BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's Request to Increase Its Revenue for Gas Service	))	**Case No. GR-2017-0215**
In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service	)))	**Case No. GR-2017-0216**

STAFF'S REPLY AND TRUE-UP BRIEF

Respectfully submitted,

KEVIN THOMPSON, Mo Bar No. 36288
Chief Staff Counsel

JEFF KEEVIL, Mo Bar No. 33825
Deputy Staff Counsel

NICOLE MERS, Mo Bar No. 66766
Deputy Staff Counsel

MARK JOHNSON, Mo Bar No. 64940
Senior Counsel

WHITNEY PAYNE, Mo Bar No. 64078
Associate Counsel

MARCELLA FORCK, Mo Bar No. 66098
Associate Counsel

CASI ASLIN, Mo Bar No. 67934
Legal Counsel

Attorneys for the Staff of the
Missouri Public Service Commission

January 17, 2018

Table of Contents

I. Introduction

The purpose of a reply brief is for a party to respond to the opposing arguments made by the other parties to a proceeding. Staff does not intend in this reply brief to respond to every argument made by each of the other parties in their initial briefs, as it has already presented and argued its positions in its *Initial Post-Hearing Brief*. Rather, Staff will limit its replies to the areas where it views further explanation as aiding the Commission in its determinations.

Spire, along with the other parties, in accordance with the procedural schedule ordered in these rate cases was charged with filing a brief. While the Missouri Public Service Commission ("Commission") is an agency and operates under administrative law, the definition of "brief" in Black's Law Dictionary still applies to this type of document, "A written statement setting out the legal contentions of a party in litigation … document prepared by counsel as the basis for arguing a case consisting of legal and factual arguments …In determining each contested issue, the Commission should be mindful that the law places the burden of proof on the utility. Section 393.150.2, RSMo, provides:

> At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation … and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

In its most basic sense, the burden of proof is "that of establishing the affirmative of the ultimate issue[.]"[1] In practical terms, it means that the Company must prove that rates

[1] ***Been v. Jolly,*** 247 S.W.2d 840, 854 (Mo. 1952).

should be increased and any failure of proof means that the Company loses. This burden never shifts away from the Company.[2] Spire Missouri's initial brief, however, spends a good deal more real estate in pointing the finger at other parties for the misgivings of these cases and asking the Commission to look past the legal arguments of the parties to grant its requests solely on the basis of cost savings than it does in carrying its burden of proof. Words and phrases such as "modest" and "forced to file" seem out of place next to the requests for several alternative ratemaking mechanisms designed to reduce potential risk to the Companies. Mechanisms such as a revenue stabilization mechanism ("RSM"), Environmental Tracker, Performance Metrics, Goodwill recovery, earnings-based Incentive Compensation and Synergy Savings. The burden of proof remains on LAC and MGE to show that these alternative rate making mechanisms are necessary to provide safe and adequate service at just and reasonable rates. If they fail to show any of these mechanisms are necessary, the Commission must rule against them.

The driving force behind this rate case, as Spire describes it, was the Office of the Public Counsel's ("OPC") over-earnings complaint coupled with the Infrastructure System Replacement Surcharge ("ISRS") requirement of a company receiving an ISRS to come in for a general rate case at least once every three years.[3] Staff has no opposition to utilities' collecting an ISRS, however, nowhere in Sections 393.1000, 393.1003 and 393.1006, RSMo, is Spire required to have an ISRS. While OPC did initiate an investigation of the Company in its overearnings complaint (Case No. GC-2016-0297), any decision to request a general rate increase was a calculated decision

[2] *Id.*
[3] Section 393.1012(2), RSMo.

made by Spire and the mechanisms it requests are designed to ensure substantial returns for its shareholders.

Spire referenced settlement frequently throughout the case and in its initial brief.[4] In an attempt to justify the substantive list of issues litigated in these proceedings it states, “Many rate cases go to hearing, and they all involve Staff, OPC and other regular rate case participants. Spire Missouri was the only party that came into this case with a clean record of peaceful settlements, and it can be inferred that Spire Missouri was not responsible for the large number of issues, nor the increased rate case expense.”[5] First, by Commission rule Staff and OPC are automatically made party to all cases filed before the Commission.[6] Staff specifically, is charged to, “render advice and assistance to the commissioners and the commission’s administrative law judges on technical matters … that may arise during the course of proceedings before the commission.”[7] OPC is charged with determining the extent of public interest involved in each case before the Commission and representing the public interest should they determine the action of the OPC is necessary.[8] It follows that in the instance of particularly large rate cases which ask for substantive increases to be borne by the ratepayers it represents, such as these proceedings, OPC would find it necessary to represent the public interest. Despite Spire’s characterization of the parties to this case, counsel for the Company referenced Staff’s unbiased review on more than one occasion at the evidentiary hearing; once in response to Commissioner Kenney stating,

---

[4] A review of the transcript produces six different occasions throughout the evidentiary hearing in which Spire inappropriately discusses the settlement negotiations in these cases and one occasion where counsel for the company, Mr. Pendergast, objects to counsel for Staff, Mr. Thompson’s, reference to the lack of settlement agreements in these proceedings, Tr. Vol. 18, P.1678:5-15.
[5] *Spire Initial Post-Hearing Brief*, P. 49, EFIS item No. 544.
[6] 4 CSR 240-2.010(10).
[7] Section 386.135(4), RSMo.
[8] Section 386.710, RSMo.

"Staff, for example, has nothing to gain or lose from this. They can take a case to hearing or settle at their [sic] - - at their discretion."[9] Again in discussing pensions, "Staff's, you know, doesn't really have a risk to take. There's no dollars that Staff will make or lose over this."[10] In these cases, as in all general rate cases, Staff's intent was to balance the interests of the utility and the ratepayers and it approached settlement negotiations with that intent. Second, Spire witness Glenn Buck on the stand tried to explain why cases did not settle, "And frankly, it's because everybody sees their part of the process, and they didn't want to sit there and lose out on their piece of it."[11], It is unclear why expectations should be any different than what Mr. Buck describes when considering that all of the intervening parties to these proceedings intervened on the basis of *an interest in the proceedings*. Finally, it is perhaps best exhibited in Chairman Hall's question of Mr. Buck when he pointed out, "capital structure and ROE, now, those are obviously issues that are litigated in almost every rate case, but if you look at the positions of the parties, you've got pretty much all of the parties, Staff, OPC, Interveners, pretty close or with identical positions, and then you've got the Company with a significantly higher ROE and a significantly different capital structure; isn't that true?"[12] Mr. Buck could only respond that Spire's position was similar to what it had requested in the past, but does not dispute that the Company was the outlier on that issue.[13]

The nature of Spire's *Initial Post-Hearing Brief* suggests that the Company has taken countless actions for which it expects no return. Looking just below the surface,

---

9 Tr. Vol. 18, P.1668:22-24.
10 Tr. Vol. 20, P. 2053:15-17.
11 Tr. Vol. 19, P.1710:16-18.
12 Tr. Vol. 19, P.1710:9-22.
13 *Id*.

however, several of these claims lose their luster. A quick evaluation reveals that the safety effort the Company has coordinated between utilities and first responders in Missouri was actually a Staff recommendation made in the *Stipulation and Agreement* filed in GC-2014-0216.[14] The millions of dollars of savings stemming from acquisitions, which Spire uses to bolster each of its arguments throughout the brief, have actually been recouped and held by the Company for substantial periods of time leading up to these rate cases.[15] Claims of a request for a "modest increase" are dulled by the statements of Mr. Buck to Chairman Hall that the Company specifically asked for an increase that included "a little bit of cushion" and that might be considered a "more aggressive position".[16]

II. Reply Brief

A. Capital Structure

COST OF CAPITAL

i. Return on Common Equity – What is the appropriate return on common equity to be used to determine the rate of return?

In this proceeding, the Company is requesting a 10.35% ROE, utilizing the actual capital structure of Spire Missouri, the regulated public utility, taking into account its business risk as a smaller public utility. Staff expert witness David Murray

[14] *Stipulation and Agreement*, Case No. GC-2014-0216, EFIS Item No. 38, "Staff recommends that MGE review and revise as necessary its procedures to make certain fire department, police department or any other entities with authority to evacuate individuals from buildings remain on the scene or are present during an emergency situation which may require evacuation of buildings. In addition, Staff recommends that MGE review and revise as necessary its liason program with the KCFD for identifying the various situations that may constitute a hazardous situation involving natural gas, the various actions that should be taken before MGE personnel arrive when a hazardous situation is identified and when KCFD assistance may be needed."

[15] *Staff's Initial Post-Hearing Brief*, P. 102.

[16] Tr. Vol. 19, P. 1712:9-25.

recommended an ROE of 9.25% within the range of 9.00% to 9.50% (Ex. 204, Staff Cost of Service Report, p. 7). OPC/Missouri Industrial Energy Consumers ("MIEC") expert witness Michael Gorman recommended an ROE of 9.20% in the range of 8.90% to 9.40% (Ex. 407, Gorman Direct, p. 2). Spire asserts that the Commission must reject the recommendations of Staff and OPC/MIEC and rely instead upon the bloated and absurdly inflated recommendation of Spire Missouri expert witness Pauline Ahern. Ms. Ahern recommends that the Commission adopt a 10.0% ROE and then adjust it upwards by 35 basis points for flotation costs and for the purported extra business risk of a smaller utility, for a final recommendation of 10.35%. (Ex. 38, Ahern Direct, pp. 5, 52-53).

Staff witness David Murray testified that the actual market cost of common equity for Spire Missouri was in the range of 6.90% to 7.70% (Ex. 204, Staff Cost of Service Report, p. 7, 39; Tr. 1290). Hopefully, the Commission will take a moment to consider that range. It is not a mistake and it is not the naïve suggestion of an unqualified witness; indeed, David Murray is one of the most qualified and experienced expert financial analysts to appear before the Commission. The range of 6.90% to 7.70% was calculated by Mr. Murray using market-driven data and well-known and well-regarded analytical techniques. Mr. Murray's estimated cost of equity range tells the Commission that the utility regulatory commissions of this nation have been regularly awarding ROEs to regulated public utilities that are ***far in excess*** of their actual capital costs, thereby causing a substantial transfer of wealth from utility customers to utility shareholders. It's time for that to stop. As Staff stated in its initial brief:

> Staff expert David Murray testified that state commissions are setting ROEs too high in general.[17] The effect of awarding ROES to public utilities that are significantly higher than the actual cost of common equity is to create value for shareholders at the expense of the ratepayers.[18] Mr. Murray noted, "[g]iven that the cost of capital is as real a cost as any other cost of service, reducing this cost in the ratemaking formula to a value closer to its actual cost is consistent with the principles of cost-of-service ratemaking."[19] Mr. Murray testified, "[u]tilities have outperformed the markets for the last five years since January 1st, 2014, and specifically since the middle of 2015."[20] About sixty percent of these record profits were paid out to shareholders,[21] reflecting a government-enforced redistribution of wealth from ratepayers to shareholders. (*Staff Brief,*
> p. 25).

Spire spends a portion of its brief ranting about the Liberty Utilities case (*Spire Brief,* p. 21). Here, Spire is using the technique of misdirection; attempting to deflect the Commission's attention from the fact that Staff's recommended ROE is 9.25% within the range of 9.00 to 9.50 (Ex. 204, Staff Cost of Service Report, p. 7). After all, why does 6.90% to 7.70% matter when Staff has recommended 9.00 to 9.50? In fact, it does not matter. Spire makes the statement, "Instead of recommending the ROE range that he believed to be the actual cost of common equity for Spire Missouri, Mr. Murray looked at the ROE that the Commission authorized in a KCP&L rate case, and adjusted it downward for his perceived risk differential between natural gas companies and vertically integrated electric companies. (Tr. 1300-01) For the reasons stated below, this novel approach should be rejected by the Commission, as it has rejected other Staff ROE recommendations in the past." Actually, the Commission

[17] Ex. 208 Staff's *Cost of Service Revenue Requirement Report,* p. 7, line 29, through p. 8, line 2; p. 10, lines 14-17; Tr. Vol. 17:1332, line 9, through p. 1333, line 1.
[18] Tr. Vol. 17:1357, line 17, through p. 1358, line 25.
[19] Ex. 208 Staff's *Cost of Service Revenue Requirement Report,* p. 45, lines 27-29.
[20] Tr. Vol. 17:1337, lines 2-4.
[21] Tr. Vol. 17:1338, lines 20-24.

should embrace Mr. Murray's approach and should reject the blatantly intellectually dishonest recommendation offered by the highly-paid Ms. Ahern. Mr. Murray's recommendation is supported by the nearly-identical recommendation of Mr. Gorman.

Spire next turns to a discussion of the principles derived from ***Hope*** and ***Bluefield*** and the Commission's own "zone of reasonableness" (*Spire Brief,* pp. 22-23).[22] Those Constitutional principles are:

> (1) An adequate return is commensurate with the returns realized from other businesses with similar risks. This is the principle of the commensurate return.
>
> (2) An adequate return is sufficient to assure confidence in the financial integrity of the utility and to maintain the utility's credit rating. This is the principle of financial integrity.
>
> (3) An adequate return is sufficient to enable the utility to obtain necessary capital. This is the principle of capital attraction.

Spire cites a nearly seven-year old Commission case for the "zone of reasonableness," which states: "The Commission has described a "zone of reasonableness" extending from 100 basis points above to 100 basis points below the recent national average of awarded ROEs to help the Commission evaluate ROE recommendations." ***In the Matter of Kansas City Power & Light Company,*** 20 Mo.P.S.C.3d 197, 289 (2011). Spire goes on to state, "[a]s Staff witness David Murray confirmed in cross-examination (Tr. 1293-94), the Company's recommendation ROE of 10.35% is within the current zone of reasonableness, based

[22] ***Federal Power Commission v. Hope Natural Gas Company***, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943); ***Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia***, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923).

upon national average authorized returns (9.5% for the first six months of 2017; and updated to 9.89% for the calendar year of 2017) (Tr. 1187)(Ex. 40, Ahern Surrebuttal, p. 40), implying an upper range of 9.89% to 10.89% using the zone of reasonableness approach."

As to the recent average of awarded ROEs, Mr. Gorman testified:

> In 2014, the average authorized return on equity for a gas LDC was around 9.78. Through the first six months of 2017 that dropped down to about 9.5. Subsequent to me filing this testimony the third quarter report for 2017 was made available. The average for the first three quarters is around 9.8 percent, but there are two rate decisions in there that are notable outliers that increase the average for the LDCs in the industry. * * * Except for those two notable exceptions in the third quarter of this year, the authorized returns on equity for gas utilities and even electric utilities have been relatively flat over the last 18 to 24 months.[23]

Based on Mr. Gorman's testimony, the "zone of reasonableness" extends from 8.8% to 10.8% and Ms. Ahern's recommendation is within it.

Spire next presents Ms. Ahern's qualifications, her methodology, and her recommendation (*Spire Brief,* pp. 23-26). Staff discussed the flaws in Ms. Ahern's work in detail in its *Initial Post-Hearing Brief* and will not repeat those observations here (*Staff's Initial Post-Hearing Brief,* pp. 19-24).

Spire next examines Mr. Murray's recommendation (*Spire Brief,* pp. 26-28). Spire criticizes Mr. Murray's methodology as "essentially a rearview mirror approach looking back at economic conditions that existed in 2014 and 2015 (test years in the last Ameren and KCP&L rate cases), and not using the improved economic and interest rate data to review the current market conditions for the year the rates in this case will be in

[23] Tr. Vol. 17:1366, line 11, through p. 1367, line 12.

effect—2018" (*Spire Brief,* p. 27). This statement is nonsense and is intended to mislead the Commission. As Staff stated in its initial brief:

> Staff's expert financial analyst, David Murray, developed a ROE recommendation for the Companies using recent ROEs of about 9.5% awarded by the Commission to large electric utilities as a benchmark.[24] Mr. Murray "compared the current broader and utility-specific capital markets to those which existed when the Commission issued those decisions."[25] Mr. Murray concluded that, while the utility capital markets are similar to those that existed when the Commission allowed an ROE of approximately 9.5% for Missouri's large electric utility companies, persuasive evidence supports a lower allowed ROE for the Spire Missouri operating companies.[26] In particular, Mr. Murray concluded that the cost of common equity differential between the electric utility industry and gas utility industry is about 50 basis points.[27] Mr. Murray used both the DCF and CAPM in developing his recommendation, applied to the market-driven data pertaining to a proxy group of natural gas utilities of similar risk to the Spire Missouri operating companies.[28] (*Staff Initial Post-Hearing Brief,* p. 24).

The reality is that Mr. Murray took the conditions existing when the Commission awarded ROEs of about 9.5 to Missouri's two largest electric utilities as his starting point and then carefully examined and evaluated intervening market and economic changes in order to determine a reasonable ROE for Spire Missouri. Contrary to Spire's assertions, Staff's range of 9.00% to 9.50% is more than adequate to compensate the shareholders and, indeed, exceeds the market cost of equity (6.90% to 7.70%) by at least 130 basis points.

---

[24] Ex. 208 Staff's Cost of Service Revenue Requirement Report, p.8, p. 10, lines 18-21; Murray Surrebuttal, p. 3; the cases are **In the Matter of Union Electric Company d/b/a Ameren Missouri,** Case No. ER-2016-0179 (Order Approving Unanimous Stipulation and Agreement, issued March 8, 2017) pp. 2-3; **In the Matter of Kansas City Power & Light Company,** Case No. ER-2016-0285 (Report & Order, issued May 3, 2017) at p. 22.
[25] Ex. 208 Staff's Cost of Service Revenue Requirement Report, p. 8.
[26] Ex. 208 Staff's Cost of Service Revenue Requirement Report, p. 8.
[27] Ex. 208 Staff's Cost of Service Revenue Requirement Report, p. 8.
[28] Ex. 208 Staff's Cost of Service Revenue Requirement Report, p. 10.

Spire next attacks Mr. Gorman's recommendation as too low (*Spire's Brief,* pp. 28-29) and argues strenuously for the fatuous flotation costs and small size adjustments used by Ms. Ahern to inflate her recommendation (*Spire Brief,* pp. 29-30). Finally, Spire returns to the recent average of awarded ROEs and the "zone of reasonableness" to argue that Pauline Ahern's recommendation is the most worthy of adoption (*Spire Brief,* pp. 30-31). None of these arguments should sway the Commission.

The Commission's duty with respect to ROE is to set it at a level that produces a return commensurate with that realized from other investments of commensurate risk and that is sufficient to attract capital on reasonable terms and to ensure the Company's financial stability.[29] The very similar recommendations of Mr. Murray (9.25%) and Mr. Gorman (9.20%) accomplish this and do so at a reasonable cost to ratepayers. While still appreciably higher than the actual market cost of common equity, an ROE award of 9.20%-9.25% would not cause shock among the rating agencies and other professionals who pay close attention to such things and would provide a handsome reward to the Company's shareholders.

ii. Capital Structure – What capital structure should be used to determine the rate of return?

Staff continues to recommend that the capital structure should be based on Spire, Inc.'s consolidated capital structure, inclusive of short-term debt, as of the true-up

[29] **Hope,** supra, and **Bluefield,** supra.

date, which consists of 45.56% common equity, 47.97% long-term debt and 6.47% short-term debt.[30]

The capital structure recommended by the Company, 54.20% equity to 45.80% debt, would be unduly expensive for ratepayers[31] and includes an impermissible indirect recovery of the $210 million acquisition premium from Laclede Gas Company's acquisition of MGE.[32] In the *Stipulation and Agreement* filed in that acquisition case, and approved by the Commission, Laclede (now Spire Missouri) promised to never seek either direct or indirect recovery of the acquisition premium.[33] Now, Spire boldly violates the Commission's order issued in Case No. GM-2013-0254 and the promises it made in the *Stipulation and Agreement* filed in that case.[34]

Spire states, "[t]here is simply no justification for arbitrarily denying the Company tens of millions of dollars in revenue requirement based on such opportunistic recommendations, particularly where they are so obviously outside the mainstream of utility capitalizations that this and other commissions have found to be a reasonable"

---

[30] Ex. 218 Staff's Cost of Service Revenue Requirement Report, p. 7, lines 12-17; Ex. 264 Murray Surrebuttal, p. 2; p. 4, lines 8-12 and Sch. 1-1.
[31] Murray: Tr. Vol. 17:1352, lines 5-21; p. 1354, lines 13-20; Ex. 414 Gorman Rebuttal, p. 2.
[32] Ex. 414 Gorman Rebuttal, pp. 2, 7; Tr. Vol. 17:1206, line 20, through p. 1207, line 6.
[33] ***In the Matter of the Joint Application of Southern Union Company d/b/a Missouri Gas Energy, The Laclede Group, Inc., and Laclede Gas Company for an Order Authorizing the Sale, Transfer, and Assignment of Certain Assets and Liabilities from Southern Union Company to Laclede Gas Company and, in Connection Therewith, Certain other Related Transactions,*** 23 Mo.P.S.C.3d 133 (2013): "The stipulation and agreement also provides that any acquisition premium paid for Missouri Gas Energy in connection with the Transaction shall not be recovered in retail distribution rates." The *Stipulation and Agreement,* which was not published, provides on pp. 8-9: "Premium. The acquisition premium is the total purchase price above net book value. The amount of any acquisition premium paid for MGE in connection with the Transaction shall not be recovered in retail distribution rates. Nothing herein shall preclude any party to this Agreement from taking a position in any future ratemaking proceedings involving the Laclede or MGE Divisions in Missouri regarding the ratemaking measures and adjustments necessary to ensure no impact from the acquisition premium on rates. **Neither Laclede Gas nor its MGE division shall seek either direct or indirect rate recovery or recognition of any acquisition premium in any future general ratemaking proceeding in Missouri.** In addition, neither Laclede Gas nor its MGE division shall seek to recover in Missouri the amount of any acquisition premium in the Transaction as being a "stranded cost" regardless of the terms of any legislation permitting the recovery of stranded cost from Missouri ratepayers." (emphasis added.)
[34] Ex. 55. *Stipulation and Agreement* in Case No. GM-2013-0254.

(*Spire's Brief,* p. 32). Of course, enforcing its order – and LAC's promise -- from Case No. GM-2013-0254 would hardly be an "arbitrary" action by the Commission and would be entirely justified.

Spire Missouri's equity-heavy capital structure is unsuitable for ratemaking purposes.[35] Its use would cost ratepayers a significant amount of additional money.[36] Because Spire Missouri is wholly-owned by Spire, Inc., Spire Missouri's capital structure is invisible to investors. Staff suggests that the only reason Spire has recommended the use of Spire Missouri's capital structure in this case is to inflate its revenue requirement. Should the Commission nonetheless decide to use the capital structure of Spire Missouri, then the adjustments recommended by Mr. Gorman should be made.

iii. Cost of Debt – What cost of long-term debt should be used to determine the rate of return?

The cost of long-term debt should be based on Spire, Inc.'s consolidated embedded cost of long-term debt of 4.16% and the cost of short-term debt should be based on Spire, Inc.'s cost of short-term debt of 1.5% as of September 30, 2017.[37]

iv. Should short-term debt be included in the capital structure? If so, at what cost?

Yes, short-term debt should be included in the capital structure based on Staff's recommended capital structure of 45.56% common equity, 47.97% long-term debt and 6.47% short-term debt.[38] However, if the Commission determines that Gas and Propane Inventory Carrying Charges should not be included in rate base, then Staff recommends excluding short-term debt from the ratemaking capital structure.

---

[35] Ex. 414 Gorman Rebuttal, p. 2.
[36] $16,745,156.00. *Reconciliation,* filed November 30, 2017 (EFIS Item 276).
[37] Ex. 264 Murray Surrebuttal, p. 4, lines 15-17.
[38] Ex. 264 Murray Surrebuttal, p. 4, line 18, through p. 5, line 3.

The Company wants to keep short-term debt out of the capital structure (*Spire's Brief,* pp. 44-45). But Spire ignores the fact that Spire, Inc., and Spire Missouri have consistently carried high short-term debt balances, well in excess of construction work in progress ("CWIP") balances.[39] Because Staff is recommending short-term gas assets be included in rate base, the average short-term debt in excess of CWIP should also be included in the ratemaking capital structure. Staff's recommendation to include short-term debt in the capital structure is applicable whether the Commission adopts Staff's recommendation to use Spire, Inc.'s consolidated capital structure or if the Commission uses Spire Missouri's capital structure.[40]

-Kevin Thompson

B. Rate Design

ii. Reflective of the answer to part i, what should the Residential customer charge be for LAC and MGE, and what should the transition rates be set at until October 1, 2018?

<u>Reply to Spire (LAC and MGE)</u>

As stated in Staff's initial brief, although this issue begins with the introductory phrase "Reflective of the answer to part i," the resolution of this issue – what should the residential customer charge be – should be independent of the answer to part i. For MGE, the residential customer charge should be $20;[41] for LAC it should be either $22 or $26 (depending upon the Commission).[42] As for "transition rates," there should be no "transition rates," given that there is no reasonable reason to delay

[39] Ex. 264 Murray Surrebuttal, pp. 2-3.
[40] Ex. 264 Murray Surrebuttal, pp. 2-3.
[41] Ex. 208, pages 14, 23.
[42] Ex. 208, pages 13, 24; see also Exhibits 282, 283, 284, and Affidavit of Robin L. Kliethermes filed on January 8, 2018 as EFIS entry 511.

implementation of ongoing permanent rates.[43] If rates are set correctly – pursuant to any of the alternatives presented by Staff – there is no need for "transition rates."

Unlike Staff, whose residential customer charge recommendation is based primarily on its CCOS study, Spire Missouri (LAC and MGE) proposed what it calls "transition rates," with little or no basis in cost. LAC proposed a customer charge of $17 after October 2018 and MGE proposed a customer charge of $20 after October 2018.[44] Prior to October 2018, LAC proposed a customer charge of $23.50 and MGE proposed a customer charge of $25.50.[45]

The only supposed justification for "transition rates" given by Spire Missouri is that it experiences low customer usage during the months of March (when Spire Missouri expects the rates from this case to become effective) to October. However, when rates become effective is a function of when the case was filed, and when the case was filed was totally within the control of the Company. Spire Missouri could have filed this case earlier or later, and the resulting rates would not have become effective in March. Furthermore, as Staff has previously stated, if rates are set correctly in the first place, there is no need for "transition rates."

The Commission should also recognize that Spire Missouri's brief (page 81) states that its proposed "transition rate" customer charges are based on LAC's and MGE's *current customer charges and current ISRS charges*. However, as reflected on page 6 in the *Partial Stipulation and Agreement* filed in this case on December 13, 2017, and as required by law, the ISRS will be reset to zero upon the effective date of

[43] Ex. 236, page 8, lines 6-10.
[44] Ex. 249, page 8, lines 9-11.
[45] Ex. 236, page 5.

new rates. The "transition rate" customer charges are an attempt by Spire Missouri to continue recovering ISRS charges after the ISRS is required to be reset to zero.

As discussed in some detail in *Staff's Initial Post-Hearing Brief*, although it filed a CCOS study, Spire Missouri's "post-transition rate" residential customer charge recommendation is not really based on its CCOS study; rather, Spire Missouri proposed customer charges which it claims were designed to be in alignment with the RSM proposal as filed by Spire Missouri.[46] Spire Missouri's *Initial Brief* admits as much on pages 81 through 83, while adding what it refers to as "a modified version of Staff's WNAR" along with Spire Missouri's proposed RSM. Staff has explained elsewhere what is wrong with Spire Missouri's RSM and "modified WNAR" proposals. Spire Missouri's corresponding residential customer charge recommendations must also fail.

Spire Missouri's brief on this issue goes on to say that if neither its RSM proposal nor its "modified WNAR" proposal is adopted by the Commission, its current weather mitigated rate design ("WMRD") would need to be continued for LAC and would need to be expanded to MGE. Such a proposition strains credulity.

To begin, Staff's *Initial Post-Hearing Brief* discussed problems with LAC's current WMRD. It currently contains a seasonal volumetric charge of $0.91686 per therm for the first 30 therms used in the winter, but no charge for therms used after 30 in the winter; in the summer it is $0.31290 per therm for the first 30 therms, and $0.15297 for all therms over 30.[47]

[46] Ex. 236, page 5, lines 12-15.
[47] Ex. 208, page 20, lines 11-14.

In addition, Spire Missouri's own witness – outside consultant Timothy S. Lyons – testified that “[t]here are several problems that arise from LAC’s current rate design,” and that “the Company is concerned that *the current rate design produces adverse customer bill impacts, particularly on low-use customers and is complicated to administer*.”[48] (Emphasis added) This begs the question why the Commission should even consider continuing such a rate design, and why Spire Missouri would argue for its continuation.

In addition, while Spire Missouri’s brief cites Mr. Lyons’ surrebuttal testimony on pages 5 and 6 as discussing a WMRD for MGE, it should be noted that the proposed blocks are based on consumption at or below 20 therms per month and consumption above 20 therms per month, whereas LAC’s current WMRD is based on the first 30 therms and consumption above 30 therms. So what Spire Missouri has proposed for MGE is not even consistent with LAC’s current rate design.

Finally, as discussed in more detail in Staff’s *Initial Post-Hearing Brief*, although LAC’s current customer charge is too low, its current WMRD results in a flat charge of $47.01 for virtually all residential customers in winter billing months (not including PGA). There is no per-therm charge for LAC residential customers in the winter months after the first 30 therms, thus no non-PGA cost-based price signal to control consumption. Staff’s CCOS study indicates, and Staff recommends, that *the LAC customer charge should be increased*; however, Staff also recommends moving to charge customers for all usage, including usage after the 30th therm, which significantly moderates the customer impact of an increase to the customer charge. [49]

[48] Ex. 10, page 7, lines 17-22.
[49] Ex. 208, page 20, line 27 through page 21, line 2.

<u>Reply to Non-Spire Missouri Parties</u>

The OPC, Division of Energy ("DE") and Consumers Council of Missouri ("CCM") all support unreasonably low customer charges which fail to take into account the effect of the customer charge on the corresponding volumetric rate. An unreasonably low customer charge – *i.e.,* one without any basis in a cost of service study – will result in a corresponding unreasonably high volumetric rate. As testified by Ms. Kliethermes, Staff is concerned about a volumetric rate that is too high, especially in the winter:[50]

> A familiar argument is that a high volumetric rate will encourage energy efficiency. However, based on the cumulative bill frequency distribution data provided by the Company, a large portion of customers are higher usage customers in the winter and use little to no usage in the summer. This tends to imply that winter heating drives overall customer usage. Staff cautions that although a high volumetric rate in the winter over the long term may encourage customers to install a more efficient furnace [if they can afford to do so], over the short term it could also encourage economically vulnerable customers to turn down their thermostat to a level that causes physical discomfort or is unsafe.[51]

It is important to note that *none* of these parties filed class cost of service studies. Unlike any other party – including Spire Missouri – Staff's residential customer charge recommendations are primarily based on cost, as derived from its CCOS study (as discussed in detail in Staff's Class Cost of Service Report, Exhibit 208), with concern for customer impacts and other policy considerations such as encouragement of energy efficiency.[52]

It should also be noted that DE supports *both inclining and declining block rates*, apparently at the same time. Furthermore, DE supports maintaining LAC's current WMRD if the Commission does not order implementation of the RSM. Numerous

[50] Ex. 249, page 15, lines 5-6.
[51] Ex. 249, page 15 line 6 through page 16 line 5.
[52] Ex. 236, page 6, lines 12-16.

problems with the current WMRD are discussed above under Staff's Reply to Spire Missouri and will not be repeated here.

iii. Reflective of the answer to part i, should LAC's weather mitigated Residential Rate Design be modified to collect a customer charge and variable charge for all units of gas sold, or should it be continued in its current form?

Spire Missouri's brief on this issue merely refers to its discussion under the previous issue. Staff would therefore likewise refer the Commission to its discussion under the previous issue (issue ii) for its reply. In summary, LAC's weather mitigated residential rate design must be abandoned and not extended to MGE; furthermore, the residential rate design for both LAC and MGE should consist of a customer charge and a per unit charge (flat or inclining block) for all units of gas sold, as discussed at length in Staff's *Initial Post-Hearing Brief*.

-Jeffrey Keevil

C. Rate Case Expense

i. What is the appropriate amount of rate case expense to include?

ii. What is the appropriate normalization period for recovering rate case expense?

Spire asserts that "[t] The Commission should approve all prudently incurred rate case expense, especially in a case where the Company was required to file a rate case in order to continue collecting revenues under the ISRS Statute" (*Spire's Brief,* p. 47). Spire goes on to say:

> For a host of reasons, Spire Missouri should be able to recover all of its rate case expense in this case. These reasons include the Company's history of modest rate case expense aided by settlements; the

> fact that the case was driven by the ISRS Statute and not the Company's desire to raise rates; the fact that much of the amount of rate case expense was driven by factors outside of the Company's control; the fact that Spire Missouri's issues were not designed to increase revenue requirement; the need for a policy that avoids the incentive for the Company to drive up its cost of service in order to cut down on rate case disallowances *Spire's Brief,* p. 48).

Unfortunately, Spire's assertions are simply not true. Staff expert Majors testified that the Companies' rate case expense in total in this proceeding has increased from the level of incurred rate case expenses in prior cases.[53] Spire has exceeded the budget it set in this case.[54] While LAC has been economical in prior rate cases, its expenses have increased significantly in the present case.[55] The charts presented by Mr. Majors show that, of four prior LAC rate cases and one prior MGE rate case, only one cost more than $1 million.[56] Mr. Buck also admitted that, while the Company goes into a rate case with an estimate of its litigation costs, there is no ceiling or other mechanism that actually serves to constrain its expenditures.[57] Mr. Buck testified that, while cost was a consideration in choosing consultants, he did not necessarily choose the cheapest.[58]

Nor is it true that this case was driven by the ISRS statute as Spire would have the Commission believe. At the hearing, the Companies' counsel admitted that the Companies controlled half of the many issues brought to hearing.[59] As in Case ER-2014-370, the unusually large number of issues litigated in this case is driven

[53] Ex. 255 Majors Surrebuttal, p. 5 and tables on that page.
[54] Tr. Vol. 19:1714.
[55] Ex. 255 Majors Surrebuttal, p. 5.
[56] Ex. 255 Majors Surrebuttal, p. 5.
[57] Tr. Vol. 19:1713, line 19, through p. 1715, line 3.
[58] Tr. Vol. 19:1715, line 4, through p. 1717, line 13.
[59] Tr. Vol. 18:1666, lines 20-21 (Mr. Zucker).

by the Companies' requests, such as the requested ROE of 10.35%; the expensive consultants supporting the Companies' proposed capital structure; the request for three new trackers; the RSM; the performance-based incentive mechanism (an ROE adder); and the proposed retention mechanism (another ROE adder).[60] Mr. Majors commented, "Comparatively, LAC and MGE have asked for more new, unique shareholder focused ratemaking tools than KCPL did in Case No. ER-2014-0370."[61]

Staff recommends that rate case expenses be shared between ratepayers and shareholders based on the ratio of LAC and MGE's Commission-authorized revenue requirement increase to their requested revenue requirement increase, net of Staff's adjustments (*Staff's Brief,* p. 31). This methodology is consistent with the Commission's treatment of rate case expense in the *Report and Order* in Case No. ER-2014-0370.[62] The total amount of rate case expense should be split between LAC and MGE based on the requested revenue requirement increase and the normalized amount of rate case expense should be recovered over four years. Mr. Majors testified, "The total amount of incurred rate case expenses through September 30 is $1,396,399. Staff recommends this amount should be split 53.5% and 46.5% to LAC and MGE, respectively, based on their requested revenue requirement increase. This amount should be normalized over four years, which is the approximate time between rate cases for both LAC and MGE."[63] Although Company witness Glenn Buck complained that the proposed rate case expense sharing mechanism would disincent the Companies from the economical

[60] Ex 255 Majors Surrebuttal, pp. 7-8.
[61] Ex. 255 Majors Surrebuttal, p. 8, lines 4-5.
[62] ***In the Matter of Kansas City Power & Light Company,*** issued September 2, 2015.
[63] Ex. 255 Majors Surrebuttal, p. 3.

practice of hiring expertise for the rate case project rather than maintaining it in-house,[64] he admitted that the use of the sharing mechanism might incent the Companies to be more efficient, a position with which Staff witness Mark Oligschlaeger agreed.[65]

-Kevin Thompson

D. Revenue Stabilization Mechanism

i. Should a Revenue Stabilization Mechanism or other rate adjustment mechanism be implemented for the Residential and SGS classes for MGE and LAC? If so, how should it be designed and should an adjustment cap be applied to such a mechanism?

Contrary to the recommendation of Spire, Staff recommends that a Rate Stabilization Mechanism ("RSM") not be implemented in this case for these companies.[66] First of all, no party has disputed Staff's finding that LAC's and MGE's proposed RSMs adjust for changes beyond those authorized by §386.266.3, RSMo. Secondly, the analysis of Staff witness Michael Stahlman shows that a RSM is not needed. No other party has provided any analysis on the need for a revenue stabilization mechanism, and so there is absolutely no evidence that a RSM is needed by these companies. However, should the Commission determine that either or both of these companies should have a RSM, Staff recommends that it be limited to adjustments for weather and applied only to the residential customer class.

In its brief, Spire claims that the RSM is needed to "permit the Company to be open to different rate designs that would otherwise present heightened exposure to weather. It also allows the Company to be agnostic, and even helpful in promoting

[64] Ex. 255 Majors Surrebuttal, p. 9; Tr. 19:1704, line 17, through p. 1707, line 12.
[65] Tr. Vol. 19:1707; p. 1777, line 24, through p. 1778, line 11.
[66] Ex. 238 Stahlman Rebuttal, p. 10.

energy efficiency and other conservation measures" (*Spire's Brief,* pp. 70-71). However this claim is belied by the very stipulations and agreements signed by Spire in this case—the *Partial Stipulation and Agreement* filed on December 13, 2017, includes an energy efficiency settlement without a RSM and all non-residential rate designs, including the Small General Service Class, were settled between the parties in the *Non-unanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design* filed on December 20, 2017. Furthermore, no party other than Staff has provided analysis of Spire's risk due to weather exposure. As discussed in the Surrebuttal of Michael L. Stahlman, even though the weather varies from one heating season to the next, the average trends towards Staff's climatic normal. Therefore the risk of abnormal weather in one season is mitigated by the weather in subsequent seasons.

Additionally, Mr. Stahlman discusses how the RSM can compound the problem of high bills by adding an additional charge when a warm period is followed by a subsequent cold period. This occurred just this last month, where the two prior heating seasons were relatively mild and when Missouri even experienced a relatively mild autumn, only to have a very cold and long cold snap. If either the RSM or WNAR mechanisms were in place, customers would be seeing an additional charge for the warm periods on top of their charges for higher usage to heat their homes.

Spire charges that Staff has "turned a seemingly broad grant of authority to adjust for revenue variations due to 'either weather, conservation or both' into a crimped, highly restrictive grant of authority that, without saying so, affirmatively precludes recognition of any revenue variation that may be related to another factor, no matter how small and inconsequential that factor may be" (*Spire's Brief,* p. 77). Spire, instead, prefers to interpret §386.266.3, RSMo as a legislative declaration that "the only two ways customer usage can change is by weather or conservation" (*Id.).* According to Spire, the phrase "due to variations in either weather, conservation, or both" actually means "weather or other reasons" (*Spire's Brief,* pp. 77-78). Nonsense!

"In the absence of a statutory definition or established judicial interpretation, analysis * * * begins with the proposition that "[t]he primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute." ***Gash v. Lafayette County,*** 245 S.W.3d 229, 232 (Mo. banc 2008), *quoting* ***State ex rel. Burns v. Whittington,*** 219 S.W.3d 224, 225 (Mo. banc 2007). The plain and ordinary meaning of the word "conservation" is, as Spire acknowledges, "prevention of wasteful use of a resource" (*Spire's Brief,* pp. 77). It certainly does ***not*** mean "or other reasons."

Staff recommends that the Commission reject both the RSM and WNAR. Should the Commission decide to grant a mechanism to Spire, Staff recommends that the Commission direct the parties to develop a mechanism like the WNAR for Spire without Spire's proposed modifications. Modifications to the specimen WNAR tariff sheets would need to be made to reflect the final rate design (e.g. inclining block or flat rates) and to reflect the correct variables for MGE and LAC, respectively. Additionally, should the Commission nonetheless grant a RSM to Spire, then should adjust the awarded ROE downward to reflect the Company's greatly-diminished business risk. Staff suggests a reduction of 100 basis points.

-Kevin Thompson

E. Trackers

i. Should LAC and MGE be permitted to implement an environmental tracker?

Spire Missouri should not receive an environmental tracker. Spire Missouri has not put forth evidence or argument to support the granting of an environmental tracker in its testimony or in the perfunctory discussion contained in Spire Missouri's *Initial Post Hearing Brief.* Spire Missouri, who carries the burden in this case,[67]has not made any argument that environmental costs are volatile, that Spire Missouri lacks historical data upon which to set an appropriate ongoing level of environmental expense, or that there are new Commission rules, or even state or federal laws that will increase the current level of environmental expense incurred. Spire Missouri's only argument is that it should not be required to wait three or four years until its next rate case to recover environmental costs.[68] This argument fails in several regards.

First, Spire Missouri would be required to wait until its next rate case to recover environmental costs even if the environmental tracker was granted, as trackers are not interim rate adjustment mechanisms and can only be recovered in the next rate case.[69] Second, Spire Missouri is not required to wait three or four years to file its rate case. Spire Missouri can time its rate cases to capture cost increases prior to the every four years required by the ISRS statute. Finally, Spire Missouri has not shown any evidence that it will incur environmental costs in the next few years. Staff requested budgeted environmental costs for the period of 2015-2020 in Staff Data Request No. 0227, attached to the rebuttal testimony of Staff witness Ms. Karen Lyons as

[67] ***Been v. Jolly,*** 247 S.W.2d 840, 854 (Mo. 1952).
[68] Spire Missouri's *Initial Post Hearing Brief,* filed January 9, 2018, p. 69.
[69] Ex. 217, *Rebuttal Testimony of Karen Lyons* (Confidential), p. 2, lines 5-7.

Schedule KL-r1.[70] Spire Missouri stated that there were no budgeted costs for expected environmental costs for MGE or LAC in that period.[71] Spire Missouri's own projections are that no environmental costs will be incurred in the next two years. As Spire Missouri will, at maximum, have to file a rate case in 2021 if it wishes to maintain an ISRS, that would only be a few months of possibly incurred environmental expenses that Spire Missouri would not receive return of and on until new rates are in effect. That's assuming Spire Missouri would even incur environmental costs in 2021, as all historical data shows a trend of Spire Missouri paying no out of pocket costs for environmental remediation for several years.[72] Spire Missouri concludes its *Initial Post Hearing Brief* stating that it should have a reasonable opportunity to recover its environmental costs.[73] Staff is not denying Spire Missouri a reasonable opportunity to recover its costs. Once those environmental costs are actually incurred, Staff will use traditional ratemaking principles to put an appropriate level of annual costs in to the cost of service during that rate case. Staff simply does not believe Spire Missouri needs an environmental tracker, as there has been no evidence put forth to support one. A mere specter of an increase to expense not currently incurred does not justify a departure from the matching principle to implement a single issue ratemaking mechanism to isolate one cost.

-Nicole Mers

F. Combined Heat and Power

i. Should LAC and MGE implement a CHP pilot program as proposed by the Division of Energy?

[70] Ex. 217, *Rebuttal Testimony of Karen Lyons*, Schedule KL-r1.
[71] *Id.*
[72] *Id.* at p. 9, lines 19-20.
[73] Spire Missouri's *Initial Post Hearing Brief,* filed January 9, 2018, p. 69.

Staff maintains its position as expressed in its initial post-hearing brief that the Commission should not order LAC and MGE to implement a CHP Pilot Program as proposed by DE.

The Division of Energy, in its *Initial Post-Hearing Brief*, stated that the parties to this case have not accurately portrayed DE's recommended program.[74] If this is in fact true, Staff would suggest that is because the explanation of the project is unclear, and lacks the necessary specificity for the Commission to order its implementation. In its brief, DE states that its proposal is intended to address the need for resilient critical infrastructure, through $4.5 million dollars in incentives towards up to 10 Commission-approved CHP projects that could potentially be co-delivered with electric utilities under the Missouri Energy Efficiency Investment Act ("MEEIA"). However, DE provides no specific recommendations as to how this might be accomplished, no formulas to allocate and assign the value of energy savings and project costs between natural gas and electric utilities if a project were to be co-delivered, or even a discussion of whether individual CHP projects could qualify as demand-side programs under MEEIA.[75]

Aside from the list of guidelines proffered by DE witness Ms. Jane Epperson in her direct testimony,[76] DE has offered very few details regarding this program; instead stating that each project would require individual approval.[77] No time period for the development of this pilot has been proposed, or any explanation of how and when such a pilot would be evaluated. DE has recognized this lack of specificity in its response to Staff's Data Request 480, stating that, "Consideration of a CHP Pilot Program is still in

[74] *Missouri Division of Energy's Initial Post-Hearing Brief*, page 3.
[75] Ex. 214, page 7, lines 14-17.
[76] Ex. 502, page 16 line 16 through page 18, line 10.
[77] *Missouri Division of Energy's Initial Post-Hearing Brief*, page 4.

the conceptual phase." [78] Seemingly, the only defined aspect of DE's proposal is that *all* ratepayers would be asked to foot the bill for a handful of projects – a subsidy to the tune of several million dollars.

While Staff recommends the Commission reject DE's proposal, Staff echoes OPC's support of DE's exploratory partnership with Spire to investigate CHP summits to consider the relevance of CHP within the context of a regulated natural gas utility in the Midwest,[79] and would encourage the development a program that is not reliant on ratepayer subsidization; such as on-bill financing. However, Staff would caution that any such financing program would need to comply with the Commission's Promotional Practices Rules, specifically section 4 CSR 240-14.020, Prohibited Promotional Practices.

-Mark Johnson

G. Pensions

Staff agrees with Spire Missouri that for the issue of the correct amount of pension expense to include in rates, the ultimate question is "whether the Commission believes customers should pay $2 million more in pension expense today to save $68,000 and reduce pension expense in the future?"[80] Staff believes that the cost benefit to ratepayers does not justify paying an additional $2 million in rates to save $68,000, and believes that future PBGC premiums and future pension expense can be avoided by an increase in the market return earned by the pension assets.[81] Staff's minimum ERISA funding level of 80% allows retirees to draw a lump sum payment,

[78] Ex. 214, page 9, lines 12-16.
[79] *Initial Brief of the Office of the Public Counsel*, page 56.
[80] Spire Missouri's *Initial Post Hearing Brief*, p. 85.
[81] Ex. 262, Surrebuttal Testimony of Matthew R. Young, p. 6, line 21 – p. 7, line 3.

which should assuage the union's concerns for its members.[82] Staff's approach balances the needs of retirees that are entitled to their pensions and the needs of ratepayers to pay no more than necessary to accomplish that goal.

The Company's argument for recovery of the pre-1996 pension asset is premised on the assumption that rates are set on Generally Accepted Accounting Principles ("GAAP"). In fact, the Company states in order for Staff's position to be correct, the Commission must "assume that its Staff and the Company violated accounting rules not once, but twice."[83] However, the Company's premise, and therefore its argument, is misguided. In reality, ratemaking adjustments frequently deviate from GAAP without the creation of an asset or liability in rate base. An example of this can be found in the Supplemental Executive Retirement Plan ("SERP") issue heard by the Commission in this case.

For financial reporting purposes, Laclede books SERP expense based on GAAP's FAS 87 accounting guidance.[84] However, the ratemaking adjustments recommended by Staff, the Company, and OPC were based on some form of cash flow which is a deviation from GAAP accrual accounting.[85] The ratemaking adjustment to SERP expense (to base it on cash flow) is consistent with the approach in Laclede's historic rate cases.[86] Despite its non-conformance with GAAP requirements, the SERP expense used for ratemaking purposes does not result in a regulatory asset or liability despite a difference between GAAP SERP expense and the amount of SERP expense set in rates. This "cash flow method" is exactly the methodology that was used in

---

[82] USW Local 11-6's Post-Hearing Brief, p. 2.
[83] Spire Missouri's *Initial Post Hearing Brief*, p. 89.
[84] Ex. 20, Rebuttal Testimony of Glenn W. Buck, p. 15, lines 4-6.
[85] *Id.*
[86] Ex. 264, Surrebuttal Testimony of Matthew R. Young, p. 19, lines 20-22.

Laclede rate cases between 1990 and 1994 for Laclede's pension expense. Any asset or liability recorded by Laclede during this time was booked for Laclede's balance sheet presented in its SEC financial statements. Furthermore, Spire Missouri's insistence that use of FAS 87 and 88 was required by the Commission, absent Commission approval to deviate,[87] is belied by the same 1996 Report Spire Missouri cites as supporting its position. The Report and Order states,

> Missouri law requires adoption of FAS 106 for ratemaking purposes where the assumptions are considered reasonable and the amounts collected in rates are funded by the utility. The use of FAS 87 and FAS 88, **though not required**, makes the accounting for these benefits more compatible with FAS 106.[88]

The Commission, in 1996, did not seem to believe use of FAS 87 and FAS 88 was required, and a departure from accrual accounting would be unauthorized. The Commission recognized, and should recognize again today, that a difference exists between financial reporting accounting and ratemaking adjustments.

The Company continues to blur the line between financial reporting accounting and ratemaking adjustments. Utilities can only violate accounting rules by how they account for certain financial events, not in how much they collect in customer revenues for that item. Utilities have requested language in Stipulations and Agreements to support their accounting practices during the company's external audit. For example, in KCP&L Greater Missouri Operations Company's ("GMO") most recent rate case, Case No. ER-2016-0156, the Stipulation and Agreement contained language regarding the accounting for major maintenance.[89] GMO's Stipulation and Agreement states

[87] Spire Missouri's *Initial Post Hearing Brief*, p. 89.
[88] In Re Laclede Gas Co., 172 P.U.R.4th 83 (Aug. 28, 1996).
[89] *In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service*, Case No. ER-2016-0156, Non-Unanimous Stipulation and Agreement, filed September 20, 2016, p. 3, item 4.

"The accounting for this accrual is to record the authorized cost of service as expense in the period collected in rates with an offsetting credit to a regulatory liability until the major maintenance is performed.[90] Use of this methodology referenced in this paragraph shall have no ratemaking effect in future rate cases."[91] GMO sought, and Staff agreed to, this language for financial reporting purposes because the desired accounting method is a deviation from GAAP accounting. However, Staff is under no requirement to assist Laclede with its external audit and the lack of clarification in prior Commission-approved Stipulations appears to be an oversight on the part of the Company. LAC's accounting treatment of pensions for financial reporting purposes at a point in time should not be used to "back into" assumptions regarding ratemaking treatment for pensions during the same time period when no specific ratemaking treatment was reflected in black box dollar settlements of the pensions issue, as there is a difference between regulatory and financial accounting.[92]

Staff agrees with the Company that the question that needs to be answered for the pension asset issue is, "How were rates set between 1990 and 1996."[93] However, the remainder of the Company's argument continues to be built upon faulty logic regarding the difference between financial reporting accounting and ratemaking adjustments. A study of the Company's and Staff's testimonies in Laclede's historic rate cases illustrates that prior to 1994 rates were set using expected cash contributions.[94] The Company does not dispute that neither Staff nor the Company sought to include in

[90] *Id.*
[91] *Id.*
[92] Tr. Vol. 20:2143, lines 14-17.
[93] Spire Missouri's *Initial Post Hearing Brief*, page 87.
[94] *See* Ex. 276, *Direct Testimony of Stephen R. Rackers, Case No. GR-90-120,* Ex. 277, *Direct Testimony of Stephen M. Rackers, Case No. GR-92-165*, p. 6, lines 1-2, and Ex. 278, *Direct Testimony of Mark D. Waltermire, Case No. GR-92-165,* p. 5, lines 13-18.

rate-base pension costs that were deferred as of the 1990 and 1992 rate cases. The Company has illustrated that it sought to include deferred pension costs in rate base in the 1994 rate case, but evidence in the record shows that the Company's request was not adopted for ratemaking purposes. The proof lies in the Company's own testimony in the 1996 rate case, where the Company requested rate base treatment of deferred pension costs beginning with the conclusion of the 1994 rate case.[95] Staff witness Gibbs' testimony in the 1996 case explains why the Company's 1994 request for rate base treatment was inappropriate. Mr. Gibbs' 1996 testimony explains that rate base should include a pension asset after pension ratemaking was changed from a cash contribution approach to a FAS 87 approach in the 1994 rate case.[96] In the 1996 case, both Staff and the Company were in agreement on how to measure the pension asset, which would be improbable if the parties disagreed on how rates were established in past Laclede rate cases. It wasn't until Laclede's "eyewitness" Mr. Fallert sponsored the pension issue in the 1998 rate case that the parties were in disagreement.[97]

Mr. Gibbs' testimony in the 1996 case also illuminates Staff's position on the deferred FAS 88 costs between the 1994 and 1996 rate cases. In his testimony, Mr. Gibbs describes Staff's opposition to including FAS 88 gains in Laclede's pension asset.[98] It is apparent that the FAS 88 gains in question were not included in Staff's accounting schedules. In its brief, the Company admits that FAS 88 was not discussed in the 1994 rate case.[99]

---

[95] Ex. 262, Surrebuttal Testimony of Matthew R. Young, 9, lines 8 -18.
[96] Ex. 262, Surrebuttal Testimony of Matthew R. Young, page 9, line 21 through page 10, line 22.
[97] Ex. 262, Surrebuttal Testimony of Matthew R. Young, page 10, line 25 through page 11, line 5.
[98] Ex. 262, Surrebuttal Testimony of Matthew R. Young, page 15, line 20 through page 16, line 12.
[99] Spire Missouri's *Initial Post Hearing Brief*, page 87.

It is important to note that at the conclusion of a rate case, it is Staff's accounting schedules that are adjusted for agreements between parties and/or Commission orders in order to create compliance tariffs. Absent any decisive language in the Commission's authorized 1994 Stipulation, it is reasonable to conclude that the tariffs resulting from the 1996 rate case were based on Staff's accounting schedules, which did not contain a pension asset related to FAS 88 gains.

The Stipulations filed at the time do not contain any language agreeing to any future rate recovery of a prepaid pension asset. The existence of black box Stipulations and the use of FAS 87 is not an issue of first impression for the Commission. In 1993, the Commission had to decide a similar disagreement between Staff and St. Joseph Light and Power Company ("SJLPC").[100] SJLPC argued that FAS 87 had been used for ratemaking purposes, and that SJLPC would face a write off if the Commission adopted Staff's position.[101] This is similar to Spire Missouri's arguments through the current proceeding. The Commission's Report and Order concluded:

> There is no dispute as to the level of funding in this issue. The dispute centers on the adoption of an accounting method: accrual accounting (FAS 87) as advocated by company or a funding cash contribution (ERISA) as advocated by Staff and Public Counsel. In its case SJLPC takes the position that the Commission has previously adopted FAS 87 for ratemaking treatment of SJLPC's pension expense and that if a funding cash contribution is now adopted a turn around cost of approximately $3.5 million will have to be written off by SJLPC. The Commission finds based upon its review of SJLPC's rate proceedings since 1987 that the Commission has never adopted FAS 87 for ratemaking purposes. **These proceedings have resulted in stipulated cases wherein an overall dollar amount was accepted with no ratemaking treatment designated for the individual issues. The Commission, therefore, is of the opinion that the application of a funding cash contribution should not result in a write off as advocated by SJLPC.**

[100] Re St. Joseph Light & Power Co., EC-93-252, 1993 WL 449447 (June 25, 1993).
[101] *Id.*

> Furthermore, the Commission fully intends to allow prudently incurred pension costs to be recovered in the future on a funding cash contribution basis. Pensions costs are legitimate, historically approved costs of providing service, and, absent any evidence that they are excessive or imprudently incurred, they may be recovered by SJLPC on a funding cash contribution basis.[102]

Therefore, Spire Missouri makes an extreme leap in logic in arguing that in cases where cash contributions are discussed in testimony, that the existence of a stipulation means the Commission ordered FAS 87. At best, the Commission made no determination about ratemaking treatment, and believed no rate base asset should exist. This can be supported by the Commission's conclusion in the above case that "The Commission believes it is probable that these pension costs booked under SFAS 87 above the minimum ERISA contribution, capitalized as a regulatory asset, will be recovered in rates."[103] The Commission's decision in that case makes it clear that SJLPC did not have a regulatory asset to write off, contrary to their claims, as accrual accounting was not ordered by the Commission, and that it is probable that rates will effectively pay the utility for its pension costs. Spire Missouri concedes this is true, stating, "If rates had been set based on the Company's cash contributions to the pension plans, then customers had effectively paid the Company for its pension costs and no rate base asset should exist."[104] Based on the historical evidence, customers have paid Spire Missouri for its pension costs, and should not pay any additional amounts.

-Nicole Mers

[102] *Id.*
[103] *Id.*
[104] Spire Missouri's *Initial Post Hearing Brief*, page 87.

H. Incentive Compensation

As Staff devoted nearly twenty pages in its initial brief to this issue, Staff will not attempt to re-refute every argument Spire Missouri makes. Instead, Staff chooses to not overburden the record, and focus its attention where additional explanation and clarification will most aid the Commission. The Commission may refer back to Staff's *Initial Post-Hearing Brief,* for responses to any argument not specifically addressed herein.

Spire Missouri's major critique against Staff's position is Staff's disallowances were "equivalent to a critic judging a book by its title."[105] If Staff critiqued Spire Missouri's books by its titles, it is because Spire Missouri submitted to Staff the cover of a book, with all the pages removed from within. Spire Missouri argues that Staff did not ask to obtain the appropriate information required to make an evaluation, such as descriptions or targeted performance levels or end-of-year comments on performances, or supervisor's evaluations or ratings.[106] Any attempts to argue otherwise, and shift the burden, are illegal and contrary to law. Section 393.150.2, RSMo., provides:

> At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . gas corporation . . . and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

[105] Spire Missouri's *Initial Post Hearing Brief*, p. 99.
[106] *Id.* at p. 98.

This burden **never** shifts,[107] and Spire Missouri's attempt to do so in its *Initial Post-Hearing Brief* is contrary to law and a dereliction of its statutory obligation. Furthermore, Spire Missouri's statements are inaccurate and misleading to the Commission. Spire Missouri makes these statements without reference to evidence or the actual data requests at all. Staff, to shed light on Spire Missouri's attempts to mislead the Commission and shift the burden of proof in contravention of law, reviewed the data requests Staff submitted regarding incentive compensation. Staff sent nine individual data requests regarding incentive compensation to Spire Missouri. Staff requested, in data request 61,

> Separately for Laclede Gas and MGE: 1. Identify the amount of short term incentive compensation charged to expense in the test year. Provide a spreadsheet from the general ledger that would support this amount. Include any accruals for bonuses paid and unpaid. 2. Does each utility capitalize any portion of incentive compensation? Please explain. 3. **Provide the individual 2016 goals, scorecards, and actual results which were required to be met for each employee who received a bonus under the annual incentive compensation plan during the calendar year 2016.** If this documentation does not exist explain how the 2016 bonuses were distributed. 4. When do annual incentive compensation payouts occur? Provide the amount of 2016 annual incentive compensation plan payout for each utility employee under the plan. Identify the method of payout (cash, etc.). Provide a spreadsheet detailing the amounts for each employee by name and bonus amount. Provide this information for each and every bonus payout during the test year. Provide the calculations based on plan documents that will identify the achieved thresholds/goals for each and every bonus payout during the test year. If this documentation does not exist explain how the 2016 bonuses were distributed. 5. Identify if any of the amount paid during the test year was charged to expense. Include any accruals for the amounts paid that were charged to the test year. 6. Identify if each utility paid holiday bonuses and/or work performance bonuses charged to the test year. If so, identify the amounts by FERC account. (Case No. GR-2014-0007 DR 45.2)

[107] ***Been v. Jolly,*** 247 S.W.2d 840, 854 (Mo. 1952).

Staff received a spreadsheet response, which included four columns – the employee's id number, the employee's department, a one line objective similar to the examples provided in the surrebuttal testimony of Mr. Young, and a weight to apply to that criterion. In data request 61.1, Staff requested:

> Please provide the following for each of Spire's subsidiaries. 1) For the non-union individual component of the Annual Incentive Plan, please describe the process utilized to establish individual objectives, including the roles of individuals and supervisors. 2) Identify if individuals create their own objectives and if so, if the individual's supervisor approves the objective. If supervisory approval is required, identify the number and level of supervisory approval required. 3) If each individual does not establish their own objectives, identify how objectives are chosen for the non-union individual annual incentive plan.

Staff received the following response:

> Each year through the talent management process, employees and supervisors meet to set individual objectives that tie into the overall corporate and business unit objectives. The objectives are mutually agreed upon by the supervisor and employee and approved by the second level manager.
> 2. Please see response to #1.

Staff requested the following information in data request 61.2:

> Please provide the following for each of Spire's subsidiaries. 1) For the non-union individual component of the Annual Incentive Plan, please describe the Company's process utilized to score the level of achievement of individual objectives. 2) What level of supervisory input is required for evaluating an individual achievement of objectives? 3) Are payments based on individual objectives scored on a performance scale (e.g. threshold, target, exceptional)? 4) Please describe how an employee's performance evaluation affects his/her eligibility for all components (individual, team, business unit, corporate) of the Annual Incentive Plan. (i.e. is an employee that received a "below-standard" evaluation eligible for incentive compensation)

Staff received the following response:

> 1. Each year during the performance review process, supervisors meet individually with each employee to assess and discuss performance towards achievement of individual goals. The performance on each goal is assessed by the supervisor with a rating of 1 through 5 (1= Requires Immediate Improvement, 2 = Below Expected Performance; 3 = Meets Performance Goals; 4 = Exceeds Performance Goals; 5 = Outstanding Performance)

2. The supervisor of each employee is responsible for evaluating their employees and there is a second level manager review of the appraisal

3. Please see the response to #1.

4. An employee's performance does not affect their Corporate or Business Unit component incentive. However, the employee's performance directly affects the amount of payout the employee can receive from the individual component of the AIP. Assuming the employee meets the minimum threshold to qualify for an award under the individual component, lower performance correlates to lower payout.

Staff requested all the items Spire Missouri claims Staff should have reviewed, and Spire Missouri did not provide it. Spire Missouri cannot withhold information, and then criticize Staff for not examining the information it withheld.

Spire Missouri criticizes Staff's removal of objectives that were not challenging and did not require more than expected daily duties.[108] Spire Missouri states, "It is natural that the objective would pertain to the employee's duties" which misstates Staff's argument.[109] Objectives should pertain to the employee's duties, but encourage them to produce a higher level of performance than what is the expected, which is what base salary captures. The Commission has outlined this policy before, in removing incentive compensation from rates. In an Ameren Missouri rate case, the Commission removed incentive compensation relating to the following individual objectives.

1. Reduce preventable motor vehicle accidents by 10 percent, and achieve a specific level of on-the-job accidents.

2. Achieve a five percent reduction in sick leave.

3. Limit O & M expenses to the budgeted level.

4. Limit construction expenditures to a specified level.

5. Achieve a five percent reduction in customer outage time.

---

[108] Spire Missouri's *Initial Post Hearing Brief*, p. 99.
[109] *Id.*

> 6. Achieve a five percent reduction in the level of non-Callaway materials and supplies inventory.
>
> 7. Achieve an overall major power plant equivalent availability rate of 73 percent.[110]

In that case, Staff opposed the incentive compensation on three grounds: (1) the Company has not determined the savings resulting from the plan and has made no offset to the cost of the plan by such savings; (2) there is no guarantee that the Company will incur the cost associated with the plan; and (3) only four of the seven goals call for improvement over 1986 performance.[111]

The Commission concluded:

> However, the Staff's criticism of the Company's plan for ratemaking purposes is well taken. At a minimum, an acceptable management performance plan should contain goals that improve existing performance, and the benefits of the plan should be ascertainable and reasonably related to the incentive plan. The Company's management incentive plan meets neither of these minimum standards. Accordingly, the Commission determines that the Company's adjustment should be rejected.[112]

Spire Missouri's objectives are even more ill-defined and less encouraging of improvement over past performance than the ones present in the above Ameren Missouri case, so incentive compensation recovery here should also be denied.

Spire Missouri also makes the argument that incentive compensation is the driver behind costs being lower than they would have otherwise been.[113] There is no evidence that the non-union incentive compensation package is behind any of the claimed cost reductions, efficiencies, synergies, or rates that customers will pay as a result of this rate case. Spire Missouri makes this sweeping argument, without any citations to the record, while simultaneously arguing that its acquisitions, its new contracts, or whatever

[110] Staff of Missouri Pub. Serv. Comm'n, 90 P.U.R.4th 400, 410–11 (Dec. 21, 1987)
[111] *Id.*
[112] *Id.*
[113] Spire Missouri's *Initial Post Hearing Brief*, p. 99.

position it is arguing for at the time are the drivers behind the cost reductions. For instance, Spire Missouri argues in its *Initial Post Hearing Brief* that:

> The Company, Staff and OPC have all suggested that the cost of service approved in these cases for LAC and MGE should reflect, to one degree or another, the substantial synergies achieved as a result of Spire's acquisition of Alagasco in 2014 (now Spire Alabama) and the two EnergySouth utilities in 2016 (now Spire Gulf and Spire Mississippi).[114]

Spire Missouri claims, "Those savings would not have been possible had Spire not made the decision to grow and transform its utility businesses."[115] No mention of incentive compensation being the driver behind the acquisitions. There is no mention of incentive compensation driving the AMR contract, the St. Peters lateral decisions, or the decision to use tax laws to reduce costs to customers.[116] Spire Missouri is conspicuously silent on the most likely driver of any of those issues, and countless others, the opportunity to benefit from retained savings from positive regulatory lag, which benefits Spire Missouri and its shareholders.[117] If incentive compensation is truly responsible for the rates Spire Missouri has requested customers pay as part of its direct case, the Commission should be leery of a program that incentivizes Spire Missouri's request for an ROE of 10.35%, significantly higher than recommended by the rest of the parties, as well as a revenue requirement request above what a realistic cost of service requires.[118]

Spire Missouri refers often to the 2009 Ameren Missouri's decision to bolster its arguments surrounding earnings based individual metrics. (For a discussion on how that decision is distinguishable from Spire Missouri's incentive compensation program, and

[114] Spire Missouri's *Initial Post Hearing Brief*, p. 118.
[115] *Id.* at 2.
[116] *Id.* at 3.
[117] Tr. Vol. 22:2607, lines 3-17.
[118] Tr. Vol. 19:1713, lines 6-9.

supports Staff's adjustments, please refer to Staff's *Initial Post Hearing Brief*.[119]) However, Spire Missouri glosses over this decision when it comes to earnings-based equity compensation. A perfunctory statement of "executive incentive pay has been the most controversial for the commission to approve"[120] is the closest Spire Missouri gets to admitting that earnings-based equity compensation has never been included in rates, even in the 2009 Ameren Missouri rate case.[121] So now, contrary to Commission policy, and to statements Spire Missouri itself made in both its position statement and at hearing that "We are not asking for any compensation for equity incentives for the CEO and 100 of our top executives and managers"[122], Spire Missouri is requesting equity incentives. The Commission has disallowed stock options in the past for misaligning employee incentives with shareholders incentives over the benefit of ratepayers, and because there is not an expense recorded on a utility's books for stock options. For instance, the Commission supported Staff's removal of stock costs in a case where Staff argued there was not a sufficient connection between benefits to Missouri ratepayers and incentive compensation awarded in stock and that "since neither Southern Union nor MGE records an expense on its books associated with the stock options, it is not appropriate to charge MGE ratepayers for the options."[123] The Commission again in 2007 supported Staff's removal of earnings based incentive compensation awarded as stock due to lack of a relationship between earnings per

[119] Staff's *Initial Post-Hearing Brief* Pp. 91-95.
[120] Spire Missouri's *Initial Post Hearing Brief*, p. 106.
[121] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service*, Case No. ER-2008-0318, **Report and Order** issued January 27, 2009, p.86, *In the Matter of the Tariff Filing of The Empire District Electric Company to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area*, **Report and Order** issued December 21, 2006, p. 48-49
[122] Spire Missouri's Statement of Position, filed November 30, 2017 p. 11, Tr. 14:393, lines 15-17.
[123] *In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Service Area*, Case No. GR-96-285.

share and ratepayer benefit, as well as the fact that "KCPL would pay that compensation with stock, not cash, so KCPL would not need to recover money from the ratepayers to pay the compensation."[124] Spire Missouri has not justified a departure from this Commission standard.

Spire Missouri attempts to argue that Spire Missouri is offering a below market rate for its base salary, but overlooks an important detail.[125] On page 6 of Spire Missouri witness Mr. Mispagel's rebuttal testimony, he states "the company uses industry market data from surveys and other publicly available sources to help determine competitive compensation, both on the base and incentive level."[126] This is a small, but important difference from the representations made in Spire Missouri's brief. Mr. Mispagel's statement in rebuttal is that competitive compensation is determined on two levels, base and incentive. Both Staff and LAC compare base salary to market base salary.[127] Then LAC compares incentive compensation to market incentive compensation.[128] Spire Missouri would have the Commission believe that the salary survey provides a total compensation figure, and that Spire Missouri apportioned that total figure between incentive compensation and base salary. Instead, as Mr. Mispagel's testimony makes clear, Spire Missouri does an apples to apples comparison, incentive compensation to market incentive compensation, base salary to market base salary.

---

[124] *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Implement its Regulatory Plan*, Case No. ER-2007-0291, **Report and Order** issued December 6, 2007, p. 51.

[125] "The Company offers a base salary that is below a market rate" Spire Missouri's *Initial Post Hearing Brief*, p. 110.

[126] Ex. 48, Rebuttal Testimony of Mark C. Mispagel, p.6, lines 14-16.

[127] Tr. Vol. 22:2720, lines 7-10.

[128] *Id.*

Finally, Spire Missouri argues that Staff's adjustments to remove capitalized incentive compensation is a "re-trading of the terms" of settlement agreements reached in prior cases and is retroactive ratemaking.[129] Spire Missouri's argument is misleading is several aspects. First, Staff is removing the current value of the capitalized incentive compensation, which is not retroactive ratemaking, since the capitalized incentive compensation amounts are currently in rate base for this case. Retroactive ratemaking has been defined by the Court of Appeals as "the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established."[130] Staff is simply removing the present value of the capitalized incentive compensation from rates, not adjusting Spire Missouri's overall revenue requirement to capture excess profits or past losses. Second, Staff is not re-trading issues that have been settled. A black box settlement only settles an overall dollar value, unless specific terms are included. The Commission has supported this view of settlement agreements before, stating,

> These proceedings have resulted in stipulated cases wherein an overall dollar amount was accepted with no ratemaking treatment designated for the individual issues.[131]

The same view of stipulated cases is true today, and Staff's approach is neither retroactive ratemaking, nor prohibited by prior settlements. If the Commission finds in Staff's favor, Staff's adjustment is merely the removal of capitalized amounts currently included due to an improper incentive compensation plan, and prevents ratepayers from

---

[129] Spire Missouri's *Initial Post Hearing Brief*, p. 108.
[130] State ex rel. AG Processing v. Pub. Serv. Comm'n, 340 S.W.3d 146, 150 (Mo. Ct. App. 2011)
[131] Re St. Joseph Light & Power Co., EC-93-252, 1993 WL 449447 (June 25, 1993)

paying for capitalized amounts of an expense the Commission has deemed to be contrary to public policy.

In conclusion, Staff's position is backed by evidence and Commission history. Spire Missouri's position is contrary to thirty years of Commission practice and what other Missouri utilities are including in rates. As recently as 2015, the Commission has recognized that earnings based incentive compensation is designed for shareholder benefit. The Commission, while discussing rate case expense and other items that benefit shareholders, stated, "Utility expenses that are highly discretionary and do not benefit customers, such as charitable donations, political lobbying expenses, and **incentive compensation tied to earnings per share**, are typically allocated entirely to shareholders."[132] The Commission should continue to recognize that expenses that do not benefit customers should not be charged to customers.

-Nicole Mers

I. Gas Inventory Carrying Charges

i. Should LAC's natural gas and propane inventory carrying costs be recovered through rate base inclusion, as currently is the case with MGE, or recovered through the PGA/ACA process?

As stated in Staff's initial brief, if a representative level of short term debt consistent with the level of gas inventories in rate base is included in capital structure, gas inventories, including propane inventory, should be included in rate base for LAC as has been the case for natural gas inventories for MGE.[133] However, if short term debt is not included in the capital structure, PGA treatment (Gas Inventory Carrying Cost

[132] In the Matter of Kansas City Power & Light Companys Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv., Case No. ER-2014-0370, **Report and Order** issued Sept. 2, 2015, p. 46.
[133] Ex. 204, page 62, line 2 through page 63, line 2; Ex. 259, page 3, lines 17-23; Tr. pages 1497 – 1503.

Recovery, or "GICCR", mechanism treatment) should be continued for LAC and extended to MGE's PGA tariffs.[134]

On page 62 of its initial brief, LAC continues with an argument it began under the capital structure portion of its brief; namely, that if short term debt is included in the capital structure, LAC will not be permitted to earn its overall cost of capital on the gas inventories in rate base but will only be allowed a short term debt (i.e., 1.5%) return on those inventories.[135] At best, LAC's argument is blatantly wrong, as clearly demonstrated at the hearing. If gas inventories are included in rate base, the overall cost of capital will be applied to those inventories just like everything else in rate base.[136]

Also under the capital structure portion of its brief, LAC takes issue with the dollar amount of short term debt Staff proposes to include in capital structure as compared with the dollar amount of gas inventory.[137] However, as explained in Staff's initial brief, the key is to look at the percentage of gas inventory to rate base versus the percentage of short term debt to the entire capital structure used for ratemaking purposes;[138] to be consistent, the percentages should be approximately the same.[139] In other words, the key is to look at the percentage, or ratio, rather than focus on the dollar figures themselves as LAC would like to do. This is because the gas inventories and rate bases in question are those of LAC and MGE (i.e., Spire Missouri), whereas the capital structure proposed by Staff is the consolidated parent Spire Inc. capital structure.[140]

---

[134] Ex. 259, page 5, lines 8-14.
[135] See LAC and MGE initial brief pages 46 and 62.
[136] Tr. Vol. 18, page 1513.
[137] See LAC and MGE initial brief page 46.
[138] Tr. Vol. 18, page 1492.
[139] Tr. Vol. 18, pages 1501-1502.
[140] Tr. Vol. 18, pages 1501-1502.

In its brief on page 37 LAC admits that Spire Inc.'s capital structure is substantially larger than Spire Missouri's capital structure; therefore, the dollar amount of short term debt included in capital structure must be larger than the dollar amount of gas inventory in order to be consistent and avoid a detrimental impact on customers by moving the inventories to rate base.

In its brief, LAC seems to take issue with the proposition that gas inventories are financed by short term debt; however, it is simply a fact that gas inventories are financed by short term debt.[141] Mr. Buck of LAC has testified over the years that LAC considers gas inventory to be financed by short term debt.[142] At the hearing on December 12, 2017, after some equivocation Mr. Lobser of LAC admitted that gas inventory is a short term asset for accounting purposes;[143] short term assets are financed with short term debt. Furthermore, despite LAC's claim under the capital structure portion of its brief (page 45) that "the Commission has had a long-standing practice of not including short-term debt in the capital structures of major public utilities", as stated in Staff's initial brief, in a *Report and Order* issued in 2010, MGE had short term debt in its capital structure and the Commission included the cost of short term debt in determining MGE's rate of return.[144]

LAC's brief on gas inventory carrying charges issue (i) concludes with the statement (on page 64) that "the Commission should continue its long-standing practice of including gas inventory costs in LAC's rate base." This statement is perplexing, given that gas inventory costs are not currently in LAC's rate base, and have not been in

[141] Tr. Vol. 18, page 1497.
[142] Ex. 259, page 3, lines 22-23.
[143] Tr. Vol. 18, page 1454 line 23 through page 1455 line 16.
[144] Ex. 271, *In the Matter of Missouri Gas Energy and its Tariff Filing to Implement a General Rate Increase for Natural Gas Service,* Report and Order issued February 10, 2010, pages 11-20.

LAC's rate base since 2005 – a fact which is undisputed. Even the remainder of LAC's brief on this issue recognizes that currently its natural gas and propane inventory carrying costs are recovered through its PGA/ACA. LAC is not truly arguing for "continuation" of a "long-standing practice," but instead is arguing for a new practice; a practice with which Staff agrees[145] **but only if** a representative level of short term debt consistent with the level of gas inventories in rate base is included in capital structure.

ii. Should Line of Credit (LOC) fees be removed from LAC's PGA consistent with inventory inclusion in rate base?

It appears from the Company's *Initial Brief* that LAC agrees with Staff's position on this issue.

-Jeffrey Keevil

J. PGA/ACA

i. Should LAC have new PGA/ACA tariff provisions pertaining to costs associated with affiliated pipeline transportation agreements?

This proposal was brought to the Commission by the Environmental Defense Fund ("EDF"). As stated in Staff's initial brief, EDF's proposals to change LAC's PGA/ACA tariff should be rejected.

Although EDF's initial brief takes care to avoid use of the word "preapproval" (or "pre-disapproval") in relation to any contract between LAC and its interstate pipeline affiliate in explaining EDF's proposed tariff changes, it is clear that is precisely what EDF is proposing. Throughout this section of its brief, EDF refers to its proposal as "allowing Laclede to recover" certain costs and on page 16 even states that its proposed "PGA/ACA revisions put the Company on notice – today – *as to the anticipated cost*

[145] Staff would include both natural gas and propane inventories.

recovery" and "the Company should be put on notice as to *the amounts it will be allowed to recoup* from customers." (Emphasis added)

As the Commission is aware, just because EDF's proposed PGA/ACA changes are not adopted does not mean that LAC's decision to contract with Spire STL Pipeline (assuming that a transportation agreement is eventually entered) – and the related costs of such contract to LAC – will not be reviewed by Staff at the appropriate time.[146] Staff will in fact review such decision and costs as part of the existing PGA/ACA process[147] when LAC seeks to recover such costs in a future PGA/ACA proceeding.[148] EDF, however, criticizes this PGA/ACA prudence review process – which has long been established in Missouri – for its "retrospective" nature.

However, upon closer examination, EDF's true concern begins to come into focus. Beginning on page 2 of its brief EDF states that "[s]uch retrospective analysis is problematic as it overlooks the economic and environmental harm that will result from building a pipeline that is ultimately not needed," and on page 14 that "[s]uch retrospective analysis is ineffectual as it functionally would ignore the harms that will result from building a pipeline that is ultimately not needed." Clearly, EDF's true concern is with the planned construction of Spire STL Pipeline by an affiliate of LAC's.

Staff has not taken, and does not herein take, a position regarding the need for or wisdom of construction of the Spire STL Pipeline, nor of the prudence of LAC's decision to contract with Spire STL Pipeline (assuming that a transportation agreement is eventually entered). As stated above, Staff will review such decision and costs as part of the PGA/ACA process when LAC seeks to recover such costs in a future

[146] Ex. 233, page 9, lines 13-17.
[147] *Id.*
[148] Tr. Vol. 19, pages 1884, 1887.

PGA/ACA proceeding. However, Staff does not believe this case is the appropriate forum in which to determine the need for an interstate pipeline.

The Commission should also be aware that, ostensibly due to what it refers to on page 18 of its brief as "a gap in regulatory oversight" between this Commission and FERC, on January 9, 2018 – the same day it filed its initial brief in this case – EDF filed a *Motion to Lodge* in the Spire STL Pipeline LLC case before FERC (FERC Docket Nos. CP17-40-000 and CP17-40-001) in which EDF moved to lodge at FERC [*i.e.,* enter into the record of the FERC docket] a portion of the transcript of this case (GR-2017-0215 and GR-2017-0216) and a copy of EDF's initial brief in this case.[149] In its *Motion to Lodge* at FERC, EDF argued that the "MoPSC transcript and [EDF's] Initial Brief directly implicate the [FERC's] analysis of need." Again, Staff takes no position on the need for the Spire STL Pipeline; however, EDF's use of a portion of this Commission's transcript and its brief before this Commission in the FERC proceeding reveals EDF's true underlying interest.

-Jeffrey Keevil

K. Forest Park

i. How should any gain resulting from the sale of the Forest Park property be treated for ratemaking purposes?

Staff maintains its position as expressed in its *Initial Post-Hearing Brief* that the Commission should order a sharing of the gain on the sale of the LAC facilities located at Forest Park Avenue between ratepayers and shareholders, using Staff's recommended true-up capital structure. As part of LAC's executive summary on this

[149] https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14794320

issue within its *Initial Brief*, LAC acknowledges that, "circumstances may occasionally arise where it is appropriate for a utility to share a gain on the sale of assets with its customers." Unfortunately, while LAC argues that those circumstances are not present here, it does not indicate when such a sharing **would** be appropriate. Staff suggests that sharing of the gain is appropriate when utility property that is needed for the provision of utility service is sold and a replacement is needed. LAC's executive summary continues by misstating and mischaracterizing facts revealed in Staff's investigation of this issue.

First, LAC incorrectly states that the entire gain on the sale of the Forest Park property was related exclusively to the value of the land. As articulated in Staff's *Initial Post-Hearing Brief* on the matter, the property provided value to the utility and its ratepayers in the structures contained on the land. The sales contract between LAC and CORTEX states the sale included not only the land, but also the real property and all structures.[150] Therefore, it was not merely a land-only transaction.[151] Only the two additional sawtooth parcels adjacent to the original Forest Park property, purchased mere months before the sale to CORTEX, were not included. The two sawtooth parcels were purchased at $450,000 and then sold for approximately ** **, yielding an approximately ** ** profit for those parcels.[152] The land in rate base was over 90% of the total acreage. The $5.8 million gain calculated by Staff could be reduced by the ** ** realized on the sawtooth properties.

As part of this argument, LAC seems to imply that Staff is attempting retroactive ratemaking with its adjustment. However, this transaction included capital assets, and

---

[150] Ex. 250 Surrebuttal Testimony of Jason Kunst, Schedule JK-s1, Attachment 6.
[151] Ex. 250 Surrebuttal Testimony of Jason Kunst, p. 10, lines 1 – 12 and 22 – 23.
[152] *Id.* at Confidential Schedule JK-s1, Attachment 1.

capital costs are included in rate base, no matter when the transaction occurred. This rate case was the first opportunity Staff had to address the regulatory treatment of both the relocation funds received in connection with the sale of the Forest Park facilities and the construction of the Manchester facility. Accordingly, the Commission should rightfully consider the ratemaking treatment of these costs in this case.

Second, LAC misleadingly suggests that the sale of the Forest Park property and relocation of the Forest Park employees were part of its restructuring plan and would have happened regardless of whether CORTEX had made an offer. However, LAC actually purchased two parcels of land immediately adjacent to its Forest Park property, even after it learned that CORTEX was interested in purchasing the property.[153] This suggests that not only was LAC not looking to sell the Forest Park property to CORTEX, but it was not planning to sell or relocate at all. Two months after LAC signed a purchase agreement for the two additional parcels, CORTEX made its offer to purchase the Forest Park property,[154] and almost four months after the offer was made, LAC signed the sales contract with CORTEX.[155] It wasn't until approximately five months after the sales contract was signed that LAC even began looking for a replacement facility.[156] Contrary to what Company witness Susan Kopp stated in her testimony, Glenn Buck stated in response to two data requests that the Manchester facility was a partial replacement of the Forest Park facilities.[157] The final sale to CORTEX happened the following year,[158] but that does not mean that LAC "had already decided to move"

---

[153] *Id.* at Confidential Schedule JK-s1, p. 1.
[154] *Id*. at Confidential Schedule JK-s1, p. 2, para. 5.
[155] *Id*. at Confidential Schedule JK-s1, p.3 and 4, para 10.
[156] *Id.* at Confidential Schedule JK-s1, p. 4, para. 11.
[157] *Id.* at Schedule JK-s2, p. 1 – 2.
[158] *Id.* at Confidential Schedule JK-s1, p. 5, para. 12.

any of its field personnel prior to CORTEX offering to purchase the Forest Park property.

Third, LAC attempts to find relevance in the growth and development of the CORTEX entrepreneurial and science district, which in fact has no relevance to the ratemaking treatment of the proceeds of the Forest Park property sale. LAC is a utility designed to provide safe and adequate service to its ratepayers; it is not in the business of facilitating retail construction or city beautification projects.

Fourth, LAC argues incorrectly that capital contributions using the relocation proceeds more than offset the remaining rate base value of the Forest Park buildings. What LAC neglects to mention is that the capital contribution LAC made was for furniture and equipment, which has a much shorter depreciable life than buildings (10 years versus 40 years), and ratepayers do not benefit in the same way as if the contribution had been used as an offset to the cost of a building. With LAC's proposed accounting treatment in this case, ratepayers will be paying for both the new Manchester facility and the old Forest Park property once rates are reset in this case. Therefore, the relocation proceeds used for capital contributions cannot logically be used as an offset to the early retirement of capital assets for which ratepayers continue to pay.

Treatment of the relocation proceeds is discussed immediately following this subsection of the brief.

Finally, LAC asserts in its *Initial Brief* that the Manchester facility that replaced the Forest Park service center is cheaper to own and operate than the Forest Park facility would have been once rehabilitated. Staff submitted several data requests seeking analysis of the sale and construction of the Manchester replacement facility, but Staff was informed that the analyses did not exist in the requested format. Staff was therefore unable to audit supporting documentation for LAC's assertion. Further, the analysis consisted of improvements to the Forest Park facility through the year 2020. Ms Kopp's analysis requires that all of the upgrades be performed at once, but it does not consider reductions to operating expenses that would have resulted from the future-scheduled improvements listed on her workpaper. Because the analysis was lacking this key factor, and because Staff was told by the Company that there was no auditable supporting documentation, Staff cannot agree with LAC's assertion that the replacement facility at Manchester is cheaper to own and maintain than the rehabilitated Forest Park facility would have been.

Overall, LAC is unable to articulate why the Commission should not adopt Staff's position and order a sharing of the proceeds from the sale of the Forest Park property between ratepayers and shareholders.

ii. How should the relocation proceeds from the sale of the Forest Park property, other than proceeds used for relocation purpose or contributed to capital for the benefit of customers, be treated for ratemaking purposes?

Staff's position is that this portion of the relocation proceeds should be treated as a regulatory liability to be amortized over 5 years, with rate base treatment.

LAC argues that Staff witness Jason Kunst was provided with a "massive spreadsheet with hundreds of entries showing where every dime of [the relocation proceeds] was spent," leaving no question to be answered as to the ratemaking treatment of remaining relocation proceeds. The problem with the spreadsheet is it does not distinguish for which move the expenses were incurred, and LAC was unable to tell Staff for which move the relocation expenses were used. Staff's position is that the funds should have been used for relocating Forest Park employees but not for relocating Olive employees to the new headquarters. The funds left after moving Forest Park employees should have been used to offset Manchester construction, not relocating employees from 720 Olive to 700 Market. Staff's adjustment is based on the dollars LAC was unable to account for as part of the actual relocation from Forest Park to Manchester.

LAC brings up a new issue in its brief, suggesting that Staff's recommended sharing of the relocation proceeds is for expenditures made outside the test year. However, Staff's position did not include sharing the actual costs LAC incurred to relocate. Instead, Staff recommends using the remainder of the proceeds, other than those used to relocate Forest Park employees or that contributed to capital associated with the Forest Park relocation, as a capital offset, because they are related to the capital facilities. Capital costs are included in rate base, no matter when the transaction occurred. This is similar to LAC's reimbursement for relocating natural gas mains and other infrastructure for road improvements. Typically, in instances where LAC receives reimbursement for relocating its infrastructure, the reimbursement is recorded as contribution in aid of construction ("CIAC") in an amount equal to capital investment costs incurred, which results in a zero net book value for the capital costs incurred to relocate. Therefore, ratepayers are not required to pay either a return on or a return of this relocated property.[159] Staff is proposing similar treatment of the relocation proceeds received in the Forest Park transaction. Because this case was Staff's first opportunity to address the regulatory treatment of the relocation funds received in

[159] *Id.* at p. 16, lines 11 – 23.

connection with the sale of the Forest Park facilities, it is appropriate that the issue is addressed here, and Staff's adjustments are intended to share the windfall of proceeds equitably between ratepayers and shareholders in a manner that mitigates harm to the ratepayers resulting from the higher cost replacement facility.

- *Marcella Forck*

L. Uncollectibles

i. What is the appropriate amount of bad debt to include in base rates?

The parties do not dispute as to the appropriate definition of uncollectibles or the fact that some portion needs to be included in base rates to account for uncollectible expenses. However, OPC believes that a determination should be made as to whether account 904 titled Uncollectible Accounts, is the proper account in which to record uncollectibles or if account 144 titled Accumulated Provision for Uncollectible Accounts – Credit, is proper. OPC argues for Account 904, while Staff prefers to use Account 144. LAC's and MGE's Account 904 represents the estimated amounts of accrued write-offs, which should not be used to establish an ongoing level of uncollectible expense. Account 144 represents the actual net write-offs (write-offs less any recoveries of amounts previously written off), which is the appropriate account to analyze in order to establish an ongoing level of the actual expense LAC and MGE incur. Despite the Company's argument for a 3 or 5 year average of expense, OPC does agree with Staff that it is proper to take into account that Spire Missouri has drastically modified its policies for uncollectibles as of September 2015[160] (fiscal 2016)[161] and that this fact should be considered in the measurement for uncollectible amounts included in base

[160] Ex. 24 Rebuttal Testimony of Timothy W. Krick P. 8:9-13.
[161] *Spire Initial Brief* P. 113.

rates going forward. Staff's use of the average of the 12 month period ending June 30, 2017, updated for true-up to September 30, 2017, is proper because it most closely represents the methodology and amounts which can be expected to be used by Spire Missouri for its two divisions following these general rate cases. The Company's position was established using a multi-year average which is the three-year period of time immediately prior to the policy change during which a different methodology for calculating uncollectible expense was in effect.[162] It is improper to use these amounts in the calculations going forward because the new methodology will produce different results.[163] Therefore, Staff continues to support its position that the appropriate level of uncollectible expense to include in base rates is $7,318,951 for LAC and $3,501,893 for MGE.[164]

-Whitney Payne

M. Credit Card Processing Fees

i. Should an amount be included in LAC's base rates to account for fees incurred when customers pay by credit card, in the same manner fees are currently included in MGE's base rates?

ii. If yes, what is an appropriate amount to include in LAC's base rates for credit card fees?

Staff in its *Initial Post-Hearing Brief* laid out its reasons for supporting LAC's proposal to include credit card processing fees in its base rates in alignment with MGE, which already includes these fees in rates. OPC in its *Initial Brief* claims that Staff has not provided evidence to show that this would not result in a discriminatory rate. However, OPC fails to prove that inclusion of credit card fees will discriminate against

---

[162] *Id*. at 114.
[163] Ex. 253 Surrebuttal Testimony of Amanda McMellen P. 3:13-16.
[164] *Staff's Initial Post-Hearing Brief* P. 97.

any specific class of customers. Furthermore, the standard for setting just and reasonable rates is that it "cannot be so great as to produce an unjust discrimination" and was set in *Laundry v. Public Service Commission*.[165] The standard in *Laundry* is not that any discrimination is prohibited, but only that an unjust level of discrimination is forbidden. Staff would argue that the approximately $630,000 it proposes to include in LAC's rates does not rise to the level of unjust discrimination to those customers who choose not to pay by credit card.

In fact OPC was struck down when it cited to the *Laundry* case to make its argument in the appeal of Missouri-American Water Company's last general rate case.[166] The Missouri Court of Appeals Western District determined in that case that the standard in *Laundry* did not apply to consolidation of water districts because the result of consolidation would be every customer in that consolidated district would pay the same rate for service, which was based on the cost of service for all residential customers in all water systems located within the district.[167] So to, should the Commission determine that it is appropriate to include credit card fees in LAC's cost of service, those costs would be dispersed equally such that all customers would pay the same rate and all customers would have the option of paying by credit card open to them.

---

[165] ***State ex rel. Laundry, Inc. v. Public Service Com'n,*** 327 Mo. 93, 111, 34 S.W.2d 37, 45 (Mo. 1931) (*quoting* ***Western Union Telegraph Co. v. Call Pub. Co.,*** 181 U.S. 92, 100, 21 S.Ct. 561, 564, 45 L.Ed. 765, ___ (1901).

[166] "The principle of equality designed to be enforced by legislation and judicial decision forbids any difference in charge which is not based upon difference of service, and even when based upon difference of service must have some reasonable relation to the amount of difference, and cannot be so great as to produce unjust discrimination" ***Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas v. Office of Pub. Counsel***, 526 S.W.3d 253, 262 (W.D. 2017), *citing* ***State ex rel. Laundry, Inc. v. Public Service Com'n,*** 327 Mo. 93, 111, 34 S.W.2d 37, 45 (Mo. 1931).

[167] ***Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas v. Office of Pub. Counsel***, 526 S.W.3d 253, 263 (W.D. 2017)

In an attempt to discredit Staff's argument, OPC cites to Staff witness Natelle Dietrich in its brief.[168] Counsel for OPC takes a quote from Ms. Dietrich's testimony out of context by utilizing only the text which supports its position and then inserting language regarding credit card processing fees after the quote to make it appear as if Ms. Dietrich in fact supports OPC's position. However, Ms. Dietrich was not Staff's witness on the issue of Credit Card processing fees; Staff witness Jason Kunst handled that issue. Ms. Dietrich's quote was in reference to DE's proposal to include an annual administration fee in the program budget of LAC's weatherization program.[169] When viewing Ms. Dietrich's testimony in the proper context, the argument she makes regarding weatherization administration can be distinguished from the issue of Credit Card processing fees because LAC customers must meet certain criteria set forth in the program description in order to qualify for weatherization services. For this reason, Ms. Dietrich argues that charging all customers the weatherization administration fees rises to a level of unlawful discrimination.[170] Unlike the weatherization program, payment by credit card would be open to all LAC customers without restriction and therefore, does not rise to a level of unlawful discrimination. Staff would again ask the Commission to approve its recommendation to include Credit Card processing fees in rates at the level set forth based on the annualized known and measurable amount of fees Staff calculated using the 12 months ending September 30, 2017, and the average transaction fee incurred by MGE.[171]

-Whitney Payne

---

[168] *Initial Brief of the Office of the Pub. Counsel* P. 29, EFIS Item No. 543.
[169] Ex. 213 Rebuttal Testimony of Natelle Dietrich P. 3:8-12.
[170] *Id*.
[171] *Staff's Initial Post-Hearing Brief* P. 47, EFIS Item No. 535.

III. True-Up

A. AMR Meter Reading Devices – LAC only

a. What is the appropriate amount to include in rates to account for expenses related to LAC's purchase of automated meter reading ("AMR") devices?

No additional amount needs to be included in rates for LAC, as LAC will not incur any additional expenses not covered by the $0.24 per meter read cost, already included in the cost of service. LAC instead requests an additional $700,000 of future capital costs misrepresented as "maintenance" expenses, for replacement plant that has or will be put in place after the true up cutoff date of September 30, 2017, and is not currently used or useful.

LAC entered into an agreement with Landis + Gyr that converted an expense into a capital cost, by LAC purchasing meter interface units from Landis + Gyr that LAC was previously renting.[172] Pursuant to the contract, LAC is responsible for the purchase of replacement or additional meter interface units.[173] However, Landis + Gyr is responsible for all maintenance and installation costs.[174] Although LAC is requesting maintenance costs,[175] LAC has stated that the $700,000 does not include annual maintenance expense, as annual maintenance is built into the monthly service fee of $0.24, which has already been included in the cost of service for ratepayers to pay.[176] What LAC is really requesting then, is an on-going level of expense built into rates for future capital replacement of meter interface units that are not used and useful. Capital replacement

---

[172] Ex. 291, True-Up Direct Testimony of Lisa M. Ferguson, p. 2, lines 14-16.
[173] Ex. 287, Company Response to DR 484.
[174] Ex. 287, Company Response to DR 484.
[175] "Why does Staff reject the maintenance costs?" Ex. 65, True-Up Rebuttal Testimony of C. Eric Lobser, p.2, line 21.
[176] Ex. 288, Company Response to DR 507.

costs are not O&M costs, and are only booked once the device is in service, and used and useful. Therefore, any devices that were replaced before the close of true-up at September 30, 2017, are included in Staff's true-up plant in service at that date.[177] Utilities cannot charge ratepayers for plant that is not used and useful. Countless case precedent, even reaching to the Supreme Court of the United States, makes this very clear.[178] The Supreme Court of Missouri has also upheld the Commission's application of the used and useful standard, when the Commission applied the standard to disallow land, machinery, and other items not used and useful in the provision of gas services.[179] The Court stated, "The consumer should, therefore, not be charged with any amount for the amortization of the units of property which we have classified as not used in public service at the present time."[180] Plant must currently be in use for public service if it is to be considered used and useful, plant that does not meet this criterion cannot be charged to consumers. Spire Missouri witness Mr. Lobser admits he came to his incremental replacement cost figure to include in cost of service by determining an expense level for replacement plant not in service, and then adding a return of and return on that plant not in service.[181] Spire Missouri is not entitled to a return on plant that is not in service; doing so would violate fundamental regulatory ratemaking principles such as used and useful and the matching principle. Furthermore, Spire Missouri admits it is estimating how many AMR devices it will replace in the

[177] Ex. 291, True-Up Direct Testimony of Lisa M. Ferguson, p. 4, lines 1-3.
[178] "As of right safeguarded by the due process clause of the Fifth Amendment, U.S.C.A.Const. Amend. 5, appellant is entitled to rates, not per se excessive and extortionate, sufficient to yield a reasonable rate of return upon the value of property used, at the time it is being used, to render the services But it is not entitled to have included any property not used and useful for that purpose." ***Denver Union Stock Yard Co. v. United States***, 304 U.S. 470, 475, 58 S. Ct. 990, 994, 82 L. Ed. 1469 (1938).
[179] ***State ex rel. City of St. Louis v. Pub. Serv. Comm'n,*** 341 Mo. 920, 966, 110 S.W.2d 749, 774 (1937).
[180] *Id.*
[181] Tr. Vol. 22:2604, lines 7-11.

future.[182] Estimated costs are not known and measurable,[183] and are properly excluded from cost of service until incurred and installed.

Spire Missouri's main argument seems to be summarized as; Spire Missouri will save customers money by entering into this contract, so customers should pay Spire Missouri to encourage Spire Missouri to save customers money.[184] Spire Missouri tries to couch the payment from customers as fees for "maintenance", but as discussed above, the proposed maintenance fee is for replacements, and is not properly included in rates until used and useful. Spire Missouri is not suffering a loss, it will receive a return on and return of replacement plant when it is installed and captured as plant in service in the next general rate proceeding.[185] Moreover, Spire Missouri argues that its timing of the contract to capture the impact in the rate case is altruistic, for customers' benefit, and had Spire Missouri waited until after true-up, the savings would have been retained by Spire Missouri and not passed on to customers.[186] Spire Missouri glosses over the benefits itself and its shareholders receive from pursuing this contract and the benefit it and its shareholders receive from the contract being included as part of true-up. If this contract was not included as part of true-up, Spire Missouri would have not been able to receive the return on and the return of the $16,624,220 in meter interface units that are used and useful and in service.[187] That is a sizeable asset that, had Spire Missouri waited until after true-up to execute the contract, Spire Missouri

---

[182] Tr. Vol. 22:2605, lines 4-5.
[183] Tr. Vol. 22:2640, lines 23-25.
[184] "Staff should take steps to encourage these kind of customer beneficial actions by permitting the Company to recover…" Ex. 65, True-Up Rebuttal Testimony of C. Eric Lobser, p. 4.
[185] Ex. 292, True-Up Rebuttal Testimony of Lisa M. Ferguson, p. 6, lines 1-2.
[186] "Certainly, LAC could have deferred this purchase until after the true-up period and kept all of the expense reduction. Instead, the Company took this action at a time that allowed customers to take advantage of a cost reduction…" Ex. 65, True-Up Rebuttal Testimony of C. Eric Lobser, p. 4, lines 16-19.
[187] Ex. 292, True-Up Rebuttal Testimony of Lisa M. Ferguson, p. 2, line 5.

would have had to wait until the next rate case to recover the return of and return on. Furthermore, Spire Missouri and its shareholders benefit by turning an operational expense into a capital expense. As illustrated by this exchange between Chairman Hall and Mr. Lobser, there are benefits to pursuing this contract that are not purely altruistic.

Q. And the capital expense, do you get a return on that investment? You did not get a return on the expenditure, on the expense item; is that correct?

A. We get recovery of our cost of capital. Yes.

Q. So does that, in and of itself, inure to the benefit of the company?

A. Well, it would help pay for the capital costs of our debt and equity, yes.

Q. So it increases your rate base?

A. It increases our rate base, yes.

Q. Which allows for a return on that additional rate base?

A. Correct. To cover those costs. Yes.[188]

A financial benefit exists for shareholders and Spire Missouri. That alone should be encouragement enough for Spire Missouri to pursue such opportunities, regardless of any extraneous monetary incentive it asks customers to supply.

Spire Missouri finally attempts to compare this issue to the St. Peters lateral issue, as Staff is allowing Spire Missouri to recover the $2.1 million dollars invested in

[188] Tr. Vol. 22:2606 line 22 through 22:2607, line 11.

the St. Peters lateral in rates.[189] However, the St. Peters lateral issue is different, as Spire Missouri is collecting costs that it already spent prior to the true up cutoff in this case.[190] The costs Spire Missouri proposes to include are for future replacement plant not yet purchased or installed.

Staff also requests the Commission find that 7.5 years is an appropriate amortization period over which LAC should receive a return of its investment. Spire Missouri intends to switch to a new system in 2020, and complete replacement of the AMR devices by 2024.[191] A 5 percent depreciation rate, assuming a 20 year useful life, will not allow Spire Missouri to receive the return of its investment. Spire Missouri will replace those AMRs in 7.5 years, so a depreciation rate set using a 20 year useful life will only allow Spire Missouri to recover around 1/3 of the depreciation. A 7.5 year amortization period is appropriate under these unique circumstances.

b. What is the appropriate amount to include in the cost of service to account for property taxes related to the AMR meters?

There is no appropriate amount to include in the cost of service to account for property taxes for the AMR devices. Property placed in service after January 1, 2017, will not be assessed until January 1, 2018, and those taxes that are assessed on January 1, 2017, will not be due for payment until December 31, 2018.[192] September 30, 2017, was the cut off for true up in this case. The contract was executed on July 1, 2017, meaning the AMR devices were not placed in to plant in service until well after the January 1, 2016, assessment for taxes included in this case. Therefore, the AMR devices will not be assessed until January 1, 2018, which is outside of the true up

[189] Ex. 65, True-Up Rebuttal Testimony of C. Eric Lobser, p. 5, lines 1-12.
[190] Ex. 292, True-Up Rebuttal Testimony of Lisa M. Ferguson, p. 6, lines 14-16.
[191] Ex. 294, True-Up Direct Testimony of Keenan B. Patterson, P.E.
[192] Ex. 293, True-Up Direct Testimony of Karen Lyons, p 4, line 20 through p. 5, line 3.

period. Furthermore, the taxes that include the new AMR devices will not be paid until December 31, 2018, over a year after the end of true up. At this time, the property taxes on the AMR devices are not known and measurable, and including them would be a violation of the matching principle. The matching principle can be described as follows. Rates are developed for a utility based on the use of ratemaking adjustments such as annualizations and normalizations that are used to establish a relationship for ongoing levels of investment, revenue, and expense.[193] The amounts determined through ratemaking adjustments are intended to match the relationship among utility investment, revenue, and expense at a point in time (the test year) that is usually set during the rate case process.[194] It is anticipated that the same relationship will continue into the foreseeable future and this allows the utility the opportunity to earn its authorized return.[195] LAC's proposal to include investment and taxes past the September 30, 2017, true up cutoff disrupts the matching relationship that is projected to occur among its investment, revenue, and expense in the future.[196] The cost of service would no longer contemplate all other revenues, expenses, and investment changes that would occur during the period when those AMR meter devices would be added to plant in service.[197] Staff has not included the future capital or taxes of the AMR meter devices in this case in order to keep the relationship between LAC's investment, revenue and expense intact.[198] For instance, there are several upcoming cost reductions that could offset increases to property taxes and plant investment, such as the newBlue allocation to

[193] Ex. 292, True-Up Rebuttal Testimony of Lisa M. Ferguson, p. 3, lines 20-22.
[194] *Id.* at p. 3, line 22 through p. 4, line 1.
[195] *Id.* at p. 4, lines 1-3.
[196] *Id.* at lines 3-5.
[197] *Id.* at lines 5-7.
[198] *Id.* at lines 7-9.

Alagasco and EnergySouth, and the reduction in taxes due the recently passed tax reform.[199] Staff, for its part, has not violated the matching principle by reaching outside the test year to lower Spire Missouri's cost of service. Spire Missouri seems to recognize this principle as it applies to cost reductions, stating in response to OPC's testimony on allocating newBlue software costs to EnergySouth and Alagasco, that "it is singularly inappropriate to allocate costs to those other businesses as if this event had already occurred."[200] It is disingenuous for Spire Missouri to justify disallowing future cost reductions by claiming the event hasn't occurred and is outside the test year, and then turn around and request increases to the cost of service that have also not been incurred during the test year. Staff accepts that for the matching principle and regulatory lag to work, they must work in a symmetrical manner for both ratepayers and shareholders. So, if a cost cutting measure occurs outside the test year, the shareholders benefit until the rate case passes those savings onto customers.[201] Examples of this can be seen in this case with the merger savings resulting from the merger with MGE, Alagasco and EnergySouth.[202] Just as Staff will not add $450,000 of property taxes to Spire Missouri's 2022 case,[203] Staff has not removed $4.1 million dollars in retained savings -- due to the actual incurred meter reading costs being below the higher cost that is currently built into rates customers are paying for -- that LAC benefited from between the time the contract was signed on July 1, 2017, and March 8, 2018, the effective date of rates for this case.[204] That 4.1 million is positive regulatory

[199] Tr. Vol. 22:2640, lines 8-18.
[200] Ex. 32, Rebuttal Testimony of Ryan L. Hyman, p. 18, lines 17-19.
[201] Tr. Vol. 22:2641, line 22, through 22:2642, line 1.
[202] Tr.Vol. 22:2642, lines 1-4.
[203] Tr. Vol. 22:2627, lines 16-21.
[204] Tr. Vol. 22:2591, line 6 through 22:2593, line 20.

lag for LAC. LAC could only point to the property taxes and maintenance costs, which have not been incurred as of the true up cutoff date in this case, as offsets to that 4.1 million in retained savings. If Spire Missouri would prevail in its position, there would still be no AMR related offsets to that 4.1 million in retained savings, since Spire Missouri would begin collecting the property taxes and replacement expense when rates are reset in this case on March 8, 2018.[205] However, Staff recognizes that costs and savings cannot be viewed in isolation, as there are several factors that could offset the expense or the savings, and therefore, did not isolate and disallow the 4.1 million in savings Spire Missouri recognized. All costs and savings should be viewed as part of the relationship between expenses, revenues, and investments, and no one cost should be isolated, especially if the isolation would occur beyond the test year and true up period.

The Commission has declined to include property taxes that are not known and measurable or were outside the test year before. In 2012, Ameren Missouri proposed to include an estimated level of property taxes in its cost of service, as it argued, much as Spire Missouri does in this case, that the current level of property taxes would not be sufficient to cover future property taxes.[206] The Commission declined to use an estimated amount of property taxes, stating

> If the Commission were to set Ameren Missouri's rates based on projections about what it might pay in property taxes in December 2012, it would violate an important rate making principle. A December 2012 payment would be outside the test year and true-up period. The test year and true-up period is important

---

[206] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service*, Case No. ER-2012-0166, **Report and Order**, issued December 12, 2012, p. 47.

[206] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service*, Case No. ER-2012-0166, **Report and Order**, issued December 12, 2012, p. 47.

> because it allows the Commission to set rates while considering the relationship between revenues, expenses and rate base within a specified period. Ameren Missouri is asking the Commission to make an isolated adjustment for taxes paid outside that specified period. By going outside the specified test year and true-up period to make an isolated adjustment, the Commission would necessarily be ignoring other expense and income items that might also change the company's revenue requirement.
>
> There are many such out of test year items that might affect the company's revenue requirement. A good example was raised by MIEC. Ameren Missouri refinanced some of its outstanding debt in September 2012 at a lower interest rate, thus saving the company money. Since that transaction is outside the test year and true-up period it has no effect on the rates established in this case. But, if the Commission were to go outside the test year and true-up period to make an isolated adjustment for 2012 tax payments it would need to consider other out of period adjustments to maintain the matching principle of evaluating all relevant factors for that period. Quickly the integrity and relevance of the test year and true-up period would be lost.[207]

More recently, the Commission disallowed estimated property taxes for a water utility, stating, "That estimated property tax will not be paid until approximately December 31, 2016, so it is beyond the test year and update periods for this case."[208] The Commission concluded, "The correct property tax expenses to include in Hillcrest's cost of service are the amounts determined by Staff based on actual property tax paid in 2015, as those amounts are consistent with the matching principle."[209] Spire Missouri's request for property taxes violates the matching principle, and should also be denied.

-Nicole Mers

IV. Conclusion

WHEREFORE Staff prays that the Commission will accept the above as a full and true accounting of all positions established in these general rate cases and will find

[207] *Id.* at p. 49-50.
[208] *In the Matter of the Water Rate Request of Hillcrest Utility Operating Company, Inc.*, File No. WR-2016-0064, **Report and Order,** issued July 12, 2016, p. 18.
[209] *Id.*

in its favor on each of the issues contained both herein and in Staff's Initial Post-Hearing Brief filed January 9, 2017; and grant such other and further relief as it finds appropriate.

Respectfully submitted,

/s/ Whitney Payne
Whitney Payne
Legal Counsel
Missouri Bar No. 64078
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
whitney.payne@psc.mo.gov

/s/ Mark Johnson
Mark Johnson
Senior Counsel
Missouri Bar No. 64940
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7431 (Telephone)
(573) 751-9285 (Fax)
mark.johnson@psc.mo.gov

/s/ Kevin Thompson
KEVIN THOMPSON, Mo Bar No. 36288
Chief Staff Counsel

/s/ Jeffrey Keevil
JEFF KEEVIL, Mo Bar No. 33825
Deputy Counsel

/s/ Nicole Mers
NICOLE MERS, Mo Bar No. 66766
Deputy Counsel

/s/ Marcella Forck
MARCELLA FORCK, Mo Bar No. 66098
Associate Counsel

/s/ Casi Aslin
CASI ASLIN, Mo Bar No. 67934
Legal Counsel

Attorneys for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 17th day of January, 2018, to all counsel of record.

/s/ Whitney Payne