

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

In the Matter of the Application of)
Spire Missouri Inc. to Change its)
Infrastructure System Replacement)
Surcharge in its Spire Missouri East)
Service Territory)
Case No. GO-2019-0115

In the Matter of the Application of)
Spire Missouri Inc. to Change its)
Infrastructure System Replacement)
Surcharge in its Spire Missouri West)
Service Territory)
Case No. GO-2019-0116

**RESPONSE TO *STAFF RESPONSE TO ORDER DIRECTING RESPONSE AND
NOTICE OF SECOND CORRECTED REVENUE REQUIREMENT FOR SPIRE
EAST AND REPLY OF SPIRE MISSOURI INC. TO OPC’S RESPONSE TO
COMMISSION ORDER AND STAFF REPORT***

COMES NOW the Office of the Public Counsel (“OPC”) and for its Response to the *Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East* filed by the Staff of the Commission (“Staff”) and the *Reply of Spire Missouri Inc. to OPC’s Response to Commission Order and Staff Report* filed by Spire Missouri, Inc. (“Spire”), states as follows:

1. On April 24, 2019, the Commission issued its *Order Directing Filing and Setting Response Times*, which directed Staff to calculate the amount of pretax revenues related to the replacement of cast iron or bare steel material in Spire’s infrastructure system replacement surcharge (“ISRS”). This same *Order* also instructed Spire and the OPC to provide the same calculations, but stated that

neither party needed to replicate the calculations prepared by Staff if they accept those calculations as accurate.

2. Staff filed its *Report* in response to the Commission's *Order* on April 25, 2019.

3. The OPC responded to the Commission's *Order* and Staff's *Report* on April 30, 2019. The OPC's *Response* raised two issues with Staff's *Report*.

4. The Commission issued an *Order Directing Response* on May 1, 2019, that directed Staff to respond to the questions raised in the OPC's *Response* to its *Report*.

5. Staff filed its *Response* to the Commission's *Order* directing it to respond to the OPC's *Response* on May 1, 2019. Spire also filed a *Reply* to the OPC's *Response* that same day.

Response to Staff's Response regarding "Transfer Work Orders"

6. Staff amended its revenue requirement for the Spire East territory in relation to the OPC's concerns regarding its previous treatment of the "transfer work orders."

7. The OPC accepts Staff's correction save for one small exception.

8. Staff's corrected revenue requirement shows no change to the "Net Property Taxes" line item in the revenue requirement despite a reduction in the "Total ISRS Rate Base" line item.

9. The OPC believes that if the “Total ISRS Rate Base” value changes, then the “Net Property Taxes” value should as well.¹ However, as the OPC stated in its first *Response*, it is unable itself to determine the effect that Staff’s correction would have on the “Net Property Taxes” value within the timeframe required by the Commission’s *Order*. See *OPC Response to Commission Order Directing Filing and Staff Report*, pg. 6 n. 4.

10. If the Staff needs more time to formulate the proper impact that their change will have on the “Net Property Taxes” value before the expiration of the statutory deadline for the Commission to issue an order in this case, then the OPC proposes that the Commission file an order accepting Staff’s current calculated revenue requirement but acknowledging that the number may be subject to change in relation to a final calculation of the “Net Property Taxes” value. That change would then be reflected in the final tariffs that the Commission would later approve.

Response to Staff’s Response regarding blanket work orders

11. Staff did not make any adjustment to its previous calculations for the disallowance to be applied against the blanket work orders.

12. Naturally, the OPC does not agree with this decision.

¹ The OPC currently considers this issue to be a mere oversight by Staff. However, the OPC also acknowledges a second potential possibility, which is that the Net Property Taxes being applied to the revenue requirement are in fact not actually tied to any particular plant-in-service additions (the cost of which are being requested as part of this ISRS), which would make these costs ineligible to be recovered through ISRS Revenues. The OPC notes that this issue closely resembles the concerns regarding net operating losses that the Commission has previously disallowed in other ISRS cases. See *In the Matter of the Petition of Missouri-American Water Company for Approval to Establish an Infrastructure System Replacement Surcharge (ISRS)*, WO-2018-0373, *Report and Order* pgs. 8 – 9.

13. The OPC bases its position on a number of different factors, including (1) the fact that Staff's disallowance for the blanket work orders used a ratio based on the number of individual projects falling into certain categories instead of the ratio of plastic to non-plastic pipes being replaced (which was the method Staff employed in the 2018 case with regard to blanket work orders); (2) the sheer size of the blanket work orders, which match or **dwarf** the amount of service plant additions otherwise being claimed in these ISRS proceedings, and (3) the designation of so many of the blanket work orders as "renewals" (as shown in the appendix affixed to the OPC's previous *Response*), which, when combined with the testimony elicited at the evidentiary hearing regarding renewals, strongly suggests that at least some of these projects were not ISRS eligible to a greater degree than Staff has previously calculated.

14. However, the OPC also acknowledges that this area of the record is not the most well developed and, more importantly, there are procedural limitations created by the 120 day order deadline found in the ISRS statute that would make further development of this issue exceedingly difficult. RSMo. Section 393.1015.2(3).

15. Therefore, while the OPC does not accept Staff's position as legally sound (and may continue to litigate this issue more deeply in the future if necessary), for the purpose of the present cases and the present cases only the OPC will chose to exercise its discretion not to press this mater any further.

16. In doing so, the OPC wishes to make perfectly clear that its decision is being made purely to facilitate a clean resolution to these cases, and that the OPC

may still choose to request a rehearing related to this matter (and potentially even seek redress on appeal if necessary), though it fully intends to do so *only* in the event that Spire itself chooses to bring an appeal.²

Response to Spire's Reply to the OPC's Response

17. The OPC has numerous issues with Spire's *Reply to the OPC's Response to the Staff's Report*. These include, for example, (1) the fact that Spire makes numerous allegations of fact without citation to the factual record, mostly because there is no factual support for the statements it makes; (2) that it claims the OPC has suffered no violation of its constitutional right to challenge evidence because the OPC never submitted its own calculations for a disallowance despite the fact that it is Spire, not the OPC, that bears the burden of proof in these cases and hence it is Spire who must prove how much is allowable as opposed to the OPC having to prove how much should be disallowed; (3) that it accuses the OPC's adjustments of being "late" despite the fact that the OPC filed its response to Staff's *Report* in a timely manner; and (4) that it attempts to use the OPC's efforts to comply with the Commission's *Order* requiring the OPC to file its own calculations as a basis for attacking the sincerity of its due process arguments.

² It is always within a party's discretion to choose whether or not to seek appellate review of a Commission decision, and such decisions are often made while considering pragmatic realities beyond the mere strength of the legal arguments themselves. While the OPC is cognizant of its obligations to zealously advocate on behalf of its client (which the OPC considers to be the citizens of the great state of Missouri), the OPC must also consider the practical limitations that come with being a government agency tasked with defending so many people on so many issues. In short, the OPC must be able pick and choose its battles. In this case, the OPC has chosen not to take this fight any further, unless it considers its hand to be forced by the actions of another.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI


AFFIDAVIT OF JOHN A. ROBINETT

STATE OF MISSOURI)
) SS.

COUNTY OF COLE)

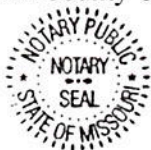
COMES NOW JOHN A. ROBINETT and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing RESPONSE TO STAFF RESPONSE TO ORDER DIRECTING RESPONSE AND NOTICE OF SECOND CORRECTED REVENUE REQUIREMENT FOR SPIRE EAST AND REPLY OF SPIRE MISSOURI INC. TO OPC'S RESPONSE TO COMMISSION ORDER AND STAFF REPORT; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


John A. Robinett
Utility Engineering Specialist

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 2nd day May, 2019.



JERENE A. BUCKMAN
My Commission Expires
August 23, 2021
Cole County
Commission #13754037


Jerene A. Buckman
Notary Public

My Commission expires August 23, 2021.