

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
Oral Argument
August 9, 2018
Jefferson City, Missouri
Volume 2

In the Matter of the Application of)
Laclede Gas Company to Change its) File No.
Infrastructure System Replacement) GO-2016-0332
Surcharge in its Missouri Gas)
Energy Service Territory)

In the Matter of the Application of)
Laclede Gas Company to Change its) File No.
Infrastructure System Replacement) GO-2016-0333
Surcharge in its Laclede Gas)
Service Territory)

In the Matter of the Application of)
Laclede Gas Company to Change its) File No.
Infrastructure System Replacement) GO-2017-0201
Surcharge in its Missouri Gas)
Energy Service Territory)

In the Matter of the Application of)
Laclede Gas Company to Change its) File No.
Infrastructure System Replacement) GO-2017-0202
Surcharge in its Laclede Gas)
Energy Service Territory)

RONALD D. PRIDGIN, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE
DANIEL Y. HALL, Chairman,
SCOTT T. RUPP,
COMMISSIONERS.

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JUDGE PRIDGIN: Good morning. We are on the record. This is the oral argument in File Numbers GO-2016-0332, GO-2016-0333, GO-2017-0201 and GO-2017-0202.

Good morning. I am Ron Pridgin. I am the Regulatory Law Judge assigned to preside over this oral argument being held on August 9th, 2018 in the Hotel Governor, Jefferson City, Missouri. The time is about 9:05 a.m.

I would like to get oral entries of appearance from counsel, please, beginning with the Company.

MR. PENDERGAST: Michael C. Pendergast and Rick Zucker appearing on behalf of Spire Missouri, Inc. My business address is 423 South Main Street, St. Charles, Missouri 63301.

JUDGE PRIDGIN: Mr. Pendergast, thank you.

On behalf of the Staff of the Commission, please.

MS. PAYNE: Whitney Payne on behalf of the Staff of the Missouri Public Service Commission. And I have provided my address and other information to the court reporter.

1 JUDGE PRIDGIN: Thank you.

2 On behalf of the Office of the Public
3 Counsel, please.

4 MS. SHEMWELL: Good morning and thank
5 you. Lera Shemwell representing the Office of the
6 Public Counsel and -- and the Public Counsel. I've
7 given my information to the court reporter. Thank
8 you.

9 JUDGE PRIDGIN: Ms. Shemwell, thank you.

10 I don't think there are any other
11 parties, but just in case, anyone else wish to enter
12 an appearance?

13 All right. Hearing none, I do see some
14 parties have brought witnesses and I appreciate you
15 bringing them. I don't know that the Commission wants
16 to take any additional testimony or evidence today,
17 but I appreciate their being here just in case.

18 Unless the Bench or counsel has another
19 plan of attack, I'd like to simply call counsel up to
20 the podium beginning with Spi re, then Staff, then
21 Public Counsel -- if you want to do another order,
22 that's fine with me -- and simply allow you to make
23 your statement and then answer Bench questions.

24 Is there anything from the Bench or from
25 counsel before we begin with oral arguments?

1 MS. PAYNE: Judge -- I'm sorry.

2 MR. PENDERGAST: Go ahead.

3 JUDGE PRIDGIN: Ms. Payne.

4 MS. PAYNE: Before things got started, I
5 did hand out -- Staff wanted to clarify -- we provided
6 a document. It's identical to what was previously
7 filed in EFIS. It is the report that was attached to
8 Staff's initial report in this matter. It is also a
9 copy of the document that was provided with the
10 notice. It's just to clarify that the final page of
11 that document is the most current calculations that
12 Staff has provided.

13 JUDGE PRIDGIN: Okay. Thank you.
14 Anything further before we proceed to oral argument?

15 MR. PENDERGAST: Yes, Your Honor. I just
16 wanted to note that we did file a Motion to Strike.
17 And my assumption is that that's probably going to be
18 taken with the ultimate decision.

19 JUDGE PRIDGIN: That's correct.

20 MR. PENDERGAST: And I just wanted to
21 make it clear that as part of that Motion to Strike,
22 there were parts of the Staff submission that we moved
23 to strike. So I don't know if it's going to be
24 offered as an exhibit or not, but to the extent it
25 would, we would object to it on the same basis that we

1 had in the Motion to Strike. Just wanted to make that
2 clear.

3 JUDGE PRIDGIN: And I understand that
4 motion's still pending and the Commission will rule on
5 it later. I appreciate that clarification.

6 Anything further before Spire begins oral
7 argument? Okay. Mr. Pendergast, if you're ready,
8 sir. And because of Commission schedules, brevity on
9 everyone's sake would be appreciated. Thank you.

10 MR. PENDERGAST: Your Honor, if I promise
11 to be brief, would it be possible to have a -- like we
12 do at the Court of Appeals, a brief rejoinder after --
13 since we're going first, after counsel for Staff and
14 OPC give their comments?

15 JUDGE PRIDGIN: I'll -- I'll certainly
16 check with the Bench and see what their preference is.
17 I suppose that's possible. I appreciate you're
18 asking.

19 MR. PENDERGAST: Okay. Thank you. If it
20 please the Commission. We are here today to address
21 what the Commission should do in response to the
22 Western District Court of Appeals' opinion which
23 reversed and remanded for further proceedings at the
24 Commission its Report and Order in two prior ISRS
25 cases, one involving Spire Missouri West, one

1 involving Spire Missouri East.

2 By agreement of the parties, which was
3 subsequently approved by the Commission, the ultimate
4 outcome of the appellate process was also to be
5 applied in two subsequent ISRS proceedings regarding
6 Spire West and Spire East. So we have a total of four
7 ISRS cases that we're dealing with here.

8 In its opinion, the Court of Appeals did
9 two things. First, it reaffirmed the bedrock
10 principles that govern whether an order issued by the
11 Commission is valid. As you well know, to be valid,
12 an order must be both lawful and reasonable, with
13 reasonable meaning that the Commission's determination
14 is supported by competent, substantial evidence on the
15 record. A valid order must also not be the product of
16 arbitrary or capricious action by the Commission.

17 Finally, while not specifically mentioned
18 in the Court's opinion, a valid Commission order must
19 be formulated in a manner that upholds the fundamental
20 due process rights of the parties, and we address that
21 issue in our Motion to Strike in some detail.

22 Second, in terms of lawfulness, the
23 opinion reversed the Commission's order on the grounds
24 that the cost incurred to replace plastic pipe that is
25 not worn out or deteriorated condition cannot be

1 recovered through the ISRS mechanism. Notably,
2 however, the Court made no determination on what those
3 costs might be, how they should be determined or how
4 they might affect the level of ISRS charges that the
5 Company was permitted to recover in these cases.

6 As I will discuss later, the Court didn't
7 address those issues in its opinion because the
8 Commission did not address them in its Report and
9 Order, relying instead on a different theory for why
10 the Company's ISRS costs were recoverable in the ISRS.

11 So rather than try and determine those
12 cost issues itself, the Court remanded the matter to
13 you for your determination. It did so because
14 Missouri law has long recognized that the Courts do
15 not have the expertise or the resources to turn legal
16 theory into actual rates, but that you do.

17 In response to the Court's remand, the
18 parties agree that this matter should be determined
19 solely on the basis of the evidentiary record already
20 produced in these cases, save only for the
21 introduction of additional work order information.

22 The parties further agree that the issue
23 to be considered by the Commission in this remand
24 proceeding is what costs, if any -- and I want to
25 emphasize the words "if any" --

1 CHAIRMAN HALL: Let me stop you for a
2 second.

3 MR. PENDERGAST: Sure.

4 CHAIRMAN HALL: So the parties agreed
5 that the Commission should -- should make the
6 determination today based solely on the factual
7 evidence already in the record. Correct?

8 MR. PENDERGAST: Correct.

9 CHAIRMAN HALL: Is that mandated by
10 either the Western District's opinion, due process,
11 statutory guidelines, procedural guidelines or some
12 other rationale? Could we, in fact, have required the
13 parties to -- to -- to bring witnesses and re-litigate
14 that issue and -- and put together a record upon which
15 we could make a decision?

16 MR. PENDERGAST: Yeah. I think that it
17 primarily results from the agreement of the parties.
18 I don't believe that there is a legal barrier to
19 having additional proceedings if you believe that was
20 appropriate.

21 CHAIRMAN HALL: So do you believe that
22 the Company carries the burden to show what -- what
23 expenses are IRS eligible?

24 MR. PENDERGAST: Well, I mean, you know,
25 there's obviously a burden of proof language when it

1 comes to rate case proceedings. And I think that as
2 the moving party, we have to show that the costs that
3 we have are includable in the ISRS and I believe we've
4 done that, Commissioner -- Chairman.

5 CHAIRMAN HALL: I'm both. Okay. Thank
6 you.

7 MR. PENDERGAST: So where does that leave
8 us? Spire Missouri would respectfully submit that the
9 only course of action that complies with all of the
10 requirements that come from the Court's opinion is the
11 one recommended by the Company; namely, to find that
12 there is no competent and substantial evidence to the
13 record to support any adjustment to the Company's
14 historical ISRS charges at issue in these proceedings.

15 As previously noted, the Court reaffirmed
16 that a valid Commission order must be supported by
17 competent and substantial evidence. And these
18 Company -- in these cases, the Company has argued that
19 the incidental replacement of plastic pipe has
20 resulted in no incremental increase in its ISRS
21 charges, but instead has reduced those charges
22 compared to what they would have otherwise been had it
23 attempted to re-use rather than retire the plastic
24 pipe at issue in these cases.

25 In short, the Company's incidental

1 replacement of plastic pipe has avoided, rather than
2 caused, costs to be incurred. And avoiding costs by
3 replacing or retiring something rather than trying to
4 re-use it is not a terribly difficult concept to
5 understand.

6 You get into an auto accident and take
7 your car into the shop to get it fixed. It has a
8 couple of dents in the bumper, the rest of the bumper
9 is just fine. And you're advised that they can spend
10 a thousand dollars in labor costs to pound out the
11 dents, to go ahead and repaint the bumper or they can
12 go ahead and spend 600 dollars and just replace the
13 bumper.

14 And obviously that decision to replace is
15 one that is saving money. It is not costing money.
16 And there's no owner of a car and no, you know,
17 insurance company who would disagree with that
18 concept.

19 The same thing is true if you're faced
20 with a decision on putting in a new main. And I can
21 put in a new main for 500,000 dollars if I simply try
22 and re-use the existing pipe and stretch the service
23 lines to go ahead and try and attach to -- or the main
24 to attach to old service lines --

25 CHAIRMAN HALL: Counsel --

1 MR. PENDERGAST: Yeah.

2 CHAIRMAN HALL: -- I understand that
3 argument. And, you know, obviously the Commission
4 understood that argument when it issued its Report and
5 Order in January of 2017. The Western District didn't
6 agree with the Commission, did not agree with the
7 Company's position. And I really hope we're not going
8 to spend this morning re-litigating that issue.

9 MR. PENDERGAST: No. I don't want to
10 spend this morning --

11 CHAIRMAN HALL: So I mean, what -- what
12 we are here to do is to figure out, if possible, what
13 percentage of the ISRS was ISRS eligible and what
14 percentage was not eligible. We're not going to spend
15 time going into whether or not the approach the
16 Company took was prudent, whether it was economic,
17 whether it resulted in a safer system.

18 I mean the Commission's opinion -- or
19 Report and Order agreed with you on the approach. The
20 Western District did not. So we -- we have to stay
21 within the mandate from the -- from the Court of
22 Appeals. So please limit your argument to that issue.

23 MR. PENDERGAST: No. And I agree fully
24 that we have to stay within the mandate. My concern
25 about saying that this cost issue is something that's

1 already been decided by the Court of Appeals is that
2 it hasn't been decided by the Court of Appeals. And
3 it hasn't been decided by the Court of Appeals,
4 Chairman, because you didn't address it in the Report
5 and Order that was issued on this case.

6 What you talked about was a concept that
7 this plastic is simply part of a larger system and
8 because it's part of a larger system, it's eligible
9 for ISRS recovery. There was nothing in the
10 Commission's Report and Order that addressed this cost
11 issue.

12 You may have agreed with the Company, you
13 may have thought we were right in that, but you didn't
14 rely on it in your Report and Order. And because you
15 didn't rely on it in your Report and Order, the Court
16 of Appeals never addressed it. And so I think to say
17 that the Court of Appeals has already determined that
18 issue when there's nothing in its opinion that even
19 addresses it would not be correct.

20 CHAIRMAN HALL: I'm reading the
21 conclusion right above the signature line. We reverse
22 the Commission's Report and Order as it relates to the
23 inclusion of the replacement costs of the plastic
24 components in the ISRS rate schedules.

25 We need to figure out today how much of

1 the total ISRS is the plastic components. That's what
2 the Court told us to do.

3 MR. PENDERGAST: Okay. I understand
4 that. And our answer to that, Chairman Hall, would be
5 none. There is no cost associated with the
6 replacement of plastic in our ISRS charges. What we
7 have in our ISRS charges are lower ISRS charges
8 because we retired certain plastic facilities and --
9 rather than re-using them. That's what's in our ISRS
10 charges.

11 And it's not just me saying that. Mark
12 Lauber, an engineer who is well versed in the
13 practical realities of installing ISRS plant,
14 testified that it would be significantly more
15 expensive to go ahead and re-use rather than replace
16 that plastic. Mr. Buck, who's got years of experience
17 in the ISRS accounting for costs, indicated and
18 testified to the same thing. Now, nobody has disputed
19 those, Chairman.

20 CHAIRMAN HALL: Right. And we agreed
21 with you. We agreed with you. That was the basis of
22 our decision. And the Appellate Court said no.

23 MR. PENDERGAST: You know, Chairman, I
24 just have to respectfully disagree. You didn't put
25 that in your Report and Order. You didn't say that in

1 your Report and Order. We find that it is cheaper to
2 go ahead and do it this way than do it that way. You
3 did not address that issue at all.

4 And because you didn't address that issue
5 at all, the Court of Appeals didn't address that issue
6 at all. And I think, you know, to sit there and think
7 that it has is just erroneous. It's -- it's not
8 consistent with the historical record. And --

9 CHAIRMAN HALL: All right. Well, let's
10 continue.

11 MR. PENDERGAST: Okay. And, you know, we
12 had two witnesses that went ahead and testified to
13 that, they said there's no incremental costs
14 associated with it. Those witnesses were subject to
15 cross-examination and nobody disputed what they had to
16 say. Nobody disputed what they had to say when we
17 said the same thing in our most recent rate case
18 proceeding and provided even more granular evidence
19 showing why that is true.

20 So because of that, the Company's
21 position that there are no costs to disallow is the
22 only one that's supported by competent substantial
23 evidence on the record. It's the only one that's not
24 arbitrary and capricious because it is based on
25 competent and substantial evidence. And it's the only

1 one that doesn't offend the fundamental due process
2 rights of the parties. Because we were very up front
3 with that evidentiary presentation. We didn't try and
4 tender it at the last minute when nobody had an
5 opportunity to respond. We were completely consistent
6 with what due process requires.

7 And from my standpoint, it is perfectly
8 responsive to the Court of Appeals' opinion. The
9 Court of Appeals, as I said, left it to you to make
10 the rate-making determinations. The Court of Appeals
11 may have gone ahead and said, well, we had this
12 percentage of plastic and we had that percentage of
13 non-plastic materials. They may have mused about
14 whether or not the programs are sufficiently approved
15 by the Commission.

16 But what they did not do was go ahead and
17 address what really are the costs of retiring that
18 plastic? Are they negative? Are they positive? They
19 left that to you because you know how to do those
20 things and the Court doesn't.

21 Now, that's what we have in support of
22 our position. We think we hit on all cylinders. We
23 think we satisfy all of the principles and
24 requirements that were in the Court's order. And, you
25 know, the Court didn't say the only thing you have to

1 do is look at excluding ISRS costs. They said you
2 need to do whatever a Commission order needs to do to
3 be valid and it's got to be based on competent and
4 substantial evidence and it can't be arbitrary and
5 capricious and it can't go ahead and offend the due
6 process rights of the parties.

7 So that's our case. Let's look at the
8 other side. And what they have done is come in and
9 just said we're going to propose that you disallow
10 ISRS charges based on the relative plastic that was
11 retired versus other plant that was retired.

12 Now, in contrast to Mr. Lauber and
13 Mr. Buck, who testified as to our view that there's no
14 incremental costs, what is there on the evidentiary
15 record to support that equal percentage? And, you
16 know, the fact of the matter is there's nothing on
17 it -- in the record to support it.

18 In fact, I've given you a handout. And,
19 Chairman Hall, you may remember this back and forth
20 you had with Mr. Hyneman. And we've put some of that
21 transcript pages in there. And you asked him about
22 whether a percentage approach would be appropriate and
23 you mentioned the specific example of a situation
24 where you're installing less new main than what you're
25 retiring. And Mr. Hyneman said, well, you know, under

1 those circumstances, maybe not. Maybe you'd have to
2 do some kind of allocation. But of course, he never
3 indicated what that allocation should be and never
4 came up with a proposal for doing that.

5 If we look at what Staff said in their
6 brief, and I've also attended that, in that they
7 basically say we have significant reservations
8 regarding the use of a percentage-based method for
9 adjusting ISRS charges. And, you know, that's not
10 surprising, in part, because the Staff supported our
11 position on this issue.

12 But those reservations were summarized in
13 the attached page from Staff's brief in these cases.
14 And as stated there, Staff witness Bolin testified
15 that the use of percentages would not be appropriate
16 and that Staff had not even developed a methodology.
17 Similarly, Staff Witness Oligschlaeger testified that
18 OPC's percentage method was inaccurate or inadequate.

19 Given these statements, OPC and Staff
20 were naturally unable to cite to any expert testimony
21 from their own witnesses to support the method they
22 are now proposing to use to adjust the Company's ISRS
23 charges. Instead, their only citation to a testifying
24 expert in support of their proposed method was a cite
25 by Staff to some answers that were given by Company

1 Witness Glenn Buck on cross-examination.

2 As shown by the last page in the handout,
3 Mr. Buck was asked whether it would be possible to use
4 a percentage of plastic approach to adjust ISRS
5 charges. And while he acknowledged that it might be
6 possible to use such a method, after all virtually
7 anything in this world is possible, he also said with
8 regard to the propriety of such method that, quote, I
9 don't think that would really be accurate, closed
10 quote. Quote, I don't think that's how you could do
11 it, closed quote. Quote, I don't think that's a
12 logical way to look at it, no. And, quote, I wouldn't
13 agree with it, closed quote.

14 Clearly when the best evidentiary support
15 a party can find for its proposed method is the
16 testimony of an expert witness who disagrees with the
17 reasonableness and accuracy of that method, not just
18 once but four times, it's a pretty solid indication
19 that you have no evidentiary support whatsoever for
20 your position.

21 So the method proposed by Staff and OPC
22 for adjusting ISRS charges clearly fails the first
23 requirement of the Court's opinion in that the
24 Commission could not possibly find it is based on
25 competent and substantial evidence and, thus,

1 reasonable.

2 For the same reason, endorsing an
3 approach that has simply been picked out of the air
4 with no supporting evidence would be the exact kind of
5 arbitrary and capricious act that the Court's opinion
6 confirmed should not be engaged in by the Commission.

7 Third, for the reasons stated in our
8 Motion to Strike, approving such an adjustment based
9 on a method that was never proposed during the
10 evidentiary hearing process and that the Company has
11 never had an opportunity to rebut or cross-examine on
12 would be an egregious violation of the Company's due
13 process rights.

14 Finally, in addition to failing to
15 satisfy all of these bedrock core requirements, the
16 method proposed by OPC and Staff is also inconsistent
17 with the Court's specific reasoning on the plastic
18 issue itself. OPC and Staff have effectively proposed
19 a method that simply assumes that all retired plastic
20 pipe, other than that retired in connection with
21 mandated public improvements, should be excluded from
22 ISRS charges.

23 Even the Court of Appeals recognized,
24 however, that some plastic pipe that was replaced
25 could be eligible for ISRS inclusion either because of

1 its age, they cited the fact that some of this pipe
2 was past its depreciable life or because it was truly
3 incidental in nature in anybody's definition.

4 Moreover, the Company itself has raised a
5 number of issues as to why this blanket exclusion of
6 all plastic is inappropriate, including the fact that
7 the replacement of many plastic facilities was
8 unavoidable and had to be done simply to resume or
9 maintain service. You have no choice but to go ahead
10 and replace certain of these facilities if you are
11 going to go ahead and continue to provide service.

12 So the blanket method proposed by OPC and
13 Staff for the first time in their post-hearing
14 submissions just sweeps all of these considerations
15 aside while at the same time foreclosing any
16 opportunity by the Company to adjudicate why they make
17 that method too flawed to be relied on.

18 For all of these reasons, the Company
19 respectfully suggests that the only course of action
20 available to the Commission is to find that no
21 adjustment has been justified to the Company's
22 historical ISRS charges in these cases.

23 The Company's position to that effect is
24 supported in a way that complies fully with all of the
25 requirements that the Western District Court of

1 Appeals has said are essential for valid Commission
2 order, while the positions of OPC and Staff comply
3 with none of them.

4 And as we discussed, I don't think you
5 should hesitate to reach such a result because of some
6 notion that you would somehow be ignoring the Court's
7 legal guidance in its opinion. As I previously
8 indicated, it's very important to keep in mind that
9 the issue of whether the incidental replacement of
10 pipe actually resulted in any increase in ISRS charges
11 was never relied upon by the Commission in its initial
12 decision to not disallow any ISRS charges.

13 Instead, the Commission based its
14 decision on other rationales, including whether the
15 plastic replacements were simply an integral part of a
16 larger system that was eligible for replacement. As a
17 result, this cost impact issue is one that has not yet
18 been considered by the Court of Appeals.

19 Now that you do have an opportunity to
20 consider it head on, there's nothing in the Court's
21 opinion that requires you to dispense with
22 long-standing rate-making concepts or ignore
23 fundamental principles of economics or engineering in
24 order to satisfy what OPC and Staff can only speculate
25 might be the Court of Appeals' preferences for how its

1 opinion should be implemented.

2 And that's the exact kind of speculation
3 that OPC and Staff are attempting to rely on in their
4 responses to the Company's position on this matter.
5 As I said, the Court of Appeals made some comments
6 about the percentages of plastic versus non-plastic,
7 made some comments about, you know, the degree to
8 which these specific programs have been approved by
9 the Commission, but it did not address the issue of is
10 there really a cost associated with the replacement
11 versus the re-use of these facilities.

12 And, quite frankly, if the Commission
13 agreed with us before, even though it didn't state it
14 in its order, there's nothing in the Commission -- or
15 in the Court's opinion that requires the Commission to
16 change its view of that.

17 Instead, rather than trying to guess at
18 what the Court of Appeals might want, how it might
19 handle this issue, how it might sort through the whole
20 set of considerations that go into defining what is a
21 real cost and when does it occur, I would respectfully
22 submit that you should stand firm with what your
23 initial, albeit unstated, view on this was.

24 State it and then let the Court of
25 Appeals wrestle with that issue and give you the

1 guidance that they believe is appropriate. But I
2 think speculating on what it might want and what the
3 Court might want to do, you know, there's no basis for
4 doing that and there's certainly no basis in the
5 record for doing that.

6 For all of these reasons, we would
7 respectfully request that you adopt the Company's
8 position that no adjustment to its ISRS charges is
9 justified based on the evidence in this case. Thank
10 you.

11 CHAIRMAN HALL: Turning to the Western
12 District's opinion at page 5 --

13 MR. PENDERGAST: Got it.

14 CHAIRMAN HALL: -- at the bottom of that
15 first paragraph where the -- where the Court says,
16 Section 393.1000 [sic] 9(5)(a) clearly sets forth two
17 requirements. One, the replaced components must be
18 installed to comply with state or federal safety
19 requirements. And then the second, the worn out and
20 deteriorated condition requirement.

21 Concerning the first one, is there
22 evidence in the record that shows that all of the ISRS
23 expenses that are at issue here were installed to
24 comply with the state or federal safety requirements?

25 MR. PENDERGAST: Yeah. I think while the

1 Court kind of gave a short shrift, Mr. Lauber
2 testified that it's certainly consistent with the fact
3 that we have mandated replacement programs for cast
4 iron and bare steel that are included in the
5 Commission's rules.

6 We have a system integrity rule that says
7 you will take various actions to mitigate leaks and
8 other dangers to your distribution system. And we
9 have cited our replacement programs as being
10 consistent with that.

11 And, you know, from the standpoint of
12 whether they've been approved by the Commission,
13 unlike many replacement programs, we come before you
14 twice a year and we provide you with information
15 showing what the scope and nature and footage of our
16 replacement programs have been, what the costs have
17 been. People are free to raise any issues they may
18 want under those circumstances. And those particular
19 filings have been approved with some adjustments over
20 the years time and time again.

21 So, you know, this was probably one of
22 those issues, because we didn't know what basis the
23 Court of Appeals was going to rely on, to go ahead and
24 say I'm reversing the Commission. It could have been
25 developed further and maybe ought to be developed in

1 the future.

2 And finally, you know, there's a
3 statutory provision, it's the first one in the
4 statutes applicable to gas, electric and water
5 companies that basically says we have a fundamental
6 obligation to provide safe and adequate services and
7 facilities. And if that's not a mandate to do
8 programs that are designed to accomplish that very
9 purpose, I don't know what is.

10 CHAIRMAN HALL: So -- so do you believe
11 that it is undisputed as to whether or not the
12 Company's program is mandated by the state and sa--
13 state and federal safety requirements?

14 MR. PENDERGAST: Well, I think it's done
15 to comply with state and federal safety requirements.

16 CHAIRMAN HALL: Right. So do you -- is
17 it -- is it -- is it undisputed at this hearing today
18 on that issue, from your perspective?

19 MR. PENDERGAST: I'm trying to think back
20 on what Public Counsel has said about that. They've
21 obviously raised the issue. I don't know if they
22 think it should have something like a copper service
23 replacement program where you say you'll do everything
24 within ten years or not, but I think they have
25 probably taken some issue with that. So I -- I would

1 not say that it's completely undisputed.

2 CHAIRMAN HALL: The way that I looked at
3 the -- at the Court's order, and I've read it quite a
4 few times, is it -- on page 5 it sets forth those two
5 requirements. And then in the conclusion it focuses
6 exclusively on the worn out or deteriorated condition
7 requirement. Because that's where it says we've got
8 to figure out the replacement costs of the plastic
9 components. Is that --

10 MR. PENDERGAST: I -- agree with you. We
11 have to --

12 CHAIRMAN HALL: Is that -- is that your
13 interpretation as well?

14 MR. PENDERGAST: We have to figure that
15 out. We do.

16 CHAIRMAN HALL: But -- but -- but
17 under -- based upon that conclusion, we don't need to
18 delve back into the state or federal safety
19 requirements issue. At least that's the way I read it
20 and I want to make sure that that's how you read it as
21 well.

22 MR. PENDERGAST: I -- I do. I do.

23 CHAIRMAN HALL: Okay. Following up on
24 some questions I asked previously, if -- if the
25 Commission were to determine that the record does not

1 provide us the guidance necessary to comply with the
2 Western District's mandate, one thing that I'm
3 considering is maybe we need to have an evidentiary
4 hearing and let the parties present witnesses so as to
5 get to the issue of the costs related to the plastic
6 component. That would alleviate all of your due
7 process concerns, would it is not?

8 MR. PENDERGAST: It would certainly take
9 a significant step in that direction. And, of course,
10 because the ISRS is always before you it seems -- we
11 have a current ISRS where I'm assuming that these
12 issues are probably going to be addressed again anew
13 in any event.

14 I guess the only question is do you go
15 ahead and afford another hearing to go ahead and do
16 that? And I -- I think that kind of comes down to the
17 integrity of the process. And the process in your
18 procedural rules and everything contemplate that if
19 people want to make an adjustment, at some point they
20 need to support it.

21 And I guess the question is how many
22 opportunities the parties get to go ahead and come up
23 with some kind of evidence to support their position.

24 CHAIRMAN HALL: I would say as many as it
25 takes to comply with the Western District's mandate.

1 All right. Thank you. Thank you.

2 COMMISSIONER RUPP: So your basic
3 position is there's no cost and there shouldn't be a
4 percentage and we should just reaffirm that and
5 articulate it in our Report and Order that based off
6 all the arguments that you made, that this is why we
7 made that decision, it was on this -- this -- this
8 grounds and we stand by it and -- and move forward?

9 MR. PENDERGAST: Yeah. I think that's a
10 fair summary that there are no incremental costs. In
11 fact, there are cost savings associated with what
12 we've done and --

13 COMMISSIONER RUPP: Okay. So I -- I get
14 where you're at. Now, Chairman wants to find a
15 percentage. And so I can already see where -- you
16 know, where -- where this is -- is going. So is the
17 Company open to any percentage? Are you open to hey,
18 what if we said 1 percent because there could possibly
19 have been some that maybe there would have been some
20 costs. We don't have a methodology. Would the
21 Company be like, yeah, we'll walk away for 1 percent?

22 MR. PENDERGAST: Well, you know,
23 obviously the smaller percentage is, you know, the
24 more we would tend to go ahead and look at it. But
25 our fundamental theme, and we think it's the only one

1 that's supported by the competent and substantial
2 evidence, is that the way we have done this has
3 actually saved customers money, it hasn't cost
4 customers money.

5 And, you know, the Court talked about
6 incentives in its opinion and what was appropriate and
7 what isn't. But what you don't want to do is if you
8 have something that is saving customers money, that
9 it's reducing the costs compared to what they would
10 otherwise be, say, you know, we need to come up with a
11 little bit of a disallowance associated with that. I
12 just don't think that that's appropriate, and
13 certainly given the evidentiary record, not justified
14 by the evidence.

15 COMMISSIONER RUPP: So you're afraid that
16 if we did a percentage, that in the future, any time
17 there is something that is cost saving to the Company
18 and to the customers that maybe can't fully be
19 calculated, that you would then be held to a point
20 where you would have to calculate it and you would not
21 have the option to just replace the bumper and you
22 would have to go to do it because of -- of a
23 previous -- previous case?

24 MR. PENDERGAST: That's -- that's --
25 that's a bit of a concern. But I also want to make it

1 clear, this issue isn't going away, you know. It's
2 not like we're not going to have another ISRS. We
3 already have one filed. Staff's already made a
4 recommendation in that to exclude certain plastic.
5 We're going to have something to say about that. And
6 you'll have maybe a fuller record at that point to go
7 ahead and make a determination.

8 COMMISSIONER RUPP: So why -- why would
9 we need another hearing? Why can't we just wait till
10 the next ISRS and deal with this then?

11 MR. PENDERGAST: I think -- I think it
12 should be dealt with there. I take very seriously the
13 legal guidance that's provided by the Court of Appeals
14 and I think we have an obligation to make sure we
15 inform whatever actions we have.

16 I think for these historical ISRS charges
17 though, you know, the parties agreed let's just base
18 it on whatever the record is, you know. OPC had
19 multiple opportunities to put its method on the
20 record. It didn't have to wait 18 months to do it.

21 COMMISSIONER RUPP: So let me stop you
22 there.

23 MR. PENDERGAST: Sure.

24 COMMISSIONER RUPP: So let's assume we
25 just reaffirm our order, say no, we got it right.

1 Maybe we didn't articulate ourselves the best way we
2 could have and now we're going to do that and we --
3 and we pass that up. I'm not an attorney. And all
4 this motions to do this and that, they explain it to
5 me and every time it's like just (indicating).

6 So what happens? So it goes back --
7 somebody sues and it goes back. Does it go back to
8 the Western Court of Appeals and do they just be like,
9 hey, you guys didn't do what we told you to do. Here
10 you go again. And then do we just get in this back
11 and forth? Or what's the -- what's the path forward
12 if we were to do something like that?

13 MR. PENDERGAST: I think if you were to
14 do something -- I'm not going to step in the shoes of
15 OPC and -- and, you know, conjecture on what they --

16 COMMISSIONER RUPP: Well, I'll
17 conjecture. Someone appeals.

18 MR. PENDERGAST: Okay. So -- so they're
19 going to appeal. And then what the Court of Appeals
20 would have to do would be to look at the rationale
21 you've now given as to why no disallowance of
22 ISRS cost is appropriate. And they would have to go
23 ahead and either say yeah, now I understand and -- and
24 I agree with that. Or they would have to go ahead and
25 say, I don't agree with that.

1 COMMISSIONER RUPP: So let's assume they
2 don't agree with that. Then what happens?

3 MR. PENDERGAST: Then they would go ahead
4 and provide you with additional legal guidance as to
5 why they don't buy that concept either.

6 COMMISSIONER RUPP: So then it comes back
7 here?

8 MR. PENDERGAST: It comes back here. In
9 the meantime, you know, the ISRSs roll on. We have a
10 current ISRS case. These issues are going to be
11 probably raised and litigated in that case and maybe
12 you'll come up with a different determination. I
13 don't know. I would hope you come up with the same
14 determination you did in this case.

15 COMMISSIONER RUPP: So let's assume that
16 that has happened. How are customers harmed if that
17 plays out the way we just talked about it?

18 MR. PENDERGAST: I'm not suggesting that
19 customers would be harmed under those circumstances.
20 Like I said, I just think that we've been dealing with
21 these four ISRS cases now for six months to a year and
22 a half depending on which ones we're talking about,
23 actually a year to a year and a half. People had
24 every opportunity to come up with adjustments to
25 support it, to give us a chance and they didn't do it.

1 COMMISSIONER RUPP: So remind me in the
2 ISRS cases, do we do our rate case sharing expense
3 like we do on the other rate cases?

4 MR. PENDERGAST: I don't believe you do.
5 And I don't know if that has anything to do with the
6 fact that, you know --

7 COMMISSIONER RUPP: So if we had another
8 hearing, there would be some incremental small cost to
9 ratepayers for the cost of the hearing?

10 MR. PENDERGAST: Well, actually I think
11 the way it works, you know, there's no accounting
12 order, there's no rate case expense at all that's
13 provided there. So I think whatever the Company
14 incurs to prosecute that case would be borne by the
15 Company.

16 COMMISSIONER RUPP: So it's borne by the
17 Company?

18 MR. PENDERGAST: Right. Yeah.

19 COMMISSIONER RUPP: All right. Thank
20 you.

21 JUDGE PRIDGIN: Anything further from the
22 Bench?

23 All right. Mr. Pendergast, thank you
24 very much.

25 MR. PENDERGAST: Thank you very much.

1 JUDGE PRIDGIN: Oral argument from Staff
2 of the Commission. Ms. Payne, when you're ready.

3 MS. PAYNE: May it please the Commission.
4 I'm a little bit shorter than Mr. Pendergast.

5 I will go ahead and summarize what
6 Chairman Hall said in the interest of brevity. I
7 think it's very clear -- Staff argues that it's very
8 clear what the Western District has asked us to do
9 today. They have remanded the case, they expect
10 further action from this Commission.

11 And so obviously what is at issue here is
12 three very simple issues. The Commission must decide
13 were there costs associated with the replacement of
14 ineligible plastic components that were collected
15 through Spire Missouri's 2016 and 2017 ISRS filings?

16 The answer is a clear yes. The
17 neighborhood replacement strategy unquestionably
18 results in the replacement of plastic components that
19 were not worn out or deteriorated. The Western
20 District, in its opinion, found that the cost to
21 replace any plastic components which were not in a
22 worn out or deteriorated condition but which were
23 replaced cannot be recovered through an ISRS filing
24 pursuant to 393.1009 (5)(a). The Western District
25 remanded the case for further proceedings consistent

1 with exactly that.

2 The plain language of the order can only
3 mean that the Commission is expected to determine the
4 costs to replace any plastic piping which should not
5 have been included in the ISRS for recovery. And then
6 pursuant to the stipulation that the parties entered
7 into in the 2017 cases, the action should be extended
8 to those as well.

9 So now the Commission must determine how
10 should these ineligible replacement costs be
11 calculated? The answer is Staff's methodology, which
12 was proposed in its Report and Reply. In the original
13 hearing in the 2016 ISRS filings, Staff's position was
14 that the cost of replacing plastic pipe which was not
15 worn out or deteriorated could be included in Spire
16 Missouri's filing for recovery through the ISRS
17 mechanism. However, that was remanded.

18 Unlike what Spire tries to order -- argue
19 now, Staff's position was required to change because
20 of the Western District remand. And we are trying to
21 comply with that remand, as should the Commission.

22 Staff did calculate a rough percentage
23 based on the sampling of work orders that OPC provided
24 in its testimony in that case. However, it was not
25 considered to be an exact estimate of the full costs

1 that would be associated with the replacement of
2 plastic components. So now that must be -- that must
3 be determined.

4 When the parties filed their Joint
5 Response to Order Directing Filing on May 25th of
6 2018, we included the statement, The parties agree
7 that the Commission has the authority to allow new
8 evidence to be presented in determining the value of
9 the replacement cost of plastic pipe in these matters,
10 along with a request to utilize all of the work orders
11 or other information in the Company's possession that
12 would be necessary to make a determination of the
13 amount of plastic that was replaced in forming our
14 arguments for this matter.

15 Spi re Mi ssouri , in conjunction with that,
16 did provide Staff and OPC with almost all of the
17 relevant work orders associated with the 2016 and 2017
18 filings. And Staff, I can assure you, did not pull
19 anything out of air -- out of the air. And as
20 presented in our notice and our reply, we went through
21 all of the work orders and determined how much plastic
22 what percentage of that work order would be considered
23 the replacement of plastic that was not in a worn out
24 or deteriorated condition and came to our calculation
25 of 1,359,165 dollars for Spi re West and 2,801,860

1 dollars for Spire East. And that is the product of
2 the extensive review that Staff conducted.

3 Staff determined the actual percentage of
4 plastic footage replaced for all mains and service
5 lines compared to the total footage replaced for the
6 mains and service lines. We then applied the actual
7 individual plastic main and service percentages to the
8 work order cost to determine the value of the
9 replacement of the plastic components.

10 To account for the costs associated with
11 the work orders that were not provided, Staff
12 calculated and applied the average percentage of
13 plastic replaced in the provided work orders. The
14 exact amount and the estimated amounts were added
15 together for our final recommendation as has been
16 provided.

17 It also factors in certain accumulated
18 depreciation, deferred income taxes and the length of
19 time that the associated amounts were collected
20 through the ISRS from the customers while the 2016
21 case was on appeal and while the 2017 case was in
22 effect pending this matter here today.

23 These calculations are decidedly more
24 accurate than the rough percentage that Staff provided
25 in the original proceedings and we recommend that the

1 Commission accept those amounts as the most accurate
2 calculations.

3 Now Spire Missouri, as you just heard,
4 has challenged that Staff's methodology is outside the
5 record. But Staff provided several places in its
6 reply that point to the counsel for OPC
7 cross-examining witnesses for both the Company and
8 Staff and even OPC's own witness on redirect that
9 discussed the ability to calculate the percentage of
10 plastic in the work orders and could that be used to
11 determine the overall calculation that we are trying
12 to determine here today.

13 Spire argues that its due process rights
14 have been violated, but I would argue that Spire has
15 had ample opportunity throughout the course of this
16 remanded proceeding to respond to Staff and has
17 certainly taken that opportunity.

18 Finally, the Commission must decide how
19 these calculated costs of -- should be returned to the
20 ratepayers. Section 393.1012, Section 1, provides for
21 ISRS revenues to be refunded based on findings of the
22 Commission under Statute 393.1009(5) and (8).

23 However, the Commission rules correct that to be
24 393.1015, Sections 5 and 8.

25 Section 8 specifically provides that a

1 gas corporation must offset its ISRS in the future to
2 account for any over-collections when it collects an
3 amount through the ISRS which the Commission later
4 determines in a general rate proceeding should be
5 disallowed from collection through the ISRS.

6 Further, Commission Rule 3.265, Section
7 18, explicitly authorizes this process. It states
8 that if an over- or under-recovery of ISRS revenues,
9 including Commission-ordered refunds, exist after the
10 ISRS has been reset to zero, that amount of over- or
11 under-recovery shall be tracked in an account and
12 considered in the next ISRS filing of the natural gas
13 utility.

14 Now, the Western District determined that
15 certain replacement costs were inappropriately
16 included in the ISRS. And the statutes and the rules
17 clearly contemplate situations where a refund is
18 appropriate. In the matter at hand, Spire Missouri
19 has inappropriately over-collected millions of
20 dollars, as proven by Staff's calculations. A refund
21 is clearly permitted and is, in fact, appropriate
22 under the plain language of both the statutes and the
23 rules.

24 Now, given the current circumstances of
25 the case and the fact that Spire Missouri has its 2018

1 ISRS filing currently pending before this Commission,
2 as Mr. Pendergast pointed out, the most appropriate
3 method of refund for the over-collected amount is to
4 consider this recommended calculation, as Staff has
5 provided, as an offset to those current ISRS filings.

6 It is both the simplest way and saves the
7 time and effort of Spire Missouri attempting to modify
8 its billing to account for a refund to each customer
9 individually. The delay is minimal, as Mr. Pendergast
10 pointed out, Staff's recommendation has already been
11 filed and the tariffs filed in that case were
12 suspended to only October 5th, 2018.

13 The Staff's recommendation already
14 contemplates a supplemental recommendation to be filed
15 based on the update period for that proceeding and the
16 Commission's decision in this matter before us today.

17 I'm happy to answer any questions of the
18 Commission. And Staff does have its witness, Kim
19 Bolin, available if there are any questions regarding
20 Staff's proposals.

21 CHAIRMAN HALL: Good morning.

22 MS. PAYNE: Good morning.

23 CHAIRMAN HALL: Do you believe that it
24 would be one possible approach to consolidate this
25 proceeding with the pending ISRS case so as to allow

1 all of the parties to present a factual record as to
2 the replacement costs of the plastic components?

3 MS. PAYNE: I certainly think that that's
4 a consideration. I -- I think that based on Staff's
5 proposal, the amount should be considered in that
6 proceeding anyway. So if the Commission feels that
7 more evidence is needed, I think that consolidation
8 would be an appropriate action.

9 CHAIRMAN HALL: And -- and do you believe
10 that that would alleviate the due process concerns
11 raised by the Company?

12 MS. PAYNE: I personally think that the
13 due process concerns raised by the Company are
14 probably unfounded. However, I do agree that should
15 there be any due process concerns, that they would be
16 alleviated by that.

17 CHAIRMAN HALL: Where is that case in the
18 process, the pending ISRS case?

19 MS. PAYNE: The -- Staff's recommendation
20 has been filed. It's now currently awaiting response
21 to that recommendation. However, there are certain
22 update calculations that need to -- or that need to be
23 considered at least. Whether or not they change the
24 ultimate recommendation is still to be determined, so
25 it -- there is still time for those cases to be

1 consolidated and this to be considered.

2 CHAIRMAN HALL: What is the statutory
3 deadline with which that case has to be finally
4 adjudicated?

5 MS. PAYNE: I am not certain of the exact
6 statutory deadline. I apologize. I haven't taken the
7 helm on that one.

8 MR. KEEVIL: I -- I think it's October
9 5th, Commissioner. Basically you have 120 days from
10 when it was filed to make your order effective. And I
11 think that was why the Commission suspended those
12 tariffs to October 5th. So it's somewhere around
13 October 5th.

14 MS. PAYNE: And for the court reporter's
15 benefit, that's Staff counsel Jeff Keevil.

16 CHAIRMAN HALL: What is your response to
17 the Company's position that the replacement costs of
18 the plastic components are zero?

19 MS. PAYNE: I -- Staff's original
20 position did align with the Company's position that
21 there were savings produced from this.

22 CHAIRMAN HALL: Okay. Let me stop you.
23 Savings produced by the -- savings by replacing the
24 plastic as opposed to leaving the plastic? Is that
25 what you mean?

1 MS. PAYNE: Not the replacement of the
2 plastic specifically, but the changes to the system in
3 general. There were less lengths of pipe replacing
4 larger lengths of pipe.

5 CHAIRMAN HALL: Right.

6 MS. PAYNE: However, in --

7 CHAIRMAN HALL: Which is separate from
8 the issue of replacing the plastic. It's --

9 MS. PAYNE: Correct. And that's --
10 that's where Staff's argument hinges now. Is that
11 based on what the Western District stated in its
12 opinion, the -- what is at issue here is not whether
13 or not there were savings and what the ultimate
14 fallout of the program is.

15 It's specifically the plastic that was
16 replaced did, in fact, incur a cost. That cannot be
17 argued. There -- there must be costs to put a plastic
18 pipe into the ground and, therefore, those are the
19 costs which I -- Staff would argue the Western
20 District was contemplating in its order and that's
21 what needs to be calculated and refunded.

22 CHAIRMAN HALL: So the -- the Company has
23 the burden of proof to show ISRS eligibility for its
24 expenses. Correct?

25 MS. PAYNE: Correct.

1 CHAIRMAN HALL: And so is there an
2 argument that because -- if we were to determine that
3 it is impossible to -- to -- to figure out what the
4 replacement cost of the plastic components are, that,
5 therefore, the entire thing, the entire program is not
6 IRS eligible?

7 MS. PAYNE: I would say that what has
8 already been determined would need to be refunded in
9 its entirety. The entire 2016 and 2017 filings would
10 need to be disallowed if we determine that there
11 cannot be a calculation of the plastic costs.

12 However, going forward, I -- I would
13 think -- and I mean the Company can obviously answer
14 this better than I can, but I would think that there
15 would be a way for the Company to start tracking the
16 plastic that is being replaced that's not in a
17 deteriorated or worn out condition.

18 And, therefore, the entire program going
19 forward would not need to be disallowed, but prior to
20 the Western District opinion and our awareness of
21 this -- this now legal issue, it would need to be
22 disallowed in its entirety.

23 CHAIRMAN HALL: And then finally, do you
24 believe that there is any issue as to whether or not
25 the replacement program is consistent or required by

1 state or federal safety requirements?

2 MS. PAYNE: I know that our Commission
3 Rule 40-- 40.030, Section 15, does require certain
4 programs. I believe that that neighborhood
5 replacement program was designed to be under that
6 Commission rule. So I don't think that that in and of
7 itself is a concern.

8 CHAIRMAN HALL: Okay. Thank you.

9 COMMISSIONER RUPP: Good morning.

10 MS. PAYNE: Good morning.

11 COMMISSIONER RUPP: I'm -- I'm confused.
12 So Staff originally said there were savings and agreed
13 with the Company. But now that the Western District
14 has had this order, you're now saying okay, yeah, we
15 were wrong?

16 MS. PAYNE: We're not saying that we were
17 wrong. We're just saying that there's costs to
18 replace the plastic. We disagree with the Company's
19 argument that the savings are what's at issue here.
20 We believe that the cost to replace the plastic that
21 was not eligible under the ISRS --

22 COMMISSIONER RUPP: So not what is at
23 issue here. So are you saying that Staff was wrong
24 with agreeing with the Company in your original
25 determination in the Report and Order?

1 MS. PAYNE: I don't think we were wrong.
2 We were overruled.

3 COMMISSIONER RUPP: Okay. So overruled.
4 That's fine. Why not just rearticulate what you said
5 was correct, what the Company said was correct, what
6 the Commission said was correct and go back and say
7 you know what? It's right, Mr. Court of Appeals
8 people. You don't know how to rate -- this is our
9 job, we're articulating ourselves. What is the harm
10 of doing that? And then if they come back and say,
11 no, got it wrong again, then we can gladly roll out
12 your methodology. What's the harm in doing that?

13 MS. PAYNE: I think it's delay. I think
14 that the -- Staff has read the Western District
15 opinion extensively and we believe that it's very
16 clear what was determined there, that the -- the
17 calculation of the plastic cost needs to be
18 determined.

19 Taking this case back to the Western
20 District is unlikely to produce that calculation and
21 we will, in fact, be back here six months to a year
22 from now having this exact same discussion and still
23 trying to determine the exact same calculation that
24 we're trying to provide here today.

25 COMMISSIONER RUPP: But we're back here

1 talking about this every six months anyway.

2 MS. PAYNE: Correct. Which is why we
3 also think that the calculation could be considered in
4 the current 2018 ISRS filings. However, if the
5 Commission were to issue the exact same opinion that
6 it did previously, the Western District opinion would
7 be exactly the same. It's already been determined.

8 COMMISSIONER RUPP: And you know that for
9 a fact? So no -- no --

10 MS. PAYNE: I don't know that for a fact,
11 but --

12 COMMISSIONER RUPP: -- no Court of
13 Appeals has ever been changed by anybody else? I mean
14 how many cases -- I just -- no one has articulated to
15 me yet, which I'm challenging and I'm looking for
16 someone to please do, is what is the downside of
17 reaffirming and rearticulating our position that
18 everyone has agreed with?

19 So if someone can point out how customers
20 are harmed, other than a little bit of a delay, then
21 that's -- I'm trying to wrap my head around that. So
22 if you have a response, I'd love to hear that.

23 MS. PAYNE: I'm not a mathematician;
24 however, I do know that the costs of the ISRS that the
25 Western District has ruled ineligible are being

1 collected in rates now. The ISRS was rebased during
2 the rate case that concluded earlier this year. And,
3 therefore, those amounts are being collected from the
4 ratepayers daily.

5 And by the amounts that need to be
6 refunded not being refunded for a longer period of
7 time, I would hazard to guess that there will be costs
8 associated with that continuing to be collected.
9 Therefore, I would say that in the long run that
10 ratepayers will be harmed. I just unfortunately am
11 not good at doing the math to explain to you in
12 dollars how that would happen.

13 COMMISSIONER RUPP: But would the
14 ratepayers be refunded if proved that we were wrong,
15 making them whole?

16 MS. PAYNE: That falls to the decision of
17 the Commission. I -- I think it's appropriate to
18 issue a refund. And I would think that should the
19 Western District rule the same as it did previously on
20 the same opinion of the Commission, that eventually
21 yes, the amounts would be refunded.

22 COMMISSIONER RUPP: All right. Thank
23 you.

24 JUDGE PRIDGIN: All right. Ms. Payne,
25 thank you very much.

1 MS. PAYNE: Thank you.

2 JUDGE PRIDGIN: Ms. Shemwell, when you're
3 ready.

4 MS. SHEMWELL: Thank you. May it please
5 the Commission. Thank you.

6 When a constitutional Court orders a
7 Commission or any other party to do something, they
8 expect that party to comply with their order. And I
9 think that the Western District's order has been clear
10 as to what the Commission needs to do in this case.

11 They have found that the Commission must
12 read the ISRS statute narrowly and comply with both
13 and make sure that to include ISRS costs in the ISRS
14 surcharge, that the pipe may not be worn out or
15 deteriorated and it must comply with a state or
16 federal safety requirement. The Court noted that the
17 Commission did not cite any federal or state safety
18 requirement.

19 Staff suggested that this is a remand of
20 the Commission's order and the Court ordered the
21 Commission to take further proceedings consistent with
22 its opinion. So you need to listen to what the
23 opinion says. The Court said that there must be proof
24 that the pipeline is worn out or deteriorated and that
25 there must be proof of some federal or state safety

1 mandate, and that the statute must be read closely and
2 narrowly in accordance with Liberty Energy.

3 A general remand does not provide any
4 specific directions and it leaves all issues open to
5 the Commission to decide, except those conclusively
6 decided by the Court.

7 In this case, the Court has conclusively
8 decided that the statute must be narrowly interpreted
9 to -- and requires those two requirements that it's
10 mentioned; must comply with the state or federal
11 safety requirement and be in a worn out or
12 deteriorated condition.

13 We also have the relocation issue that
14 the Court did not talk about, but that also is
15 required in combination with a direction from an
16 authority with eminent domain.

17 I would like to discuss the Commission's
18 replacement programs to which everyone has referred at
19 4 CSR 240-40.030 (15). The replacement programs --
20 the requirements of the section for replacement
21 applied as they existed on December 15th, 1989. For
22 unprotected steel service lines, replacement of all
23 yard lines was to be completed by May 1, 1994, almost
24 30 years ago.

25 There is then a requirement for annual

1 replacement of additional steel service lines to
2 replace 10 percent beginning in '94. So we would be
3 to 100 percent of service lines replaced under that.
4 For cast iron, the Commission required that operators
5 who are cast iron services shall replace them by
6 December 31st, 1991. And that the Company had to form
7 its plan to replace them and file with the Commission
8 in 1990 either cathodically protect or replace the
9 cast iron line. So there should be very little cast
10 iron or unprotected steel out there.

11 And we went through a ten-year copper
12 service line replacement program when Steve Gaw was
13 the Chairman. And all of the copper service lines
14 except about six were replaced during that period.

15 CHAIRMAN HALL: Let me interrupt just for
16 a moment. Do -- do you agree, looking at the Western
17 District's opinion on -- on page 8 on the conclusion
18 where the direction from the Court was to look at a
19 modification of the Commission's Report and Order as
20 it relates to the inclusion of replacement costs of
21 the plastic components? Do you see that?

22 MS. SHEMWELL: I do. And I agree.

23 CHAIRMAN HALL: Okay. To me, what --
24 what that requires is for us to look at -- look at
25 the -- look at the plastic compared to the

1 non-plasti c.

2 MS. SHEMWELL: Yes.

3 CHAIRMAN HALL: There is nothing in there
4 about looking at the issue of state or federal safety
5 requirements. Do you agree?

6 MS. SHEMWELL: I agree with that.

7 CHAIRMAN HALL: Okay. Well, then if that
8 is true, why do we have to go back and look at our
9 CSRs on -- on -- on the -- the -- the replacement
10 program? Isn't the issue just what's plastic, what's
11 not?

12 MS. SHEMWELL: That is. But people were
13 suggesting that the Commission's replacement serves as
14 a requirement. That -- that's what Staff suggested,
15 requirement that the Company continue to replace
16 today.

17 And I'm saying that those -- the ISRS was
18 originally established so that companies could get
19 recovery of what was required under those replacement
20 programs because they were aggressive. But those
21 pipes have already been replaced largely.

22 Let me -- may I add something that I may
23 think may be helpful? The remand cannot be read in
24 isolation. You must also read the entire opinion as a
25 part of the mandate to the Court. The Commission --

1 CHAIRMAN HALL: Right. But there's --
2 but there's -- there's nothing else in the decision
3 about whether or not the replacement program was to
4 comply with state or federal safety requirements.
5 That was not an issue to -- other than the -- on
6 page 5 where it identifies that as a requirement. The
7 rest of the decision is about plastic, is it not?

8 MS. SHEMWELL: The decision is primarily
9 about plastic. However, the law of the case now after
10 the opinion does include, I believe, the requirement
11 that going forward, the Commission must require --
12 because it's required by statute that Laclède show
13 that there are state or federal safety requirements.

14 CHAIRMAN HALL: I completely agree with
15 that. And I -- and I think even counsel for the
16 Company identified that, that going forward, that is
17 going to have to be a -- an -- an issue that is
18 addressed and resolved in our -- in our decision. But
19 for the limited hearing -- for the limited issue of --
20 at issue here, it's -- it's not relevant.

21 MS. SHEMWELL: We are agreeing with you
22 and that's why we recommended the 5,025,000 --

23 CHAIRMAN HALL: Okay. Well, then let's
24 focus on that, if we could.

25 MS. SHEMWELL: Okay.

1 CHAIRMAN HALL: Thank you.

2 MS. SHEMWELL: Mr. Zucker told you,
3 Mr. Chairman, in the hearing that it would be possible
4 for them to calculate a specific amount. Staff has
5 calculated an amount with which we agree and we think
6 it's based on evidence of the work orders. They have
7 an option one and option two.

8 OPC did not -- does not have the staff or
9 the time to go through every work order. I'm not sure
10 that the Commission Staff -- I'm sure they had to take
11 a lot of time to do that. We don't have that staff.
12 So we did a calculation based upon what the Court
13 found -- a calculation that the Court determined based
14 upon the record evidence.

15 We are comfortable with our
16 recommendation. It falls between Staff's option one
17 and option two. And we think that it is a reasonable
18 approximation, which is probably all that Staff can
19 calculate as well is a reasonable approximation.

20 We support option two because the Company
21 did not provide all of the work orders that they said
22 they would. And the Company should not get the
23 benefit of that because there's an evidentiary
24 presumption that if they didn't provide it, it works
25 against them. They should not be allowed to not

1 provide what they have -- they should not be rewarded
2 for that. So we recommend our reduction of 5,025,000
3 dollars -- 250,000. I'm sorry.

4 CHAIRMAN HALL: What is your position as
5 to whether or not it would be appropriate to
6 consolidate this proceeding with the pending ISRS case
7 and allow the Company to submit all of its work orders
8 and all of the parties to raise methodology approaches
9 and then the Company -- and then the Commission rule
10 on that in the -- in the pending case?

11 MS. SHEMWELL: I think if the Commission
12 looks at it in the pending case, then it's going to
13 have to apply the state or federal safety requirement
14 rule to that amount. Because the Court has said that
15 that is the statute. And the Commission's rule at
16 4 CSR 240.3.065 --

17 CHAIRMAN HALL: Okay.

18 MS. SHEMWELL: -- has all that
19 information.

20 CHAIRMAN HALL: Beyond that concern, what
21 does -- does OPC have a position on that -- on that
22 procedural approach?

23 MS. SHEMWELL: I would say generally the
24 record is closed, but the Commission has to consider
25 it for refund purposes in this -- the 2018 case.

1 CHAIRMAN HALL: So you would not be
2 opposed to that approach?

3 MS. SHEMWELL: I haven't discussed it
4 with the Public Counsel so I can't say for sure, but
5 we'd certainly have some arguments about how that
6 should proceed, I believe.

7 CHAIRMAN HALL: Okay. Thank you.

8 JUDGE PRIDGIN: All right, Ms. Shemwell.
9 Thank you. I don't have any questions.

10 MS. SHEMWELL: Thank you.

11 JUDGE PRIDGIN: Thank you.

12 Anything further from the Bench?
13 Anything further from counsel?

14 MR. PENDERGAST: I promise to be very
15 brief. I just want to note, number one, that when
16 we're talking about costs, from the Company's
17 perspective, it's a negative cost associated with any
18 incidental replacement of plastic. Number two --

19 CHAIRMAN HALL: Explain that. Why is it
20 negative?

21 MR. PENDERGAST: It's negative because
22 when you make determinations like this, you have to do
23 it in the context of what the consequences are of
24 going in one direction versus another. I mean the
25 literature is rich in concepts of opportunity costs,

1 concepts of avoided costs. You can't simply isolate
2 costs and say we're not going to go ahead and see what
3 the alternative would be, what the practical realities
4 would be.

5 You know, I don't think the Legislature
6 wrote the ISRS statute to say ignore those economic
7 principles, don't even consider them, don't take them
8 into account. And, quite frankly, I don't think the
9 Court of Appeals would necessarily feel that way if it
10 was based on that kind of discussion.

11 CHAIRMAN HALL: Okay. So when you say
12 negative cost, tell me the two things you are
13 comparing.

14 MR. PENDERGAST: I'm comparing, for
15 example, if I were to go ahead and do this and attempt
16 to re-use the plastic that is in the ground when I put
17 in a new cast -- or a new plastic --

18 CHAIRMAN HALL: So -- so --

19 MR. PENDERGAST: -- main and replace a
20 cast iron, that would be more expensive.

21 CHAIRMAN HALL: Okay. So you're
22 comparing what the Company did, which was replace the
23 plastic patches with -- with new plastic lines, you're
24 comparing that to if the Company had maintained the
25 patches and put new plastic in on both sides?

1 MR. PENDERGAST: Yes. Or -- or --

2 CHAIRMAN HALL: Those are the two things
3 you're comparing?

4 MR. PENDERGAST: Those are basically what
5 we're comparing.

6 CHAIRMAN HALL: And do you think -- and
7 I'm -- I'm asking you to speculate, but I mean, do you
8 think that it is undisputed that that -- it would be
9 more expensive to leave that -- to leave the plastic
10 patches in there?

11 MR. PENDERGAST: I think it is undisputed
12 on the record in this case. And I think that we
13 presented --

14 CHAIRMAN HALL: I mean it's clear that it
15 wouldn't be economic, I guess. I mean, it's clear
16 that it probably wouldn't be as safe either because
17 you've got to put -- you've got to connect -- every
18 connection is -- is a potential danger so the fewer
19 connections, the better. Correct?

20 MR. PENDERGAST: Exactly.

21 CHAIRMAN HALL: So it's -- it's -- it's
22 clear that it would be less safe. It's clear that it
23 would be probably more expensive.

24 MR. PENDERGAST: I think that's
25 absolutely right. I think that's what the evidence

1 demonstrates and there's no evidence to the contrary.

2 CHAIRMAN HALL: And you don't -- and you
3 don't -- so there was a significant amount of
4 testimony at the hearing related to that. Do -- do
5 you agree?

6 MR. PENDERGAST: I do.

7 CHAIRMAN HALL: And do you agree that
8 the -- the record was before the Court of appeals?

9 MR. PENDERGAST: I believe the record was
10 before the Court of Appeals, but I don't believe they
11 had a Commission Report and Order that had tried to
12 justify the inclusion of these ISRS charges on that
13 grounds.

14 CHAIRMAN HALL: I mean the -- the -- the
15 Report and Order does make it clear that it was --
16 that the patches were part of the entire system being
17 replaced.

18 MR. PENDERGAST: Exactly. And OPC took
19 issue with that and we got into a big discussion of
20 what's a segment and -- and so forth and so on. And
21 the Court looked at it and they said that's not good
22 enough. I'm not going to go ahead and uphold the
23 Commission order on that basis.

24 And -- and, once again, our point is the
25 Court didn't have an opportunity to say whether the

1 Commission was right or wrong about the cost issue
2 because that wasn't what the Commission relied on.
3 And, you know, from my perspective, this is kind of
4 like an ongoing discussion with the Court of Appeals.
5 And, you know, you make some findings and you issue an
6 order and it looks at it and it says whether it agrees
7 with it or not.

8 And I think that conversation should
9 continue by saying, well, if you had a problem with
10 that, we understand, but here's another ground that we
11 believe supports the decision we made. It's called
12 cost savings associated with using this and what do
13 you think, Court of Appeals?

14 And what I really resist is putting our
15 own thoughts into the Court of Appeals' minds and
16 saying this is what you must have intended, this is
17 how you would absolutely come out based on just these
18 snippets of things that are in your order. Because I
19 don't know what the Court of Appeals might think. I
20 don't know what judgment they would render. And I
21 think they deserve the opportunity to decide that
22 issue.

23 MS. SHEMWELL: Mr. Chairman, may I -- in
24 the opinion, the Court has already addressed this
25 argument.

1 CHAIRMAN HALL: Okay. You'll have an
2 op-- opportunity to raise that.

3 If -- if this proceeding were
4 consolidated with -- with the pending ISRS case, would
5 the Company be able to present all of the work orders
6 for the ISRS expenses relevant to this proceeding?

7 MR. PENDERGAST: I think that we have
8 produced in the past all of the material work orders.
9 Just looking at -- if you would, would we be able to
10 do that, Glenn?

11 MR. BUCK: In fact, we have volunteered
12 to give them, for example, on the blanket work orders,
13 I have volunteered to give them work orders and said
14 here's what you would get. Is that what you want?
15 And the answers basically come back, We don't need it.

16 MR. PENDERGAST: Okay. So we would be
17 able to provide anything anybody wants.

18 CHAIRMAN HALL: So you -- well, that's a
19 little broad. But -- but you -- you'd be able to
20 provide all the -- all the work orders. And so it
21 would be possible to figure out, based upon those work
22 orders, the percentage of plastic patches replaced as
23 it relates to the entire replacement program.
24 Correct?

25 MR. PENDERGAST: Yeah. I think you could

1 go ahead --

2 CHAIRMAN HALL: I know you disagree with
3 that methodology and I understand your -- your -- your
4 opposition to it, but that calculation could be done
5 in a subsequent proceeding. Correct?

6 MR. PENDERGAST: Yeah. And -- and -- and
7 you could consider other, you know, corollary issues
8 too. Like we said in our brief, you know, there are
9 issues about even how old some of this plastic is.
10 The Court noted that they have a useful life of --
11 first service lines of 40 and 44 years depending on
12 whether it's Spire East or Spire West. That's another
13 factor that could be --

14 CHAIRMAN HALL: What kind of factual
15 evidence would you be able to present in a subsequent
16 proceeding that the replacement costs of the plastic
17 components are zero?

18 MR. PENDERGAST: Yeah, I think what we
19 would do is, once again, present the testimony that
20 Mr. Lauber submitted in the rate case where he went
21 beyond the more generalized assertions that it would
22 be more expensive not to replace the plastic. And he
23 gave some specific examples of projects we had
24 undertaken, what the costs were if we didn't replace
25 the plastic versus what the costs were of when we did.

1 We could provide more granularity on that concept.

2 And I don't know. Eventually somebody
3 might take issue with it, but they haven't yet.

4 CHAIRMAN HALL: Okay. Thank you.

5 MR. PENDERGAST: And finally, I just
6 wanted to comment very briefly on the disallowed in
7 its entirety. And obviously we've taken the position
8 that no disallowance at all is justified by the record
9 evidence. We would think a disallowance in its
10 entirety would be even less justified.

11 And, you know, quite frankly, would be a
12 punitive measure because we simply disagree that there
13 is a actual cost associated with doing that. And just
14 saying we're going to throw the whole baby out with
15 the bath water would be, I think, very inappropriate.
16 Thank you.

17 JUDGE PRIDGIN: Thank you. Anything
18 further, Ms. Payne?

19 MS. PAYNE: In keeping with the theme, I
20 have a few points also. Staff would disagree with the
21 Company's argument that the Western District has not
22 had an opportunity to confront the issue that they are
23 concerned about, the -- the actual calculation of what
24 savings may have been produced.

25 And I think that's pretty clear in the

1 opinion at the top of page 7 when they say, While
2 Laclède's plan-- replacement strategy may laudably
3 produce a safer system, the question squarely before
4 us is not whether its chosen approach is prudent, but
5 rather whether the replacement of plastic components
6 that were not in a worn out or deteriorated condition
7 are ISRS eligible.

8 I think in that statement the Court
9 wrapped up many things, including the fact that they
10 were not concerned about the overall nature of the
11 program. They were concerned about the plastic
12 components that were replaced that were not considered
13 deteriorated or worn out as the statute requires.

14 Furthermore, the Western District also
15 pointed out, Our conclusion that recovery of the costs
16 for replacement of plastic components that are not
17 worn out or in a deteriorated condition is not
18 available under ISRS is based solely on our
19 determination that those costs do not satisfy the
20 requirements found in the plain language of Section
21 393.1009.

22 Nothing in this opinion should be
23 construed as expressing any view on the Commission's
24 consideration of those costs in the context of a
25 general rate-making case.

1 And I think in that they were arguing
2 that it wasn't the nature of the program overall. It
3 was the fact that they cannot be recouped through the
4 ISRS. So the Commission still has the ability to
5 determine the program and the prudence of it and the
6 potential benefits that the Company argues in that
7 sense.

8 And then finally, I would refute what
9 Mr. Pendergast and Mr. Buck stated about the blanket
10 work orders. Because Staff has looked at blanket work
11 orders previously by provided by the Company and they
12 do not list the actual retirement of the plastic mains
13 and services so it's impossible to determine when
14 plastic was installed to replace existing plastic.
15 And that is the problem with what's considered the
16 blanket work orders that Mr. Pendergast referenced.

17 CHAIRMAN HALL: So in other words, if
18 we -- if we do try to take this issue up in the
19 pending ISRS case and allow the parties to present all
20 factual evidence available, we still will be unable to
21 determine the amount of plastic replaced?

22 MS. PAYNE: For a small percentage of the
23 work orders, yes.

24 CHAIRMAN HALL: A small percentage
25 meaning?

1 MS. PAYNE: There are work orders that
2 are known as blanket work orders. They constitute a
3 small percentage of the overall work order, but they
4 tend to be ongoing work orders and they don't list the
5 same amount of detail as the traditional work orders,
6 which were provided by the Company and which is what
7 Staff reviewed in preparation for this.

8 CHAIRMAN HALL: Okay. Thank you.

9 MS. PAYNE: Thank you.

10 JUDGE PRIDGIN: Ms. Shemwell [sic], thank
11 you. Anything else before we conclude? Ms. Shemwell,
12 when you're ready.

13 MS. SHEMWELL: Thank you. What I'm going
14 to state here is from Abt versus Mississippi Lime,
15 A-b-t versus Mississippi Lime, 420 S.W. 3d, 689. The
16 doctrine of the law of the case provides that a
17 previous holding in a case constitutes the law of the
18 case and precludes re-litigation of the issue on
19 remand and subsequent appeal.

20 The doctrine governs successive
21 adjudications involving the same -- involving the same
22 facts and issues. A Court's decision is the law of
23 the case for all points presented and decided.

24 So I think to pull this in and
25 re-litigate all of the issues would violate the

1 doctrine of the law of the case. Thank you.

2 JUDGE PRIDGIN: Thank you.

3 Anything further from the Bench before we
4 conclude? All right. I think that will conclude
5 today's oral argument. Counsel, thank you very much.
6 We are off the record.

7 (Hearing adjourned.)
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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Tracy T. Taylor

Tracy Thorpe Taylor, CCR



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