

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** NOL in Rate Base/Income Tax  
Calculations in CWC/Gross Receipts Tax Refund/  
Continued Separation of Spire East and West/  
Discontinuation of the GSIP/ Adoption of  
Conner's Management Expense Charges  
**Witness/Type of Exhibit:** Riley/Surrebuttal  
**Sponsoring Party:** Public Counsel  
**Case No.:** GR-2021-0108

**SURREBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

Submitted on Behalf of the Office of the Public Counsel

**SPIRE MISSOURI, INC.**

CASE NO. GR-2021-0108

July 14, 2021

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

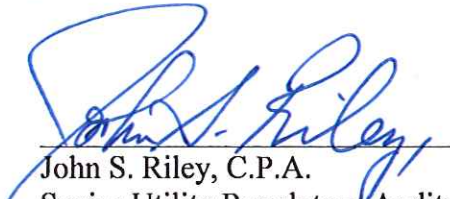
In the Matter of Spire Missouri Inc.'s            )  
d/b/a Spire Request for Authority to            )  
Implement a General Rate Increase for        )  
Natural Gas Service Provided in the            )  
Company's Missouri Service Areas            )    Case No. GR-2021-0108

**AFFIDAVIT OF JOHN S. RILEY**

STATE OF MISSOURI    )  
  )    ss  
COUNTY OF COLE     )

John S. Riley, of lawful age and being first duly sworn, deposes and states:


1. My name is John S. Riley. I am a Senior Utility Regulatory Auditor for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
John S. Riley, C.P.A.  
Senior Utility Regulatory Auditor

Subscribed and sworn to me this 14<sup>th</sup> day of July 2021.



TIFFANY HILDEBRAND  
My Commission Expires  
August 8, 2023  
Cole County  
Commission #15637121

  
\_\_\_\_\_  
Tiffany Hildebrand  
Notary Public

My Commission expires August 8, 2023.

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**SURREBUTTAL TESTIMONY**

**OF**

**JOHN S. RILEY**

**SPIRE MISSOURI INC.**

**CASE NO. GR-2021-0108**

1 **Q. Are you the same John S. Riley who prepared and prefiled direct and rebuttal testimony**  
2 **in this case on behalf of the Office of the Public Counsel?**

3 A. Yes.

4 **Q. What issues are you addressing in this surrebuttal?**

5 A. I respond to arguments presented by Spire and/or Staff concerning the net operating loss  
6 (NOL) inclusion in rate base and income tax calculations within the cash working capital  
7 (CWC)/tax offset. I also respond to Spire witness Scott Weitzel's testimony concerning the  
8 continued separation of Spire East and West for ratemaking and the discontinuation of the  
9 Gas Supply Incentive Plan (GSIP) tariff. I also point out that Spire is violating local  
10 ordinances by incorrectly computing gross receipts tax (GRT) in every taxing jurisdiction.  
11 Finally, I adopt OPC witness Ms. Amanda Conner's direct testimony concerning management  
12 expenses.

1 **NOL EXCLUSION FROM RATE BASE**

2 **Q. Would you please summarize your argument concerning the exclusion of an NOL in**  
3 **rate base before addressing any witness?**

4 A. Certainly. My argument, stated as simply as possible, is that unspent income tax expense  
5 represents a source of interest free money to Spire that should be considered as an offset to its  
6 NOL. A utility that receives in rates revenue that is earmarked to pay income taxes, but which  
7 does not actually pay income taxes, is allowed to keep that earmarked revenue for its own use,  
8 interest free. This is important because the Company, Staff and the Commission have, in the  
9 past, expressed a belief that the presence of an NOL denies the Company the benefit of  
10 deferred (interest free money) taxes and should be an offset to rate base. I am maintaining  
11 that the unspent income tax expense, caused by the unique feature of including a normalized  
12 income tax expense in rates yet not spending the balance, counter balances the argument that  
13 the Company is denied the use of the deferred, interest free tax. The NOL should therefore  
14 be excluded from rate base.

15 I believe this discussion concerning NOL and unspent income tax expense is a new issue for  
16 the Commission. I don't believe Staff or any other party to a case that has appeared before  
17 this Commission has raised this fact before. Moreover, none of the three witnesses that  
18 responded to my testimony even addressed the focal point of the argument - the unspent  
19 income tax expense built into the case.

1 **Q. Spire witness Mr. Felsenthal contends that you display “a misunderstanding of the**  
2 **interplay between book-tax differences and NOL’s – in particular, the impact on**  
3 **ratemaking.” How do you respond to that?**

4 A. I think Mr. Felsenthal spends more time on theory than actual ratemaking practice. Let’s  
5 follow his explanation.

6 As I explained, **for every dollar reduction in current income taxes due to**  
7 **claiming accelerated depreciation** on the income tax return, there is an equal  
8 and offsetting increase in deferred income tax expense. When computing  
9 income tax expense, if the “currently payable” income tax expense is negative  
10 (because there is negative taxable income, typically due to accelerated tax  
11 deductions), Spire must record a NOL ADIT asset if it is probable that the  
12 NOL will be realized by being able to offset future taxable income. Spire  
13 believes it is probable that the NOL will be realized. **The entry for this is a**  
14 **debit to NOL ADIT asset and credit to current income tax**  
15 **expense.”<sup>1</sup>(Emphasis added)**

16 Mr. Felsenthal explains that the Company needs to make a debit to NOL ADIT asset and  
17 credit (reduction) to current income tax expense. This may be a necessary point to make for  
18 financial reporting, but from a **ratemaking** perspective, there is no deduction in current  
19 income tax expense for an NOL. It is crucial to understand this point. Under the existing IRS  
20 normalization rules, the income tax expense built into rates is not reduced (credited) by the  
21 existence of an NOL ADIT asset. Thus there is a fundamental disconnect between what Mr.  
22 Felsenthal is describing for financial reporting and what actually occurs in ratemaking. This  
23 is the major point I wish to convey to the Commission. Income tax expense will be built into

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<sup>1</sup> Felsenthal rebuttal, page 10, lines 3-10

1 the rate case at a normalized level, but will not be spent, thus generating interest free money  
2 for the Company.

3 **Q. What is a normalized level of income tax when you talk about revenue requirement?**

4 A. In short, the Internal Revenue Code (“IRC”) requires the income tax expense built into a rate  
5 case cost of service to be the income tax amount that a company would incur if it did not take  
6 advantage of accelerated depreciation and other tax advantage timing differences<sup>2</sup>. Currently,  
7 Staff has a mid-point required current income tax estimate of \$40 million.<sup>3</sup> As already stated,  
8 this is calculated regardless of the Company’s NOL.

9 **Q. You have mentioned “unspent income tax expense” throughout your testimonies.  
10 Neither the Company nor Staff witness seem to want to address that point. Could you  
11 explain this phrase?**

12 A. Company and Staff want to focus on the fact that I stated an NOL has no cost, but that is only  
13 part of the equation. There is a real cost in income tax expense. Staff includes in its  
14 accounting schedules a calculated amount of current income tax as if the Company will be  
15 writing checks to the Federal and State governments every quarter. As I said, it’s about \$40  
16 million in this case. Staff has approximately \$27 million included in the test year. What is  
17 important is that the revenue requirement developed in the last case and the case before that  
18 and proposed by Staff in this current case all had income tax money expense included despite

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<sup>2</sup> IRC §168(i)(9)(A)(i) the [taxpayer](#) must, in computing its [tax](#) expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such [property](#) that is the same as, and a depreciation period for such [property](#) that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

<sup>3</sup> Staff Accounting Schedule 1, line 7

1 the fact that Spire either did not or will not pay taxes. The Company has paid no federal or  
2 state income taxes over the last three years, nor is there any indication that it will be paid for  
3 the next three. Instead, Spire either has a taxable loss, due to tax timing differences that built  
4 up its NOL balance, or it had taxable income and applied the accumulated NOL to the balance  
5 to zero out the income line.

6 **Q. Where does this unspent income tax that is included in rates go each year if it isn't**  
7 **getting spent on income taxes?**

8 A. A good question. It is certainly not being spent on deferred taxes. Because of the recent tax  
9 changes, deferred taxes have turned around and are reducing not increasing. Income tax  
10 expense is not like deferred income tax. Current income tax expense does not have a reserve  
11 account where the balance is stored and then amortized later. It disappears every year. It is  
12 an expense item and is recalculated each rate case. Mr. Felsenthal may claim an NOL journal  
13 entry reduces income tax expense, but I'm here to tell you that income tax expense is  
14 recalculated based on the Net Operating Income requirement in every rate case. The \$40  
15 million included in this case represents an annualized amount. That is \$40 million the first  
16 year, \$40 million the second year, \$40 million the third year, and so on. \$120 million or more  
17 never going to the taxing authority.

18 **Q. Just for the sake of argument, what happens if the Company does not have an NOL and**  
19 **has taxable income?**

20 A. Of course, there would be no NOL adjustment in rate base and some or all of the \$40 million  
21 will get paid to a taxing agency. But that doesn't change the fact that, for many years before,  
22 the Company had unspent income tax to play with. Spire does not have to pay that unspent  
23 income tax back and more than likely will not use anywhere close to the allotted amount to  
24 pay taxes in the future. This is interest free money over and above any deferred tax amounts.



1 **Q. What is the relationship between the income tax expense and the deferred taxes when**  
2 **Staff calculates total income taxes?**

3 A. There are two line items that make up Total Income Tax that are included in Staff's Accounting  
4 Schedule 9 and Schedule 11 that affects revenue requirement calculation. The first is the  
5 calculation of the **current income tax expense** which has been the subject of my testimony  
6 and the second is the **deferred income taxes**. These two are combined as the **total income**  
7 **tax** to adjust the "Net Income before Taxes" and produce the Net Income Available that is  
8 present on line 4 of the schedule 1 Revenue Requirement. Schedule JSR-S-01 is the income  
9 statement and revenue requirement page that are included in Staff's accounting schedules.  
10 Thus, to answer the question, the relationship between the total income tax and the revenue  
11 requirement is that current and deferred income tax are adjusted out of net income in the  
12 income statement and the current income taxes are added back in to ultimately produce the  
13 needed revenue requirement calculations of the rate case.

14 A major takeaway from the income statement is that the deferred income tax line (17) is a  
15 negative number. Mr. Felsenthal's theory that the deferred income tax is increasing and  
16 current income tax are decreasing is completely mistaken. Staff's schedules indicate that there  
17 is \$40 million in unspent current income tax expense and a decreasing deferred income tax  
18 balance. This rate base and revenue requirement will remain in place until the next rate case.  
19 No one can claim that the Company is denied use of interest free money when it will be  
20 receiving at least three years of unspent income tax expense that will be far greater than the  
21 balance of the NOL.

1 **Q. If the Commission follows your recommendation, will this have any IRS tax**  
2 **normalization ramifications?**

3 A. No. But I fully expected the Company to argue that this is a normalization violation. Mr.  
4 Felsenthal would lead you to believe that inclusion in rate base is written in stone. To quote  
5 his rebuttal testimony, “The NOL ADIT assets must be included in rate base.”<sup>4</sup> This is false.

6 I have included as Schedule JSR-S-02, a private letter ruling (“PLR”) 201418024 that  
7 supports my contention that current income tax should offset an NOL.<sup>5</sup> The Commission has  
8 stated in the past that it does not necessarily adhere to PLR decisions but the writing does  
9 bring up some good conclusions.<sup>6</sup> Another important point I would like to press about this  
10 PLR, and PLRs in general, is that the IRS generally states in most PLRs concerning NOLs is  
11 that an **NOL must be taken into account in calculating the reserve for deferred taxes**  
12 (ADIT). A similar statement will be included in the quote below. These statements do **not**  
13 say “**must be included,**” but rather, most say “**must take into account.**” That is a huge  
14 difference.

15 The basic overview of the PLR is that the Commission excluded the NOL from the ADIT  
16 reserve basing its decision on the premise that the Commission did account for the NOL and  
17 did not need to adjust the ADIT any further. The quote below is on page 6 of the PLR. Key  
18 wording is highlighted

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<sup>4</sup> Felsenthal rebuttal, page 11, line 20.

<sup>5</sup> I have also included an article written by David Yankee, Partner with Deloitte Tax that discusses the implications these PLR findings possibly have on utility ratemaking. Deloitte prepared Spire Inc. 2019 consolidated income tax return. .

<sup>6</sup> As the Commission has recently witnessed in WO-2020-0190, which was appealed, depending on how a case is presented to the IRS, a taxpayer can obtain any answer it wants from a PLR.

1 In the rate case at issue, Commission has excluded from the base to which  
2 the Taxpayer's rate of return is applied the reserve for deferred taxes,  
3 unmodified by the accounts which Taxpayer has designed to calculate the  
4 effects of the NOLCs and MTCC. **There is little guidance on exactly how**  
5 **an NOLC or MTCC must be taken into account in calculating the**  
6 **reserve for deferred taxes under §§ 1.167(l)-1(h)(1)(iii) and 56(a)(1)(D).**  
7 However, it is clear that **both must be taken into account** in calculating  
8 the amount of the reserve for deferred taxes (ADIT) for the period used in  
9 determining the taxpayer's expense in computing cost of service in such  
10 ratemaking.

11  
12 Both Commission and Taxpayer have intended, at all relevant times, to  
13 comply with the normalization requirements. Commission has stated that,  
14 in setting rates it includes a provision for deferred taxes based on the entire  
15 difference between accelerated tax and regulatory depreciation, including  
16 situations in which a utility has an NOLC or MTCC. **Such a provision**  
17 **allows a utility to collect amounts from ratepayers equal to income**  
18 **taxes that would have been due absent the NOLC** and MTCC. Thus,  
19 Commission has already taken the NOLC and MTCC into account in setting  
20 rates. **Because the NOLC** and MTCC **have been taken into account,**  
21 Commission's decision to not reduce the amount of the reserve for deferred  
22 taxes by these amounts does not result in the amount of that reserve for the  
23 period being used in determining the taxpayer's expense in computing cost  
24 of service exceeding the proper amount of the reserve and violate the  
25 normalization requirements. **We therefore conclude that the reduction of**  
26 **Taxpayer's rate base by the full amount of its ADIT account without**  
27 **regard to the balances in its NOLC-related account and its MTCC-**  
28 **related account was consistent with the requirements of § 168(i)(9) and**  
29 **§ 1.167(l)-1 of the Income Tax regulations.**

30 This Commission sets rates based on this scenario because Staff calculates income tax  
31 expense regardless of an NOL. Due to the NOL, income tax expense does not get paid to  
32 a taxing authority. This is a normalized amount of expense in the annualized cost of service  
33 that will be a greater amount than the proposed NOL that would be included in rate base.

1 **Q. Is there an alternative revenue requirement adjustment that the Commission could**  
2 **consider?**

3 A. There is, but eliminating the NOL from rate base would be my preferred course of action.  
4 Given the fact that the income tax expense paid by the ratepayers until the next rate case  
5 will total more than the NOL itself, coupled with the fact that the deferred tax balance is  
6 shrinking, the Commission could consider a regulatory liability or install a tracker to offset  
7 the NOL.

8 Conventional wisdom concludes that Spire will not file another general rate case for three  
9 years. The Commission could establish a regulatory liability for three years' worth of  
10 income tax expense to recognize the interest free use of the normalized expense. Again,  
11 however, I believe that the best course of action would be for the Commission to eliminate  
12 the NOL from rate base.

13 **INCOME TAX OFFSET CALCULATIONS WITHIN CWC**

14 **Q. It seems that both the Spire and Staff's witness present the same argument. Could you**  
15 **explain their opposition?**

16 A. Yes. Spire witness Timothy Lyons and Staff witness Antonija Nieto both cite Internal  
17 Revenue Code requiring quarterly tax payments as the basis of the 38 day expense lag  
18 component. Nieto states, "Staff accepted Spire's calculated federal and state income tax  
19 expense lag of 38 days, which is consistent with quarterly tax payments"<sup>7</sup>. Lyons stated, "The  
20 Company opposes OPC's proposed lead days for income tax payments because it does not  
21 reflect the Internal Revenue Service's ('IRS') payment schedule for income taxes in

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<sup>7</sup> Nieto Rebuttal, page 3, lines 14-15

1 accordance with IRS Publication 542.”<sup>8</sup> This would be a compelling argument **if** the  
2 circumstances were a bit different.

3 **Q. What would need to be different?**

4 A. Spire would actually need to owe the government a tax payment. The IRS mandates that a  
5 Corporation make quarterly payments **when it expects to owe the IRS an amount of tax at**  
6 **year end**. For a company that hasn’t paid income tax in at least three years and has millions  
7 in NOLC to offset any near future tax liability, no quarterly payment would be necessary.<sup>9</sup>  
8 By making this argument, Staff and the Company are effectively claiming that quarterly  
9 payments of zero dollars constitutes a 38 day expense lag. This is obviously wrong. Even if  
10 Spire did pay a token quarterly payment, it would be due a refund the following year.

11 **Q. Has opposition rebuttal testimony changed your argument?**

12 A. No. There still needs to be a 365 day lag to reflect the inflow, yet nonpayment of, the  
13 calculated income tax built into the Company revenue requirement. There is no other rational  
14 view. The Company is afforded an income tax expense in rates but does not have to pay and  
15 will not have to pay the money to a taxing authority through the period that these rates will be  
16 in effect. This is a negative CWC requirement.

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<sup>8</sup> Tim Lyons rebuttal, page 4, lines 11-13

<sup>9</sup> IRS Publication 542 states near the bottom of page 6 “a corporation must make installment payments if it expects its estimated tax for the year to be \$500 or more”

1 **Q. Is Spire disputing your contention that there are no quarterly tax payments?**

2 A. I don't believe so. Attached as JSR-S-03 is a confidential answer to OPC data request 1312.  
3 Among other requests, 1312 asked for a record of quarterly federal and state tax payments.  
4 Spire indicated that there were no quarterly income tax payments.<sup>10</sup>

5 **Q. Has Staff recognized and adjusted expenses within this cost of service for taxes that are**  
6 **not being paid?**

7 A. Yes. Staff has eliminated both Spire East and West earning tax due to neither entity paying  
8 any earning tax since 2013.<sup>11</sup>

9 **Q. How did Staff make an adjustment?**

10 A. Staff eliminated the tax from the cost of service. A nonpayment amounts to zero expense.  
11 The line item "City Tax Offset" on line 35 of the Cash Working Capital schedule displays a  
12 "\$0," which I agree with completely. No payment means no CWC requirement.

13 **Q. How is the Earning Tax Offset similar or different from the Federal and State Tax Offset**  
14 **on lines 33 and 34 of the schedule?**

15 A. The similarity is that federal and state income taxes probably haven't been paid since 2013  
16 either. Staff is aware that the tax isn't being paid even though it erroneously included tax  
17 expense as a legitimate liability in the CWC. It's treating income tax nonpayment differently  
18 than earning tax nonpayment for no apparent reason. The difference between them is that the  
19 Staff cannot just zero out the income tax lines. IRC requires the regular tax calculations to be

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<sup>10</sup> This lack of payment would be consistent with the NOLC balance, pointed out in the Company most recent 10-K, which eliminated past and future tax liabilities.

<sup>11</sup> Staff Report, page 109 lines 10 & 11

1 included in the cost of service. So even though the income taxes aren't paid, the amount is  
2 still included. This is where Staff fumbles the ball. It knows the tax isn't paid. It knows that  
3 the tax has to be included in the cost of service. Yet Staff errs when applying a CWC  
4 calculation.

5 **Q. Has Staff ever recognized an NOL adjustment when considering CWC tax offsets?**

6 A. Yes, it has. In Ameren Electric case ER-2016-0179, Staff recognized in its revenue  
7 requirement report that Ameren was in an NOL situation with its tax payments. Page 56 of  
8 the revenue requirement report states:

9 Staff proposes to set the federal income tax expense lag to zero (0) in this case as  
10 Ameren Missouri currently reports a net operating loss in regards to its federal income  
11 tax filings, resulting in no liability for payment of income taxes. Further, Ameren  
12 Missouri has stated that it does not expect to pay any income taxes until the year 2021.

13 Schedule JSR-R-04 is a copy of Staff's initial Accounting Schedule 08, from the 2016 case,  
14 presenting the CWC results. It is encouraging that someone in Staff recognizes nonpayment  
15 of taxes but they still miss the next step in the process by not deducting the customer payments.  
16 They accounted for the nonpayment of taxes but **messed the concept that \$184 million was**  
17 **collected from the ratepayer.** Instead of "\$0" adjustment to CWC it should have been a  
18 negative \$164,490,124. It's hard to expect Staff to see the reasoning of adjusting the expense  
19 lag to 365 days in the current case when they haven't recognized that Spire is in an NOL  
20 situation just as Ameren was in the 2016 case.

1 **GROSS RECEIPT TAX “(GRT)” REFUND**

2 **Q. You have brought up in prior testimony two discrepancies in the way Spire**  
3 **administers the calculation and collection of what is commonly known as gross**  
4 **receipts tax (“GRT”). One being that the Company did not apply GRT to the ISRS**  
5 **refund thereby denying the customers the refund of the GRT paid on the original \$15**  
6 **million. How has Spire responded to this allegation?**

7 A. Company witness Charles J. Kuper stated that “the ISRS settlement was silent with respect  
8 to the treatment of gross receipts tax”<sup>12</sup> but he ultimately argued in testimony that GRT is  
9 included in the revenues and therefore included in the refund and no other adjustment is  
10 needed.

11 **Q. Is this an accurate analogy of the revenue components?**

12 A. No. Company witness Kuper has misstated the facts. Mr. Kuper’s determinations are  
13 wrong on several levels. To start, let’s first look at the \$15 million refund. The refund  
14 amount was based off of an ISRS case. GRT is a flow through tax and is not a component  
15 of the revenue requirement of an ISRS calculation but it is a component of the billing  
16 mechanism. The initial \$15 million revenue requirement was devoid of GRT. Next, let’s  
17 review again Spire’s billing practice. As Mr. Kuper illustrated in his testimony; the  
18 Company includes the gas service and a grossed up tax amount in the gross receipts  
19 amount.<sup>13</sup> Using his example, the \$15 million revenue requirement charged to the  
20 customer, now has tax of \$1,129,500 which is a rate of 7.53%. The original billing has now  
21 become \$16,129,500. Third, as can be seen on the billing in my direct testimony, JSR-D-

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<sup>12</sup> Kuper Rebuttal, page 8, line 7-8

<sup>13</sup> Page 8 example \$100 service and a 7% tax on lines 13-16



1 04 page 1, that was submitted to the OPC by an actual customer, the refund was applied  
2 below the tax calculation line. The original billing of the untaxed \$15 million had tax  
3 applied (\$1,129,500 in this example) at the billing level by including the amount in the  
4 customer charges section, which is above the tax calculation line.

5 Let's be clear here that Spire refunded the \$15 million below the line (no tax applied) but  
6 originally collected the \$15 million **plus** the GRT. This means that Spire collected more  
7 money than it returned, hence the problem.

8 Spire has **confiscated** the ratepayer's previously paid gross receipts tax associated with the  
9 \$15 million refund. Charles Kuper's statement that "the ISRS settlement was silent with  
10 respect to the treatment of gross receipts tax"<sup>14</sup> is weak and the action was predatory. Tax  
11 was charged and paid by the customer in the original billing process but Spire finds  
12 "*silence*" a valid defense to withhold money due back to the customer.

13 **Q. The second irregularity you pointed out about the GRT was that the Company has**  
14 **always calculated the tax incorrectly and over-charged the customer. Both you and**  
15 **Spire witness Kuper have stated that the tax is grossed-up<sup>15</sup>. Why is this method**  
16 **incorrect?**

17 **A.** The primary reason is that the local ordinances do not mandate this method of calculation.  
18 Kuper states that "In nearly 80% of the taxing jurisdictions in which Spire operates, the  
19 gross receipts tax is a component of *revenue* on which the gross receipts tax is computed."<sup>16</sup>

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<sup>14</sup> Kuper rebuttal, page 8 lines 7-8

<sup>15</sup> Kuper rebuttal, page 8, line 15

<sup>16</sup> Kuper rebuttal, page 8 lines 10-12

1 The witness does not provide any evidence that any jurisdiction requires this redundancy  
2 of tax inclusion. Tax included in revenue to calculate tax is a circular argument.

3 **Q. Isn't income tax grossed-up when calculating revenue requirement?**

4 A. Yes it is, but these are differing circumstances which are executed to achieve different  
5 results. Income tax is grossed up to allow for the Commission approved net income to  
6 maintain the Commission specified level. Income is taxed by the IRS and the tax is  
7 calculated. The income tax is included in the revenue requirement. This inclusion is itself  
8 a taxable revenue and therefore must be taxed to **maintain the allowed net income**. GRT  
9 is not assessed to maintain a particular dollar amount. GRT is a fee, at a specified rate, on  
10 a given business transaction. It is not a fee added to a business transaction and then taxed.

11 **Q. How should GRT be calculated?**

12 A. GRT is computed like any other tax *other* than income taxes for ratemaking. The  
13 calculation is the multiplication of the taxable subject (transaction) by the statutory rate.  
14 To illustrate. Your paycheck is \$1000 and the social security tax rate is 6.2%. The social  
15 security tax then is  $\$1000 \times 6.2\% = \$62$ . You do not adjust the \$1000 by adding a grossed  
16 up tax rate of 6.61% and then multiply by 6.2% to come up with \$66.10 of social security  
17 tax. If that was the desired results of the calculation then Social Security would have just  
18 specified a 6.61% tax rate on the transaction. The same scenario applies to property tax,  
19 sales tax, hotel tax, etc. The list goes on. Simple multiplication of an amount and a rate.

1 **Q. Mr. Kuper has stated that “gross receipts tax is part of the definition of *revenue*.”<sup>17</sup>**

2 **How is this an incorrect statement?**

3 A. Mr. Kuper does not reference any definitions, ordinance citations, or any other authority  
4 that would lend credence to his statement, so I cannot determine what definition he is  
5 referring to. Nevertheless, the statement is meaningless to our calculations. It is important  
6 to point out here that Kuper is diverting the terminology. The argument is not about  
7 *revenues*. The argument concerns *gross receipts*. The definitions and terminology used in  
8 the ordinances that I have reviewed discuss gross receipts and the application of a tax rate  
9 on gross receipts. Mr. Kuper may very well be correct and could claim that gross receipt  
10 tax is a part of the definition of *revenues*. **But revenues are not what the gross receipts**  
11 **tax is applied to.**

12 **Q. Mr. Kuper states that Spire collects and remits gross receipts taxes based on the**  
13 **taxing jurisdiction ordinances in effect for the taxing period.<sup>18</sup> You added a St. Louis**  
14 **County and a Missouri State statute definition of gross receipts in you rebuttal**  
15 **testimony. Could you expand on the taxing ordinances that you reviewed?**

16 A. I’ve included an excel spreadsheet listing GRT municipalities with a summation of GRT  
17 language as well as copies of local ordinance pages clearly explaining how a utility, or if  
18 the ordinance was specific, the gas distribution service should calculate the GRT (Schedule  
19 JSR-S-05).

20 I used St. Louis County ordinances 502.150, Gross Utility Tax – Definitions in rebuttal due  
21 to it being one of the larger taxing authorities in the Spire service area and many of the

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<sup>17</sup> Kuper rebuttal, Page 8, line 17

<sup>18</sup> Kuper, page 9 line 13-14

1 incorporated townships within the county use this wording. I will break down how the tax  
2 is imposed.

3 502.150 defines a “Public Utility”

4 (1)“Public utility” means every individual, firm, corporation, partnership,  
5 joint venture, business trust, receiver and any other person, group,  
6 combination or association of any of them who shall be engaged in the  
7 business of supplying or furnishing electricity, electrical power, electrical  
8 service, gas, gas service, water, water service, telegraph service or exchange  
9 telephone service in the unincorporated areas of St. Louis county.

10 And then secondly defines what “gross receipts” to mean.

11 (2)"Gross receipts" means **the aggregate amount of all sales and charges**  
12 **of the commodities** or services described in (1) made by a public utility in  
13 the unincorporated areas of St. Louis County during any period less  
14 discounts, credits, refunds, sales taxes and uncollectible accounts actually  
15 charged off during the period. (Emphasis added)

16 Next in **502.151 – Tax Imposed-Amount.**

17 -Every public utility shall pay to St. Louis County an annual license or  
18 occupational tax in the amount equal to five (5) percent of the **gross receipts**  
19 derived from such business.

20 Even if, for the sake of argument, we accept Mr. Kuper’s contention that the terms *revenues*  
21 and *gross receipts* are interchangeable, there should be no confusion as to how the tax is  
22 calculated.

23 First. The public utility shall pay (5) percent of the gross receipts. Second. Gross receipts  
24 means the aggregate amount of all sales and charges of the **commodities** or services  
25 described in (1). It should be clear that gross receipts tax is not a commodity and it is not  
26 a service. There is no way to interpret that GRT should somehow be calculated and then  
27 added to gross receipts and calculated again. To further solidify this assertion, the

1 definition I supplied from the Missouri statutes in my rebuttal, indicates “gross receipts” is  
2 the total amount of the sale price of the sales at retail.<sup>19</sup> The statute goes on to explain that  
3 a “sale at retail” includes sales of electricity, electrical current, water and gas.<sup>20</sup> I did not  
4 find anywhere in the definitions that the tax should be included in the sale price and then  
5 taxed again. In fact, most ordinances state that sales tax should reduce the gross receipts  
6 prior to applying the tax rate<sup>21</sup>. No one should expect that gross receipts tax are handled  
7 differently than the exclusion of sales tax.

8 **Q. As you pointed out in previous testimony, GRT is a flow through item and is pulled**  
9 **from the Staff calculations. How should the Commission handle these GRT**  
10 **overcharges?**

11 A. Concerning the tax from the \$15 million refund, the Commission should require an  
12 immediate adjustment. The rate making implications should be a reduction in the  
13 Company’s allowable return. As I pointed out in rebuttal,<sup>22</sup> Spire’s handling of the  
14 judgment allowed them to refund the \$15 million and not refund the associated grossed up  
15 tax. When it submitted the tax returns, however, it was afforded a reduction due to  
16 recording the refund through the return. Spire has therefore realized this windfall since  
17 August of last year.

18 The continued overcharging of GRT poses a separate problem. These incorrect  
19 calculations have been going on for possibly decades but I’m not sure how far back the  
20 error can be refunded. I did not find a time constraint in any of the ordinances that I

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<sup>19</sup> §144.010. Definitions, (4) “Gross receipts”

<sup>20</sup> §144.010. Definitions, (13) “Sale at retail”, (b)

<sup>21</sup> Please refer back to the “Gross Receipts” definition on page 6 of my rebuttal testimony. I have noticed that many municipalities within St. Louis County adopted this definition in its ordinances.

<sup>22</sup> Riley rebuttal, page 7 lines 15-25, page 8 lines 1-2.,

1 reviewed, however, for reference the State of Missouri extended the statute of limitations  
2 for sales and use tax refund requests to 10 years.<sup>23</sup>

3 **Q. Should the customers be left on their own to request refunds from taxing authorities?**

4 A. Absolutely not. First of all, the fee is assessed against the utility and only the utility can  
5 request a refund. Secondly, now that this can of worms has been open, there is nothing  
6 stopping Spire from receiving refunds from every taxing jurisdiction and nothing I see,  
7 other than a Commission order, will require Spire to return the windfall back to the  
8 customers. The Commission needs to remember that Spire contends it was permitted to  
9 retain the tax on the court ordered \$15 million refund because the stipulation was “*silent*.”  
10 It is the function of the Commission to protect the ratepayer. Absent an order, we cannot  
11 really expect Spire to voluntarily refund money owed the customer.

12 **Q. How should the overcharge be corrected?**

13 A. The Commission should direct Spire to recalculate the gross receipts tax for each billing  
14 since the effective date of the last tariffs. This was an overpayment to the taxing authorities  
15 and should be spread out to lessen the harm to the municipality’s funding. That total  
16 overcharge should be included as a regulatory liability and reduce rate base until the  
17 overcharge is completely returned over the next three years. This was a clear error by the  
18 utility and the customer should be compensated for the economic loss.

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<sup>23</sup> Governor signed SB 87 in July 2019 extending claims from three to ten years.

**CONTINUED SEPARATION OF EAST AND WEST**

**Q. Mr. Weitzel has responded to your opposition to combining Spire East and West. He has claimed that the Commission has used single tariffs for separate and distinct territories in the past. He cites Missouri American Water as an example. Would you say that is a fair analogy?**

A. Not really. Our argument with separating East and West is that there are two very large entities with unique characteristics and quite capable of being maintained separately. Missouri American Water operates scores of small water companies so in an effort to create some efficiencies some combining makes sense. Spire has not claimed that a combination would create efficiencies.

**Q. OPC opposes combining the East and West ISRS also. Mr. Weitzel claims that exceeding the cap on the West ISRS was one of the reasons for this case. Is that a legitimate reason to combine these territories?**

A. No. The companies would have had to file a general rate case to satisfy the ISRS requirements. Combining ISRS just allows the Company to sidestep the rules without benefiting anyone.

**Q. Could you please reiterate OPC opposition to combining Spire East and West?**

A. These are two distinct and completely separate functional units. The Company would claim that there is one Spire Missouri, but the only benefit to making this claim is the ability of the Company to cross subsidize each territory with either territorial low gas prices or homogenized ISRS revenues. I'm not sure the customers get to enjoy these benefits.

1 **DISCONTINUATION OF THE GSIP**

2 **Q. Spire advocates expanding the GSIP to Spire West. What benefit would the customer**  
3 **receive from this expansion?**

4 A. I do not believe Spire East customers are benefiting from the present arrangement, so I  
5 doubt if adding a GSIP to the West would be an improvement. With the current federal  
6 administration’s attitude towards fossil fuels, the price of natural gas should remain  
7 elevated. The current \$3 Tier pricing threshold should provide Spire ample opportunity to  
8 purchase below the benchmark allowing them to collect a bonus.

9 **Q. The Company claims that the recent gas price spike proves that volatility still exists**  
10 **in the natural gas market. Do you agree?**

11 A. Not really. The “spike” in price was a convergence of unlikely events. It lasted less than  
12 two weeks. There hasn’t been a “spike” since 2014<sup>24</sup>. If Spire did its job with hedging,  
13 then the volatility should have been minimized. Prices are rising which is a function of  
14 supply and demand and government intervention, but prices are not spiking.

15 **Q. Could you summarize your opposition to the GSIP?**

16 A. I feel very strongly that the GSIP should be eliminated. Spire has set this tariff up to make  
17 it nearly automatic for them to collect a \$3 million windfall without the customer seeing  
18 any benefit.

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<sup>24</sup> Please refer to the weekly natural gas Henry Hub prices listed the US Energy Information Administration website <https://www.eia.gov/dnav/ng/hist/rngwhhdW.htm> One short lived price jump due to the polar vortex in 2014 and recently for the polar vortex in February.



1 **ADOPTION OF AMANDA CONNER TESTIMONY**

2 **Q. Direct testimony concerning Management Expense Charges was filed by Amanda C.**  
3 **Conner. Is it your intention to adopt this portion of her testimony as your own?**

4 **A.** Yes, I will be adopting her testimony and the related schedule ACC-D-3.

5 **Q. Does this conclude your surrebuttal testimony?**

6 **A.** Yes.