

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



In the Matter of the Application of Spire )  
 Missouri, Inc. to Change its Infrastructure ) **File No. GO-2019-0356**  
 System Replacement Surcharge in its Spire ) Tracking No. YG-2020-0009  
 Missouri East Service Territory )

In the Matter of the Application of Spire )  
 Missouri, Inc. to Change its Infrastructure ) **File No. GO-2019-0357**  
 System Replacement Surcharge in its Spire ) Tracking No. YG-2020-0010  
 Missouri West Service Territory )

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**REPORT AND ORDER**

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**Issue Date: October 30, 2019**

**Effective Date: November 12, 2019**

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OF THE STATE OF MISSOURI**

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System Replacement Surcharge in its Spire ) Tracking No. YG-2020-0010  
Missouri West Service Territory )

**APPEARANCES**

**SPIRE MISSOURI:**

**Goldie Bockstruck** and **Michael Pendergast**, Spire Missouri, Inc., 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101.

**OFFICE OF THE PUBLIC COUNSEL:**

**John Clizer**, Associate Counsel, Department of Commerce & Insurance, 200 Madison Street, Suite 650, P.O. Box 2230, Jefferson City, Missouri 65102.

**STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Robert S. Berlin**, Deputy Counsel, and **Karen Bretz**, Staff Counsel, Department of Economic Development, 200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, Missouri 65102.

**SENIOR REGULATORY LAW JUDGE:** Nancy Dippell

## REPORT AND ORDER

### I. Procedural History

On July 15, 2019, Spire Missouri, Inc. (“Spire Missouri” or “Company”) filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Spire Missouri East and Spire Missouri West service territories. Spire Missouri requested recovery of “new” infrastructure replacement costs for the period from February 1, 2019, through May 31, 2019 (“New ISRS Request”). In the applications, Spire Missouri also requested recovery of “old” infrastructure replacement costs for the period from October 1, 2017, through June 30, 2018 (“Old ISRS Request”).

The Commission issued notice of the applications and provided an opportunity for interested persons to intervene.<sup>1</sup> On July 18, 2019, Spire Missouri filed its tariff revision (Tariff Tracking No. YG-2020-0009 and YG-2020-0010). On July 25, 2019, the Commission suspended the tariffs until November 12, 2019.<sup>2</sup> The City of St. Joseph, Missouri, applied for and was granted intervention.

On September 13, 2019, the Staff of the Commission (“Staff”) filed its recommendations. Staff recommended that the Commission reject the original tariff sheets and approve ISRS adjustments for Spire Missouri based on Staff’s determination of the appropriate amount of ISRS revenues in each case.

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<sup>1</sup> Order Directing Notice, Setting intervention Deadline, and Directing Filings, File Nos. GO-2019-0356 and GO-2019-0357 (July 17, 2019).

<sup>2</sup> Order Suspending Tariff Sheets, File Nos. GO-2019-0356 and GO-2019-0357 (July 25, 2019).

The Office of the Public Counsel (“Public Counsel”) filed its objections and request for hearing on September 13, 2019.<sup>3</sup> Public Counsel objected to the applications arguing that Spire Missouri was seeking recovery of certain costs that were not ISRS-eligible.

On September 30, 2019, the parties identified the following issues for the hearing:

A. Are all costs included in the Company’s ISRS filings in these cases eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding?

B. If a Party believes that certain costs are not eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding, what are those costs and why are they not eligible for inclusion?

C. How should income taxes be calculated for purposes of developing the ISRS revenue requirement in these cases?<sup>4</sup>

The Commission held an evidentiary hearing on October 2, 2019. During the course of the hearing the parties settled the issues regarding income taxes. A stipulation and agreement regarding the income tax issue was filed on October 2, 2019.<sup>5</sup> The parties filed simultaneous briefs on October 11, 2019.

On October 29, 2019, Staff and Spire Missouri each filed updated revenue requirements that incorporated the results from the tax issue settlement. Spire Missouri stated that it had reviewed Staff’s numbers and agreed that the calculations were done consistently with the settlement agreement and Staff’s position on the other issues. Staff stated that Public Counsel had also reviewed its filing and was unaware of any objection to its calculations. Public Counsel did not respond.

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<sup>3</sup> The Missouri Office of the Public Counsel’s Objections to Spire Missouri’s Application to Change Its Infrastructure System Replacement Surcharge and Request for an Evidentiary Hearing (filed September 13, 2019).

<sup>4</sup> List of Issues, List and Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements (filed September 30, 2019), para. 2.

<sup>5</sup> Stipulation and Agreement Regarding Income Tax Issue (filed October 2, 2019).

## II. Stipulation and Agreement

Staff and Spire Missouri reached a settlement agreement on the income tax issue and filed that agreement on October 2, 2019. The agreement set out a methodology for calculating income taxes in the development of the ISRS revenue requirement. The parties agreed that:

[F]or purposes of these cases, the revenue requirement before grossing up for taxes will be reduced to reflect a tax deduction related to interest expense. The interest expense deduction will be calculated by multiplying the approved ISRS rate base by the Company's weighted cost of debt from its last general rate proceedings (1.89%). After accounting for the interest deduction, the revenue requirement will be multiplied by the marginal income tax rate. At that point, the tax gross up will be split 52%/48% with 52% of the tax gross up included in the Company's total ISRS revenue requirement. Should the UOI change as a result of an agreed revision or Commission order, income taxes will be adjusted accordingly using the same methodology.<sup>6</sup>

Commission rule 20 CSR 4240-2.115(2)(B)<sup>7</sup> allows nonsignatory parties seven days to object to a nonunanimous stipulation and agreement. More than seven days have passed and no party objected. The Commission has considered the stipulation and agreement regarding income taxes and finds it to be a reasonable resolution of the income tax issue. The Commission will approve the agreement. The Commission incorporates the provisions of the *Stipulation and Agreement Regarding Income Tax Issue* into this order as if fully set forth herein and directs the signatories to comply with its terms.

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<sup>6</sup> Stipulation and Agreement Regarding Income Tax Issue (filed October 2, 2019), para. 3.

<sup>7</sup> Effective August 28, 2019, all of the Commission's regulations were transferred from the Department of Economic Development's (DED) Title 4, Chapter 240, to the Department of Commerce and Insurance's (DCI) (formerly Department of Insurance, Financial Institutions and Professional Registration) Title 20, Chapter 4240.

### III. Dismissal of the “Old ISRS Request” for Lack of Jurisdiction

The infrastructure replacement costs in the Old ISRS Request were previously denied by the Commission and those projects found ineligible under the requirements of the ISRS statute in File Nos. GO-2018-0309 and GO-2018-0310.<sup>8</sup> Both Spire Missouri and Public Counsel appealed the Commission’s decisions in those cases to the Missouri Court of Appeals, Western District, and that appeal is pending.<sup>9</sup>

Spire Missouri also requested recovery of the Old ISRS Request in File Nos. GO-2019-0115 and GO-2019-0116. In the previous cases, Staff filed a motion to dismiss the Old ISRS Request arguing that the Commission lacked jurisdiction over the Old ISRS Request because the Commission’s previous orders in File Nos. GO-2018-0309 and GO-2018-0310 were on appeal at the Missouri Court of Appeals, Western District.<sup>10</sup> The Commission determined that it lacked jurisdiction to hear the Old ISRS Request and granted Staff’s motion to dismiss those portions of the cases.<sup>11</sup> In the current cases, Staff did not file a formal motion to dismiss, but stated its opinion that the Commission continues to lack jurisdiction due to the Old ISRS Request being on appeal.<sup>12</sup> Staff did

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<sup>8</sup> See, *In the Matter of the Application of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge in Its Spire Missouri East Service Territory*, Report and Order, File No. GO-2018-0309 (September 20, 2018); and *In the Matter of the Application of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge in Its Spire Missouri West Service Territory*, Report and Order, File No. GO-2018-0310 (September 20, 2018). (“File Nos. GO-2018-0309 and GO-2018-0310”).

<sup>9</sup> Missouri Court of Appeals, Western District, Docket No. WD82302 (consolidated with Docket No. WD82373).

<sup>10</sup> *In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in Its Spire Missouri East Service Territory*, Report and Order on Rehearing, File No. GO-2019-0115 (August 21, 2019), p. 16; and *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-2019-0116 (August 21, 2019), p. 16.

<sup>11</sup> Report and Order on Rehearing, File Nos. GO-2019-0115 and GO-2019-0116 (August 21, 2019), p. 22.

<sup>12</sup> Staff Recommendation, File No. GO-2019-0356 (filed September 13, 2019), para. 8; Staff Recommendation, File No. GO-2019-0357 (filed September 13, 2019), para. 8; Exhibit 100, Staff Direct Report (Spire Missouri East), pp. 3-4; and Exhibit 101, Staff Direct Report (Spire Missouri West), pp. 3-4.

not include the costs of recovery for the Old ISRS Request in its recommended revenue requirements.<sup>13</sup>

Spire Missouri continues to advocate for the recovery of the Old ISRS Request.<sup>14</sup> However, Spire Missouri recognized in its applications that the Commission was likely to rule in a similar manner with regard to the Old ISRS Request and provided as Appendix B to its applications the revenue requirement amounts associated with the Old ISRS Request.<sup>15</sup>

In the Report and Order in File Nos. GO-2018-0309 and GO-2018-0310, the Commission specifically found “that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated”<sup>16</sup> and that Spire Missouri had not provided “sufficient information to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.”<sup>17</sup> By requesting recovery for the Old ISRS Request, Spire Missouri is asking the Commission to make a new decision on the same costs that it previously found ineligible for ISRS recovery. Spire Missouri specifically appealed the Commission’s decision that these costs were not eligible,<sup>18</sup> vesting that issue in the Court of Appeals.

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<sup>13</sup> Exhibit 100, Staff Direct Report, pp. 3-4; and Exhibit 101, Staff Direct Report, pp. 3-4.

<sup>14</sup> Exhibit 1, Verified Application and Petition of Spire Missouri Inc. to Change Its Infrastructure System Replacement Surcharge for It’s[sic] Spire Missouri East Service Territory, pp. 5-6 and Appendix B (“Verified Application”); and Exhibit 2, Verified Application and Petition of Spire Missouri Inc. to Change Its Infrastructure System Replacement Surcharge for It’s[sic] Spire Missouri West Service Territory, pp. 5-6 and Appendix B (“Verified Application”).

<sup>15</sup> Exhibits 1 and 2, Verified Applications.

<sup>16</sup> Report and Order, File Nos. GO-2018-0309 and GO-2018-0310 (September 20, 2018), p. 14.

<sup>17</sup> Report and Order, File Nos. GO-2018-0309 and GO-2018-0310 (September 20, 2018), p. 15. The Report and Order also specifically refers to the “*ineligible* plastic pipe replacements” and “the *ineligible* costs” which seems to be a determination that these projects and costs are ineligible for ISRS recovery.

<sup>18</sup> Spire Missouri’s Notice on Appeal at the Western District says it is appealing the Commission’s Report and Order because, “the Commission erroneously determined that certain costs incurred by 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.”

Spire Missouri argues that the ISRS statute requires the Commission to hear the Old ISRS Request because the statute provides for the recovery of “eligible infrastructure system replacements”<sup>19</sup> which includes gas utility plant projects that “[w]ere not included in the gas corporation’s rate base in its most recent general rate case.”<sup>20</sup> However, the statute also says that a gas corporation “may file a petition . . . for the recovery of costs for eligible infrastructure system replacements.”<sup>21</sup> The statute authorizes one filing, but does not necessarily authorize the repeated filing of petitions to recover costs that the Commission has already determined are ineligible.

The settled case law is that the Commission loses jurisdiction to the Court once an appeal has been filed, and the Commission may not modify or alter its order that is being appealed and it may not issue a new order.<sup>22</sup> The Commission maintains jurisdiction to implement its orders that are appealed and the Commission maintains jurisdiction to hear new cases on similar issues or new cases involving the same costs or revenues, such as in a rate case. Even though Spire Missouri presented additional evidence in the prior cases, File Nos. GO-2019-0115 and GO-2019-0116, with regard to the Old ISRS Request, it is still asking the Commission to rehear the evidence from the cases where those costs were rejected as ineligible for ISRS recovery, File Nos. GO-2018-0309 and GO-2018-0310, and to enter a new order based on those costs.

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<sup>19</sup> Subsection 393.1012.1, RSMo (2016). Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

<sup>20</sup> Subsection 393.1009(3)(d), RSMo.

<sup>21</sup> Subsection 393.1012.1, RSMo.

<sup>22</sup> *State ex rel. Missouri Cable Telecommunications Association v. Missouri Pub. Serv. Commission*, 929 S.W.2d 768, 772 (Mo. Ct. App. 1996) (the Commission approved a settlement agreement of the issues that were on appeal. The Court found that approving the settlement agreement was tantamount to modifying its original order that was on appeal. The Missouri Court of Appeals, Western District, stated, “If review of a PSC order is pending before a... court, the PSC may not enter a modified, extended or new order.”).



The Commission continues to conclude that it lacks jurisdiction to hear and make a determination on the portions of the applications dealing with the Old ISRS Request. If the Commission lacks jurisdiction, it may not hear the issue, regardless of there being a formal motion to dismiss. Therefore, those portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

#### **IV. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East and Spire Missouri West.<sup>23</sup>

2. Spire Missouri is a “gas corporation” and a “public utility” as each of those phrases is defined in Section 386.020, RSMo.

3. Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”<sup>24</sup> Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”<sup>25</sup> Public Counsel participated in this matter.

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<sup>23</sup> Exhibits 1 and 2, Verified Applications, pp. 1-2.

<sup>24</sup> Section 386.710(2), RSMo; and 20 CSR 4240-2.010(10) and (15) and 2.040(2).

<sup>25</sup> Section 386.710(3), RSMo; and 20 CSR 4240-2.010(10) and (15) and 2.040(2).

4. Staff is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>26</sup>

5. The last general rate cases applicable to Spire Missouri are File Nos. GR-2017-0215 and GR-2017-0216 (“rate cases”), which were decided by the Commission by order issued on March 7, 2018, effective on March 17, 2018, with new rates effective on April 19, 2018.<sup>27</sup> Those rate cases included rate base investments made through September 30, 2017, and Spire Missouri’s existing ISRS were reset to zero.<sup>28</sup>

6. Spire Missouri filed verified applications and petitions (“Petitions”) with the Commission on July 15, 2019, for its East and West service territories, requesting an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during the period February 1, 2019, through May 31, 2019, with pro forma ISRS costs updated for the months of June and July 2019 (the New ISRS Request).<sup>29</sup>

7. Spire Missouri’s Petitions also requested an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during

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<sup>26</sup> 20 CSR 4240-2.010(10) and (21) and 2.040(1).

<sup>27</sup> *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, Amended Report and Order, File No. GR-2017-0215 (March 7, 2018) (“File No. GR-2017-0215”); *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, Report and Order, File No. GR-2017-0216 (March 7, 2018) (“File No. GR-2017-0216”); Order Approving Tariff in Compliance with Commission Order, File No. GR-2017-0215 (April 4, 2018); Order Approving Tariff in Compliance with Commission Order, File No. GR-2017-0216 (April 4, 2018); and Exhibits 1 and 2, Verified Applications, para. 13.

<sup>28</sup> Section 393.1015.6, RSMo; and Exhibits 1 and 2, Verified Applications, para. 14.

<sup>29</sup> Exhibits 1 and 2, Verified Applications, paras. 7-8.

the period October 1, 2017 through June 30, 2018, to the extent the costs associated with those investments were not previously approved for recovery (the Old ISRS Request).<sup>30</sup>

8. In conjunction with its Petitions, Spire Missouri filed tariff sheets that would generate a total annual revenue requirement of \$8,104,616 for Spire Missouri East<sup>31</sup> and \$6,294,574 for Spire Missouri West.<sup>32</sup> These requests included the Old ISRS Requests and pro forma costs for the months of June and July 2019.<sup>33</sup>

9. The pro forma costs for June and July 2019 were updated with actual cost information resulting in a request for Spire Missouri East of \$7,640,218 (a decrease of \$464,398) and Spire Missouri West of \$6,424,114 (an increase of \$129,540).<sup>34</sup> When these figures are adjusted to include the settlement of the tax issue, the ISRS revenue requirement request for Spire Missouri East is \$6,777,579 and for Spire Missouri West is \$5,694,548.<sup>35</sup>

10. The cumulative ISRS revenue requirement request for Spire Missouri East is \$16,191,318<sup>36</sup> and for Spire Missouri West is \$18,337,362.<sup>37</sup>

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<sup>30</sup> Exhibits 1 and 2, Verified Applications, paras. 7-9.

<sup>31</sup> Exhibit 100, Staff Direct Report (Spire Missouri East), pp. 1-3.

<sup>32</sup> Exhibit 101, Staff Direct Report (Spire Missouri West), pp. 1-3.

<sup>33</sup> Exhibits 100 and 101, Staff Direct Report, pp. 1-3.

<sup>34</sup> Exhibit 3, Spire East Updated Appendices, Appendix A, Schedule 8; Exhibit 4, Spire West Updated Appendices, Appendix A, Schedule 8; and Exhibits 100 and 101, Staff Direct Report, p. 2.

<sup>35</sup> Verified Revenue Requirement Recommendations of Spire Missouri, Inc. (filed October 29, 2019).

<sup>36</sup> Exhibit 3, Spire East Updated Appendices, Appendix A, Schedule 8; and Exhibit 100, Staff Direct Report, p.3. (The cumulative total includes the Old ISRS Request, as well as, a reduction to ISRS revenue requirement for property taxes approved by the Commission in its August 21, 2019 Report and Order on Rehearing in File No. GO-2019-0115, and an adjustment to correct an error in Spire Missouri's application workpapers for File No. GO-2018-0309. Exhibit 100, Staff Direct Report, p. 3, Notes 1-3. The cumulative ISRS revenue requirement request does not include the effects of the tax issue settlement.)

<sup>37</sup> Exhibit 4, Spire West Updated Appendices, Appendix A, Schedule 8; and Exhibit 101, Staff Direct Report, p. 3. (The cumulative total includes the Old ISRS Request, as well as, a reduction to ISRS revenue requirement for property taxes approved by the Commission in its August 21, 2019 Report and Order on Rehearing in File No. GO-2019-0116, and an adjustment to correct an error in Spire Missouri's application workpapers for File No. GO-2018-0310. Exhibit 101, Staff Direct Report, p. 3, Notes 1-3. The cumulative ISRS revenue requirement request does not include the effects of the tax issue settlement.)

11. Spire Missouri did not argue that the plastic pipes being replaced were worn out or in a deteriorated condition. Rather, Spire Missouri argued that the costs to replace the plastic components were less than the costs of reusing the plastic components and, therefore, there are no incremental costs of replacing the plastic.<sup>38</sup> To support its argument, Spire Missouri randomly selected twelve projects (seven from Spire Missouri East and five from Spire Missouri West) from the hundreds of projects<sup>39</sup> presented and compared the costs to replace the facilities under its systematic approach with the estimated costs of the piecemeal approach, where it would have only replaced the cast iron or steel components.<sup>40</sup> According to Spire Missouri's limited costs comparisons, the piecemeal approach would have been 11% to 198% more expensive than the systematic approach.<sup>41</sup>

12. Anticipating that the Commission may continue to order the removal of the plastic components from the ISRS-eligible costs, Spire Missouri presented an alternative calculation using the same methodology Staff used in prior ISRS cases to remove the cost of the replacement of ISRS-ineligible plastic pipes.<sup>42</sup> In that revenue requirement model, the feet of plastic main and service lines replaced or retired were divided by the total footage of the pipe replaced or retired to arrive at the percentage of costs associated with plastic to be removed from ISRS recovery.<sup>43</sup> Staff reviewed all the work orders Spire Missouri provided for its alternative calculations to confirm the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.), and concluded

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<sup>38</sup> Exhibit 5, Hoferlin Direct, p. 13.

<sup>39</sup> Exhibits 1, 2, 3, and 4, Appendices A, B, and C, Schedules 1-5.

<sup>40</sup> Exhibit 5, Hoferlin Direct, pp. 15-16.

<sup>41</sup> Exhibit 5, Hoferlin Direct, p. 16.

<sup>42</sup> Exhibits 1, 2, 3, and 4, Appendix C.

<sup>43</sup> Exhibits 100 and 101, Staff Direct Report, pp. 7-8.

that Spire Missouri's adjustments are consistent with the Commission methodology used in Case Nos GO-2018-0309 and GO-2019-0115.<sup>44</sup>

13. Staff's total ISRS revenue requirement recommendations were \$4,439,498 for Spire Missouri East and \$3,721,343 for Spire Missouri West.<sup>45</sup> These recommendations remove the Old ISRS Request and the percentage of plastic pipes replaced following the methodology used in prior cases. After adjustment for the tax issue settlement, Staff's recommended total ISRS revenue requirement recommendations are \$4,763,180 for Spire Missouri East, and \$3,996,543 for Spire Missouri West.<sup>46</sup>

14. The ISRS requests in the Petitions exceed one-half of one percent of Spire Missouri's base revenue levels approved by the Commission in Spire Missouri's most recent general rate case proceedings, and Spire Missouri's cumulative ISRS revenues, including the Petitions, do not exceed ten percent of the base revenue levels approved by the Commission in the last Spire Missouri rate cases.<sup>47</sup>

15. The Old ISRS Request contains the same costs from the same time period that were previously determined to be ineligible for ISRS recovery in Commission File Nos. GO-2018-0309 and GO-2018-0310.<sup>48</sup> The Old ISRS Request revenue requirement amount for Spire Missouri East is \$1,590,345 and for Spire Missouri West is \$1,383,297.<sup>49</sup>

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<sup>44</sup> Exhibits 100 and 101, Staff Direct Report, pp. 7-8.

<sup>45</sup> Exhibit 100, Staff Direct Report, Schedule 2; and Exhibit 101, Staff Direct Report, Schedule 2.

<sup>46</sup> Staff's Revenue Requirement Updated to Include Tax Stipulation and Agreement (filed October 29, 2019). Spire Missouri also completed an updated calculation of its recommended revenue requirement; however, the Commission need not review those calculations since it is adopting Staff's recommendation that Spire Missouri has agreed was calculated accurately to reflect Staff's position on the issues as adjusted to reflect the tax settlement impact. See, Verified Revenue Requirement Recommendations of Spire Missouri, Inc. filed October 29, 2019),

<sup>47</sup> Exhibits 100 and 101, Staff Direct Report, pp. 6-7. See, Section 393.1012.1, RSMo.

<sup>48</sup> Exhibits 1 and 2, Verified Applications, para. 9.

<sup>49</sup> Exhibits 100 and 101, Staff Direct Report, p. 2.

16. As set out earlier in this order, the Old ISRS Request portions of the Petitions are dismissed.<sup>50</sup>

17. Spire Missouri attached supporting documentation to its Petitions for completed plant additions. This included detailed tables identifying the plant account/type of addition, work order number, funding project number, work order description, month of completion, addition amount, number of months, depreciation rate, accumulated depreciation, and depreciation expense.<sup>51</sup>

18. Spire Missouri provided a description of the reason for the replacement broken into five categories: A. Service Replacements (i.e. renewals); B. Mains Replaced Under Maintenance "Mtce" - not related to a planned project, but emergency situations (i.e. worn out or deteriorated); C. Encapsulation/Clamping of Cast Iron Main; and D. Cathodic Protection Applied to Steel Mains Plant.<sup>52</sup> The Company also provided a summary of the total costs of each of the categories<sup>53</sup> and revenue requirement, depreciation, rate design, and tax calculations.<sup>54</sup>

19. Spire Missouri attached tables to its Petitions identifying the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.<sup>55</sup> The tables also included a reference to the applicable paragraph of the definition of "Gas utility plant projects" found in Subsection 393.1009(5), RSMo.<sup>56</sup>

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<sup>50</sup> Therefore, even though similar evidence was presented for the Old ISRS Request portions of the Petitions, this Report and Order going forward will cite to only the New ISRS Request portions of the evidence.

<sup>51</sup> Exhibits 1, 2, 3, and 4, Appendix A, Schedules 1, 2, and 3.

<sup>52</sup> Exhibits 1, 2, 3, and 4, Appendix A, Schedule 2.

<sup>53</sup> Exhibits 1, 2, 3, and 4, Appendix A, Schedule 5.

<sup>54</sup> Exhibits 1, 2, 3, and 4, Appendix A, Schedules 7-17.

<sup>55</sup> Exhibits 1, 2, 3, and 4, Appendix A, Schedules 5 and 6.

<sup>56</sup> Exhibits 1, 2, 3, and 4, Appendix A, Schedules 5-6.

20. Spire Missouri is required to implement a program to replace “cast iron transmission lines, feeder lines, or mains,”<sup>57</sup> and implement a program to “cathodically protect or replace”<sup>58</sup> “unprotected steel transmission lines, feeder lines, or mains.”<sup>59</sup> The mandated cast iron and bare steel<sup>60</sup> replacement programs began over 25 years ago.<sup>61</sup>

21. Spire Missouri’s predecessor Laclede Gas Company, began replacing cast iron and bare steel as long ago as the 1950’s due to problematic characteristics of the facilities and their history of failure.<sup>62</sup>

22. Spire Missouri’s predecessor cathodically protected these bare steel mains 30-40 years after they were installed pursuant to the Commission’s gas pipeline replacement rules at 20 CSR 4240-40.030(15).<sup>63</sup> These safety rules were promulgated in 1989 after several gas explosions involving bare steel service and yard lines.<sup>64</sup> At that time, Spire Missouri West’s steel mains had been installed and operating for over 30 years, with some of those facilities being as much as 50 years old.<sup>65</sup>

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<sup>57</sup> 20 CSR 4240-40.030(15)(D).

<sup>58</sup> 20 CSR 4240-40.030(15)(E).

<sup>59</sup> 20 CSR 4240-40.030(15)(E).

<sup>60</sup> When the Commission refers to “bare steel” or “unprotected steel” it means steel pipes that had no protective coating either at the time of installation or after installation. When the Commission refers to “coated steel” it means steel pipes that had a protective coating when they were installed. When the Commission refers to “cathodically protected steel” it means steel pipes that had a cathodic protection applied after installation.

<sup>61</sup> *In the Matter of Approval of Pipeline Replacement Programs Required by 4 CSR 240-40.030(15)*, Order Concerning Pipeline Replacement Programs, File No. GO-91-239 (April 12, 1991). See also: 40 CSR 4240-40.030(15)(E); and Exhibit 6, Leonberger Direct, pp. 5-6.

<sup>62</sup> Exhibit 5, Hoferlin Direct, p. 5.

<sup>63</sup> 20 CSR 4240-40.030(15) states in relevant part:

Replacement/Cathodic Protection Program—Unprotected Steel Transmission Lines, Feeder Lines, and Mains. Operators who have unprotected steel transmission line, feeder lines, or mains shall develop a program to be submitted with an explanation to the commission by May 1, 1990, for commission review and approval. This program shall be prioritized to identify and cathodically protect or replace pipelines in those areas that present the greatest potential for hazard in an expedited manner. . . . (Emphasis added.)

<sup>64</sup> Exhibit 6, Leonberger Direct, p. 6.

<sup>65</sup> Exhibit 5, Hoferlin Direct, p. 20.

23. In 2001, prior to the ISRS statutes being promulgated, the Commission approved a new long-term replacement program for cast iron mains, cathodically protected steel mains, and unprotected steel service and yard lines.<sup>66</sup> As part of that case, it was recognized that these pipes had not been protected for many years after being installed, that numerous leaks had developed, and that a replacement program was needed.<sup>67</sup>

24. Following several gas explosions in 2010 and 2011, resulting in injury and loss of life, a national concern developed regarding the safety of aging cast iron and bare steel pipes.<sup>68</sup> As a result of that concern in April 2011, the Secretary of the Department of Transportation convened a Pipeline Safety Forum with the states and urged utility commissions in each state to “encourage companies . . . to accelerate pipeline repair, rehabilitation, and replacement programs for systems whose integrity cannot be positively confirmed.”<sup>69</sup>

25. The Commission issued a Pipeline Safety Program Report in April 2011.<sup>70</sup> In that report, the Commission noted that cast iron natural gas pipelines that were over 100 years old were still in service in Missouri.<sup>71</sup> The report also noted that aged steel facilities had been involved in two recent (at that time) incidents in Missouri.<sup>72</sup>

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<sup>66</sup> Exhibit 5, Hoferlin Direct, p. 21; and Exhibit 200, Robinett Direct, Schedule JAR-D-8, citing *In the Matter of Missouri Gas Energy’s Application for Approval of Certain Matters Pertaining to Ongoing Cast Iron Main and Service/Yard Replacement as a Part of its Safety Line Replacement Program*, Order Approving Application, File No. GO-2002-50 (September 20, 2001) (“File No. GO-2002-050”).

<sup>67</sup> Exhibit 5, Hoferlin Direct, pp. 21-22.

<sup>68</sup> Exhibit 5, Hoferlin Direct, pp. 6-7.

<sup>69</sup> Exhibit 5, Hoferlin Direct, Schedule CRH-1.

<sup>70</sup> Exhibit 5, Hoferlin Direct, Schedule CRH-4.

<sup>71</sup> Exhibit 5, Hoferlin Direct, p. 9 and Schedule CRH-4, p. 26.

<sup>72</sup> Exhibit 5, Hoferlin Direct, p. 9 and Schedule CRH-4, p. 26; Exhibit 6, Leonberger Direct, p. 14.



26. In December 2011, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) urged state gas utility regulators to accelerate the replacement of high-risk intrastate gas infrastructure including cast iron mains, bare steel pipe, plastic pipe manufactured from 1960 to the early 1980s, mechanical couplings used for joining or pressure sealing, copper pipes, pipelines with inadequate construction records or assessment results, and older pipe that is “vulnerable to failure from time-dependent forces, such as corrosion . . . .”<sup>73</sup>

27. The USDOT Annual Reports for Gas Distribution Systems indicates that natural gas distribution operators outside of Missouri have also accelerated the replacement of their cathodically protected steel mains.<sup>74</sup>

28. In 2018, corrosion of a cathodically protected steel main resulted in a leak incident in Spire Missouri West territory.<sup>75</sup> Also in 2018, there were two leak incidents involving cast iron mains in Spire Missouri East territory.<sup>76</sup>

29. The consensus among industry professionals is that steel facilities initially installed without cathodic protection need to be replaced expeditiously whether or not they have been subsequently cathodically protected because the upward trend in leaks in these facilities will continue.<sup>77</sup>

30. Historically, Spire Missouri had used a piecemeal approach to pipe replacement by replacing pipes when they were leaking or exhibiting conditions that made replacement or repair seem more immediately necessary.<sup>78</sup>

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<sup>73</sup> Exhibit 5, Hoferlin Direct, Schedule CRH-2 (PSHMA Letter dated December 19, 2011, p. 2); and Exhibit 6, Leonberger Direct, p. 12.

<sup>74</sup> Exhibit 5, Hoferlin Direct, pp. 23-24.

<sup>75</sup> Exhibit 5, Hoferlin Direct, p. 24.

<sup>76</sup> Exhibit 5, Hoferlin Direct, p. 24.

<sup>77</sup> Exhibit 5, Hoferlin Direct, p. 23.

<sup>78</sup> Exhibit 5, Hoferlin Direct, pp. 14-15.

31. Cathodic protection will slow corrosion of steel facilities, but it does not repair or mitigate corrosion that has already occurred and it does not eliminate the corrosion completely. Thus, there may be “hot spots” that will cause leaks or other unsafe conditions any time and the steel pipes will eventually need to be replaced.<sup>79</sup>

32. Spire Missouri uses its Distribution Integrity Management Program (“DIMP”) to identify and prioritize the pipeline system according to potential risks.<sup>80</sup> The DIMP identifies the cast iron and bare steel facilities as posing a high risk of leaks or breaks.<sup>81</sup>

33. Spire Missouri’s leak data shows that the overall leak rate on cathodically protected steel mains is higher than on cast iron even though the risks are not ranked as high as cast iron’s risks in the DIMP.<sup>82</sup>

34. In the December 2016 DIMP, corrosion of cathodically protected steel mains is addressed under the rankings of risks.<sup>83</sup> The cathodically protected steel mains ranked only 189 of 220 identified risks. However, the ranking is similar to cast iron and many of the higher ranked risks are things not in the control of the company.<sup>84</sup> Additionally, the risk ranking for corrosion of cathodically protected steel mains changes in the 2019 DIMP so that it first appears as 16 of 233 for Spire Missouri East and 52 of 233 for Spire Missouri West of the identified risks.<sup>85</sup>

35. In 2017, the risk for leaks from a cathodically protected steel main was 20 times higher than the risk for leaks from plastic or coated steel.<sup>86</sup> In 2018, that risk had

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<sup>79</sup> Exhibit 5, Hoferlin Direct, pp. 20-21; Exhibit 6, Leonberger Direct, p. 11; and Transcript, pp. 76, 85-86, and 102.

<sup>80</sup> Exhibit 5, Hoferlin Direct, p. 6. See also, Exhibits 10C, 2019 DIMP, and 202C, 2016 DIMP.

<sup>81</sup> Exhibit 5, Hoferlin Direct, p. 6.

<sup>82</sup> Exhibit 5, Hoferlin Direct, p. 24.

<sup>83</sup> Exhibit 202C, 2016 DIMP, Appendix C, Section C 2.

<sup>84</sup> Exhibit 202C, 2016 DIMP, Appendix C, Section C 2; Transcript, pp. 124 and 152-155.

<sup>85</sup> Exhibit 10C, 2019 DIMP, Appendix C, Section C 3; and Transcript, p. 153.

<sup>86</sup> Exhibit 5, Hoferlin Direct, p 25; and Transcript, p. 80.

decreased as a result of accelerating replacement of the cathodically protected steel mains, but remained 10 times greater than plastic or coated steel.<sup>87</sup>

36. The cast iron pipes being replaced are sixty to one-hundred years old.<sup>88</sup> Cast iron pipes are unsafe to use because they tend to graphitize, making the pipe brittle and subject to cracking and leaking.<sup>89</sup>

37. The Commission determined in prior Spire Missouri ISRS cases that the bare steel and cast iron was in worn out or deteriorated condition.<sup>90</sup>

38. There are no unprotected bare steel mains remaining in either Spire Missouri East or Spire Missouri West territories.<sup>91</sup> The steel pipe being replaced in these cases was bare steel when it was installed; however, 30-50 years later it was cathodically protected.<sup>92</sup>

39. Unprotected bare steel corrodes, diminishing the wall thickness, which causes the possibility of leaks.<sup>93</sup> Steel pipes without cathodic protection will begin to corrode as soon as they are installed underground.<sup>94</sup> The rate of corrosion is relatively quick compared to other types of pipe, such as coated steel.<sup>95</sup> The rate of corrosion will also depend on other factors such as the soil the pipe is in, the level of cathodic protection, and whether there is rock impingement or scratches on the coating.<sup>96</sup> There is no simple

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<sup>87</sup> Exhibit 5, Hoferlin Direct, pp. 24-25; and Transcript, pp. 80-81.

<sup>88</sup> Exhibit 5, Hoferlin Direct, p. 3.

<sup>89</sup> Exhibit 5, Hoferlin Direct, pp. 3-5 and Schedule CRH-2 (PSHMA Letter dated December 19, 2011, p. 2).

<sup>90</sup> Exhibit 5, Hoferlin Direct, pp 3-4 (citing, File Nos. GO-2018-0309, GO-2018-0310, GO-2019-0115, and GO-2019-0116).

<sup>91</sup> Exhibit 200, Robinett Direct, p. 2 and Schedule JAR-D-15, p. 26.

<sup>92</sup> Exhibit 6, Leonberger Direct, pp. 9 and 11-12.

<sup>93</sup> Exhibit 5, Hoferlin Direct, p. 3; and Transcript, pp. 137 and 175.

<sup>94</sup> Transcript, p. 137.

<sup>95</sup> Exhibit 5, Hoferlin Direct, pp.19-20; and Transcript, p. 137.

<sup>96</sup> Transcript, pp. 100-101, 165, and 174-175.

formula that would be an accurate predictor of when bare steel mains that are subsequently cathodically protected should be replaced.<sup>97</sup>

40. Plastic mains that are made of polyethylene will last indefinitely.<sup>98</sup>

41. The pipelines made of cast iron and bare steel that was cathodically protected 30-50 years after its installation are worn out or in a deteriorated condition.<sup>99</sup>

42. Spire Missouri did not perform testing or leak analysis on the cast iron or cathodically protected steel mains replaced.<sup>100</sup> Spire Missouri did not take any coupons (samples) of the cathodically protected steel mains that were replaced.<sup>101</sup>

43. Spire Missouri's witness, Craig R. Hoeflerlin, Vice President – Operations Services for Spire Missouri, has a degree in chemical engineering and has been continuously employed by Spire Missouri since June 1984.<sup>102</sup> He has been in his current position since April 2012. He has decades of experience in engineering, gas supply and control, and construction and maintenance.<sup>103</sup> Mr. Hoeflerlin testified that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of deteriorated state.<sup>104</sup> He testified that based on his experience the types of pipe that Spire Missouri is targeting and replacing are worn out and deteriorated.<sup>105</sup> He also attached photographs to his written testimony and brought into the hearing examples of what he considered to

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<sup>97</sup> Transcript, pp. 75-76.

<sup>98</sup> Transcript, p. 139.

<sup>99</sup> Transcript, p. 89, 103, 105, 170-171, and 188; Exhibit 6, Leonberger Direct, p. 12.

<sup>100</sup> Exhibit 200, Robinett Direct, pp. 5-7.

<sup>101</sup> Transcript, p. 158.

<sup>102</sup> Exhibit 5, Hoeflerlin Direct, p. 1.

<sup>103</sup> Exhibit 5, Hoeflerlin Direct, p. 1.

<sup>104</sup> Exhibit 5, Hoeflerlin Direct, pp. 1-2 and 4.

<sup>105</sup> Exhibit 5, Hoeflerlin Direct, p. 4-5; and Transcript, pp. 70-73.

be illustrative of the entire system's cast iron and cathodically protected steel mains.<sup>106</sup> The Commission finds that testimony to be credible and persuasive.

44. It would be cost prohibitive to physically or visibly evaluate all pipe being replaced. However, depreciable life corresponds with the average service life and is used to determine when an asset is deteriorated and not useful anymore.<sup>107</sup> When the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated condition.<sup>108</sup>

45. The useful life for plastic pipe is 70 years for Spire Missouri East.<sup>109</sup> For Spire Missouri West, the useful life for all mains (plastic, cast iron, and steel) is 50 years. The useful life for service lines is 44 years for Missouri East and 40 years for Missouri West.<sup>110</sup>

46. Most of the cast iron pipes being replaced are 60-100 years old and have already exceeded their useful services lives for depreciation purposes.<sup>111</sup>

47. Blanket work orders are work orders that cover a large number of tasks which remain open for an extended period and contain items that are not planned replacement projects.<sup>112</sup> To determine the amount of blanket work order costs that are not ISRS eligible, Spire Missouri categorized each task in the blanket work order as either ISRS eligible, Spire Missouri categorized each task in the blanket work order as either ISRS eligible or ISRS ineligible, and then found the percentage of ISRS eligible to ISRS

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<sup>106</sup> Exhibit 5, Hoferlin Direct, p. 5 and Schedule CRH-5; and Transcript, pp.71-73.

<sup>107</sup> Transcript, pp. 257-260.

<sup>108</sup> Exhibit 5, Hoferlin Direct, pp. 4-5; and Transcript, pp. 70-73.

<sup>109</sup> Exhibit 200, Robinett Direct, p. 10.

<sup>110</sup> Exhibit 200, Robinett Direct, p. 10.

<sup>111</sup> Exhibit 5, Hoferlin Direct, p.3.

<sup>112</sup> Exhibits 100 and 101, Staff Direct Report, p. 8.

ineligible and applied the ISRS ineligible task percentage to the blanket work order total amounts to calculate the blanket work order costs that are not ISRS eligible.<sup>113</sup>

48. Tasks that Spire Missouri considered ISRS eligible were mandated relocations, replacements due to leak repairs and corrosion inspections, and replacement of copper and cast iron pipe.<sup>114</sup> ISRS ineligible items included relocations at a customer's request, replacements due to excavation damage, replacement of plastic not related to a leak repair, and installation of new services.<sup>115</sup>

49. Staff agreed with Spire Missouri's blanket work order task categorizations and the eligibility of all the tasks included in the blanket work orders.<sup>116</sup> Public Counsel did not challenge the ISRS eligibility of blanket work orders in this case.

50. Spire Missouri changed from a piecemeal approach to replacing its deteriorating infrastructure to a more systemic approach. With this systematic approach, Spire Missouri retires pipes in place and installs new plastic pipes, often in a different location.<sup>117</sup>

51. The plastic pipes are being replaced because they are part of Spire Missouri's systematic replacing parts of its system, not because they were worn out or in a deteriorated condition.<sup>118</sup>

52. The Petitions affirmatively state that the infrastructure system replacements listed on Appendix A and Appendix B to the Petitions: a) did not increase revenues by directly connecting to new customers; b) are currently in service and used and useful; c)

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<sup>113</sup> Exhibits 1 and 2, Verified Applications, p. 7; and Exhibits 100 and 101, Staff Direct Report, p. 8.

<sup>114</sup> Exhibits 100 and 101, Staff Direct Report, p. 8.

<sup>115</sup> Exhibits 100 and 101, Staff Direct Report, p. 8.

<sup>116</sup> Exhibits 100 and 101, Staff Direct Report, p. 8.

<sup>117</sup> Exhibit 5, Hoeflerlin Direct, pp. 14-15.

<sup>118</sup> Exhibit 5, Hoeflerlin Direct, pp.1-2 and 13.

were not included in rate base in Spire Missouri's most recently completed general rate cases, Case Nos. GR-2017-0215 and GR-2017-0216, and d) replaced and/or extended the useful life of existing infrastructure.<sup>119</sup>

53. Public Counsel's witness expressed "concern" about certain work orders that had incomplete, missing, or incorrect information leading the witness to question the ISRS-eligibility of those work orders.<sup>120</sup> However, Spire Missouri's witness explained how occasionally inadvertent coding errors can occur early in the process of entering information into Spire Missouri's work order creation and tracking system.<sup>121</sup>

54. Public Counsel argues that Spire Missouri is requesting ISRS recovery for overheads that do not bear a definite relationship to construction and have instead been assigned using arbitrary or general allocators.<sup>122</sup> Public Counsel's witness referred to the categories of "Director Fees, Administrative & General Salaries, Injuries and Damages, General Office Supplies, and Miscellaneous Administrative & General expense"<sup>123</sup> as being problematic, but did not identify any specific amounts that should be excluded from the overhead allocation or propose an adjustment.<sup>124</sup>

55. Overhead costs is a complex issue requiring a systemic approach and consistency.<sup>125</sup> An ISRS case is conducted on an expedited basis by statute and, therefore, does not allow for an in depth audit or review of overheads.<sup>126</sup> In a general

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<sup>119</sup> Exhibits 1 and 2, Verified Applications, para. 13.

<sup>120</sup> Exhibit 200, Robinett Direct, p. 5 and Schedules JAR-D-2, JAR-D-3, JAR-D-4, and JAR-D-5; and Transcript, pp. 260-263.

<sup>121</sup> Transcript, pp. 212-214.

<sup>122</sup> Exhibit 201, Schallenberg Direct, pp. 8-9; and Transcript, pp. 289-290.

<sup>123</sup> Exhibit 201, Schallenberg Direct, p. 9.

<sup>124</sup> Transcript, p. 289.

<sup>125</sup> Exhibits 100 and 101, Staff Direct Report, p. 10; and Transcript, pp. 196 and 234-235.

<sup>126</sup> Once the Commission receives a petition to establish or change an ISRS, under Section 393.1015.2(3), RSMo, the "commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred and twenty days after the petition is filed."

rate case, all factors affecting rates are considered over a longer time frame allowing for a full examination of complex issues and accounting mechanisms. Spire Missouri was consistent with its last general rate cases, File Nos. GR-2016-0215 and GR-2016-0216, in the application of its overheads in these ISRS cases.<sup>127</sup>

56. Spire Missouri's Controller, Timothy W. Krick, also testified that in his opinion the treatment of overheads in these cases is consistent with long-standing practice and is allowable according to the Uniform System of Accounts ("USOA").<sup>128</sup> Staff's witness also opined that the cost categories identified by Public Counsel are allowed under the USOA.<sup>129</sup>

## **V. Conclusions of Law**

A. Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo. Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo.

B. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as those proposed in the Petitions. Those statutes permit gas corporations to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on its customers' bills.

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<sup>127</sup> Exhibits 100 and 101, Staff Direct Report, pp. 11-12. Additionally, Spire Missouri indicated that even though the company's Cost Allocation Manual ("CAM") and the U.S. Generally Accepted Accounting Principles ("GAAP") are not used in the ISRS accounting calculations, Spire Missouri's methods and procedures are also consistent with the general allocation principles set forth in these documents and principles. Exhibit 7, Krick Direct, p. 10.

<sup>128</sup> Transcript, pp. 190-191; and Exhibit 7, Krick Direct, p. 10.

<sup>129</sup> Transcript, p. 228.



C. Since Spire Missouri brought the Petitions, it bears the burden of proof.<sup>130</sup> The burden of proof is the preponderance of the evidence standard.<sup>131</sup> In order to meet this standard, Spire Missouri must convince the Commission it is “more likely than not” that its allegations are true.<sup>132</sup>

D. Section 393.1012.1, RSMo, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for “eligible infrastructure system replacements.”

E. Eligible infrastructure system replacements are defined in Section 393.1009(3), RSMo, as:

Gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure[.]

F. As defined in Section 393.1009(5):

“Gas utility plant projects” may consist only of the following:

- (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;
- (b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

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<sup>130</sup> “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

<sup>131</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>132</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation[.]

G. Section 393.1015.2(4), RSMo, states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015”.

H. The Missouri Court of Appeals, Western District, has previously overturned the Commission’s decision to allow the costs of plastic components of mains and service lines because they were an integral part of the replacement of the projects as a whole.

The Court stated:

Section 393.1009(5)(a) . . . clearly sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.<sup>133</sup>

The Court found that even though it may have been a prudent decision and may have enhanced safety, Laclede (now Spire Missouri) had not shown that there was a state or federal safety requirement mandating the replacement of plastic pipe that was not shown to be in worn out or deteriorated condition. Therefore, the Court stated that costs related to the plastic replacements were not eligible for early recovery under the ISRS statutes.

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<sup>133</sup> *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, 839 (Mo. Ct. App. 2017), reh’g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018) (footnote omitted).

The Court clarified in footnote 5 of the opinion, however:

We recognize that the replacement of worn out or deteriorated components will, at times, necessarily impact and require the replacement of nearby components that are not in a similar condition. Our conclusion here should not be construed to be a bar to ISRS eligibility for such replacement work that is truly incidental and specifically required to complete replacement of the worn out or deteriorated components. However, we do not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because that [sic] are interspersed within the same neighborhood system of such components being replaced or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (*i.e.*, by changing the depth of the components or system pressure) which necessitates the replacement of additional components.<sup>134</sup>

I. Spire Missouri is required by Section 393.130, RSMo, to provide safe and adequate service.

J. Spire Missouri is required by 20 CSR 4240.40-030(13)(B) and the corresponding portions of 49 CFR part 192<sup>135</sup> to maintain its pipeline and to replace, repair, or remove it from service if it becomes unsafe.

K. Spire Missouri is required by 20 CSR 4240.40-030(15) and the corresponding portions of 49 CFR part 192 to implement a program to replace “unprotected steel service and yard lines”<sup>136</sup> and “cast iron transmission lines, feeder lines, or mains[.]”<sup>137</sup> Commission rule 20 CSR 4240-40.030(15)(D) requires “[t]his systematic replacement program shall be prioritized to identify and eliminate pipelines in those areas that present the greatest potential for hazard in an expedited manner.”

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<sup>134</sup> *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, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018).

<sup>135</sup> Commission rule 20 CSR 4240-40.030 largely similar to the Minimum Federal Safety Standards contained in the Code of Federal Regulations at 49 CFR part 192. The corresponding portions of the Code of Federal Regulations are cited within the Commission rule.

<sup>136</sup> 20 CSR 4240.40-030(15)(C).

<sup>137</sup> 20 CSR 4240.40-030(15)(D).

Commission rule 20 CSR 4240.40-030(15) also requires Spire Missouri to develop a program that identifies and prioritizes unprotected steel pipe and to “cathodically protect or replace” it in an expedited manner.<sup>138</sup>

L. Spire Missouri is required by 20 CSR 4240.40-030(17) and the corresponding portions of 49 CFR part 192 to develop an integrity management plan. That integrity management plan must “[i]dentify and implement measures to address risks” including corrosion and materials.<sup>139</sup> Spire Missouri’s integrity management plan (referred to as the “DIMP”) revised December 2016 and revised May 2019 are Exhibits 10C and 202C, respectively.

M. Commission orders also require Spire Missouri to establish cast iron pipe replacement programs in accordance with 20 CSR 4240-40.030.<sup>140</sup> Spire Missouri West’s replacement program approved in File No. GO-2002-50 also addresses the replacement of cathodically protected steel mains. However, under that order, Spire Missouri is required to replace a “minimum of 5 miles” after being triggered by the “5-5-3 program” (5 leaks within 500 feet within a 3-year period).<sup>141</sup>

N. Commission rule 20 CSR 4240-40.040 requires Spire Missouri to:

keep all accounts in conformity with the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR part 201 (1992) and 2 FERC Stat. & Regs. paragraph 20,001 and following (1992), except as otherwise provided in this rule.

<sup>138</sup> 20 CSR 4240.40-030(15)(E).

<sup>139</sup> 20 CSR 4240.40-030(17)(C) and (D).

<sup>140</sup> *In the Matter of the Review and Approval of Cast Iron Main Program for Laclede Gas Company*, Order Approving Main Replacement Program, File No. GO-91-275 (August 27, 1993) (Laclede Gas Company is now known as Spire Missouri East); and Order Approving Application, File No. GO-2002-50 (September 20, 2001) (Missouri Gas Energy is now known as Spire Missouri West). See, Exhibit 200, Robinett Direct, Schedules JAR-D-8 and JAR-D-9.

<sup>141</sup> See, Order Approving Application, File No. GO-2002-50 (September 20, 2001); and Exhibit 200, Robinett Direct, Schedule JAR-D-8, p. 29 (paragraph 12.A. of the Application in File No. GO-2002-50).

O. The USOA contains "Gas Plant Instructions" that detail how gas corporations are to account for certain expenses.<sup>142</sup> These instructions include an instruction on "3. Components of construction cost" and "4. Overhead construction costs" setting out the details of how plant accounts are to be kept. Gas Plant Instruction 3 provides for "injuries and damages,"<sup>143</sup> "general administration capitalized,"<sup>144</sup> and "earnings and expenses during construction"<sup>145</sup> to be included in construction costs. Gas Plant Instruction 4 states that "overhead construction costs . . . shall be charged to particular jobs or unit"<sup>146</sup> and with regard to pay roll, "[t]he addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted."<sup>147</sup>

P. Since Spire Missouri allocated overhead costs consistently with how these costs were allocated in its last general rate cases,<sup>148</sup> it did not add arbitrary percentages or amounts to its overhead costs. The Commission concludes that Spire Missouri's treatment of overheads for purposes of these cases is allowable according to the USOA. Further, Section (4) of 20 CSR 4240-40.040 allows the Commission to vary from the USOA where appropriate.

## VI. Decision

After approval of the tax issue settlement and the dismissal of the Old ISRS Request, the remaining issues concern whether the expenditures made by Spire Missouri

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<sup>142</sup> 18 CFR Part 201, Gas Plant Instructions; and Exhibit 201, Schallenberg Direct, p. 5.

<sup>143</sup> 18 CFR Part 201, Gas Plant Instructions, 3.A.(8).

<sup>144</sup> 18 CFR Part 201, Gas Plant Instructions, 3.A.(12).

<sup>145</sup> 18 CFR Part 201, Gas Plant Instructions, 3.A.(18).

<sup>146</sup> 18 CFR Part 201, Gas Plant Instructions, 4.A.

<sup>147</sup> 18 CFR Part 201, Gas Plant Instructions, 4.B.

<sup>148</sup> Exhibits 100 and 101, Staff Direct Report, p. 12.

are eligible for recovery under the ISRS statute and whether all the overheads are appropriate costs to be included in the capital expenditures of ISRS-eligible projects. In making a determination of eligibility for ISRS recovery, the Commission must look to the requirements of the statute. As the court of Appeals stated,

Section 393.1009(5)(a) . . . clearly sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.<sup>149</sup>

Public Counsel objects to the recovery through ISRS of the costs of replacing cast iron, plastic, and cathodically protected steel on the basis that Spire Missouri has not shown that those expenditures were made in conjunction with replacing “existing facilities that have worn out or are in deteriorated condition.”<sup>150</sup> Public Counsel also argues that the costs for the replaced plastic and cathodically protected steel are ineligible for ISRS recovery because Spire Missouri has failed to show that the replacement of those components was required by state or federal mandates. Finally, Public Counsel objected to portions of the overhead expenses that were included in the ISRS expenses.

### **Cast Iron**

Spire Missouri is required by state statute to provide safe and adequate service.<sup>151</sup> Additionally, Spire Missouri is required by state regulations to implement an integrity management plan and to repair or replace unsafe pipeline facilities, including cast iron mains.<sup>152</sup> In its Petitions, Spire Missouri specifically identified for each individual project

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<sup>149</sup> *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, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018) (footnote omitted).

<sup>150</sup> Section 393.1009(5)(a), RSMo.

<sup>151</sup> Section 393.130, RSMo.

<sup>152</sup> 20 CSR 4240-40.030(13), (15), and (17).

the state or federal safety requirements, with a citation to a state statute or Commission rule, mandating each work order.<sup>153</sup> The Commission concludes that the cast iron pipes were replaced to comply with state or federal safety requirements.

Once Spire Missouri has shown that the cast iron mains are required to be replaced or repaired, the second element that Spire Missouri must prove to show ISRS eligibility is that the cast iron mains were worn out or in a deteriorated condition. Public Counsel argues that because of work order errors and a lack of evidence to show that Spire Missouri had performed testing and leak analysis on the cast iron mains replaced, it did not provide evidence that the cast iron was worn out or in a deteriorated condition.<sup>154</sup>

Spire Missouri satisfactorily refuted Public Counsel's claims that errors in work orders make the eligibility of these projects suspect by explaining the complicated process of generating work orders and how inadvertent errors could occur.<sup>155</sup> Additionally, there is no requirement that Spire Missouri provide evidence of testing or specific leak analysis in order to prove that its pipes are in worn out or deteriorated condition. Spire Missouri provided other persuasive evidence to prove that the cast iron portions of its ISRS requests were worn out or in deteriorated condition.

To put all the evidence into perspective it is important to understand the historical context of cast iron and bare steel replacement programs. The evidence showed that the age and inherent characteristics of cast iron pipes can render them unsafe to use because they are subject to cracking and leaking, which requires their replacement.<sup>156</sup> Because

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<sup>153</sup> See, Appendix A, Schedule 6 to Exhibits 1, 2, 3, and 4, citing the specific sections of the gas safety rules that are applicable.

<sup>154</sup> Exhibit 200, Robinett Direct, pp. 5-7; and Transcript, p. 260.

<sup>155</sup> Exhibit 200, Robinett Direct, p. 5; and Transcript, pp. 212-214 and 260.

<sup>156</sup> Exhibit 5, Hoeflerlin Direct, pp. 3-5.

of these inherent characteristics, Spire Missouri has been actively engaged in replacing cast iron and bare steel since the 1950s. The Commission, adopting regulations similar to federal regulations, also put gas safety regulations in place over 30 years ago to mandate replacement programs for cast iron and steel mains and service lines. The Commission found cast iron and bare steel to be of a significant enough concern that it approved accelerated cast iron replacement programs as early as 1993 for Spire Missouri.<sup>157</sup>

Additionally, the evidence showed that federal pipeline safety officials at the USDOT and PHMSA have urged state regulators to encourage the accelerated replacement of cast iron facilities.<sup>158</sup> These officials and Spire Missouri's witness reflected that such facilities are sufficiently worn out or deteriorated to justify expedited replacement and the utilization of special rate mechanisms such as ISRS to encourage the expedited replacement.<sup>159</sup> Further, the Commission's own April 2011 Pipeline Safety Program Report identifies a need to eliminate cast iron mains expeditiously.<sup>160</sup>

Other evidence supporting a finding that cast iron mains are worn out or deteriorated included testimony that cast iron facilities are ranked by Spire Missouri's DIMP as posing a high risk of leaks from corrosion reflecting their status as worn out or deteriorated.<sup>161</sup> Additionally, the testimony of Spire Missouri's witness was that when the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated

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<sup>157</sup> Exhibit 5, Hoferlin Direct, pp. 5 and 8; and Exhibit 200, Robinett Direct, Schedules JAR-D-8 and JAR-D-9.

<sup>158</sup> Exhibit 5, Hoferlin Direct, Schedule CRH-2 (PHMSA Letter dated December 19, 2011, p. 2); and Exhibit 6, Leonberger Direct, p. 12.

<sup>159</sup> Exhibit 5, Hoferlin Direct, p. 6.

<sup>160</sup> Exhibit 5, Hoferlin Direct, Schedule CRH-4.

<sup>161</sup> Exhibit 5, Hoferlin Direct, p. 6. See also, Exhibits 10C, 2019 DIMP and 202C, 2016 DIMP.



condition and that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of a deteriorated state.<sup>162</sup>

When considered in combination, the totality of the evidence supports a finding by the Commission that the cast iron mains were in a worn out or in a deteriorated condition. The Commission concludes that the cast iron mains were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition. Thus, the Commission determines that the costs to replace the cast iron mains are eligible for cost recovery under ISRS.

### **Cathodically Protected Steel**

Similar to the replacement of cast iron, the issue here is whether the replacement of mains that were bare steel when originally installed (as opposed to coated steel, which does not corrode in the same manner as bare steel) and later cathodically protected are eligible to be recovered through the ISRS. Spire Missouri's predecessor cathodically protected these bare steel mains 30-40 years after they were installed pursuant to the Commission's gas pipeline replacement rules at 20 CSR 4240-40.030(15).<sup>163</sup> These safety rules were promulgated in 1989 after several gas explosions involving bare steel service and yard lines.<sup>164</sup> Spire Missouri seeks ISRS recovery for the replacement of the cathodically protected steel mains.

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<sup>162</sup> Exhibit 5, Hoeflerlin Direct, pp. 4-5 and Schedule CRH-5.

<sup>163</sup> 20 CSR 4240-40.030(15) states in relevant part:

Replacement/Cathodic Protection Program—Unprotected Steel Transmission Lines, Feeder Lines, and Mains. Operators who have unprotected steel transmission line, feeder lines, or mains shall develop a program to be submitted with an explanation to the commission by May 1, 1990, for commission review and approval. This program shall be prioritized to identify and cathodically protect or replace pipelines in those areas that present the greatest potential for hazard in an expedited manner. . . . (Emphasis added.)

<sup>164</sup> Exhibit 6, Leonberger Direct, p. 6.

Public Counsel argues that these cathodically protected steel mains are not required under law to be replaced and are not in a worn out or deteriorated condition. Public Counsel argues that the plain language of the rule requires the gas utility to *either* cathodically protect *or* replace the bare steel pipes.<sup>165</sup> In this instance, Spire Missouri initially chose to cathodically protect the mains. Thus, Public Counsel argues the company is not *required* to replace the protected steel mains and these replacements are not ISRS-eligible.

Spire Missouri and Staff argue that the original cathodic protection was a “stop gap” measure and not meant to be a permanent solution because the steel pipes continue to corrode after the cathodic protection, just at a much slower pace. No one, including Public Counsel, is arguing that Spire Missouri should not replace these pipes. The contested issue is whether the cathodically protected steel mains meet the statutory criteria to be ISRS-eligible. The plain reading of 20 CSR 4240-40.030(15)(E) seems clear that the rule requires a single action – “cathodically protect or replace.” Spire Missouri is not prohibited from cathodically protecting and then replacing, but it is only required under the rule to do one or the other. Thus, this rule cannot be used to meet the “required by state or federal law” criteria for ISRS eligibility.

Spire Missouri also claims that it is required to replace the cathodically protected steel mains under its Commission-approved replacement programs. However, only Spire Missouri West has a Commission-approved replacement plan that specifically includes cathodically protected steel mains.<sup>166</sup> Further, that Commission-approved replacement

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<sup>165</sup> 20 CSR 4240-40.030(15)(E).

<sup>166</sup> See, Order Approving Application, File No. GO-2002-50, (September 20, 2001); and paragraph 12.A. of the Application.

plan only requires a “minimum of 5 miles” be replaced after a trigger by the “5-5-3 program” (5 leaks within 500 feet within a 3-year period).<sup>167</sup> There was no evidence that the 5-5-3 program had triggered any of the replacements in the application. Therefore, the Commission-approved replacement plan cannot be used to show that the costs in the Spire Missouri West territory are ISRS-eligible.

Even though Spire Missouri was not required to replace the cathodically protected steel mains under 20 CSR 4240-40.030(15)(E) or under its Commission-approved replacement programs, it is required to replace the cathodically protected steel mains under the regulation requiring the development and implementation of an integrity management plan in 20 CSR 4240-40.030(17). Specifically, subsection (D)4 of section (17) requires the company to “[i]dentify and implement measures to address the risks” and “[d]etermine and implement measures designed to reduce the risks from failure of its gas distribution pipeline.” As Spire Missouri’s witness testified, compliance with this rule is accomplished through Spire Missouri’s DIMP and its systematic replacement program.<sup>168</sup> Two versions (December 2016 and May 2019) of Spire Missouri’s DIMP were presented at the hearing.<sup>169</sup> In both versions of the DIMP, corrosion of cathodically protected steel mains is identified as a risk to be addressed.<sup>170</sup>

The final requirements to replace the cathodically protected steel mains is found in 20 CSR 4240-40.030(13)(B) dictating maintenance, requiring the replacement, repair, or removal of unsafe system elements, and Section 393.130, RSMo, the general

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<sup>167</sup> See, Order Approving Application, File No. GO-2002-50, (September 20, 2001); and paragraph 12.A. of the Application.

<sup>168</sup> Exhibit 5, Hoferlin Direct, pp. 8-9; Transcript, pp. 124-126; Exhibit 202C, 2016 DIMP; and Exhibit 10C, 2019 DIMP.

<sup>169</sup> Exhibit 202C, 2016 DIMP; and Exhibit 10C, 2019 DIMP.

<sup>170</sup> Exhibit 10C, 2019 DIMP, Appendix C, Section C 3; and Exhibit 202C, 2016 DIMP, Appendix C, Section C 2.

requirement for Spire Missouri to ensure it has a safe and adequate system for distributing natural gas service. Public Counsel argues that since Spire Missouri's witness claims its system is "safe" while it is utilizing the cathodically protected steel mains, Spire Missouri is not required under the rule to replace the cathodically protected steel mains in order to comply with the law. However, Spire Missouri must not wait until its system is leaking and exploding to make necessary repairs and replacements. Under 20 CSR 4240-40.030(13)(B), Spire Missouri is required to have maintenance plans in place to proactively keep the system in a safe condition. If Spire Missouri did not replace the cathodically protected steel mains until its entire system was "unsafe" it would not be complying with the law.

The Commission concludes that Spire Missouri installed the new pipeline components replacing cathodically protected steel components in order to comply with the state requirements of Section 393.130, RSMo (requiring Spire Missouri to provide safe and adequate service), 20 CSR 4240-40.030(17) (requiring Spire Missouri to identify and implement measures to address risks), and 20 CSR 4240-40.030(13)(B) (requiring Spire Missouri to repair, replace, or remove unsafe segments of pipeline from service).

Public Counsel also argues that Spire Missouri has not shown that the cathodically protected steel mains are worn out or in a deteriorated condition. The Commission disagrees. Although there was no couponing (sampling) of the cathodically protected steel mains that were replaced,<sup>171</sup> there was other evidence to support that these pipes were deteriorated. This evidence includes most of the same factors that show that cast iron is worn out or deteriorated. Those factors include the history of a need for accelerated

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<sup>171</sup> Transcript, p. 136.

replacement programs as evidenced by white papers, reports, letters, and regulations from the USDOT, PHMSA, and the Commission. Other factors indicating the deterioration of cathodically protected steel mains were the ranking of cathodically protected steel mains as a risk in the 2016 DIMP and even a higher risk in the 2019 DIMP and the testimony of the expert witnesses as to the condition of the pipes.

In addition to those factors shared with the cast iron, the evidence showed that bare steel started to corrode as soon as it was put in the ground and it was in the ground unprotected for 30-40 years when it began to fail. It was these failures of cast iron and unprotected steel that prompted the accelerated replacement programs and the need for regulations requiring those replacement programs. Additionally, the cathodic protection greatly slowed that corrosion but did not stop it completely and there may be “hot spots” that could cause leaks or other unsafe conditions any time.<sup>172</sup> The evidence showed that the leaks on the cathodically protected steel mains are 10-20 times greater than leaks on plastic or coated steel pipes and those leaks increased notably in 2017. As a result of accelerating replacement of the cathodically protected steel mains there was a decrease in leaks of cathodically protected steel in 2018, further supporting a finding that these pipes are worn out or in a deteriorated condition and in need of replacement.<sup>173</sup>

Taken as a whole, the evidence convincingly shows that the cathodically protected steel pipes are worn out or in a deteriorated condition. The Commission concludes that the cathodically protected steel mains were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition. Thus, the Commission

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<sup>172</sup> Transcript, pp. 85-86 and 102.

<sup>173</sup> Exhibit 10C, 2019 DIMP, Appendix D, Figure D 3-2; and Exhibit 5, Hoeflerlin Direct, p. 25.

determines that the costs to replace the cathodically protected steel mains are eligible for cost recovery under ISRS.

### **Plastic**

With regard to the plastic components of the mains and service lines, the Commission again begins with the requirements of the statute. Spire Missouri must first prove the replacements satisfy the elements for ISRS eligibility, then, if eligible, the Commission will determine the amount of that recovery. Spire Missouri must prove first, that its requests consist of “gas utility plant projects . . . installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition[.]”<sup>174</sup>

There was little, if any, evidence that the non-cast iron or steel components (plastic components) were in a worn out or deteriorated condition. In fact, the evidence generally showed that the plastic pipe was not worn out or in a deteriorated condition. The evidence showed that in approximately 2010, Spire Missouri changed from a piecemeal approach to replacing its deteriorating infrastructure to a more systemic approach. With this systematic approach, Spire Missouri retires pipes in place and installs new plastic pipes, often in a different location. In other words, the plastic components, whether part of the mains or service lines, are not being replaced because they are themselves in worn out or deteriorated condition, but because they are part of the systematic replacement of all the pipe.

Spire Missouri did not argue that the plastic pipes being replaced were worn out or in a deteriorated condition. Rather, Spire Missouri argued that the costs to replace the

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<sup>174</sup> Section 393.1009(5)(a), RSMo.

plastic components were less than the costs of reusing the plastic components and, therefore, there are no incremental costs of replacing the plastic. To support its argument, Spire Missouri randomly selected twelve projects (seven from Spire Missouri East and five from Spire Missouri West) from the hundreds of projects presented and compared the costs to replace the facilities under its systematic approach, with the estimated costs of the piecemeal approach where it would have only replaced the cast iron or steel components. According to Spire Missouri's costs comparisons, the piecemeal approach would have been 11% to 198% more expensive than the systematic approach.<sup>175</sup>

However, these cost comparisons still do not convince the Commission that the statutory requirement of "worn out or in a deteriorated condition" and the Court's interpretation of that requirement has been proven with regard to the plastic components. The ISRS was not designed to allow early recovery of system-wide replacement of infrastructure, only the replacement of specifically worn out or deteriorated infrastructure. Plastic components that are not otherwise worn out or deteriorated or incidental to the replacement of worn out or deteriorated material cannot become ISRS eligible as part of a systemic redesign.<sup>176</sup> Spire Missouri's limited cost comparisons may show that it cost less to replace the plastic components than it cost to do a piecemeal replacement; however, nothing in Spire Missouri's cost comparisons or other evidence proves that the plastic components being replaced were being replaced because they were worn out or deteriorated.<sup>177</sup>

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<sup>175</sup> Exhibit 5, Hoferlin Direct, pp. 15-16.

<sup>176</sup> *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, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018).

<sup>177</sup> Whether the cost analysis shows that the decision to redesign its system was cost effective or that replacing the plastic components that were not worn out or deteriorated was a safety enhancement are

Spire Missouri asks the Commission to extrapolate from its twelve projects and reach a similar result in the hundreds of work orders that Spire Missouri did not analyze. The Commission finds that Spire Missouri's analysis is based on far too few work orders for the Commission to reasonably conclude that there was, in fact, no cost associated with the retirement of the plastic facilities.

Anticipating that the Commission may continue to order the removal of the plastic components from the ISRS-eligible costs, Spire Missouri presented an alternative calculation using the same methodology Staff used in prior ISRS cases to remove the cost of the replacement of ISRS-ineligible plastic pipes. Spire Missouri's calculation divided the feet of plastic main and service lines replaced or retired by the total footage of the pipe replaced or retired to arrive at the percentage of costs associated with plastic. That cost associated with plastic was then removed from the amount for the alternative ISRS recovery calculation.

Staff reviewed all the work orders Spire Missouri provided to confirm the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.), and concluded that Spire Missouri's adjustments are consistent with the prior Commission-approved methodology.<sup>178</sup> Staff reported that Spire Missouri's calculations were accurate and used the same methodology that the Commission approved in the prior Spire Missouri ISRS cases.<sup>179</sup>

The Commission concludes that ineligible plastic cannot be made eligible by a systematic redesign and the twelve project analyses are too few for the Commission to

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prudence issues. The Commission is not making a judgement about the prudence of these replacements as prudence and eligibility for ISRS are not the same determination.

<sup>178</sup> Exhibits 100 and 101, Staff Direct Report, pp. 6-8.

<sup>179</sup> File Nos. GO-2018-0309, GO-2018-0310, GO-2019-0115, and GO-2019-0116.



reasonably conclude that there was no cost associated with the retirement of the plastic facilities. Therefore, in order to determine how much ineligible plastic is in a project the Commission will use the same methodology previously used for removing the cost of replacing ISRS-ineligible plastic components as calculated by Spire Missouri and verified by Staff.

### **Overheads**

The final contested issue in these cases relates to the overheads allocated by Spire Missouri to the ISRS-eligible projects. Public Counsel argues that Spire Missouri is requesting ISRS recovery for overheads that do not bear a definite relationship to construction and have instead been assigned using arbitrary or general allocators.<sup>180</sup> Public Counsel did not identify any specific costs that should be excluded from the overhead allocation or propose an adjustment.<sup>181</sup>

Spire Missouri's Controller, Timothy W. Krick, explained that overheads is a complex issue requiring a systemic approach and consistency.<sup>182</sup> For this reason, Spire Missouri and Staff recommend, and the Commission agrees, that the context of a rate case would facilitate a more holistic examination of overheads.<sup>183</sup> Spire Missouri's witness also testified that the treatment of overheads in these cases is consistent with long-standing practice and is allowable according to the USOA.<sup>184</sup> Similarly, Staff's witness testified that the cost categories identified by Public Counsel are allowed under the USOA.<sup>185</sup> More importantly, the accounting treatment of overhead costs is consistent

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<sup>180</sup> Exhibit 201, Schallenberg Direct, pp. 8-9; and Transcript, pp. 289-290.

<sup>181</sup> Transcript, p. 289.

<sup>182</sup> Transcript, p. 196.

<sup>183</sup> Transcript, p. 196.

<sup>184</sup> Transcript, pp. 190-191; and Exhibit 7, Krick Direct, p. 10.

<sup>185</sup> Transcript, p. 228.

with how base rates were set in Spire Missouri's most recent general rate case.<sup>186</sup> The Commission is persuaded by these arguments and finds that under the facts of this case, the Spire Missouri's treatment of overheads is allowable. Further, even if this application of overheads was not consistent with the USOA, the Commission is not bound by the USOA and under 20 CSR 4240-40.040 could determine not to follow it.

The Commission finds that the shortened time frame of ISRS cases does not allow for in depth analysis of overhead costs. The treatment of overheads by Spire Missouri was consistent with how base rates were set in the most recent general rate cases. Therefore, the Commission finds that they are appropriately included for recovery in the ISRS. Further, given the expedited nature of an ISRS case and the complexity of determining the appropriate overheads to include in construction costs, decisions varying from the methods in a general rate case are best handled during the course of a rate case when there is more time for a full examination and all rate factors are being reviewed.

### **Summary**

In making this decision, the Commission has considered the positions and arguments of all of the parties. The Commission has concluded that the Old ISRS Request should be dismissed due to a lack of Commission jurisdiction. As to the remainder of these cases, after applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Spire Missouri has met, by a preponderance of the evidence,

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<sup>186</sup> Exhibits 100 and 101, Staff Direct Report, p. 11. Additionally, Spire Missouri indicated that even though the company's Cost Allocation Manual ("CAM") and the U.S. Generally Accepted Accounting Principles ("GAAP") are not used in the ISRS accounting calculations, Spire Missouri's methods and procedures are also consistent with the general allocation principles set forth in these documents and principles. Exhibit 7, Krick Direct, p. 10.

its burden of proof to demonstrate that the Petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo, with regard to the cast iron and cathodically protected steel portions of the projects including the overheads and the tax issue settlement agreement. Each of these portions of the projects were found to be “gas utility plant projects.”

The Commission concludes that Spire Missouri shall be permitted to establish an ISRS to recover ISRS surcharges for these cases in the amounts as recommended by Staff with adjustments for the tax issue settlement. The total ISRS revenue requirement for Spire Missouri East is \$4,763,180<sup>187</sup> and for Spire Missouri West is \$3,996,543.<sup>188</sup> Since the revenues and rates authorized in this order differ from those contained in the tariffs the Company first submitted, the Commission will reject those tariffs (Tariff Tracking Nos. YG-2020-0009 and YG-2020-0010). The Commission will allow Spire Missouri an opportunity to submit new tariffs consistent with this order.

Section 393.1015.2(3), RSMo, requires the Commission to issue an order to become effective not later than 120 days after the petition is filed. That deadline is November 12, 2019, so the Commission will make this order effective on November 12, 2019.

**THE COMMISSION ORDERS THAT:**

1. The attached *Stipulation and Agreement Regarding Income Tax Issue* is approved and its provisions are incorporated into this order as if fully set forth herein. The

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<sup>187</sup> Exhibit 100, Staff Direct Report, Schedules 1 and 2, as adjusted by the tax issue settlement. See also, Staff's Revenue Requirement Updated to Include Tax Stipulation and Agreement (filed October 29, 2019).

<sup>188</sup> Exhibit 101, Staff Direct Report, Schedules 1 and 2, as adjusted by the tax issue settlement. See also, Staff's Revenue Requirement Updated to Include Tax Stipulation and Agreement (filed October 29, 2019).

signatory parties are directed to comply with its terms.

2. The portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

3. Spire Missouri, Inc. is authorized to establish Infrastructure System Replacement Surcharges sufficient to recover ISRS revenues in the amount of \$4,763,180 for its Spire Missouri East service territory and \$3,996,543 for its Spire Missouri West service territory. Spire Missouri, Inc. is authorized to file an ISRS rate for each customer class as described in the body of this order.

4. The tariff sheets filed by Spire Missouri, Inc. on July 18, 2019, and assigned Tariff Tracking Nos. YG-2020-0009 and YG-2020-0010, are rejected.

5. Spire Missouri, Inc. is authorized to file new tariffs to recover the revenue authorized in this Report and Order.

6. This report and order shall become effective on November 12, 2019.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, and

Coleman, CC., concur.

Hall, CC., concurs, with separate concurring  
opinion to follow.

Rupp, C., dissents.

Dippell, Senior Regulatory Law Judge