

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 20th day of September, 2018.

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System)
Replacement Surcharge in its Missouri Gas)
Energy Service Territory)

File No. GO-2017-0201

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System)
Replacement Surcharge in its Laclede Gas)
Service Territory)

File No. GO-2017-0202

ORDER DENYING REQUEST TO MODIFY COMMISSION ORDER

Issue Date: September 20, 2018

Effective Date: October 1, 2018

Procedural history

On September 30, 2016, Laclede Gas Company filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Missouri Gas Energy and Laclede Gas Service territories (collectively, “Spire Missouri”)¹. Spire Missouri requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with infrastructure system replacements made during the period March 1, 2016 through October 31, 2016. These two cases were opened by the Commission as File Nos. GO-2016-0332 and GO-2016-0333 (collectively, “2016 cases”). The Office of the Public Counsel (“OPC”) filed a motion

¹ The company subsequently underwent a corporate reorganization and changed its name to Spire Missouri, Inc. with East and West service territories.

requesting that the Commission reject the petition or schedule an evidentiary hearing. The Commission held an evidentiary hearing on January 3, 2017.

On January 18, 2017, the Commission issued a Report and Order in the 2016 cases permitting Spire Missouri to file new tariffs to recover certain ISRS revenues, including plastic pipe replacements. OPC appealed the 2016 Report and Order to the Missouri Western District Court of Appeals (WD80544), challenging the Commission's decision that certain plastic pipe replacements were eligible ISRS costs.

On February 3, 2017, Spire Missouri filed new ISRS applications for its East and West service territories requesting to change its ISRS to recover costs in connection with eligible infrastructure system replacements made during the period November 1, 2016 through February 28, 2017. These two cases were opened by the Commission as File Nos. GO-2017-0201 and GO-2017-0202 (collectively, "2017 cases"). On April 26, 2017, the Commission issued an *Order Approving Unanimous Stipulation and Agreement*, in which all parties agreed that the Commission should approve the rates Staff had recommended in the 2017 cases and put aside the dispute about plastic pipe replacements pending the outcome of OPC's appeal in the 2016 cases. That stipulation and agreement stated, in part:

If the courts make a final, non-appealable decision reversing the Commission's January 18 Order on the grounds that the Commission's decision on the Plastics Issue is unlawful or unreasonable, then the court's final decision shall be applied to the Current Cases [2017 cases] in the same manner as it is applied to the Prior Cases [2016 cases], as applicable. In such event, upon remand, any one or more Signatories may request that the Commission determine the amount of refund, if any, that shall be made in both the Prior Cases and the Current Cases as a result of such reversal. LAC, MGE [Spire Missouri] and Staff agree not to challenge OPC's right to make such request, and LAC and MGE [Spire Missouri] further agree to produce work order or other information in their possession necessary to determine the amount of plastic that was replaced in the Prior Cases and the Current Cases. All Signatories reserve

their rights to make any argument they wish regarding the methodology, propriety, and quantification of such refund, if any.²

On November 21, 2017, the Missouri Western District Court of Appeals issued an opinion in the 2016 cases (WD80544) that held that the recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission's 2016 Report and Order "as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further proceedings consistent with this opinion".³ On March 7, 2018, the Court of Appeals issued the mandate in the appeal after the Supreme Court of Missouri denied transfer.

On March 30, 2018, OPC filed in both the 2016 and 2017 cases a pleading titled *Public Counsel's Recommendation* referencing the Court of Appeals opinion in the 2016 cases and requesting changes to the ISRS. Specifically, OPC requested that the Commission determine which ISRS costs from Spire Missouri's 2016 and 2017 cases were ineligible for ISRS cost recovery and apply any over-collection to the rate base set in Spire Missouri's general rate cases, GR-2017-0215 and GR-2017-0216 ("rate cases"), as an offset in future ISRS filings pursuant to Section 393.1015.8, RSMo. On the date that OPC's pleading was filed, the Amended Report and Order in the rate cases had already become effective, although compliance tariffs had not yet been approved.⁴

² Unanimous Stipulation and Agreement, File Nos. GO-2017-0201 and GO-2017-0202, p. 3.

³ *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

⁴ Amended Report and Order, *In the Matter of Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service*, GR-2017-0216, March 7, 2018; Order Approving Tariff in Compliance with Commission Order, *In the Matter of Laclede Gas Company's Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service*, GR-2017-0216, issued April 4, 2018.

In compliance with the Western District Court of Appeals' opinion remanding the 2016 cases back to the Commission for further proceedings, the Commission conducted oral arguments and an evidentiary hearing to receive additional evidence for the 2016, 2017, and 2018 ISRS cases.⁵ In total, the Commission admitted the testimony of ten witnesses and 29 exhibits into evidence and took official notice of several documents. Post-hearing briefs were filed on September 6, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.⁶

Discussion

Although the Commission conducted an evidentiary hearing in these cases, no law requires one.⁷ Therefore, this action is not a contested case,⁸ and the Commission need not separately state its findings of fact.⁹

The Commission's Order Approving Unanimous Stipulation and Agreement, issued in these cases on April 26, 2017, was a final order and concluded these proceedings except for subsequent compliance tariff filings. OPC's subsequent pleading titled *Public Counsel's Recommendation* on March 30, 2018, ultimately requested (1) a determination to modify the ISRS amounts previously approved in the order approving the Unanimous Stipulation and Agreement in light of the Appeals Court decision, and (2) apply or offset the over-collected ISRS revenues of \$4,905,862.58 to the rate base from the rate cases pursuant to Section 393.1015.8, RSMo.

⁵ Transcript ("Tr."), Volume 3.

⁶ "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

⁷ Section 393.1015.2(3), RSMo, provides that "The commission may hold a hearing on the petition and any associated rate schedules..." (emphasis added).

⁸ Section 536.010(4), RSMo 2016, states that "Contested case" means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.

⁹ *State ex rel. Public Counsel v. Pub. Serv. Comm'n*, 210 S.W.3d 344, 355 (Mo. App. 2006).

The first part of the requested relief would require the Commission to modify the final order approving the Unanimous Stipulation and Agreement and setting ISRS revenues in these ISRS cases. The second portion of the requested relief, however, would ultimately require the Commission to modify the Commission's Amended Report and Order from the rate cases, currently under appeal. In general, the Commission has the legal authority to modify or vacate its orders.¹⁰ Also, the Commission is entitled to interpret its own orders and to ascribe to them a proper meaning.¹¹ Section 393.1015.8, RSMo, permits the Commission to disallow in a general rate case the recovery of costs for eligible infrastructure system replacements previously included in an ISRS and offset a future ISRS to account for those over-collections. Those rate cases have been decided and are currently under appeal in case no. SD35485. The Commission is without authority to issue any substantive orders in those cases while on appeal.¹² Therefore, it would be improper for the Commission to attempt to modify the final order of those rate cases, especially in the context of a separate ISRS case, so the Commission will deny OPC's request to modify the Amended Report and Order in the rate cases.

Since OPC filed its request in these ISRS cases, the Commission will consider OPC's pleading as a request to modify the final Commission order approving the Unanimous Stipulation and Agreement issued on April 26, 2017, in these ISRS cases. The stipulation and agreement did provide for the situation that eventually occurred, where the Court of Appeals reversed the Commission's 2016 Report and Order on the grounds that

¹⁰ Section 386.490.2, RSMo, "Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission, unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States." (emphasis added)

¹¹ *State ex rel. Beaufort Transfer Co. v. Pub. Serv. Com'n of Missouri*, 610 S.W.2d 96, 100 (Mo. App.1980).

the Commission's decision to allow ISRS cost recovery for plastic pipe replacements was unlawful or unreasonable. In that situation, the signatories agreed that they may request that the Commission determine the amount of refund, if any, that shall be made in both the 2016 and 2017 cases as a result of such reversal, and that Spire Missouri and Staff agreed not to challenge OPC's right to make such request.

The signatories did not agree on a specific mechanism to effectuate such refunds. Even if they had so agreed, however, the Commission cannot order a refund of ISRS costs without statutory authority. In the remand of the 2016 ISRS cases, which was conducted concurrently with the hearing in these cases, the Commission found Spire Missouri's plastic pipe replacements to be ineligible, but it also concluded that it did not have statutory authority to refund those ineligible costs to customers.¹³ The Commission found that neither the ISRS statute, Section 393.1015, in light of the intervening general rate case, nor the general statute regarding temporary rate adjustments following appeal of a Commission order, Section 386.520, provide any legal authority for the Commission to order refunds in those 2016 cases to return ineligible costs.¹⁴

The same reasoning prevents the refund of ineligible ISRS costs in the 2017 cases. Even if the Commission now determines that some of those prior costs in the 2017 cases were improperly classified as ISRS-eligible, the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.¹⁵ First, there

¹² *State ex rel. Missouri Cable Telecommunications Ass'n v. Missouri Pub. Serv. Com'n*, 929 S.W.2d 768 (Mo. App. 1996).

¹³ Report and Order on Remand, *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, File No. GO-2016-0332 and *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, File No. GO-2016-0333, issued September 20, 2018. The Commission takes official notice of this Report and Order on Remand.

¹⁴ *Id.*

¹⁵ *Matter of Missouri-Am. Water Co.*, 516 S.W.3d 823, 828 (Mo. 2017).

was not an appellate decision of the 2017 cases to allow the possibility of Section 386.520 rate adjustment mechanisms. Second, the ISRS statutes do not allow superseded ISRS tariffs to be corrected retroactively after a general rate case includes those infrastructure costs in base rates.¹⁶ Therefore, since there is no legal remedy, the Commission concludes that OPC's request to modify the final order approving the stipulation and agreement is moot and will be denied.

Since the Commission is issuing orders in related Spire Missouri ISRS cases concurrently with these cases, the Commission will, consistent with those other orders, make this order effective on October 1, 2018.

THE COMMISSION ORDERS THAT:

1. The requests submitted in the Office of the Public Counsel's pleading titled *Public Counsel's Recommendation*, filed on March 30, 2018, are denied.
2. This order shall become effective on October 1, 2018.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

¹⁶ *Id.*

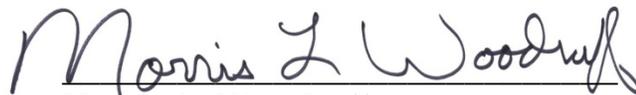
STATE OF MISSOURI

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 20th day of September 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

September 20, 2018

File/Case No. GO-2017-0201 and GO-2017-0202

**Missouri Public Service
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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.