

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

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) **File No. GO-2020-0229**
Replacement Surcharge in its Spire Missouri East)
Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) **File No. GO-2020-0230**
Replacement Surcharge in its Spire Missouri West)
Service Territory)

**RESPONSE OF SPIRE MISSOURI INC.
TO STAFF AND OPC RECOMMENDATIONS**

COME NOW Spire Missouri Inc., on behalf of itself and its two operating units, Spire East and Spire West (the “Company” or “Spire”) and pursuant to the Commission’s March 31, 2020 Procedural Schedule Order in the above captioned matters, submits this Response to the Recommendations filed in these cases by the Staff of the Public Service Commission (“Staff”) and the Office of the Public Counsel (“OPC”) on April 3, 2019. In support thereof, Spire states as follows:

RESPONSE TO STAFF

1. On April 3, 2019, the Staff filed its Recommendations and attached Memoranda in File Nos. GO-2020-0229 and GO-2020-0230 (“Recommendations”). In those Recommendations, the Staff proposes three general adjustments. The first is to exclude ISRS costs that were incurred by the Company but not recovered in prior ISRS proceedings consistent with the Commission’s prior determination that it lacks jurisdiction to consider such costs since

they have been the subject of prior appeals.¹ The second is to exclude costs, based on the percentage method previously used by the Commission, to reflect the fact that certain plastic facilities are replaced or bypassed as part of the Company’s cast iron and bare steel replacement programs.² The third is to exclude the costs incurred by the Company in connection with its cast iron and bare steel replacement programs on the theory that a recent appellate decision, which reviewed the record in Spire’s 2018 ISRS cases, had determined that the Company had not demonstrated that such facilities were “worn out or in a deteriorated condition” within the meaning of the ISRS Statute.³ According to its Recommendations, Staff has not yet seen sufficient, additional information in its review of the Company’s current ISRS applications to warrant a finding that the Company has satisfied the evidentiary threshold outlined by the Court in its recent opinion. The Staff indicates, however, that it is open to receiving additional information in these cases that might alter its views on the subject.⁴

2. Spire continues to disagree with those portions of Staff’s recommendation relating to the jurisdictional and plastic issues.⁵ Because it has already addressed the basis for its position on those two issues in prior Commission and appellate proceedings, it will focus this Response on the new position taken by Staff regarding whether the Company has or will provide evidence sufficient to demonstrate that its cast iron and bare steel facilities are worn out or in a deteriorated

¹(Staff Recommendation, p. 2, paragraph 6).

² Staff Recommendation, p. 3, paragraph 8.

³ Staff Recommendation, pp. 3-4, paragraph 9. *See also In the Matter of the Application of Spire Missouri, Inc. to Change Its Infrastructure System Replacement Surcharge*, 2019 WL 6119755 (Nov 19, 2019), reversed and remanded to the Commission, reviewing Spire’s 2018 ISRS Cases, Case Nos. GO-2018-0309 and GO-2018-0310.

⁴ *Id.*

⁵ Spire also disagrees with the Staff’s recommended treatment of income taxes on the grounds, among others, that it double counts certain deductions previously recognized in base rates. The Company is hopeful that the Parties will be able, as they have in the past, to settle this issue in a mutually acceptable manner.

condition. The Company appreciates Staff's openness to considering additional evidence pertinent to this issue and believes that the information it has provided in ISRS cases conducted subsequent to the 2018 ISRS cases, and that it will provide in these cases, fully substantiates the worn out or deteriorated condition of these facilities.

3. Before addressing that additional evidence, however, it is important to note that any evidentiary deficiency, real or imagined, in the 2018 ISRS case was largely the result of the fact that the condition of the cast iron and bare steel facilities being replaced by the Company had not emerged as an issue during the 20 preceding Spire West or 22 preceding Spire East ISRS filings made prior to the 2018 ISRS case. That's because the Commission had promulgated rules nearly 30 years ago that recognized the need to replace or remediate these very kind of facilities – a critical safety goal that the ISRS mechanism was enacted to promote by eliminating the financial disincentives faced by utilities who would otherwise have to absorb the depreciation, carrying costs and taxes associated with replacing such facilities and then waiting many months or even years to begin the recovery of such costs. Even OPC recognized this fundamental relationship between the Commission rules and the ISRS mechanism when it advised the Western District Court of Appeals in its appeal of a 2016 ISRS case that:

“As the 'replacement' surcharge title indicates, the ISRS was enacted mainly in response to significant cost increases incurred by gas utilities complying with the PSC's 1994 (sic) replacement program rules. 4 CSR 240-40.030(15). These rules mandated the systematic inspection, replacement and/or repair of all steel service lines...all cast iron...and all unprotected steel...(fn: Mo. reg., Vol. 14, No. 23, p. 1582 (December 1, 1989)).”

4. Given the advanced age of these facilities, the Commission's prior recognition of their problematic nature and need to replace them, as well as the nearly universal recognition among federal and state safety officials that such facilities not only needed to be replaced but

replaced on an accelerated basis, the Company did not believe that the worn out or in deteriorated condition needed to be reproved in the 2018 ISRS cases. So in the context of a very abbreviated ISRS proceeding where the main focus was on other issues, the Company, acting in reliance on this historical record, provided more limited evidence when this issue was first raised by OPC.⁶

5. Since that case was decided by the Commission, however, additional evidence on the subject has been presented and considered by the Commission in its two subsequent Orders reaffirming that the Company’ cast iron and bare steel facilities are worn out or in deteriorated condition – information that was not before the Western District Court of Appeals when it issued the opinion referenced by Staff.⁷ That additional information is being supplemented by new evidence that has or will be presented by the Company in these current ISRS cases. Among other evidence, this additional information includes:

- ***A more nuanced understanding of what the phrase “worn out or in deteriorated condition” means:*** In the Company’s most recent ISRS case, Chairman Silvey introduced a critical point relating to the meaning of this phrase as used in the ISRS statute, namely that a facility qualifies for ISRS inclusion if it is either “worn out” OR in a “deteriorated condition.” This straightforward but somewhat overlooked understanding of the phrase is consistent with a more safety-oriented interpretation of the ISRS statute. It conveys that

⁶ In addition to the inherent time constraints typically imposed by an ISRS proceeding, Spire’s ability to respond to the issue of whether its cast iron and bare steel facilities were in a worn out or deteriorated condition was further truncated by the Western District’s unexplained decision to reject the repeated requests by Spire to address this issue when it was raised at the appellate level. Those requests were made both at the beginning of the appellate proceedings as well as during oral argument. The Western District has since revised its procedural approach to ISRS cases to permit parties to respond to the contentions made by other appellate parties, which only underscores the irregularity of the approach it took in its review of the 2018 ISRS case.

⁷ See the Commission’s May 3, 2019 Report and Order in Case Nos GO-2019-0115 and 0116 and its October 30, 2019 Report in Order in Case Nos. GO-2019-0356 and 0357.

before replacing a facility a utility is not expected to wait until it is completely “worn out” and on the verge of causing a potentially catastrophic explosion, but can and should replace it when the facility has simply deteriorated compared to its original condition that it is reasonable and prudent to begin replacing it.⁸ Combining the propensity of bare steel to corrode and cast iron to become brittle and break over time with the length of time the Company’s facilities have been in the ground, strongly suggest that they are in the kind of “deteriorated” condition that makes them eligible for ISRS inclusion under this more nuanced understanding of what worn out or in deteriorated condition means.

- ***Additional evidence regarding the pace at which bare steel deteriorates.*** In the Company’s most recent ISRS proceeding, OPC’s engineering expert acknowledged during the evidentiary hearing that bare steel begins to corrode – i.e. deteriorate – from the moment it is put in the ground. New evidence to be provided by the Company in this case provides a more scientifically robust and detailed explanation of this natural deterioration process and the pace at which it occurs. The metallurgist the Company has retained for this case will address the seminal scientific studies done on how bare steel corrodes, including the annual rate at which such corrosion occurs and the timeframe (10 to 40 years) under which such corrosion can result in actual holes permeating the entire pipe wall. Given the fact that most of the bare steel in the Company’s system is 60 years old or more and, in most cases, was not cathodically-protected until three decades after first being installed, this new information is powerful evidence that such facilities must be

⁸ See Tr. 140, line 8, to Tr. 141, line 14, Case Nos. GO-2019-0356-57. Under its commonly used definition, deteriorated simply means something that has become “inferior in quality or value” compared to its original state. See Merriam Webster On-line dictionary <https://www.merriam-webster.com/dictionary/deteriorate>

in a deteriorated condition to one degree or another.

- ***New expert testimony regarding the condition of the Company's cast iron and bare steel facilities:*** Since the 2018 ISRS cases, there has also been additional expert testimony presented on the issue of whether the Company's cast iron and bare steel facilities are in a worn out or deteriorated condition. In addition to engineering witnesses for the Company who have personally observed the deteriorated condition of the Company's facilities, these experts included Robert Leonberger who had over 35 years of experience on these issues as a member and then manager of the Commission's pipeline safety staff.⁹ As someone who managed all facets of the Commission's Pipeline Safety Program, including on-site plant inspections, reviews and analyses of utility records, and investigations of natural gas related incidents, and played a decisive role in developing the Commission's cast iron and bare steel replacement rules, Mr. Leonberger was in a unique position to testify on the worn out and deteriorated nature of these facilities.¹⁰ Mr. Leonberger observed that the purpose of those programs was to eliminate piping materials that had been identified as *deteriorated* and presented a hazard to safety with the ultimate goal of reducing the number of natural gas leaks and the number of natural gas explosions.¹¹ Mr. Leonberger also described how the ISRS statute passed by the General Assembly in 2003 was structured to provide utility companies with an incentive to accelerate the replacement of deteriorated infrastructure.¹² Again this is new and critical

⁹See Exhibit 6, Case Nos. GO-2019-0356-57.

¹⁰ Ex. 6, pp. 3 -4. Mr. Leonberger was also a prominent member of a variety of national pipeline safety groups, serving as Chairman of the National Association of Pipeline Safety Representatives ("NAPSR") and on various NAPSR Committees. He is a recipient of the NAPSR Chairman's Award for outstanding service to the organization and to pipeline safety as well as a recipient of NAPSR's Lifetime Achievement Award for his many contributions to national pipeline safety advancements throughout his career. *Id.*

¹¹Ex. 6, p. 7

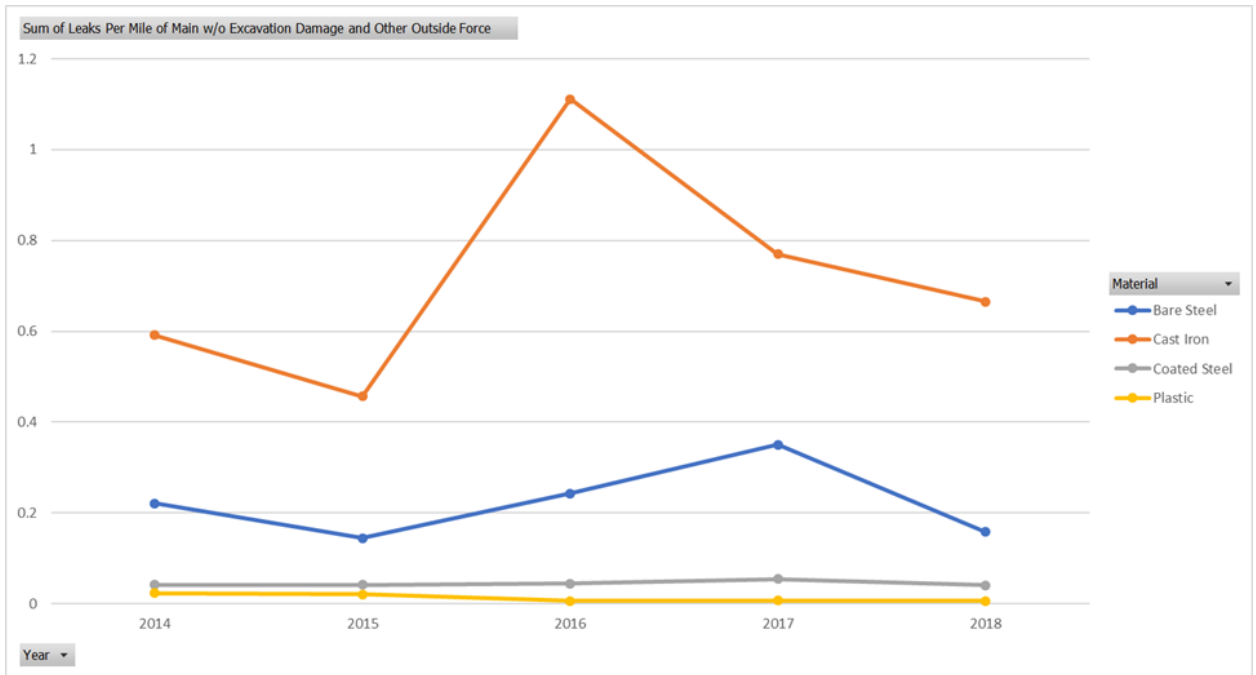
¹²Ex. 6, p. 7

evidence that was not available to the Court in its review of the 2018 case. Neither was the expert testimony to be provided by the nationally recognized metallurgist that the Company has retained to provide evidence in these cases. His testimony provides a deeper level of scientific support for the Commission's previous findings that the Company's cast iron and bare steel facilities are worn out or in a deteriorated condition, including more detailed information on the factors and inherent characteristics that contribute to such deterioration and Spire specific factors, such as soil conditions that would further exacerbate and hasten such deterioration.

- ***New physical evidence regarding the condition of the Company's cast iron and bare steel facilities:*** Since the 2018 ISRS cases, Spire has also presented new physical evidence regarding the worn out or deteriorated condition of its cast iron and bare steel facilities. Among other information, this evidence has consisted of physical samples as well as pictures¹³ of some of the cast iron and bare steel facilities replaced or bypassed by the Company in the course of its replacement programs, together with expert testimony verifying that such samples are consistent with the pipe conditions of other facilities being replaced by the Company on other ISRS projects. This kind of physical evidence will be further supplemented in this case by additional samples of pipes that have been replaced. It too will be accompanied by new expert testimony, that attests to its representative nature in demonstrating the worn out or deteriorated condition of the Company's facilities.
- ***New evidence relating to leak experience on bare steel and cast iron facilities:*** Another category of evidence that was not before the Court in its review of the Company's 2018

¹³ See e.g Ex 5, Schedule CRH-5, Case Nos. GO-2019-0356-0357.

ISRS cases, was the more robust leak information presented in by the Company in its last ISRS case.¹⁴ As set forth at page 14 of the Direct Testimony of Craig Hoeflerlin in Case Nos. GO-2019-0356-57, such information further demonstrated the worn out or deteriorated nature of the Company’s facilities, as evidenced by the below graph.



This leak information, which was not available to the Court in its review of the 2018 ISRS case, demonstrates the degree to which the Company’s bare steel and cast iron facilities have deteriorated from their original state in the most critical way of all, namely their ability to transport natural gas without it leaking and causing an incident. The fact that bare steel pipe is 10 to 20 times more likely and cast iron more than 60 times more likely to leak than plastic pipe is a compelling indicator of their deteriorated condition. Such information may very well have led the Western District Court to a different conclusion had the Company had an opportunity to present such information in the 2018 ISRS case

¹⁴ See Ex. 5, page 14, Case Nos. GO-2019-0356 and 0357.

and argue it on appeal.

- ***New evidence of the nationwide consensus regarding the need to replace cast iron and bare steel facilities because of their problematic condition:*** In the 2018 ISRS cases, the Company did provide fairly extensive evidence of the strong consensus among federal and state safety officials regarding the problematic nature of cast iron and bare steel facilities and the need to replace them on an accelerated basis. It remains a mystery as to why the judges on the Western District Court of Appeals so thoroughly discounted this national and nearly universal consensus on the concerning attributes of the facilities that Spire has been replacing for so long and without objection under its ISRS mechanism. Perhaps the Court believed that Federal and State reports, PHMSA guidance and advisories might not be reflective of the “facts on the ground.” If that was indeed the concern, the new evidence presented by the Company’s metallurgist should dispel that. As his report indicates, since 2005, Spire has been replacing (or removing from service) its bare steel facilities at a rate that is about 5.7% less than the national average while it has been replacing its cast iron facilities at a rate that is about 1% more than the national average. What this means is that hundreds of utilities and dozens of regulators throughout the country have, respectively, invested and approved the investment of billions of dollars in capital to eliminate these problematic facilities. It begs the imagination to believe that such extraordinary expenditures would be made to replace non-problematic facilities that were not deteriorated and posed no threat to public safety. It is even less plausible to believe that in enacting the ISRS mechanism, the Missouri General Assembly intended not to eliminate disincentives to making safety investments but instead to erect barriers to the recovery of such investments that would ensure Missouri falls behind its counterparts

in getting rid of these problematic pipes and protecting their utility customers.

- ***New depreciation evidence that substantiates the worn out or deteriorated condition of the Company's facilities:*** Spire and the Commission have repeatedly noted the advanced age of the cast iron and bare steel facilities being replaced by the Company as one (but not the only) factor supporting a determination that they are worn out or in a deteriorated condition. Spire will be providing additional depreciation testimony to further elaborate on how these facilities had already exhausted most of their estimated useful lives and would therefore be reasonably deemed to be in a deteriorated condition compared to their original state.
- ***New cost impact information.*** When it reviewed the 2018 ISRS cases, the Court also did not have the benefit of the unrebutted analyses submitted by the Company in its last ISRS case which compared the costs of the Company's systematic approach of replacing or bypassing cast iron and bare steel facilities to its "patchwork" or piecemeal" approach where the Company only replaced, or patched if you will, those portions of its facilities that required immediate remedial action. Based on its analyses of 12 randomly selected ISRS projects (including 7 in its Spire East service area and 5 in its Spire West service area) the Company determined that the piecemeal approach was more expensive than the systematic approach by 11% to 198% depending on the specific characteristics of the project being evaluated.¹⁵ In other words, ratepayers are receiving substantial long-term savings by the way the Company is conducting its cast iron and bare steel replacement programs. It is always possible of course that the Western District might conclude that the ISRS mechanism was intended to erect rather than remove barriers to the recovery of

¹⁵ Ex. 5, p.15, line 21 to p. 16, line 5, Case Nos. GO-2019-0356 and 0357.

safety-related investments even if such barriers cost ratepayers more over the long-term and make the systems serving them less safe. Spire would respectfully suggest, however, that such an absurd result is not one that the PSC should predetermine for the Court by finding that the Court's prior opinion requires such a result even in the face of new evidence to the contrary.

6. For all of these reasons, Spire Missouri respectfully submits that the Commission should reaffirm its findings in the two ISRS cases that have been conducted since the 2018 ISRS case upon, appeal of which the Staff bases its recommendation in this case. Specifically, it should reaffirm based on the new evidence provided in those cases as well as the new evidence furnished in these current cases that the Company's cast iron and unprotected steel facilities are indeed worn out or in a deteriorated condition. As the Commission itself observed in seeking transfer of the Court's opinion in the appeal of the 2018 ISRS cases:

Because the federal government has determined that cast iron and bare steel pipes carrying natural gas present a "high risk" and mandated their replacement, the sufficiency of evidence necessary to determine their ISRS eligibility is an important issue for Spire, its customers, and every Missouri citizen living near these facilities. By analyzing the ISRS statute in a legal vacuum without deference to the Commission's expertise, the Court has imposed an inappropriately high evidentiary standard that could undermine the legislature's goal of hastening the removal of dangerous aging gas infrastructure. While Spire may suffer decreased revenue, Missouri citizens may bear more serious consequences of any delay in replacing cast iron and bare steel pipes.

7. The Commission's and the Company's request to transfer this case to the Missouri Supreme Court was ultimately denied. But that does not mean that the Commission has to suspend common sense, accept factual propositions that it knows to be untrue or compromise its duty to the utility, customers and public safety as it goes about the task of implementing the Court's mandate. Instead, the Commission should and must evaluate the abundance of new evidence that

has been provided in its last two ISRS cases and these cases, and determine that such evidence fully supports the previous findings it made after the 2018 record reviewed by the Court of Appeals was closed. Upon doing so the Commission should reaffirm the important findings it has made regarding the worn out or deteriorated condition of the Company's cast iron and bare steel facilities.

RESPONSE TO OPC

8. For many of the same reasons discussed above, the Commission should also reject the proposals made by the OPC in its Recommendations filed on April 3, 2020. OPC's contention at pages 2-3 of its Recommendation that there is no federal or state mandate supporting the Company's replacement of unprotected steel mains that has had cathodic protection applied decades after installation has already been rejected by the Commission. In fact, the Company is replacing such facilities pursuant to its long-standing statutory obligation to provide service that is "safe and adequate" in "all respects"¹⁶; Commission and federal safety rules, which require gas operators like Spire, to maintain its pipelines and to replace, repair, or remove it from service if it becomes unsafe,¹⁷ the risks identified in its federally and state-mandated Distribution Integrity Management Plan,¹⁸ the remedial actions identified in the Commission's rules;¹⁹ and multiple recommendations by federal and safety officials that such replacements on an accelerated basis are warranted due to the problematic nature of such facilities.

9. Equally invalid is OPC's contention at pages 3-4 of its Recommendation that the Company's application the costs of the Company's cast iron and bare steel programs should be

¹⁶ Section 393.130.1 RSMo.

¹⁷ See Rule 20 CSR 4240.40-030(13)(B) and the corresponding portions of 49 CFR part 192 of the federal safety rules,

¹⁸ See 20 CSR 4240.40-030(17)

¹⁹ See 20 CSR 4240.40-030(15)(E).

excluded because it has not provided sufficient evidence that they are worn out or in a deteriorated condition is also contrary to this Commission's repeated findings to the contrary and further ignores the additional evidence that the Company has provided and will provide in this proceeding. Finally, OPC's contention at pages 5-6 that the "costs" of replacing or bypassing plastic components should be excluded based on precedent from the Missouri Court of Appeals ignores the fact that such costs do not, in fact, exist and that the issue of whether they do is currently before the Court of Appeals in two judicial review proceedings involving new and different evidence on this issue.

WHEREFORE Spire Missouri Inc. respectfully requests that the Commission accept this Response and, based on its consideration of its own prior findings and the new evidence that has been provided regarding the worn out and deteriorated condition of the Company's cast iron and bare steel facilities, reject Staff's and OPC's adjustments to exclude the costs incurred by the Company to replace these and other facilities.

Respectfully submitted,

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ATTORNEYS FOR SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 10th day of April, 2020.

/s/ Goldie T. Bockstruck