Reconsideration of the Commission's Report and Order on Remand is denied.
3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Bushmann, Senior Regulatory Law Judge

MISSOURI PUBLIC SERVICE COMMISSION

October 17, 2018

File/Case No. GO-2017-0201 and GO-2017-0202

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

**Missouri Public Service
Commission**

Jeff Keevil
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
jeff.keevil@psc.mo.gov

Spire

Michael C Pendergast
423 Main Street
St. Charles, MO 63301
mcp2015law@icloud.com

Spire

Rick E Zucker
14412 White Pine Ridge Ln
Chesterfield, MO 63017-6301
zuckerlaw21@gmail.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.