

arguments at hearing, the parties agreed, and were subsequently ordered by the Judge, to submit them in writing, before close of business Tuesday, February 6, 2018. Wherefore, Staff Counsel submits the following as its *Closing Arguments*:

ARGUMENT

In its *Reply Affidavit* submitted to the Commission on January 25, 2018, Staff recommended to the Commission that complete deferral was the best option at that time for consideration of the TCJA impacts on Laclede Gas (“LAC”) and Missouri Gas Energy (“MGE”)(Collectively “Spire Missouri”) as part of their current rate proceedings.² However, after having more time to investigate the Tax Act itself, the impact of the Tax Act on Spire Missouri specifically, and after receiving additional information from Spire Missouri,³ Staff now believes the Commission has the requisite information to order a quantification of the lowered federal corporate tax rate be reflected in LAC and MGE’s rates at this time.

Staff proposes that the Commission:

- Reduce LAC’s and MGE’s current income tax expense utilizing the methodology outlined by Staff witness Lisa Ferguson, and OPC/MIEC witness Greg Meyer at hearing. The ultimate value of this reduction will be dependent on the final revenue requirement ordered by the Commission; however, based upon its True-Up case, Staff estimates this reduction to be approximately \$15.1 million between Spire Missouri’s two divisions.

² Ex. 298 pg. 9.

³ Staff and Spire Missouri continued to discuss and share information after the technical conference held January 30, 2018. Spire Missouri shared with Staff its estimated ratio of protected and unprotected ADIT, and Staff shared with Spire Missouri its updated EMS runs that incorporated its estimated revenues based upon Commission discussion at Agenda, and Staff’s estimated tax impact.

- Flow back to ratepayers excess accumulated deferred income tax (“ADIT”) resulting from the changes in the TCJA in the amount of approximately \$11.5 million dollars annually. This equates to roughly \$10.6 million for LAC, and \$815,000 for MGE, and is a result of amortizing protected ADIT over 20 years, and unprotected ADIT over 10 years. Staff has attached a breakdown of the methodology it presented at hearing as Attachment A.
- Implement a tracker to defer any amounts of excess ADIT over or under the amounts refunded in rates, from the effective date of rates resulting from this case, forward, for inclusion in a later rate case proceeding.
- Implement a tracker to account for any other impacts of the TCJA not captured by the reduction of current income tax expense, and flowback of the excess ADIT, beginning on January 1, 2018.
- Include the additional amount of actual 2017 property tax expense (approximately \$1.4 million) as an offset to the reduction in current income tax expense.

It is clear from what we know today about the TCJA, and from the evidence presented at hearing on February 5, 2018, that Spire Missouri will realize a significant reduction in both current and deferred income tax expense as a result of the new Tax Law. At hearing, the Commission heard from several experts, each one detailing the potential impact of the TCJA. These reductions in tax expense should be passed on to the Companies’ ratepayers; no party that participated in the February 5th hearing disagrees with that statement. However, the looming question is: when will this reduction actually be realized by Spire Missouri’s ratepayers?

Spire Missouri sits in a unique position; it is currently before the Commission asking for a change in rates where all relevant cost of service factors have been considered. Spire Missouri can pass on the benefits of the Tax Act to its ratepayers immediately. No other utility in the state of Missouri has the ability to reflect the tax change so quickly.

Spire Missouri has raised questions as to the appropriateness of reflecting the tax change in rates immediately, however; at hearing, the Company outlined these concerns as:

1. The TCJA was signed into law on December 22, 2017, and became effective on January 1, 2018. This was outside the test year for this case, which ended September 30, 2017. Because of this fact, the Company contends that reflecting the impacts of the Tax Act violates the "Matching Principle," and thus would be improper; and
2. The full effects of the TCJA are not currently "Known and Measurable."

First, the Company is correct; the Tax Law was signed and went into effect outside of the test year and true-up period for this case. In utility regulation before this Commission, a test year is a historic period in which revenues, expenses, and investment is measured, to serve as a foundational guide to set rates for a utility going forward. The Matching Principle goes hand in hand with the concept of the test year. Simply put, in the context of setting rates, the Matching Principle is matching of a utilities revenues, expenses, rate base, and cost of capital during a generally consistent period of time. In Spire Missouri's current rate cases, the test year was set as the 12 months ending December 31, 2016, updated through June 30, 2017, and

Trued Up through September 30, 2017. Therefore, including any impact of the bill would technically violate the matching principle. Staff generally recommends that the Commission adhere to the Matching Principle, however as Staff witness Mark Oligschlaeger testified at hearing, there are instances where looking beyond the test year is appropriate. The Commission has stated in the past that it will consider proposals for inclusion of “isolated adjustments” beyond the test year and true-up periods in rate cases, such as those “imposed by governmental bodies.”⁴ The Commission stated that, when reviewing such proposals, it would consider whether the financial impact of the isolated adjustment was known and measurable, and whether the proposed adjustment affects the matching of rate base, expense and revenue. Staff asserts that its proposed rate treatment of Tax Act impacts meets both of these standards for inclusion of isolated adjustments in rates.

The Tax Cuts and Jobs Act is an extraordinary event, one the likes of which has not been seen in over 30 years. The impact of the TCJA will have a material impact on the Companies’ current and deferred income tax expense going forward. There has been a major change in one of the factors the Commission must consider in setting Spire Missouri’s rates. As such, in this isolated instance, Staff believes it is appropriate for the Commission to reach beyond the test year for this case. Arguably, setting rates ignoring the change in the income tax rate would not be fair and reasonable from a customer perspective. Factoring in the reality that Spire Missouri sits in a unique position to pass on any benefits of this Tax Law to its ratepayers immediately, it is Staff’s position that the best route forward is to include the effects of the TCJA in rates,

⁴ *Order Establishing Test Year*, Case No. WR-91-361, St. Louis County Water Company, September 6, 1991.

now, in combination with trackers to ensure that the immediate adjustment neither harms nor benefits Spire Missouri going forward.

As to whether the impacts of the TCJA are known and measurable, Staff would contend that, at least in terms of calculating the impact on current income tax expense, they are. While the ultimate dollar amount of the necessary reduction in current income taxes is not known, the new corporate income tax rate of 21% is. Once a final revenue requirement for each division of Spire Missouri is ordered by the Commission, Staff will be able to recalculate a level of current income tax expense utilizing the same methodology as it applied in the rate case, but utilizing the new corporate tax rate. Staff included an estimate of current income tax expense in its *Reply Affidavit* based upon its True-Up case positions. However, as stated at the hearing, Staff did compile estimated revenue requirements for both LAC and MGE based upon Commission deliberations relating to this case. Staff's expected reduction to current income tax expense based on those numbers, as stated by Staff witness Lisa Ferguson, is approximately \$16.6 million. OPC/MIEC witness Greg Meyer testified that he also calculated an estimated revenue requirement based upon Commission deliberations, and he stated that his calculated reduction to current income tax expense, utilizing the same methodology as Staff, is \$16.7 million between the two divisions of Spire Missouri. Even Spire Missouri's own witness, Mr. Steven Rasche, stated that a calculation of current income taxes can be made utilizing the new corporate tax rate.

In regard to flowing back excess ADIT to ratepayers, Staff concedes this calculation is not as certain. There are aspects of how the TCJA will affect the flow back of deferred taxes that are not certain at this time; for example, an exact calculation

of the average remaining life of the assets giving rise to prior ADIT, and the exact relative percentages of protected and unprotected ADIT on Spire Missouri's books. However, at hearing, Ms. Ferguson outlined Staff's methodology for calculating an estimated amount of excess ADIT to flow back to ratepayers, for both protected and unprotected ADIT. She explained that Staff's calculation is based upon Spire Missouri's own estimates of an approximate 50/50 split between protected and unprotected ADIT. Further, she explained that the proposal for a 20 year amortization period for protected ADIT was based upon Spire Missouri's estimate of average remaining life of its current assets. OPC/MIEC witness Greg Meyer also calculated an estimate of excess ADIT to be flowed back to ratepayers. Mr. Meyer based his estimate utilizing the same estimates that Spire Missouri provided to Staff. Mr. Meyer utilized a similar methodology as Staff in making his calculation, and the result was an estimate of \$11.7 million dollars of excess ADIT to be flowed back to ratepayers annually. Mr. Meyer's estimate is extremely close to Staff's, but not exactly the same. Staff would point out that this is because Mr. Meyer utilized Spire Missouri's stated level of ADIT of \$344 million as a starting point, while Staff used its calculated level of \$338.6 million.

While Staff recognizes that the calculation of excess ADIT to be flowed back to Spire Missouri's ratepayers is not an exact calculation of the impact of the TCJA on the utilities' deferred taxes, it is Staff's belief that its estimate is reasonable given what is known at this time. The fact that another party to this case calculated a nearly identical annual level of excess ADIT, points to the reasonableness of Staff's estimate. Coupled with a tracking mechanism, Spire Missouri would be protected from flowing back more

deferred taxes than necessary, and ratepayers would realize an immediate benefit from the impact of the TCJA.⁵

In summary, after having additional time to review the impact of the TCJA on Spire Missouri's income tax expense, and obtaining additional information from Spire Missouri, Staff now recommends that rates ultimately ordered by the Commission in this case reflect both an immediate reduction in current income tax expense and a flow back to ratepayers of excess ADIT amounts. Coupled with a series of trackers, explained earlier herein, Spire Missouri's ratepayers would realize immediate benefits stemming from the TCJA, while ensuring Spire Missouri would be held harmless.

However, should the Commission determine that adjusting rates in this rate case to reflect some or all of the impact of the TCJA is inappropriate at this time, Staff recommends that any TCJA financial impacts not reflected in LAC's and MGE's rates be deferred on Spire Missouri's books beginning January 1, 2018, so that ratepayers will, at the very least, be able to receive a delayed benefit resulting from the impact of the Tax Act. Accordingly, if the Commission were to determine that it is not appropriate to reflect an excess ADIT flow back in customer rates at this time, Staff recommends that the amount of this flow back be deferred by LAC and MGE back to January 1, 2018. This treatment would also apply to the current income tax rate reduction in the event the Commission were to adopt the "total deferral" of TCJA impacts approach discussed in Staff's January 25, 2018 Affidavit.

⁵ At hearing, it was noted that the Commission in several instances involving vegetation management costs and plant O&M expenses has chosen to include estimated values in rates when backed up with a tracker mechanism.

WHEREFORE Staff prays that the Commission will accept the above as *Staff's Closing Arguments*; and grant such other and further relief as is appropriate under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served electronically, or hand-delivered, or via First Class United States Mail, postage prepaid, on all parties of record herein on this 6th day of February, 2018.

/s/ Mark Johnson