

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

In the Matter of the Application of Spire	)	
Missouri Inc. to Change its Infrastructure	)	<b><u>Case No. GO-2019-0115</u></b>
System Replacement Surcharge in its	)	Tariff No. YG-2019-0138
Spire Missouri East Service Territory	)	

**MOTION TO DISMISS PORTION OF SPIRE EAST’S ISRS APPLICATION THAT IS  
UNDER REVIEW BY THE WESTERN DISTRICT COURT OF APPEALS**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its Motion moves that the Commission dismiss the portion of Spire East’s ISRS Application which requests rate recovery for plant investment that is currently under appeal and for which jurisdiction currently lies at the Western District Court of Appeals, and in further support of its Motion states:

1. In its Application, Spire East filed two cost recovery requests. One request is to recover “new” ISRS qualifying infrastructure replacement costs incurred during the period July 1, 2018, through January 31, 2019. The “new” request was addressed in Staff’s recommendation filed March 15, 2019, and is not the subject of this Motion.

2. The second component of Spire East’s cost recovery request is a renewal of the Company’s previous ISRS cost recovery request (hereafter the “Old Request”) which was denied by the Commission in a prior case, Case No. GO-2018-0309. Specifically, the Company’s Old Request again seeks to recover its proposed ISRS costs incurred during the period of October 1, 2017 through June 30, 2018, which the Commission determined to be ineligible.<sup>1</sup> The Report and Order in Case Nos. GO-2018-0309 and GO-2018-0310 was appealed to the Missouri Western

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<sup>1</sup> See Case No. GO-2018-0309, Report And Order, *In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri East Service Territory*, effective October 1, 2018. (EFIS Item No. 64)

District Court of Appeals by Spire Missouri Inc. and the Office of the Public Counsel, Docket No. WD82302 (consolidated with WD82373).<sup>2</sup> Because the Western District has not yet issued an opinion ruling on the appeal of the ISRS recovery denied by the Commission in the underlying case (Case No. GO-2018-0309), Staff did not address the Old Request component of the instant ISRS case in its revenue requirement for this proceeding.

3. In its Recommendation, Staff pointed out that jurisdiction over the matter of the ISRS costs previously denied by the Commission in the Old Request now rests with the Missouri Court of Appeals and not the Commission. As a general rule, upon filing of a notice of appeal, a trial court loses almost all jurisdiction over a case. **Reynolds v. Reynolds**, 109 S.W.3d 258, 269–71 (Mo. App., W.D. 2003); **State ex rel. Stickelber v. Nixon**, 54 S.W.3d 219, 223 (Mo. App., W.D. 2001); **State ex rel. Steinmeyer v. Coburn**, 671 S.W.2d 366, 371 (Mo. App., W.D. 1984). The remaining jurisdiction of a trial court is sharply constrained, with few exceptions. **Stickelber**, *supra*, p. 223. For example, a trial court retains the ability to exercise functions of a purely ministerial or executive nature. **Id.** Statutes or Supreme Court Rules also convey authority to take up particular motions or applications for relief. **Id.** at 371–72. Among these is the authority to correct a clerical error by an order *nunc pro tunc*. **Reynold**, *supra*, p. 268. Beyond such exceptions, the trial court is not permitted to exercise functions of a judicial character. **Stickelber**, *supra*, p. 372.

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<sup>2</sup> Spire Missouri Inc. has also appealed to the Western District Court of Appeals its 2017 ISRS Case Nos. GO-2017-0201 and GO-2017-0202 in WD82200 (consolidated with WD82297) and its 2016 ISRS Case Nos. GO-2016-0332 and GO-2016-0333 in WD82199 (consolidated with WD82299).

These latter functions are those which entail “the exercise of judgment and discretion whereas ministerial functions invoke no such discretion.” *Id.*

4. Spire Missouri Inc., having appealed the Commission’s denial of ISRS treatment for certain transactions while that appeal is pending with the Missouri Court of Appeals, now asks the Commission to reconsider its denial in view of certain additional evidence. Under the rule cited above, the Commission is without authority to do so. The determination of whether or not ISRS treatment is appropriate is a quasi-judicial function, which entails “the exercise of judgment and discretion.” *Stickelber, supra*, p. 372. Since jurisdiction over the transactions in question now lies with the Court of Appeals, the Commission cannot reconsider those transactions in this proceeding.

5. Because the Commission is called to act in a quasi-judicial function and to exercise its judgment and discretion over this matter, the Commission is a tribunal much like a trial court and cannot, as to the Old Request, exercise functions of a judicial character. Thus, the Commission must exercise the same scrutiny over the question of jurisdiction that would be required of a trial court under the court’s rules. Because the Commission lacks jurisdiction over the “Old Request” portion of Spire East’s ISRS Application, where jurisdiction now lies with the Court of Appeals, the Commission has no other recourse than to dismiss the “Old Request” portion of the Company’s ISRS Application. Missouri Court Rule 55.27(g)(3): “*Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.*” The only recourse of a court which lacks subject matter jurisdiction is dismissal; all other proceedings are absolutely void.

*Miller v. Illinois Court R. Co.*, 782 S.W. 2d 138 (Mo. App. E.D. 1989); see also, *Maxey v. Werner*, 686 S.W.2d 862 (Mo. App. E.D. 1985). It is elementary that where judicial tribunals have no jurisdiction to act, their proceedings are absolutely void. *Randles v. Schaffner*, 485 S.W.2d 1 (Supreme Court of Missouri, 1972).

**WHEREFORE**, for the reasons stated above, and as a matter of law, the Staff moves the Commission to dismiss the “Old Request” portion of Spire East’s ISRS Application.

Respectfully submitted,

**/s/ Robert S. Berlin**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 20<sup>th</sup> day of March, 2019.

**/s/ Robert S. Berlin**