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

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

# BRIEF OF SPIRE MISSOURI, INC.

COMES NOW Spire Missouri Inc. ("Spire Missouri" or "Company"), on behalf of itself and its two operating units Spire East and Spire West, and pursuant to the Commission's September 18, 2019 Order in these cases submits the following Brief addressing all of the issues identified in these proceedings. For purposes of addressing such issues, this Brief will follow the same list of issues previously submitted by the Parties to these proceedings.

## I. INTRODUCTION/EXECUTIVE SUMMARY

As set forth in the list of issues submitted by the Parties on September 30, 2019, the primary issues in these cases all revolve around the central question of whether the costs included in the Company's ISRS filings are eligible for inclusion in the ISRS and, if not, what costs should be excluded and for what reasons. With the exception of the issue surrounding the proper calculation of income taxes, which the parties have settled pending Commission approval, all of these issues were taken to hearing. These remaining contested issues include:

1. Whether the cast iron and bare steel facilities being replaced by the Company pursuant to the Commission's safety rules are in a worn out or deteriorated condition and therefore eligible for ISRS inclusion;

2. Whether the costs incurred by the Company to replace certain bare steel mains are ineligible for ISRS inclusion because they were placed under cathodic protection decades after they were first installed;

3. Whether certain costs should be excluded from ISRS charges because some plastic components were replaced or bypassed as part of the Company's cast iron and bare steel replacement programs;

4. Whether there are components of the overhead costs allocated by the Company to ISRS projects that are not eligible for inclusion in the ISRS; and

5. Whether the Commission has the jurisdiction to consider ISRS investments that were not recovered in prior ISRS cases because those same costs are at issue in a pending appeal.

The Company believes that the evidentiary record in these cases strongly supports recovery of all of the ISRS costs included in the Company's filing. The reasons supporting the Company's position will be discussed in detail in the Argument section of this Brief. For purposes of this introduction, however, they can be summarized as follows:

***Worn Out or in a Deteriorated Condition of Cast Iron and Bare Steel Facilities***

In terms of the first issue, the Commission has already ruled in the Company's last ISRS cases[1] that its cast iron and bare steel facilities are indeed in a worn out or deteriorated condition. The evidence presented by Company witnesses Hoeferlin and Leonberger in these cases broadly reconfirms the propriety of that finding. So too does the observation of Chairman Silvey that under the ISRS statute, this eligibility requirement can be satisfied by ***either*** a finding that particular facilities are "worn out" ***or*** by a finding that they are in "a deteriorated condition". While there may be some debate as to whether and exactly when these facilities meet the test of being "worn

[1] File Nos. GO-2019-0115 and GO-2019-0116

out", there can be no doubt based on the evidentiary record in these cases that they are in a "deteriorated condition." In fact, OPC's own witness, Mr. Robinett, provided testimony showing that all of the elements necessary to make such a determination have been met.

***Bare Steel Mains Cathodically Protected Decades after Installation***

Equally unavailing is the OPC's argument that the costs incurred by the Company to replace certain bare steel mains in Spire West's service area are not eligible for ISRS inclusion because they were cathodically protected decades after they were installed. The OPC bases this latest attempt to exclude costs from the ISRS on the theory that there is nothing in the Commission's safety rules that mandate such replacements and that there are no substantive safety concerns with such facilities. OPC is simply wrong on both counts. Rule 15(E) of the Commission's safety rules, which was promulgated in 1989 after a horrific set of explosions involving bare steel service and yard lines, required that utilities have programs to address their unprotected steel mains. Under the rule, utilities were given the option to replace or cathodically protect such facilities or, in any reasonable interpretation of the Rule, to do both if necessary to meet the objective of effectively addressing these problematic facilities. As explained by Spire witnesses Leonberger and Hoeferlin, Spire West's predecessor, MGE, initially decided to cathodically protect these facilities, not as a permanent solution, but as a stop gap measure designed to buy some time while it went about the daunting task of replacing the tens of thousands of unprotected steel service lines and critical cast iron facilities that were also required to be addressed by the Commission's safety rules. Because cathodic protection was not an effective long-term solution, however, MGE began utilizing the replacement option provided in Rule 15(E) nearly two decades ago and has been replacing them ever since. The fact that these facilities have a leak rate some ten times higher than plastic facilities (and along with other bare steel facilities

produced 18 hazardous corrosion leaks last year alone) and that they have a risk ranking in the upper quadrant of the Company's most recent Distribution Integrity Management Plan (DIMP) illustrates why such replacement actions are necessary to comply with the mandate in 15(E).

***Plastics Issue***

The Company also believes that the evidentiary record in these cases supports its position that none of its ISRS costs should be excluded because certain plastic components were replaced or bypassed as part of its systematic cast iron and bare steel replacement programs. In taking that position, the Company is not attempting to relitigate the significance of the 509 engineering/cost studies that it presented in its last ISRS cases in an effort to demonstrate that its method of replacing such cast iron and bare steel facilities results in no actual costs associated with the replacement or bypass of plastic components. While the Company continues to believe in the basic validity of those studies, the Company submitted additional studies in these cases based on the guidance given by Commissioner Hall in a concurring opinion in the Company's last ISRS cases. In that opinion, Commissioner Hall said that the appropriate basis of comparison for determining if there is any cost caused by replacing or bypassing plastic was to compare the cost of replacing its facilities using the Company's systematic approach versus its historical patchwork replacement of only replacing facilities that need immediate remedial action.

The Company believed that such a comparative analysis would provide another valid metric to assess this issue and so it conducted such analyses on a number of ISRS projects in both the Spire East and Spire West service areas. Those studies broadly reconfirmed that the systematic replacement approach followed by the Company does not result in any incremental cost even though plastic components are being replaced or bypassed. To the contrary, the unrebutted evidence on this issue demonstrated that the Company's systematic replacement approach was

anywhere from 11% to 198% cheaper than the piecemeal approach. Given this new evidence, there is simply no basis for making an adjustment to the Company's ISRS recoveries in these cases.

***Overheads***

There is also no basis for excluding any costs let alone rejecting the Company's application in whole or in part based on the OPC's argument that some of the overhead costs allocated by the Company to its ISRS projects are somehow inappropriate. As discussed below, these overheads should be fully reflected in the Company's ISRS charges because they have been determined in a manner that appropriately follows the cost allocation and capitalization methods that have been approved by the Commission and used by the Company for decades to determine such matters. Such long-standing methods and practices have been audited and reviewed in multiple rate case proceedings, have been repeatedly used to determine the Company's cost of service in such proceedings and are consistent with the Company's Commission-approved Cost Allocation Manual. While the OPC has raised some generalized concerns regarding the Company's derivation of the overheads allocated to ISRS projects, it has yet to identify a specific component of such overheads that have been "arbitrarily" allocated to such projects as the OPC claims. This is especially true given that the Company has proven that all costs charged to ISRS overheads bear either a direct or indirect relationship to its ISRS construction projects. In addition, given the complexity of this issue, the abbreviated schedule of ISRS cases, and the inability to address both the capital and expense sides of the issue in an ISRS case, the evidence clearly showed that the more appropriate place to address this issue would be within the context of a general rate case proceeding.

***Jurisdictional Issue***

Finally, the Company continues to believe that the Commission has the power to consider and include investments not recovered in prior ISRS proceedings and that such consideration is affirmatively mandated by the specific language of the ISRS statute. The Company recognizes that the Commission determined otherwise in the Company's last ISRS cases but has included such amounts since the Commission's order was not final at the time it filed its ISRS application in both cases and to preserve its rights with respect to its recent appeal of this matter. In the event the Commission decides not to revisit this issue and adopt the approach it followed in the Company's last ISRS cases, the Company has provided an alternative revenue requirement calculation reflecting such an approach.

## II. ARGUMENT

### 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?

For the reasons discussed below, the Company believes that all of the costs included in its ISRS filing are eligible for recovery though the ISRS mechanism and that the ISRS statute as applied to the evidentiary record in these cases strongly supports that conclusion. For those same reasons, the Commission should reject the recommendations put forth by the other parties – most prominently the Office of the Public Counsel ("OPC") – to exclude costs based on various legal and factual assertions that, in the Company's view, are fundamentally flawed.

In evaluating the recommendations of the parties, the Company believes the Commission should apply a special degree of skepticism to those presented by the OPC. As the Commission knows, the OPC has devoted an extraordinary level of resources over the past several years to mounting repeated challenges to various aspects of the Company's ISRS filings. The public

interest rationale behind the OPC's obsessive focus on the ISRS is murky enough given the fact that it is aimed at the only adjustment mechanism specifically designed to advance the most important objective of any utility, namely to protect the safety and welfare of its customers and the general public. Discerning a valid public policy objective for the OPC's repeated attacks on the ISRS is made even more difficult, however, by the complete absence of any evidence showing that the OPC's proposals, if adopted and implemented, would actually save customers money. In a world of limited resources, it is almost always necessary to balance how and how quickly various safety objectives can be achieved while taking into account the costs of achieving them. But no such balancing act is necessary here. To the contrary, the engineering/cost analyses presented by the Company in these cases demonstrates that the Company's systematic approach to replacing its cast iron and bare steel facilities is not only improving the safety of its distribution system, but also providing its customers with substantial savings compared to its historical piecemeal replacement approach which OPC's proposals would imply should be followed once again. In short, customers are receiving the best of both worlds under the Company's approach for replacing problematic facilities – a circumstance which makes the OPC's assault on the Company's replacement programs devoid of any recognizable public policy justification.

**1. <u>Worn out or Deteriorated Condition of Cast Iron and Bare Steel Facilities</u>.**

In perhaps its most aggressive assault on the ISRS yet, the OPC once again challenges whether the cast iron and bare steel facilities being replaced by the Company pursuant to its Commission-mandated replacement programs are "worn out or in a deteriorated condition" and therefore eligible for recovery through the ISRS mechanism. In doing so, the OPC seeks to relitigate an issue that was definitively decided by the Commission in the Company's last two

ISRS cases.[2] In its Report and Order in the most recent of those cases (which was issued less than a month and a half ago), the Commission specifically found that the Company's "cast iron pipes are unsafe to use because they tend to graphitize, making the pipe brittle and subject to cracking and leaking."[3] In terms of bare steel facilities, the Commission further determined that steel "that is not cathodically protected corrodes relatively quickly and needs to be replaced" as the "corrosion diminishes wall thickness which causes the possibility of leaks."[4] Based on these determinations, the Commission went on in its Report and Order to find that the cast iron and bare steel pipe being replaced as part of Spire's replacement programs was in a "worn out or deteriorated state."[5]

Because the Company was concerned that the OPC would challenge rather than accept these Commission findings when it staked out its position in these cases, it provided much of the same testimony and evidence that the Commission relied upon in the Company's prior ISRS cases to support its determinations that these facilities were worn out or in a deteriorated condition. That evidence was presented, in part, in the direct testimony and schedules of Spire Witness Craig Hoeferlin, the Company's Vice President of Operations Services.[6] Mr. Hoeferlin, who has oversight responsibility for various operational functions at Spire, including engineering, pipeline safety, replacement programs, environmental compliance, system planning and damage prevention, reiterated many of the same key factors that has previously led the Commission to conclude that such facilities were worn out or in a deteriorated condition and that the Company

[2]*See* the Commission's September 20, 2018 Report and Order in Case Nos. GO-2018-0309 and August 23, Report and Order on Rehearing in Case Nos. GO-2019-0115 and GO-2019-0116.
[3]Case Nos. GO-2019-0115 and 0116, Report and Order issued May 23, 2019, Findings of Fact No. 24. Also see Ex. 5, page 3, lines 9-11.
[4]*Id.*, Findings of Fact No. 25, Ex. 5, page 3, lines 12-15.
[5]*Id.*, Findings of Fact No. 26, Ex. 5, page 4, lines 18-20.
[6]Ex. 5, p. 1.

was mandated to replace them under the Commission's rules.[7] Among others, these factors include:

- Commission rules that mandate the establishment of programs to replace and otherwise address such facilities as well as continually track and address through Distribution Integrity Management Programs ("DIMP") the risks posed by such facilities;[8]
- The inherent characteristics of such facilities that, as acknowledged by the Commission, give them a propensity to break and/or leak, from fractures in the case of cast iron facilities, and from corrosion in the case of bare steel facilities;[9]
- The advanced age of such facilities and their problematic history of failures, including failures that led to the implementation of replacement programs for such facilities as long ago as the 1950's;[10]
- The personal observations of Mr. Hoeferlin and Rob Atkinson, another Spire engineer, that in their many years of experience with distribution facilities they had never encountered a cast iron or bare steel pipe dug up that was not in some sort of deteriorated condition;[11]
- The recommendations of federal safety officials, including the Secretary and the Administrator of the Department of Transportation ("DOT") and the Pipeline and

[7] As Mr. Hoeferlin explained, the Commission's determination that the Company's systematic replacement programs were necessary to comply with federal or state safety requirements was also made in its September 20 Report and Order Case Nos. GO-2018-0309 and 0310 (Ex. 5, p. 4, lines 1-6).
[8] *See* 20 CSR 4240-40.030 (15)(D) & (E) (mandating programs for addressing cast iron and unprotect steel facilities, respectively) and 20 CSR 4240.40.030(17) (mandating establishment of ongoing DIMP plans.
[9] Ex. 5, pp. 3-5.
[10] Ex. 5, p. 5, lines 4-13.
[11] Ex. 5, p. 4, lines 7-12.

Hazardous Materials Safety Administration ("PHMSA"), emphasizing the need for utilities and state commissions to accelerate the replacement of cast iron and unprotected steel facilities in the wake of several tragic natural gas incidents in 2010 and 2011; [12]

- The recommendations of state safety officials, including an April 2011 Pipeline Safety Program Report issued by this Commission, that noted the advanced age and large quantity of cast iron and steel pipelines in the distribution systems of Missouri utilities and emphasized the need to consider accelerated programs for replacing such facilities so that they wouldn't still be in the ground 200 years after they were first installed; and [13]
- Pictures and physical specimens of typical cast iron and steel facilities dug up and removed from the ground in the recent past showing the extreme deterioration of such facilities over the many years that they had been in service.[14]

In addition to the evidence presented by Mr. Hoeferlin, the Company also presented the testimony of Robert Leonberger.[15] Given the OPC's repeated challenges to the Company's safety initiatives, including what is or is not required by the Commission's safety rules, the Company believed Mr. Leonberger could provide some valuable insight on the issues given his extensive involvement in such matters over nearly 35 years as a member and then manager of the Commission's pipeline safety staff. [16]

[12]Ex. 5, p. 5, line 17 to p. 7, line 17. Letters and Avisory Bulletins setting forth these various recommendations are contained in Schedules CRH-1, CRH-2 and CRH-3 to Mr. Hoeferlin's Direct Testimony)
[13] Ex. 5, p. 8, line 21 to p. 9, line 23.
[14] See Schedule CRH-5 to Ex. 5.
[15]See Exhibit 6.
[16]Ex. 6, p. 2, lines 4-20. Mr. Leonberger was a member or manager of the Commission's pipeline safety staff from 1982 until his retirement in 2016.

During his tenure at the Commission, Mr. Leonberger managed all facets of the Commission's Pipeline Safety Program, including on-site plant inspections, reviews and analyses of utility records, and investigations of natural gas related incidents, including dozens that he personally investigated.[17] It was also his responsibility to make recommendations to each utility's management and to the Commission, if necessary, following these evaluations and investigations.[18] While at the Commission, Mr. Leonberger was also instrumental in the drafting of the Commission's current safety rules as well as a participant in the drafting of federal pipeline safety regulations, including the regulations mandating that operators develop and maintain a DIMP.[19] Mr. Leonberger was also a prominent member of a variety of national pipeline safety groups, serving as Chairman of the National Association of Pipeline Safety Representatives ("NAPSR") and on various NAPSR Committees. He is a recipient of the NAPSR Chairman's Award for outstanding service to the organization and to pipeline safety as well as a recipient of NAPSR's Lifetime Achievement Award for his many contributions to national pipeline safety advancements throughout his career.[20]

The bulk of Mr. Leonberger's testimony was centered on the next issue that will be addressed in this Brief involving the replacement of certain bare steel lines that were not cathodically protected until decades after they were first installed. Mr. Leonberger also provided insights, however, into the origins of the Commission's current safety rules as well as the Company's systematic replacement programs for eliminating the cast iron and bare steel facilities addressed by the rules. As Mr. Leonberger explained, during the winter of 1989/1990 there were several natural gas explosions in Missouri and Kansas caused by leakage from unprotected (non-

[17] Ex. 6, p. 3, lines 1-23.
[18] *Id.*
[19] *Id.*
[20] Ex. 6, p. 4, lines 8-14.

cathodically protected) steel service lines due to corrosion.[21] This drew the attention of the Governors and Commissions of both states, the Missouri Legislature, as well as national and state-wide media.[22] The then Chairman of the Commission stated that in light of these terrible incidents, which involved the loss of life and serious injuries, it was obvious that the "minimum" Federal Pipeline Safety Regulations in effect at the time were not enough.[23] The Missouri commissioners wanted to address these pipeline safety issues and directed the Staff to draft comprehensive revisions to its Pipeline Safety Regulations.[24] The current rules mandating the replacement of cast iron and bare steel facilities followed.

Mr. Leonberger made several observations of particular relevance to this proceeding when he discussed the events that have unfolded since these safety rules were promulgated. In contrast to the OPC's constant challenges to the Company's accelerated replacement programs, Mr. Leonberger observed that the purpose of those programs was to eliminate piping materials that had been identified as deteriorated and presented a hazard to safety with the ultimate goal of reducing the number of natural gas leaks and the number of natural gas explosions.[25] Mr. Leonberger also described how the ISRS statute passed by the General Assembly in 2003 was structured to provide utility companies with an incentive to accelerate the replacement of deteriorated infrastructure.[26] It did so by allowing utilities to begin recovering the costs for such investments once they were placed into service rather than making them absorb and permanently forego the depreciation, carrying costs and other expenses that were incurred between the time these facilities went into

[21] Ex. 6, p. 6, lines 3-10.
[22] *Id.*
[23] *Id.*
[24] Ex. 6, p. 6, lines 10-12.
[25]Ex. 6, p. 7, lines 15-17.
[26]Ex. 6, p. 7, lines 18 to p. 8, line 1.

service and a subsequent rate case was finalized.[27] As someone who had been working as a pipeline safety regulator for over 20 years at the time the ISRS statute was enacted, Mr. Leonberger testified that he believed the statute appropriately encouraged utilities to accelerate replacements of these facilities and that he wanted utilities to use these tools to expedite elimination of hazardous and deteriorated facilities as quickly as possible.[28] Mr. Leonberger also testified that the developments addressed by Company witness Hoeferlin in his direct testimony, including the increased emphasis at the federal and state level on such accelerated replacements, had underscored the wisdom of, and need for, the approach that has been taken by Spire Missouri in conducting its replacement programs.[29]

The OPC offers nothing substantive in its testimony in these cases to demonstrate how or why the Commission, Mr. Hoeferlin and Mr. Leonberger have somehow erred in determining that the Company's cast iron and bare steel facilities are worn out or in a deteriorated condition and that the Company's systematic, and accelerated programs for replacing them is in keeping with the purpose and intent of the ISRS statute. Instead, OPC witness John Robinett simply recycles old hoops or invents new ones for needlessly reproving what we already know and what the Commission has already determined to be true – namely that these facilities are indeed worn out or in a deteriorated condition.

For example, Mr. Robinett suggests that the Company could have attempted to assess whether or to what extent its steel mains were worn out or in a deteriorated condition by keeping track of the thickness of the walls of its various steel mains and the rate of corrosion experienced on each.[30] Apparently, Mr. Robinett is of the opinion that such information would permit an

[27] *Id.*
[28] Ex. 6, p 8, lines 1-9.
[29] *Id.*
[30]Ex. 200, p. 13, lines 5-19.

operator to develop a mathematical formula where one could estimate when corrosion was going to be significant enough on a particular main to warrant its removal. As Company witness Hoeferlin explained, however, the Company does not keep track of such information because it would not be helpful in assessing the actual condition of steel mains.[31] This is because steel mains do not corrode on a uniform basis. Instead, there can be significant variation in the amount of corrosion occurring from one pipe to the next or even on the same pipe due to a variety of factors, including the impact of rocks or other hard substances affecting a segment of pipe, soil conditions or even minor structural damage that occurred at the time of installation.[32] Given this natural variation, which also occurs in cast iron facilities, accumulating the information suggested by Mr. Robinett would not only be a huge waste of resources, but would give potentially misleading indications regarding the actual condition of the Company's infrastructure. Mr. Hoeferlin's observations in this regard were broadly reconfirmed by Mr. Leonberger.[33]

The OPC also recommended (once again) that leaks be used as a metric for determining whether to replace problematic facilities, citing the 5-5-3 leak protocol that was previously used to require a minimum level of replacements.[34] Both Mr. Hoeferlin and Mr. Leonberger testified that from a public safety perspective the goal should be to *avoid* leaks from occurring – given their potentially deadly consequences – rather than relying on them to occur for purposes of determining

[31]Tr. 75, lines 2-7.
[32]Tr. 75, lines 8-21.
[33] Tr. 165, line 3 to Tr. 166, line 15. Mr. Robinett also expressed concerns regarding the quality of some of the work order information provided by the Company. As Spire witness Selinger explained, however, Mr. Robinett's concerns were related to a few work orders that were mislabeled or that did not yet have certain vintage information included. These concerns could have been cleared up with a simple phone call to Mr. Selinger, but Mr. Robinett was apparently too busy to make such a call, but not too busy to reference the work orders in his testimony. (Tr. 260, line 19, to Tr. 261, line 12).
[34]This 5-5-3 leak protocol was set forth in Case No. GO-2002-50, a proceeding that was designed to reset certain aspects of MGE's various safety programs. Essentially, it required that replacements of bare steel main that had been cathodically protected decades after installation be targeted first at those pipes which had experienced 5 leaks within 5 hundred feet over 3 years. (Tr. 79, lines 7-18).

when facilities should be replaced. Indeed, that is the very rationale for the Commission's mandated cast iron and bare steel replacement programs: to prevent the kind of leaks that resulted in multiple deaths and injuries in the late 1980's.[35]

And it is this single issue that perhaps best illustrates the OPC's deeply flawed interpretation and application of the "worn out or in deteriorated condition" requirement for determining that facilities are eligible for recovery under the ISRS mechanism. As Chairman Silvey observed during the evidentiary hearing, this requirement should be read in the disjunctive as requiring that facilities be *either* worn out *or* in a deteriorated condition, but not both, to qualify for ISRS treatment.[36]

> Q. [Chairman Silvery] In the discussion about whether or not the pipes are deteriorated –
> A. Uh-huh.
> Q. It seems like most of the discussion centers around the words in the statute of "worn out" and it seems like "and deteriorated."· Almost like it's a two-part thing. But when I read the statute, it says worn out or are in a deteriorated condition.
> A.· · Yes.
> Q.· · So is it possible that pipes could be in a deteriorated condition but not be worn out?
> A.· · They -- they -- my understanding of deteriorated is, you know, it's -- the condition is not as good as when you place it in service.· So through the corrosion, I would say yes, it is deteriorated.· I would also say, especially when it's leaking, that it's worn out and it needs to be replaced.
> Q.· · Sure.
> A.· · Yeah.· Okay.
> Q.· ·And worn out, I think.
> A.· · Yeah.
> Q.· · I think everybody . . pretty well has a handle on.· But . . . as I read the statute, it doesn't have to be worn ·out.
> A.· · Right.
> Q.· · It can be worn out –
> A.· · Or.
> ·Q.-- or it can be deteriorated?

[35] The OPC is apparently so oblivious to the risks posed by natural gas leaks, that it once again compared how Missouri American Water Company utilizes leaks to determine when it will replace water lines to how it believes Spire Missouri should rely on leaks to determine the replacement of natural gas distribution infrastructure. (Tr. 58, line 24 to Tr. 59, line 5). It is nothing short of astonishing that the OPC would implicitly equate the risks posed by water leaks to those arising from natural gas leaks. To the Company's knowledge no one has drowned as a result of a corrosion leak in a water main, but the consequences of natural gas leaks, both in Missouri and elsewhere in the country, have all too often involved fatalities and severe injuries.

[36] Tr. 140, lines 10-25.

A.· · Yes.[37]

It is clear that the OPC's repeated assertions that the Company's cast iron and bare steel facilities are not worn out or in a deteriorated condition have focused almost exclusively on the "worn out" part of the statutory definition while largely ignoring the "in deteriorated condition" part. That is why the OPC has for a number of cases now attempted to convince the Commission that facilities have to be leaking or on the brink of falling apart – i.e. "worn out" – before the costs of replacing them are eligible for recovery under the ISRS. That is decidedly not what the General Assembly had in mind, however, when it wrote the ISRS statute as evidenced by its use of the alternative phrase "or in a deteriorated condition." In other words, by using this alternative language, the General Assembly did not intend that utility customers be exposed to an imminent threat of harm before any action could be taken to replace the facilities posing such risks. Nor does it seem plausible that the General Assembly envisioned having the Commission perpetually retest and reverify, as the OPC suggests, the deteriorated condition of aging facilities that the Commission has already determined were problematic and needed to be replaced.

In fact, the OPC's contention that such reassessments need to be constantly made is directly at odds with the Commission's historical approach to replacement programs – an approach that was well known prior to the enactment of the ISRS Statute. For example, in response to the new safety rules adopted by the Commission in 1991, it was determined that MGE would replace tens of thousands of bare steel service or yard lines; facilities which were the same kind of lines that resulted in the tragic incidents giving rise to the rules. Once this decision was made, no one stepped in and suggested, as the OPC has been doing over the past few years, that these service and yard lines needed to be continually retested, or uncovered and examined or otherwise re-

[37] Tr. 140, line 8, to Tr. 141, line 14.

evaluated to determine whether they were, in fact, worn out or in a deteriorated condition or otherwise no longer presented a safety problem. Why? Because the Company does not believe it would have occurred to anyone familiar with the laws of chemistry and the inherent properties of the materials used in these facilities to even imagine, let alone say out loud, that their condition may have somehow improved with age and additional time spent in the ground.

The same common-sense, reality-based approach has been taken with respect to other safety-related replacement programs implemented by utilities in Missouri. The program for replacing Spire's direct buried soft copper service lines is another prime example of this historical approach by the Commission.[38] Again, once the decision was made that such lines posed a threat to public safety, they were replaced without the need to constantly reconfirm their problematic nature.

It is, of course, impossible to tell how many lives have been saved and how much property damage has been avoided by this sensible and entirely appropriate approach that has been taken by the Commission and utilities in Missouri to rid the state of problematic facilities that threaten public safety. But the results have been truly impressive as evidenced by the fact that no more serious incidents involving the facilities subject to these replacements programs have occurred. The lives and property of customers in the future should likewise be protected rather than jeopardized by fanciful notions that the Commission and the Company need to prove anew, and in ever shifting ways, what we already know to be true.

In any event, it is clear that the OPC's attempt to assess ISRS eligibility only through the prism of whether facilities are "worn out" is inconsistent with the clear language of the ISRS statute. It is equally clear that the Company's cast iron and bare steel facilities more than satisfy

[38] See Tr. 87, lines 1-11.

the second part of the requirement in that they are unquestionably "in a deteriorated condition." Under its commonly used definition, deteriorated simply means something that has become "inferior in quality or value" compared to its original state.[39] While one might quibble over how worn out the Company's cast iron and bare steel facilities are, it would be preposterous to contend that they are not inferior in quality or value compared to the day they were installed. Cast iron becomes brittle over time and as OPC witness Mr. Robinett observes, bare steel pipe begins corroding and losing metal the day it is installed. After being in the ground for 60 to 100 plus years, and approaching or exceeding what depreciation professionals, like Mr. Robinett, would say is their average useful service lives, there can be no question that such facilities have become inferior in quality and value.[40] Moreover, those witnesses who have seen such facilities up close at the time of their removal have testified in no uncertain terms that they are all in a deteriorated condition to one degree or another. It should not have been necessary to prove that truism once again in these cases, but hopefully with a better understanding of how the "worn out or in deteriorated condition" language of the ISRS should be interpreted and applied, these are the last ISRS cases in which such an exercise will have to be undertaken.

**2. <u>Bare Steel Lines Placed under Cathodic Protection Decades After Installation</u>**

The second issue raised by the OPC is a new one. It relates to the Company's replacement of bare steel mains that have had some form of cathodic protection applied to them, but only decades after they were first put into service.[41] Spire West and its predecessor, MGE, have been

[39] Merriam Webster On-line dictionary https://www.merriam-webster.com/dictionary/deteriorate

[40] As Mr. Robinett testified, the purpose of depreciation is to allocate the value of an asset over its expected useful life as it is being economically and operationally "used up" over time. (Tr. 258, lines 8-15). Clearly when facilities have had 80% or 90% of more of their initial value "used up", it is simply not possible to say that they are not inferior in quality or value (i.e. deteriorated) compared to their initial state.

[41] Bare steel lines that have been cathodically protected after their installation need to be distinguished from coated steel lines that had a protective outer coating applied prior to their installation. These coated steel pipe have an excellent leak history that rivals plastic as show by the graph presented elsewhere in this section.

replacing these kind of facilities for 18 years now, and recovering their costs through the ISRS for much of that time. It has done so without challenge by the OPC or any other party for that matter.

The OPC has now taken the position that that there is nothing in the Commission's safety rules that mandate such replacements and that there is no compelling safety justification in any event for taking such action. As discussed below, the OPC is simply wrong on both counts.

In terms of whether there is a governmental mandate for the Company's replacement of this subsequently protected bare steel main, Rule 15(E) of the Commission's safety rules affirmatively requires that utilities have programs to address their unprotected steel mains.[42] Under the Rule, utilities were given the option to replace or cathodically protect such facilities or, in the view of Mr. Hoeferlin and Mr. Leonberger, do both at different times depending on what was required to effectively comply with the Rule's basic objective.[43] As explained by Spire witness Leonberger, MGE decided to cathodically protect these facilities as a first step. Applying cathodic protection was not viewed as some kind of permanent solution, but rather as an interim measure designed to slow down further corrosion on these pipes while MGE went about the business of replacing tens of thousands of unprotected steel service lines and deal with certain critical cast iron facilities.[44] It was always anticipated that such facilities would have to be eventually replaced.[45] That replacement process began in 2002 as a result of the Commission's approval of a proposal by MGE in Case No. GO-2002-50. By that time, MGE had made substantial progress in its service and yard line replacement program and there were additional resources to

[42]*See* 20 CSR 4240-40.030(15)(E)
[43] *Id.*
[44]Ex. 6, p. 10, line 13 to p. 11, line10.
[45]As Mr. Leonberger explained, at the time he was helping to draft Rule 15(E), he believed that the bare steel mains that had been in the ground for decades before protection was applied would have to be eventually replaced. (Ex. 6, p. 11, lines 19-23). That was his opinion 30 years ago when the Rule was drafter and remains his opinion today. (*Id.*)

begin the replacement of its bare steel mains that had only been cathodically protected decades after their installation. It was also apparent at the time that such facilities continued to experience leaks at a concerning level. MGE therefore agreed to begin replacing such facilities at a minimum quantity of 5 miles per year. Notably, no one argued at the time that such replacements were incompatible with the requirements of Rule 15(E).

Nearly two decades ago the Company began replacing its deteriorated bare steel main under Rule 15(E). There should be no question regarding the Company's rights and obligations under Rule 15(E) to continue to replace these facilities nearly 20 years later just because they were cathodically protected. Under Rule 15(E) the Company has been and is currently replacing bare steel main that was previously unprotected for a significant amount of time. In challenging the ISRS eligibility of these replacements costs for the first time, the OPC would have the Commission adopt a tortured interpretation of Rule 15(E) under which MGE's initial application of cathodic protection to these unprotected bare steel mains would be deemed to have satisfied its obligation to address these facilities not just then but forever, regardless of whether and for how long such cathodic protection was effective in preventing leaks. Moreover, the Rule's option of replacing such facilities would no longer be available to meet the Rule's remedial goals regardless of how necessary such action might become. The Company submits that such an implausible interpretation of a Rule that, after all, is intended to advance public safety should be rejected by the Commission. By its very terms, the Rule mandated that the risks posed by bare steel mains be remedied and it provided both cathodic protection and replacement as tools to comply with that mandate; while saying nothing about those two options being mutually exclusive.

The OPC's suggestion that there is no safety justification for replacing these facilities should also be rejected. The OPC presented a number of arguments in support of this position, none of which withstand scrutiny. First, the OPC asserts that because cathodic protection has been applied to these bare steel mains the risks of future corrosion on these pipelines has been mitigated. As Spire witnesses Leonberger and Hoeferlin explained and as OPC witness Robinett acknowledged however, the application of cathodic protection did nothing to reverse or repair any corrosion that had already occurred on these facilities over the 30 to 50 years that they were in the ground prior to such protection being applied.[46] This is significant because such bare steel mains were simply a larger version of the bare steel services and yard lines that were beginning to be replaced because of their involvement in multiple explosions.[47] And they, like those service and yard lines, had been corroding away in the ground for decades.[48] Moreover, as Mr. Robinett also acknowledged, in addition to doing nothing to repair the corrosion that had already developed on these steel mains, the application of cathodic protection only slowed the development of future corrosion, but did not eliminate it. Coating and cathodic protection would provide greater protection only for brand new steel pipe put in service, which is not the situation these cases. Given these considerations, it is clear that the application of cathodic protection to these lines was not the permanent solution to the safety risks posed by such facilities that OPC suggests it was.

In another, and especially misleading, argument, the OPC also suggested that the safety justification for replacing subsequently protected bare steel mains was insufficient because of where such facilities ranked as a risk on the Company's Distribution Integrity Management Plan or DIMP. In fact, Counsel for the OPC questioned Mr. Hoeferlin at length on this issue in an

[46] Ex. 5, p. 21, lines 1-3; Ex. 6, p. 9, lines 14 to 22.
[47] Ex. 6, p. 10, lines 13-16.
[48] *Id.*

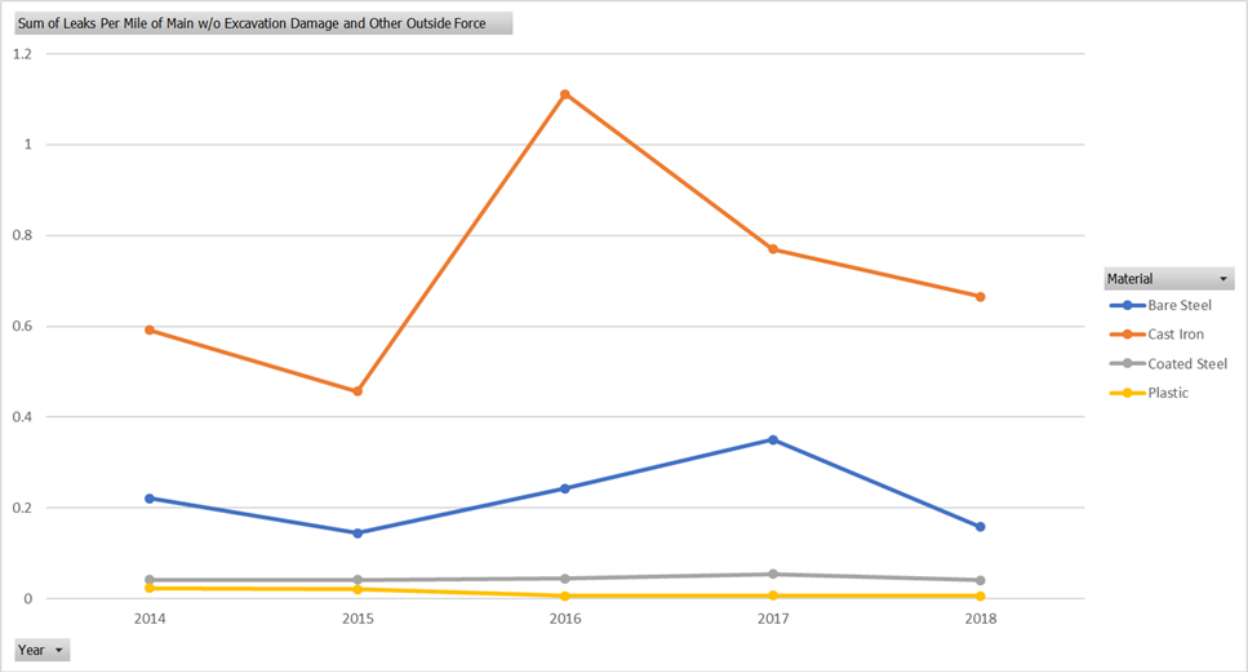
effort to show that such facilities were ranked towards the bottom of those risks identified by the DIMP. The primary problem with the OPC's line of attack on this front – a line that was not even mentioned in its filed testimony – is that the OPC was relying on an outdated DIMP from a number of years ago, rather than on the Company's most recent DIMP that was completed in May of 2019.[49] Fortunately, Mr. Hoeferlin had an opportunity to obtain the 2019 DIMP and correct the misleading impression that was being given during the OPC's cross-examination of him. Specifically, Mr. Hoeferlin was able to point out that in 2019, the risks posed by these facilities were ranked in the upper quadrant of all risks faced by the Company.[50] As Mr. Hoeferlin explained, the elevated risk level for these facilities may have been due to, in part, the significant spike in leaks that were experienced on such facilities in 2017.[51]

Speaking of leaks, the OPC also argued that there was an insufficient safety justification for replacing these facilities because they were not, in the OPC's opinion, leaking enough. Again, like its attempt to suggest an equivalence between natural gas and water leaks, the OPC's argument in this regard conveys a fundamental misunderstanding of the gravity and potential consequences of natural gas leaks. As Mr. Hoeferlin explained, as recently as 2017, the leakage rate on these subsequently protected steel mains was some 20 times greater than the leakage rate on plastic mains.[52] And prior to the time the Company began replacing such facilities, their leak rate had been some 30 to 40 times greater than the leakage rate on plastic mains.[53] The Company's efforts

[49] Tr. 150, lines 14-25.
[50] Tr. 156, line 20 to Tr. 157, line 4.Mr. Hoeferlin also explained that the number of risks ranked above that for subsequently protected bare steel is misleadingly large because the DIMP, for example, assigns a separate risk number for third party excavation damage based on the various geographic areas where such damage occurs even though third party damage is really a single risk factor. (Tr. 151, line 23 to Tr. 152, line 22). Accordingly, while the DIMP gives a high rank to the risks posed by these facilities, that rank is even more elevated once this factor is taken into consideration.
[51] Tr. 156, lines 5-12.
[52] Tr. 81, lines 3-9.
[53] Ex. 5, p. 24, lines 19-22.

to accelerate the replacement of these facilities have helped to reduce their leakage rate, but even today they still have 10 times more leaks per mile than plastic facilities.[54]

Mr. Hoeferlin attempted to illustrate the impact that the Company's accelerated replacement efforts have had on the leakage rate for its cast iron and subsequently protected bare steel facilities by graphing the leaks per mile experienced on these facilities over the past five years.




As the above graph demonstrates, after an initial spike in 2017, the Company's accelerated replacement programs for subsequently protected bare steel has resulted in a significant decline in the leak rate for those facilities. Mr. Hoeferlin explained, however, that this progress could be easily reversed in the event these accelerated replacements were stopped. In the end, the only permanent fix for uncoated bare steel pipes is the one being pursued by the Company, namely to

[54] Ex. 5, p. 24, line 17 to p. 25, line 5. It is also important to note that the leaks identified by OPC only include those that needed to be repaired on a more immediate basis and thus reported and by no means captures all the leaks detected on these facilities.

replace such pipes with plastic mains that do not suffer from corrosion or fracturing and bring the rest of the Company's distribution system to the minimal leak levels shown by the bottom two lines on the above graph.

Despite this evidence, the OPC has persisted in downplaying the threats posed by such leaks by contending how few there are per mile. As Mr. Hoeferlin pointed out, however, there were 18 hazardous corrosion leaks reported on these and other bare steel facilities in 2018 alone.[55] These are the most serious leaks of all, involving the infiltration of escaping gas into homes, businesses, sewers and other underground pathways – circumstances that have led and can easily lead to catastrophic situations.[56] While the OPC may be unconcerned with the gravity posed by such leaks, the Company views them with the utmost seriousness and believes that its replacement of these facilities is critical to avoiding them in the future.

As Mr. Hoeferlin points out, it is for all of these reasons, that today the need to replace these facilities has also been widely recognized by federal safety officials as well as utilities across the country. In fact, there is today a consensus among industry officials responsible for the safe operation of natural gas distribution systems regarding the need to accelerate the replacement of bare steel mains that have been placed under cathodic protection subsequent to their installation. As Mr. Hoeferlin noted in his Direct testimony, a review of the USDOT Annual Reports for Gas Distribution Systems, which can be found on PHMSA's website, clearly shows that other natural gas distribution operators outside of Missouri have in fact been replacing bare steel mains under cathodic protection at an accelerated rate over the last several years.[57]

[55] Tr. 82, lines 4-12.
[56] Tr. 81, line 14 to Tr. 82, line 8.
[57] Ex. 5, p. 23, line 21 to p. 24, line 1.

PHMSA itself has also warned about the need to accelerate the replacement of bare steel facilities that, like those being replaced by the Company, have not had a protective outer coating applied. As PHMSA states:

> "Uncoated steel natural gas and hazardous liquids pipelines are also known as bare steel pipelines. While many of these pipelines have been taken out of service, and no longer transport these commodities to customers, some of them continue to operate today. The typical age and the lack of a protective outer coating have to be considered by the pipeline operators, and this may lead to accelerated replacement or rehabilitation of bare steel pipelines."

For all of these reasons, there is absolutely no basis for backtracking now on this important safety initiative as it makes the Company's distribution system safer and replaces facilities that pose a significant risk to that safety. The OPC's challenge to the ISRS eligibility of costs incurred by the Company to replace bare steel mains that were not cathodically protected until decades after they were first installed should accordingly be rejected by the Commission.

### 3. The Plastics Issue

In its Report and Order in Case Nos. GO-2018-0309 and GO-2018- 0310 the Commission stated:

> "In the future, if Spire Missouri wishes to renew its argument that plastic pipe replacements result in no cost or a decreased cost of ISRS, it should submit supporting evidence to be considered, such as, but not limited to, a separate cost analysis for each project claimed, evidence that each patch was worn out or deteriorated, or evidence regarding the argument that any plastic pipe replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components"

The Company, with the Staff's endorsement, submitted 509 engineering/cost studies in its last ISRS cases which the Company believes fully substantiated its position that there are really no costs resulting from the replacement or bypass of plastic components as part of the cast iron and bare steel replacement programs. Although the Company continues to believe that those

analyses were sound and warranted approval of its requested ISRS revenues in those cases, it is not seeking to relitigate the issue here. Instead, it is attempting to take a new and different look at this issue based on guidance provided by Commissioner Hall in a concurring opinion in those cases. Basically, the Commission found in Spire's last ISRS cases that the 509 studies performed by the Company did not use the right basis of comparison. The Commission did not really specify what the right basis of comparison would be, but Commissioner Hall issued a concurring opinion in which he indicated that the Company should have compared the costs of its systematic approach, which involves the replacement or bypass of certain plastic components, to the Company's former "patchwork" or piecemeal" approach where the Company only replaced, or patched if you will, those portions of its facilities that required immediate remedial action.

The Company thought that such a comparison would be another valid data point to consider in assessing the cost issue. Accordingly, the Company performed a number of analyses on 12 randomly selected ISRS projects (including 7 in its Spire East service area and 5 in its Spire West service area) that looked at what it cost to replace certain facilities under the systematic approach versus what it would cost under the piecemeal approach. As discussed in the direct testimony of Craig Hoeferlin and presented in the table below, the piecemeal approach. was more expensive than the systematic approach by 11% to 198% depending on the specific characteristics of the project being evaluated.[58]

[58] Ex. 5, p.15, line 21 to p. 16, line 5.

| Overall vs. Piecemeal | | | | |
|---|---|---|---|---|
| **MoEast** | | | | |
| WO | Description | Overall Cost | Piecemeal Cost | % Difference |
| 901314 | Central West End 2D | $ 462,053 | $ 1,098,364 | 238% |
| 901962 | Delmar - Vandeventer to Sarah Mandated | $ 183,013 | $ 525,706 | 287% |
| 902261 | Lynch & Missouri 1A | $ 329,072 | $ 719,027 | 219% |
| 901622 | Marconi & Shaw 1H | $ 490,590 | $ 654,749 | 133% |
| 902586 | Dunnica- Alexander to Gravois - Mandated Section 453 | $ 151,446 | $ 323,567 | 214% |
| 901238 | Pagedale 2B | $ 289,365 | $ 441,209 | 152% |
| 901299 | Wellston 3I | $ 431,016 | $ 828,636 | 192% |
| | | | | |
| **MoWest** | | | | |
| WO | Description | Overall Cost | Piecemeal Cost | % Difference |
| 802271 | 17th & Oakland Strategic Phase B (MPL) - Magnolia River GPS | $ 322,055 | $ 560,065 | 174% |
| 800132 | FY16 Strategic Grid MGE - Belton Phase 2D - IUI | $ 165,421 | $ 413,213 | 250% |
| 800497 | 63rd and 55th Street- Cast Iron Main replacemnet Phase 1B | $ 355,686 | $ 1,061,562 | 298% |
| 801873 | Replacement due to CP at Canterbury in Joplin - SPIRE - Smith | $ 151,026 | $ 211,666 | 140% |
| 802458 | Meadowlake Terr & State Line Road Strategic Grid Replacement (IUI) | $ 409,349 | $ 453,024 | 111% |

Why the Company's systematic replacement program would have such an extraordinary cost advantage over the piecemeal approach advocated by the OPC is not difficult to understand. Under the piecemeal approach, the Company would be precluded from reducing the size of the piping being installed, since the new pipe would need to match the larger size of the pipe being patched.[59] This size factor, as well as the need to prevent water-retaining dips in the piping, would also preclude the use of more efficient boring techniques for installing the pipe and require instead that pipe be direct buried.[60] Moreover, while a piecemeal replacement on a segment of main may, on a one-time basis, be somewhat less expensive than replacing the entire pipe all at once under the systematic approach, over time crews would need to be repeatedly re-assembled and sent to work on the same main to replace other portions that develop leaks in the future – costs that would be avoided by the systematic approach.[61] And despite these added costs, the main would ultimately need to be replaced anyway.[62]

[59] Ex. 5, p. 15, lines 7-11.
[60] *Id.*, lines 11-13.
[61] *Id.*, lines 13-18.
[62] *Id.*

As Mr. Hoeferlin went on to explain, these results of the comparisons he performed are reasonably representative of the relative systematic versus piecemeal cost that would be incurred on other ISRS projects since most of the same cost-related factors would apply to other ISRS projects as well.[63] Moreover, while the relative cost advantage of the systematic approach would be greater in some instances and less in others, Mr. Hoeferlin testified that the systematic approach would be less expensive in nearly all instances and that on a cumulative basis, the cost advantage of the systematic approach would be overwhelmingly positive.[64]

In addition, the piecemeal approach would have prohibited the Company from realizing other significant efficiencies that have been achieved as a result of its systematic replacement program such as reducing the amount of regulator stations for Spire East from approximately 130 down to just six.[65] That factor alone would have significantly increased the costs paid by customers in rates, as the Company would have had to maintain the far larger number of regulator stations it historically had with all of the added capital investment and operational expenses required to keep them operating safely.[66]

Notably, while the OPC had an opportunity to provide live rebuttal to the Company's comparative analyses on this issue, it did not challenge in any manner the results of this comparison or the methodology that was used to derive them. Nor did the Staff. In fact, the Staff went so far as to advise the Commission that the analyses performed by the Company appeared"to be a very logical and reasonable approach . . .".[67]

[63] Ex. 5, p. 16, lines 8 to 15.
[64] *Id.*
[65] Ex. 5, p. 17, lines 8-12.
[66] *Id.*
[67] Tr. 47, lines 10-12.

In the end, the Company believes that the comparative analyses presented by Mr. Hoeferlin is another valid evaluation supporting what, if anything, utility customers are being asked to pay in their ISRS charges relating to the replacement or bypass of plastic components done as part of the Company's cast iron and bare steel replacement programs. And it demonstrates once again and on an undisputed basis, that customers aren't being asked to pay anything extra in their ISRS charges because some plastic was replaced or bypassed. It is instead a cost benefit for the Company's customers. Better yet, it is a cost benefit that also makes the distribution system serving those customers safer than if the piecemeal approach were still being followed, creating a contiguous pipe absent numerous joints susceptible to possible leaking or failure. As previously noted, such an analysis also demonstrates that the OPC's repeated challenges to the Company systematic programs are untethered to any legitimate public policy rationale in that the OPC is ultimately advocating an approach that would simply make the Company's distribution system less safe at a greater cost to customers.

Whether one looks at this issue on a very detailed basis, as the Company did in its last ISRS cases, or on a more macro, long-term basis as it has done here, the fact remains that the elimination of plastic components as part of the Company's cast iron and bare steel replacement program have not cost ratepayers anything and the Company should not be financially penalized as if it had. For all of these reasons, the Company respectfully requests that reduction to its ISRS revenues being proposed based on application of the Staff's percentage method be rejected by the Commission and the Company permitted to recover its full ISRS costs.

**4. <u>Overheads Issue</u>**

The fourth issue relates to the overheads allocated by the Company to ISRS projects. This issue was raised by the OPC in the last ISRS cases but not pursued to a Commission decision.

Instead, the parties agreed that the Company would make a detailed presentation on how it determines and allocates overheads to ISRS projects, which we did, and that parties would be free to ask follow- up questions. A copy of that presentation has been attached to the direct testimony of our witness on the issue, Timothy Krick. As part of this process we also agreed to make our subject expert available to discuss the specifics of the presentation. Although the Company received very little feedback from the OPC during this process, the OPC has now weighed in again on this issue with its objections and testimony in these cases.

While the OPC acknowledges that the majority of the Company's overheads allocated to the Company's ISRS are appropriate-those consisting of specific allocators such as employee benefits and pension, the OPC *is* taking issue with those Company overheads that the OPC believes are general and "arbitrary" and "recognizes no definite relationship to the ISRS construction projects."[68] The argument that Spire's general factor allocators are arbitrary simply isn't true. As explained in the direct testimony of Timothy Krick, Spire's Controller, all costs attributed to the ISRS are either directly or indirectly related to the ISRS projects.[69] The OPC points to director fees and A&G salaries as inappropriate ISRS costs. As Mr. Krick testified at hearing, director fees *do* have a relationship to the Company's ISRS projects as the Company's executive board provides oversight and communication to Spire's investment community regarding the Company's ISRS as well as ensures that Spire is effectuating its ISRS projects in a safe manner that is legally compliant.[70] Mr. Krick also testified that A&G salaries are comprised of a portion of the salaries of those departments that support the ISRS projects, such as human resources, finance, procurement, and supply chain.[71] Furthermore, as emphasized by Staff witness Matthew Young

[68] Ex. 202, p. 8, lines 8-9.
[69] Ex. 7, p. 9, line 21 to p. 10, line 1.
[70] Tr. 209, lines 7-13.
[71] Tr. 199, lines 17-22.

during live rebuttal, the cost categories identified by the OPC are allowed under the Uniform System of Accounts (USOA) gas plant instruction 3. Paragraph 12 of gas plant instruction 3 specifically allows for general administration, expenses and salaries. And as Mr. Krick pointed out in his testimony, paragraph 8 of USOA gas plant instruction 3 specifically allows for the inclusion of injuries and damages in overheads.

Nevertheless, the OPC continues to insist that the Company is not following the USOA for Gas Utilities in the treatment of its overheads. While the Company maintains that its treatment of overheads is generally consistent with the USOA, it is important to note, as even the OPC has acknowledged at hearing, the Commission is not bound by the USOA pursuant to 20-CSR-4240-40.0404 which states:

> In prescribing this system of accounts the commission does not commit itself to the approval or acceptance of any item set out in any account, for the purpose of fixing rates or in determining other matters before the commission.

As Mr. Krick testified, the methods and procedure used to determine the overheads that have been capitalized and allocated to the Company's ISRS projects in these cases are the same methods and procedures used for at least the past two decades for this purpose.[72] Over that span, those methods and procedures have been audited and reviewed in multiple rate case proceedings and used to set the Company's cost of service in each of them.[73] As Staff pointed out in its Direct Report, the capitalization rate used in Spire Missouri's ISRS cases is consistent with the capitalization rate used to set Spire Missouri's base rates in its last rate case.[74] Below is the chart from page 11 of Staff's Direct Report.

[72]Ex. 7, p. 10, lines 3-12.
[73]*Id.*
[74] Ex.204 p. 11, lines 6-21.

| Comparison of Labor Capitalization Rates | | | |
|---|---|---|---|
| | Capital % in Rate Case (Staff) | Spire Current % (Staff DR 4) | Difference |
| Spire East | 45.67% | 45.23% | -0.44% |
| Spire West | 39.77% | 39.48% | -0.29% |

This same capitalization rate was applied to the Company's pension asset, which, as explained by Staff witness, Mr. Young, for Spire East, 55% of pension is recovered through expense and 45% of the amount is capitalized through future rate base.[75] It is important to note that none of the parties has contested the eligibility of pension costs as a component of ISRS overheads in these cases. In fact, the OPC specifically acknowledged that pension expense *is* an allowable component of the Company's ISRS overheads[76]. OPC Witness Mr. Robert Schallenberg provided direct testimony confirming the OPC's position that pension is an allowable overhead, stating that pension is charged on a benefits rate or payroll charges which has a "definitive relationship to ISRS construction and these costs therefore do not violate the overhead instructions found in the USOA."[77]

At no time has anyone raised the same concern that has now been newly discovered by the OPC. These methods and procedures are also consistent with the general allocation principles set forth in the Company's Commission approved Cost Allocation Manual ("CAM") and the U.S. Generally Accepted Accounting Principles.[78] The OPC claims that this is not relevant because ISRS projects are not an affiliate transaction, but that misses the point. Regardless of whether the

[75] Tr. 232, lines 1-14.
[76] Tr. 50, lines 15-18.
[77] Ex. 201, p. 10, lines 3-7.
[78] Ex. 7, lines 9-12.

allocation is to an affiliate or an ISRS project, it simply cannot be arbitrary for the Company to use the same allocation method that is in the PSC's rules and the Company's approved CAM.

In any event, the Company fully agrees with the Commission Staff that this is an issue that belongs in a rate case not an ISRS proceeding. In a rate case, the Commission won't have to decide these issues based on one round of testimony and a few days of response time. As Mr. Krick testified at hearing, the allocation of overheads "involves lots of inputs" and a "systemic approach that goes through hundreds of steps."[79] Mr. Krick further pointed out that "there could be thousands of transactions that the Staff and the OPC might want to look at the details of the overheads."[80] Moreover, if the Commission ultimately decides that some of these overhead costs should be expensed rather than capitalized, it will also have the opportunity in a rate case to increase rates so that each year customers pay the full cost of these expenses rather than just a fraction of them spread out over the life of the asset. The Company does not believe that is a particularly good result for customers, but at least in a rate case the Commission would be able to address both sides of the capital/expense equation.

### 5. Jurisdictional Issue

This fifth and final issue was first raised in the Company's last ISRS cases. It centers on whether the Commission has the power or jurisdiction to consider ISRS investments that were not allowed to be recovered in prior ISRS cases. Given the explicit language of the ISRS statute, the Company continues to believe that the Commission does have the jurisdiction to consider and approve such costs. Simply put, the ISRS Statute specifically states that all otherwise qualifying

[79] Tr. 196, lines 18-20.
[80] Tr. 197, lines 5-7.

gas projects are eligible for inclusion in an ISRS so long as such projects "were not included in the gas corporation's rate base in its most recent general rate case."[81]

Although Company continues to believe that this explicit legislative directive authorizes the Commission to consider such prior investments and trumps all other arguments to the contrary, it recognizes, of course, that the Commission concluded otherwise in its last ISRS Order. Because that Order was not final at the time we filed our application we included those prior costs in our filing in this case. And because the Company has now sought judicial review of this legal determination by the Commission, we believe including these amounts in our filing remains appropriate to preserve our right to obtain meaningful relief on the issue should we prevail. While the Company would obviously be thrilled if the Commission revised its views on this issue in the meantime, it understands that for consistency sake the Commission may choose to dismiss this aspect of our application like it did in the last ISRS cases. Accordingly, for the Commission's convenience, the Company calculated and included in its application what amounts would need to be excluded from our ISRS filing should the Commission choose to go in that direction.

**B) <u>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?</u>**

For all of the reasons discussed above, the Company believes all of the costs included in its ISRS filing should be approved. Accordingly, it will simply incorporate its arguments in Section A as a response to the arguments made by other Parties who have recommended the exclusion of certain costs.

[81] Section 393.1009(3)(c) RSMo.

**C) How should income taxes be calculated for purposes of developing the ISRS revenue requirement in these cases?**

As previously noted, the Parties reached a Stipulation and Agreement resolving this issue which was filed with the Commission on October 2, 2019. This particular issue has been settled for many years with the Commission's approval by basically splitting the value of certain 263A deductions while attempting to expedite the processing of the Company's ISRS cases. A slight variation of this traditional resolution was also agreed upon and approved by the Commission in the Company's last ISRS cases. Pursuant to a Stipulation and Agreement approved by the Commission in those cases, the parties also agreed to meet and discuss whether they could develop an alternative way of resolving this issue. While the Company believes those discussions resulted in a better understanding of each party's position, the Parties were not able to reach an agreement on a particular solution. The Parties did agree, however, on settling the issue again in a manner consistent with the historical approach to this issue by essentially splitting the value of these deductions with a small adjustment under which 48% of the value of the deductions is included as a reduction to the revenue requirement in the calculation while 52% is excluded. The Company will, of course, continue to be open to discussing this issue and exploring alternative ways of addressing the issue in subsequent ISRS cases and its next rate case proceeding.

## III. CONCLUSION

For all the reasons set forth above, the Company respectfully submits that the Commission should approve the entirety of the Company's ISRS requests in these proceedings. The Company fully understands that the periodic and ongoing nature of its ISRS requests has resulted in a significant expenditure of resources, both by the Company and the Commission. In the Company view, the expenditure of much of those resources could have been avoided but for the repeated

advancements of challenges that have no factual, legal or public policy justification. One redeeming factor, however, is that with the help of guidance from the Commissioners, progress has hopefully been made in sorting out the truth about certain fundamental matters involving the proper administration of the ISRS statute. Among others, these include a more sound understanding of the proper interpretation and application of the ISRS "worn out or in deteriorated condition" requirement and a better assessment of whether the replacement or bypass of certain plastic components as part of the Company's cast iron and bare steel systematic replacement programs have imposed any real costs on customers or instead provided them with a safer system at a lower cost. Based on the clarity provided by this evolving understanding of the ISRS statute and how the Company has attempt to implement it, the Company respectfully requests that the Commission approve its ISRS applications in these proceedings.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

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

/s/ *Goldie T. Bockstruck*