

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

In the Matter of the Application of)
Spire Missouri, Inc. to Change its)
Infrastructure System Replacement) Case No. GO-2019-0356
Surcharge in its Spire Missouri East)
Service Territory)

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

STATEMENT OF POSITIONS OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Statement of Positions*, states as follows:

The OPC will respond to the issues identified by the *List of Issues, List and Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements* in the order they are set forth

Issue 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?

No. See response to second issue for details.

Issue 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?

There are at least five costs that have been included in Spire's ISRS filing that are not eligible for recovery under the ISRS statute.¹ Those five costs are: (1) overhead costs that possess no definite relationship to construction and/or add to direct construction costs arbitrary percentages of overhead costs or amounts to cover assumed overhead costs, (2) costs related to the replacement of cathodically protected steel mains, (3) costs related to the replacement of cast iron mains, and (4) costs related to the replacement of plastic mains and services, and (5) costs the company was denied recovery of in past ISRS cases.

Overhead costs that possess no definite relationship to construction and/or add to direct construction costs arbitrary percentages of overhead costs or amounts to cover assumed overhead costs

Section 4 of the gas USoA, sub part B states (with respect to overhead costs) that:

As far as practicable, the determination of pay roll charges includible in construction overheads shall be based on time card distributions thereof. Where this procedure is impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities **to the end that only such overhead costs as have a definite relation to construction shall be capitalized. The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.**

Direct, Schallenberg, pg. 5. These instructions are applicable to Spire Missouri under Commission rule 20 CSR 4240-40.040. *Direct*, Schallenberg, pg. 6. Spire has included for recovery in its ISRS application overheads that do not bear a definite relationship

¹ The OPC believes that there may indeed be more than the four costs identified here, but, due to the time constraints imposed by statute, have been unable to fully develop its arguments regarding the other issues.

to construction and have instead been assigned using arbitrary or “general” allocators. *Direct*, Schallenberg, pgs. 8 – 9. These overhead costs are: Director Fees, Administrative & General Salaries, Injuries and Damages, General Office Supplies, and Miscellaneous Administrative & General expense. *Direct*, Schallenberg, pg. 9. Because these “overhead costs [are] charged to ISRS construction projects on a general basis . . . [they] do not conform to the requirements of the USOA.” *Direct*, Schallenberg, pg. 9. To permit these overhead costs to be recovered through the ISRS would thus violate Commission rules and these costs should therefore be disallowed.

Costs related to the replacement of cathodically protected steel mains

Spire’s application seeks recovery for the cost of replacing cathodically protected steel mains. *Direct*, Robinett, pg. 2. There is no evidence in the record that these pipes are worn out or in a deteriorated condition as required for recovery under section 393.1009. *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835, 839 (Mo. App. WD 2017); *Direct*, Robinett, pg. 4. Nor is there any reason that the Commission should believe that these pipes are in a worn out or in a deteriorated condition because the whole point of cathodic protection is to prevent the wear and deterioration that might otherwise occur on a steel pipe. *Direct*, Robinett, pg. 4. Moreover, there is no requirement that cathodically protected steel mains be replaced to the level or degree that Spire is engaged in. *Direct*, Robinett, pg. 4. This is significant given the following finding by the Western District in the *In re Laclede Gas Co.* case:

Additionally, the Commission's order does not identify a single "state or federal safety requirement" that mandated the replacement of the plastic mains and service lines or, for that matter, replacement of the neighborhood systems as a whole. The Commission's reasoning that patched lines are more "vulnerable . . . to leaks" and could result in "degradation of safety" is not a relevant consideration under section 393.1009(5)(a), which unambiguously requires that the replacement be done to "comply with state or federal safety requirements." Although Laclede has a cast iron main replacement program pursuant to 4 C.S.R. 240.030(15), no state or federal safety requirement has been cited mandating the manner and extent of the replacement strategy employed by Laclede. Replacement programs undertaken by a gas utility that incidentally improve safety, but are not grounded in a government-mandated requirement, fail to trigger cost recovery under ISRS. *Cf. Liberty Energy*, 464 S.W.3d at 525 (holding that costs for replacing lines damaged by a third party were not eligible for recovery under ISRS). While Laclede's replacement strategy may laudably produce a safer system, the question squarely before us is not whether its chosen approach is prudent but rather whether the replacement of plastic components that were not in a worn out or deteriorated condition are ISRS-eligible. In analyzing that proposition, we cannot ignore the plain language of the statute for "convenience, expediency[,] or necessity" to conclude that the costs are eligible for recovery through the ISRS process. *Laclede Gas Co.*, 504 S.W.3d at 859 ("Neither convenience, expediency[,] or necessity are proper matters for consideration in the determination of whether or not an act of [**9] the commission is authorized by statute." (citation omitted)); *see also Liberty Energy*, 464 S.W.3d at 525 (stating that the legislative intent is "demonstrated by the plain language of the statute").

Id. at 840. In a similar manner to the conclusion drawn by the Western District in the *In re Laclede Gas Co.* case, rule 20 C.S.R. 4240.030(15)(e) does not mandate cathodically protected steel main replacement to "the manner and extent of the replacement strategy employed by [Spire]" as it requires non-cathodically protected steel to either be replaced or cathodically protected. The only other source requiring replacement of cathodically protected steel is the Commission approved replacement

program for Spire West only. However, this program only mandates a minimum of five miles of cathodically protected steel be replaced per year. *Direct*, Robinett, pg. 3. Further, this replacement is only triggered when “5 leaks within 500 feet are reported over a three-year period.” *Id.* The evidence in this case overwhelming proves that this is not occurring for the vast majority of the replacements that Spire is undertaking. *Id.*

Because there is no evidence that cathodically protected steel mains are worn out and in a deteriorated condition and there is no requirement for Spire to replace them regardless, the cost of these replacements is not ISRS eligible.²

Costs related to the replacement of cast iron mains

Spire has provided no evidence that the cast iron mains it is replacing and seeking cost recovery for in this ISRS application are eligible for ISRS recovery. *Direct*, Robinett, pgs. 5 – 6. On this basis alone the costs should be dismissed because Spire bears the burden of proof to show that the costs it seeks recovery for are ISRS eligible. But there are other concerns that arise from Spire’s claim that go beyond the mere lack of proof. Spire is claiming that all of its cast iron pipes are worn out or deteriorated including both what they replace and what they have not yet replaced. *Direct*, Robinett, pg. 14. If this is true, however, then it is hard to see how Spire could possibly be providing safe and adequate service. *Direct*, Robinett, pgs. 14 – 15. This is especially true since Spire appears to be concentrating on replacing the

² The photographs attached to the testimony of Craig R. Hoeflerlin would all appear to be based on leak repairs, not the system-wide ISRS replacements that the OPC is taking issue with in these cases.

aforementioned cathodically protected steel mains over replacing the much older cast iron mains. *Direct*, Robinett, pgs. 15 – 16. In addition, it raises serious concerns from a reporting standpoint because Spire would need to report this information to the United States Securities and Exchange Commission, which they have not done. *Direct*, Schallenberg, pgs. 12 – 15. Therefore, if Spire is correct about its cast iron mains all being worn out or in a deteriorated condition, there are serious concerns regarding the efficacy of Spire’s replacement program and their reporting about the same.

Costs related to the replacement of plastic mains and services

This issue remains largely unchanged since the last Spire ISRS case. Spire has continued to include the cost of replacing plastic mains and services. *Direct*, Robinett, pg. 16. Any replacement of plastic pipes costs some money as there is necessarily a cost incurred for the pipe that is used to replace the existing pipe. *Direct*, Robinett, pg. 17. These costs may not be recovered through the ISRS. *Direct*, Robinett, pg. 17; *In re Laclede Gas Co.*, 539 S.W.3d at 841.

Costs the company was denied recovery of in past ISRS cases

To the extent that Spire seeks recovery of costs that were denied in previous ISRS cases, those costs should be disallowed under the same legal principles set forth by the Commission in the report and order issued in GO-2019-0115 and GO-2019-0116. *Report and Order on Rehearing*, GO-2019-0115 and GO-2019-0116, pgs. 15 – 22.

