

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Spire)
Missouri Inc. to Establish an)
Infrastructure System Replacement) **File No. GO-2018-0309**
Surcharge in its Spire Missouri East)
Service Territory)

In the Matter of the Application of Spire)
Missouri Inc. to Establish an)
Infrastructure System Replacement) **File No. GO-2018-0310**
Surcharge in its Spire Missouri West)
Service Territory)

ORDER DENYING MOTION IN LIMINE

Issue Date: May 19, 2020

Effective Date: May 19, 2020

On April 29, 2020, the Commission issued its Order Setting a Procedural Schedule Including a Limited Evidentiary Hearing on Remand. That order set out the procedure by which the Commission would hold an evidentiary hearing for the limited purpose of receiving information to comply with the mandate from the Missouri Court of Appeals, Western District. The Commission specifically stated in its order that Spire Missouri Inc. (Spire) may file written testimony and evidence it needs to make an offer of proof. On May 13, 2020, the Commission denied Spire's motion for reconsideration of the limitations set on the evidentiary hearing.

Also on May 13, 2020, Spire filed a notice that it intended to offer new evidence at the hearing to show that its cast iron and bare steel facilities are worn out or in a deteriorated condition and that it expected it would need to make an offer of proof regarding this information. Spire also filed written testimony and photographs that it stated were for the purpose of making an offer of proof. On May 18, 2020, the Staff of the Commission

(Staff) filed a motion in limine seeking to exclude the new evidence and to prevent Spire from making such an offer of proof.

Subsection 536.070(7), RSMo (2016), provides that if an objection to evidence is sustained, the evidence “shall . . . nevertheless be heard and preserved in the record, together with any cross-examination with respect thereto and any rebuttal thereof, unless it is wholly irrelevant, repetitious, privileged, or unduly long[.]” The Missouri Supreme Court has previously said that Subsection 536.070(7) does not allow the Commission to wholly exclude an offer of proof.¹ The Missouri Supreme Court stated that allowing the Commission to exclude an offer of proof would make the Commission’s decision unreviewable by the courts.² In that case, the Missouri Supreme Court stated that the Commission could have excluded the testimony from the hearing, but still allowed a written offer of proof, thereby preserving the evidence for review by the court.³

The Commission finds no justification to wholly exclude, before the hearing, Spire’s written testimony that it states it has provided for the purpose of making an offer of proof. The Staff’s motion in limine is denied. In denying the motion in limine, the Commission is not finding that Spire’s testimony should be admitted into the record. Rather that testimony is still subject to objection from any party when it is offered into evidence at the hearing.

THE COMMISSION ORDERS THAT:

1. The Motion in Limine to Exclude Certain Direct and Supplemental Testimony Filed by Spire Missouri Inc. in Remand Proceedings is denied.
2. This order shall be effective when issued.

¹ State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n, 344 S.W.3d 178, 185–86 (Mo. 2011).

² State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n, 344 S.W.3d 178, 185–86 (Mo. 2011).

³ State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n, 344 S.W.3d 178, 185–86 (Mo. 2011).



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

Nancy Dippell, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 19th day of May, 2020.