

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



In the Matter of the Laclede Gas Company's)
Request to Increase Its Revenues for Gas) **File No. GR-2017-0215**
Service) Tariff No. YG-2017-0195

In the Matter of the Laclede Gas Company d/b/a)
Missouri Gas Energy's Request to Increase Its) **File No. GR-2017-0216**
Revenues for Gas Service) Tariff No. YG-2017-0196

AMENDED REPORT AND ORDER

Issue Date: March 7, 2018

Effective Date: March 17, 2018

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Table of Contents

Appearances	3
Procedural History	5
Complaint Case	7
The Partial Stipulations and Agreements	8
General Findings of Fact and Conclusions of Law	10
General Findings of Fact	11
The Rate Making Process	14
Conclusions of Law Regarding Jurisdiction	15
Conclusions of Law Regarding Just and Reasonable Rates	15
The Issues	18
I. Forest Park Property	18
II. Kansas Property Tax	25
III. Cost of Capital	28
A. Return on Common Equity	28
B. Capital Structure	36
C. Cost of Debt	36
D. Short-Term Debt	36
IV. Rate Case Expense	45
V. PGA/ACA Tariff Revisions	55
VI. Cost Allocation Manual	58
VII. Gas Inventory Carrying Charges	65
VIII. Credit Card Processing Fees	68
IX. Trackers	72
X. Surveillance	74
XI. Rate Design	78
XII. Pensions, OPEBs and SERP	91
XIII. Income Taxes	108

XIV. Incentive Compensation for Employees	118
XV. Uncollectibles	129
XVI. Performance Metrics	131
XVII. Transition Costs	134
XVIII. Low Income Energy Assistance Program.....	136
XIX. CHP	139
XX. AMR Meters	142
Ordered Paragraphs.....	148

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SENIOR REGULATORY LAW JUDGE: Nancy Dippell

On February 21, 2018, the Commission issued its *Report and Order* resolving the above-captioned cases. On February 27, 2018, Spire Missouri Inc. and the Staff of the Missouri Public Service Commission filed a *Joint Request for Clarification or Modification* and Spire Missouri filed its *Spire Missouri Inc.'s Request for Clarification*. The motions request that the Commission clarify certain aspects of its *Report and Order*. The Commission set a date for responses and timely responses were received from the Office of the Public Counsel and the Missouri Industrial Energy Consumers.

The Commission has reviewed the requests for clarification and the responses and finds that clarification to its *Report and Order* is needed. Therefore, the Commission amends its *Report and Order* accordingly to clarify those sections. This amended report and order will be given a ten-day effective date to allow an opportunity for parties to file an application for rehearing.

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On April 11, 2017, Spire Missouri Inc., then known as Laclede Gas Company, and referred to herein as “Spire Missouri,”¹ filed tariffs designed to implement general rate increases for gas service in its Spire Missouri East (f/k/a Laclede Gas Company, and referred to herein as “LAC” or “Laclede”) and Spire Missouri West (f/k/a Missouri Gas Energy and referred to herein as “MGE”) territories. The tariffs would have increased Laclede’s annual gas revenues by approximately \$58.1 million, exclusive of associated taxes, of which approximately \$29.5 million is already being recovered through its infrastructure system replacement surcharge (ISRS), resulting in a net

¹ This is the first general rate case the Commission has heard since Laclede Gas Company acquired Missouri Gas Energy on July 17, 2013. During the course of this proceeding, on August 30, 2017, Laclede Gas Company changed its name to Spire Missouri Inc. and now operates its two divisions in Missouri as Spire Missouri East and Spire Missouri West.

increase of \$28.5 million.² The tariffs would have increased MGE's annual gas revenues by approximately \$50.4 million, exclusive of associated taxes, of which approximately \$13.4 million is already being recovered through its ISRS, resulting in a net increase of \$37.0 million.³ The tariff revisions carried an effective date of May 11, 2017.

By orders issued on April 19, 2017, the Commission suspended Spire Missouri's general rate increase tariffs until March 8, 2018, the maximum amount of time allowed by the controlling statute.⁴ The following parties filed applications and were allowed to intervene: Missouri Industrial Energy Consumers (MIEC); Midwest Energy Consumers Group (MECG); Missouri Department of Economic Development – Division of Energy (DE); Consumers Council of Missouri (Consumers Council); Missouri School Boards' Association; The City of St. Joseph, Missouri; National Housing Trust; Environmental Defense Fund; MoGas Pipeline, LLC; USW Local 11-6; Kansas City Power and Light Company; and KCP&L Greater Missouri Operations.⁵ On May 24, 2017, the Commission established the test year for these cases as the 12-month period ending December 31, 2016, to be updated for known and measurable changes through June 30, 2017 and trued-up for known and measurable revenue, rate base, and expense items through September 30, 2017. In its May 24, 2017 orders, the Commission also established a procedural schedule leading to an evidentiary hearing. The cases were consolidated for hearing purposes, but remain separate cases with similar filings.

² File No. GR-2017-0215, In the Matter of Laclede Gas Company Request to Increase Its Revenues for Gas Service, Tariff No. YG-2017-0195, filed April 11, 2017.

³ File No. GR-2017-0216, In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service, Tariff No. YG-2017-0196, filed April 11, 2017.

⁴ Section 393.150, RSMo 2016. (All statutory references are to the Revised Statutes of Missouri 2016, unless otherwise noted.)

⁵ The USW Local 11-6 intervened only in File No. GR-2017-0215 and Kansas City Power and Light Company and KCP&L Greater Missouri Operations intervened only in File No. GR-2017-0216.

In September and October 2017, the Commission conducted eleven local public hearings at various sites⁶ in Laclede's and MGE's service areas. At those hearings, the Commission heard comments from Spire Missouri's customers and the public regarding the requests for rate increases.

In compliance with the established procedural schedule, the parties prefiled direct, rebuttal, and surrebuttal testimony and direct and rebuttal true-up testimony. The evidentiary hearing began on December 6, 2017, and concluded on December 15, 2017. The true-up hearing was held on January 3, 2018. The parties filed post-hearing briefs on January 9, 2018, and reply briefs on January 17, 2018.

On January 18, 2018, the Commission directed Spire Missouri to submit an affidavit explaining the specific adjustments that would be needed to include in rates any change in cost of service as a result of the Tax Cuts and Jobs Act⁷ for each of Spire Missouri's operating units. The Commission also set a date for requests for a hearing on the issues and indicated that if a hearing were set it would be held on February 5, 2018. Spire Missouri filed an affidavit of Glenn Buck on January 22, 2018, and on January 25, 2018, Staff filed an affidavit in reply. On January 26, 2018, the Commission set a technical conference for January 30, 2018 and set a hearing on February 5, 2018. A hearing was held on February 5, 2018 and written closing statements were filed on February 6, 2018.

Complaint Case

In addition to the above procedures, on April 27, 2016, the Office of the Public Counsel (OPC) filed a complaint with the Missouri Public Service Commission against

⁶ Hearings were held in Joplin, Independence, St. Joseph, Arnold, St. Louis, Sunset Hills, St. Charles, Kansas City, and Gladstone, Missouri.

⁷ Public Law No.: 115-97; signed into law on December 22, 2017.

Spire Missouri assigned File No. GC-2016-0297. The complaint alleged that Spire Missouri's rates were excessive and should be reduced. On October 5, 2016, the Commission granted *OPC's Motion to Stay Proceedings*. On July 31, 2017, OPC filed a *Motion to Lift Stay and Consolidate with the Companies' Current Rate Cases*. The Commission granted that motion and on August 11, 2017, consolidated the complaint case with the two pending rate cases.

After hearing the evidence in this matter, the Commission finds there is insufficient evidence to establish that LAC or MGE have earned an actual return on equity that is significantly higher than necessary to attract necessary capital, to provide safe and reliable service, or significantly higher than commensurate returns by enterprises having corresponding risks indicating that their ordered rates were not just and reasonable. Therefore, the Commission denies Public Counsel's complaint. The Commission further notes, however, that in this order it has determined just and reasonable rates on a going forward basis.

The Partial Stipulations and Agreements

On October 25, 2017, the Commission approved the *Joint Stipulation and Agreement* between the Missouri School Boards' Association and Spire Missouri which settled all issues between those parties.⁸ During the course of the evidentiary hearing, various parties filed three additional non-unanimous partial stipulations and agreements: *Partial Stipulation and Agreement*,⁹ *Partial Non-Unanimous Stipulation and*

⁸ *Order Approving Joint Stipulation and Agreement Regarding Spire West's (Formerly Known as Missouri Gas Energy) STP Tariff*, issued October 25, 2017.

⁹ Filed December 13, 2017.

Agreement,¹⁰ and *Non-Unanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design*.¹¹ Those stipulations and agreements resolved issues that would otherwise have been the subject of testimony at the hearing. After the hearing, an additional non-unanimous *Partial Stipulation and Agreement Regarding Low Income Energy Affordability Program* was filed.¹² No party opposed those partial stipulations and agreements. As permitted by its regulations, the Commission treats the unopposed partial stipulations and agreements as unanimous.¹³

After considering these stipulations and agreements, the Commission independently finds and concludes that the stipulations and agreements are reasonable resolutions of the issues addressed by those agreements. The Commission further finds and concludes that those agreements should be approved. The issues resolved in those stipulations and agreements will not be further addressed in this report and order, except as they may relate to any unresolved issues.

Just prior to the hearing on February 5, 2018, Public Counsel, MIEC, MEEG, and Consumers Council filed a *Non-Unanimous Stipulation and Agreement Regarding Tax Cuts and Jobs Act*. Spire Missouri made an oral objection to the agreement at the hearing. Thus, under 4 CSR 240-2.115(D), that stipulation and agreement became “merely a position of the signatory parties” thereto.

¹⁰ Filed December 20, 2017.

¹¹ Filed December 20, 2017.

¹² Filed January 9, 2018.

¹³ Commission Rule 4 CSR 240-2.115(C).

General Findings of Fact and Conclusions of Law

Spire Missouri set out its rationale for increasing its rates in the direct testimony it filed along with its tariffs on April 11, 2017.¹⁴ In addition to its filed testimony, Spire Missouri provided work papers and other detailed information and records to the Staff of the Commission, Public Counsel, and to the intervening parties. Those parties then had the opportunity to review Spire Missouri's testimony and records to determine whether the requested rate increase was justified.

Where the parties disagreed, they prefiled written testimony to raise those issues to the attention of the Commission. All parties were given an opportunity to prefile three rounds of testimony – direct, rebuttal, and surrebuttal. The process of filing testimony and responding to the testimony filed by other parties revealed areas of agreement that resolved some issues and areas of disagreement that revealed new issues. On December 1, 2017, the parties filed a list of the issues they asked the Commission to resolve. Some of the issues identified at that time were later resolved by the stipulations and agreements or otherwise by agreement at hearing. On December 29, 2017, the parties filed a further list of issues for Commission resolution at the true-up hearing. On January 1, 2018, the Commission additionally requested testimony and comment regarding the Tax Cuts and Jobs Act. Additional testimony was taken on February 5, 2017 on that issue. The unresolved issues will be addressed in this report and order.

¹⁴ Exhibit Nos. 1-4, 6, 10, 15, 19, 23, 28, 33, 35, 38, 46, and 50.

General Findings of Fact

1. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East (formerly known as Laclede Gas Company or LAC) and Spire Missouri West (formerly known as Missouri Gas Energy or MGE).

2. Spire Missouri is a wholly-owned subsidiary of Spire Inc.¹⁵ In 2016, Spire Inc. had three gas distribution systems as wholly-owned subsidiaries including Laclede Gas Company in Missouri, Alabama Gas Corporation (Alagasco) in Alabama, and EnergySouth Inc. in Alabama and Mississippi.¹⁶ Spire Inc. also holds gas marketing business segments and Spire STL Pipeline LLC, a company applying for permits at the Federal Energy Regulatory Commission (FERC) to build a pipeline.¹⁷

3. MGE serves approximately 500,000 customers on the western side of Missouri. The Commission approved the acquisition of MGE by Laclede Gas Company when it approved a *Unanimous Stipulation and Agreement* dated July 2, 2013, in Commission Case No. GM-2013-0254.¹⁸

4. The Commission last authorized a general rate increase for MGE on April 16, 2014, in Case No. GR-2014-0007, with new rates effective on May 1, 2014. That case was settled by a stipulation and agreement approved by the Commission that increased MGE's Missouri jurisdictional revenues by \$7.8 million and reset the ISRS to zero.¹⁹

¹⁵ Ex. 205, Staff Report - Cost of Service, p. 17.

¹⁶ Ex. 205, Staff Report - Cost of Service, p. 17-18.

¹⁷ Ex. 205, Staff Report - Cost of Service, p. 18; and Ex. 650, Lander Direct, p. 12.

¹⁸ Ex. 205, Staff Report - Cost of Service, p. 3; and Ex. 55, Stipulation and Agreement in Case No. GM-2013-0254.

¹⁹ Exhibit 204, Staff Cost of Service Report dated September 2017, p. 3.

5. LAC serves approximately 630,000 customers on the eastern side of Missouri.

6. The Commission last authorized a general rate increase for LAC on June 26, 2013, in Case No. GR-2013-0171, with new rates effective July 8, 2013. That case was also settled by a stipulation and agreement approved by the Commission and reset the ISRS rate to zero.²⁰

7. A test year is a historical year used as the starting point for determining the basis for adjustments that are necessary to reflect annual revenues and operating costs in calculating any shortfall or excess of earnings by the utility. Adjustments, such as annualization and normalization, are made to the test year results when the unadjusted results do not fairly represent the utility's most current annual level of existing revenue and operating costs.²¹

8. A normalization adjustment is an adjustment made to reflect normal, on-going operations of the utility. Revenues or costs that were incurred in the test year that are determined to be atypical or abnormal will get specific rate treatment and generally require some type of adjustment to reflect normal or typical operations. The normalization process removes abnormal or unusual events from the cost of service calculations and replaces those events with normal levels of revenues or costs.

9. An annualization adjustment is made to a cost or revenue shown on the utility's books to reflect a full year's impact of that cost or revenue.²²

10. The test year for this case is the twelve months ending December 31, 2016,

²⁰ Exhibit 204, Staff Cost of Service Report dated September 2017, p. 3.

²¹ Ex. 205, Staff Report - Cost of Service, p. 3.

²² Ex. 205, Staff Report - Cost of Service, p. 97.

updated to June 30, 2017.²³

11. The Commission also ordered a true-up period ending September 30, 2017, in order to account for any significant changes in Spire Missouri's cost of service that occurred after the end of the test year period but prior to the tariff operation of law date.²⁴

12. For ratemaking purposes, a tracker mechanism is a unique regulatory tool used to ensure that rate recovery over time is made equal to the actual expenditures for a particular cost of service item. A tracker mechanism compares the ongoing amount of a cash expense actually incurred by a utility to the amount of the same expense reflected in the utility's rates, and provides rate recovery over time of the difference between the two totals. Generally, tracker mechanisms should only be used for certain cost items incurred by utilities that show unusual characteristics or are incurred under extraordinary circumstances. . . . Ongoing tracker mechanisms capture both under and over recovery of an expense for recovery from or return to ratepayers.

The overall goal of a tracker mechanism, when properly exercised, is to provide the utility with dollar for dollar recovery of reasonable and prudently incurred cash expenses, but no more and no less than dollar for dollar recovery.²⁵

13. The Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.²⁶

²³ Ex. 205, Staff Report - Cost of Service, p. 4.

²⁴ Ex. 205, p. 4.

²⁵ Ex. 205, Staff Report - Cost of Service, p. 64

²⁶ Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo.

14. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.²⁷

The Rate Making Process

15. The rates Spire Missouri will be allowed to charge its customers are based on a determination of the company's revenue requirement. The revenue requirement can be expressed as the following formula:²⁸

$$\mathbf{RR = COS - CR}$$

where: **RR = Revenue Requirement**
COS = Cost of Service
CR = Adjusted Current Revenues

The cost-of-service for a regulated utility can be defined by the following formula:

$$\mathbf{COS = O + (V - D)R}$$

where: **COS = Cost of Service;**
O = Adjusted Operating Costs (Payroll, Maintenance, etc.), Depreciation Expense and Taxes
V = Gross Valuation of Property Required for Providing Service
D = Accumulated Depreciation Representing Recovery of Gross Property Investment
R = Allowed Rate of Return
V - D = Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)
(V - D)R = Return Allowed on Net Property Investment

All parties accept the basic formula. Disagreements arise over the amounts that

App. 2009).

²⁷ An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

²⁸ Ex. 201, Myers Direct, pp. 6-7.

should be included in the formula.

Conclusions of Law Regarding Jurisdiction

A. Spire Missouri is a public utility, and a gas corporation, as those terms are defined in Subsections 386.020(18) and (43), RSMo. As such, Spire Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Spire Missouri can charge only those amounts set forth in its tariffs.²⁹ Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates Spire Missouri may charge its customers for natural gas.

C. When Spire Missouri filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo, to suspend the effective date of that tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

D. Sections 386.390 and 393.150, RSMo, authorize the Commission to determine complaints, including those regarding regulated utility rates.

Conclusions of Law Regarding Just and Reasonable Rates

A. Utilities are required to provide safe and adequate service.³⁰ In determining the rates Spire Missouri may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable.³¹

B. Spire Missouri has the burden of proving its proposed rates are just and reasonable.³² In order to carry its burden of proof, Spire Missouri must meet the

²⁹ Sections 393.130 and 393.140, RSMo.

³⁰ Sections 393.130 and 393.140, RSMo.

³¹ Section 393.150.2, RSMo.

³² Section 393.150.2, RSMo.

preponderance of the evidence standard.³³ In order to meet this standard, Spire Missouri must convince the Commission it is “more likely than not” that Spire Missouri’s proposed rate increase is just and reasonable.³⁴

C. In determining whether the rates proposed by Spire Missouri are just and reasonable, the Commission must balance the interests of the investor and the consumer.³⁵ In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.³⁶

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the

³³ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

³⁴ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

³⁵ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

³⁶ *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.³⁷

The Supreme Court has further indicated:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.³⁸

D. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.³⁹

E. Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’ ... Under the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.⁴⁰

³⁷ *Bluefield*, at 692-93.

³⁸ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (citations omitted).

³⁹ *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

⁴⁰ *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm’n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

Issues

The issues are set out as the parties phrased them, but have been renumbered and reorganized herein.

I. Forest Park Property

- A. **How should any gain resulting from the sale of the Forest Park property be treated for ratemaking purposes?**
- B. **How should the relocation proceeds from the sale of the Forest Park property, other than proceeds used for relocation purposes or contributed to capital for the benefit of customers, be treated for ratemaking purposes?**

Findings of Fact

1. LAC owned and operated three large district service centers for several decades. These service centers provided leak detection, leak repair, construction, maintenance, marketing, and other services for the company. One of these service centers was located near Forest Park in the City of St. Louis (referred to as the “Forest Park property”).⁴¹ The Forest Park property provided some functions, such as gas procurement, gas controls, and diversion services that were not provided at the other two service centers.⁴²

2. After Laclede Gas Company purchased Missouri Gas Energy, certain restructuring of the company was undertaken. The major elements of the restructuring in the St. Louis area for LAC included: (a) the 2014 sale of the Forest Park property; (b) the 2015 termination of the lease for the Laclede Gas Company main corporate office at 720 Olive Street; (c) the 2015 leasing of new office facilities at 700 and 800 Market

⁴¹ Ex. 205, Staff Cost of Service Report, p. 48.

⁴² Ex. 205, Staff Cost of Service Report, p. 48.

Street; and (d) and the 2016 construction of a new satellite operation facility on Manchester Avenue.⁴³

3. In order to provide additional negotiation leverage for potential sale of the Forest Park property, LAC acquired two parcels in January 2013 that were adjacent to the Forest Park service center for \$450,000 plus some additional expenses.⁴⁴ These properties were included in the Forest Park property sale.

4. On June 27, 2013, LAC signed an agreement to sell the Forest Park property to The Cortex Innovation Community in St. Louis (Cortex). Cortex, an urban redevelopment corporation, purchased the property for an IKEA retail store now located on the property.⁴⁵

5. Cortex obtained an appraisal of the property for the purpose of determining the property value for redevelopment by a specific retail business. That appraisal found the market value for the property with all of the buildings and structures was \$6.89 million. The appraised market value for the property with all the buildings demolished and removed was \$7.44 million.⁴⁶

6. An agreement for sale between LAC and Cortex was reached and Cortex purchased the Forest Park property, including the buildings, other improvements, and land for \$8.3 million and an additional \$5.7 million for employee and equipment relocation expenses. The sale transaction closed in May of 2014.⁴⁷

7. As part of the sale agreement, LAC retained the right to occupy the

⁴³ Ex. 42, Kopp Rebuttal, p. 4.

⁴⁴ Ex. 250, Kunst Surrebuttal, Schedule JK-s1, p.2 (the specific “other expenses” were designated as “Confidential” in Staff’s schedule and will not be denominated here).

⁴⁵ Ex. 205, Staff Cost of Service Report, pp. 48-49; and Ex. 251, Kunst Surrebuttal, Schedule JK-s2.

⁴⁶ Ex. 251, Kunst Surrebuttal, Schedule JK-s1.

⁴⁷ Ex. 205, Staff Cost of Service Report, p. 49; and Ex. 251, Kunst Surrebuttal, p. 2 and Schedule JK-s1, Attachment 6.

premises while it coordinated its move to other facilities.⁴⁸ The move from the Forest Park property was coordinated with moves to other facilities and the consolidation of “shared services” employees and functions after the acquisition of MGE.⁴⁹

8. LAC continued to use portions of the Forest Park property for almost a year after the closing.⁵⁰ Eventually, LAC relocated management employees to the Shrewsbury and Berkeley service centers and other Forest Park employees were moved to a temporary location in the vicinity. In November 2016, LAC placed its newly constructed facility at 5311 Manchester (Manchester facility) into service where approximately 100 LAC employees responsible for construction and maintenance, leak detection and repair, and other functions were relocated.⁵¹

9. The Manchester service center location allows LAC to provide quick emergency response time to the city and also allows LAC to continue with its accelerated pipe replacement work that LAC previously performed at its Forest Park facility.⁵²

10. The Manchester facility was a “partial replacement” for the Forest Park property and has an approximate \$7.7 million rate base value.⁵³

11. The Manchester facility was the only capital expenditure in this case used to “replace” the Forest Park functions.⁵⁴

12. The Manchester facility is more cost efficient to operate; however, the

⁴⁸ Ex. 42, Kopp Rebuttal, p. 8.

⁴⁹ Ex. 42, Kopp Rebuttal, p. 8; and Ex. 205, Staff Cost of Service Report, p. 49.

⁵⁰ Ex. 251, Kunst Surrebuttal, p. 4; and Ex. 42, Kopp Rebuttal, p. 8.

⁵¹ Ex. 205, Staff Cost of Service Report, p. 49; and Ex. 42, Kopp Rebuttal, p. 9.

⁵² Ex. 251, Surrebuttal Testimony of Jason Kunst, p. 4.

⁵³ Ex. 205, Staff Report - Cost of Service, p. 49; and Ex. 251, Kunst Surrebuttal, pp. 3-4 and Schedule JK-s2.

⁵⁴ Tr. 1620.

capital cost is substantially greater than the existing Forest Park facility.⁵⁵

13. LAC had owned the Forest Park property for many decades and the original buildings were fully depreciated many years ago. However, more recent capital improvements to the property resulted in additional gross plant of approximately \$3.3 million, offset by a depreciation reserve of \$1.5 million, leaving a net rate base asset for the capital improvements of \$1.8 million at the time of the sale.⁵⁶

14. When the buildings were retired for accounting purposes, LAC credited the Forest Park building asset account by \$3.3 million and debited the depreciation reserve account by the same amount. Since the depreciation reserve balance associated with the buildings was \$1.5 million prior to the retirement, a negative reserve debit of \$1.8 million now exists.⁵⁷ Thus, ratepayers will continue paying for the old building (*i.e.* LAC will continue to earn a return on the \$1.8 million) while also paying for the new Manchester facility.⁵⁸

15. LAC's gain or profit from the \$8.3 million sale price of property previously included in rate base after subtracting the \$1.8 million net book value of the buildings and \$700,000 for the land was \$5.8 million.⁵⁹

16. LAC used \$1.5 million from the gain on the sale of the Forest Park property to make civic contributions for downtown St. Louis rehabilitation.⁶⁰

17. LAC used \$1.95 million of relocation proceeds for the purchase of furniture

⁵⁵ Ex. 43, Kopp Surrebuttal, Schedule SMK-S1.

⁵⁶ Ex. 64, Affidavit of Glenn Buck Related to Forest Park, pp. 1-2; and Ex. 251, Kunst Surrebuttal, p. 14.

⁵⁷ Ex. 64, Affidavit of Glenn Buck Related to Forest Park, pp. 1-2

⁵⁸ Ex. 64, Affidavit of Glenn Buck Related to Forest Park, p. 2; Ex. 438, Robinett True-Up Rebuttal, p. 3; and Tr. 1633 and 1643.

⁵⁹ Ex. 205, Staff Cost of Service Report, p. 49; and Ex. 251, Kunst Surrebuttal, p. 2.

⁶⁰ Tr. 1619.

and fixtures at its new offices located at 700 and 800 Market Street.⁶¹ LAC recorded these purchases at a “zero” net book value.⁶²

18. In Data Request 388, LAC reported its moving and relocation expenses, but the expenses were not tracked by particular move. With the exception of a lease expense for one of the temporary locations at a cost of \$200,000, it was not clear which expenses were used for moving Forest Park employees and equipment and which were used for moving employees and equipment from Olive to Market.⁶³

19. LAC did not seek Commission authorization prior to the sale of the Forest Park property.

20. The Forest Park property was necessary and useful in the provision of utility service at the time of its sale.

21. Staff argues that the gain from the sale of the Forest Park property should be shared with ratepayers because LAC sold utility property that was needed for the provision of utility service that had to be replaced with a facility at a higher cost.⁶⁴

22. With regard to the relocation proceeds, Staff proposes that \$3.6 million (the \$5.7 million relocation proceeds, less documented moving expenses and less the \$1.95 million in capital expenditures for furniture and fixtures) be used to offset the cost of the more expensive Manchester facility.⁶⁵

23. It is just and reasonable to offset the cost of the more expensive replacement facility with the relocation proceeds less the known moving expenses for Forest Park and the capital contributions.

⁶¹ Ex. 42, Kopp Rebuttal, pp. 8-9; and Ex. 251, Kunst Surrebuttal, p. 6.

⁶² Ex. 251, Kunst Surrebuttal, p. 6.

⁶³ Tr. 1649-1650.

⁶⁴ Ex. 251, Kunst Surrebuttal, p. 3.

⁶⁵ Ex. 251, Kunst Surrebuttal, p. 6.

Conclusions of Law

A. A company is required to obtain Commission authorization prior to the sale of any part of its system that is necessary or useful in the performance of its duties to the public.⁶⁶

B. Commission rule 4 CSR 240-40.040 requires a gas utility to use the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts (USOA) for tracking its regulated property. The FERC USOA for gas utilities proscribes specific treatment for the sale of utility assets that constitute an operating unit or system as follows:

F. When gas plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate utility plant accounts, including amounts carried in account 114, Gas Plant Acquisition Adjustments. The amounts (estimated if not known) carried with respect there-to in the accounts for accumulated provision for depreciation, depletion, and amortization and in account 252, Customer Advances for Construction, shall be charged to such accounts and the contra entries made to account 102, Gas Plant Purchased or Sold. Unless otherwise ordered by the Commission, the difference if any, between (a) the net amount of debits and credits and (b) the consideration received for the property (less commissions and other expenses of making the sale) shall be included in account 421.1, Gain on Disposition of Property, or account 421.2 Loss on Disposition of Property (see account 102, Gas Plant Purchased or Sold).⁶⁷

Decision

The Commission has not previously had an opportunity to address how Spire Missouri should handle the accounting for the Forest Park property transaction because the issue was not presented to the Commission for authorization of the transactions.

⁶⁶ Subsection 393.190.1, RSMo.

⁶⁷ Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, 18 C.F.R. § Pt. 201, Gas Plant Instructions, 5. *Gas Plant purchased or sold, F.*

The Commission finds that the ratepayers should not continue to pay for property that was necessary for the provision of utility service and was replaced with a more expensive property.

The sale of the Forest Park property was not purely a land transaction. The appraisal Cortex received was given from the perspective of a client that had no use for the structures and would need the land cleared to build its retail facility. The fact is that these buildings were included in rate base and had an undepreciated net book value of \$1.8 million at the time of the sale. This transaction included the sale of the land and the buildings and when the buildings were sold any return on or of the building costs should have been removed from rates.

The FERC USOA for gas utilities proscribes specific treatment for the sale of utility assets that constitute an operating unit or system. Spire Missouri's recording of the transaction reduced the building asset account by \$3.3 million. However, its reduction of the depreciation reserve by the same amount (\$3.3 million) does not allow for the recognition of the \$1.8 million loss on the retirement of the Forest Park buildings and misrepresents the effect of the sale on the depreciation reserve. The Commission orders LAC to account for the sale of the Forest Park buildings transaction in accordance with the FERC USOA by increasing its accumulated depreciation reserve by the \$1.8 million loss on the retirement of the Forest Park buildings. Neither a return on the \$1.8 million undepreciated value of the Forest Park buildings, nor any return of the \$1.8 million shall be included in rates going forward. The remainder of the \$5.8 million gain properly belongs to the shareholders.

LAC partially replaced the Forest Park buildings with the Manchester facility. LAC also received \$5.7 million in moving expenses as part of the sale. It was necessary for LAC to continue to utilize the Forest Park facilities after the completion of the sale and it was necessary to replace a portion of the previous Forest Park facilities with the Manchester facility at greater cost. Although the Manchester facility may be less expensive to operate, it is a much more expensive capital asset than the Forest Park property and rates will include this more expensive capital. Therefore, it is appropriate for the Commission to order a portion of the \$5.7 million relocation costs be used to offset the higher costs of the partial replacement facility.

The actual expenses incurred to relocate Forest Park employees could not be determined from the evidence presented, but the \$200,000 lease expense and the \$1.95 million capital contributions should be deducted from the \$5.7 million total before the remainder is used to offset the construction cost of the new Manchester facility. The Commission adopts the Staff's proposal that Spire Missouri shall create a regulatory liability to record the rate base offset of the relocation expense which shall be amortized over five years beginning with the date the rates set in this case become effective.

II. Kansas Property Tax

- A. What is the appropriate amount of Kansas property tax expense to include in MGE's base rates?**
- B. Should the tracker for Kansas property tax expense be continued?**

During the course of the hearing, Spire, Staff, and Public Counsel indicated they reached an agreement regarding Staff's surrebuttal position on the issue of Kansas

property tax and the continuation of a tracker for that expense.⁶⁸ They further indicated MIEC would waive cross-examination on these issues, but would brief the remaining issues.⁶⁹ MIEC did not, however, include any arguments on these topics in its briefs.⁷⁰ Thus, it appears that the parties reached agreement on these issues as set out below.

Findings of Fact

1. MGE has natural gas inventory for use in its Missouri gas service area that is stored in the state of Kansas. MGE currently pays Kansas property tax for the natural gas inventory based on its volume of gas costs and the market price of gas as of January 1 of that year.⁷¹

2. The amount of actual Kansas property taxes paid by MGE since 2009 has been somewhat volatile with a downward trend from 2013 through 2016.⁷²

3. Based on actual tax bills received for four of ten counties, the 2017 Kansas property tax amount will increase.⁷³ Thus, based on those actual tax bills, Staff calculated and recommended at the time of its surrebuttal testimony a normalized annual level of Kansas property taxes of \$1,454,069 (the average of the taxes for 2009 through 2016).⁷⁴ Staff indicated the revised normalized amount would be reflected in its true-up accounting schedules.⁷⁵

4. Because of the volatility of the property tax amount and the Kansas laws

⁶⁸ Tr. 1628.

⁶⁹ Tr. 1628.

⁷⁰ *Initial Brief of Missouri Industrial Energy Consumers* (filed January 9, 2018); and *Reply Brief of Missouri Industrial Energy Consumers* (filed January 17, 2018).

⁷¹ Ex. 205, Staff Cost of Service Report, p. 130.

⁷² Ex. 252, K. Lyons Surrebuttal, p. 3.

⁷³ Ex. 252, K. Lyons Surrebuttal, p. 4.

⁷⁴ Ex. 252, K. Lyons Surrebuttal, p. 4.

⁷⁵ Ex. 252, K. Lyons Surrebuttal, p. 4.

pertaining to this property tax,⁷⁶ the Commission has previously approved, as part of a stipulation and agreement, a tracker for the Kansas property tax amount.⁷⁷ In its Surrebuttal testimony, Staff recommended the tracker continue and be reviewed again in MGE's next general rate case.⁷⁸

Conclusions of Law

The Commission makes no additional conclusions of law for this issue.

Decision

Based on actual tax bills for the 2017 tax year when compared to the actual amounts from 2009-2016, the Commission finds the Kansas property taxes remain volatile, with an increase in 2017 over the previous four years. The Commission further finds that an average of the actual Kansas property tax expense from 2009-2016 (\$1,454,069) is an appropriate amount to include in rates as a normalized annual level. Further, because of the past volatility of the Kansas property tax amount, the potential for future volatility given that the tax is set based on one-day price information, and the agreement of Spire, Staff, and Public Counsel, the Commission finds that the Kansas property tax tracker shall be continued.

⁷⁶ Ex. 205, Staff Cost of Service Report, pp. 130-136.

⁷⁷ Ex. 205, Staff Cost of Service Report, pp. 130-131.

⁷⁸ Ex. 252, K. Lyons Surrebuttal, pp. 5-6.

III. Cost of Capital

A. Return on Common Equity – What’s the appropriate return on common equity to be used to determine rate of return?

Findings of Fact

1. These issues concern the rate of return Spire Missouri will be authorized to earn on its rate base. Rate base is the net value of the utility’s assets. In order to determine a rate of return, the Commission must determine Spire’s capital structure and cost of obtaining the capital it needs.

2. To determine a return on equity, the Commission must consider the expectations and requirements of investors when they choose to invest their money in Spire Missouri rather than in some other investment opportunity. As a result, the Commission cannot simply find a rate of return on equity that is unassailably scientifically, mathematically, or legally correct. Such a “correct” rate does not exist. Instead, the Commission must use its judgment to establish a rate of return on equity attractive enough to investors to allow the utility to fairly compete for the investors’ dollar in the capital market without permitting an excessive rate of return on equity that would drive up rates for Spire’s ratepayers. To obtain guidance about the appropriate rate of return on equity, the Commission considers the testimony of expert witnesses.

3. Three financial analysts testified in the case regarding an appropriate return on equity. David Murray testified on behalf of Staff. Mr. Murray is the Utility Regulatory Manager of the Financial Analysis Unit for the Staff Division of the Missouri Public Service Commission. He holds a Bachelor of Science degree in Business Administration from the University of Missouri – Columbia, and a Master’s degree in

Business Administration from Lincoln University. Mr. Murray has been employed by the Commission since 2000 and has offered testimony in many cases before the Commission.⁷⁹ Mr. Murray recommends an allowed return on equity of 9.25 percent, within a range of 9.00 percent to 9.50 percent.⁸⁰

4. Michael Gorman testified on behalf of Public Counsel and MIEC. Mr. Gorman is a consultant in the field of public utility regulation and is a Managing Principal of Brubaker & Associates, Inc. He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Master's Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield.⁸¹ Gorman recommends the Commission allow Spire Missouri a return on equity of 9.20 percent, the midpoint of a recommended range of 8.90 percent to 9.40 percent.⁸²

5. Pauline Ahern testified on behalf of Spire Missouri. Ms. Ahern is a consultant in the field of investor-owned utility regulation and is an Executive Director of ScottMadden, Inc. She holds a Bachelor of Arts degree in Economics from Clark University and Master's Degree in Business Administration with a concentration in finance from Rutgers University.⁸³ Ms. Ahern recommends the Commission allow Spire Missouri a return on equity of 10.35 percent, including a "flotation risk adjustment" of .16 percent and a "business risk adjustment" of .20 percent.⁸⁴

⁷⁹ Ex. 206, Staff Report Appendix 1, pp. 42-50.

⁸⁰ Ex. 205, Staff Report - Cost of Service, p. 8.

⁸¹ Ex. 407, Gorman Direct, Appendix A, p. 1.

⁸² Ex. 407, Gorman Direct, p. 2.

⁸³ Ex. 38, Ahern Direct, p. 1.

⁸⁴ Ex. 38, Ahern Direct, p. 5.

6. A utility's cost of common equity is the return investors require on an investment in that company. Investors expect to achieve their return by receiving dividends and through stock price appreciation.⁸⁵ In general, the United States Supreme Court has set out the financial and economic standards to consider in setting the cost of common equity.⁸⁶ That is, the Commission must authorize a return on equity sufficient to maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk.⁸⁷

7. The financial analysts in this case used a variety of methods to estimate a company's fair rate of return on equity including the Discounted Cash Flow (DCF) method, the Risk Premium Model (RPM), and the Capital Asset Pricing Method (CAPM).⁸⁸ The DCF is based on a theory that a stock's current price represents the present value of all expected future cash flows discounted at the investor's required rate of return or cost of capital.⁸⁹ The analysts also use variations of the DCF model.⁹⁰ The RPM is based on the principle that investors require a higher return to assume a greater risk.⁹¹ Common equity investments have greater risk than bonds because bonds have more security of payment in bankruptcy proceedings than common equity and the coupon payments on bonds represent contractual obligations.⁹² The CAPM assumes the investor's required rate of return on equity is equal to a risk-free rate of interest, plus

⁸⁵ Ex. 407, Gorman Direct, p.19.

⁸⁶ Ex. 407, Gorman Direct, p. 20.

⁸⁷ Ex. 205, Staff Report - Cost of Service, p. 9; and Ex. 407, Gorman Direct, p. 20.

⁸⁸ Ex. 38, Ahern Direct, p. 4; Ex. 205, Staff Report - Cost of Service, p. 10; and Ex. 407, Gorman Direct, p. 20.

⁸⁹ Ex. 407, Gorman Direct, p. 22.

⁹⁰ Ex. 407, Gorman Direct, p. 20.

⁹¹ Ex. 407, Gorman Direct, p. 37.

⁹² Ex. 407, Gorman Direct, p. 37.

a risk premium associated with the specific security.⁹³ Generally, no one method is any more correct than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

8. Before examining the analysts' use of these various methods to arrive at a recommended return on equity, it is important to look at some other numbers. In 2014, the average authorized return on equity for a gas local distribution company (LDC) was approximately 9.78 percent.⁹⁴ Through the first six months of 2017 that dropped to approximately 9.5 percent. However, the most recent data available at the hearing showed that the average for the first three quarters of 2017 was approximately 9.8 percent.⁹⁵ Additionally, from 2015 through 2017, there has been a general trend upward in "fully litigated" authorized returns on equity.⁹⁶ Further, in the last three quarters of 2017, the United States had its strongest gross domestic product (GDP) growth since 2015.⁹⁷

9. The Commission mentions the average allowed return on equity because Spire Missouri must compete with other utilities all over the country for the same capital. Therefore, the average allowed return on equity provides a reasonableness test for the recommendations offered by the return on equity experts.

10. Mr. Murray testified that he believed the actual cost of common equity for Spire Missouri was in the range of 6.90 percent to 7.70 percent.⁹⁸ Mr. Murray also indicated that no state agency had found such a low range to be reasonable for many

⁹³ Ex. 407, Gorman Direct, pp. 43-44.

⁹⁴ Tr. 1366.

⁹⁵ Tr. 1366.

⁹⁶ Ex. 40, Ahern Surrebuttal, pp. 39-40.

⁹⁷ Tr. p. 1299.

⁹⁸ Ex. 205, Staff Report - Cost of Service, p. 7 and 39; and Tr. 1290.

years.⁹⁹ Thus, instead of recommending that range for an authorized return on equity, he determined that utility capital markets were similar to those in place with the Commission authorized returns of approximately 9.5 percent for Missouri's large electric utilities.¹⁰⁰ Mr. Murray then adjusted that return downward based on his determination of a risk differential between natural gas companies and vertically integrated electric companies.¹⁰¹ The Commission finds that Mr. Murray's recommended ROE is too low due to its reliance on Commission decisions in cases that had test years in 2014 and 2015, Mr. Murray's ROE recommendation does not consider the improving economy and increasing Federal Reserve interest rates.

11. Gorman's recommended return on equity was calculated very differently than Mr. Murray's but had a similar outcome at 9.2 percent. However, Gorman's return on equity is also too low when compared to average ROEs awarded by other state commissions to similarly situated utilities. Obviously, this Commission is not bound to follow the lead of other commissions in setting an appropriate ROE. Even so, Spire Missouri must compete in the capital market with those other utilities. Further, Gorman's analysis failed to take into account areas where Spire Inc. faces risk above that in faced by his proxy group. When appropriately adjusted for business risk and flotation cost adjustments, and other corrections suggested by Ms. Ahern, Gorman's common equity cost rates would be 9.89 percent, also very close to the national average.¹⁰²

⁹⁹ Tr. 1292.

¹⁰⁰ *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.

¹⁰¹ Tr. 1299-3001; and Ex. 205, Staff Report - Cost of Service, p. 8.

¹⁰² Ex. 39, Ahern Rebuttal, pp. 47-70.

12. In contrast to Mr. Murray and Gorman, the Commission finds Ms. Ahern's return on equity recommendation is too high. Ms. Ahern's methods are inconsistent in that she ignores the corporate parent structure (Spire Inc.) of Spire Missouri in determining a business risk adjustment for size, yet she compares LAC and MGE as stand-alone companies to other parent company entities in her proxy group.¹⁰³ While Spire Missouri operates through its LAC and MGE subsidiaries, Atmos Energy, New Jersey Resources, and Northwest Natural Gas, all publicly traded parent companies in the proxy group, also provide gas service via their subsidiaries.¹⁰⁴ When compared at the parent-company level, Spire Inc. falls in the middle of the other parent companies with regard to size.¹⁰⁵

13. Considering the range of the expert ROE recommendations from 9.2 percent to 10.35 percent and each of their flaws, the most recent national average of 9.8 percent, and appropriate adjustments for risk, the growing economy, and the anticipated increase in Federal Reserve interest rates, the Commission finds the most reasonable authorized return on equity is 9.8 percent.

Conclusions of Law

A. In assessing the Commission's ability to use different methodologies to determine just and reasonable rates, the Missouri Court of Appeals has said:

Because ratemaking is not an exact science, the utilization of different formulas is sometimes necessary. ... The Supreme Court of Arkansas, in dealing with this issue, stated that there is no 'judicial mandate requiring the Commission to take the same approach to every rate application or even to consecutive applications by the same utility, when the commission in its expertise, determines that its previous methods are unsound or inappropriate to the particular application' (quoting Southwestern Bell

¹⁰³ Ex. 38, Ahern Direct, Schedule PMA-D3, p. 3.

¹⁰⁴ Ex. 38, Ahern Direct, Schedule PMA-D3, p. 3, 5, and 6.

¹⁰⁵ Ex. 38, Ahern Direct, Schedule PMA-D3.

Telephone Company v. Arkansas Public Service Commission, 593 S.W. 2d 434 (Ark 1980).¹⁰⁶

Furthermore,

Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony.¹⁰⁷

B. The Court of Appeals has recognized that the establishment of an appropriate rate of return is not a "precise science":

While rate of return is the result of a straight forward mathematic calculation, the inputs, particularly regarding the cost of common equity, are not a matter of 'precise science,' because inferences must be made about the cost of equity, which involves an estimation of investor expectations. In other words, some amount of speculation is inherent in any ratemaking decision to the extent that it is based on capital structure, because such decisions are forward-looking and rely, in part, on the accuracy of financial and market forecasts.¹⁰⁸

C. In addition to being imprecise, determining a return on equity also involves balancing a utility's need to compensate investors against its need to keep prices low for consumers.¹⁰⁹

D. Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.¹¹⁰ "The cases also recognize that the fixing of rates is a matter largely of prophecy and because of this commissions, in carrying out their functions, necessarily deal in what are called 'zones of reasonableness', the result of which is that they have some latitude in exercising this

¹⁰⁶ *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

¹⁰⁷ *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission*, 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

¹⁰⁸ *State ex rel. Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376, 383 (Mo App. W.D. 2005).

¹⁰⁹ *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. Ct. App. 2009).

¹¹⁰ *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).

most difficult function."¹¹¹ Moreover, the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.¹¹²

Decision

In order to set a fair rate of return for Spire, the Commission must determine the weighted cost of each component of the utility's capital structure. One component at issue in this case is the estimated cost of common equity, or the return on equity. Based on the competent and substantial evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayers and shareholders, as fully explained in its findings of fact and conclusions of law, the Commission finds that 9.8 percent is a fair and reasonable return on equity for Spire Missouri. That rate is nearly the midpoint of all the experts' recommendations and is consistent with the national average, the growing economy, and the anticipated increasing interest rates. The Commission finds that this rate of return will allow Spire Missouri to compete in the capital market for the funds needed to maintain its financial health.

¹¹¹ *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570 -571 (Mo. App. 1976). In fact, for a court to find that the present rate results in confiscation of the company's private property, that court would have to make a finding based on evidence that the present rate is outside of the zone of reasonableness, and that its effects would be such that the company would suffer financial disarray. *Id.*

¹¹² *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009). See, *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness' ").

- B. Capital Structure – What capital structure should be used to determine the rate of return?**
- C. Cost of Debt – What cost of long-term debt should be used to determine the rate of return?**
- D. Should short-term debt be included in the capital structure? If so, at what cost?**

Findings of Fact

1. Another essential ingredient of the cost-of-service ratemaking formula is the rate of return, which is premised on the goal of allowing a utility the opportunity to recover the costs required to secure debt and equity financing. To arrive at a rate of return, in addition to considering the return on equity, the Commission must examine an appropriate ratemaking capital structure and Spire Missouri's embedded cost of debt.

2. Spire Inc. has been acquiring gas distribution utilities since 2013. Spire Inc. through Spire Missouri (known as Laclede Gas Company at the time) acquired the assets of MGE in 2013. That transaction was structured as a direct asset purchase with no long-term debt assumed in the transaction. Spire Inc. (known as The Laclede Group at the time) issued new equity and Spire Missouri issued debt to fund the purchase of MGE's assets.¹¹³

3. Spire Inc.'s other utility acquisitions were structured as stock purchases of a subsidiary corporation owning the utility systems. Spire Inc. funded its acquisition of Alagasco by issuing debt, issuing equity, and assuming \$250 million of Alagasco debt. Spire Inc. acquired EnergySouth similarly with the assumption of \$67 million of Mobile Gas debt. The acquisitions of Alagasco and EnergySouth resulted in Spire Inc. having a more leveraged capital structure than its subsidiary, Spire Missouri.¹¹⁴

¹¹³ Ex. 205, Staff Report - Cost of Service, p. 18.

¹¹⁴ Ex. 205, Staff Report - Cost of Service, p. 18.

4. Spire Inc. holds natural gas utilities which are regulated in three states and a pipeline company subject to the jurisdiction of FERC.

5. Spire Missouri's expert witnesses with regard to capital structure, Pauline Ahern, Glenn Buck, Robert Hevert, and Steven Rasche, recommended the Commission adopt the capital structure of the utility, Spire Missouri, and not that of the parent company, Spire Inc.¹¹⁵

6. Spire Missouri's actual capital structure on the true-up date, September 30, 2017, was 54.2 percent common equity and 45.8 percent long-term debt.¹¹⁶

7. Spire Missouri has an independently determined capital structure in that its debt is secured by its own assets and not the assets of Spire Inc. or any of Spire Inc.'s other subsidiaries.¹¹⁷ Additionally, Spire Missouri's assets do not guarantee the long-term debt of its parent or of any of Spire Inc.'s other public utilities or of Spire Marketing or Spire STL Pipeline.¹¹⁸ Further, the Commission must approve any long-term debt issuances made by Spire Missouri.¹¹⁹

8. Spire Missouri's stand-alone capital structure supports its own bond rating.¹²⁰

9. Spire Missouri's capital structure ratios are consistent with the capital structure ratios used by Staff in the most recent Laclede Gas Company rate case

¹¹⁵ Ex. 21, Buck Surrebuttal, p. 2; Ex. 22, Buck True-Up Direct, p. 2; Ex. 36, Hevert Surrebuttal, pp 15-16; Ex. 37, Rasche Surrebuttal, p. 18; and Ex. 40, Ahern Surrebuttal, pp. 24-25.

¹¹⁶ Ex. 21, Buck Surrebuttal, p. 2; Ex. 22, Buck True-Up Direct, p. 2; and Ex. 36, Hevert Surrebuttal, p. 3.

¹¹⁷ Ex. 39, Ahern Direct, pp. 3-4; and Tr. 1307.

¹¹⁸ Ex. 39, Ahern Direct, p. 4; and Tr. 1307-1308.

¹¹⁹ Ex. 39, Ahern Direct, pp. 3-4.

¹²⁰ Ex. 39, Ahern Direct, p. 4.

involving the MGE division, File No. GR-2014-0007. In that proceeding, Staff used the capital structure of 53.56 percent common equity and 46.44 percent long-term debt.¹²¹

10. Spire Missouri's capital structure ratios as of the true-up date are based on the actual capital structure that finances the assets and operations of the public utility for which the Commission is setting rates in this proceeding.¹²²

11. Spire Inc.'s capital structure contains capital that has not been directly used to fund investments in LAC and MGE (such as the debt issued to acquire Alagasco and EnergySouth and the debt assumed from those companies).¹²³ Additionally, the capital structure of the parent, Spire Inc. includes the common equity of other public utilities and unregulated operations.¹²⁴ However, Spire Missouri does not have access to capital that is being used by Spire Inc.'s other subsidiaries.¹²⁵

12. Spire Inc.'s actual capital structure on September 30, 2017, was 48.71 percent common equity and 51.20 percent long-term debt.¹²⁶

13. Michael Gorman, on behalf of Public Counsel and MIEC, recommended a capital structure of Spire Missouri consisting of 47.2 percent equity and 52.8 percent long-term debt.¹²⁷ Mr. Gorman's recommendation reflects the removal of \$210 million of common equity for goodwill.¹²⁸ Mr. Gorman argues that the utility capital structure should be used, but that a \$210 million deduction from common equity should be made "to remove the capital supporting the goodwill asset."¹²⁹ With that adjustment (and

¹²¹ Ex. 60, Staff Accounting Schedule in GR-2014-0007; and Tr. 1304.

¹²² Ex. 37, Rasche Surrebuttal, p. 18; and Tr. 1311.

¹²³ Ex. 205, Staff Report - Cost of Service, pp. 24-25.

¹²⁴ Tr. 1311-1312.

¹²⁵ Ex. 39, Ahern Rebuttal, p. 7.

¹²⁶ This was determined using the ratios provided by Staff, but removing the short-term debt.

¹²⁷ Ex. 414, Gorman Rebuttal, p. 5.

¹²⁸ Ex. 414, Gorman Rebuttal, pp. 4-5.

¹²⁹ Ex. 414, Gorman Rebuttal, p. 14.

another that was resolved during true-up), Mr. Gorman proposes a capital structure including 47.20 percent common equity, and 52.80 percent long-term debt.¹³⁰

14. According to SNL and Value Line (industry and financial reports), the common equity ratio for the utility peers used by Mr. Gorman was 49.0 and 55.3 percent, respectively, *including* Spire Inc., the parent company in the proxy group.¹³¹ Without including Spire Inc. the average common equity ratio was 50.42 and 56.5, respectively.¹³²

15. Mr. Gorman admitted that his capital structure proposal was “a little light on common equity. . . .”¹³³

16. The Stipulation and Agreement in File No. GM-2013-0254 indicates that the parties intended to prevent Spire Missouri from recovering the acquisition premium (the goodwill balance) from the purchase of MGE in rates.

17. The MGE acquisition by Laclede Gas Company was financed with both debt and equity. The acquisition financing, which included both debt and equity, funded the MGE transaction in its entirety, including both tangible utility assets and goodwill.¹³⁴

18. Mr. Rasche testified that, with the exception of project financing, capital is not raised to support a specific asset.¹³⁵

19. Cash is fungible. A particular dollar cannot be traced from the initial dollar invested to the specific asset purchased. Specific portions of the financing were not raised to fund specific portions of the acquisition.¹³⁶

¹³⁰ Ex. 414, Gorman Rebuttal, p. 14.

¹³¹ Ex. 407, Gorman Direct, Schedule MPG-3.

¹³² Ex. 407, Gorman Direct, Schedule MPG-3.

¹³³ Tr. 1376. See also, Tr. 1375 (Mr. Gorman testified, “I found that my adjustment to the Company’s capital structure has a relatively thin amount of common equity.”)

¹³⁴ Ex. 36, Hevert Surrebuttal, p. 7; and Ex. 37, Rasche Surrebuttal, p. 4.

¹³⁵ Ex. 37, Rasche Surrebuttal, p. 4.

20. No portion of the \$210 million goodwill asset is included in the company's rate base.¹³⁷

21. Mr. Gorman's proposed adjustment is inconsistent with the actual method by which the MGE acquisition was financed, it ignores the basic financial principle of capital fungibility, and it is inconsistent with how other assets are treated.¹³⁸

22. David Murray, on behalf of Staff, recommended a capital structure based on Spire Inc.'s consolidated capital structure with the inclusion of short-term debt.¹³⁹ He used Spire Inc.'s actual capital structure as of September 30, 2017, and included an average amount of short-term debt in excess of an average amount of construction-work-in-progress (CWIP) for the period September 30, 2014, through September 30, 2017. This capital structure consists of 45.56 percent common equity, 47.97 percent long-term debt and 6.47 percent short-term debt.¹⁴⁰

23. Mr. Murray used five natural gas companies (Atmos Energy, Northwest Natural Gas, Southwest Gas, OneGas, and Spire Inc.) as his proxy group for his cost of capital analysis.¹⁴¹ The five-year average common equity ratios for the natural gas companies in Staff's proxy group were: Atmos Energy, 53.73 percent; North West Natural Gas, 53.34 percent; Southwest Gas, 48.85 percent; and Spire Inc., 53.53 percent.¹⁴²

¹³⁶ Ex. 36, Hevert Surrebuttal, p. 11.

¹³⁷ Ex. 36, Hevert Surrebuttal, p. 13, citing Noack True-Up Direct, Laclede Gas Company, Schedule B (PDF 12) and Missouri Gas Energy Schedule B (PDF 55).

¹³⁸ Ex. 36, Hevert Surrebuttal, p. 14.

¹³⁹ Ex. 205 Staff Report, p.7; and Ex. 265, Murray Surrebuttal, p.2, 4, and Schedule 1-1.

¹⁴⁰ Ex. 205, Staff Report - Cost of Service, p. 7; and Ex. 265, Murray Surrebuttal, p.2, 4, and Schedule 1-1.

¹⁴¹ Ex. 205, Staff Report - Cost of Service, Appendix 2, Schedule 8.

¹⁴² Ex. 38, Ahern Direct, Schedule PMA-D2, page 2 of 2. (The five-year common equity ratio for OneGas was not in the record.)

24. None of Staff's proxy companies had five-year average common equity ratios as low as Staff's proposed 45.56 percent common equity ratio (or Mr. Gorman's proposed 47.20 percent) for Spire Missouri.

25. Similarly, Ms. Ahern's seven proxy natural gas companies had common equity ratios with the five-year average common equity ratio ranging from 53.46 percent in 2014 to 57.52 percent during the period of 2011-2015.¹⁴³

26. In the last Laclede Gas Company rate case involving the MGE division, File No. GR-2014-0007, the Staff utilized a common equity ratio of 53.56 percent and a long-term debt ratio of 46.44 percent. This ratio is substantially similar to the 54.20 percent common equity ratio and 48.50 percent long-term debt ratio proposed by Spire Missouri in this proceeding.¹⁴⁴

27. Staff also argues that short-term debt should be included if gas inventories for LAC are included in rate base.¹⁴⁵ While the specific issue of gas inventory carrying costs is addressed elsewhere in this Report and Order, Staff's approach is inconsistent with the fact that every other gas distribution company in Missouri, as well as Spire Missouri's MGE division, currently have these gas inventories in rate base.¹⁴⁶ Further, only rarely has short-term debt been included in the capital structure of major public utilities.¹⁴⁷

28. Additionally, LAC's gas inventory is approximately \$82 million, while Staff proposes to include \$283 million of short-term debt in the capital structure, using the

¹⁴³ Ex. 38, Ahern Direct, Schedule PMA-D2.

¹⁴⁴ Tr. 1305-1306.

¹⁴⁵ Ex. 259, Sommerer Surrebuttal, pp. 3-5.

¹⁴⁶ Ex. 259, Sommerer Surrebuttal, pp. 3-5.

¹⁴⁷ Tr. 1510-1511.

parent's capital structure.¹⁴⁸ Thus, the amount of short-term debt Staff proposes to include in the capital structure is far in excess of the value of LAC's gas inventories.

29. The average level of construction work in progress and other short-term assets exceeds the amount of short term debt outstanding during the true-up period after taking into consideration a September 15, 2017 funding of \$170 million of long-term debt instruments.¹⁴⁹ Mr. Murray's proposal to add short-term debt to the capital structure ignores this fact by using a three-year average rather than the customary "point in time" analysis of short term debt.¹⁵⁰

30. It is not uncommon to include short-term assets such as cash working capital and materials and supplies in rate base.¹⁵¹

31. Spire Missouri's actual embedded cost of long-term debt is 4.123 percent as of the end of the true-up period, September 30, 2017.¹⁵²

Conclusions of Law

A. Rejecting Mr. Gorman's proposed adjustment to reduce common equity by the \$210 million goodwill balance is consistent with the Commission-approved Stipulation and Agreement in File No. GM-2013-0254. The Stipulation and Agreement states, at Subparagraph 3.a., "[n]either Laclede Gas [Company] 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." The goodwill balance has been removed from rate base.

¹⁴⁸ Ex. 265, Murray Surrebuttal, Schedule DM-s1-1, p. 1.

¹⁴⁹ Ex. 22, Buck True-Up Direct, p. 2; Ex. 37, Rasche Surrebuttal, p. 3; and Tr. 1269-70.

¹⁵⁰ Ex. 37, Rasche Surrebuttal, p. 4.

¹⁵¹ Tr. 1502.

¹⁵² Ex. 68, Noack True-up Direct, Schedule F.

Decision

The Commission finds that the capital structure of Spire Missouri without short-term debt is the reasonable capital structure for ratemaking purposes in this case. Similarly, the Commission determines that the cost of debt should be the cost of Spire Missouri's cost of long-term debt.

The Commission's decision on capital structure is supported by the facts set out above including that Spire Missouri has an independently determined capital structure with its own long-term debt issuances secured by its own assets that are the subject of this rate case. These assets do not secure the debt of the parent or its other utilities or unregulated operations. In addition, while the Commission previously used the consolidated capital structure of the parent, Laclede Gas Company, it made up almost the entire holding company. Thus, a consolidated capital structure was basically the utility specific capital structure. Currently, however, the parent, Spire Inc., holds five utilities in three different states and is applying to build an interstate pipeline that will be subject to the FERC oversight. Thus, if the parent company's capital structure were used, regulatory policies employed by commissions in other two other states and at FERC, and financing practices followed by utilities or entities not regulated by the Commission, would affect the rates customers pay in Missouri. The changes to the company and the other facts set out above make it reasonable to use the utility-specific capital structure in this case, and not the consolidated capital structure.

Mr. Gorman's proposed adjustment is rejected. The Commission was not persuaded by Mr. Gorman's testimony regarding a reduction for goodwill. No portion of the \$210 million goodwill asset is included in the company's rate base. Because cash is

fungible, goodwill cannot be singled out to be considered financed only through equity. The evidence presented by Spire Missouri's four expert witnesses was more persuasive than Mr. Gorman's testimony on these issues. As shown by the facts set out above, Mr. Gorman's proposal is inconsistent with the actual method by which the MGE acquisition was financed, it ignores the basic financial principle of capital fungibility, and it is inconsistent with how other assets are treated. Further, if adopted, Mr. Gorman's proposal would reduce Spire Missouri's cash flows, increasing the risk of impairment of the goodwill asset. Because the GM-2013-0254 Stipulation and Agreement calls for customers to be held harmless from the costs of impairment of the goodwill asset, Mr. Gorman's proposal actually presents the risk of a cycle in which investors are subject to increasing risks and decreasing returns, eventually threatening Spire Missouri's ability to efficiently raise capital.

The Commission also finds Spire Missouri's witnesses to be more persuasive than Staff's witness with regard to capital structure and the inclusion of short-term debt. Staff's recommended capital structure is not consistent with: the capital structures of Staff's own proxy natural gas companies; the Commission's long-held precedent to exclude short-term debt from major public utility's capital structures; or the Staff's previously used capital structure in the true-up proceeding of Laclede's last rate case. For these reasons, the Staff's proposed capital structure is rejected.

Further, the Commission finds that short-term debt should not be included in the capital structure, even though the Commission is also finding in this Report and Order that the gas inventory carrying charges should now be recovered through rate base (see the gas inventories section below). The amount of short-term debt Staff

proposes to include in the capital structure is far in excess of the value of LAC's gas inventories.

The average level of construction work in progress and other short-term assets exceeds the amount of short term debt outstanding during the true-up period after taking into consideration funding of \$170 million of long-term debt instruments during the true-up period. Mr. Murray's proposal to add short-term debt to the capital structure ignores this fact by using a three-year average rather than the customary "point in time" analysis of short term debt.

Thus, the Commission determines the appropriate capital structure as of the true-up date is 54.2 percent common equity and 45.8 percent long-term debt. To be consistent with its findings related to capital structure, the Commission further finds that the cost of long-term debt should be based on Spire Inc.'s consolidated embedded cost of long-term debt of 4.123 percent as of September 30, 2017.

IV. Rate Case Expense

- A. What is the appropriate amount of rate case expense to include?**
- B. What is the appropriate normalization period for recovering rate case expense?**

Findings of Fact

1. Rate case expense is the sum of the costs a utility incurs in preparing, filing and litigating a rate case.¹⁵³

2. Rate case expenses do not include the payroll or benefits of LAC or MGE employees that charge time to rate case expense. Those expenses are included in

¹⁵³ Ex. 205, Staff Report - Cost of Service, p. 109.

payroll and benefit expense, and are not allocated between shareholders and ratepayers.¹⁵⁴

3. Prudence is not the only consideration in determining what costs should be included in rates; the benefit to customers must also be considered when deciding what costs are reasonable for customer rates. Rate case expense can benefit both utility shareholders and customers, though often in different ways. A utility and its shareholders directly benefit from this expense because generally these costs are incurred in order to ensure an opportunity to receive a reasonable return on their investment. Customers benefit generally from being served by financially healthy utilities with the ability to provide safe and adequate service at just and reasonable rates.¹⁵⁵

4. The consumer groups participating in this rate case were represented by hired counsel, and some also hired expert witnesses. While Spire Missouri is able to recoup the costs of its legal counsel and expenses through utility service rates, Public Counsel, the entity representing ratepayers, operates within a tight annual budget, and the intervenors pay their own legal and expert witness expenses.¹⁵⁶

5. Spire Missouri's witness testified that the company enters into a rate case with an estimate of its rate case expenses but had no firm ceiling or other mechanism in place to limit those expenses.¹⁵⁷

6. When LAC and MGE filed their direct case, Spire Missouri had budgeted \$994,447 (\$397,779 for MGE and \$596,668 for LAC) of Missouri jurisdictional rate case

¹⁵⁴ Ex. 255, Majors Surrebuttal, p. 6.

¹⁵⁵ Ex. 205, Staff Report - Cost of Service, p. 111 and 114.

¹⁵⁶ Ex. 205, Staff Report - Cost of Service, pp. 109-112.

¹⁵⁷ Tr. 1713-1715.

expenses with the annual expense being \$132,593 for MGE and \$198,889 for LAC.¹⁵⁸

7. At hearing, Spire Missouri's estimated rate case expense had risen to \$1.3 million, but it had already exceeded that estimate,¹⁵⁹ "largely because [Spire Missouri] had more issues than [it] expected."¹⁶⁰

8. LAC and MGE have historically incurred relatively low levels of rate case expense compared to other Missouri utilities. In this case, LAC and MGE have incurred rate case expenses substantially higher than those historical levels. In three prior LAC rate cases and four prior MGE rate cases, total rate case expense exceeded \$1 million on only one occasion.¹⁶¹

9. Approximately half of the issues in this case were raised by Spire Missouri, which has a high level of discretion and control over the content and methodologies proposed in the rate case.¹⁶²

10. Awarding a utility all of its incurred rate case expenses could provide that utility with a significant financial advantage over other participants in the rate case process, who may be constrained by budgetary and other financial restrictions. Such a practice does not encourage reasonable levels of cost containment in the utility's rate case expense decisions.¹⁶³

11. One incentive for a utility to limit its rate case expense is for the shareholders to share that rate case expense.¹⁶⁴

¹⁵⁸ Ex. 28, Noack Direct, p. 21, Schedule MRN_D1, Schedule H-10, and Schedule MRN_D2, Schedule H-10.

¹⁵⁹ As of September 30, 2017, Spire Missouri's total amount of incurred rate case expenses were \$1,393,399. (Ex. 254, Majors Surrebuttal, p. 3).

¹⁶⁰ Tr. 1714.

¹⁶¹ Ex. 255, Majors Surrebuttal, pp. 5-6.

¹⁶² Tr. 1666 and 1707-1708; and Ex. 205, Staff Report - Cost of Service, pp. 111-112.

¹⁶³ Ex. 205, Staff Report - Cost of Service, p. 111.

¹⁶⁴ Ex. 205, Staff Report - Cost of Service, p. 113; and Tr. 1701 and 1777-1778.

12. Spire Missouri requested a three-year amortization of all prudently incurred rate case expenses with a three-year amortization of all those expenses except the current depreciation study. For the depreciation study, Spire Missouri requested a five-year amortization.¹⁶⁵

13. Staff recommended that the proposed rate case expenses be recovered via a sharing mechanism between the ratepayers and the 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 recommended methodology is similar to a sharing mechanism in the *Report and Order* in Case No. ER-2014-0370, Kansas City Power & Light Company's most recent rate case.¹⁶⁶

14. Staff recommended the ultimately allowed rate case expense be split among LAC and MGE 53.5 percent and 46.5 percent, respectively, based on each division's requested revenue requirement increase. Staff further recommended that rate case expense be normalized over four years, the approximate time between rate cases for both LAC and MGE.¹⁶⁷

15. Staff proposed one disallowance for the procurement of an outside consultant firm, ScottMadden, to perform a Cash Working Capital study. Staff proposed that this expense be born entirely by the shareholders and not be shared with the ratepayers because it was not a prudent expense.¹⁶⁸

16. Public Counsel also recommended a disallowance for the expenses

¹⁶⁵ Ex. 28, Direct Testimony of Michael R. Noack, p. 21

¹⁶⁶ *In the Matter of Kansas City Power & Light Company*, issued September 2, 2015.

¹⁶⁷ Ex. 254, Majors Surrebuttal, p. 3.

¹⁶⁸ Ex. 205, Staff Report - Cost of Service, p. 114-115; Ex. 255, Majors Surrebuttal, p. 8; and Tr. 1745.

related to Spire Missouri's witness, Thomas J. Flaherty, because of the high hourly rate charged by this expert.¹⁶⁹

17. The company also admitted that it purposefully takes the more "aggressive" positions and builds "a little bit of cushion" into its requests.¹⁷⁰

18. Part of the rate case expense was the cost of Commission-ordered customer notices.¹⁷¹ The cost of providing those notices was \$436,000.¹⁷²

19. Gas utilities are required to file a depreciation study every five years.¹⁷³ This rate case coincided with the required filing of a depreciation study. The cost of the depreciation study was \$54,114.¹⁷⁴

20. Spire Missouri has pursued issues and incurred rate case expenses in this case that largely benefit only the shareholders, such as employing an outside expert witness to support its recommended return on equity of 10.35 percent, the highest of any large Missouri utility including two utilities owning nuclear power plants, and litigating the Forest Park property issue.¹⁷⁵

21. Spire Missouri has pursued more new, unique shareholder-focused ratemaking tools in this case to insulate shareholders from risk, such as three new tracking mechanisms (environmental expense tracker, cyber security tracker, and major capital projects tracker) and a revenue stabilization mechanism.¹⁷⁶

22. Spire Missouri has pursued utility expenses that are highly discretionary, do not benefit customers, and are typically allocated entirely to shareholders, such as

¹⁶⁹ Tr. 1721 and 1841.

¹⁷⁰ Tr. pp. 1712-1713.

¹⁷¹ *Order Setting Local Public Hearings and Directing Notice*, (issued June 28, 2017).

¹⁷² Tr. 1701.

¹⁷³ 4 CSR 240-3.160(1)(A).

¹⁷⁴ Tr. 1722

¹⁷⁵ Ex. 255, Majors Surrebuttal, p. 7; and Tr. 1710.

¹⁷⁶ Ex. 255, Majors Surrebuttal, p. 7.

incentive compensation tied to earnings per share and a retention mechanism, a onetime adder to ROE for its claimed benefits of acquisitions in Alabama and Mississippi, and performance metrics.¹⁷⁷

23. Spire Missouri's witness for rate case expense testified that the basic "goal" of the rate case is to receive its revenue requirement increase, that "there is a little bit of cushion built into what [Spire] asked for[.]"¹⁷⁸ and that the company never expected to actually receive that amount.¹⁷⁹ Such a request is purely for the benefit of the shareholders.

24. Public Counsel filed an earnings complaint against LAC and MGE in April 2016.¹⁸⁰ That complaint was stayed in October 2016 pending the filing of these rate cases and then consolidated with these cases in August 2017.¹⁸¹

Conclusions of Law

A. Under Missouri law, the Commission must set just and reasonable rates.¹⁸² In a rate case, the Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Missouri Supreme Court has stated that the Commission's statutory power and authority to set rates "necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and to determine and decide what treatment should be accorded

¹⁷⁷ Ex. 255, Majors Surrebuttal, pp. 7-8; and Tr. 1709.

¹⁷⁸ Tr. 1712-1713.

¹⁷⁹ Tr. 1711-1713.

¹⁸⁰ File No. GC-2016-0297.

¹⁸¹ File No. GC-2016-0219, *Order Granting Motion to Stay Proceedings*, issued October 5, 2016; and *Order Granting Motion to Lift Stay and Consolidate Cases*, issued August 11, 2017.

¹⁸² Section 393.130.1, RSMo, "...All charges made or demanded by any...electrical corporation ... shall be just and reasonable and not more than allowed by law or by order or decision of the commission..."

such expense items.”¹⁸³ The Commission’s authority extends to allocating an expense between certain classes or groups of ratepayers¹⁸⁴ and to requiring company shareholders to bear expenses the Commission finds to be unreasonable or unnecessary.¹⁸⁵

B. Section 393.1012, RSMo, does not require Spire Missouri to file a rate case every three years. Instead, that statute permits the company to continue collecting its authorized infrastructure replacement surcharge (ISRS) so long as it files a rate case every three years. The company could choose to cease collections of the ISRS rather than file a rate case.

C. Commission rule 4 CSR 240-3.160(1)(A) requires a gas utility to conduct a depreciation study every five years.

D. The Commission has previously found rate case expense sharing was just and reasonable. In a 1986 decision, *In the Matter of Arkansas Power and Light Company*, the Commission “adopted Public Counsel’s proposed disallowance of one-half of rate case expense.”¹⁸⁶ The Commission also acknowledged this authority in a number of other cases.¹⁸⁷

E. More recently, the Commission determined that rate case expense should be shared between the ratepayers and shareholders.¹⁸⁸ That decision was upheld by the

¹⁸³ *State ex rel. City of W. Plains v. Pub. Serv. Comm’n*, 310 S.W.2d 925, 928 (Mo. 1958). See also, *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm’n*, 408 S.W.3d 153, 166 (Mo. App. 2013).

¹⁸⁴ *State ex rel. City of W. Plains v. Pub. Serv. Comm’n*, 310 S.W.2d at 934.

¹⁸⁵ *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm’n*, 408 S.W.3d at 164-165.

¹⁸⁶ Report and Order, File No. ER-85-265, 28 Mo. P.S.C. (N.S.) 435, 447 (1986),

¹⁸⁷ See, *In the Matter of Kansas City Power & Light Company*, Report and Order, File Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.) 229, 263 (1986), and *In the Matter of Missouri Gas Energy*, Report and Order, File No. GR-2009-0355, 19 Mo. P.S.C. 3d 245, 303 (2010).

¹⁸⁸ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General*

Western District Court of Appeals which found that “the remedy crafted by the [Commission] was a reasonable exercise of the [Commission’s] discretion and expertise in determining just and reasonable expenses to be borne by ratepayers.”¹⁸⁹

Decision

The Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Commission determines that it is reasonable for Spire Missouri shareholders and ratepayers to share most of the rate case expenses in these cases. However, the Commission recognizes that certain expenses, such as the customer notices and the depreciation study, were required by Commission rule or order and should not be part of the shared rate case expense.

In one sense, rate case expense is like other common operational expenses that a utility must incur to provide utility services to customers. Since customers benefit from having just and reasonable rates, it is appropriate for customers to bear some portion of the utility’s cost of prosecuting a rate case. However, rate case expense is also different from most other types of utility operational expenses, in that 1) the rate case process is adversarial in nature, with the utility on one side and its customers on the other; 2) rate case expense produces some direct benefits to shareholders that are not shared with customers, such as seeking a higher return on equity; 3) requiring all rate case expense to be paid by ratepayers provides the utility with an inequitable financial advantage over other case participants; and 4) full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment.

Rate Increase for Electric Service, Report and Order, File No. ER-2014-0370, issued September 2, 2015.
¹⁸⁹ *In Matter of Kansas City Power & Light Co.’s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm’n*, 509 S.W.3d 757, 779 (Mo. Ct. App. 2016), reh’g and/or transfer denied (Nov. 1, 2016), transfer denied (Feb. 28, 2017).

Under Missouri law, the Commission must set just and reasonable rates,¹⁹⁰ and rates in this case, that include all of the utility's rate case expense, for the reasons set forth above, are not just or reasonable. However, the Commission determines that it is just and reasonable for ratepayers and shareholders to share rate case expense. In these cases, the just and reasonable sharing mechanism is based on the fact that the issues controlled by the company amounted to about half of the contested issues at hearing. Thus, the shareholders who ultimately controlled 50 percent of the rate case issues should share 50 percent of the rate case expense with the exception of the customer notice cost and the depreciation study were done because of Commission order and rule requirements.

This sharing mechanism is supported by the evidence showing approximately half of the litigated issues in these cases are driven primarily by Spire Missouri, which had complete control over the content and methodologies proposed when it filed its rate cases. Additionally, a number of these litigated issues were unique shareholder-focused ratemaking tools, such as the revenue stabilization mechanism, the requested high rate of return of 10.35 percent, three new tracking mechanisms to limit shareholder risk, and earnings-based incentive compensation which has been consistently denied by the Commission. It was Spire Missouri's decision and entirely within Spire Missouri's power to pursue these issues and to file this rate case and the shareholders stood to benefit from those issues. Also, the company witness admitted that the company "padded" its revenue requirement beyond what it expected to receive by pursuing strong positions on issues it did not expect to win, which is clearly to the benefit of the

¹⁹⁰ Section 393.130.1, RSMo, "...All charges made or demanded by any...electrical corporation ... shall be just and reasonable and not more than allowed by law or by order or decision of the commission..."

shareholders over the ratepayers. Finally, rate case expense for this proceeding has far exceeded Laclede and MGE's estimates and their historical rate case expense levels.

Therefore, it is just and reasonable that the shareholders and the ratepayers who both benefited from the rate case, share in the rate case expense. The Commission finds that in order to set just and reasonable rates under the specific facts in this case, the Commission will require Spire Missouri shareholders to cover half of the rate case expense and the ratepayers to cover half with the exception of the cost of customer notices and the depreciation study.

Spire Missouri argues that its shareholders should not have to share rate case expense because it was required to file this rate case by Public Counsel's earnings complaint and by the ISRS statute.¹⁹¹ The complaint case was stayed while the company made the decision to file a rate case and then ultimately consolidated with these cases. While the company would have been required to participate in that earnings complaint, the decision to instead file a rate case was purely within the discretion of the company.

Further, the ISRS statute does not require that a rate case be filed. Rather, that statute allows the company to continue to collect an authorized ISRS if it files a rate case at least every three years. Thus, Spire Missouri made a decision to continue collecting an ISRS by filing this rate case; it was not required to do so.

Staff and Public Counsel each argue that certain expenses of Spire Missouri in this matter were not prudent and should be born entirely by the shareholders. However, the Commission does not find that any specific individual items of rate case expense were imprudent. A rate case expense sharing mechanism will act as sufficient

¹⁹¹ Section 392.1012.3, RSMo.

incentive for the company to manage its costs. The Commission also finds that it is appropriate to require a full allocation to ratepayers of the expenses for Spire Missouri's depreciation study, recovered over five years, because this study is required under Commission rules to be conducted every five years. The Commission further finds that it is just and reasonable to require a full allocation to ratepayers of the expenses associated with the Commission-ordered notices provided in this case to be normalized over a four-year period.

The Commission concludes that Spire Missouri should receive rate recovery of 50 percent of its rate case expenses except the cost of the customer notices (\$436,000) and the depreciation study (\$54,114), which will be wholly included in rates. This amount should be normalized over four years which is roughly equal to the amount of time between rate cases for these companies.

V. PGA/ACA Tariff Revisions --

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

Findings of Fact

1. The Environmental Defense Fund, through its witness, Gregory M. Lander,¹⁹² proposes a revision to LAC's Purchased Gas Adjustment/Actual Cost Adjustment (PGA/ACA) tariff. The proposed tariff provision would establish explicit standards to guide the Commission's review of the reasonableness of utility costs incurred for transportation of natural gas through an affiliated interstate natural gas

¹⁹² Lander is president of Skipping Stone, LLC, a consulting firm specializing in pipeline transportation issues. Ex. 650, Lander Direct, p. 1.

pipeline.¹⁹³

2. In essence, the proposal would group the company's pipeline capacity into two "buckets" -- a supply reliability capacity bucket and a supply diversity capacity bucket.¹⁹⁴ Those categories would then be separately analyzed to assess whether that capacity is unnecessary or excessive. The Environmental Defense Fund does not propose to undertake such an analysis in this proceeding, but proposes to amend LAC's PGA/ACA tariff to establish procedures to be used in future PGA/ACA cases.¹⁹⁵

3. The effect of the proposal would be to emphasize the importance of the supply reliability bucket over the supply diversity bucket.¹⁹⁶

4. Although the review process that would be established by the proposed tariff language would not be limited to any particular gas supply contract, it is apparent that the Environmental Defense Fund is concerned about a 20-year precedent agreement that Spire Missouri has entered into with Spire STL Pipeline, LLC, a proposed interstate pipeline owned by Spire Missouri's corporate parent.¹⁹⁷ The Environmental Defense Fund has challenged that proposed pipeline at the Federal Energy Regulatory Commission (FERC).¹⁹⁸

5. Staff, which would be required to implement the Environmental Defense Fund's proposed review process, is concerned that the proposal is complicated, does not take into consideration important issues, and may be lacking in sufficient detail to implement.¹⁹⁹

¹⁹³ Ex. 650, Lander Direct, p .5.

¹⁹⁴ Ex. 650, Lander Direct, p. 5.

¹⁹⁵ Ex. 650, Lander Direct, pp. 7-8.

¹⁹⁶ Ex. 650, Lander Direct, p. 8.

¹⁹⁷ Ex. 650, Lander Direct, p. 12.

¹⁹⁸ Tr. 1991.

¹⁹⁹ Ex. 233, Crowe Rebuttal, pp. 8-9.

6. If Spire STL Pipeline's pipeline is approved by the FERC, and if Spire Missouri enters into a transportation agreement with that affiliated pipeline, the Commission would review the prudence of that decision in a future ACA review case.²⁰⁰

Conclusions of Law

A. The ACA filing procedure allows the Commission an opportunity to review the reasonableness of a gas utility's charges by evaluating its gas acquisition practices during the relevant time period.²⁰¹

B. There is no provision in Missouri law that would require, or authorize, the Commission to preapprove Spire Missouri's management decision to enter into a transportation agreement with a natural gas pipeline.

Decision

The Environmental Defense Fund's proposed revision of LAC's PGA/ACA tariff is unnecessary, premature, and inappropriate. If Spire Missouri ultimately makes a business decision to enter into a transportation agreement with a new interstate natural gas pipeline, the Commission will have an opportunity to review the prudence of that decision in a future ACA case. There is no need to preapprove, or pre-reject that hypothetical decision at this time. If the Environmental Defense Fund or any other stakeholder wants to further examine the establishment of standards for consideration of the prudence of future transportation agreements with affiliated pipelines, they may address such matters as part of the working group the Commission will establish to consider issues regarding Spire Missouri's Cost Allocation Manual.

²⁰⁰ Tr. 1889.

²⁰¹ See, *State ex rel. Associated Natural Gas v. Mo. Pub. Serv. Com'n*, 954 S.W.2d 520 (Mo. App. W.D. 1997).

VI. Cost Allocation Manual

A. Should a working group be created following this rate case to explore ideas for modifying the LAC and MGE CAM?

Findings of Fact

1. Spire Missouri uses a Commission-approved Cost Allocation Manual (CAM) to guide its decisions when assigning costs to its various utility operating companies and affiliates.²⁰²

2. Spire Missouri's existing CAM was approved by the Commission in 2013.²⁰³ Since that approval, Spire Inc. has acquired Alagasco and Mobile Gas in Alabama and Willmut Gas in Mississippi and has created a new shared services entity.²⁰⁴ Because of the changes in Spire Inc.'s structure, the existing CAM should be updated.

3. Spire Missouri agrees the existing CAM should be reviewed,²⁰⁵ and supports the creation of a working group to consider changes to the CAM.²⁰⁶

4. Staff is also open to the creation of a working group to revise the CAM.²⁰⁷

5. Public Counsel is willing to take part in a working group to revise Spire Missouri's CAM.²⁰⁸ Public Counsel also advocates for an independent third-party audit of Spire Missouri's affiliate transactions,²⁰⁹ and argues the audit should take place before the working group starts its review. Public Counsel also suggests the Commission order Spire Missouri to file its new CAM with the Commission for approval

²⁰² Ex. 23, Krick Direct, p. 8.

²⁰³ Ex. 403, Hyneman Direct, p.17. A copy of the CAM can be found at Ex. 403, Hyneman Direct, Schedule CRH-D-3.

²⁰⁴ Ex. 46, Flaherty Direct, p. 13. See *also*, Ex. 403, Hyneman Direct, p. 17.

²⁰⁵ Tr. 1850.

²⁰⁶ Tr. 1859.

²⁰⁷ Tr. 1890.

²⁰⁸ Tr. 1913.

²⁰⁹ Tr. 1913-1914.

no later than six months after rates established in the case become effective.²¹⁰

6. In its testimony, Public Counsel indicates the independent audit should be completed before the end of 2019,²¹¹ and that the specific timing of the audit should be determined in conjunction with Spire Missouri to ensure the company has sufficient resources available to respond to discovery requests.²¹²

7. The Environmental Defense Fund does not oppose the creation of a working group to revise the CAM, but urges the Commission to immediately order a particular change in the CAM to establish a process for Spire Missouri to follow before it enters into a transportation agreement with an affiliated pipeline company.²¹³

8. Staff opposes the changes to the CAM proposed by the Environmental Defense Fund because they are complicated and lack sufficient detail to be implemented.²¹⁴

Conclusions of Law

A. The Commission's affiliate transaction regulations require Spire Missouri to utilize a CAM with regard to its transactions with affiliated companies.²¹⁵

Decision

The Commission finds that Spire Missouri's CAM should be rewritten, and the best way to accomplish that rewrite is to authorize a working group, comprised of Spire Missouri, Staff, Public Counsel, and any other interested stakeholders, to draft a

²¹⁰ *Initial Brief of the Office of the Public Counsel* (filed January 9, 2018), pp. 14-18.

²¹¹ Ex. 401, Azad Direct, p. 5.

²¹² Ex. 401, Azad Direct, p. 6.

²¹³ Tr. 2004. The details of the modification proposed by the Environmental Defense Fund are set forth in Ex. 650, Lander Direct, Schedule EDF-06.

²¹⁴ Ex. 233, Crowe Rebuttal, p. 8.

²¹⁵ 4 CSR 240-40-015.2(E) and .3(D).

proposed CAM for the Commission’s approval. That working group will be established by the Commission in a separate order. The Commission will not delay the working group by ordering the independent audit proposed by Public Counsel. The need for an independent audit will be addressed later in this order.

The Commission will not order Spire Missouri to adopt the specific changes to its CAM proposed by the Environmental Defense Fund. The Commission finds those specific changes to be complicated and difficult to implement. Further, the technical details of the revised CAM should be addressed by the interested stakeholders through the working group that will be authorized. If the Environmental Defense Fund wants to press for its desired changes through that process, it may do so. For the same reason, the Commission will not order Spire Missouri to comply with the other recommendations offered by Public Counsel, as those recommendations can best be addressed by the working group.

B. Should an independent third-party external audit be conducted of all cost allocations and all affiliate transactions, including those resulting from Spire’s acquisitions, to ensure compliance with the Commission’s Affiliate Transaction Rule, 4 CSR 240-20.015?

Findings of Fact

1. Public Counsel urges the Commission to order Spire Missouri to engage the services of an independent auditor - approved by Staff and Public Counsel – to undertake a focused affiliate transactions audit in order to provide the Commission with an objective and independent review of Spire Missouri’s cost allocation practices.²¹⁶

2. Public Counsel believes such an audit should “look at all the charges and

²¹⁶ Ex. 401, Azad Direct, p. 5-6 and 23.

the allocation factors and the specific calculations in a level of detail that would far surpass the timeframe that's even allotted for a rate case proceeding."²¹⁷ The auditor would also be expected to examine Spire Missouri's compliance with the Commission's affiliate transaction rule and with its existing CAM.²¹⁸

3. Public Counsel does not indicate how much such an audit would cost. Rather, Public Counsel's witnesses at the hearing suggested that the parties could agree on a budget and then solicit bids from interested auditors. It was also suggested that Spire Missouri's shareholders should be responsible for some, or all, of the cost of the audit.²¹⁹

4. Another witness for Public Counsel explained that in the recent Westar/Great Plains Energy merger case, Great Plains Energy agreed to fund the first \$500,000 of the cost of a similar audit, with the balance of the audit costs being shared equally between shareholder and ratepayers.²²⁰ That amount might not be required in this case and Public Counsel's witness suggested the parties get together to agree upon a budget for the audit work.²²¹

5. Unlike Great Plains Energy in the merger case, Spire Missouri has not agreed to use shareholder funds to pay for an audit.²²²

6. The great majority of Spire Inc.'s expenses are allocated between regulated entities in multiple states, not with unregulated affiliates.²²³

7. One of the major reasons Public Counsel believes an outside audit is

²¹⁷ Tr. 1929.

²¹⁸ Tr. 1930.

²¹⁹ Tr. 1906.

²²⁰ Tr. 1981.

²²¹ Tr. 1985.

²²² *Reply Brief of Spire Missouri* (filed January 17, 2018), p. 39.

²²³ Tr. 1938.

needed is because of the problems it experienced in obtaining responses to discovery requests made to Spire Missouri in this case.²²⁴

Conclusions of Law

A. Subsection 393.140(5), RSMo, gives the Commission authority to “[e]xamine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business.” In addition, subsection (8) of that section of the statute gives the Commission power to “examine the accounts, books, contracts, records, documents and papers of any such corporation or person”

B. Similarly, subsection 386.710(2), RSMo, gives Public Counsel the power and duty to “represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”

C. Both Staff and Public Counsel have authority to audit Spire Missouri without the Commission having required the hiring of an outside auditor.

Decision

It is apparent that both Public Counsel and Spire Missouri are frustrated with the other regarding discovery efforts relating to affiliate transactions and cost allocations. The Commission does not need to assess blame for those problems in this order, and neither party brought their discovery concerns to the Commission’s attention by filing either a motion to compel, or a motion to protect against discovery, during the course of this case when those concerns could have been addressed and discovery facilitated.²²⁵

²²⁴ Tr. 1929.

²²⁵ Public Counsel did join, in essence, a motion to compel brought by Staff. At the discovery conference, however, the issues had been worked out by agreement of the parties. (Tr. 25-30). Further, the Regulatory Law Judge advised the parties that if discovery disputes needed to be addressed before a

Regardless, neither those discovery concerns, nor the other concerns described by Public Counsel, justify the expense necessary to undertake such an audit at this time.

It may be that a special audit would be helpful, and the working group the Commission will be establishing to examine Spire Missouri's CAM will be an appropriate forum for that discussion.

The Commission determines it is not necessary or appropriate to order Spire Missouri to hire an outside auditor to examine the company's affiliate transactions and allocations.

C. How Should the Commission Account for an Alleged Downward Trend in the Cost of Spire Shared Services?²²⁶

Findings of Fact

1. Spire Inc. has adopted a legal shared services entity – Spire Shared Services - to manage the cost of providing common and centralized services across its operating companies and business units.²²⁷

2. As part of his assessment of the operations of Spire Shared Services, Spire Missouri's witness, Thomas Flaherty, determined that the cost of operating Spire Shared Services was trending downward for the period 2013 through 2016.²²⁸ Specifically, he found that Spire Shared Services' Operations and Maintenance (O&M) billings to Spire declined by 3.3 percent annually during that period.²²⁹

3. Public Counsel proposed that the downward cost trend identified by

scheduled discovery conference, motions could be filed at any time and would be addressed as needed to make sure that deadlines could be met for filing testimony. (Tr. 30-31).

²²⁶ This issue was not identified as such by the parties in the list of issues filed before the hearing. Nevertheless, evidence about it was taken at the hearing, and it was addressed in the briefs of Spire Missouri and Public Counsel.

²²⁷ Ex. 46, Flaherty Direct, p. 13.

²²⁸ Ex. 46, Flaherty Direct, pp. 63-64.

²²⁹ Ex. 46, Flaherty Direct, p. 72.

Flaherty will be continued into 2017, and initially proposed a resulting reduction of O&M expense of \$4.9 million for LAC, and \$2.2 million for MGE.²³⁰

4. Mr. Flaherty responded to Public Counsel's proposed adjustment through his rebuttal testimony. First, he points out a calculation error in Public Counsel's proposed adjustment resulting from the improper application of after inflation adjusted dollars to a nominal cost base. Public Counsel's witness, Ara Azad recognized that error in her surrebuttal testimony and reduced the proposed reduction in O&M expense to \$2,062,266 to LAC and \$922,081 for MGE.²³¹

5. Flaherty's rebuttal testimony also challenges the basis for Public Counsel's entire proposed adjustment of O&M expenses. As he explains, the decline in shared services charges that he measured between 2013 and 2016 reflects the realization of significant synergies resulting from the merger of LAC and MGE into Spire Missouri, as well as the acquisition of Alagasco by Spire Inc.²³²

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

The Commission agrees with Mr. Flaherty that the initial savings resulting from these transactions cannot be assumed to continue at the same rate in 2017. Public Counsel's proposed adjustment is based merely on speculation and will not be adopted.

²³⁰ Ex. 401, Azad Direct, p. 43.

²³¹ Ex. 426, Azad Surrebuttal, p. 10.

²³² Ex. 47, Flaherty Rebuttal, p. 41.

VII. Gas Inventory Carrying Charges

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

Findings of Fact

1. Currently, MGE recovers the cost of maintaining its gas storage inventories in its base distribution rates. LAC, on the other hand, recovers these gas inventory costs through its PGA/ACA mechanism.²³³

2. Spire Missouri proposed adjustments to LAC's PGA/ACA balances and cost of service to reflect the addition of the average storage inventory costs in rate base, consistent with the approach taken for MGE.²³⁴

3. Rate base is the utility's plant-in-service at original cost. Rate base often includes other values, as well, such as capitalized construction expenses, including interest and carrying costs, and other charges that the Commission has allowed the utility to capitalize and include in rate base. Also included in rate base are tools and equipment, materials and supplies, fuel stocks, prepayments of expenses, and cash working capital.

4. In 2005, LAC began recovering gas inventory carrying charges at the short-term debt rate through the PGA/ACA process pursuant to a stipulation and agreement in a rate case proceeding, File No. GR-2005-0284.²³⁵ LAC continued to

²³³ Tr. 1445.

²³⁴ Ex. 6, Lobser Direct, pp. 17-18.

²³⁵ Ex. 205, Staff Report - Cost of Service, p. 62; Tr. 1437 and 1475.

recover the gas inventories associated with “cushion gas” in rate base.²³⁶

5. In Missouri, LAC is the only local distribution company collecting gas inventory carrying charges in this manner.²³⁷ By putting gas inventory carrying costs back into rate base, these costs for LAC will be consistent with both its sister division, MGE, and with all other local distribution companies in the state.

6. One other benefit of including gas inventory carrying costs in rate base is it reduces the complexity that results from reviewing the separate gas inventory carrying cost recovery mechanism in the annual ACA review process.²³⁸

7. Staff argues that the gas inventory carrying cost should be included in rate base but only if a comparable amount of short-term debt is included in the capital structure.²³⁹

8. Public Counsel opposes including natural gas storage costs in rate base arguing that these costs should remain tied to the PGA mechanism because they are more like gas costs than long-term debt.²⁴⁰

9. LAC’s revenue requirement would be increased by approximately \$8 million if gas inventory carrying charges are included in rate base. However, ratepayers will also have the benefit of reduced PGA rates. The effect on revenue requirement for MGE is approximately \$3.5 million; however, this is not an incremental cost as MGE was already recovering gas inventory carrying costs in rate base.²⁴¹

10. Other inventories, such as materials and supplies, are included in rate

²³⁶ Ex. 205, Staff Report - Cost of Service, p. 62.

²³⁷ Ex. 205, Staff Report - Cost of Service, p. 63; and Tr. 1428.

²³⁸ Ex. 205, Staff Report - Cost of Service, p. 62.

²³⁹ Ex. 227, Sommerer Rebuttal, p. 5. (The Commission has decided the issue of capital structure elsewhere in this order and determined that the capital structure should be that of the utility and should not include short-term debt.)

²⁴⁰ Ex. 410, Hyneman Rebuttal, pp. 6-16

²⁴¹ Tr. 1438; and Ex. 429, Gas Inventory Carrying Costs.

base using a 13-month average. A 13-month average helps create a more stable, long-term value for the asset.²⁴²

11. LAC's gas inventories have cycles whereby gas is injected and withdrawn at various times. However, some amount of gas to meet the reliability needs of LAC's distribution sales customers is maintained in storage year-round, regardless of the length of the injection and withdrawal cycle.²⁴³

12. Staff and LAC agree that if gas inventory carrying costs are included in rate base, the approximately \$4.1 million of carrying costs and associated line of credit fees currently included in the PGA mechanism for gas inventory carrying cost should be removed from the PGA to be consistent.²⁴⁴

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

The Commission has considered the effects on the ratepayers of removing these costs from the PGA and putting them back in rate base. The Commission has also considered the benefits of doing so and that PGA costs will be reduced potentially offsetting the rate base increases. In balancing the interests of the ratepayers and of the company, the Commission determines that it is just and reasonable to move LAC's gas storage costs out of the PGA tariff and back into base rates. By doing so, the Commission brings LAC back in line with MGE and every other natural gas local

²⁴² Ex. 205, Staff Report - Cost of Service, pp. 61-63.

²⁴³ Tr. 1517-1518.

²⁴⁴ Ex. 209, Staff Report - Class Cost of Service, p. 33; *Staff's Initial Post-Hearing Brief* (filed January 9, 2018), p. 44; and *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), p. 64.

distribution company in Missouri. Additionally, placing gas inventory carrying charges in rate base has the benefit of reducing the complexity resulting from the review of the separate gas inventory carrying cost mechanism in the PGA tariff and in the annual ACA review. The Commission also determines the approximately \$4.1 million of carrying costs and associated line of credit fees currently included in the PGA mechanism should also be removed from the PGA to maintain consistency.

VIII. Credit Card Processing Fees

- A. 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?**

Findings of Fact

1. Under LAC's current rate structure, customers who wish to pay their gas bill using a credit or debit card will be assessed a fee by the issuer of the credit card. MGE's customers who pay their bill using a credit or debit card do not pay such a fee. Instead, the credit card fee is paid by MGE and recovered through the rates charged to all customers. Spire Missouri proposes to change LAC's rate structure to match that of MGE, so that customers who pay their bill using a credit or debit card do not have to pay the credit card fee.²⁴⁵

2. Currently, approximately 30 percent of MGE's customers - who do not have to pay a fee - pay their bills using a credit or debit card. Approximately 11 percent of LAC's customers - who do have to pay a fee - pay their bills using a credit or debit card.²⁴⁶

²⁴⁵ Ex. 29, Noack Rebuttal, p. 4.

²⁴⁶ Ex. 250, Kunst Surrebuttal, p. 19.

3. Public Counsel opposes the shifting of costs from customers who use a credit or debit card to pay their bills to all customers, including those who pay their bills by other methods.²⁴⁷

4. If LAC customers no longer have to pay a fee to pay their bills with a credit or debit card it is anticipated that more LAC customers will pay their bills by that method.²⁴⁸

5. Spire Missouri will benefit if more customers use credit cards because once the payment is made, the credit card company would assume the risk of non-payment.²⁴⁹ Further, Spire Missouri would get its money sooner and without the risk of taking a bad check,²⁵⁰ and it might see a reduction in its level of bad debt.²⁵¹

6. While Spire Missouri has not proposed any cost adjustments in this case to recognize any savings from the change in cost recovery of credit and debit card fees,²⁵² any such benefits that do materialize would reduce the company's cost of service and ultimately benefit ratepayers in a future rate case.²⁵³

Conclusions of Law

A. Subsection 393.130.3, RSMo, forbids a gas corporation to give an “*undue or unreasonable preference or advantage*” to any “person, corporation or locality.”²⁵⁴ The statute implies that not every preference or advantage is “undue” or “unreasonable.”

²⁴⁷ Ex. 417, Conner Surrebuttal, p. 3.

²⁴⁸ Ex. 29, Noack Rebuttal, p. 5.

²⁴⁹ Ex. 29, Noack Rebuttal, p. 4.

²⁵⁰ Ex. 30, Noack Surrebuttal, p. 4.

²⁵¹ Tr. 1026-1027.

²⁵² Tr. 1023.

²⁵³ Tr. 1031.

²⁵⁴ Emphasis added.

Decision

Public Counsel's argument is based on the premise that those who cause a cost should pay for that cost. That is an appropriate maxim to consider when designing utility rates, but it is not an absolute limitation on the structure of such rates. No customer has a right to pay only their particular costs for receiving utility service, because the cost to serve each customer is different. If nothing else, each customer lives a greater or lesser distance from the interstate pipeline and requires a greater or lesser length of distribution system to obtain their gas supply. If each customer paid only their own individualized costs, Spire Missouri would have to establish thousands of different rates.

In this case, it is reasonable to allow Spire Missouri to recover fees resulting from the use of credit and debit cards to pay LAC bills from all LAC customers rather than from just those customers who use the credit or debit cards to pay their bills, just as it currently does for MGE customers. That policy does not result in an undue or unreasonable preference among customers because all customers can use the convenience of a credit or debit card if that tool is available to them. Ultimately, this is a policy question for which the Commission finds in favor of allowing the company to recover these costs from all ratepayers rather than imposing these costs on only some customers.

Having found that an amount should be included in LAC's base rates to account for fees incurred when customers pay by credit or debit card, the Commission must address the second portion of this issue.

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

Findings of Fact

1. Staff proposes that Spire Missouri be allowed to recover an annualized amount for credit and debit card processing fees for LAC based on the number of actual credit card payments that occurred for LAC during the 12 months ending June 30, 2017, multiplied by the known and measurable average per payment transaction fee incurred by MGE for the same period.²⁵⁵

2. Spire Missouri counters that if customers are allowed to make credit or debit card payments without having to pay a separate fee, then more customers will take advantage of that payment option. Spire Missouri would include an amount in LAC's base rates that assumes the number of such payments by LAC customers will increase by 30 percent the first year, 50 percent the second year, 75 percent the third year, reaching the level of such payments made by MGE customers in the fourth year. Spire Missouri would then average those costs over four years, and include \$1,246,619 in base rates to recover those costs.²⁵⁶

3. In 2009, the year before MGE took over payment for credit and debit card transaction fees, only four percent of residential customers paid their bills with credit or debit cards. By 2012, the rate of customers paying their bills with credit or debit cards had increased to 14 percent.²⁵⁷

4. No one can say with certainty how LAC customers will respond to the removal of a separate charge for the use of credit or debit cards to pay bills. In

²⁵⁵ Ex. 250, Kunst Surrebuttal, p. 19; and Ex. 202, Staff's Accounting Schedule 10, p. 7 of 11, indicates this adjustment amounts to \$573,853.

²⁵⁶ Ex. 30, Noack Surrebuttal, p. 5 and Schedule MRN-S1, as corrected at Tr. 1020.

²⁵⁷ Ex. 250, Kunst Surrebuttal, p. 20.

addition, an increase in the use of credit and debit cards could have as yet unknown effects on other utility costs and revenues.²⁵⁸ As a result, those costs in future years are not yet known and measurable.²⁵⁹

Conclusions of Law

A. Spire Missouri proposes that an adjustment be made to account for anticipated changes in customer usage of credit or debit cards in future years. The Missouri Court of Appeals has indicated:

the criteria used to determine whether a post-year event should be included in the analysis of the test year is whether the proposed adjustment is (1) 'known and measurable,' (2) promotes the proper relationship of investment, revenues and expenses, and (3) is representative of the conditions anticipated during the time the rates will be in effect.²⁶⁰

Decision

The Commission finds that the cost Spire Missouri will incur in future years resulting from the change in how costs are recovered for the use of credit or debit cards by LAC customers to pay their bills are not yet known and measurable. The Commission will utilize the level of costs calculated by Staff, which is based on actual costs incurred during the test year.

IX. Trackers

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

Findings of Fact

1. A "tracker" is a rate mechanism that tracks the amount of a specific cost of service item actually incurred by a utility and then compares that amount to the amount

²⁵⁸ Tr. 1035.

²⁵⁹ Ex. 250, Kunst Surrebuttal, p. 20.

²⁶⁰ *State ex rel. GTE North, Inc. v. Mo. Pub. Serv. Com'n*, 835 S.W.2d 356, 368 (Mo App. W.D. 1992).

of an item that is currently included in a utility's rate levels. Any over-recovery or under-recovery of the item's amount set in rates is then booked to a regulatory asset or regulatory liability account, and made eligible for recovery in the utility's next general rate case proceeding through an amortization to expense.²⁶¹

2. Spire Missouri requested authority for a tracker for its environmental compliance costs as they relate to 19 manufactured gas plant sites for which LAC and MGE may be a potential responsible party.²⁶²

3. During the next year, Spire Missouri may incur costs for federal, state, and local environmental compliance requirements for these gas plant sites. Spire Missouri expressed the intent to continue pursuing reimbursement for these costs from insurance companies and other potentially responsible third parties.²⁶³

4. Staff requested that Spire Missouri provide budgeted environmental costs for the period of 2015-2020, but Spire Missouri indicated there were no budgeted costs for expected environmental costs for MGE or LAC during that timeframe.²⁶⁴ Spire Missouri projects no environmental costs will be incurred during the next two years.²⁶⁵

5. Spire Missouri's requested environmental tracker would isolate for special ratemaking treatment a cost of service for which LAC and MGE are not currently incurring material costs without considering other costs that may decline and offset any environmental cost increases that may occur in the future.²⁶⁶

²⁶¹ Ex. 218, K. Lyons Rebuttal, p.2.

²⁶² Ex. 8, Lobser Surrebuttal, p.22.

²⁶³ Ex. 8, Lobser Surrebuttal, p.22

²⁶⁴ Ex. 218, K. Lyons Rebuttal, p.2. and Schedule KL-r1.

²⁶⁵ Ex. 218, K. Lyons Rebuttal, p.2. and Schedule KL-r1.

²⁶⁶ Ex. 218, K. Lyons Rebuttal, p.2

Conclusions of Law

A. Spire Missouri requests both LAC and MGE be authorized to track through a deferred accounting mechanism environmental costs incurred to comply with federal, state, or local environmental compliance requirements. Subsection 386.266.2, RSMo, grants the Commission the authority to approve the use of an adjustment mechanism by a gas utility in order to “reflect increases and decreases in its prudently incurred costs, whether capital or expense to comply with any federal, state, or local environmental law, regulation, or rule.”

B. In determining whether an environmental tracker should be granted, Spire Missouri bears the burden of proof.²⁶⁷

Decision

Although Spire Missouri bears the burden of proof, the company failed to present evidence to support the request for an environmental tracker. No evidence was presented on the historic level of environmental costs that would demonstrate a material level of costs or that either LAC or MGE will incur, or is likely to incur, significant environmental costs that would justify the extraordinary remedy of a tracker. The Commission denies Spire Missouri’s request for an environmental tracker.

X. Surveillance

Findings of Fact

1. Staff proposed a new format for surveillance data to allow more robust and separate earnings monitoring for LAC and MGE.²⁶⁸

2. Before this issue was taken up at hearing, Public Counsel, Spire Missouri,

²⁶⁷ *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

²⁶⁸ Ex. 205, Staff Report - Cost of Service, p. 6.

and Staff reached an agreement that Spire Missouri will provide to Staff and Public Counsel, surveillance documents for LAC and MGE separately on a quarterly basis. Those parties agreed that the information will be in the format set out by Staff.²⁶⁹

3. Public Counsel, Spire Missouri, and Staff also agreed that Spire Missouri would provide its general ledger and the Customer Care and Billing (CC&B) subledger on an annual basis, within 60 days of the close of Spire Missouri's fiscal year.

4. Additionally, as part of the agreement, Staff and Public Counsel may request copies of the general ledger and CC&B subledger on a more frequent basis than annually, if further support of the surveillance data is needed. Staff and Public Counsel agreed to first go to the company with requests to see the general ledger more frequently before making additional requests to the Commission. Spire Missouri agreed that it would provide the general ledger and CC&B subledger more frequently when requested or would provide secure access to the information.²⁷⁰

5. Public Counsel, Spire Missouri, and Staff also agreed that the information provided in the surveillance reports would be considered "confidential," and Staff agreed to follow all statutory provisions and Commission rules governing the use and protection of such confidential information.

6. The only remaining dispute on this issue involves the request by the MIEC to allow the parties to this rate case access to those same quarterly surveillance reports.

7. Staff and Public Counsel are the only parties to this case that are obligated to provide a regulatory function relating to Spire Missouri.

²⁶⁹ Tr. 1551-52 and 1569.

²⁷⁰ Tr. 1551-52.

8. The non-regulatory parties to this case are not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be contained in the surveillance reports.

Conclusions of Law

A. Staff and Public Counsel are restricted by law from divulging confidential surveillance information to any person and are subject to being guilty of a misdemeanor for violation of this law.²⁷¹

B. Information filed in accordance with the Commission's confidentiality rule is restricted from disclosure except to attorneys and experts. Specifically, Commission rule 4 CSR 240-2.135 states in part:

(6) Confidential information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

* * *

(13) All persons who have access to information under this rule shall keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission's staff or the Office of the Public Counsel from using confidential information obtained under this rule as the basis for additional investigations or complaints against any public utility.

C. Staff and Public Counsel are the only parties to this case that are obligated to provide a regulatory function relating to Spire Missouri.

D. The non-regulatory parties to this case are not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be

²⁷¹ Section 386.480, RSMo.

contained in the surveillance reports.

Decision

The Commission finds that it is reasonable to adopt the agreement of Spire Missouri, Staff, and Public Counsel regarding surveillance. The Commission will order Spire Missouri to provide Staff and Public Counsel the surveillance data in the format agreed upon and set forth in Attachment 1 of *Staff's Initial Post-Hearing Brief* on a quarterly basis. Additionally, the Commission will order Spire Missouri to provide Staff and Public Counsel its general ledger and CC&B subledger on an annual basis, within 60 days of the close of Spire Missouri's fiscal year, and to make both the ledger and subledger available more frequently in the event further support of the surveillance data is needed.

The Commission rejects the request of MIEC to provide surveillance reports to the nonregulatory parties to this case. Unlike the Staff and Public Counsel, the other parties, specifically the industrial consumers, are not obligated to provide any regulatory function relating to Spire Missouri. Further, the non-regulatory parties to this case are not subject to the same statutory prohibitions on the disclosure of sensitive business information that may be contained in those reports.

The Commission previously determined that the parties to this case had an interest sufficient to allow their participation and different from the interest of the general public. However, outside the context of a formal proceeding, the Commission cannot know that the interests of each of these parties will continue. Further, outside the context of a formal proceeding where the Commission has determined that a party has an interest in the case, enforcing the Commission's confidentiality rule becomes

impossible. Therefore, the Commission denies MIEC's request.

XI. Rate Design

- A. 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?**
- B. Reflective of the answer to part A, 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?**
- C. Weather Normalization Adjustment Rider (WNAR) Tariff – should a WNAR be adopted? If so, what modifications to Staff's proposed tariff should be adopted?**

Findings of Fact

1. After the Commission determines the amount of revenue necessary, it must decide how that revenue will be spread among Spire Missouri's customer classes via rates. The process of determining how Spire Missouri's non-gas revenue requirement will be allocated among the different customer classes is known as rate design.²⁷²

2. A non-unanimous stipulation and agreement with no objections is approved in this order and addresses the class cost of service and rate design issues with the exception of the residential customer charge and rate structure, and the revenue stabilization mechanism (RSM) or other tariffed rate adjustments.²⁷³

3. This case was unique in that it is the first instance that a RSM for weather

²⁷² Ex. 209, Staff Report - Class Cost of Service, p. 11.

²⁷³ *Nonunanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design* (filed December 20, 2017).

and/or conservation was proposed under Section 386.266.3, RSMo.

4. Spire Missouri seeks a RSM that would appear as a separate charge on the customer bills and would vary in response to changes in average customer usage.²⁷⁴

5. Spire Missouri argues that a RSM is an appropriate rate design because most fixed costs do not increase with increased usage, tying recovery of fixed costs to customer usage discourages the company from pursuing energy efficiency programs, and the volumetric rate sometimes has the unintended consequence of allowing over-recovery during periods of high usage. Spire Missouri further argues that a RSM would simplify rate designs and would provide residential and commercial customers with more stability in their bills.²⁷⁵

6. LAC and MGE confirmed that historically, they have fully recovered their operating expenses, interest payments, depreciation expense, and income taxes.²⁷⁶

7. A RSM is not needed by Spire Missouri due to difficulty meeting its revenue requirement without a RSM.²⁷⁷

8. It is difficult to design a RSM that will distinguish lower usage due to economic conditions versus lower usage due to conservation.²⁷⁸

9. The RSM proposed by Spire Missouri adjusts for *all changes* in average customer use, not only due to variations in weather and/or conservation.²⁷⁹ It would adjust rates for the effects of fuel switching, rate switching, new customers with non-

²⁷⁴ Ex. 238, Stahlman Rebuttal, p. 5.

²⁷⁵ Ex. 14, T. Lyons, Surrebuttal, pp. 3-4.

²⁷⁶ Ex. 753, Meyer Rebuttal, p. 22.

²⁷⁷ Tr. 2359.

²⁷⁸ Tr. 2326.

²⁷⁹ Ex. 238, Stahlman Rebuttal, p. 6; and Ex. 15, Weitzel Direct, p. 21..

average usage, and economic factors.²⁸⁰ For example, if Spire Missouri was to add low usage customers in place of current high usage customers, the RSM would treat their usage as too low and would make a rate adjustment allowing the company to recover the difference between those new customers' lower-than-average usage and an average customer's usage.²⁸¹ Additionally, if a large Small General Service (SGS) customer that acts more like a Large General Service (LGS) customer moved to an LGS rate, the overall average usage of the SGS class would decrease, the RSM would provide the company with additional compensation even though there was no change in actual total usage.²⁸²

10. The RSM proposed by the companies would not provide rate stability because of the numerous tariff changes per year. As proposed, the RSM would have up to four rate changes per year and an annual true-up.²⁸³

11. With a volumetric rate, the goal of the companies to increase revenues by selling more gas is misaligned with the goal of conservation for customers. This misalignment is best resolved by using Staff's climatic normal and weather normalization because annual natural gas usage is 95 percent correlated with annual heating degree days (HDD).²⁸⁴

12. Weather variations cause the greatest variations in revenues for the companies.²⁸⁵

13. Based on Staff's weather normalization regressions, a mechanism based

²⁸⁰ Ex. 238, Stahlman Rebuttal, p. 6.

²⁸¹ Ex. 238, Stahlman Rebuttal, p.8 and Sch. MLS-r-2; and Ex. 260, Stahlman Surrebuttal, p. 6.

²⁸² Ex. 238, Stahlman Rebuttal, p. 8; and Ex. 260, Stahlman Surrebuttal, p. 6.

²⁸³ Ex. 753, Meyer Rebuttal, p. 23.

²⁸⁴ Ex. 260, Stahlman Surrebuttal, pp. 4-5 and 9. (A "heating degree day" is a formula for capturing how hot or cold it is and is used in the weather normalization process of rate cases. Tr. 2434.)

²⁸⁵ Ex. 753, Meyer Rebuttal, p. 23.

solely on weather could account for over 97 percent of usage variation within a given year.²⁸⁶ Thus, a weather normalization adjustment rider would account for most of the variations due to weather.

14. During the hearing, Staff presented a sample tariff sheet with a Weather Normalization Adjustment Rider (WNAR) for Commission consideration.²⁸⁷ That sample tariff sheet, which was admitted into the record as Exhibit 281, included a method of adjusting rates based only on weather variations.²⁸⁸ No objection to the document was made, with the exception of proposed modifications submitted by Spire Missouri.²⁸⁹

15. Spire Missouri proposed that if the Commission were to reject its RSM and instead adopt the WNAR, three modifications should be made:

- Approve the WNAR for both LAC's and MGE's Residential and Small General Service Classes.
- Eliminate the \$0.01 per therm (or ccf) limit on adjustments that can be made. If the Commission determines that some limit is appropriate, it should be: (1) a limit only on **upward** adjustments and (2) that it be set at \$0.05 per therm or ccf. Additionally, provide that any adjustment amounts falling outside the \$0.05 limit would be deferred for recovery from customers in the next WNAR adjustment.
- Allow for at least three adjustments per year, including the annual required one, provided that there must be at least 60 days between each adjustment.

16. Changing the \$0.01 per therm (or ccf) limit on adjustments in the WNAR sample tariff to a limit of \$0.05 per therm (or ccf) on *upward* adjustments will ensure that any monthly increase for the average customer will not be so high as to provide

²⁸⁶ Ex. 238, Stahlman Rebuttal, p. 10.

²⁸⁷ Ex. 281, Sample WNAR Tariff Sheet.

²⁸⁸ Tr. 2433-2434.

²⁸⁹ Ex. 63, Affidavit Regarding Weather Normalization Adjustment Rider.

rate shock while providing customers with an opportunity to receive a larger monthly decrease if the weather is exceptionally cold.²⁹⁰ Additionally, by providing that any adjustments falling outside the \$0.05 limit will be deferred for recovery from customers in the next WNAR adjustment, the company is assured of receiving the appropriate revenue. Further, these changes are consistent with and can be administered in a similar manner to the PGA/ACA clauses in the LAC and MGE current tariffs.

17. The WNAR proposed in Exhibit 281 when modified according to Spire Missouri's second suggested modification set out above is a just and reasonable mechanism to account for weather variations.

18. With regard to the application of the WNAR to the Small General Services (SGS) customers, unlike residential customers, there is no established coefficient²⁹¹ for the relationship between weather and usage for SGS customers.²⁹² Additionally, "rate switchers"²⁹³ are a common occurrence for LAC.²⁹⁴ Larger customers are less weather sensitive than smaller customers because they use gas all year round for more than just heating.²⁹⁵ Without knowing the final makeup of the customers in the SGS class, it is impossible to calculate an unbiased coefficient for the SGS class. Therefore, it is not just and reasonable to adopt this proposed modification.

²⁹⁰ Ex. 63, Affidavit Regarding WNAR, p. 2.

²⁹¹ "Correlation is a measure of how the variations in one dataset are consistent with the variations in another. A correlation coefficient is a number between -1 and +1 calculated so as to represent the linear dependence of two variables or sets of data. Generally speaking, the closer a correlation coefficient is to 1, the more the datasets vary consistently with each other. If the correlation is negative, the variation in one dataset gets more positive as the variation in the other dataset gets more negative. Conventionally, if a correlation coefficient is greater than 0.7 then it is interpreted that there is a strong positive relationship." (Staff Report, p. 97, fn. 47.)

²⁹² Ex. 205, Staff Report - Cost of Service, pp. 97-98

²⁹³ Rate switching is when customers switch which rate class they will be served on during the test year or update period. (Ex. 205, Staff Report - Cost of Service, p. 97)

²⁹⁴ Ex. 205, Staff Report - Cost of Service, pp. 90-99.

²⁹⁵ Tr. 2569.

19. Staff's proposal limits the rate adjustments to two per year, thus including half of a heating and cooling season. This would account for customers who have limited seasonal usage (e.g. heat water only). A triannual filing as proposed by the company would cause one period to include either a majority of summer or of winter months where a majority of the changes would occur. For these reasons, this modification is not just and reasonable.

Conclusions of Law

A. The Commission's powers are "limited to those conferred by the statutes."²⁹⁶

B. A RSM is authorized by Subsection 386.266.3, RSMo, which provides:

Subject to the requirements of this section, any gas corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect the non-gas revenue effects of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both.

C. The statute authorizes an RSM that allows adjustments for variations due to *weather, conservation, or both*. The Commission cannot approve Spire Missouri's proposed RSM because the RSM would make adjustments for all variations in average usage per customer (such as, fuel switching, rate class switching, new customers with non-average usage, and economic factors) and not just those limited to weather or conservation.

Decision

Spire Missouri has not provided evidence that the RSM it proposed is needed for either revenue recovery (Spire Missouri has had no difficulty in meeting its revenue

²⁹⁶ *State ex. Rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. 1979).

requirement) or to incentivize conservation. Further, the RSM as proposed by Spire Missouri is not consistent with the statutory requirements that allow the Commission to approve a mechanism for adjusting rates outside of a general rate proceeding “to reflect the non-gas revenue effects of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both”²⁹⁷ because it would adjust rates for *all changes* in average customer use, not only due to variations in weather and/or conservation. However, because annual natural gas usage is 95 percent correlated with annual HDD, using Staff’s climatic normal and weather normalization in the form of the WNAR tariff would more accurately resolve the revenue stabilization issue because it is specifically linked to weather fluctuations.

The Commission further finds that the \$0.01 per therm (or ccf) limit on adjustments under the WNAR tariff as proposed by Staff should be eliminated but that a limit of \$0.05 per therm (or ccf) on upward adjustments should be included. This will ensure that any monthly increase for the average customer will not be so high as to create rate shock, while providing customers with an opportunity to receive a larger monthly decrease if the weather is exceptionally cold. The WNAR tariff shall also provide that any adjustments falling outside the \$0.05 limit will be deferred for recovery from customers in the next WNAR adjustment. Thus, this mechanism becomes similar to the PGA/ACA process with regard to adjustments and a true-up period.

The Commission rejects the other two modifications to the WNAR that Spire Missouri proposed. The Commission will not order the WNAR to apply to the SGS

²⁹⁷ Subsection 386.266.3, RSMo.

classes because no coefficient has been established for the relationship between weather and usage and “rate switchers” seem to be a common occurrence for LAC. It is often assumed that the larger customers are less weather sensitive than smaller customers. Without knowing the final makeup of the customers in the SGS class, it is impossible to calculate an unbiased coefficient for the SGS class. Additionally, the Commission rejects Spire Missouri’s request to allow three rate adjustments per year. Staff’s proposal limits the rate adjustments to two per year, thus including half of a heating and cooling season. This would account for customers who have limited seasonal usage (e.g. heat water only). A triannual filing as proposed by the company, however, would cause one period to include either a majority of summer or of winter months where a majority of the changes would occur. Thus, the triannual filing would make the customer billing more volatile than Staff’s proposal.

The Commission determines that a RSM as proposed by Spire Missouri is not necessary for the company because the utility is not having any difficulty meeting its revenue requirement and has not been shown to be a good mechanism to incentivize conservation. Further, the RSM as proposed is not authorized by the statute. Therefore, the Commission rejects Spire Missouri’s proposed RSM. However, the Commission also determines that a WNAR tariff is in the public interest and is just and reasonable as set out by the Staff’s example tariff with the modification of an upward adjustment limit and elimination of a downward adjustment limit.²⁹⁸ Spire Missouri shall include the WNAR tariff with a limit of \$0.05 per therm (or ccf) on upward adjustments and shall provide that any adjustments falling outside the \$0.05 limit will be deferred for recovery from customers in the next WNAR

²⁹⁸ Ex. 281, Sample WNAR Tariff Sheet.

adjustment.

D. What should the Residential customer charge be for LAC and MGE, and what should the transition rates be set at until October 1, 2018?

Findings of Fact

1. The customer charge is the set amount on every customer's bill that must be paid even if the customer uses no gas.

2. Customer-related costs are the minimum costs necessary to make gas service available to the customer, regardless of how much gas the customer uses. Examples include meter reading, billing, postage, customer account service, and a portion of the costs associated with required investment in a meter, the service line, and other billing costs. Customer-related costs are generally recovered through the customer charge while other costs are recovered through volumetric rates that vary with the amount of gas used.²⁹⁹

3. It is important to remember that determining an appropriate customer charge is a question of rate design, not a question of the company's revenue requirement. That means any increase in the company's customer charge would be accompanied by a decrease in volumetric rates so that, in theory, the company recovers the same amount of revenue.

4. In actual practice, because the amount collected from volumetric rates varies with the amount of gas used, the company will collect less money from volumetric rates when customers use less gas. Thus, for example, in the summer, when customers are using less gas for heating, the company runs the risk of collecting

²⁹⁹ Ex. 505, Hyman Rebuttal, pp. 9-10.

less revenue. However, a higher customer charge also creates the problem of customers dropping off the system seasonally.

5. A lower customer charge coupled with a volumetric rate encourages efficient consumption because higher usage causes higher bills.³⁰⁰

6. A lower customer charge can also help low-income customers, because they tend to use less natural gas than the general body of residential customers.³⁰¹

7. LAC's current residential rate consists of a customer charge of \$19.50 and 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; \$0.31290 per therm for the first 30 therms in summer; and \$0.15297 for all therms over 30 in the summer. LAC's current "weather mitigated" rates result in a flat customer charge of \$47.01 (\$19.50 plus \$0.91686 per therm) for virtually every residential customer in the winter months.³⁰²

8. MGE's current residential rate consists of a \$23.00 customer charge and a flat volumetric rate of \$0.07380 per ccf used.³⁰³

9. A class cost of service study (CCOS) provides a basis for allocating and/or assigning to the customer classes a utility's cost of providing service to all customer classes in a manner that best reflects cost causation.³⁰⁴

10. Staff performed a separate CCOS for LAC and MGE.³⁰⁵ Staff's CCOS for both LAC and MGE were primarily based on cost.³⁰⁶ Staff's class cost of service

³⁰⁰ Ex. 505, Hyman Rebuttal, pp. 10, 11, and 13-15.

³⁰¹ Ex. 503, Kroll Direct, pp. 21-23.

³⁰² Ex. 209, Staff Report - Class Cost of Service, p. 20.

³⁰³ Ex. 209, Staff Report - Class Cost of Service, p. 20.

³⁰⁴ Ex. 209, Staff Report - Class Cost of Service, p. 2.

³⁰⁵ Ex. 209, Staff Report - Class Cost of Service, p. 1.

³⁰⁶ Ex. 236, R. Kliethermes Rebuttal, p. 6.

studies showed that on a strict cost allocation basis, the customer charge should be approximately \$26.00 per customer for LAC and \$17.01 for MGE.³⁰⁷

11. Staff included the following costs in the calculation of the residential customer charge:

- Distribution - services (investment and expenses)
- Distribution - meters and regulators (investment and expenses)
- Distribution - customer installations
- Customer deposits
- Customer billing expenses
- Uncollectible accounts (write-offs)
- Customer service & information expenses
- Portion of income taxes³⁰⁸

12. For LAC, Staff recommended an increased customer charge of \$26.00 and recommended charging customers for all therms including therms used after 30.³⁰⁹ Alternatively, Staff presented an inclining block residential rate design for LAC with a \$26.00 customer charge and a volumetric charge per therm to increase for usage beyond 50 therms.³¹⁰ As a further alternative to decrease the customer charge, Staff presented a design for LAC consisting of a customer charge of \$22.00 plus a flat volumetric rate, and an alternative inclining block residential rate design with a \$22.00 customer charge and a volumetric charge per therm to increase for usage beyond 50 therms.³¹¹

13. For MGE, Staff recommended a customer charge of \$20.00, plus a flat volumetric rate per ccf.³¹² Alternatively, Staff presented an inclining block residential

³⁰⁷ Ex. 209, Staff Report - Class Cost of Service, p. 20.

³⁰⁸ Ex. 209, Staff Report - Class Cost of Service, p. 20.

³⁰⁹ Ex. 209, Staff Report - Class Cost of Service, pp. 14 and 20.

³¹⁰ Ex. 209, Staff Report - Class Cost of Service, p. 24.

³¹¹ Ex. 284, Inclining Block Rate Document.

³¹² At the time Staff filed its Class Cost of Service Report, the volumetric rate was calculated to be \$0.13859 per ccf. However, the volumetric component of the rates for both MGE and LAC will change based on the revenue requirement outcome of these cases and the billing determinants stipulated to after

rate design for MGE with a \$20.00 customer charge and a volumetric charge per ccf to increase for usage beyond 50 ccf.³¹³

14. Although Spire Missouri filed a CCOS, its proposed residential customer charge is not really based on its study. Rather, those proposed customer charges were designed to be in alignment with the RSM proposal that also included proposed transition rates from March to October 2018.³¹⁴

15. Staff indicated that there was no “reasonable reason to delay implementation of ongoing rates.”³¹⁵

16. Public Counsel proposed a customer charge of \$14.00 for both LAC and MGE.³¹⁶

17. DE supported lower customer charges, but did not provide evidence related to a specific charge.³¹⁷ DE also supported a lower tail-block rate for LAC customers during the winter. This rate would apply only to the upper five percent of usage during the winter to decrease the effects of a cold winter.³¹⁸

18. Raising the fixed customer charge to recover all of the fixed costs, such as Staff’s proposed \$26.00 customer charge for LAC, can cause rate shock for customers least able to afford the service.³¹⁹

19. An inclining block rate is a volumetric rate where the customers pay more per unit of energy consumed at the higher levels of usage. An inclining block rate can

the filing of Staff’s CCOS Report. (Ex. 209, p. 14).

³¹³ Ex. 209, Staff Report - Class Cost of Service, p. 23.

³¹⁴ Ex. 236, R. Kliethermes Rebuttal, p. 5; and Ex. 18, Weitzel Surrebuttal, pp. 17-18.

³¹⁵ Ex. 236, R. Kliethermes Rebuttal, p. 8

³¹⁶ Ex. 249, R. Kliethermes Surrebuttal, p. 8.

³¹⁷ Ex. 249, R. Kliethermes Surrebuttal, p. 8.

³¹⁸ Ex. 505, Hyman Rebuttal, pp. 16-17 and 23.

³¹⁹ Ex. 505, Hyman Rebuttal, pp. 17-18.

encourage energy efficiency.³²⁰

20. LAC and MGE customers' usage is very seasonal with 90 percent of the customers using less than 20 therms in the summer months.³²¹ Further, approximately 95 percent of the change in residential customer usage is due to weather.³²²

21. Customers are concerned about higher customer charges as evidenced by the numerous oral and written comments received at local public hearings saying the customer charges were too high.³²³

22. The Commission is not bound to set the customer charges based solely on the details of the cost of service studies. The Commission must also consider the public policy implications of changing the existing customer charges. There are strong public policy considerations in favor of lower customer charges.

23. Residential customers should have as much control over the amount of their bills as possible so that they can reduce their monthly expenses by using less gas, either for economic reasons or because of a general desire to conserve. A lower customer charge gives the customer the opportunity to conserve where appropriate. However, during the winter, conservation becomes much more difficult because the majority of the usage is for heating the home. A level block rate will give the customers some stability during the winter when they are less able to conserve. An inclining block rate in the summer coupled with a lower customer charge will give the customers the ability to achieve savings through conservation during the time when their usage is not critical to heating the home.

³²⁰ Ex. 505, Hyman Rebuttal, pp. 17-18.

³²¹ Ex. 260, Stahlman Surrebuttal, p. 8.

³²² Ex. 260, Stahlman Surrebuttal, p. 9.

³²³ Ex. 505, Hyman Rebuttal, pp. 4-8; and Tr. 2359-2360.

Conclusions of Law

The Commission makes no additional conclusions of law for this issue.

Decision

The Commission finds that Spire Missouri's customer charges for LAC should be \$22.00 and for MGE should be \$20.00 with an inclining block rate in the summer and a level block rate in the winter for both. An inclining block rate in the summer will incentivize conservation when the customers have the most control over usage not necessary to heat their homes. Additionally, the level block in the winter will provide stabilization for customers during the winter months when they have more difficulty paying increased bills in order to heat their homes. These rates shall be calculated based on the agreed to billing determinants and the revenue requirement set out in this order in the method set out in Staff Exhibit 284. The Commission sets no transition rates.

XII. Pensions, OPEBs and SERP

- A. What is the appropriate amount of pension expense to include in base rates?**

Findings of Fact

1. This issue deals with the amount of funding or pension expense for MGE and LAC's pension assets that should be reflected in rates.

2. Spire Missouri is proposing to include \$31 million in rates for contributions to the LAC pension plan.³²⁴ This is designed to fund 90 percent of pension liabilities for LAC.³²⁵ Public Counsel and the Union support this level of funding.³²⁶

3. Pension Benefit Guarantee Premiums (PBGC) is a federal agency created by the Employee Retirement Income Security Act (ERISA) that provides a form of insurance to protect pension benefits in the event of a default by a sponsor of a pension plan.³²⁷

4. Funding of pension liabilities at the level proposed by Spire Missouri will lower the PBGC premiums in the future and prevent further significant increase in the pension asset.³²⁸ Each \$1,000 paid in pension expense by LAC will reduce PBGC premiums by \$34.00.³²⁹

5. Staff recommends funding LAC's pension at the 80 percent ERISA minimum level which is \$29 million for LAC.³³⁰

6. ERISA minimums are premised on pension trusts earning a sufficient amount of return on investment in the future, thus eliminating the need for additional funding.³³¹

7. Spire Missouri, Staff, and Public Counsel agree that the pension expense for MGE should be \$5.5 million.³³²

³²⁴ Ex. 20, Buck Rebuttal, p. 9.

³²⁵ Ex. 20, Buck Rebuttal, p. 9.

³²⁶ *Initial Brief of the Office of the Public Counsel*, p. 37.

³²⁷ Ex. 231, Young Rebuttal, p. 4.

³²⁸ Ex. 263, Young Surrebuttal, p. 2.

³²⁹ Ex. 231, Young Rebuttal, p. 6.

³³⁰ Ex. 231, Young Rebuttal, p. 4.

³³¹ Ex. 231, Young Rebuttal, p. 2.

³³² Ex. 20, Buck Rebuttal, p. 11; *Staff's Initial Post-Hearing Brief* (filed January 9, 2018), p. 65; and *Office of the Public Counsel's Reply Brief* (filed January 17, 2018), p. 26.

8. Public Counsel also requests that the Commission order a strategic financing review of the pension and benefit plans.³³³

9. LAC's pension plans already receive much "scrutiny and utilize some of the nations' leading investment advisory and actuarial firms to assist it in planning."³³⁴

10. In the past, the Commission has investigated the pension plan practices of all the utilities in the state and found no shortcomings with regard to LAC's pensions.³³⁵

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

The pension asset of LAC has grown quite large and a 90 percent funding level would lower PGCB premiums in the future and prevent the regulatory asset from increasing in size substantially. However, a 90 percent funding level would require an additional \$2 million in pension expense, thus, raising rates. Additionally, the ERISA minimums are calculated to take into consideration growth of the funds through returns, thus, additional investment may not be needed. In balancing the needs of the ratepayers to keep rates from increasing, with the need Spire Missouri to fulfill its pension obligations, the Commission determines that an 80 percent ERISA funding level (\$29 million) for LAC is the most just and reasonable level.

With regard to MGE's pension asset funding, Spire Missouri, Staff, and Public Counsel reached consensus that the funding level should be \$5.5 million. Having reviewed the evidence before it, the Commission determines that \$5.5 million is a just

³³³ Ex. 408, Pitts Direct, p. 17.

³³⁴ Ex. 20, Buck Rebuttal, p. 11; and Tr. 2087.

³³⁵ Ex. 20, Buck Rebuttal, p. 11.

and reasonable funding level for MGE's pension expense.

Public Counsel also requested that the Commission order a strategic financing review of the pension and benefit plans. The Commission was not persuaded that such a review is necessary since Spire Missouri's pension and benefit plans already receive scrutiny and utilize investment advisory and actuarial firms to assist it in planning. Additionally, in the past the Commission has investigated the pension plan practices of all the utilities in the state and found no shortcomings with regard to LAC's pensions. The Commission will not order a review of the pension and benefit plans.

B. What is the appropriate amount of the LAC and MGE pension assets?

Findings of Fact

1. This issue is about what amount to use for regulatory purposes as the total of LAC's prepaid pension asset and MGE's prepaid pension liability.

2. The pension asset is a regulatory asset that represents an amount owed by ratepayers for LAC's and MGE's contributions to the company pension funds that have not been recovered in rates.³³⁶ A pension liability is the opposite. That is, a liability is created when the company has collected more from ratepayers than it has paid (with regard to the authorized regulatory payments) into the pension funds.

3. Staff, MGE, and Public Counsel agree that MGE currently has a pension *liability* of \$28.4 million.³³⁷ With regard to LAC, however, there is not agreement.

4. The prepaid pension asset is equal to the difference between cash

³³⁶ Ex. 20, Buck Rebuttal, p. 9.

³³⁷ Ex. 286, Staff True-Up Accounting Schedule 02 — MGE, p. 1.

contributions to the pension trust and cash collected in rates since October 1, 1987.³³⁸ The LAC pension asset amount has not been fully litigated for over 20 years. Staff and LAC agree that approximately \$131.4 million has accumulated in LAC's pension asset since 1996.³³⁹ However, the disagreement comes down to how much customers paid in rates for pension expense between 1990 and 1994 for both FAS 87 and FAS 88 accounts, and from 1994 to 1996 for the FAS 88 account.

5. LAC argues that between the time it adopted FAS 87 in 1987 and its rate case in 1994, its pension asset accumulated \$19.8 million; and between that 1994 rate case and its 1996 rate case an additional \$9.0 million accumulated under FAS 88. Thus, LAC argues that its prepaid pension asset is \$28.8 million more than Staff's position.

6. Staff's witness, Matthew Young, did a thorough and credible review of prior testimony and workpapers in LAC rate cases during the relevant period.³⁴⁰ The Commission adopts many of Mr. Young's findings as follows:

a. Pension expense is an item that is examined and adjusted in every large rate case.³⁴¹ Until the current case, however, LAC had not written testimony responsive to Staff's adjustment to LAC's proposed pre-1994 prepaid pension asset.³⁴²

b. LAC has not sought to include a pension asset in its accounting schedules for rate base in any rate case since 1987.³⁴³

³³⁸ Tr. 2074.

³³⁹ Ex. 285, Staff True-Up Accounting Schedule 02 – LAC, p. 1.

³⁴⁰ Ex. 263, Young Surrebuttal, p. 9.

³⁴¹ Ex. 263, Young Surrebuttal, p. 13.

³⁴² Ex. 263, Young Surrebuttal, p. 11.

³⁴³ Ex. 263, Young Surrebuttal, p. 8.

c. In LAC's various rate cases between October 1, 1987 and September 1, 1994, neither LAC nor Staff accounting schedules itemized a pension asset in rate base in their accounting schedules.³⁴⁴

d. A prepaid pension asset was first proposed to be included in rate base by LAC in Case No. GR-96-193. In that case, LAC witness Waltermire supported a prepaid pension asset in LAC's rate base estimated at April 30, 1996, to include accrued pension liability and prepaid pension assets account balances for all Company sponsored retirement plans (excluding the SERP and Directors' plans) that had occurred since September 1, 1994 (the effective date of tariffs in Case No. GR-94-220).³⁴⁵

e. LAC did not seek to include in its rate base all costs deferred after its 1987 implementation of FAS 87 for financial reporting purposes.³⁴⁶

f. Based on the testimony presented in Case No. GR-96-193, including Staff witness Gibbs's direct testimony, both Staff and LAC were in agreement on the methodology to calculate the prepaid pension asset created by the adoption of FAS 87.³⁴⁷

g. LAC changed the methodology it used to calculate the rate base effect of the prepaid pension asset in its next rate case, Case No. GR-98-374. This is shown in the direct testimony in that case of LAC witness Fallert (then employed as the Controller of LAC) implying that LAC no longer calculated its

³⁴⁴ Ex. 263, Young Surrebuttal, p. 8.

³⁴⁵ Ex. 263, Young Surrebuttal, p. 9.

³⁴⁶ Ex. 263, Young Surrebuttal, p. 8-9.

³⁴⁷ Ex. 263, Young Surrebuttal, p. 9.

pension asset beginning on September 1, 1994.³⁴⁸

h. In LAC's next rate case, Case No. GR-98-374, the direct testimony of Staff witness Traxler shows that Staff continued to calculate LAC's prepaid pension asset beginning with September 1, 1994.³⁴⁹

i. LAC changed the methodology it used to calculate the rate base effect of the prepaid pension asset in Case No. GR-98-374. However, Staff has maintained the adjustment to the booked asset in every LAC rate case since Case No. GR-94-220.³⁵⁰

j. LAC adopted FAS 87 for financial reporting purposes in 1987. However, FAS 87 was not used for regulatory purposes prior to the effective date of rates in Case No. GR-94-220.³⁵¹

k. Additionally, in Case No. GR-92-165, LAC's rate case immediately prior to the 1994 case, both Staff and LAC filed direct testimony supporting the use of cash contributions to set pension expense. Since Staff and LAC had the same methodology, and other parties did not present a different position, it is likely rates were set using the current level of cash contribution instead of FAS 87 expense.³⁵²

l. The testimony of Staff witness Gibbs in Case No. GR-96-193, recognizing the recording of FAS 88 gains during the period under review, refutes LAC's contention that during the period prior to September 1, 1994, FAS

³⁴⁸ Ex. 263, Young Surrebuttal, pp. 10-11; citing, Fallert Direct, p. 10, Ins. 16-23, in Case No. GR-98-374.

³⁴⁹ Ex. 263, Young Surrebuttal, pp. 10-11; citing, Traxler Direct, p. 22, Ins. 22 -23 through p. 23, Ins. 1-8, in Case No. GR-98-374.

³⁵⁰ Ex. 263, Young Surrebuttal, p. 11.

³⁵¹ Ex. 205, Staff Report - Cost of Service, p. 67.

³⁵² Ex. 263, Young Surrebuttal, pp. 13-14.

88 was also used for setting rates.³⁵³

7. The Commission adopted the Stipulation and Agreement in Case No. GR-94-220 as a resolution of all issues and permitted LAC to book its pension and OPEB expenses to FAS 87 and FAS 106 accounts, respectively.³⁵⁴

8. The Commission's *Report and Order* in Case No. GR-94-220 authorized the deferral of OPEB expenses, SERP, and Directors' pension plan expenses described in paragraphs 8 and 9 of the Stipulation and Agreement in that case. However, the *Report and Order* is silent as to a deferral of any FAS 87 or FAS 88 expenses.³⁵⁵

9. The Stipulation and Agreement in Case No. GR-94-220 states that the parties agree to reflect the adoption by LAC of FAS 87 for all qualified pension plans and that the Commission approval of this Stipulation and Agreement shall constitute all necessary authorization for LAC to utilize FAS 87 and FAS 106 for ratemaking purposes.³⁵⁶

10. Prior to September 1, 1996, when rates from Case No. GR-96-193 became effective, accumulated pension assets in FAS 88 were not included in LAC's cost of service.³⁵⁷

11. Public Counsel agrees with Staff's calculation of the prepaid pension asset, with the exception that it believes Laclede's contributions in excess of the

³⁵³ Ex. 263, Young Surrebuttal, pp. 15-16.

³⁵⁴ In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 135.

³⁵⁵ In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 140.

³⁵⁶ In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 135, *Report and Order*, Attachment A, para. 4.

³⁵⁷ Ex. 205, Staff Report - Cost of Service, p. 67.

minimum required by ERISA should not be included in rate base. Public Counsel argues that LAC has overstated its ERISA minimums and, therefore, should not be allowed to use an exception in a previous stipulation and agreement to over-contribute to the pension asset. Thus, Public Counsel recommends a reduction in the value of the prepaid pension asset of approximately \$54 million.³⁵⁸

12. Public Counsel's witness admitted that his calculations of the contributions in excess of ERISA minimums were possibly overstated.³⁵⁹

13. LAC has a collective bargaining agreement with its Union employees that it will offer those employees the option of a lump sum payment at retirement.³⁶⁰

14. LAC has made contributions in excess of ERISA minimums. These contributions were made to avoid benefit restrictions of the Pension Protection Act and to avoid variable premiums of PBGC.³⁶¹

Conclusions of Law

A. Paragraph 7 of the Commission-approved Stipulation and Agreement from LAC's rate case, Case No. GR-2013-0171, states that LAC shall be allowed rate recovery for contributions it will make to avoid benefit restrictions specified by the Pension Protection Act of 2006 (PPA).³⁶² LAC contributed funds sufficient to avoid the restrictions outlined in the PPA.

B. Additionally, the Commission-approved Stipulation and Agreement in LAC's rate case, Case No. GR-2013-0171, also states that LAC can include in the

³⁵⁸ Ex. 413, Pitts Rebuttal, p. 4.

³⁵⁹ Ex. 413, Pitts Rebuttal, p. 4.

³⁶⁰ Tr. 2080.

³⁶¹ Tr. 2080-2081.

³⁶² Ex. 263, Young Surrebuttal, p. 8; Ex. 413, Pitts Rebuttal, p. 4; Ex. 20, Glen Buck Rebuttal, Schedule GWB-R2, p. 8; and Tr. 2084 and 2096.

pension asset contributions in excess of ERISA minimums as they were made to avoid variable premiums from the PBGC.³⁶³

C. One benefit restriction is the inability to offer a lump sum payment option to retirees. In order to avoid this restriction, the pension fund has to be funded by at least 80 percent of ERISA minimums.³⁶⁴

D. The Commission's *Report and Order* in Case No. GR-94-220 approved a Stipulation and Agreement as a "resolution of all issues" to that case.³⁶⁵ The *Report and Order* stated in relevant part:

3. That Laclede Gas Company be permitted to book its pension and OPEB expenses to FAS 87 and 106 accounts respectively, and shall fund its OPEB accounts in accordance with Section 386.315, RSMo Supp. 1994.

4. That Laclede Gas Company be permitted to defer and book to Account 186 the OPEB expenses particularly described in paragraph 8 of the Stipulation and Agreement approved by this Report and Order.

5. That Laclede Gas Company be permitted to defer and book to Account 186 the expenses associated with its SERP and Directors' pension plans particularly described in paragraph 9 of the Stipulation and Agreement approved by this Report and Order.

6. That Laclede Gas Company be permitted to defer and book to Account 186 the expenses associated with line and main replacement particularly described in paragraph 11 of the Stipulation and Agreement approved by this Report and Order.

7. That Laclede Gas Company be permitted to defer and book to Account 186 the expenses associated with its former manufactured gas operations particularly described in paragraph 12 of the Stipulation and Agreement approved by this Report and Order.³⁶⁶

³⁶³ *Order Approving Unanimous Stipulation and Agreement*, File No. GR-2013-0171 (issued June 26, 2013), attachment *Stipulation and Agreement*, para. 7; See also, Ex. 20, Glen Buck Rebuttal, Schedule GWB-R2.

³⁶⁴ e.g. 26 USC 436 (d)(5) and (3)(a) and 29 USC 1056 (g)(3)(A) and (C)(I); See also, 26 C.F.R. § 1.436-1.

³⁶⁵ In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 139.

³⁶⁶ In the Matter of Laclede Gas Company's Tariff Sheets Designed to Increase Rates for Gas Service Provided to Customers in the Missouri Service Area of the Company, Case No. GR-94-220 (decided August 22, 1994), Volume 3 MPSC 3d, 139-140.

Decision

The Commission was persuaded by Staff's thoughtful and logical review of the supporting testimony from the period at issue as set out in the findings above. That testimony shows that parties were using a cash contribution method, and not FAS 87 or FAS 88 accrual accounting prior to September 1, 1994, the effective date of Case No. GR-94-220. The recording of the difference between LAC's pension fund contributions and the amount collected in rates began at September 1, 1994 for ratemaking purposes. The *Report and Order* from GR-94-220 supports Staff's position. That *Report and Order* was a resolution of all issues in the case and authorized LAC to book its pension and OPEB expenses to FAS 87 and 106 accounts; however, the *Report and Order* is silent to a deferral of any FAS 87 or FAS 88 expenses. The Commission finds the sworn testimony of LAC and Staff witnesses that were knowledgeable of the issue during the era in question to be more persuasive than the conclusions drawn by LAC more than 20 years later even those conclusions drawn by its witness that was involved in some of the earlier cases.

Further, Public Counsel's evidence quantifying excess contributions was not reliable. Therefore, the Commission denies Public Counsel's adjustment for pension contributions over the ERISA minimums.

After reviewing the evidence, the Commission determines that the amount of MGE's pension *liability* is \$28.4 million.³⁶⁷ The Commission further determines that the appropriate amount of the LAC prepaid pension asset is approximately \$131.4 million

³⁶⁷ Ex. 296, Staff True-Up Accounting Schedule 02 — MGE, p. 1.

as set out by Staff.³⁶⁸

C. How should the pension regulatory assets be amortized?

Findings of Fact

1. Staff recommended an eight-year amortization of the prepaid pension asset while the company originally proposed a ten-year amortization.

2. LAC indicated that it was not opposed to Staff's proposal.³⁶⁹

3. Public Counsel originally proposed a twenty-year amortization³⁷⁰ but has since agreed to the eight-year amortization as well.³⁷¹

4. Thus, the only parties to file testimony on this issue agree to an eight-year amortization period.

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

The parties filing testimony on this issue have reached consensus that the prepaid pension asset should be amortized over eight years. The Commission finds that eight years is a reasonable amount of time to amortize the pension regulatory asset.

³⁶⁸ Ex. 297, Staff True-Up Accounting Schedule 02 – LAC, p. 1.

³⁶⁹ Ex. 20, Buck Rebuttal, p. 9.

³⁷⁰ Ex. 408, Pitts Direct, p. 17.

³⁷¹ *Initial Brief of the Office of the Public Counsel*, p. 39.

D. What is the appropriate amount of SERP expense to include in base rates?

Findings of Fact

1. The Supplemental Executive Retirement Plan (SERP) is an employee benefit fund for highly compensated employees and employees that defer a portion of their income as set out by Section 415 of the Internal Revenue Code.³⁷²

2. SERP applies to executives and non-executive employees of Spire Missouri.³⁷³

3. Staff has calculated the SERP expense as \$468,731 based on a three-year average.³⁷⁴ Spire Missouri is in agreement with that amount.³⁷⁵

4. Public Counsel's position is that a normalized annual SERP payment of \$24,097 is the appropriate amount to include for SERP expense.³⁷⁶

5. Public Counsel argued that lump sum payments are erratic, nonrecurring, and difficult to predict and thus are not known and measurable.³⁷⁷

6. Upon retirement, Spire employees receiving SERP have the option of an annuity or a lump sum SERP payment. With only one or two exceptions, most employees choose the lump sum payment.³⁷⁸

7. Staff examined actual historical data for SERP payments from 2010 through 2016. The historical data shows that lump sum payments can be reasonably expected to recur.³⁷⁹

³⁷² 26 U.S.C.A. § 415; and Tr. 2215.

³⁷³ Tr. 2215.

³⁷⁴ Ex. 296, Staff Updated True-Up Accounting Schedules-LAC; and Ex. 297, Staff Updated True-Up Accounting Schedules-MGE.

³⁷⁵ Tr. 2219.

³⁷⁶ Ex. 425, Hyneman Surrebuttal, p. 38.

³⁷⁷ Ex. 425, Hyneman Surrebuttal, p. 33-36.

³⁷⁸ Tr. 2213-2214.

8. Staff excluded one lump sum payment from its averages because this SERP payment was for the departure of a CEO and was unusually large. The departure of a CEO, and thus, a payment this large, is not expected to recur.³⁸⁰

9. Further, when a historical average is used, with the exclusion of any special anomalies, the size of lump sum SERP payments is not volatile.³⁸¹

10. Lump sum SERP payments for Spire Missouri are known and measurable.

Conclusions of Law

A. The Missouri Court of Appeals has stated:

the criteria used to determine whether a post-year event should be included in the analysis of the test year is whether the proposed adjustment is (1) 'known and measurable,' (2) promotes the proper relationship of investment, revenues and expenses, and (3) is representative of the conditions anticipated during the time the rates will be in effect.³⁸²

Decision

Historical data shows that with regard to Spire Missouri's SERP expense, lump-sum payments can be reasonably expected to recur. In fact, with only a few exceptions, retiring employees opt to receive their SERP benefits by a lump sum payment instead of by annuity. Further, when considering the historical averages, and excluding the one anomaly of an especially high payment, the size of the lump sum SERP payments is not volatile and is known and measurable. The Commission finds that the appropriate amount of SERP expense is \$468,731 as calculated by Staff.

³⁷⁹ Ex. 263, Young Surrebuttal, p. 21.

³⁸⁰ Ex. 263, Young Surrebuttal, p. 21.

³⁸¹ Ex. 263, Young Surrebuttal, pp. 21-22.

³⁸² *State ex rel. GTE North, Inc. v. Mo. Pub. Serv. Com'n*, 835 S.W.2d 356, 368 (Mo App. W.D. 1992).

E. Should SERP payments be capitalized to plant accounts?

Findings of Fact

1. Public Counsel recommends an adjustment of \$461,279 from plant-in-service to remove what it believes are capitalized SERP payments from the test year.³⁸³

2. Public Counsel argues that because SERP is accounted for on a pay-as-you-go accounting method and not an accrual method, it does not have any service cost component; and, it is inappropriate to capitalize any portion of SERP expense.³⁸⁴

3. Spire accounts for its SERP plan under Generally Accepted Accounting Principles (GAAP), Financial Accounting Standards (FAS 87) for financial reporting.³⁸⁵

4. FAS 87 allows for the capitalization of the service cost component of FAS 87 SERP expense.³⁸⁶

5. A service cost is the amount of cost that is booked in the current rate period for obligations that will be paid in future periods.³⁸⁷

6. Spire capitalizes its accrued SERP costs in accordance with the Uniform System of Accounts (USOA) and in accordance FAS 87. No payments are being capitalized.³⁸⁸

Conclusions of Law

A. Investor-owned natural gas utilities under this Commission's jurisdiction are obligated to use the Uniform System of Accounts (USOA) prescribed by the Federal Energy Regulatory Commission (FERC).³⁸⁹

³⁸³ Ex. 410, Hyneman Rebuttal, p. 28; and *Initial Brief of the Office of the Public Counsel* (filed January 9, 2018), p. 41.

³⁸⁴ Ex 403, Hyneman Direct, p. 16.

³⁸⁵ Tr. 2211.

³⁸⁶ Tr. 2211-2212.

³⁸⁷ Tr. 2213.

³⁸⁸ Ex. 21, Buck Surrebuttal, p. 18.

B. This Commission has authorized the use of FAS 87 for Laclede Gas Company and MGE and the recording of costs associated with company sponsored employee pension plans for ratemaking purposes.³⁹⁰ FAS 87 allows for the capitalization of the service cost component of FAS 87 SERP expense.³⁹¹

Decision

All the parties agree that SERP payments should not be capitalized. Further, Spire Missouri is not capitalizing *payments* made to employees under its SERP. However, Spire Missouri is capitalizing some SERP expense. Spire Missouri must recognize, as SERP expense for accounting purposes, a portion of those future SERP payments for each year of the current employee's expected service. This is the "accrued service cost" relating to SERP expense. Accrued service cost for SERP expense is appropriately capitalized under current FAS. The Commission determines that the adjustment requested by Public Counsel is not appropriate.

F. Should the prepaid pension asset be funded through the weighted cost of capital or long-term debt?

Findings of Fact

1. Public Counsel argues that a prepaid pension asset is similar to a long-term debt obligation and should not be considered to be funded by equity from

³⁸⁹ 4 CSR 240-40.040.

³⁹⁰ *Report and Order*, File Nos. GR-94-220 (issued August 22, 1994) and *Report and Order*, File No. GR-98-140 (issued August 21, 1998).

³⁹¹ Tr. 2211-2212.

shareholders. Because of this, Public Counsel argues that the pension asset should be funded at the cost of Spire Missouri's long-term debt.³⁹²

2. The prepaid pension asset represents a sum that investors have advanced that has not yet been paid by customers.³⁹³

3. Cash is fungible and attempting to earmark a funding source to specific assets within the same organizational structure is nothing more than optics - ultimately, all long-term financing (both debt and equity) will be used to fund all long-term assets, pensions or otherwise.³⁹⁴

4. Since 2002, through at least the last five rate cases for LAC, the prepaid pension asset has been included in rate base at the normal weighted average cost of capital.³⁹⁵

5. Staff accounted for the prepaid pension asset with a weighted cost of capital in its accounting schedules.³⁹⁶

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

The prepaid pension asset represents a sum that investors have advanced that has not yet been paid by customers. Cash is fungible and it is not easy or appropriate to pull one type of long-term asset out and assign it a particular funding source. The Commission determines that like other assets, the prepaid pension asset is

³⁹² Ex. 408, Pitts Direct, p. 6.

³⁹³ Tr. 2074.

³⁹⁴ Ex. 20, Buck Rebuttal, p. 13.

³⁹⁵ Ex. 20, Buck Rebuttal, Schedule GWB-R2.

³⁹⁶ Ex. 296, True-Up Hearing Accounting Schedules – LAC; and Ex. 297, True-Up Hearing Accounting Schedules – MGE.

appropriately included in rate base and is properly funded at the normal weighted average cost of capital.

XIII. Income Taxes

In addition to the accumulated deferred income tax presented by the parties at the hearing, the Commission has additionally considered the effects of the Tax Cuts and Jobs Act (TCJA).³⁹⁷

A. What is the appropriate amount of accumulated deferred income tax to include for LAC and MGE?

Findings of Fact

1. Deferred income taxes arise from temporary differences between the book and tax treatment of an item of income or expense. Thus, the deferred tax reserve is a net prepayment of income taxes by each company's customers prior to the time actual payment to the taxing authority is made.³⁹⁸

2. Under well-established regulatory principles, deferred taxes are treated as a reduction to rate base so ratepayers do not pay a return on funds provided to the utility at no cost.³⁹⁹

3. Staff and Spire Missouri have agreed that the statutory income tax rate of 38.3886 percent is the appropriate rate to apply in determining accumulated deferred income tax (ADIT) prior to the TCJA. They also indicated that their differences in determining the amount of ADIT would be resolved with the Commission's Report and

³⁹⁷ Public Law No.: 115-97.

³⁹⁸ Ex. 205, Staff Report - Cost of Service, p. 72; and Ex. 425, Hyneman Surrebuttal, pp. 23-24.

³⁹⁹ Ex. 205, Staff Report - Cost of Service, p. 72.

Order.⁴⁰⁰

4. Public Counsel argued that the Commission should include \$54.3 million of “FIN 48 liability” in ADIT.⁴⁰¹

5. FIN 48 liability stems from uncertain tax positions in open tax years. Open tax years are years in which the Internal Revenue Service (IRS) may still audit the company’s tax filings and could potentially rule against the company’s position causing it to owe more taxes. Generally Accepted Accounting Principles (GAAP) allows the company to record only the portion of the tax liability on which the company expects to prevail as a deferred tax. The FIN 48 liability is the remaining portion that the company expects to have to pay. If the FIN 48 liability were included in ADIT, it would have the effect of decreasing revenue requirement by \$5 million.⁴⁰²

Conclusions of Law

A. The Commission has previously decided against including FIN 48 liability in ADIT, determining that both ratepayers and shareholders benefit when a company takes uncertain tax positions with the IRS, because paying less income tax benefits the shareholders with increased revenues and the ratepayers with reduced tax expense.⁴⁰³ The Commission found in that case that the best way to encourage the company to pursue uncertain tax positions was to treat the company fairly in the regulatory process by excluding from ADIT the FIN 48 liability, which the company expects to have to pay.

⁴⁰⁰ *Staff’s Notice*, (filed January 30, 2018), p. 1.

⁴⁰¹ Tr. 1082 and 1088.

⁴⁰² Tr. 1081-1083.

⁴⁰³ *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. 54.

Decision

Staff and Spire Missouri agree that the \$54.3 million of FIN 48 liability should be excluded from ADIT. Public Counsel argues that it should be included. As previously found by the Commission, both ratepayers and shareholders benefit when the company takes an uncertain tax position with the IRS, because saving money on taxes benefits the company's bottom line and it also reduces the amount of tax expense for the ratepayers. As in File No. ER-2008-0318, the Commission determines that the best way to encourage the company to pursue these tax savings, and thus ultimately benefit both shareholders and ratepayers, is to exclude the FIN 48 liability from ADIT. The Commission finds the FIN 48 liability shall be excluded from consideration in the deferred taxes account.

- B. What specific adjustments would be needed to include in rates any change in cost of service as a result of the Tax Cuts and Jobs Act for each of Spire's operating units?**

Findings of Fact

1. The Tax Cuts and Jobs Act (TCJA) was signed into law on December 22, 2017, and will greatly reduce the amount of income taxes paid by Spire Missouri.
2. There has been no similar tax reform since 1986, and nothing similar is likely to happen again in the near future.
3. Beginning January 1, 2018, the TCJA will cause a significant (millions of dollars) reduction in income tax expense for Spire Missouri by reducing the federal corporate income tax applicable to Spire Missouri from 35 percent to 21 percent with

the effective composite federal and Missouri state tax rate being reduced from 38.3886 percent to 25.4483 percent.⁴⁰⁴

4. A reduction in Spire Missouri's federal corporate tax expense in revenue requirement due to the effects of the TCJA would reduce rates and save ratepayers millions of dollars annually.⁴⁰⁵

5. The effects of the reduced federal corporate tax expense can be calculated with great accuracy.⁴⁰⁶

6. The current accumulated deferred income tax reserve was deferred at a 35 percent corporate tax rate, but because of the reduction of the corporate tax rate by the TCJA, the reserve is overstated and will need to be flowed back to ratepayers.⁴⁰⁷

7. Spire Missouri is unique among large investor-owned utilities in Missouri in that it was before the Commission in the late stages of a rate proceeding when the TCJA became law and took effect. No other investor-owned utility in the state has the ability to reflect the tax changes in rates so quickly.

8. Spire Missouri has generally filed a rate case every four years.⁴⁰⁸

9. Not all of the effects of the TCJA are known as the Internal Revenue Service (IRS) and the Securities and Exchange Commission (SEC) have not yet issued guidance or promulgated rules on the implementation of the TCJA.⁴⁰⁹

⁴⁰⁴ Tr. 2893 and 2895; and Ex. 754, Spire Tax Reform Quantification.

⁴⁰⁵ Tr. 2881 and 2889.

⁴⁰⁶ Tr. 2895.

⁴⁰⁷ Tr. 2893-2894.

⁴⁰⁸ Ex. 254, Majors Surrebuttal, p. 3.

⁴⁰⁹ Tr. 2894.

10. The test year is a historic period in which revenues, expenses, and investment is measured, to serve as a foundational guide to set rates for a utility going forward.⁴¹⁰

11. The test year in this case was set as the 12 months ending December 31, 2016, updated through June 30, 2017, and trued-up through September 30, 2017.⁴¹¹

12. The “matching principle” in the context of setting rates is the concept that a utility’s revenues, expenses, rate base, and cost of capital are matched to each other during a generally consistent period such as the test year.⁴¹²

13. If all the effects of the TCJA, including reduced income tax expense, are deferred under a regulatory liability until Spire Missouri’s next rate case, the balance in that account will likely reach over \$100 million, an unusually large regulatory liability.⁴¹³ This means that ratepayers would have been overpaying income tax expenses until the next rate case and would not start receiving the benefits of the income tax reduction set out in the TCJA for possibly as long as four years.⁴¹⁴ This is not a just and reasonable result.

14. Staff’s recommendation on this issue is that the financial benefits of the TCJA should be returned to the ratepayers in this rate proceeding and any effects that are not able to be put into rates immediately should be tracked so they may be flowed back to the ratepayers or the utility in a later proceeding.⁴¹⁵

⁴¹⁰ Tr. 2909.

⁴¹¹ Ex. 205, Staff Report - Cost of Service, p. 4.

⁴¹² Tr. 2909.

⁴¹³ Tr. 2974.

⁴¹⁴ Tr. 2973.

⁴¹⁵ Tr. 2894-2895.

15. Staff's witness Lisa Ferguson's method of estimating the change in the ADIT was clear and concise.⁴¹⁶ Ms. Ferguson based her calculation on the difference between the former composite tax rate of 38.3886 percent and the new effective composite tax rate of 25.4483 percent to determine the reduction to ADIT.⁴¹⁷ Ms. Ferguson also explained that she applied a 50/50 split between the "protected" and "unprotected" ADIT applying a 20-year amortization to protected ADIT and a 10-year amortization to unprotected ADIT.⁴¹⁸

16. The amount of reduction to ADIT can be reasonably estimated as done by Staff's witness Ms. Ferguson. That estimate of the reduction to ADIT was \$11.5 million (a \$10.7 million reduction for LAC and an \$815,000 reduction for MGE).⁴¹⁹

17. MIEC witness Greg Meyer also reached a similar estimate for the income tax expense and ADIT reductions and used nearly identical methodology.⁴²⁰

18. Actual property tax expense paid in 2017 is also now known and measurable even though it falls outside the test year. That amount was estimated at hearing to be an increase of approximately \$1.4 million.⁴²¹

19. Property tax for 2018 is expected to increase but is not yet known and measurable because taxing authorities have not yet set the tax rates or set the assessed values and those taxes will not be assessed until later in 2018.⁴²²

⁴¹⁶ Tr. 2969-2970.

⁴¹⁷ Tr. 2968-2969.

⁴¹⁸ Tr. p. 2969-2972

⁴¹⁹ Tr. 2968-2970.

⁴²⁰ Tr. 2993-2996; and Ex. 754, Spire Tax Reform Quantification.

⁴²¹ Tr. 2956

⁴²² Tr. p. 2935 and 2956.

Conclusions of Law

A. On December 22, 2017, the President of the United States signed into law the Tax Cuts and Jobs Act⁴²³ which amends the Internal Revenue Code of 1986. Specifically, sections of the Internal Revenue Code are amended dealing with the income tax rate that Spire Missouri will be required to pay on its revenues earned beginning January 1, 2018.

B. In setting just and reasonable rates, the Commission considers *all* relevant factors.⁴²⁴

Decision

The TCJA is the first major tax reform in the United States since 1986. As such, it will have a material effect on investor-owned public utilities and their ratepayers, including Spire Missouri, which is currently before this Commission for a rate case. A rate case is the only opportunity for the Commission to consider *all* factors surrounding the determination of just and reasonable rates that will allow the company an opportunity for a reasonable return on its investment. Because of this, the Commission cannot ignore the consequences of this extraordinary event.

Because of this major change in one of the factors the Commission considers in setting just and reasonable rates, the Commission requested information from the parties regarding the best and most fair way to incorporate the effects of the TCJA into the rates of Spire Missouri. By incorporating the TCJA in these rates, ratepayers will begin to see benefits of the TCJA almost immediately rather than waiting another three to four years until Spire Missouri files its next rate case. Additionally, by addressing

⁴²³ Public Law No.: 115-97.

⁴²⁴ Subsection 393.270.4, RSMo; and *State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56 (Mo. banc 1979).

these tax implications now, the potential for Spire Missouri to over-earn is also lessened. Addressing the TCJA implications in the current rate case is complicated by the past test year method of determining just and reasonable rates and by the late stage of the rate case process at which the law was passed. The Commission, however, finds it is necessary to address the TCJA in the current case in order to set just and reasonable rates.

At the hearing on this particular issue, the evidence was clear that effective January 1, 2018, Spire Missouri's basic federal corporate income tax rate will be reduced from 35 percent to 21 percent, with the effective composite federal and Missouri state tax rate being reduced from 38.3886 percent to 25.4483 percent.⁴²⁵ Beginning January 1, 2018, this change will reduce income tax expense, which in turn if considered in rates, will reduce Spire Missouri's revenue requirement by millions of dollars and, therefore, would save ratepayers millions of dollars. While the specific income tax expense reduction cannot be calculated until the other decisions from this Report and Order are incorporated, it is a known and measurable expense. The new federal corporate tax rate is set and can easily be included in the revenue requirement calculation once the Commission has made a final decision in this case. Staff and MIEC calculated a very similar number in determining what the tax reduction might be if the Commission decided certain issues in a particular way. There is no reason why, using this same methodology with the actual decisions of the Commission incorporated, the reduction in income tax expense cannot be calculated making this a known and measurable expense.

Therefore, the Commission finds that based on the extraordinary event of the

⁴²⁵ Ex. 754, Spire Tax Reform Quantification.

passage of the TCJA happening at the latter stages of this rate case, it is just and reasonable to reduce income tax expense in this case using the TCJA effective composite income tax rate of 25.4483 percent. Because these rates will not go into effect until near the end of March 2018, Spire Missouri's shareholders will receive the benefits of the lag and will maintain any previously collected taxes for the first quarter of 2018 with ratepayers seeing the benefits of reduced rates upon the effective date of the compliance tariffs.

The Commission further recognizes that not all of the effects of the TCJA are known at this time. The IRS has yet to promulgate rules or issue guidance on all the aspects of the TCJA. Therefore, the Commission will order that a tracker be established to account for any other effects (either over- or under-collection in rates) of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri's next rate case.

One additional consequence of the TCJA is its effect on ADIT. The parties presented evidence regarding the estimated effects, but because of the complex nature of deferred income taxes and the potential effect on cash flows to the company if the flow back of excess ADIT is not done correctly, this calculation as presented to the Commission still remains an estimate. The estimates of the percentage of "protected" versus "unprotected" ADIT and the lack of evidence surrounding the appropriate amortization periods for each category, convinces the Commission that effects of the TCJA on ADIT are not sufficiently known and measurable to include in the current rate case with any certainty beyond an estimate.

However, Spire Missouri and Staff indicated that they will be able to determine,

based on the former composite tax rate of 38.3886 percent and the new effective composite tax rate of 25.4483 percent, an appropriate estimated amount to set as a reduction to ADIT.⁴²⁶ That amount calculated by Staff's witness Lisa Ferguson is \$11.5 million (a \$10.7 million reduction for LAC and as \$815,000 reduction for MGE). As part of its calculation, Staff applied a 50/50 split between the "protected" and "unprotected" ADIT applying a 20-year amortization to protected ADIT and a 10-year amortization to unprotected ADIT. However, the calculations and the determination of the actual split between protected and unprotected excess ADIT and the appropriate amortization period for the protected and unprotected excess ADIT have not been completed as of the date of this order. The protected component to be flowed back to the ratepayers shall be computed by Spire Missouri in accordance with the normalization requirements of the TCJA. The Commission orders that the ADIT amount for purposes of rates in this case shall be reduced by \$11.5 million. Additionally, the Commission orders that a tracker be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from this case, forward, for possible inclusion in a later rate case. Further, the determination of the actual split between protected and unprotected ADIT and the appropriate amortization periods will be determined in Spire Missouri's next rate case.

Finally, one of Spire Missouri's arguments against including the effects of the TCJA in the present case was that it was unfair to the company to not also include certain property taxes that also fall outside of the test year. Having considered these arguments the Commission agrees that actual property tax expense paid in 2017 is now known and measurable even though it falls outside the test year. And, coupled with the

⁴²⁶ *Staff's Notice* (filed January 30, 2018).

extraordinary event of decreased income tax expense it would not be just to exclude these known and measurable taxes (estimated at hearing as approximately \$1.4 million) from increasing property tax expense. Therefore, as an offset to the reduction in current income tax expense, the Commission will include the actual 2017 property taxes as an expense for the new rates. However, as 2018 property taxes are still not known and measurable, the Commission will also establish a tracker to account for any amounts of property tax expense over or under the amounts set out in rates for possible inclusion in Spire Missouri's next rate proceeding.

XIV. Incentive Compensation for Employees

The Commission presents the issues related to incentive compensation in a different order than set out in the parties' issues list.

A. Earnings Based Incentive Compensation – Should LAC and MGE be permitted to include earnings based and/or equity based employee incentive compensation amounts in base rates?

Findings of Fact

1. Earnings based incentives are usually incentives based on financial metrics such as, net income, return on equity, and increases in stock prices. These components of an incentive compensation plan focus utility management on maximizing net income. They also provide motivation to utility management to request rate increases that are higher than needed to earn a reasonable return.⁴²⁷

2. Earnings based incentive compensation primarily benefits shareholders.⁴²⁸

⁴²⁷ Ex. 403, Hyneman Direct, p. 21 and Ex. 263, Young Surrebuttal, p. 26.

⁴²⁸ Tr. 2721; Ex. 403, Hyneman Direct, p. 19; and Ex. 263, Young Surrebuttal, p. 25.

3. All employees of LAC and MGE are eligible for annual bonuses under Spire Missouri's Annual Incentive Plans (AIP).⁴²⁹ This incentive compensation plan provides an annual cash payout to eligible union and nonunion participants based on four components, each component with its own objectives: corporate performance, business unit performance, individual performance, and team unit performance.⁴³⁰

4. Under the AIP, corporate performance and business unit performance are measured with financial metrics and net economic earnings per share (NEEPS) and operating income, respectively. Payouts under these two components are applicable to all employees.⁴³¹

5. Corporate based earnings provide an incentive for management to focus on the non-Missouri regulated portions of the overall corporate structure which could be detrimental due to reduced focus on Missouri ratepayers.⁴³²

6. The Commission has previously determined that compensation based on corporate earnings is focused on shareholder wealth maximization and should be assigned to the shareholders.⁴³³

7. The Commission has a long history of removing earnings based employee compensation from rates. Examples of cases in which the Commission decided against allowing incentive compensation tied to financial benchmarks include: EC-87-114, Union Electric; TC-89-14, Southwestern Bell; TC-93-224, Southwestern Bell; GR-96-

⁴²⁹ Ex. 205, Staff Report - Cost of Service, p. 101; and Ex. 48, Misspagel Rebuttal, p. 6.

⁴³⁰ Ex. 205, Staff Report - Cost of Service, pp. 101-102.

⁴³¹ Ex. 205, Staff Report - Cost of Service, p. 102.

⁴³² Ex. 263, Young Surrebuttal, p. 25.

⁴³³ *In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the Company's Service Area*, File No. GR-96-285.

285, Missouri Gas Energy; GR-2004-0209, Missouri Gas Energy; ER-2006-0314, Kansas City Power & Light; and ER-2007-0291, Kansas City Power & Light.⁴³⁴

8. An incentive to maximize earnings could compromise service to ratepayers by reducing costs that are related to the quality of service. Corporate based earnings incentives provide an incentive for management to focus on the non-Missouri regulated portions of the overall corporate structure (including non-regulated business segments and out-of-state utilities), which could be detrimental to Missouri-regulated ratepayers.⁴³⁵

9. Spire Missouri admits that earnings based incentive compensation, in the form of stock, is meant to align the interests of its directors, officers, and employees with the interests of the shareholders.⁴³⁶

10. Any metric based on earnings per share is also based on the performance of all of Spire Inc.'s subsidiaries and non-Missouri regulated activities, because Spire Inc. is the only entity that has shares outstanding.⁴³⁷

11. Individual goals of certain executives were based on Spire Inc.'s achievement of earnings per share and for meeting Spire Inc.'s growth objectives.⁴³⁸ A number of the metrics set out were also tied to the performance of Spire's Alabama and Mississippi operations.⁴³⁹

12. Spire Missouri's incentive based compensation for directors and executives is based entirely on financial metrics.⁴⁴⁰ For other Spire Missouri employees,

⁴³⁴ Ex. 263, Young Surrebuttal, pp. 24-25.

⁴³⁵ Ex. 263, Young Surrebuttal, p. 25.

⁴³⁶ Ex. 403 Hyneman Direct, p. 23.

⁴³⁷ Ex. 205, Staff Report - Cost of Service, pp. 17-18.

⁴³⁸ Ex. 263, Young Surrebuttal, p. 30, citing Ex. 48, Mispagel Rebuttal, p. 8.

⁴³⁹ Ex. 205, Staff Report - Cost of Service, p. 103.

⁴⁴⁰ Tr. 2696.

50 percent of incentive compensation is attributed to financial metrics and 50 percent is attributed to other metrics assigned to that employee.⁴⁴¹ Public Counsel does not support the inclusion of incentive compensation payments based on earning metrics such as net income, earnings per share, or stock appreciation. Public Counsel also does not support the inclusion of any short-term compensation based on incentives that do not directly benefit utility customers.⁴⁴²

13. The third component of the AIP, individual performance, is applicable only to nonunion employees. The fourth component, team unit performance, is applicable only to union employees.⁴⁴³ These components of the AIP are addressed elsewhere in this order.

Conclusions of Law

A. Traditionally, the Commission has not allowed the recovery of incentive compensation tied to financial metrics in rates because “[t]hose financial incentives seek to reward the company’s employees for making their best efforts to improve the company’s bottom line. Improvements to the company’s bottom line chiefly benefit the company’s shareholders, not its ratepayers. Indeed some actions that might benefit a company’s bottom line, such as a large rate increase, or the elimination of customer service personnel, might have an adverse effect on ratepayers.”⁴⁴⁴

⁴⁴¹ Tr. 2692 and 2697.

⁴⁴² Ex. 403, Hyneman Direct, p. 22.

⁴⁴³ Ex. 205, Staff Report - Cost of Service, p. 103.

⁴⁴⁴ *In the Matter of Missouri Gas Energy’s Tariffs to Implement a General Rate Increase for Natural Gas Service*, Case No. GR-2004-0209, Report and Order (issued September 21, 2004), p. 43. See also similar conclusions in *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. 49 (the Commission denied Kansas City Power & Light’s request to recover compensation tied to earnings per share).

B. The Commission's historical decisions are represented in its *Report and Order* in KCPL's rate case in File No. ER-2007-0291. Beginning on page 49 of that *Report and Order* the Commission said:

KCPL has the right to tie compensation to [earnings per share]. However, because maximizing [earnings per share] could compromise service to ratepayers, such as by reducing maintenance, the ratepayers should not have to bear that expense. What is more, because KCPL is owned by Great Plains Energy, Inc., and because GPE has an unregulated asset, Strategic Energy L.L.C., KCPL could achieve a high [earnings per share] by ignoring its Missouri ratepayers in favor of devoting its resources to Strategic Energy. Even KCPL admits it is hard to prove a relationship between earnings per share and customer benefits. Nevertheless, if the method KCPL chooses to compensate employees shows no tangible benefit to Missouri ratepayers, then those costs should be borne by shareholders, and not included in cost of service. [footnotes omitted]

C. Subsection 393.150.2, RSMo, provides that Spire Missouri has “the burden of proof to show that the...proposed increased rate is just and reasonable...”

Decision

The Commission has traditionally not allowed earnings based or equity based compensation to be recovered in rates because such incentives are primarily for the benefit of shareholders and not for the benefit of the ratepayers. As the Commission has said in the past, incentivizing employees to improve the company's bottom line aligns the employee interests with the shareholders and not with the ratepayers. Aligning interests in this way can negatively affect ratepayers. The evidence in this case shows that Spire Missouri's nonunion employees' incentive compensation plan is made up of 50 percent financial metrics. Additionally, the executive and director incentive compensation is 100 percent based on financial metrics.

The Commission finds that Spire Missouri's earning based and equity based

incentive compensation is primarily for the benefit of the shareholders and not for the benefit of the ratepayers. Therefore, the Commission determines that Spire Missouri has not met its burden of proving that its proposed increase in rates for earnings based and equity based incentive compensation plans is just and reasonable. Spire Missouri shall not recover earnings based or equity based employee incentive compensation amounts in rates.

B. What criteria should be applied to determine appropriate levels of employee incentive compensation?

Findings of Fact

1. As stated above, for nonunion, nonexecutive Spire Missouri employees, 50 percent of incentive compensation is attributed to financial metrics, but 50 percent is attributed to individual performance metrics assigned to that employee.⁴⁴⁵

2. Spire Missouri's individual performance component of its incentive compensation plan is not based on financial metrics, but rather is based on service and operational metrics.⁴⁴⁶

3. An incentive compensation plan can motivate performance of employees to the benefit of ratepayers.⁴⁴⁷

4. An incentive compensation plan can also be a recruitment and retention tool allowing Spire Missouri to retain and motivate talented employees, which is also of benefit to the ratepayers.⁴⁴⁸

5. Most publicly-traded companies the size of Spire Missouri offer an incentive compensation plan.⁴⁴⁹

⁴⁴⁵ Tr. 2692 and 2697.

⁴⁴⁶ Ex. 48, Mispagel Rebuttal, p. 7.

⁴⁴⁷ Ex. 48, Mispagel Rebuttal, p. 5.

⁴⁴⁸ Ex. 48, Mispagel Rebuttal, pp. 5 and 7.

6. Staff used five standards that had been previously articulated by the Commission to evaluate the nonunion employee incentive compensation component of Spire's AIP. Those standards were: 1) does the goal provide the employee an incentive to perform at a level above what is already required for the applicable job; 2) does a goal require improvement over past performance; 3) is the goal objective and measurable; 4) was the goal related to Missouri regulated operations; and 5) was the goal, if achieved, directly linked to overall ratepayer benefit.⁴⁵⁰

7. For the union employees, the incentive compensation plan establishes team goals. A majority of those team goals are customer-oriented, such as average call handle time, call abandonment rate, leak response time, etc.⁴⁵¹

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

Staff used the five standards previously articulated by the Commission for evaluating the nonunion employee individual performance metrics for incentive compensation. The Commission has previously used these criteria in determining whether to allow incentive based compensation and finds that those criteria are generally appropriate to evaluate employee incentive compensation plans. However, in this case, the Commission was not persuaded by Staff's evaluations of the specific individual performance metrics that the non-earnings and non-equity based portion of the incentive compensation plan was inadequate to encourage and motivate employees to the benefit of the ratepayers. Therefore, the Commission finds that the individual

⁴⁴⁹ Ex. 48, Mispagel Rebuttal, p. 5.

⁴⁵⁰ Ex. 205, Staff Report - Cost of Service, p. 27; and Ex. 263, Young Surrebuttal, p. 27.

⁴⁵¹ Ex. 205, Staff Report - Cost of Service, p. 103.

performance component (50 percent of the nonunion, nonexecutive and director incentive compensation) of Spire Missouri's employee incentive compensation plan encourages, motivates, and retains talented employees to the benefit of ratepayers and should be included in revenue requirement.

C. What is the appropriate amount of employee incentive compensation to include in base rates?

Findings of Fact

1. Spire Missouri's overall incentive compensation package for nonunion employees is heavily weighted toward financial metrics, and contains individual metrics that are vague, not designed to incent an employee to perform at a level higher than what is required for their base salary, and are not linked to ratepayer benefit.⁴⁵²

2. There is no opposition to including incentive compensation for union employees as this is the result of a collective bargaining agreement.⁴⁵³

3. The Staff recommended a total reduction to Spire Missouri's revenue requirement of \$4.8 million for non-union employee incentive compensation.⁴⁵⁴

4. The Commission has determined in this Report & Order that Spire Missouri's incentive compensation program expense should be disallowed.

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

The Commission has determined that 50 percent (the earnings based and equity based portions) of Spire Missouri's nonunion, non-executive or director employee

⁴⁵² Ex. 263, Young Surrebuttal.

⁴⁵³ Staff Initial Brief, p. 78; Public Counsel Initial Brief, p. 51;

⁴⁵⁴ Ex. 268, Reconciliation – LAC; and Ex. 269, Reconciliation – MGE.

incentive compensation plans should be disallowed from rates. Further, the executive and director incentive compensation plan, which is 100 percent earnings and equity based, shall also be disallowed. Incentive compensation for union employees, however, is appropriately included in rates because this is the result of collective bargaining agreements. Therefore, Spire Missouri's proposed revenue requirement shall be reduced by 100 percent of the executive and director's incentive compensation plan and 50 percent of the other nonunion employee incentive compensation plan.

D. Should LAC and MGE be permitted to capitalize earnings based and equity based employee incentive compensation amounts in base rates?

Findings of Fact

1. The Commission previously determined that earnings based and equity based incentive compensation should not be recovered in rates.

2. Utilities typically capitalize a portion of their incentive compensation costs.⁴⁵⁵

3. Staff proposes to adjust base rates by removing the present value of the capitalized incentive compensation amounts from 2003 to present that it contends was inappropriately capitalized following past settled rate cases where the subject of incentive compensation was not litigated.⁴⁵⁶

4. Every LAC rate case since 2003 has been resolved through settlement and neither the issue of incentive compensation nor the issue of incentive compensation capitalization were specifically addressed in any stipulation or litigation.⁴⁵⁷

⁴⁵⁵ Tr. 2731.

⁴⁵⁶ Ex. 205, Staff Report - Cost of Service, p. 104.

⁴⁵⁷ Ex. 263, Young Surrebuttal, p. 23; and Tr. 2731-2731.

Conclusions of Law

No additional conclusions of law are necessary for this issue.

Decision

The Commission has decided above that earnings based and equity based incentive compensation should not be recovered in rates. Thus, that incentive compensation expense will not be included in rates and no part of the earnings based or equity based incentive compensation for the current case (test year through true-up period) should be capitalized in rate base going forward. However, Staff has also proposed to remove from rate base the value of incentive compensation that it contends was inappropriately capitalized by Spire Missouri following past settled rate cases where the subject of incentive compensation was not litigated. The Commission finds that it is not appropriate to make this adjustment. Because the stipulation and agreements settled all issues but did not specifically address the capitalization of incentive compensation, the Commission will not now reach back to those settled cases and remove capitalized earnings based and equity based incentive compensation from rate base. The Commission determines that no adjustment shall be made to remove the value of any capitalized past incentive compensation that may have been involved.

- E. To the extent the Commission declines to include employee incentive compensation in rates, what adjustment should be made to base salaries paid to employees?**

Findings of Fact

1. “[T]he company uses industry market data from surveys and other publicly available sources to help determine competitive compensation, both on the base and

incentive level.”⁴⁵⁸

2. Both Staff and Spire Missouri compare base salary to market base salary.⁴⁵⁹

3. Spire Missouri also compares its incentive compensation to market based incentive compensation.⁴⁶⁰

4. LAC’s and MGE’s actual payout for individual incentive compensation was approximately 13 percent above market compensation.⁴⁶¹

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

Both Staff and Spire Missouri compare the base salary paid by Spire Missouri to market salaries. Then Spire Missouri also compares incentive compensation to market incentive compensation. Thus, base salary is not less than market base salary and there is no need for any upward adjustment. Spire Missouri is free to compensate its employees in the manner it sees fit. However, in order to include the earnings based and equity based incentive compensation into rates, Spire Missouri must show that it is just and reasonable for the ratepayers to pay. The Commission determines Spire Missouri has not met its burden to show that any upward adjustment to base salaries is just and reasonable to include in rates. Therefore, no adjustment in compensation expense shall be made due to the Commission disallowing portions of Spire Missouri’s incentive compensation plans expense.

⁴⁵⁸ Ex. 48, Mispagel Rebuttal, p. 6.

⁴⁵⁹ Tr. 2720.

⁴⁶⁰ Tr. 2720.

⁴⁶¹ Ex. 263, Young Surrebuttal, p. 28.

XV. Uncollectibles

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

Findings of Fact

1. In Spire Missouri's Fiscal Year 2016, the company made a significant change to its write-off policy for both LAC and MGE. LAC went from writing off bad debt (considering it uncollectible) in 180 days after disconnection to writing off bad debt in 360 days after disconnection. MGE went from writing off bad debt in 30-45 days after disconnection to writing off bad debt in 360 days after disconnection. This change makes it difficult to compare the net uncollectible levels in 2016 (the test year) and those experienced prior to 2016.⁴⁶²

2. Because of this difficulty, Staff calculated its bad debt expense level based on an "annualized/normalized level" of actual bad debt for the most current twelve-months (the twelve months ending June 30, 2017).⁴⁶³

3. Public Counsel recommended that bad debt expense be set at the level of the test year uncollectibles.⁴⁶⁴

4. Spire Missouri calculated bad debt expense based on both a three-year average and on a five-year average and normalized the data due to the change in write-off policy.⁴⁶⁵

5. To normalize the bad debt expense for the change in write-off policy, Spire Missouri's witness, Timothy Krick, generated a list of all customer balances that had write-off dates scheduled on or after October 1, 2017, and then subtracted 180 days or

⁴⁶² Ex. 23, Krick Direct, pp. 3-5.

⁴⁶³ Ex. 205, Staff Report - Cost of Service, p. 136; and Ex. 253, McMellen Surrebuttal, pp. 2-3.

⁴⁶⁴ Ex. 403, Hyneman Direct, p. 41.

⁴⁶⁵ Ex. 24, Krick Rebuttal, pp. 9-10.

330 days for customers of LAC and MGE, respectively, to estimate when the customers would have systematically been written-off under the old policy.⁴⁶⁶

6. The Commission finds that Spire Missouri's normalization gives an accurate estimate of future bad debt expense.

7. Fiscal years 2016 and 2017 were two of the warmest years on record for LAC and MGE. Thus, write-offs for that time period would artificially be lower than other years.⁴⁶⁷

8. A twelve-month period is not long enough to fairly represent bad debt write-off trends and to fairly project future expense. An average over at least three years normalizes unusual variances that can occur in a shorter period such as twelve months.⁴⁶⁸

9. A five-year average is an even better predictor of future write-offs. A five-year average includes more data points, which reduces the standard deviation in statistical terms. Adding more data points helps to average out unusually warm and cold winters.⁴⁶⁹

10. The five-year average bad debt for LAC is \$8.3 million, and the five-year average bad debt for MGE is \$4.5 million.⁴⁷⁰

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

⁴⁶⁶ Ex. 24, Krick Rebuttal, pp. 9-10, Schedule TWK-R1.

⁴⁶⁷ Tr. 975.

⁴⁶⁸ Ex. 24, Krick Rebuttal, p. 8.

⁴⁶⁹ Ex. 24, Krick Rebuttal, p. 9; and Tr. 966 and 976.

⁴⁷⁰ Tr. 966; and Ex. 24, Krick Rebuttal, Schedule TWK-R1.

Decision

Both LAC and MGE had a change in write-off policy that makes comparing the data in the test year difficult. However, looking at only a twelve-month period of bad debt expenses does not provide enough data to project trends in bad debt expense. The five-year normalized average calculated by Spire Missouri, on the other hand, has sufficient data points to smooth out variations in bad debt. The Commission finds that a five-year average is the most appropriate method to calculate the amount of bad debt to include in rates. The Commission also finds that Spire Missouri's normalization calculation provided an accurate estimate of future bad debt expense. Thus, the Commission determines the appropriate amount of bad debt to include in rates are \$8.3 million for LAC, and \$4.5 million for MGE as calculated by Mr. Krick.

XVI. Performance Metrics

- A. Should a proceeding be implemented to evaluate and potentially implement a performance metrics mechanism? If yes, how should this be designed?**

Findings of Fact

1. Currently, neither LAC nor MGE have performance incentives based upon the achievement of any Commission-approved performance metrics. Spire Missouri proposes the Commission establish a separate proceeding⁴⁷¹ to consider incentivizing performance for Spire Missouri based on performance metrics in the areas of customer service, safety, and reliability, as well as other areas.⁴⁷² This performance incentive

⁴⁷¹ Ex. 8, Lobser Surrebuttal, p. 23.

⁴⁷² Ex. 6, Lobser Direct, p.41.

would be independent of the revenue requirement in a subsequent rate case.⁴⁷³

2. LAC already monitors a variety of service, safety, reliability, and other operational metrics. LAC has previously provided those metrics to Staff. Spire Missouri proposes using historic performance levels to establish an appropriate benchmark for future performance.⁴⁷⁴

3. Spire Missouri believes that performance metrics align the interests of the shareholders with the customers by holding the company financially accountable for how well it serves customers.⁴⁷⁵

4. In this rate case, Spire Missouri did not provide a specific program with specific performance metrics to be considered. At this point, Spire Missouri is proposing that the Commission form a working group to develop a program with the following guidelines:

- a. the total sum of any positive or negative financial adjustments associated with exceeding or falling below such performance metrics not exceed \$2 million annually, after tax, across both business units (LAC and MGE);
- b. that each performance metric have a range of acceptable annual performance that is reasonably achievable based on historical experience;
- c. Spire Missouri report quarterly on results, toward an annual result;
- d. any financial adjustments for each particular metric be equivalent in value and only be made for performance that falls outside the range

⁴⁷³ Ex. 6, Lobser Direct, p.42.

⁴⁷⁴ Ex. 6, Lobser Direct, p.41.

⁴⁷⁵ *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), p. 115-116.

established for the metric; and

e. any financial adjustments be credited each year to a regulatory asset or liability, as applicable, subject to an annual review to confirm their accuracy; and the accumulated net value of such financial adjustments be tracked for return to or recovery from customers over a four-year period in Spire Missouri's next rate case proceeding.⁴⁷⁶

5. Staff takes no formal position on whether a proceeding should be implemented to evaluate and potentially implement a performance metric mechanism.

6. Public Counsel opposes implementing a proceeding to investigate performance mechanisms, indicating a lack of specific proposed metrics on the record.⁴⁷⁷ Public Counsel also opposes the formation of a working group that might merely be a platform for topics outside providing safe and reliable service at just and reasonable rates.⁴⁷⁸

Conclusions of Law

A. There is no statutory authorization or prohibition for the implementation of incentives related to performance metrics.

Decision

The Commission supports performance metrics and incentives but because none were proposed by Spire Missouri, it was not possible to build a record supporting such in this case. A separate docket after the case would not be helpful for setting metrics in this case because it would not be possible to use them to modify existing

⁴⁷⁶ *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), pp. 116-117.

⁴⁷⁷ Ex. 421, Marke Surrebuttal, p. 4.

⁴⁷⁸ Ex. 421, Marke Surrebuttal, pp. 18-19.

rates. The commission hopes the record in the next rate case is more developed on this issue, allowing the commission to fully consider implementation of such mechanism. Therefore, the Commission will not establish a working group or separate proceeding to explore performance metrics for Spire Missouri at this time. Spire Missouri is encouraged to bring a more complete proposal in its next rate case.

XVII. Transition Costs

Should LAC's and MGE's cost of service be adjusted to reflect the recognition of merger synergies through the test year?

Findings of Fact

1. One reason public utilities merge with and acquire one another is to benefit shareholders.⁴⁷⁹ Mergers and acquisitions cost money ("transition costs") but increase efficiency ("merger synergies").⁴⁸⁰ Merger synergies also reduce expenditures ("synergy savings").⁴⁸¹

2. Sound ratemaking practice does not encourage or discourage public utilities from merging when such merger is discretionary.⁴⁸² Rather, it maintains consistent ratemaking policy as to transition costs and synergy savings.⁴⁸³ No special accounting or ratemaking treatment is necessary for a public utility to benefit from synergy savings.⁴⁸⁴

⁴⁷⁹ Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

⁴⁸⁰ Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

⁴⁸¹ Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

⁴⁸² Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

⁴⁸³ Ex. 224, Oligschlaeger Rebuttal, p. 15-16.

⁴⁸⁴ Ex. 224, Oligschlaeger Rebuttal, p. 15.

3. Merger synergies may also benefit customers. Quantifying that benefit is possible,⁴⁸⁵ but it is subjective and extremely difficult, even for experts.⁴⁸⁶

4. Spire Missouri's predecessor Laclede Gas Company merged with Alagasco four years ago, and merged with EnergySouth one and one-half years ago, resulting in merger synergies.⁴⁸⁷ Because Laclede Gas Company, now Spire Missouri, has not had any change to its applicable tariffs since those mergers, Spire Missouri has retained all synergy benefits due to regulatory lag, while customer bills reflected no such benefit.

Conclusions of Law

A. Because Spire Missouri seeks an increase in rates for merger synergies, Spire Missouri has the burden to prove that such an increase is just and reasonable.⁴⁸⁸

Decision

Public utilities are largely motivated to merge with and acquire one another for purposes of benefitting shareholders. Shareholders benefit from these mergers because the synergy savings mean decreased expenses and increased profits. While it is clear that such transactions can also present some incidental benefits for ratepayers, they are difficult to quantify. Rates for Spire Missouri have not changed since the mergers, so Spire Missouri shareholders and not ratepayers, through regulatory lag, have received the benefit of any synergy savings for four years since merging with Alagasco and one-and-one-half years since merging with EnergySouth. In this case, Spire Missouri presented insufficient credible evidence for the Commission to make a finding of the

⁴⁸⁵ Ex. 55, *Stipulation and Agreement* in Case No. GM-2013-0254.

⁴⁸⁶ Ex. 224, *Oligschlaeger Rebuttal*, p. 15.

⁴⁸⁷ Ex. 9, *Lobser Surrebuttal* p. 15.

⁴⁸⁸ Section 393.150.2, RSMo. The burden of proof does not shift. *Been v. Jolly*, 247 S.W.2d 840, 854 (Mo. 1952).

exact savings achieved or of an amount that would be just and reasonable to include in rates. Further, the Commission is not persuaded that it would be just and reasonable for Spire Missouri's rates to continue to include the benefits of synergy savings that it has enjoyed for the last several years. Because Spire Missouri has not met its burden of proof to show that increasing rates by an amount to include synergy savings on a going forward basis is just and reasonable, the Commission will not include synergy savings in rates.

XVIII. Low Income Energy Assistance Program

A. What is the appropriate funding level for each division?

Findings of Fact

1. On January 9, 2018, LAC and MGE, Staff, DE, and Consumers Council filed a Partial Stipulation and Agreement Regarding Low-Income Energy Affordability Program that has been approved in this order. The only issue left for the Commission to resolve for the Low-Income Energy Affordability Program is the level of funding.⁴⁸⁹

2. The current level of funding for LAC's low-income energy affordability program is \$600,000 annually, which LAC requests to maintain.⁴⁹⁰

3. MGE does not currently have a low-income energy affordability program. MGE proposes to fund a new one at \$500,000 annually.⁴⁹¹ However, LAC and MGE

⁴⁸⁹ Partial Stipulation and Agreement Regarding Low-Income Energy Affordability Program (filed January 9, 2018), EFIS No. 512.

⁴⁹⁰ Ex. 18, Weitzel Surrebuttal, p. 26.

⁴⁹¹ Ex. 17, Weitzel Rebuttal, p. 12.

are amenable to a moderately higher level of funding.⁴⁹²

4. "Energy burden" is defined as the percentage of total income spent by a family on their utility bills. On average, Missouri low-income families spend 14 percent of their income on utilities and 30 percent on housing cost, while middle income families spend on average four percent of their income on utilities. In the dense urban areas of the state, which are served by Spire Missouri, it is common to have families with energy burdens that exceed 30 percent of their income, not including other housing costs.⁴⁹³

5. Low-income energy needs exceed \$5 million in each service area.⁴⁹⁴

6. The Low-Income Home Energy Assistance Program (LIHEAP) is the federal fuel assistance program designed to help pay low-income heating and cooling bills.⁴⁹⁵

7. Current LIHEAP funding is not adequate to meet the needs of low-income Missourians. The gross LIHEAP allocation to Missouri was \$65.7 million in 2016 and the number of average annual low-income heating and cooling bills "covered" by LIHEAP was 101,018. In comparison, the gross LIHEAP allocation to Missouri in 2015 reached \$73 million and covered 92,403 average annual bills and ran out of money before the end of the previous heating season.⁴⁹⁶

8. Consumers Council and DE proposed the programs be funded at \$1 million each for LAC and MGE service territories.

9. Even though there is a great need for funding of low-income energy

⁴⁹² *Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy* (filed January 9, 2018), p. 122; see also Tr. 696 (in which Spire Missouri's counsel stated Spire Missouri believes it needs to do all it can to help its most vulnerable customers maintain utility service).

⁴⁹³ Ex. 800, Hutchinson Direct, p. 4.

⁴⁹⁴ Ex. 800, Hutchinson Direct, pp. 5-6.

⁴⁹⁵ Ex. 800, Hutchinson Direct, p. 5.

⁴⁹⁶ Ex. 800, Hutchinson Direct, p. 5.

assistance programs, LAC's funds were not all distributed in years past.⁴⁹⁷ Because of this, Staff and Public Counsel oppose increasing funding for the program.

10. The new program under the stipulation and agreement has been designed similar to a successful program, Ameren Missouri's Keeping Current. Additionally, the agreement provides that this program will be funded through a regulatory deferral so that any unused allocations will not be included in the revenue requirement.

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

The Commission finds that the energy burden low-income consumers face, combined with the LIHEAP funding decrease, requires a moderate increase of funding over what was proposed for LAC's and MGE's proposed low-income energy affordability programs. However, it is not reasonable to fund these programs at the full level of need because ultimately, ratepayers will be paying for these programs. The Commission determines that a 50 percent increase over the companies' proposals is a reasonable increase. Thus, the Commission orders these programs be funded at \$900,000 for LAC and \$750,000 for MGE.

⁴⁹⁷ Ex. 501, Kohl Direct, pp. 7-8.

XIX. CHP

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

Findings of Fact

1. Combined heat and power (CHP) refers to technologies that simultaneously generate electricity and use thermal energy from a single fuel source. This is accomplished by recovering the otherwise wasted heat from the electric generation process and using it to provide the thermal load for a building. CHP results in a total system efficiency of approximately 75 percent, compared with separate heat and power at approximately 50 percent.⁴⁹⁸

2. Missouri has at least 21 CHP installations, including schools, colleges, universities, hospitals, hotels, government, agriculture, and chemical facilities.⁴⁹⁹

3. DE has an interest in promoting the utilization of CHP technology to improve energy reliability and resiliency for critical infrastructure, such as hospitals, nursing homes, public water and wastewater treatment facilities, government facilities, emergency shelters, and data centers.⁵⁰⁰

4. DE proposes that the Commission approve a CHP pilot program, whereby Spire Missouri would work with DE to encourage customers in Spire Missouri's service area to adopt CHP technology. DE recommends that the Commission establish the following guidelines for the CHP pilot program:

- Establish a definition of critical infrastructure that encompasses the range of CHP applications, from individual facilities (e.g., hospitals) to communities (e.g., hospital plus water and wastewater treatment facility, shelter, and grocery store).

⁴⁹⁸ Ex. 502, Epperson Direct, p. 4; and Ex. 214, Eubanks Rebuttal, p. 2.

⁴⁹⁹ Ex. 502, Epperson Direct, p. 5-6; and Tr. 861-862.

⁵⁰⁰ Ex. 502, Epperson Direct, pp. 12-13.

- Authorize Spire Missouri to investigate and develop a proposed CHP pilot program to serve critical infrastructure, with a total program budget not to exceed \$5.1 million for 10 projects and with each specific project proposed to be included in the program filed with the Commission for its approval within 60 days.

- Allow Spire Missouri to track, and in the future seek recovery of, the cost of participating in the pilot program. Such costs might include offsetting up to \$10,000 of the cost of a project's feasibility study following a positive initial screening conducted by CHP TAP identifying a customer as a good candidate for CHP, the cost of any contribution by Spire Missouri to a project's installed cost (up to the lesser of \$500,000 or 30 percent of a project's installed cost), and any buy-down on the rate of interest offered for financing of a project.

- Allow Spire Missouri to extend the cost recovery periods (up to 15 years) for customer repayments on the customer portion of the cost of natural gas line extensions and other natural gas facilities necessary to develop a CHP system.

- Allow Spire Missouri to offer on-bill financing to assist potential CHP customers in funding the necessary capital improvements needed for CHP installation.

- Spire Missouri should use a societal cost test to evaluate the potential benefits of critical infrastructure projects. Spire Missouri currently uses a societal cost test in evaluating custom rebates under its Commercial and Industrial Rebate Programs.

- For projects jointly offered with electric utilities offering Missouri Energy Efficiency Investment Act (MEEIA) programs, the Commission should direct that the costs and benefits of CHP be symmetrically valued by developing a transparent and reproducible formula to reasonably allocate and assign the value of energy savings and project costs between natural gas and electric companies and customers.

- Allow a potential CHP pilot program customer to participate in otherwise-applicable EDRs or Special Contract service rates.⁵⁰¹

5. DE's proposal has the potential to affect the sales and revenues of electric utilities that are not participating as intervenors in this case.⁵⁰²

6. DE's proposal would allow Spire Missouri to recover costs associated with contributing to a project's installed cost, which may be a prohibited promotional practice.⁵⁰³

⁵⁰¹ Ex. 502, Epperson Direct, pp. 16-18.

⁵⁰² Ex. 214, Eubanks Rebuttal, p. 4.

7. MEEIA is a state statutory policy which is designed to encourage electric investor-owned utilities to offer and promote energy efficiency programs designed to reduce the amount of electricity used by the utility's customers. Under MEEIA and with Commission approval, electric utilities may offer demand-side programs and special incentives to participating customers. MEEIA does not apply to natural gas utilities, but DE's proposed pilot program would be jointly offered by Spire Missouri and the electric utilities.⁵⁰⁴

8. DE's proposal does not include any specific recommendations or formulas relating to MEEIA, and does not discuss whether individual CHP can qualify as demand-side programs under either the MEEIA statute or the Commission's rules.⁵⁰⁵

9. DE's CHP pilot program proposal is still in the conceptual phase and does not state a time period for the program or how it would be evaluated. The proposal lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA.⁵⁰⁶

10. The \$5.1 million recommended for DE's pilot program would equate to an additional 25 percent beyond Staff's total revenue requirement recommendation in direct testimony, subject to true-up.⁵⁰⁷

Conclusions of Law

The Commission makes no additional conclusions of law on this issue.

Decision

DE has proposed a pilot program with the stated goal of promoting CHP

⁵⁰³ Ex. 214, Eubanks Rebuttal, p. 4-5.

⁵⁰⁴ Ex. 214, Eubanks Rebuttal, p. 7.

⁵⁰⁵ Ex. 214, Eubanks Rebuttal, p. 7.

⁵⁰⁶ Ex. 214, Eubanks Rebuttal, p. 9.

⁵⁰⁷ Ex. 244, Eubanks Surrebuttal, p. 3-4.

technology to improve energy reliability and resiliency for critical infrastructure. The Commission supports that goal, but DE has not been persuasive that the \$5.1 million pilot program as proposed should be approved and paid for by ratepayers. The proposed pilot program lacks sufficient details, as it does not contain specific recommendations or formulas relating to MEEIA, does not state a time period for the program or how it would be evaluated, and lacks specificity regarding on-bill financing, line extension policies, and interaction with MEEIA. This lack of detail does not allow the Commission to determine if and to what extent the pilot program may affect the sales and revenues of electric utilities that are not participating as intervenors in this case, may be a prohibited promotional practice, and may be inconsistent with MEEIA requirements. For all these reasons, the Commission concludes that the CHP pilot program should not be approved as proposed by DE. The Commission encourages the parties to continue discussions on how best to improve energy reliability and resiliency for critical infrastructure and submit more detailed recommendations in the future.

XX. AMR Meters

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?

Findings of Fact

1. Prior to July 1, 2017, LAC leased AMR devices from the company Landis & Gyr, who both owned and maintained the AMR devices.⁵⁰⁸ As part of the contract LAC was charged a meter read rate of \$0.985 per meter, per month.⁵⁰⁹

⁵⁰⁸ Ex. 65, Lobser True-Up Rebuttal, p. 1.

⁵⁰⁹ Ex. 292, Ferguson True-Up Rebuttal, p. 2.

2. Effective July 1, 2017, LAC purchased the AMR devices from Landis & Gyr for \$16.6 million⁵¹⁰ (\$16,624,220 for the 700,262 already deployed meter interface units).⁵¹¹

3. By purchasing the AMR devices LAC reduced the price per meter read from \$0.98 to \$0.24, which directly benefits ratepayers.⁵¹² Landis & Gyr still read the meters under contract with LAC at a rate of \$0.24 per meter per month until June 30, 2020, and at \$0.30 per meter per month after that date.⁵¹³

4. Staff included in its calculated cost of service the \$16,624,220 that LAC paid for the AMR devices.⁵¹⁴

5. The AMR devices are distinct from the meters they monitor. Because of this, Staff recommends the establishment of Account No. 397.2 – AMR Devices.⁵¹⁵

6. The useful life of the AMR devices is 20 years based on battery life. However, LAC will be switching to a new system in 2020 with replacement of all AMR devices completed by 2024. Thus, Staff recommends that the cost be *amortized* over a period of 7.5 years.⁵¹⁶

7. Public Counsel agrees that the AMR should be listed in a new plant sub-account for the AMR meter interface units in Account 397.2 – AMR Devices. OPC recommends a five percent *depreciation* rate based on the average service life of the asset.⁵¹⁷

8. Spire Missouri is also seeking to recover approximately \$700,000 in rates

⁵¹⁰ Ex. 65, Lobser True-Up Rebuttal, p. 2.

⁵¹¹ Ex. 292, Ferguson True-Up Rebuttal, p. 2.

⁵¹² Ex. 65, Lobser True-Up Rebuttal, p. 2.

⁵¹³ Ex. 292, Ferguson True-Up Rebuttal, p. 2.

⁵¹⁴ Ex. 294, Patterson True-Up Direct, p. 2.

⁵¹⁵ Ex. 294, Patterson True-Up Direct, p. 2.

⁵¹⁶ Ex. 294, Patterson True-Up Direct, p. 2.

⁵¹⁷ Ex. 438, Robinett True-Up Rebuttal, p. 1.

for maintenance expenses. Though Landis & Gyr maintain the communications network and perform rudimentary maintenance on the devices, LAC is responsible for the cost of replacement of the devices and their batteries when they stop working or functioning properly. Landis & Gyr is also responsible for maintenance which is built into the monthly service fee.⁵¹⁸ Spire Missouri based its maintenance costs on a historic failure rate LAC has seen since the system was installed in 2005.⁵¹⁹

9. Spire Missouri estimates that when all maintenance, replacement, and property tax expenses are combined with the roughly \$0.49 in depreciation and capital costs plus the \$0.24 Landis & Gyr contract meter rate, the total cost per month of AMR devices is approximately \$0.86. This would result in a \$0.12 per month reduction in cost for the ratepayer from the \$0.98 meter read rate prior to July 1, 2017.⁵²⁰

10. Staff opposes including \$694,256 (approx. \$700,000) as a maintenance expense, because Spire Missouri pays for device replacement (a capital cost) and not routine maintenance which is performed under the contract with Landis & Gyr.⁵²¹ Spire Missouri will recover those replacement costs as plant in service at the next general rate proceeding.⁵²²

Conclusions of Law

A. Subsection 393.230.1, RSMo, empowers the Commission to ascertain valuation of property of any gas corporation. This would include the power to, “ascertain all new construction, extensions and additions to the property of every gas

⁵¹⁸ Ex. 292, Ferguson True-Up Rebuttal, pp. 4-5; and Ex. 287, Response to Data Request 484.

⁵¹⁹ Ex. 65, Lobser True-Up Rebuttal, p. 3; See also, Ex. 292, Ferguson True-Up Rebuttal, p. 4, noting that paragraph 4 of the contract amendment with Landis & Gyr specifies that all maintenance and installation costs are included in the amended contract as Landis & Gyr’s responsibility through the year 2024.

⁵²⁰ Ex. 65, Lobser True-Up Rebuttal, p. 4.

⁵²¹ Ex. 292, Ferguson True-Up Rebuttal, p. 4.

⁵²² Ex. 292, Ferguson True-Up Rebuttal, p. 6.

corporation[.]”

B. Subsection 393.240.2 RSMo, empowers the Commission by order to, “fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person or public utility.”

Decision

Spire Missouri directly reduced the cost to ratepayers by choosing to purchase rather than continue to lease the AMR devices. Spire Missouri asserts that savings to LAC’s customers will be around one million dollars a year. This one million dollar amount is calculated with the assumption that after recoupment of any cost to acquire the AMR devices (\$16.6 million), the company will be allowed to recoup approximately \$700,000 in maintenance for the devices, and an estimated \$400,000 in property taxes on the devices.⁵²³

The Commission recognizes that Spire Missouri could have waited to purchase the assets until after the true-up period and have taken advantage of any regulatory lag to retain the savings for its shareholders. Because this purchase occurred outside the test year but before September 30, 2017, it is appropriately a true-up issue. Spire Missouri shall be allowed to recover the \$16.6 million cost of the AMR devices. Spire Missouri shall establish Account 397.2 – AMR Devices as a new plant sub-account. Additionally, because of the planned obsolescence of these devices, the Commission finds it is reasonable under these specific facts to authorize the amortization of these assets over 7.5 years.

It is unclear from the record what, if any, maintenance expenses will be incurred by Spire Missouri with regard to the maintenance of the AMR devices given that Landis

⁵²³ A resolution of the property tax issue is set out below.

& Gyr are responsible for maintenance under the terms of the contract. The Commission is of the opinion that any replacement of the AMR device or battery would not be maintenance, but is a capital expenditure that the company will have an opportunity to recoup in its next rate case. However, because of the benefits to the ratepayers presented by this purchase and renegotiation of the AMR contract, and because of the uncertainty as to what actual maintenance expense Spire Missouri will incur related to the AMR devices, the Commission orders a maintenance tracker be established to ascertain Spire Missouri's actual maintenance expense on the AMR devices not covered by the contract and not including replacement of the devices or their batteries for possible recovery in Spire Missouri's next rate case.

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

Findings of Fact

1. As set out above, on July 1, 2017, LAC purchased AMR devices that it previously leased from Landis & Gyr for approximately \$16.6 million.⁵²⁴
2. Spire Missouri estimates that property taxes for 2018 and beyond will be \$400,000 annually.⁵²⁵ Spire Missouri seeks to recover that amount in this case.
3. Because the property was not purchased until July 2017, no property taxes would be assessed on the AMR devices until January 2018 and will not be due until December 31, 2018.
4. Staff argues it is inappropriate to allow recovery of any amount for property taxes related to the purchase of the AMR devices as they are outside the test

⁵²⁴ Ex. 65, Lobser True-Up Rebuttal, p. 2.

⁵²⁵ Ex. 65, Lobser True-Up Rebuttal, p. 3.

year and true-up period and are not known and measurable.⁵²⁶

Conclusions of Law

A. Spire Missouri seeks to recover in rates approximately \$400,000 that it estimates it will have to pay in property taxes annually on the AMR devices. The standard for if this amount can be recovered in rates in this rate case is whether the amount is known and measurable now.⁵²⁷

Decision

The Commission finds that the AMR property taxes will not be due to be paid until December 31, 2018. Thus, these property taxes are beyond the test year and true-up period for this case. Also, to include these property taxes in rates, they must be known and measurable; at this point, they are not. However, given the specific circumstances of this case set out below, including the inclusion of a large income tax reduction to expenses due to the Tax Cuts and Jobs Act (TCJA) being incorporated in this case even though outside the test year and true-up period, the Commission determines that the property tax for AMR devices should be included in the property tax tracker set out elsewhere in this order. Therefore, even though the property tax for the AMR devices will not be included in current rates, they will be tracked for potential recovery in LAC's next rate case as discussed in further detail in the TCJA section of this order.

⁵²⁶ Tr. 2586.

⁵²⁷ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service*, ER-2014-0370, 2015 WL 5244724, at *71 (Sept. 2, 2015). *State ex rel. GTE North, Inc. v. Missouri Public Service Commission*, 835 S.W. 2d 356, 368 (Mo App. 1992).

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by Spire Missouri Inc., then known as Laclede Gas Company, on April 11, 2017, and assigned tariff number YG-2017-0195, are rejected.

2. The tariff sheets filed by Spire Missouri Inc., then known as Laclede Gas Company, on April 11, 2017, and assigned tariff number YG-2017-0196, are rejected.

3. Spire Missouri Inc. is authorized to file tariffs for its Spire Missouri East and Spire Missouri West divisions sufficient to recover revenues as determined by the Commission in this order.

4. The non-unanimous Partial Stipulation and Agreement filed on December 13, 2017 is approved.

5. The Partial Non-unanimous Stipulation and Agreement filed on December 20, 2017, is approved.

6. The Non-Unanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design, filed on December 20, 2017, is approved.

7. The non-unanimous Partial Stipulation and Agreement Regarding Low Income Energy Affordability Program filed January 9, 2018, is approved.

8. The parties shall comply with the terms of the above-approved stipulation and agreements.

9. The complaint filed by the Office of the Public Counsel in File No. GC-2016-0297 is denied.

10. The Kansas property tax tracker previously ordered in File No. GR-2014-0007 shall be continued.

11. Spire Missouri Inc. shall provide the Staff of the Missouri Public Service

Commission and the Office of the Public Counsel surveillance data in the format agreed upon and set forth in Attachment 1 of Staff's Initial Post-Hearing Brief on a quarterly basis.

12. Spire Missouri Inc. shall provide the Staff of the Missouri Public Service Commission and the Office of the Public Counsel its general ledger and CC&B subledger on an annual basis, within 60 days of the close of Spire Missouri Inc.'s fiscal year, and shall make both the ledger and subledger available more frequently in the event further support of the surveillance data is needed.

13. A tracker shall be established to account for any other effects (either over- or under-collection in rates) of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri Inc.'s next rate case.

14. A tracker shall be established to defer any amounts in excess ADIT over or under the \$11.5 million amount refunded in rates, from the effective date of rates resulting from this case, forward, for possible inclusion in a later Spire Missouri Inc. rate case.

15. A tracker shall be established to account for any amounts of property tax expense, including for the automated meter reading devices that are discussed in this Report and Order, over or under the amounts set out in rates for possible inclusion in Spire Missouri Inc.'s next rate proceeding.

16. The Joint Request for Clarification or Modification filed by Spire Missouri Inc. and the Staff of the Missouri Public Service Commission is granted in part as set out in this amended report and order. Any request for clarification not granted is denied.

17. This amended report and order shall become effective on March 17, 2018.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and
Silvey, CC., concur.

Dippell, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 7th day of March 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 7, 2018

File/Case No. GR-2017-0215 and GR-2017-0216

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.